

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Federal-State Joint Board on Universal Service)	WC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109

COMMENTS OF COMPTTEL

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SUMMARY

COMPTEL wholeheartedly supports the Commission's efforts to eliminate waste, fraud and abuse in the Lifeline/Link Up programs. As such, COMPTEL supports the development and implementation of a national database – with USAC as the primary administrator - to verify consumer eligibility for Lifeline/Link Up assistance, track verification and check for duplicate claims. Such a database would not only assist in detecting and eliminating program violations, it would also reduce burdens on consumers, ETCs, states and USAC.

Pending the development of the database, the Commission should not make any dramatic rule changes that could be costly and short-lived. For one, the Commission should not eliminate the self-certification option or require low income consumers to present financial and extensive benefit program documentation to ETCs to establish their eligibility from Lifeline assistance. Requiring ETCs to provide customer names, addresses and birth dates on their Forms 497 (after obtaining customer consent to provide such information to USAC) should be sufficient to enable USAC to determine whether a customer has applied for support for more than one service at an address.

COMPTEL supports the process proposed by USTA *et al.* for dealing with duplicate claims, rather than that proposed by the Commission.

COMPTEL supports some proposed amendments to alleviate uncertainty with particular aspects of the rules. Namely, the Commission should clarify its eligibility rules to prevent violations (duplicate claims) caused by confusion over the Commission's policy. The Commission should adopt a single line per qualifying eligible adult rule to be applied evenly across wireline and wireless services. COMPTEL also supports the clarification that the definition of "ordinary charge for commencing telecommunication service" excludes a charge that is imposed on Lifeline or Link Up customers to initiate service, but not assessed on

customers that do not receive discounted service. Additionally, in accordance with the Electronic Signatures in Global and National Commerce Act (“E-Sign Act), the Commission should clarify that an electronic signature, including one obtain through an IVR, is an acceptable signature for purposes of meeting the signature and verification requirements.

The Commission must be mindful not to modify its rules in a manner that hinders low income users access to popular services. For example, the Commission needs to take into account prepaid wireless service offerings, an attractive competitive choice for many low-income users, when considering reporting requirements. Reporting partial or pro rata dollars when claiming reimbursement would not be possible for carriers that offer their Lifeline customers prepaid service. Likewise, the Commission should not amend its rules to eliminate either the obligation to provide toll limitation service (“TLS”) or Lifeline support for the costs of providing the service. TLS continues to be a service Lifeline subscribers elect as it maximizes the opportunity for low income users to stay connected to the telecommunications network. Additionally, the Commission should ensure that consumers are not penalized for non-usage or light usage, by allowing reimbursement for subscribers that are able to demonstrate that their Lifeline service should not be terminated even after 60 days of non-use.

While unconstrained growth of the Low Income Fund is not favorable, COMPTTEL submits that prior to taking any action to further cap the low income fund, the Commission should determine the extent of the savings that accrue to the fund, and reassess the need for a cap, once its proposals to eliminate waste, fraud and abuse and improve program administration have been put into place and are operating.

Finally, all qualifying subscribers, including those who subscribe to wireless services, should be entitled to receive equivalent amounts of Lifeline support regardless of the identify of their ETC or the technology used to provide their service.

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COMMENTS OF COMPTTEL

COMPTTEL, through counsel, hereby submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued in the above captioned proceedings on March 4, 2011. COMPTTEL supports the Commission’s efforts to eliminate waste, fraud and abuse in the Lifeline/Link Up programs by strengthening and enforcing the eligibility and verification rules, strengthening program administration and increasing accountability and efficiency. At the same time, the Commission must ensure that its proposed rule changes do not increase the burden or difficulty of qualifying for and enrolling in the Lifeline program in a way that discourages eligible consumers from taking advantage of the program.

Consistent with the statutory directive to ensure the availability of basic communications service to all Americans, including low-income Americans,¹ the Commission proposes a goal of preserving and advancing the availability of voice service for low income Americans and eliminating any difference in the availability of voice service to low income consumers versus

¹ Section 254(b) of the Communications Act, as amended, 47 U.S.C. § 254(b).

non low-income consumers.² The Lifeline program has much to accomplish before this goal is achieved. As of March 2009, only 90 percent of low income households subscribed to telephone service compared to 96 percent of the general population and the Commission’s target subscribership rate for low income households of 96.9 percent.³ And participation in the program is surprisingly sparse: only one-third of eligible low income households nationwide take advantage of the Lifeline program.⁴ The low level of participation in the Lifeline program underscores the need for the Commission to remain vigilant in advancing the availability of voice service for low income consumers and in refraining from unintentionally creating barriers to participation in the program.

I. Immediate Reforms To Eliminate Waste, Fraud and Abuse

It is critical that the Commission make every effort to eliminate waste, fraud and abuse in the distribution of Lifeline/LinkUp funds through improvements in the administration and management of the program.

A. Eliminating Duplicate Claims

The Commission asserts that “both the Commission and the Joint Board have consistently stated that Lifeline support is limited to a single line per residence,”⁵ but the Commission’s rules do not currently so provide. Indeed, the Commission proposes to amend the definition of “qualifying low income consumer” in Section 54.100 of the rules to add language requiring

² Notice of Proposed Rulemaking (“NPRM”) at ¶34.

³ *Id.* at ¶¶26, 35. In 1996, the telephone penetration rate for low income households was 85.4% versus a national average of 96.2%. *In the Matter of Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 2007) at ¶ 124.

⁴ *Id.* at ¶25.

⁵ NPRM at ¶ 47.

compliance “with the one-per-residence limitation” and to add Section 54.408 limiting Lifeline and Link Up support to one discount per residential billing address.⁶ The lack of clarity in the existing rules could not help but have contributed to the generation of duplicate claims.

At the same time, the Commission has expressed legitimate concern about multiple eligible telecommunications carriers (“ETCs”) receiving reimbursement for Lifeline service provided to the same consumer.⁷ As the Commission has acknowledged, however, ETCs lack the data to determine whether a consumer is enrolled in Lifeline with another carrier and therefore lack the data to prevent the occurrence of duplicate claims.⁸ Requiring ETCs to provide customer names, addresses and birth dates on their Forms 497 and obtain customer consent to provide such information to USAC would give USAC the data necessary to determine whether a consumer has applied for support for more than one service at the same address.

Customer name, address and birth date should be sufficient to identify duplicate claims and would be minimally invasive of the customer’s privacy as opposed to a requirement to provide social security numbers. By requesting the customer’s consent in advance to provide such information to USAC as a condition of receiving discounted service, carriers can avoid any potential violation of the privacy statutes. Any burden on carriers in providing such information to USAC would be outweighed by the benefit such information would offer in terms of safeguarding the integrity of the Lifeline program and ensuring that the funds are used for their intended purpose. Once such a process is put into place, ETCs could ideally receive electronic

⁶ NPRM at Appendix A, 47 C.F.R. §§54.100, 54.408.

⁷ *Id.* at ¶53.

⁸ See January 21, 2011 Letter from Sharon Gillett to Richard Belden, Chief Operating Officer, USAC, DA 11-110.

confirmation from USAC that a consumer is or is not receiving Lifeline support from another carrier prior to activating service and would thereby eliminate the hassle of resolving duplicate claims after the fact.

In terms of remedies to address duplicate claims, COMPTTEL submits that the proposal suggested by United States Telecom Association, *et al.* (“USTA”),⁹ is preferable to and more equitable than the one put forth by the Commission.¹⁰ Under the Commission’s proposal, when a duplicate subsidy is discovered, USAC would notify the ETCs to discontinue including the duplicate subscriber in their list of subscribers for whom they are claiming Lifeline support. ETCs must then notify the subscriber by phone and in writing, where possible, that the subscriber has 30 days to select one Lifeline provider or face de-enrollment in the program. Once the subscriber selects a single Lifeline provider by signing a new certification, the chosen ETC would notify USAC and the other ETC. The selected ETC may then seek reimbursement for the customer going forward while the other ETC must de-enroll the subscriber.

ETCs should be entitled to rely on their customers’ representations that they are eligible to receive Lifeline assistance. Because they lack the data to independently verify whether a customer is receiving duplicate support from another carrier, ETCs are innocent parties in the transaction and should not be penalized financially for the period of time it takes to resolve the duplicate claim as they would be under the Commission’s proposal. Pursuant to the Commission’s proposal, both ETCs would be required to cease seeking Lifeline reimbursement as soon as the duplicate claims are discovered, meaning that carriers would be forced to subsidize the customer’s service pending resolution or start billing the customer for the non-discounted rate of the service in order to be made whole. Both the Commission’s existing rules

⁹ NPRM at ¶59.

¹⁰ *Id.* at ¶58.

and the proposed revisions, however, prohibit ETCs from de-enrolling Lifeline subscribers without advance notice.¹¹

In addition, the Commission's proposal does not address what happens if the customer selects both ETCs as the "single" Lifeline provider and signs new certifications for both. In the case of a positive response to both ETCs, who will decide which ETC may continue to receive Lifeline support? If the customer does not respond to an ETC, the Commission proposes that the ETC notify the customer that service will be terminated for failure to respond to the notice regarding duplicate support and give the customer an additional 30 days to respond.¹² Is this second notice really necessary if the customer has chosen the other ETC? Putting the burden on the ETCs to independently notify their customers of the duplicate claims and their obligation to choose one provider is neither an efficient nor necessarily effective way to timely resolve duplicate claims.

The alternative suggested by USTA *et al.* is far preferable in that it would achieve the result desired by the Commission without penalizing the ETCs or leaving open questions. Under USTA's proposal, USAC would be responsible for notifying in writing the subscribers it identifies as receiving duplicate claims that they had to select one provider and to return a form with their selection within 30 days. The form that USAC provides to the subscriber should only list the two ETCs involved with the duplicate claims, rather than every ETC that serves the area as suggested by USTA. USAC would also notify the affected ETCs about the written notice to the subscribers and the ETCs would continue to provide Lifeline supported service to the

¹¹ 47 C.F.R. §405 (requiring ETCs to give consumers written notice of impending termination and allow 60 days for consumers to demonstrate continued eligibility); NPRM at Appendix A, 47 C.F.R. §405 (requiring ETCs to give written notice of impending termination and allow 30 days for consumers to demonstrate continued eligibility).

¹² NPRM at Appendix A, 47 C.F.R. §54.405(e).

subscribers and seek reimbursement from the fund until the resolution process is complete.

Although not included in USTA's proposal, COMPTEL submits that ETCs also should be free to contact their customers to facilitate the resolution process. When USAC receives a completed form from a subscriber indicating his/her selection, USAC would notify the ETC not selected and that ETC would be required to de-enroll the subscriber from its Lifeline service. If USAC does not receive a completed form from a subscriber, after 30 days it would either notify both ETCs to de-enroll the subscriber from their Lifeline services or contact the subscriber by phone to ascertain the subscriber's preferred provider.

The Commission asks whether customers would be more or less likely to respond to an inquiry from USAC than from their service provider. While it is impossible to answer this question with any certainty, COMPTEL submits that customers may be more likely to respond to USAC when it identifies itself as the Administrator of the fund that subsidizes their service and states that a failure to respond will result in a loss of the subsidy. Moreover, as noted above, ETCs should also be free to contact their customers to facilitate with the resolution and would be available to answer any questions from their costumers about USAC and the role it plays in the Lifeline program.

Implementation of USTA's proposal may increase USAC's administrative costs slightly but those costs would be offset by the savings realized from eliminating duplicate claims. Moreover, once USAC builds its database with the unique household-identifying information that ETCs provide for their customers, hopefully ETCs will be able to verify whether a consumer is already receiving Lifeline support from another carrier before activating service. If such a process can be implemented, the occurrence of duplicate claims should significantly diminish.

COMPTTEL does not support the Commission's alternative proposal¹³ which also puts the burden on the ETCs to notify their customers that they have 30 days to select a single provider. Under the alternative, if a customer does not respond to the notice to make a selection, the ETC that has provided continuous Lifeline service to the customer for the longest period of time would continue to receive Lifeline support and the other ETC would not. This default option should not be adopted because there is a huge risk that it inadvertently would discriminate against competitive ETCs and in favor of incumbent LECs, as incumbents are more than likely to be the ones providing continuous service for the longest period of time. Moreover, one ETC is not in a position to know how long the other ETC has provided continuous Lifeline service to the customer. As a result, if neither ETC receives a response from the consumer, would both be entitled to assume they should continue to provide Lifeline service and seek Lifeline support or would neither be entitled to make that assumption? Centralizing the customer and carrier notification process in USAC would avoid these problems.

B. Recovering Duplicate Payments

The Commission asks for comment on a proposed mechanism for ETCs to reimburse the universal service fund in the event of duplicate claims. Under its proposal, USAC would be required to seek recovery of Lifeline payments from all ETCs involved with the duplicate claims from the time the duplicates are discovered until the time it can be demonstrated that the consumer or household is no longer receiving duplicate benefits. In addition, if a customer does not respond to the notice informing him/her of the need to choose one provider and is terminated from the program by both ETCs, USAC will be required to seek reimbursement from both ETCs from the time of discovery of the duplicate claims until the time of termination. Alternatively,

¹³ NPRM at ¶60.

the Commission proposes requiring USAC to seek recovery only from the ETC that is not chosen by the customer.¹⁴

COMPTTEL disagrees with the Commission's proposal for several reasons. First, as noted above, it would be inequitable for the Commission to punish ETCs financially for duplicate claims by requiring them to subsidize the consumer's service because they do not have access to data that would allow them to determine whether the consumer is already participating in Lifeline when he/she signs up for service or data that would alert them if the consumer subsequently signs up for Lifeline service with another provider. Section 214(e) of the Act and Section 54.405(a) of the Commission's rules require ETCs to offer Lifeline service to all qualifying consumers. In exchange for providing local voice service to qualifying low income consumers at a discount, ETCs are entitled to reimbursement from the universal service fund and offer the discounted service in reliance on being reimbursed as the statute allows. Until the Commission establishes a mechanism, such as a national database, that would allow ETCs to obtain verification of whether a consumer is receiving Lifeline support from another provider in advance of activating service, the Commission cannot hold an ETC liable for a consumer's violation of the single-line-per-household "rule" in the absence of evidence that the ETC had actual knowledge of and participated in the violation. At the very least, ETCs should be given the opportunity to demonstrate that they made reasonable efforts to avoid duplicate claims, such as obtaining a certification from the customer.

The Commission cites Section 54.707 of its current rules, which directs USAC to suspend or delay discounts if a carrier fails to provide adequate verification of those discounts upon reasonable request or if the Commission so directs, as authority for directing USAC to

¹⁴ NPRM at ¶ 62.

recover duplicate payments from the ETCs.¹⁵ If the Commission is suggesting that this rule would require an ETC to prove to USAC that a consumer for whom it seeks Lifeline reimbursement is not simultaneously receiving Lifeline support from another carrier, the Commission has already determined that it would be impossible for an ETC to do so. Specifically, the Commission has conceded that “[t]here is no comprehensive database in place for ETCs to determine whether an eligible consumer is enrolled in Lifeline with another ETC, and ETCs are not in the position to share customer information with one another.”¹⁶ Because an ETC would never be in a position to provide “adequate verification” that a consumer is *not* receiving Lifeline support from another carrier, Section 54.707 affords ETCs no rights at all in terms of defending against a reimbursement claim.

Second, it is the customers, not the ETCs, that are the beneficiaries of duplicate claims. To the extent the Commission is going to direct USAC to pursue recovery of duplicate payments, the Commission should direct USAC to seek reimbursement directly from the customers who received the discounted services, not the carriers who provided them.

Third, the Commission and USAC also must bear responsibility for duplicate claims – USAC for paying them and the Commission for not requiring USAC to have controls in place to prevent the payment. Any attempt to hold an innocent party in the transaction financially responsible is inequitable and unlikely to withstand judicial review. Moreover, requiring ETCs to shoulder the entire financial burden for the period when one of their customers accepts Lifeline service from more than one carrier does not create an incentive for ETCs “to avoid

¹⁵ NPRM at ¶62.

¹⁶ January 21, 2011 Letter from Sharon Gillett to Richard Belden, Chief Operating Officer, USAC, DA 11-110, at 2.

requesting support for duplicative services,” as the Commission suggests.¹⁷ ETCs have no incentive to request support for duplicative services and until they have access to data that would allow them to verify a customer’s enrollment in the Lifeline program before activating service, penalizing them financially for unknowingly providing Lifeline service to a customer who is also receiving service from another carrier may only serve to incent them to err on the conservative side in rejecting applications for Lifeline service.

C. Pro Rata Reporting Requirements

The Commission asks for comment on its proposal to codify the rule that all ETCs must report partial or pro rata dollars when claiming reimbursement for Lifeline customers who receive service for less than a month.¹⁸ The Commission asserts that carriers routinely bill customers for partial months and should have the capacity in their billing systems to determine whether a customer is a Lifeline subscriber for the full billing period. The Commission’s assumption may be true for carriers that bill their Lifeline customers in one month for service provided in the prior month (postpaid accounts). However, for carriers that offer their Lifeline customers prepaid service – *i.e.*, payment in advance for a specified number of minutes with the ability to add additional minutes as needed – reporting partial or pro rata dollars when claiming reimbursement would not be possible.

Prepaid wireless service is an extremely attractive competitive choice for many low-income consumers. With a prepaid service, a customer does not have to pass a credit check, sign a long term contract or agree to be subject to termination fees if the contract is terminated early. Prepaid plans allow customers to better manage their telephone expenses, an important consideration when money is tight. Because customers do not receive monthly bills for prepaid

¹⁷ NPRM at ¶55.

¹⁸ *Id.* at ¶67.

service, they are not billed for partial months of service no matter when their service begins. What the customer purchases is a specified number of minutes of use, not service for a specified period of time. As a result, it is not practical for providers to pro-rate the cost of a prepaid service over a 30 day billing cycle. Moreover, it would not be fair to require them to do so. A customer who initiates service in the last week of the month could use all of the prepaid minutes on the first day of service. Permitting a carrier to seek only a 25 percent pro-rata share of the monthly reimbursement under such circumstances would not compensate the carrier for the revenues forgone in providing the Lifeline service.

As it updates its rules, the Commission must ensure that the new rules reflect the realities of today's telecommunications marketplace and the way consumers purchase service. The Commission's rule should provide that where a carrier bills a customer for only a partial month of service, it may only seek reimbursement for the corresponding pro-rated amount of Lifeline support.

D. Toll Limitation Service

The Commission's rules currently require ETCs to offer low income subscribers toll limitation service ("TLS") and authorize Lifeline support for the incremental cost of providing the service.¹⁹ The Commission proposes to amend the rules to eliminate both the obligation to provide TLS to Lifeline customers and Lifeline support for the costs of providing TLS on the grounds that there is a great variation in the TLS costs claimed by ETCs and the rule has outlived its usefulness given the reduction in long distance rates.²⁰ COMPTTEL submits that neither of these rationales justifies repealing the rule.

¹⁹ Sections 54.401(a)(3) and 54.403(c) of the Commission's Rules.

²⁰ NPRM at ¶70.

Although it proposes to eliminate the requirement to offer TLS and the Lifeline support to provide it, the Commission did not alter its findings that low income consumers may not be able to afford TLS or that TLS maximizes the opportunity for low income consumers to stay connected to the telecommunications network.²¹ TLS remains an important safeguard for low income consumers and can effectively be used to control telecommunications expenditures. It is an optional service that low income consumers can elect to take or not take. The fact that Lifeline subscribers continue to elect to take the service demonstrates that the service continues to have value to them regardless of the reduction in long distance rates. If the Commission repeals Section 54.401(c) of the rules as proposed, those low income consumers who cannot afford to pay the additional retail charge for TLS may very well be forced to pay a security deposit as a condition of receiving service, a condition that may discourage many from subscribing to telecommunications service.²²

The Commission's real concern with TLS seems to be the large variation in the amounts that ETCs are claiming in incremental costs subject to reimbursement, not the service itself. The Commission notes that ETCs have claimed anywhere from \$0 to \$36 per month in incremental costs to provide TLS to low income subscribers.²³ The better way to address the incremental cost issue would be to establish a cap on the amount of reimbursement carriers may claim for TLS rather than eliminating the reimbursement altogether. Establishing a cap on the

²¹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997) at ¶385.

²² See also, April 8, 2011 Letter from John Heitman, Counsel for Reunion Communications, Inc., to Marlene H. Dortch filed in WC Docket Nos. 11-42, *et al.*

²³ *Id.*

reimbursement amount will ensure that low income consumers retain access to TLS while guarding against abuse and the opportunity for carriers to inflate their incremental costs.

E. Link Up

The Commission proposes to amend its rules to clarify the definition of “customary charge for commencing telecommunications service.” The revised definition is “the ordinary charge an ETC routinely imposes on all customers within a state to initiate service.” This limits recovery to the actual charged assessed on all customers, including non-Lifeline customers, to initiate service with that ETC, and excludes a charged imposed only on Lifeline or Link Up customers to initiate service.²⁴ COMPTTEL submits that these revisions effectively put ETCs on notice that Link Up funds are not available for reimbursement of service initiation charges that are assessed on Lifeline customers, but not on customers who do not receive discounted service. The purpose of the Link Up program is to provide financial assistance to low income consumers to defray the costs of initiating service. If an ETC were to charge low income customers a service initiation fee that is not assessed on similarly situated non low-income customers, reimbursement from the Link Up program would not be appropriate or consistent with the statute.

F. Customer Usage

COMPTTEL supports the Commission’s efforts to ensure that Lifeline support is used for its intended purpose, which is to subsidize the cost of providing telephone service to low income consumers.²⁵ Continuing to subsidize customers who are no longer using the Lifeline service is a waste of Lifeline funds and should be avoided. The Commission’s proposal to limit Lifeline

²⁴ NPRM, Appendix A at 47 C. F. R. §54.400(e).

²⁵ NPRM at ¶¶80, 82.

support to qualifying low income consumers who have used the supported service to initiate or receive a *voice call* within the last 60 days,²⁶ however, should be expanded to include consumers who have checked voice mail, sent or received a text message, or purchased additional minutes in the last 60 days. Broadening the activities that can be used as evidence that the service is still active more accurately reflects the reality of consumers' telephone usage today. ETCs should be required to notify their customers at initial enrollment that Lifeline service will be terminated if they fail to use the service for 60 days.

The Commission's proposed rule 54.405(e) provides that ETCs shall notify Lifeline subscribers of "impending termination" if the subscriber fails to use the supported service during a 60-day period, give the subscriber 30 days to respond and terminate the Lifeline service if the subscriber fails to demonstrate that the service should not be terminated. The proposed rule also provides that the ETC shall not seek Lifeline reimbursement for the subscriber during the 30 day period. COMPTTEL submits that if the subscriber is able to demonstrate that his Lifeline service should not be terminated, ETCs should not be precluded from seeking reimbursement for the 30 day response period. As the Commission noted, it does not seek to penalize customers for non-usage or light usage.²⁷

II. Clarifying Eligibility Rules

A. One-Per-Residence

The Commission's policy of providing low income support for a single line per residential address was adopted at a time when wireline voice service was the only option available to most Americans. Since that time, wireless service has become ubiquitous and 93%

²⁶ NPRM at Appendix A, 47 C.F.R. §54.407(b).

²⁷ NPRM at ¶83.

of the general population now subscribes to wireless.²⁸ In addition, the Commission and the states have authorized competitive ETCs to receive universal service support for providing both wireline and wireless service to low income consumers. The entry of competitors has meant that low income consumers now have access to a choice of service providers as well as a choice of technologies for their subsidized service. As the Commission notes, the availability of wireless services has led to an increase in telephone penetration rates among low income consumers.²⁹ The increase in telephone penetration rates demonstrates that the low income fund is succeeding in maximizing the number of Americans with access to communications services.

The Commission proposes to codify its single line per residential address policy as a rule,³⁰ but in light of changes in the marketplace since the policy was adopted, seeks comment on whether a better approach may be to limit Lifeline support to one line per eligible adult.³¹ COMPTTEL submits that a single line per qualifying eligible adult rule would better promote the goal of providing affordable access to telecommunications services to the low income community. The rule should apply evenly across technologies. If two qualifying eligible adults live in the same household, this proposal would mean that (a) both could receive Lifeline support for separate wireless services; (b) both could receive Lifeline support for separate wireline services; or (c) one could receive Lifeline support for a wireless service while the other receives support for a wireline service.

²⁸ *Id.* at 110.

²⁹ *Id.* at ¶104.

³⁰ *Id.* at Appendix A, 47 C.F.R. §54.408.

³¹ NPRM at ¶110.

As the Commission recognizes, there must be some flexibility in the definition of “residence” so as not to preclude unrelated eligible adult roommates, multiple eligible families sharing a common address, or other eligible adults living in group quarters from subscribing to Lifeline service. In such group living situations, eligibility may be demonstrated in a variety of ways, including by IRS filing status. In the alternative, requiring each eligible subscriber to certify that he is not receiving Lifeline service from another ETC at the same or a different location would minimize the potential for waste, fraud and abuse.

III. Constraining The Size Of The Low Income Fund

The Commission has asked for comment on whether it should cap the size of the Lifeline/Link Up program at the 2010 disbursement level of \$1.3 billion or at some higher or lower level.³² COMPTTEL concurs with the Commission’s assessment that unconstrained growth of the universal service fund may jeopardize the goal of universal service by increasing the contribution burden on consumers and businesses, thereby discouraging the adoption and use of telecommunications services.³³ Nonetheless, although the low income program roughly doubled in size between 2000 and 2010,³⁴ still only one-third of eligible low income households currently participate in the program.³⁵ This rate of participation has not changed since 2004

³² *Id.* at ¶145.

³³ *Id.* at ¶142.

³⁴ *Id.*

³⁵ *Id.* at ¶25.

when the Commission expanded the federal default eligibility criteria in an effort to increase Lifeline/Link Up subscription rates.³⁶

As the Commission acknowledges, the Lifeline program is already subject to an ultimate cap in that only a defined population of low income consumers are eligible to participate and support is limited to a maximum of \$10 per household per month except on Tribal lands.³⁷ COMPTTEL submits that prior to taking any action to further cap the low income fund, the Commission should determine the extent of the savings that accrue to the fund, and reassess the need for a cap, once its proposals to eliminate waste, fraud and abuse and improve program administration have been put into place and are operating. Because fund growth is not necessarily indicative of waste, fraud and abuse and is instead influenced by a number of factors, including macroeconomic conditions,³⁸ the Commission cannot focus simply on the growth of the fund, but must evaluate that growth in the context of the nation's economy as a whole.

It would be unrealistic to assume that the extended economic recession that this country has suffered over the last several years has had no impact on the growth in the size of the fund. According to a report by the Bureau of Labor Statistics in October 2010, “[t]he number of long-term unemployed workers has increased sharply since the recession began in December 2007. In the second quarter of 2010, about 46 percent of the 14.6 million unemployed persons were jobless for 27 weeks or longer and about 31 percent were unemployed for 52 weeks or longer.”³⁹ It would be extremely difficult for the Commission to honor its commitment to enable

³⁶ *In the Matter of Lifeline and Link Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87 (rel. Apr. 29, 2004) at ¶1 (only one-third of households currently eligible for Lifeline/Link Up assistance actually subscribe).

³⁷ NPRM at ¶144.

³⁸ *Id.*

³⁹ U.S. Bureau of Labor Statistics, “Issues in Labor Statistics,” (Oct. 2010) at 1.

households in economic distress to obtain access to telecommunications services if it were to cap the fund at 2010 levels before the economic recovery has progressed to the point where unemployment rates have dropped to pre-recession levels. This is especially so given the fact that significantly less than 50 percent of the eligible low income households are currently taking advantage of Lifeline service and that access to a telephone is critical to anyone looking for work.

IV. Improving Program Administration

The Commission seeks comment on improving key aspects of the administration of the Lifeline/Link Up fund consistent with the goals of reducing waste, fraud and abuse. COMPTTEL supports the Commission's efforts to improve administration of the program and reduce barriers to participation by carriers and low income households through the use of automatic enrollment procedures and the development and use of a national database to facilitate enrollment and verification of ongoing eligibility.

A. Eligibility Criteria

The federal default eligibility requirements for the Lifeline program, which apply in eight states, include household income at or below 135 percent of the Federal Poverty Guidelines or participation in at least one of a number of federal assistance programs.⁴⁰ The remaining 42 states that have their own Lifeline and Link Up programs have flexibility under the Commission's rules to establish their own eligibility criteria.⁴¹ The Commission proposes to amend its rules to require all states to utilize at a minimum the federal default criteria while allowing states that have state-specific requirements in addition to the federal criteria to maintain

⁴⁰ See Section 54.409(b) and (c) of the Commission's rules.

⁴¹ Section 54.409(a) of the Commission's rules.

those requirements.⁴² Establishing uniform eligibility criteria that apply nationwide would produce the positive benefits of ensuring that consumers in all states have comparable access to assistance from the Lifeline/Link Up fund, and simplify monitoring and auditing processes somewhat. Moreover, a national set of eligibility criteria would make it easier for states and ETCs to use a national database or information management system to check and confirm a consumer's eligibility for the Lifeline/Link Up discounts.

B. Certification and Verification of Consumer Eligibility

The Commission asks for comment on its proposal to amend the rules to require that all ETCs obtain a certification when initially enrolling a customer in Lifeline that only one Lifeline service will be received at that address and an annual certification that the customer is receiving Lifeline support for only one line.⁴³ COMPTTEL submits that such a certification process should help guard against the occurrence of duplicate claims by effectively putting customers on notice that receiving Lifeline service for more than one line and/or from more than one provider is a violation of federal law and that such violations will be prosecuted.

The Commission also proposes to eliminate the self-certification option for eligibility and to require customers to present documents to the ETC demonstrating that they are eligible for the Lifeline program.⁴⁴ COMPTTEL appreciates the Commission's concern for reducing the number of ineligible consumers and the opportunities for waste, fraud and abuse, but submits that the more effective, and far less intrusive, way to verify consumer eligibility is the development and implementation of a national database against which eligibility could be checked. With a

⁴² NPRM at ¶154.

⁴³ NPRM at ¶168.

⁴⁴ *Id.* at ¶170.

national database system in place, it should be possible to verify Lifeline consumers' eligibility at the time of enrollment in the program as well as annually. A national database that routinely reviews eligibility status and notifies ETCs electronically that a customer no longer qualifies for Lifeline assistance would be the most effective and efficient method for ensuring that only those eligible continue to receive the benefit.

Pending the development of the national database, the Commission should not eliminate the self-certification option or require low income consumers to present financial and extensive benefit program documentation to ETCs to establish their eligibility for Lifeline assistance. Qualifying consumers may decline to take advantage of Lifeline assistance because of the necessity of producing tax returns, divorce decrees or other personal and financial information to ETCs.⁴⁵ Moreover, it is questionable how a prior year's tax return, which could be up to a year old at the time of application for service, would effectively demonstrate a consumer's current income-based eligibility for the program. The same is true for a prior year's statement of benefits for a consumer seeking Lifeline assistance based on participation in a qualifying state or federal program. If the Commission nonetheless determines that consumers should be required to share their very personal and financial information with their telephone companies in order to qualify for Lifeline service, ETCs should not be required to keep copies or other records of the data, either in paper or electronic format. Instead, ETCs should be permitted to certify that they have reviewed the documentation and based on the information provided, the consumer qualifies for Lifeline service.

In addition to the inadvisability of requiring consumers to share personal and financial data with their telephone companies to demonstrate their eligibility for Lifeline, any benefit of

⁴⁵ NPRM at Appendix A, 47 C.F.R. §54.410.

requiring ETCs to undertake the expense and burden of implementing the Commission's proposed verification processes would not outweigh the cost. Hopefully, the revised verification processes would have a limited shelf life and be in effect only until the national database becomes available. In the absence of evidence that the proposed revisions to the verification rules will prove more effective than the current rules in identifying ineligible consumers, the Commission should focus its efforts on establishing the long term solution of a national database, rather than on implementing short term fixes that may or may not be effective in confirming eligibility.

C. National Database

COMPTEL wholeheartedly supports the development and implementation of a national database to verify consumer eligibility for Lifeline/Link Up assistance, track verification and check for duplicate claims. As the Commission appropriately recognizes, such a database could substantially reduce burdens on consumers, ETCs, states and USAC and could help identify and eliminate program violations.⁴⁶

As the entity responsible for paying Lifeline/Link Up claims, USAC should be the primary administrator of the national database. Safeguarding consumers' privacy and sensitive information must be given the highest priority. Through its oversight and management functions, the Commission could ensure that a database under the control of USAC has appropriate security safeguards.

Any such national database should allow ETCs to verify prior to activating service that a customer is or is not eligible for Lifeline/Link Up assistance and is or is not currently receiving Lifeline discounted service from another provider. As noted above, duplicate claims could be

⁴⁶ NPRM at ¶206.

substantially reduced, if not eliminated, if ETCs had the ability to verify up front whether a customer was already receiving subsidized service. The database should also allow ETCs to verify an existing customer’s ongoing eligibility for Lifeline assistance. Ideally, ETCs would be notified electronically when a customer is no longer participating in a state or federal qualifying assistance program so that steps may be taken to de-enroll the customer from Lifeline without undue delay.

D. Electronic Signature

The Commission seeks comment on whether to modify its current rules to clarify that an electronic signature is an acceptable “signature on a document” for purposes of meeting the certification and verification requirements of sections 54.409(d) and 54.410, and specifically asks whether an interactive voice response (IVR) telephone system satisfies the signature requirement of the rules. Pursuant to the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”) an electronic signature, including one obtain through IVR, satisfies the signature requirements of the rules. Amending the rules to specifically clarify that electronic signatures obtained via IVR are acceptable under Sections 54.409 and 54.410 would be advisable to remove any uncertainty on the matter.

The E-Sign Act mandates that a signature cannot be denied legal effect or validity solely because it is in electronic form.⁴⁷ “Electronic” is defined by that Act as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.”⁴⁸ “Electronic Signature,” in particular, means “an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with

⁴⁷ 15 U.S.C. §7001(a).

⁴⁸ 15 U.S.C. §7006(2).

the intent to sign the record.”⁴⁹ Therefore, if an ETC offers its customers the option to enroll online, an electronic signature satisfies the signed certification and verification requirements of the rules.

A signature obtained via IVR, which is a phone technology that allows a computer to detect voice and touch tones during a normal phone call, can also meet the definition of an electronic signature under the E-Sign Act if set up properly.⁵⁰ For example, the consumer must be given appropriate disclosures and must be allowed to enter a response that indicates consent associated with the record containing the information which the consumer must certify.

Accordingly, IVR would meet the signature requirement under the Commission’s rules so long as it otherwise meets the requirements of the rule and the record keeping requirements under the E-Sign Act.

The Commission also seeks comment on how the ETC would satisfy the recordkeeping requirements of section 54.417 using an IVR telephone system. As the Commission has previously stated, the E-Sign Act provides a specific framework for the use of electronic records and signatures and places limitations on the Commission’s interpretation authority with regard to

⁴⁹ 15 U.S.C. §7006(5).

⁵⁰ See “Complying with Telemarketing Sales Rule” BCP Business Center, Federal Trade Commission, at <http://business.ftc.gov/documents/bus27-complying-telemarketing-sales-rule> “A seller need not obtain or retain the consumers agreement in paper form. The Rule expressly permits sellers to use electronic records that comply with the Electronic Signatures In Global and National Commerce Act (“E-SIGN”). Therefore, a seller may use a written agreement that is both created and retained in electronic form, so long as the seller can demonstrate that the seller’s procedures comply with E-SIGN, and conform to the Rule’s written agreement requirements. Thus, consumers’ express agreements to receive prerecorded message calls could be obtained by means of email, *a website form*, *a telephone keypress* during a live call with a sales agent, or a voice recording.” Emphasis added. See also, Shroyer v. New Cingular Wireless Services, Inc., 498 F.3d 976, 979 (2007) [“Shroyer...executed an electronic signature over the telephone to assent to the terms of the Agreements.”]

this framework.⁵¹ Under the Act, record retention requirements are met by an electronic record that accurately reflects the information set forth in the record and remains accessible to all persons entitled to access for the required period, in a form capable of being reproduced.⁵²

V. Modernizing the Low Income Program

A. Support Amounts For Voice Service

The Commission seeks comment on whether it makes sense to continue to tie Lifeline support amounts to the federal subscriber line charge (“SLC”) and whether an incumbent LEC’s SLC continues to be an appropriate metric for determining the amount of support that should be provided to a non-ILEC.⁵³ All qualifying subscribers, including those who subscribe to wireless services, should be entitled to receive equivalent amounts of Lifeline support regardless of the identify of their ETC or the technology used to provide their service and all should be eligible to receive the maximum available Tier I Lifeline support in all service areas.

The SLC is a flat monthly charge that ILECs assess on end users to recover a portion of the revenue assigned to the interstate jurisdiction.⁵⁴ The amount of the charge is the tariffed SLC rate of the ILEC serving the area in which the qualifying low-income consumer receives service.⁵⁵ The SLC varies across regions, may be revised at any time, and is capped at \$6.50.

⁵¹ Third Report and Order and Second Order on Reconsideration, *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, FCC 00-255 at ¶9 (2000).

⁵² 15 U.S.C. § 7001(d).

⁵³ NPRM at ¶ 249.

⁵⁴ NPRM at ¶246.

⁵⁵ 47 C.F.R. § 54.403(a)(1).

Under the current system, the Lifeline support consumers receive varies due to the fact that the support is tied to the incumbent LEC's SLC. For example, while the SLC for Verizon is \$6.50 in Texas, it is \$5.65 in Maryland. Qwest's SLC is \$6.50 in Montana but \$5.81, \$4.94, and \$4.76 in Washington, Minnesota, and Nebraska respectively. The support even varies within a state. In California, Verizon's SLCs vary in amount between \$6.50 and \$5.21, while Pacific Bell Telephone Company's (AT&T) is \$4.40. Overall, SLCs range from \$2.24 (in parts of Maine) to the \$6.50 capped amount.⁵⁶

Such variation in support makes it difficult for ETCs to offer rates that apply nationwide⁵⁷ and may deter some ETCs from offering service in certain areas where Tier 1 support is very low. The federal Tier 1 support amount should not be tied to any provider's costs. Instead, a uniform reimbursement amount should be available to all ETCs. The support is intended to reimburse ETCs for forgone revenue and the amount provided for eligible consumers should be equal regardless of the technology or provider of service the consumer chooses. If the Commission were to adopt different reimbursement frameworks for carriers that do not charge a SLC or that do not allocate costs between state and federal jurisdictions or that use different technologies, the Commission would in effect be influencing the customer's choice of provider and technology by steering the customer toward the ETC able to offer the biggest discount.

⁵⁶ USAC FCC Filings, Second Quarter Appendices – 2011, Low Income LI10- Tier 1 Amounts Reported by All Companies – 3Q2010. <http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx>

⁵⁷ TracFone Wireless, Inc., Petition for Rulemaking, RM-11526, p. 9, filed March 5, 2009.

CONCLUSION

COMPTEL urges the Commission to implement Lifeline/Link Up reform in a manner consistent with the foregoing recommendations.

Respectfully submitted,

/s/

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