

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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
)	
)	WC Docket No. 03-109
Lifeline and Link Up)	

COMMENTS OF CONSUMER CELLULAR, INC.

CONSUMER CELLULAR, INC.

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SUMMARY

The FCC has wisely started taking the first steps toward reforming the low income portion of the Universal Service Fund. The Commission is motivated to take action not only as part of the National Broadband Plan's recommendations, but also because the low income fund has been growing at an increasingly fast pace. The Commission proposes both short term and longer term reforms designed to reign in the growth of the fund by curbing waste, fraud, abuse, and other administrative inefficiencies. The Commission also proposes some reforms to properly align the incentives of ETCs receiving reimbursement from the fund, and low income consumers benefiting from the fund, with the Commission's overall goal of reigning in fund growth. Finally, the FCC proposes some reforms to modernize the fund and make it easier for non-facilities based service providers to be able to address the needs of the low income consumer.

Consumer Cellular appreciates the challenges facing the Commission, both with administering the fund to accomplish its primary purpose—helping low income consumers—and to ensure that the resources spent to accomplish the fund's purpose are allocated with maximum efficiency. Unfortunately, the unique nature of the low income fund means it will be under the most duress when the economy is weak and overall resources are limited. It also means the universe of recipients will change constantly as consumers move in and out of poverty. The Commission's challenges, as a result, are uniquely difficult as well

Simply constraining the size of the fund through regulatory fiat would be tempting but would defeat the purpose of the fund, yet the Commission must take steps to ensure prudent allocation of fund resources. Consumer Cellular believes that the Commission can achieve both its goals through some of the reforms that it proposes as part of this NPRM.

The most significant reforms the Commission can undertake are: 1) to eliminate service offerings that are free to consumers, but paid for by the USF, and 2) to quickly create and implement a national database to eliminate the waste of duplicative subsidies, as well as fraud and abuse in the distribution of fund resources to ineligible, or no-longer-eligible, consumers.

The Commission can move even more quickly to reduce certain types of Lifeline subsidy waste by adopting the Industry Proposal for dealing with duplicative subsidies to the same customer address. The Commission should also eliminate the arcane subsidy structure that it has now in favor of a more streamlined, “flat rate” subsidy amount that is available to any qualified provider of Lifeline voice or broadband service.

The FCC has previously recognized that the needs of low income consumers are best served, where possible, through competition. Both the FCC and industry participants have suggested eliminating certain regulatory requirements that might be necessary to protect consumers whose service is subsidized by the high cost fund, but are not necessary to impose on carriers providing service to low income customers. Accordingly, Consumer Cellular encourages the FCC to streamline the regulatory burdens that can act as barriers to the entry of new service providers into the Lifeline-subsidized, low income market.

That the FCC needs to reform and modernize the low income fund, there can be no doubt. Consumer Cellular encourages the Commission to pursue this reform by constantly weighing the benefits of imposing rules designed to promote efficiency in fund administration, with the costs that the rules may impose on ETCs, and low income consumers. Finally, constraining the size of the fund is a laudable goal, but the public is best served by the Commission remaining true to its obligation to ensure that all eligible low income consumers are provided the best service possible in as efficient manner as possible.

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COMMENTS OF CONSUMER CELLULAR, INC.

Consumer Cellular, Inc. www.consumercellular.com (“Consumer Cellular” or “CCI”) submits these comments in response to the Commission’s above-captioned Notice of Proposed Rulemaking to comprehensively reform and modernize the Lifeline and Link Up programs, which provide assistance for low income consumers to obtain (Lifeline) and initiate (Link Up) telephone service.¹ Consumer Cellular provides wireless service as a mobile virtual network operator (“MVNO”) using the network of AT&T Mobility. As a reseller of wireless service, Consumer Cellular has not been granted authorization by the Commission to participate in the Link Up program, so its Comments are confined to the Commission’s proposed changes in the Lifeline program.

Consumer Cellular appreciates the Commission’s concerns and motivations for seeking to reform the Lifeline program and is grateful for the opportunity to provide Comments. Consumer Cellular believes that the Lifeline program can be made more efficient, but that the purpose of the program—providing assistance for low income consumers to purchase voice

¹ *Lifeline and Link Up Reform and Modernization*, Notice of Proposed Rulemaking, (rel. March 4, 2011) (“NPRM”).

telephony—should not be jeopardized in the effort to eliminate waste, fraud and abuse. The Commission can adopt some immediate interim procedures that will reduce incentives of both consumers and eligible telecommunications carriers (“ETCs”) to engage in inefficient, wasteful, or fraudulent activity, while it implements reforms that will allow Lifeline to deliver the best possible services to low income consumers at the lowest cost to all consumers. The Commission’s ultimate goals for modernizing Lifeline, however, can best be achieved by working quickly to implement a comprehensive database that will eliminate duplication and ensure that customers eligible for Lifeline assistance receive it in the most efficient way possible.

I. CONSUMER CELLULAR’S BACKGROUND AND INTEREST

Consumer Cellular is based in Portland, Oregon, and has been continuously operated by its founders since its inception in 1995. CCI serves over 500,000 customers using the AT&T Mobility network. Consumer Cellular focuses on the 50+ market, and is the exclusive wireless provider for AARP members. Consumer Cellular’s unique postpaid service does not require customers to sign contracts or recharge their minutes. Customers are billed each month for their prior month’s usage. As a postpaid service provider, Consumer Cellular must maintain direct contact with each of its customers in order to render a bill, which is sent by mail or electronically.

In April, 2010 Consumer Cellular, in an effort to minimize overage charges, became one of the first mobile providers to text usage alerts to its customers. Each customer also has their own unique PIN and can check their usage and billing at any time, either online or over the phone. Moreover, CCI customers are allowed to change their monthly plan at no cost at any time prior to close of the monthly billing cycle. In the January, 2011 edition of a leading consumer magazine, Consumer Cellular was recognized as the #1 provider of “no contract”

mobile service.

As part of Consumer Cellular's mission to provide the best possible service to the mature market, the company is seeking the ability to offer affordable service to an underserved portion of an already-underserved market. One in six American seniors lives in a household that is below the poverty line. In order to better serve these households, Consumer Cellular began taking the steps necessary to provide Lifeline service to its customers almost two years ago, by filing a Petition for Forbearance from the facilities requirement of Section 214(e)(1)(A) of the Act.²

In late December, 2009, Consumer Cellular filed a Petition for ETC Designation in the States of Connecticut, New York, North Carolina, Tennessee, and the Commonwealth of Virginia.³ In July of 2010, Consumer Cellular received forbearance from the facilities requirements of Section 214(e)(1)(A) for the purpose of being designated an ETC for Lifeline-only purposes.⁴ In accordance with the Commission's grant of Consumer Cellular's Petition for Forbearance, Consumer Cellular filed a Compliance Plan with the Commission on August 27, 2010. Consumer Cellular's Compliance Plan was put on Public Notice on August 31, 2010, and the comment cycle closed on October 15, 2010.⁵

² *Federal State Joint Board on Universal Service*, Consumer Cellular Petition for Forbearance Pursuant to Section 160(c), CC Docket No. 96-45, filed June 30, 2009.

³ *Telecommunications Carriers Eligible for Universal Service Support*; Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of Connecticut, New York, North Carolina, Tennessee, and the Commonwealth of Virginia, WC Docket No. 09-197, filed December 30, 2009.

⁴ *Telecommunications Carriers Eligible for Universal Service Support; Federal State Joint Board on Universal Service, Petitions for Forbearance of Head Start, Consumer Cellular, Midwestern Telecommunications, and Line Up, LLC*, Order, FCC 10-134, (rel. July 30, 2010).

⁵ *Comment Sought on Plans of Head Start Telecom, Inc., Consumer Cellular, Inc., and Line Up, LLC, to Comply with the Conditions of Their Limited Forbearance*, DA 10-1661 (Aug.31, 2010).

As of this writing, the Commission has yet to approve Consumer Cellular’s Compliance Plan or grant its Petition for Limited ETC Designation. Nonetheless, the company expects that its Compliance Plan will be approved and its Petition for ETC Designation will be granted in the near future. As such, Consumer Cellular has a compelling interest in the outcome of this proceeding, and some unique insights to offer in support of the Commission’s expressed goals.

II. THE SCOPE AND NATURE OF THE PROBLEMS CONFRONTING LIFELINE

Putting aside, for a moment, the problems the Commission has identified, it is helpful to step back and appreciate the potential scope of the challenges the Commission confronts—even if the low income fund could be easily administered with perfect efficiency. The first challenge is the nature and purpose of the low income fund itself—to serve low income Americans. In 2009, according to the Census Bureau, almost 44 million Americans lived below the poverty line.⁶ Moreover, according to the Urban Institute www.urban.org, more than half of the U.S. population will experience poverty before reaching age 65.⁷ Complicating matters further is the fact that the identity of the poor is constantly changing; about half of those in poverty escape within a year, and 75% stay in poverty less than 4 years.⁸

So, depending on economic factors beyond the Commission’s influence, the low income fund—if perfectly matched to those it is designed to help—will ebb and flow with the economy. While the Commission is understandably concerned about the growth of the low income fund, the Commission must separate the notion of modernizing and reforming the fund, with a concern

⁶ Washington Post, About 44 million in U.S. lived below poverty line in 2009, census data show, September 16, 2010. <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/16/AR2010091602698.html>

⁷ Urban Institute, Poverty Fact Sheet. http://www.urban.org/UploadedPDF/411956_transitioningpoverty.pdf

⁸ *Id.*

over the size of the fund. Again, assuming perfect efficiency, the size of the fund—if successful—should be much higher than it is at the moment.

In the NPRM, the Commission notes that only 33% of the low income-eligible households are actually enrolled in Lifeline/Link Up.⁹ Assuming that a still-low 66% of eligible households could be served with *just* the \$10/month Lifeline subsidy that is available for most customers (with no tribal households, and no Link Up subsidies), the low income fund should be over \$2 billion right now. Thus, even with perfect efficiency, and improved, but still less-than-perfect efficacy, the low income fund will be higher than it is today.

It is critical that the Commission understand the *nature* of the problems confronting the challenge of serving low income customers *before* the Commission can begin to prioritize what needs to be done in order to reform the low income fund. Both the size of the fund—which is outside of the Commission’s control—and the fact that the specific lines served will be constantly changing, demand that the Commission take a different approach to reforming the low income fund than reforming the high cost fund. The low income fund is, by nature, fundamentally different from the high cost fund—which is characterized by a static-to-declining number of lines to largely the same locations.

III. IMPLICATIONS FOR ACHIEVING PROGRAM GOALS AND IMPROVING EFFICIENCY

The Commission, to its credit, seeks to follow the guidance of the GAO and set goals for the low income program and performance metrics to monitor its success at meeting those goals. The Commission’s goals—to ensure that voice service is available to low income consumers on the same basis as other Americans, to seek to increase penetration rates by ensuring that affordability of voice service is equivalent to the next highest income bracket, and to ensure that

⁹ NPRM, ¶25.

service is subsidized at sufficient, but not excessive, levels—all seem perfectly appropriate.¹⁰

On the other hand, the performance measures the Commission identifies in Section III of the NPRM (¶¶ 38-40) seem to put the cart before the horse, in the sense that they appear to discount the contribution reform that must take place in the same time frame as the Commission’s efforts on high cost and low income distribution reform. Similarly, the “Immediate Reforms” discussed in Section IV of the NPRM fail to appreciate the nature of the challenges inherent in efficiently administering the low income fund in a manner that maximizes its purpose. The same can be said for the suggestions to constrain the size of the low income fund described in Section VI of the NPRM.

Most importantly, all of the Commission’s goals—to maximize the value of the fund to low income consumers, to maximize the efficiency of fund administration, and to eliminate the potential for waste, fraud, and abuse—can be realized as the natural and expected consequence of expeditiously moving to implement the database described in Section VII of the NPRM. While there are some “Immediate Reforms” that should be expected to increase the incentives for carriers and consumers to more efficiently use the fund, there are really no short term rules that can increase efficiency without concomitantly increasing the burden on ETCs seeking to serve low income customers with very little expected gain. The only solution to the difficult problems of certification, verification, and elimination of duplication is the creation of a national database. The quick development of such a database will pay for itself in consumer benefits to low income Americans and the elimination of undue burdens on ETCs. In addition, it is the only way to handle the dynamic nature of the low income customer base.

The need for the Commission to quickly focus its energy on migrating to a national database solution to address the problems confronting Lifeline cannot be understated. There

¹⁰ NPRM, ¶¶ 34-37.

simply is no substitute. While Consumer Cellular will discuss the “Immediate Reforms” put out for public comment in Section IV of the NPRM, none of these “reforms” seem reasonably likely to address the problems of the fund. Indeed, these problems cannot be solved by placing burdens and risks on ETCs and consumers but not giving these parties any more information, or “tools,” than they have today. Moreover, these proposals put an unreasonable, and impossible, enforcement expectation (and penalties for non-enforcement) on ETCs who should not, and cannot, be placed in the position of enforcing the Commission’s policies

Finally, Consumer Cellular believes that the ETC requirements must be updated in order to successfully modernize and streamline the Lifeline program. In this regard, Consumer Cellular appreciates the Commission’s willingness to consider distinctions between Lifeline-only ETCs (and, in particular, resellers) and other ETCs for purposes of reducing the regulatory burdens associated with providing Lifeline service.¹¹ In this respect, the AT&T proposal that the FCC identifies in Section IX, subsection C¹², goes furthest in updating the Lifeline program to encourage service providers using the most efficient technologies and business models to serve low income customers. The AT&T proposal will eliminate the unnecessary burdens of becoming a Lifeline ETC, and will encourage the best service providers to serve those segments of the underserved, low income population they are best situated to serve. This would ensure that low income consumers with differing characteristics have their needs met in a more efficient manner by carriers that truly want to serve them.

IV. IMMEDIATE REFORMS THAT CAN EFFICIENTLY IMPROVE LIFELINE

A. Duplicative Claims

The problem of duplicative claims for Lifeline support at a single residence is perhaps the

¹¹ NPRM ¶¶ 306-309.

¹² *Id.*, ¶¶ 310-312.

most pressing, and most vexing, problem preventing efficient administration of Lifeline support. In the NPRM, the Commission requests comment on a number of alternatives for helping to reduce duplicative claims, detect duplicative claims, procedures for resolving the problem of duplicative claims once identified, and situations in which USAC should be reimbursed for duplicative Lifeline payments to multiple ETCs.¹³

1. Data Collection and Reporting

Consumer Cellular maintains sophisticated information systems and, as part of its pending compliance plan, has promised to work with the Commission and states to protect the integrity of the low income fund. With respect to identifying duplicative claims on a per residential address basis, using the Commission's existing reporting procedures, such as requiring electronically reporting certain standard information to USAC along with each ETC's Form 497 submission,¹⁴ Consumer Cellular most likely could electronically provide virtually all data required by the Commission for participation in the Lifeline program.

2. Procedures for Resolving Duplicative Claims by Multiple ETCs

The Commission also seeks comment on a number of proposals regarding how to deal with the issue of resolving duplicate ETC claims where one household is receiving Lifeline subsidies from more than one service provider.¹⁵ One proposal is to use the procedures outlined in the Guidance Letter sent by the Wireline Competition Bureau ("WCB") to USAC in January.¹⁶ The procedures outlined by the WCB require ETCs to automatically stop requesting

¹³ See, generally, NPRM ¶¶ 54-64.

¹⁴ *Id.*, ¶ 56.

¹⁵ *Id.*, ¶¶ 58-60.

¹⁶ *Id.*, ¶ 58 (internal citation omitted).

reimbursement for the subscriber(s) that are receiving duplicative service at the same address, and then USAC instructs the ETCs to contact the customer(s) and resolve the issue within 30 days. If one ETC is not chosen for the address within 30 days, both customers are to be de-enrolled in Lifeline.¹⁷ The WCB Guidance Letter imposes a difficult burden on ETCs, who must work with their competitors and customers to resolve complex matters in just 30 days. And it places a heavy burden on consumers, who could lose the benefits of Lifeline service for which they are eligible because no resolution is reached concerning possible duplicative Lifeline service.

The Commission also seeks comment on a proposal that, in the event ETCs were unable to reach a resolution of one provider for the residential address for which two providers were claiming subsidies, then the carrier which had been receiving the subsidy the longest would continue to receive the subsidy.¹⁸ This proposal is also unfair to both low income consumers, and to ETCs using newer technologies (like cable or wireless providers). Low income consumers, if they are unable to be reached, or to make a decision, lose the benefits of competition, and providers using newer technologies will frequently be defaulted into the incumbent provider's technology.

On the other hand, the Commission seeks comment on a proposal by various industry participants and trade associations.¹⁹ A refinement of this proposal was submitted for the record

¹⁷ Letter from Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to Richard Belden, Chief Operating Officer, Universal Service Administration Company, DA 11-110 (Wireline Comp. Bur. Jan. 21, 2011), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DA-11-110A1.pdf (“WCB Guidance Letter”).

¹⁸ NPRM, ¶ 60.

¹⁹ *Id.*, ¶ 59 (internal citation omitted).

on April 15, 2011.²⁰ There are several major advantages to this proposal. First, it makes USAC the administrator of the process (helping to minimize disagreements between the carriers, and mitigating any loss of consumer goodwill resulting from a consumer's loss of a Lifeline subsidy from one provider). Secondly, it insulates the carrier de-enrolling a customer from any state liability associated with the de-enrollment. In addition, it protects consumers from loss of Lifeline support (in situations where unrelated consumers receive service at the same residential address both consumers keep their Lifeline service through the pendency of this matter). Finally, it is specifically an interim process and only meant as a temporary measure to alleviate the greatest burden of duplications while the Commission evolves toward the ultimate solution of a national database that will prevent most duplication in advance. For these reasons, Consumer Cellular encourages the Commission to adopt the Industry Proposal as its interim solution to the problem of duplicate reimbursements to different service providers to the same household.

3. Recovery of Duplicative Reimbursements

The Commission asks what measures should be taken to prevent further abuse of the low income fund when a consumer has been de-enrolled more than once. The Commission also proposes rules requiring the fund to be reimbursed in instances where duplicative services have been provided. Reimbursement would come from either ETCs or consumers when a consumer or a household has been found to be receiving duplicative service at the same address.²¹ The Commission makes the case that, under its rules, if a consumer has been receiving multiple subsidies, or if two or more carriers have been receiving support for providing service to the

²⁰ Letter to Marlene H. Dortch, FCC, from United States Telecom Association, CTIA—The Wireless Association®, AT&T, CenturyLink, Cox Communications, Inc., General Communication, Inc., Nexus Communications, Inc., Sprint Nextel Corp., Tracfone Wireless, Inc., and Verizon Communications, filed in Docket Nos. 11-42, 03-109, and 96-45, April 15, 2011 (“Industry Proposal”).

²¹ NPRM, ¶¶ 61-62.

same residential address, then the integrity of the Fund has been compromised and recompense is owed.

While the Commission's reasoning is technically correct, the Commission is right to ask for comment on the value of seeking to recover funds that have already been disbursed. Consumer Cellular would advise the Commission to limit the exercise of this power to situations where an individual, or an ETC, appears to have acted with intent to defraud the Fund, or with reckless disregard for the integrity of the Fund. In the absence of a certification/verification database, it is quite likely that both consumers and ETCs will make good faith mistakes. When the duplicative subsidies are the result of good faith errors, then it is not worth the costs of imposing more risks on ETCs and potentially intimidating low income customers from not availing themselves of the benefits Congress intended they receive.

B. The Commission Should Decline to Impose Pro Rata Reporting Requirements

The Commission proposes to impose a new rule requiring ETCs to report and seek partial reimbursement for Lifeline customers that enroll for new service, or disconnect existing service, during the middle of a month.²² The Commission notes that Qwest and Verizon have stated that this requirement would be unduly burdensome.²³

The Commission does not attempt to quantify the value to the Fund of such a pro rata reporting/reimbursement rule. In the absence of any demonstration, or even assertion, of compelling value to the Lifeline program, Consumer Cellular agrees with Qwest and Verizon. Given that, in many states, an ETC will have to provide up to \$3.50/month in value to the customer (out of its own pocket) in order to qualify for the full \$10/month non-tribal customer

²² NPRM, ¶¶ 65-67.

²³ *Id.* ¶ 66 (internal citation omitted).

subsidy, the additional costs of filing for partial reimbursements, coupled with the reduced support from receiving partial support, will certainly make providing service to low income customers more burdensome. And, considering the already-thin margins associated with serving low income customers, any added burden may easily become “overly” burdensome. The Commission should reconsider this proposed rule, as it may do more harm than good.

C. Customer Usage of Lifeline-Supported Service

The Commission proposes adopting a new rule, based on the experience of state Commissions in dealing with providers of “prepaid” wireless service.²⁴ In its initial discussion of the proposed rule and description of its concerns, the Commission conflates the term “prepaid” with “free.” The distinguishing characteristic of the “prepaid” service providers the Commission identifies is not whether they collect a fee at the beginning or end of the month, but rather that they collect no fee at all.

The legitimate concern of the FCC and state regulators is that, if the “free” wireless provider is being profitably compensated by the Lifeline program, the provider has no incentive to disconnect the customer, absent some form of legal coercion. After all, even if a customer decides to discontinue service, the customer has little incentive to notify the service provider, because the customer is not paying for service. Taking the time to disconnect “free” service actually costs a customer more (in time value) than simply discontinuing usage. The customer is not aware of the social costs of abandoning service, so the regulator has to create “proxies” for customer disconnections, and one such “proxy” is that if a customer does not use their service in 60 days, the customer is presumed to have disconnected and the service provider has to remove the customer from its Lifeline enrollment.

There is no doubt that regulators need to create “customer proxy” rules to protect the

²⁴ NPRM., ¶ 80.

public-as-payer in situations where “he who chooses does not pay, and he who pays does not choose.” The Commission, however, rightly questions whether it should expand a rule created to address a single, rather anomalous, type of situation into a rule of general applicability—applying even in circumstances where the customer does pay for service.²⁵

This leads the Commission to posit the question of the appropriate length of time that must pass before a customer that is paying for service, but not using the service, is deemed ineligible to receive the Lifeline discount. The Commission does state that it does not seek to punish deserving customers for not using service, which prompts the FCC to ask whether different types of services should be treated differently.²⁶ Consumer Cellular believes that the exceptional treatment in its proposed rule should be reserved for the exceptional cases.

1. The Commission Should Not De-Enroll Paying Customers

While it is certainly possible to imagine situations in which the “normal”, positive cost, postpaid service arrangement could be a means of abusing the Lifeline program by unscrupulous providers²⁷, Consumer Cellular does not believe this to be the ordinary case. Indeed, over the years the company has been in business, it has discovered that many people sign up for cellular service not because they plan on using the service regularly, but because it provides a measure of safety and convenience that only cellular service can offer. These individuals may go weeks, or even a month or two, without using their cellphone but they enjoy the “peace of mind” that comes with knowing it is there if they need it. Imagine Consumer Cellular contacting customers in this category, specifically those who have not used their cellphone for 60 days or more, and informing them they must use their cellphone or their service will be terminated. In the real

²⁵ NPRM, ¶ 84.

²⁶ *Id.*, ¶ 83.

²⁷ *Id.*, ¶ 80, n. 141.

world (the non-Lifeline world), of course, this would happen no more frequently than service providers would give away handsets and service. Yet, we are considering implementing this very policy for Lifeline customers.

Consumer Cellular sees no reason to treat those Lifeline customers who pay even a nominal amount each month for service any differently with regard to when and how they choose to use their cellular service. As long as they are paying for the service each month, we must assume they find value in it regardless of whether they actually use it. Hence, just like all other wireless subscribers, they should be free to make calls, or not make calls, without the threat of service cancellation hanging over their heads.

2. The FCC Should Consider Requiring Minimum Monthly Charges

The Commission, in revisiting the Joint Board’s “concern about consumers receiving Lifeline service offerings that are offered at no fee to the subscriber”, goes on to pose some intriguing questions that Consumer Cellular believes may have the potential to alter service provider incentives in ways that would align both customer and service provider incentives in a manner designed to promote fund efficiency.²⁸ It is worth noting that—prior to the advent of Lifeline-supported providers of “free” wireless services—neither the FCC nor any state commission found it necessary to take the step of substituting a regulatory rule for the normal service provider-customer relationship. Indeed, the existence of such a rule seems to lead the Commission to question whether the rule would be necessary if Lifeline-supported service providers engaged in more “traditional” business practices where consumers pay a positive price for service.

In Paragraphs 85, 86, 88, and 89 the Commission asks whether imposing a nominal

²⁸ NPRM, ¶¶ 85-89. See also, *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order, 25 FCC Rcd 15626-27, ¶ 79 (2010).

monthly fee for service would help to promote the Commission’s goals of preventing waste, fraud, and abuse. Consumer Cellular, as noted, is a postpaid service provider that does not offer free service today, and does not plan to offer any “free” services supported by the Lifeline program. Consumer Cellular does not believe the Commission should impose its business model on all ETCs, but neither does it wish a rule created to address the business plans of a few service providers be imposed on all others. Thus, as stated previously, Consumer Cellular does believe that charging a minimum monthly fee would promote the Commission’s goals, and would alleviate the need for the Commission’s proposed rule requiring service providers to “de-enroll” customers who do not use their service, but continue to pay for service.

3. What Is An Appropriate Nominal Monthly Fee?

The Commission is concerned that, if it imposes a mandatory monthly fee, that the fee not be so high as to defeat the goal of promoting subscribership by low income consumers, and not be so low as to impose nothing more than a wasteful administrative cost on service providers.²⁹ Ideally, the Commission would require a monthly fee that would not impose greater costs on the service provider than the cost of the fee. To this end, Consumer Cellular proposes that the Commission adopt a minimum mandatory monthly charge of \$5 for those ETCs seeking Lifeline reimbursement.

D. Audits

Consumer Cellular recognizes and supports the Commission’s responsibility to efficiently administer the Lifeline program and to ensure that ETCs receiving Lifeline support are able to justify their requests for support. Similarly, Consumer Cellular understands that audits are an important and essential tool for the Commission to ensure that Lifeline funds are being prudently and efficiently disbursed.

²⁹ NPRM, ¶¶ 86, 88-89.

Nonetheless, Consumer Cellular wishes to impress upon the Commission that the expense of submitting to an audit is something the Commission should consider when assessing the overall goals of the low income fund. Audits are costly for the audited firm, as well as for the fund administrator. The Commission must be careful to ensure that audits do not become a barrier to serving low income customers.

With this concern in mind, Consumer Cellular would like the Commission to re-consider, and perhaps qualify, its proposal to subject all ETCs to audits after their first year of program participation.³⁰ Consumer Cellular believes that the Commission's resources would be best used to audit ETCs when they receive a certain threshold of annual benefits in any state. If, for example, the threshold were set at \$1 million annually in any state, then ETCs who qualify to be audited would have achieved some amount of success in serving low income customers, can be expected to afford the audit, and, if the ETC is found to be non-compliant, the audit has some potential to pay for itself from the standpoint of the fund administrator.

Consumer Cellular has many of these same concerns with respect to the Commission's questions about whether the FCC should require some or all ETCs to engage an independent auditor to periodically review compliance.³¹ However, Consumer Cellular is encouraged by the Commission's recognition of the expense involved and the need for more specific concerns in order to trigger an ETC-engaged compliance audit. Consumer Cellular would encourage the Commission to be careful to impose such audits using only the most selective criteria, such as growth of the payments to the ETC, size of the ETC (relative to fund disbursements), or poor performance on previous Commission audits. Indiscriminate, or random, selection of firms to conduct compliance audits adds an unnecessary component of risk to the low income market.

³⁰ NPRM, ¶ 98.

³¹ *Id.*, ¶ 102.

V. CLARIFYING CONSUMER ELIGIBILITY RULES

A. One-Per-Residence

Consumer Cellular understands the Commission’s desire for a “bright line” rule that is easy for both ETCs and USAC to apply, and the Commission’s proposed “one subsidy per residential address” rule is certainly a bright line rule that will be easy for both administrators and ETCs to apply. However, as the Commission recognizes, and others point out, it may be time to recognize that the realities of a wireless future do not correspond to the traditional notion of one telephone in a residence that can be shared by all.³² The “bright line” rule will require plenty of exceptions, because as consumers become eligible for Lifeline service, many will try to share the costs of their largest expenses, such as shelter. The poorest, the most elderly, and the least healthy Americans that would otherwise qualify for Lifeline will often not have a choice as to whether to share the cost of shelter. The FCC, to its credit, recognizes this reality and is willing to make accommodations for group living facilities lacking individual postal addresses. Still, a more flexible definition of household might be inevitable and might yield the same result.

Consumer Cellular encourages the Commission to seriously consider whether the “alternative” approach described in Paragraph 110, which would allow for one subsidy per eligible adult, isn’t the best way to administer Lifeline subsidies. As the Commission moves toward adopting a database for eligibility certification and verification, the Commission will want consumers to have unique PINs, and these PINs will be based on something other than just a unique residential postal address. Perhaps, the consumer’s PIN will be based on multiple pieces of individual identification but, regardless of criteria, the PIN will be the “brightest” line for determining individual eligibility. Expanding Lifeline eligibility to any eligible adult will expand the size of the low income fund, so the Commission may, understandably, want to wait

³² NPRM, ¶ 110.

until it undertakes USF contribution reform, and/or develops a certification/verification database before abandoning the “one-per-residence” subsidy rule.

Consumer Cellular has a great deal of experience in serving 50+ individuals, many of whom live in group facilities. For each of its customers, Consumer Cellular assigns a unique PIN identifier which both the consumer and CCI can use to access the customer’s account information, including whether the consumer lives at a unique residential address or at a group living facility. In those situations where a customer lives in a group facility, Consumer Cellular recommends that the FCC accept multiple Lifeline customers sharing the same address, subject to proper coding. In other words, Consumer Cellular would, as part of the certification process, ask any customer applying for Lifeline service whether they live in a group living facility, and ask the consumer to identify the type of group living facility and the central number for the address provided. Like any other eligibility criteria, the consumer would self-certify, under penalty of perjury, that the commercial address provided was a group living facility.

VI. CONSTRAINING THE SIZE OF THE LOW-INCOME FUND

The Commission’s concern over the rate of growth in the low-income fund is understandable, but capping the fund is not an option that the Commission should consider. As explained in Section III, the size of the fund will be expected to grow in times of economic hardship, and the fund should be allowed to grow to fulfill the purpose of the fund. It is not easy to keep in mind at this time, but the number of consumers who will be eligible to participate in the fund will always be changing, and most fund recipients should not be expected to be receiving support for more than a few years at the outside.

The Commission has, within this comprehensive NPRM, identified many problems with fund administration that, once solved, could be expected to reduce the size of the fund. Capping

the fund would send exactly the wrong message, and would defeat the many positive goals of this NPRM. Placing a cap on the size of the fund would not only impose a hardship on America's poor, for whom access to a telephone is a critical tool to escape poverty, but a cap would remove the momentum to truly reform and modernize the low-income fund. Capping the fund, after identifying so many solvable problems, would not only disserve those for whom the fund was created, but would also be a capitulation to short term inefficiencies.

The Commission's best chance to constrain fund growth is to move forward quickly with the one reform that will solve so many problems—efficient administration of the fund through the development of a national eligibility/certification database. Consumer Cellular has faith in the Commission's ability to constrain fund growth by efficiently mechanizing fund administration.

VII. IMPROVING PROGRAM ADMINISTRATION

A. Certification and Verification of Consumer Eligibility for Lifeline

The Commission proposes modifying its rules to eliminate the option for self-certification by consumers of program-based Lifeline eligibility.³³ Consumers seeking to enroll in Lifeline based on income eligibility have always had to provide documentation to the ETC, but the Commission is now proposing that every consumer in every state provide documentation confirming not only income eligibility, but also program-specific eligibility. The Commission asks parties that oppose this requirement to present alternatives that could be implemented quickly.³⁴

Consumer Cellular is not opposed to the Commission's desire to improve the accuracy of the eligibility certification process, even if the elimination of self-certification will impose

³³ NPRM, ¶ 170.

³⁴ *Id.*, ¶ 171.

burdens on consumers and ETCs, but only to the degree that an equally accurate, less burdensome, certification process is not available. In its background discussion, the Commission noted that some states offered automatic enrollment for consumers that were already deemed program eligible.³⁵ Similarly, the Commission noted that some states had online databases that would allow for verification (though no mention was made of certification) of income and program participation.³⁶

Consumer Cellular opposes the Commission's proposed new rule which requires ETCs to require consumers to provide documentation confirming their eligibility for Lifeline if a state has a less burdensome, equally reliable, means to certify consumer eligibility. For states that have confirmed a consumer's eligibility to participate in Lifeline, through either automatic enrollment, coordinated enrollment, or otherwise through access to a state maintained database of program participation, Consumer Cellular would like the Commission to allow an ETC to rely on a state's certification. This alternative does not compromise the Commission's desire to improve the accuracy of consumers deemed eligible for Lifeline, but does reduce the administrative burden on ETCs and consumers.

B. National Database

Consumer Cellular strongly supports the Commission's efforts to create a national database that would eliminate waste, duplication, and fraud in the administration of the low-income fund. Since the purpose of the database would be to improve the efficiency with which the low-income fund is administered, Consumer Cellular would like to see the database administered by USAC. Ideally, the database would be able to efficiently incorporate the work already performed by those states that have developed automatic enrollment.

³⁵ NPRM, ¶ 162 (internal citation omitted).

³⁶ *Id.*, ¶ 164 (internal citation omitted).

To this end, Consumer Cellular supports the basic outline of a national database proposed by AT&T.³⁷ Consumer Cellular would encourage the Commission to quickly put together the framework of a national database that would leverage the work done by states that have developed their own databases. Since several of the most populous states have put in the work to develop their own databases, the Commission might be able to quickly see the real benefits of a national database that incorporated the information already assembled by California, Florida, and Texas. Any trial that the Commission could put together quickly, given a rough consensus framework, would provide valuable information and encouragement that the Commission will need to accelerate the deployment of a national database.

VIII. MODERNIZING THE LOW INCOME PROGRAM

A. Support Amounts for Voice Service

Consumer Cellular believes that the Commission, for non-tribal areas, should eliminate its existing 3 tiered system for determining voice support in favor of a flat \$10 monthly subsidy. The \$10 subsidy is available in most states, whether the state provides the required \$3.50 in additional support for Tiers 2 and 3, or whether the state requires the carrier to provide services valued at \$3.50. An even flat rate will be fair to carriers and states, and will create a minimum even level of support among states. Consumer Cellular believes that the \$10 number is a fair subsidy, because it seems to be producing competition even among providers who charge no positive rate to consumers.

The Commission asks whether it is appropriate to create different subsidy levels for prepaid or postpaid wireless carriers.³⁸ Consumer Cellular believes this point has merit,

³⁷ See Letter from Mary L. Henze, AT&T, to Marlene H. Dortch, FCC, filed in Docket Nos. 03-109, 10-90, and 01-92, dated February 18, 20011.

³⁸ NPRM, ¶ 251.

depending upon whether the Commission decides to require all ETCs to charge a mandatory minimum monthly fee for service. If the Commission chooses not to require all ETCs to charge a positive monthly fee, then the Commission may want to provide a slightly higher rate of reimbursement to postpaid providers. Postpaid providers do incur additional charges that accrue to the benefit of others, including fund contributors, municipalities, and emergency service providers, and which free, prepaid wireless providers do not incur.

B. Eligible Telecommunications Carrier Requirements

The Commission notes the considerable burden in terms of time and resources on both itself and on resellers seeking to obtain ETC designation.³⁹ Consumer Cellular is well aware of these burdens. The Commission proposes allowing any carrier that agrees to comply with its standard requirements to simply register and become a Lifeline-only ETC. Consumer Cellular agrees with the Commission that this process would save prospective ETCs valuable time and money, as well as easing the strain on already-exhausted Commission resources.

The Commission also proposes the idea of issuing blanket forbearance from its current rules which prevent non-facilities based carriers from participating in Link Up, and that would eliminate certain ETC requirements from Lifeline-only ETCs. Consumer Cellular also agrees that this is a good idea.

The Commission asks what obligations would replace its general rules regarding other ETCs if it were to grant blanket forbearance.⁴⁰ In this case, the obligations that the Commission places on carriers to which it grants forbearance adequately protect public safety and the integrity of the fund—which address essentially the same concerns as the Commission’s general ETC obligations under 47 C.F.R. §54.202.

³⁹ NPRM, ¶¶ 304-306.

⁴⁰ *Id.*, ¶¶ 308-9.

AT&T offers its own, even more streamlined version, of the Commission's proposed reforms to modernize Lifeline.⁴¹ Under AT&T's proposal the FCC would eliminate the ETC designation process altogether for Lifeline service providers, in favor of a simple registration process. AT&T also suggests that the Commission eliminate its tiered reimbursement schedule in favor of providing each carrier a flat, technology neutral subsidy to provide voice service, and another flat subsidy to provide broadband service. Consumer Cellular believes that AT&T's proposed ETC plan makes providing service easier and more accessible to all carriers.

Consumer Cellular could not agree more with AT&T's suggestion to eliminate the current, overly-complex, tiered reimbursement schedule. Finally, as with the Commission's proposed reforms, the only obligations that would be necessary for newly-registered, low income ETCs to comply with would be—at the most—the standard compliance plan conditions that the FCC imposes today each time it grants forbearance from the facilities requirements of Section 214(A)(1).

CONCLUSION

In this NPRM, the FCC proposes some very good ideas for both short and longer term reform of the USF low income program. However, some of the reforms proposed by the Commission may go too far in the direction of constraining fund size, by making it more costly for ETCs to provide service to low income consumers, and more difficult for low income customers to receive program benefits. Consumer Cellular has proposed some modifications to the Commission's suggested reforms, which if adopted, it believes will allow the Commission to more efficiently administer the fund without imposing an unfair burden on low income consumers, or the ETCs seeking to serve them.

⁴¹ NPRM, ¶¶ 310-312.

Respectfully submitted,

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