Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	:	
	:	
Lifeline and Link Up Reform and Modernization	:	**WC Docket No. 11-42**
	:	
Federal-State Joint Board on Universal Service	:	**CC Docket No. 96-45**
	:	
Lifeline and Link Up	:	**WC Docket No. 03-10**
	:	

COMMENTS
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

April 21, 2011

TABLE OF CONTENTS

Page

INTRODUCTION AND SUMMARY 1

DISCUSSION 2

I. IMMEDIATE REFORMS TO ELIMINATE WASTE, FRAUD AND ABUSE 2

A. Duplicate Claims 2

B. Remedies to Duplicate Claims 5

C. De-Enrollment for Duplicate Claims 5

D. USAC Reimbursement for Duplicative Claims 6

E. Required Physical Address in Order to Receive a Lifeline Benefit 7

F. Pro Rata Reporting Requirements 7

G. Elimination of Reimbursement for Toll Limitation Service 8

H. Customer Usage of Lifeline-Supported Service 9

II. CLARIFYING SUBSCRIBER ELIGIBILITY RULES 10

III. CONSTRAINING THE SIZE OF THE LOW-INCOME FUND 13

IV. IMPROVING PROGRAM ADMINISTRATION 14

A. Eligibility Criteria 14

B. Certification and Verification of Eligibility 16

C. Database 20

V. CONSUMER OUTREACH AND MARKETING 21

A. Marketing Guidelines 21

B. Outreach 22

TABLE OF CONTENTS

Page

VI. MODERNIZING THE LOW INCOME PROGRAM TO ALIGN WITH CHANGES IN TECHNOLOGY AND MARKET DYNAMICS 23

A. The Current Lifeline Program 23

i. Definition of "Lifeline" 23

ii. Support for Voice Service 24

iii. Minimum Service Requirements for Voice Service 26

iv. Support for Bundled Service 27

B. The Transition to Broadband 28

i. Broadband Pilot 28

C. Eligible Telecommunications Carrier Requirements 30

CONCLUSION 31

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INTRODUCTION AND SUMMARY

On March 4, 2011, the Federal Communications Commission (FCC) released a notice of proposed rulemaking (NPRM) in the above-captioned dockets that proposes reforms to and modernization of the Lifeline and Link Up programs (collectively Lifeline or Lifeline service).[1] Among the FCC's stated goals, the reforms proposed in the NPRM are intended to "bolster protections against waste, fraud, and abuse" and "control the size of the program[s]."[2] On November 3, 2010, the Public Utilities Commission of Ohio

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[1] *In the Matter of Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*, WC Docket No. 11-42, CC Docket No. 95-45, WC Docket No. 03-109 (Notice of Proposed Rulemaking) (rel. March 4, 2011) (NPRM).

[2] *Id*. at 3, ¶ 1.

(Ohio Commission) opened an investigation into the provision of prepaid Lifeline service by competitive eligible telecommunications carriers (competitive ETCs).[3] That docket remains pending. While the FCC proceeding is broader in scope than the Ohio Commission's investigation, it nonetheless considers some of the same issues raised in the state investigation. Thus, the Ohio Commission has chosen not to participate in this FCC NPRM proceeding while its investigation is pending. The staff of the Ohio Commission (Ohio Staff) is pleased to present its independent comments to the FCC for consideration.

DISCUSSION

I. IMMEDIATE REFORMS TO ELIMINATE WASTE, FRAUD AND ABUSE

A. Duplicate Claims

As the FCC notes, both it and the Federal-State Joint Board on Universal Service (Joint Board) have consistently stated that Lifeline support is limited to a single line per residence.[4] However, a recent audit by the Universal Service Administrative Company (USAC) indicated that there are certain ETCs[5] seeking reimbursement for Lifeline service provided to the same residence.[6] In addition, the industry contends that the FCC has

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[3] *In the Matter of the Commission Investigation into the Provision of Prepaid Lifeline Service by Competitive Eligible Telecommunications Carriers*, Case No. 10-2377-TP-COI (Entry) (rel. Nov. 3, 2010) (Ohio Commission Lifeline Investigation Entry).

[4] NPRM at 17, ¶ 47.

[5] As used in these comments, the acronym "ETC" refers to competitive ETCs and incumbent ETCs,

[6] *Id*. at 18, ¶ 48.

never promulgated a legally binding one-line-per-household rule.[7] In the past, most customers, including low-income customers, had only one option for telephone service, the incumbent local exchange carrier (ILEC).[8] However, the FCC points out that today, most customers, including those residing in low-income households, have multiple wire-line and wireless options for voice service from which to choose.[9] These expanded service offerings, as well as competition among competitive ETCs, have created a greater risk that multiple Lifeline discounts are being provided to a single residence.[10]

The FCC seeks to establish rules to reduce the likelihood that residents of a single address receive more than one subsidized service through the Lifeline program.[11] These rules are intended to balance the universal service objective of maximizing communications access with the need to protect the low-income fund against waste, fraud, and abuse.[12] To ensure that Lifeline benefits are limited to the amount necessary for the provision of telecommunications service to low-income subscribers, the FCC recognizes that in the long-run, a permanent solution, such as the establishment of a Lifeline database, may ultimately be required.[13] To effect a more immediate, short-term solution, the

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7 NPRM at 18, ¶ 49.

8 *Id*. at 19, ¶ 50.

9 *Id*.

10 *Id.*

11 *Id*. at 19-20, ¶ 52.

12 *See id*.

13 *Id.* at 20, ¶ 54.

FCC solicits comment on its proposal to require that ETCs submit to the USAC unique household identifying information for every supported household. Under the FCC's proposal, this information would be used to assist in determining whether two or more ETCs are providing Lifeline benefits to the same residential address.[14] Specifically, the FCC seeks comment on amending section 54.410(e) of its rules to require that ETCs provide the names, addresses, social security numbers, birthdates and other unique residence-identifying information of their Lifeline subscribers to the USAC.

The Ohio Staff recognizes the important role that reducing the instances of duplicative Lifeline support plays in protecting the low-income fund against waste, fraud, and abuse. While the FCC has provided little detail as to how the delineated information will be used, the Ohio Staff believes that the creation and utilization of a Lifeline database provides a good start to ensure a single line per residence to help prevent waste, fraud and abuse of the low-income fund. Toward this end, the Ohio Staff encourages the FCC to develop a process to balance the rights of eligible Lifeline subscribers against the need for such subscribers to assume ownership and responsibility for maintaining their Lifeline benefits. In effect, eligible subscribers should become active participants in securing their benefits rather than passive recipients who simply receive benefits. This approach would require a subscriber to actively verify his/her eligibility to remain enrolled in the Lifeline program. Additionally, the Ohio Staff believes that any methodology ultimately adopted should seek to maximize Lifeline enrollment by eligible

[14] NPRM at 20, ¶ 56.

subscribers, while also establishing controls that guard against waste, fraud, and abuse of the low-income fund and provide a means of enforcement for violations.

B. Remedies to Duplicate Claims

The FCC has proposed three remedies to address duplicate claims.[15] Of these, the Ohio Staff believes requiring direct communication between a subscriber and the USAC to be the most effective. This approach eliminates a layer of communication by removing the Lifeline service provider from its role as the liaison between the subscriber and the USAC. By simply requiring the USAC to directly inform the subscriber of the need to select one provider and requiring the subscriber send a completed form containing the subscriber's selection directly to the USAC, the potential for error and miscommunication would be reduced and the likelihood of timely subscriber response would be enhanced.

C. De-Enrollment for Duplicate Claims

The FCC seeks comment as to whether Lifeline subscribers who are found to be in violation of the one-per-residence requirement should be de-enrolled in the Lifeline program and, if so, how long the de-enrollment should remain in effect.[16] The Ohio Staff believes that it is appropriate to de-enroll Lifeline recipients that, after adequate process, have been determined to have violated this requirement. This should have a deterrent

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[15] NPRM at 21-22, ¶¶ 58-60.

[16] *Id*. at 22, ¶ 61.

effect and increase the effectiveness of the one-per-residence requirement. Once it is determined that a violation has occurred at a particular residential address, the USAC should block that address unless the requesting head-of-household can demonstrate that a new household resides at the address. The length of time that an address would remain de-enrolled should be assessed on a case-by-case basis and include consideration of past violations. The Ohio Staff recognizes that there may be limited affirmative defenses to noncompliance. For example, to the extent that automatic enrollment mechanisms continue to exist, the Ohio Staff believes it may be appropriate to excuse a subscriber's noncompliance if the subscriber was unaware that he or she had been enrolled with a particular ETC due to their participation in a qualifying program.

D. USAC Reimbursement for Duplicative Claims

The FCC has proposed that in the event of duplicate claims, the USAC be required to seek recovery from all implicated Lifeline service providers for all reimbursement provided during the duplicative service period.[17] Rather than seeking recovery from both ETCs, the Ohio Staff believes that it would be more appropriate to seek recovery from only the provider that is ultimately not selected by the subscriber. Such an approach is equitable inasmuch as the non-selected ETC would be presumed to have improperly enrolled the subscriber and, therefore, should be responsible for reimbursing the USAC. To the extent that neither ETC is selected by the subscriber, the Ohio Staff would support the FCC's proposal to seek recovery from both ETCs.

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[17] NPRM at 23, ¶ 62.

E. Required Physical Address in Order to Receive a Lifeline Benefit

The FCC asks whether it should codify its current practice of requiring unique residential addresses to assist both ETCs and the USAC in determining whether a Lifeline applicant already receives Lifeline service.[18] The Ohio Staff supports codifying the current practice believing that it is logical to use a physical address for the purpose of ensuring only one Lifeline benefit per residential address. In the unique circumstance where a physical address cannot be provided, the subscriber should be responsible for providing a comparable form of verification prior to enrollment in the Lifeline program.

F. Pro Rata Reporting Requirements

The FCC has proposed codifying its existing requirement that all ETCs must report partial or pro rata dollars when claiming reimbursement for Lifeline customers who receive service for less than a month.[19] The FCC notes that section 54.405(c) of its rules states that an ETC may only receive Lifeline program support for active subscribers.[20] Additionally, ETCs are required to report *pro rata* funds for Lifeline customers who enrolled in or disconnected from the program during the month.[21] As noted in the NPRM, some ETCs contend that they are permitted, but not required, to report and seek

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18 NPRM at 22, ¶ 63.

19 *Id*. at 24-25, ¶ 67.

20 *Id*.

21 *Id.* at 24, ¶ 65.

pro rata recovery for customers who were not enrolled for the full month.[22] The Ohio Staff believes that memorializing this requirement in a rule will assist in ensuring that ETCs only claim reimbursement for active subscribers and that the support received corresponds to the benefit provided. The Ohio Staff supports the FCC's proposal in this regard.

G. Elimination of Reimbursement for Toll Limitation Service

The FCC has proposed amending its rules to eliminate Lifeline reimbursement for the costs ETCs incur in providing toll limitation service to Lifeline subscribers.[23] The Ohio Staff agrees with the proposed rule change. The FCC notes that at the time this rule was established, studies indicated that the primary reason subscribers lost access to telephone service was for failing to pay toll charges.[24] Nonetheless, the Ohio Staff believes that such service goes beyond the intended purpose of Lifeline support, especially in light of the current financial strain on the limited resources of the low-income fund. In reaching this conclusion, the Ohio Staff notes the FCC's representation that eliminating Lifeline support for toll limitation service could save the program roughly $23 million in 2011, which could alternatively be used for Lifeline discounts or for broadband support.[25]

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22 NPRM at 24, ¶ 66.

23 *Id*. at 25, ¶ 70.

24 *Id*. at ¶ 68.

25 *See id.* at 25-26, ¶ 70.

H. Customer Usage of Lifeline-Supported Service

The FCC asks whether it should prohibit ETCs from seeking reimbursement from the low-income fund for any Lifeline subscriber who has failed to use his or her service for 60 consecutive days.[26] The FCC also asks if a subscriber's failure to use service for a specific period of time constitutes a discontinuation of service.[27] In order for limited fund resources to be most efficiently used, the Ohio Staff recommends that support should only be provided to assist those subscribers who actually make use of Lifeline service. Failure to use the service demonstrates a lack of need for the service. Therefore, the Ohio Staff agrees that some level of minimum usage should be required to receive Lifeline support and supports the FCC's proposal. The Ohio Staff believes that a minimum usage requirement will help assure that funding is allocated to those who most benefit from the support. Consequently, failure by a subscriber to use his or her Lifeline service within a specified period of time should constitute a discontinuance of service on the part of the subscriber, which the ETC must report to the USAC. Following a discontinuance of service, the ETC should not receive any further reimbursement from the USAC. After providing reasonable notice, the ETC should be permitted to de-enroll the subscriber and terminate the subscriber's Lifeline service. The Ohio Staff believes that after receiving such notice, a subscriber should be afforded a reasonable amount of time to re-establish use of his or her Lifeline service prior to de-enrollment and service termination.

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[26] NPRM at 29, ¶ 82.

[27] *Id.*

II. CLARIFYING SUBSCRIBER ELIGIBILITY RULES

The FCC seeks comment as to whether codifying the one-per-residential address requirement would aid in the administration of that requirement "by providing a bright line that could be determined by reference to external sources."[28] The FCC, notes that a "one-per-residential address requirement is consistent with the existing single-line-per residence limitation."[29] The Ohio Staff agrees that the FCC's proposal to codify the one-per-residential address requirement provides the simplest and most effective solution at this time. Group facilities and commercially zoned buildings notwithstanding, adoption of the one-per-residential address requirement would balance the FCC's statutory obligation to ensure that low-income consumers have access to phone service at reasonable rates as well as ensure that support is sufficient, but not excessive.[30] Accordingly, the Ohio Staff supports the FCC's proposal.

For the past 27 years, Lifeline service has been provisioned to the head-of-household for a single line per household; however, with the proliferation of wireless Lifeline service, expectations for Lifeline support have changed. In this new environment, some advocate providing Lifeline support to all low-income individuals at the same address, without regard to the head of household or the number of supported services per house-

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[28] NPRM at 36, ¶ 106.

[29] *Id*. at ¶ 107.

[30] *See id.* at 36-37, ¶ 109.

hold.[31] While the Ohio Staff appreciates the well-intentioned concerns underlying this position, it nonetheless believes that, until adequate controls such as a national database are in place to help curb fraud or abuse, the one-per-residential address requirement remains the best policy.

As alluded to above, the transition from the traditional public switch telephone network (PSTN) to IP-based networks is inevitable. Once this transition is complete, voice service will no longer be a stand alone service, but rather an application that one may use over the underlying broadband network. With this technological transition comes a need to shift traditional low-income support for voice service to low-income support for broadband service, which the National Broadband Plan (NBP) anticipates.[32] Consequently, if the FCC expands Lifeline eligibility for traditional Lifeline service to include each adult in a household as some suggest, the Ohio Staff questions how this expanded eligibility will operate within the context of universal broadband service. If the FCC intends to ensure that low-income families have access to broadband and the Internet through a single family computer, the Ohio Staff recommends against expanding Lifeline eligibility. Such an expansion will likely create an expectation that may not be fulfilled once the transition to broadband is complete. If, however, it is the FCC's intent

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[31] *See, e.g.*, Nicholas P. Sullivan, *Subsidized Cell Phones Provide Significant Economic Gains for Poor and Near-Poor Americans* (Tufts University) (February 10, 2011).

[32] *See In the Matter of Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337 (National Broadband Plan at 172-173) (rel. March 16, 2010).

to expand eligibility for traditional Lifeline service now and broadband service in the future, the Ohio Staff respectfully requests that the FCC consider the impact this would have on the size of the Fund and the ratepayers who support it.

Finally, the Ohio Staff notes that technology typically outpaces regulation. This is the case with the Lifeline program and the regulations that apply to Lifeline service providers. As noted, prepaid wireless Lifeline service providers have entered the Lifeline service market under a regulatory framework designed for ILECs. The Ohio Staff believes that basing changes in Lifeline eligibility on the emergence of new technology or service offerings essentially allows "the tail to wag the dog." Accordingly, the Ohio Staff respectfully recommends that low-income support be provided on a technology neutral basis, even though the program itself should be reformed to increase accountability and efficiency while maintaining, or even decreasing, program size. Codifying the one-per-residential address requirement is a good first step toward accomplishing this end.

III. CONSTRAINING THE SIZE OF THE LOW-INCOME FUND

The FCC has proposed and seeks comment on capping the size of the Lifeline program as a means of constraining the size of the low-income fund.[33] The FCC points to the interim cap on ETC high-cost funding and the cap on the E-Rate support mechanisms as precedent for establishing a Lifeline cap.[34] The Ohio Staff agrees with the concept of controlling the costs of the Lifeline program. Nonetheless, while placing a cap on the size of the Lifeline program should constrain its size, the Ohio Staff believes such a measure merely treats a symptom rather than the underlying problem. Accordingly, the Ohio Staff does not support capping the Lifeline program.

The FCC notes that the size of the low-income program has grown from $667 million in 2000 to $1.3 billion in 2010, factoring in adjustments for inflation.[35] The FCC further notes that "fund growth is not necessarily indicative of waste, fraud, and abuse."[36] While this may technically be true, the Ohio Staff does not believe that the rapid growth in the size of the low-income fund can be separated from the issue of waste, fraud, and abuse. In fact, the Ohio Staff believes that the size of the fund would not likely be a concern were it not for the fear that waste, fraud and abuse had lead to its growth.

Historically, there has been a concern that the Lifeline program was under-enrolled as evidenced by both federal and state requirements that ETCs actively engage

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33 NPRM at 49, ¶ 145.

34 *See id.* at 48, ¶ 142.

35 *Id*. at ¶ 143.

36 *Id*. at 48-49, ¶ 144.

in outreach and marketing activities that promote the program.[37] The size of the fund only became an issue following the entrance of prepaid wireless Lifeline providers into the Lifeline market. In their absence, the Ohio Staff does not believe that current size of the low-income fund would be viewed as problematic. Rather, in the Ohio Staff's estimation, it would be viewed favorably as an endorsement of the federal and state Lifeline marketing and out reach policies.

In addition to not addressing the underlying cause of fund growth, a cap could potentially create inequities among eligible subscribers. Regardless of how administered, there is a risk that some otherwise eligible applicant may be excluded from the program due to the arbitrary nature of a cap. As such, the Ohio Staff recommends continued, concentrated focus on the prevention of waste, fraud and abuse as a superior approach for controlling the size of the fund rather than the implementation of a cap.

IV. IMPROVING PROGRAM ADMINISTRATION

A. Eligibility Criteria

The FCC has proposed amending its rules to require all states to use, at a minimum, the program eligibility criteria currently used by federal default states while at the same time preserving any existing state-specific eligibility program criteria that would supplement the federal criteria.[38] The Ohio Staff agrees with the FCC's proposal.

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[37] *See* 47 U.S.C. 214(e)(1)(B) (2011); *see, e.g.*, Ohio Rev. Code Ann. § 4927.13(A)(3)(a) (West 2011).

[38] NPRM at 51, ¶ 154.

The FCC asks whether it should raise the Lifeline income eligibility threshold for the federal default states from 135 percent of the Federal Poverty Guidelines (FPG) to 150 percent of the FPG.[39] Conversely, the FCC seeks comment on lowering the threshold from the current level of 135 percent of FPG.[40] While Ohio is not a federal default state and would not be directly affected by any change in the federal income eligibility requirement, the Ohio Staff nonetheless supports the FCC's proposal. Recent changes to Ohio's telecommunications laws have established 150 percent of FPG as the Lifeline income eligibility threshold for Ohio's Lifeline subscribers.[41] Furthermore, the income eligibility thresholds for qualifying eligibility programs, such as the Home Energy Assistance Program (HEAP), may be higher than the current Lifeline income eligibility threshold.[42] While program applicants whose income is 150 percent of FPG would not qualify under the current 135 percent of FPG eligibility threshold, they may qualify based upon participation in a program with a higher income threshold. As such, it makes little sense to have an income eligibility threshold that differs from the income eligibility threshold of some Lifeline qualifying programs.

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39 NPRM at 52-53, ¶ 157.

40 *Id.*

41 Sub. S.B. 162 codified at Ohio Rev. Code Ann. § 4927.13 (West 2011).

42 *See In the Matter of Connect Federal-State Joint Board on Universal Service, Lifeline and link Up*, WC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 05-337 (Comments Submitted on Behalf of the Public Utilities Commission of Ohio at 6) (filed July 14, 2010). In Ohio, the income eligibility threshold for HEAP was recently raised from 175% to 200% of FPG.

While the Ohio Staff recognizes that raising the income eligibility threshold could place greater demands on the low-income fund, it does not believe this to be a likely result because most households at 150 percent of FPG, in those states with the 135 percent of FPG eligibility threshold, are likely enrolled in the Lifeline program through a qualifying program that has a higher income eligibility threshold. Accordingly, it is unlikely that lowering the current 135 percent income eligibility threshold, as the FCC has suggested,[43] would result in a significant effect on the Lifeline program as many households would remain program eligible based upon participation in a qualifying program. As such, the Ohio Staff supports the FCC's proposal and believes it would provide more consistency in the administration of the Lifeline program through a uniform qualifying standard for program participation.

B. Certification and Verification of Eligibility

The FCC has proposed amending its rules to require that all ETCs obtain certification from the subscriber, at both the time of enrollment and as part of the annual Lifeline eligibility verification process, that the subscriber receives only one Lifeline benefit at the qualifying household address.[44] The receipt of multiple Lifeline benefits by subscribers has recently become an issue in Ohio as prepaid service providers have been designated as competitive ETCs. Lifeline service providers in Ohio, like those in most states, do not have the means to verify Lifeline program participation among competitive providers

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43 *See* NPRM at 53, ¶ 157.

44 *Id*. at 55, ¶ 167.

once a subscriber has been enrolled in the Lifeline program. As such, the Ohio Staff believes that all ETCs should be required to obtain subscriber certification as proposed by the FCC as a safeguard against the provisioning of multiple Lifeline benefits.

While the Ohio Staff agrees that the certification form should clearly advise the Lifeline subscriber that he or she is entitled to only one benefit per household, it does believe that simply stating the federal benefit is available for only one line per residence achieves this intended purpose.[45] Many competitive ETCs offer wireless Lifeline service, which unlike traditional wireline service, is not typically referred to as a "line" as there is no physical line connecting the service to the home. The Ohio Staff believes that referring to a "line" may lead to confusion and recommends that the certification form be technology neutral and precisely and clearly convey that the subscriber is entitled to only one benefit per household regardless of the technology providing the benefit. The Ohio Staff agrees that the certification form should indicate that a violation of the one-per-residence requirement may constitute fraud on the part of the subscriber for which the subscriber could be prosecuted. Recognizing that prosecution for fraud will be handled on a case-by-case basis, the Ohio Staff recommends that the certification language clearly inform the subscriber that violation of the one-per-residence requirement may result in the subscriber's immediate removal from the Lifeline program and that future participation in the program may be conditioned upon repayment of any illegally obtained discounts or benefits to the low-income.

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[45] *See* NPRM at 55, ¶ 168.

The FCC has proposed that compliance with the one-per-residence requirement be verified annually with subscribers and the results and sampling data reported to both it and the USAC.[46] The Ohio Staff supports the FCC's proposal. The Ohio Staff notes that all ETCs are presently required to provide the USAC and the FCC with annual Lifeline certification and verification affidavits that attest to their compliance with Lifeline rules and regulations and believes that no less should be expected from Lifeline subscribers. Accordingly, on an annual basis, a random sampling of subscribers should be required to provide certification and verification that they are eligible to receive Lifeline benefits, including an attestation that the subscribers' respective households receive only one Lifeline benefit. Subscribers that are unresponsive or those that indicate receipt of multiple benefits should be considered ineligible for the program and de-enrolled.

The FCC has also proposed amending its rules to eliminate subscriber self-certification in a qualifying program and replace it with a requirement that subscribers provide documentation of program participation.[47] The Ohio Staff believes that the FCC's proposed rule amendment would provide a level of confidence that the current rule does not. The Ohio Staff does not believe that imposing a documentation requirement on Lifeline subscribers would work a hardship on those subscribers who should have some form of readily available documentation of qualifying program participation such as a food stamp card, vouchers, award letters, or copies of utility bills indicating

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46 NPRM at 55, ¶ 169.

47 *Id*. at ¶ 170.

HEAP credits. If producing documentation creates a legitimate hardship for a subscriber, the subscriber's situation should be handled on a case-by-case basis with the subscriber being permitted to maintain Lifeline service while he/she works with a case worker or other advocate to collect and provide the necessary documentation.

The Ohio Staff believes that the present lack of documentation places the ETCs in a difficult position. To receive reimbursement, the ETCs must certify to the USAC that their Lifeline subscribers are eligible to receive Lifeline benefits. In doing so, they are faced with the choice of blindly, and perhaps incorrectly, certifying eligibility for their subscribers or not receiving reimbursement. The documentation requirement proposed by the FCC would provide the ETCs with additional confidence that their FCC 497 forms and accompanying worksheets are true, accurate and complete. The Ohio Staff believes that integrity of the Lifeline program relies, in large part, upon the diligence of the ETCs to provide Lifeline benefits only to those subscribers who truly qualify. The proposed documentation requirement, while perhaps slowing the certification process a bit, would provide the ETCs with an important tool to protect the integrity of the Lifeline program.

Section 54.409 (d)(3) of the FCC's rules requires a Lifeline subscriber to notify his or her Lifeline service provider if the subscriber becomes ineligible to participate in the program. The FCC has proposed amending this rule to require that subscribers provide this notification within 30 days of becoming ineligible. The Ohio Staff believes that it is prudent to establish a timeframe within which subscribers must provide the required notification and supports the FCC's proposed rule amendment. Additionally, the Ohio Staff recommends establishing a penalty for violations of the rule. Without a penalty, the

30 day notice requirement is little more than an unenforceable guideline. Nonetheless, the Ohio Staff believes that the FCC's proposal is a good first step toward placing with subscribers the responsibility for notifying their Lifeline service providers when they become ineligible.

C. Database

The FCC has proposed creating a national database of Lifeline program subscribers.[48] If properly designed, the Ohio Staff believes that a database would prove beneficial in resolving many of the problems currently affecting the Lifeline program. A national database would, in the Ohio Staff's opinion, greatly reduce the instances of duplicative benefits and help alleviate questions regarding subscriber eligibility. Since a national database would contain sensitive, private subscriber information, the Ohio Staff recommends that it be administered by the USAC. The USAC is most familiar with the ETCs' practices and the Lifeline program and is in the best position to understand and protect the information required for the database. To the extent that the FCC would look to the states and/or the ETCs to provide financial support for a national database, the Ohio Staff strongly recommends that the FCC study the costs of creating and maintaining a database and carefully evaluate the level of state and/or ETC support prior to committing to implementation.

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[48] NPRM at 64, ¶ 205.

V. CONSUMER OUTREACH AND MARKETING

A. Marketing Guidelines

The FCC asks whether marketing guidelines should be imposed on ETCs "to ensure that consumers fully understand the benefit being offered, which may help prevent the problem of duplicate support."[49] The Ohio Staff supports doing so and recommends that such guidelines require ETCs to explicitly reference the Lifeline program and the Universal Service Fund in their advertising and marketing materials. Such a requirement is especially important in the context of the prepaid wireless Lifeline service. The Ohio Staff believes that the advertising employed by prepaid wireless Lifeline service providers has been confusing.[50] Accordingly, the Ohio Staff recommends that the FCC adopt guidelines requiring providers of prepaid wireless Lifeline service to make clear that prepaid wireless Lifeline service is part of the Lifeline program that provides subsidies to low-income customers as well as explain how prepaid wireless Lifeline service differs from traditional Lifeline service to allow service providers to give "free" wireless telephones to subscribers. Additionally, the Ohio Staff believes that it is imperative that the FCC guidelines require ETCs to clearly indicate in their advertisements and other marketing materials that subscribers may only receive one Lifeline subsidy per residence. Such a requirement will, in the Ohio Staff's opinion, help prevent confusion and, in turn, alleviate the problem of duplicative support.

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49 NPRM at 71, ¶ 227.

50 Some advertising for prepaid wireless Lifeline service has implied that the federal government is giving away wireless telephones. *See, e.g.*, http://www.cell-phone-plans.net/blog/cell-phone-plans/how-to-get-your-free-government-cell-phone/.

B. Outreach

Ohio's large ILECs have traditionally partnered with community-based organizations (CBOs) within their respective service territories to enroll eligible low-income subscribers in the Lifeline program. For their efforts in maximizing enrollment, the ILECs have historically provided monetary support to the CBOs. With the increasing availability of prepaid wireless Lifeline service offerings, prepaid wireless service providers have begun offering financial incentives to the CBOs for enrolling subscribers in their Lifeline services. The Ohio Staff is aware that at least one wireless ETC is contracting with CBOs as its "exclusive" Lifeline partner. In exchange for monetary compensation from the ETC, the CBO is obligated to refrain from performing or delivering the same services or deliverables to other providers of Lifeline service. The Ohio Staff believes that such arrangements raise problematic concerns. Exclusive dealing can be anti-competitive and raise concerns over whether the CBO will make low-income applicants aware of all Lifeline service options that best meet their needs. A CBO that has an exclusive contractual agreement with an ETC may promote its "partner's" products or services over those of another provider. As such, the Ohio Staff believes that these agreements can serve to frustrate the FCC's outreach and marketing objectives for the Lifeline program as many applicants will be directed to toward a single service provider. The Ohio Staff recognizes that finances are often limited for CBOs. As such, they have likely come to rely on financial incentives from the competitive ETCs just as they have relied upon financial support from the ILECs. Consequently, the Ohio Staff does not recommend that the FCC prohibit ETCs from providing financial incentives to CBOs,

but does recommend that the FCC consider establishing parameters for ETCs to follow when entering into arrangements with these organizations.

VI. MODERNIZING THE LOW INCOME PROGRAM TO ALIGN WITH CHANGES IN TECHNOLOGY AND MARKET DYNAMICS

A. The Current Lifeline Program

i. Definition of "Lifeline"

The FCC seeks comment as to the need, as the marketplace evolves, to evaluate the definition of "Lifeline" to ensure that it is keeping pace with the basic connectivity needs of low income customers and asks if the "local" qualifier is outdated in light of these marketplace changes.[51] Additionally, the FCC asks whether any change in definition of "Lifeline" should explicitly recognize support for broadband service.[52] The Ohio Staff agrees that the distinction between local and long distance service offerings has undoubtedly become blurred with the proliferation of flat rate, unlimited calling plans and service packages.[53] Further, as noted above, the transition in technology from the PSTN to IP-based networks is inevitable. Accordingly, redefining "Lifeline" makes sense. In formulating a new definition of "Lifeline," however, the Ohio Staff encourages the FCC to maintain the "local" qualifier in the new definition. This flexibility is

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51 NPRM at 75, ¶ 242.

52 *Id.*

53 *See id.*

important for states like Ohio that have codified local exchange service as an integral part of Lifeline services.[54]

ii. Support for Voice Service

The FCC asks how eligible low-income households can continue to benefit from the expanded array of service offerings, including prepaid wireless service offerings, while ensuring that funds benefit subscribers more than the carriers serving those subscribers.[55] Under rules adopted by the Ohio Commission, all ETCs must provide for the maximum contribution of federally available assistance.[56] This requirement ensures that subscribers receive the full value of their Lifeline benefit while also endowing Lifeline carriers and service providers with a stake in the Lifeline program. While ensuring that subscribers receive full benefit value is a straight-forward proposition with traditional landline Lifeline service, the rate structures of prepaid service offerings make this less certain where this type of service is involved.

The Ohio Staff recognizes that carrier costs may vary between traditional landline Lifeline service and non-traditional Lifeline service offerings. Some of these differences may be attributed to some prepaid wireless Lifeline service providers providing service at

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54 *See* Ohio Rev. Code Ann. § 4927.13(A)(1)(a) (West 2011); Ohio Admin. Code § 4901:1-6-19(B) (West 2011).

55 NPRM at 77, ¶ 248.

56 Ohio Admin. Code § 4901:1-6-19(B)(1) (West 2011).

no cost to their subscribers.[57] This pricing model is a significant departure from that of traditional Lifeline service providers, in which the eligible subscriber receives a monthly discount, but is still responsible for paying the difference between the discount and the price of the service. Accordingly, the Ohio Staff recommends that the FCC establish a new framework for Lifeline reimbursement that takes into account the pricing difference between pre-paid and post-paid Lifeline service providers, both wireline and wireless.[58]

To develop this new Lifeline reimbursement framework, the Ohio Staff recommends that the FCC require all Lifeline service providers, regardless of the underlying technology, to provide cost data that demonstrates their actual costs incurred in providing Lifeline service, including costs for 911 service and telephone relay service (TRS). This will help ensure that all service providers receive the appropriate amount of reimbursement for the value of the services provided. Continuing to base reimbursements for all Lifeline service providers on the costs incurred by only one type of provider may lead to windfall profits for those providers whose costs are less as well as allow these providers to avoid contributing to the 911, TRS or other necessary funds. Bearing in mind the FCC's objectives of eliminating waste, fraud and abuse of the low-income fund, and constraining fund size, the Ohio Staff posits for the FCC's consideration the possibility of providing a uniform Lifeline reimbursement to all providers on a technology-neutral

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57 *See in the Matter of TracFone Wireless, Inc. Petition for Declaratory Ruling*, WC Docket no. 09-197, WC Docket No. 03-109 (Comments Filed on Behalf of the Staff of the Public Utilities Commission of Ohio at 7) (filed Dec. 23, 2010) (Ohio Staff TracFone Petition Comments).

58 *See* NPRM at 78-79, ¶ 251.

basis that is based upon the costs incurred by the least cost provider for a given area. Such an approach may prove successful in eliminating waste and in constraining the size of the fund.

iii. Minimum Service Requirements for Voice Service

The FCC seeks comment on the advantages and disadvantages of adopting minimum standards for all ETCs offering Lifeline service and asks what those standards should be.[59] As noted in the introduction above, the Ohio Commission is currently grappling with some of these same issues in a pending matter. While a formal position has not yet been adopted in Ohio, the Ohio Staff suggests that it is both necessary and important to strike a balance between the value received by eligible Lifeline subscribers and the costs born by the rate-payers who ultimately support the Lifeline program. In adopting minimum Lifeline service standards, a worthy goal should be to ensure that both Lifeline subscribers and the ratepayers receive adequate value.

The growing number of Lifeline service providers and choices, while presenting challenges to the administration of the Lifeline program, offer many benefits to eligible subscribers. Subscribers may now choose service options that more closely align with their lifestyles. Consequently, the Ohio Staff does not believe that the services available to Lifeline subscribers should be limited. Certainly, the Ohio Staff does not wish to discourage the development and evolution of new and innovative services. Nonetheless, in determining appropriate minimum Lifeline standards, the basic objective of universal

[59] NPRM at 79-80, ¶ 253.

service ”to ensure the availability of basic communications services to all Americans, including low-income consumers”[60] must remain at the fore of the FCC’s decision-making process. As such, the Ohio Staff believes that, at a minimum, Lifeline subscribers should be guaranteed access to stand-alone basic voice service in addition to the vast array packages and bundles that are certain to be offered.

iv. Support for Bundled Service

The FCC has proposed amending its rules to permit eligible households to apply their Lifeline and Link Up discounts to any service plan with a voice component.[61] The FCC asks whether amending its rules in this manner would further the statutory goal that consumers have access to quality services at just, reasonable and affordable rates.[62] Further, the FCC seeks comment on whether allowing eligible subscribers to choose from an array of expanded packages would create a greater likelihood that Lifeline subscribers will be unable to pay for the remaining portion of their chosen calling plans and risk termination of voice service?[63] The Ohio Staff recognizes that the availability of discounted packages and service bundles may be beneficial to Lifeline subscribers. As early as 2007, the Ohio Commission granted a waiver of its then-current rules to allow AT&T

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60 *See* NPRM at 3, ¶ 3, n. 1.

61 *Id*. at 81-82, ¶¶ 259.

62 *Id*. at 82, ¶ 260.

63 *Id*. at ¶ 263.

Ohio to offer optional vertical features to its Lifeline subscribers.[64] At that time, a number of consumer advocacy groups, senior groups, consumers, community action agencies and other special interest groups filed letters in support of the waiver. The Ohio Commission took note of this support and agreed that technological advances and innovations had led to the development of optional services that Lifeline subscribers not only wanted but also relied upon due to the benefit they received. Accordingly, the Ohio Staff supports the FCC's proposal to amend its rules to allow eligible households to apply their Lifeline discounts to any service plan that includes a voice component. While there is a risk that some subscribers will be disconnected for nonpayment of the package rates, the potential benefits to subscribers, in the Ohio Staff's opinion, far outweigh that risk.

B. The Transition to Broadband

i. Broadband Pilot

The FCC has proposed setting aside a portion of the universal service funds reclaimed through the elimination of inefficiencies and/or waste, fraud, and abuse to create a pilot program to evaluate whether and how Lifeline can effectively be used to support broadband adoption by low-income households.[65] The FCC has also proposed structuring the pilot program as a joint effort between itself, one or more broadband providers, one or more non-profit institutions or independent researchers with experience

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64 *See In the matter of AT&T Ohio for Approval of an Alternative Form of regulation,* Case No. 02-3069-TP-ALT (Entry) (rel. April 25, 2007).

65 NPRM at 86, ¶ 279.

in program design and evaluation, private foundations, non-profit organizations experienced in outreach and digital literacy training, desktop computer, laptop, or mobile device manufacturers or retailers, and state social service or economic development agencies.[66]

The Ohio Staff notes that the state of Ohio has already begun its own initiative to promote broadband deployment in Ohio through an entity known as Connect Ohio. Connect Ohio is a nonprofit, technology-neutral public-private partnership that works with telecommunications providers, business and community leaders, information technology companies, researchers, public agencies, libraries and universities in an effort to help extend affordable high-speed Internet service to every Ohio household.[67] For example, Connect Ohio's "No Child Left Offline" initiative brings together public and private partners to help disadvantaged children and their families join the Information Age.[68] Since Ohio has experience with using such partnerships to close the broadband gap, the Ohio Staff believes that the FCC's proposal will provide an effective means of determining how to provide broadband support for low-income households.

The FCC asks what role the states should play in any pilot program that integrates broadband service into the Lifeline service program.[69] Ohio Staff believes that the states

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66 NPRM at 88, ¶ 281.

67 http://www.connectohio.org/about_connect_ohio/.

68 Connected: Connect Ohio Quarterly (Fall 2008); See http://connectohio.org/publications/connected/Connect_Ohio_Connected_Newsletter_Fall_2008.pdf

69 NPRM at 90, ¶ 291.

with programs similar to that in Ohio are in the best position to assist in identifying target populations within their respective borders and recommends that these states take the lead in determining the best approaches for providing Lifeline support for broadband service.

C. Eligible Telecommunications Carrier Requirements

The FCC is seeking comment on whether it should forbear from applying the Act's facilities requirement to all carriers that seek limited ETC designation to participate in the Lifeline program.[70] More specifically, the FCC asks whether every wireless reseller should be eligible to become an ETC so long as it fulfills the conditions the FCC has previously imposed as conditions of forbearance.[71] The FCC further asks whether it should adopt rules codifying these conditions rather than imposing them on a case-by-case basis.[72] In past comments, the Ohio Staff indicated its belief that section

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[70] NPRM at 94, ¶ 306.

[71] *Id.*; *see, e.g., i-wireless Forbearance Order*, 25 FCC Rcd at 8788, 8790, ¶¶ 11, 16 (conditioning forbearance on i-wireless (1) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (2) providing it Lifeline customers with E911-compliant handsets and replacing, at no additional cost to the customer, noncompliant handsets of existing customers who obtain Lifeline-supported service; (3) complying with conditions (1) and (2) as of the date it provides Lifeline service; (4) obtaining a certification from each public safety answering point (PSAP) where the carrier seeks to provide Lifeline service confirming that the carrier provides its customers with 911 and E911 access or self-certifying that it does so if certain conditions are met; (5) requiring each customer to self-certify at time of service activation and annually thereafter that he or she is the head of household and receives Lifeline-supported service only from that carrier; (6) establishing safeguards to prevent its customers from receiving multiple Lifeline subsidies from that carrier at the same address; (7) dealing directly with the customer to certify and verify the customer's Lifeline eligibility; and (8) submitting to the Wireline Competition Bureau a compliance plan outlining the measures the carrier will take to implement these conditions).

[72] NPRM at 94, ¶ 306.

214(e)(1)(A) unequivocally requires a carrier designated as an ETC to provide service using, in part, its own facilities, to be eligible for Lifeline reimbursement.[73] The Ohio Staff further expressed its belief that any wireless carrier that is not providing service using, at least in part, its own facilities, should request forbearance from the FCC to be eligible to receive such reimbursement.[74] While the Ohio Staff believes that all wireless resellers of Lifeline service should be required to meet the conditions that the FCC has previously imposed relating to forbearance, it would not recommend that these conditions be codified until there are provisions put in place to address the waste, fraud, and abuse of the Fund.

CONCLUSION

Lifeline service provides a valuable benefit to some of our most vulnerable citizens. As its name implies, it is a lifeline to the outside world. Consequently, the Ohio Staff believes that it is important to protect the integrity of the Lifeline program to ensure its ongoing viability. Only by addressing waste, fraud and abuse of the Lifeline fund will

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[73] *See* Ohio Staff TracFone Petition Comments at 8.

[74] *Id*.

this be accomplished. As such, the Ohio Staff appreciates the FCC's efforts in this regard and the opportunity to provide its thoughts and recommendations for the FCC's consideration.

Respectfully submitted,

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