

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

INITIAL REPLY COMMENTS OF GENERAL COMMUNICATION, INC.

Tina Pidgeon
Senior Vice President,
Governmental Affairs and Senior
Counsel
Martin Weinstein
Regulatory Counsel
Chris Nierman
Director, Federal Regulatory
Affairs
GENERAL COMMUNICATION, INC.
1350 I Street, N.W., Suite 1260
Washington, D.C. 20005
(202) 457-8812

John T. Nakahata
Patrick P. O'Donnell
Charles D. Breckinridge
Jacinda A. Lanum
WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
(202) 730-1300

Counsel for General Communication, Inc.

May 10, 2011

Table of Contents

I.	INTRODUCTION AND SUMMARY.....	1
II.	THE RECORD DEMONSTRATES THAT ADOPTION OF A ONE-PER-ADULT RULE INSTEAD OF A ONE-PER-RESIDENCE RULE BETTER FULFILLS CONGRESS’S UNIVERSAL SERVICE MANDATES AND PROMOTES PUBLIC SAFETY	5
III.	ELIMINATING SELF-CERTIFICATION WOULD DENY SERVICE TO THOUSANDS OF ELIGIBLE SUBSCRIBERS.....	12
IV.	RATHER THAN MANDATE PARTIAL MONTH REPORTING, THE FCC SHOULD PERMIT ETCS TO SEEK REIMBURSEMENT BASED ON SNAPSHOT LINE COUNTS.....	15
V.	THE COMMISSION SHOULD ADOPT A “NO PAY” RULE FOR POSTPAID LIFELINE SUBSCRIBERS AND A “NO USE” RULE ONLY FOR PREPAID LIFELINE SUBSCRIBERS	18
VI.	REQUIRING CENSUS-BASED VERIFICATION OR CERTIFICATION WOULD GENERATE ENORMOUS COSTS AND DENY SERVICE TO THOUSANDS OF ELIGIBLE SUBSCRIBERS.....	21
VII.	THE FCC SHOULD ADOPT THE INDUSTRY’S PROPOSED INTERIM SOLUTION INSTEAD OF THE JANUARY 21 LETTER	22
VIII.	WITH VIRTUAL UNANIMITY, COMMENTERS SUPPORT THE CREATION OF A LIFELINE DATABASE.....	24
IX.	CONCLUSION	25

I. INTRODUCTION AND SUMMARY.

General Communication, Inc. (“GCI”) submits these preliminary reply comments with respect to the issues presented in Sections IV, V.A, VII.B, and VII.D of the Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission (“FCC” or “Commission”) in its effort to reform and modernize the low-income universal service program (“Low Income Program”).¹ As explained in more detail in the sections that follow, the comments filed in response to the NPRM reveal that the Low Income Program rules need to be updated, both to account for the growth and adoption of wireless services and to include broadband services. The proposed “one-per-postal-address” rule would be a gigantic step backwards—abandoning the statutory objective that low-income Americans have affordable access to the same telecommunications and information services as other Americans.

Before turning to the details of the proposals, however, GCI first observes that the comments fall into two general categories: those that consider the proposed reforms in light of the wireless transformation that has swept across the entire industry and those that appear rooted in the landline era of the past. The distinction is critical, of course, because the emergence and proliferation of wireless services has completely altered the communications landscape and vastly improved the public’s ability to place critical calls (such as calls to 911) and to contact or be contacted by children, caregivers, teachers, health care providers, and actual or potential employers. The old structure—in which almost every house had a hard-wired telephone on the hall table or on the kitchen wall—has been replaced by a much more personalized system in which consumers have their own individual phones that they carry with them wherever they go.

¹ *Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking, FCC 11-32, 26 FCC Rcd. 2770 (2011) (“Lifeline NPRM”).

At its core, Lifeline is intended to ensure that low-income Americans can—like all other Americans—call 911 when they need to, contact doctors and other health care providers, reach and be reached by their children’s teachers, and reach and be reached by actual or potential employers. In the words of the Act, “low-income consumers” “should have access to telecommunications and information services, including interexchange and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas” and at rates that are “just, reasonable and affordable.”² The wireless revolution and the accelerating trend towards “wireless only” households fundamentally affect how the Low Income Program needs to be structured to achieve its mission.

A recent study from the National Center for Health Statistics reveals the breadth of consumers’ transformative switch to wireless service, a transformation that is even more pronounced among low-income consumers:³

- As of June 2010 more than one in every four homes (26.6 percent) was served only by wireless telephones.⁴ In contrast, less than 13 percent of households had a landline phone but no wireless phone.⁵ Moreover, the study suggests strongly that the percentage of wireless-only homes will continue to grow, as the supporting data show that it has been increasing steadily for several years. As recently as June 2007, the figure stood at only 13.6 percent.⁶
- Adults living below federal poverty guidelines levels (39.3 percent) were far more likely than higher income adults (21.7 percent) to live in wireless only households.⁷

² 47 U.S.C. § 254(b)(1), (3).

³ See Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January – June 2010* (2011), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.pdf>.

⁴ See *id.* at 1.

⁵ See *id.* at 6.

⁶ See *id.*

⁷ See *id.* at 3, 9.

- 32.9 percent of adults living only slightly above the poverty line (*i.e.*, with incomes between 100 percent and 200 percent of the federal poverty guidelines) lived in wireless-only residences.⁸
- 29.0 percent of all children (more than 21 million children) lived in households with only wireless telephones.⁹
- More than two in three adults living only with unrelated adult roommates (69.4 percent) lived in residences with only wireless telephones.¹⁰
- Almost half of all renters (47.1 percent) lived in wireless only residences.¹¹
- A *majority* of all adults aged 25-29, and approximately 40 percent of those aged 18-24 and 30-34, lived in wireless-only residences.¹²

Given these (growing) percentages, the FCC must ensure that the Low Income Program rules reflect the reality that Lifeline subscribers increasingly depend on wireless service.

Policies—such as the proposed “one-per-residence” rule—that fail to recognize the changing landscape will substantially limit the Low Income Program’s effectiveness and compromise Congress’s express objective that “low-income consumers” (not “residences”) have “access to telecommunications and information services, including interexchange and advanced telecommunications and information services” that are “reasonably comparable to those service provided in urban areas” and that are “affordable.”¹³

In addition, the comments demonstrate that prepaid and postpaid Lifeline present different regulatory issues. Many of the proposed regulations address potential fraud concerns that appear to arise primarily and particularly with respect to prepaid services, where a Lifeline subscriber’s relationship to her carrier is most attenuated and the risk of phantom subscribers is

⁸ See *id.* at 3.

⁹ See *id.* at 2, 7.

¹⁰ See *id.* at 3, 9.

¹¹ See *id.* at 3, 9.

¹² See *id.* at 2-3, 8.

¹³ 47 U.S.C. § 254(b)(1), (3).

most acute. Regulatory burdens designed to address such problems—such as the proposed application of a “no use” rule to deny reimbursement even for Lifeline subscribers who continue to pay their bill but reserve their phone for emergency use—threaten all Lifeline subscribers and carriers with measures that will predictably increase the program’s administrative cost, deter carrier participation, and trigger loss of service for substantively eligible low-income consumers. New regulations should be carefully aimed at addressing the specific concerns that give rise to them, not applied summarily across the entire program, where they will cause more harm than good.

GCI’s preliminary reply comments on specific issues presented in the NPRM follow. In Section II, GCI catalogs commenters’ widespread concern that the proposed one-per-residence rule ignores the growing pervasiveness of wireless service and that it would result in pronounced hardship for millions of low-income consumers. Like GCI, several commenters propose that a one-per-adult rule would better serve the statutory requirements of the Low Income Program and would save the FCC, USAC and ETCs from the administrative complexities (and privacy intrusions) that a one-per-residence rule would create.

In Section III, GCI summarizes the commenters’ broad opposition to the proposed elimination of the self-certification system, based on the shared concern that increasing the documentation burden on the vulnerable population eligible for Low Income Program service would effectively prevent many from subscribing in the first place. Section IV conveys many commenters’ opposition to a partial-month reporting obligation and their support for a “snapshot” approach that achieves the same substantive result without the corresponding administrative burden. Next, in Section V, GCI recaps the arguments made by many commenters that the proposed “no use” rule should apply only to prepaid services and that a “no

pay” rule would be a more effective measure for postpaid services, and in Section VI, GCI covers many commenters’ opposition to proposed census-based reporting requirements. Finally, in Section VII, GCI catalogs the widespread support for implementing the industry’s proposed interim solution to duplicates concerns, rather than the Wireline Competition Bureau’s January 21 letter, and in Section VIII, it identifies the near universal support for the development of a national Lifeline database.

II. THE RECORD DEMONSTRATES THAT ADOPTION OF A ONE-PER-ADULT RULE INSTEAD OF A ONE-PER-RESIDENCE RULE BETTER FULFILLS CONGRESS’S UNIVERSAL SERVICE MANDATES AND PROMOTES PUBLIC SAFETY.

As the comments filed in response to the NPRM demonstrate, adopting a one-per-residence limitation as the FCC proposes would undermine the core purpose of the Low Income Program with potentially disastrous consequences.¹⁴ It would also unleash a dizzying array of administrative complexities as the FCC and ETCs struggle to determine whether various non-traditional living arrangements are subject to the rule and as ETCs are forced to pry into subscribers’ living arrangements to assess whether an exception to the rule applies. Telephone companies are not public assistance agencies, of course, and they are not equipped or accustomed to investigate the private living arrangements of their customers. Consumers, state public utility commissions, public interest advocates and providers alike explain that a one-per-residence rule would leave millions of the nation’s most vulnerable citizens without any access to a phone—even for emergency calls—whenever a residence’s lone authorized Lifeline subscriber takes a Lifeline wireless handset away from the home. Since wireless customers tend to carry their phones with them wherever they are—at home or at school, at work down the street or at a remote cannery, even while hunting or fishing—a one-per-residence rule would guarantee

¹⁴ See Lifeline NPRM Section V.A.

that many qualifying low-income adults—and their children—will be barred from any meaningful access to critical communications service. This directly contravenes the language and the spirit of Section 254, and the Commission should decline to adopt the proposed rule as a result.¹⁵

As GCI and several others (including state public utility commissions and consumer advocates) detail in their comments, a one-per-residence rule would completely ignore the transformational shift that wireless technologies have introduced and, as a result, would subvert public policy by stranding thousands of qualified consumers without any meaningful access to a phone.¹⁶ The Media Action Grass Roots Network, for instance, states that “the increasingly essential nature of mobile connectivity” has rendered a one-per-residence rule obsolete.¹⁷ As the New York Public Service Commission (“New York PSC”) explains, the one-per-residence rule was designed for the wireline era, and adopting such a rule today would “ignore[] the reality of the expanding use of mobile telecommunications.”¹⁸ Imposing this rule, the New York PSC observes, would prevent critical “[a]ccess to emergency services” every time the lone qualifying subscriber leaves the residence with his wireless handset in his pocket.¹⁹ The Alaska Telephone

¹⁵ As GCI and many others commenters explained, there is no current rule limiting Low Income Program service to one subscription per residence, notwithstanding the FCC’s repeated references to a rule that expired at the end of 1997. *See, e.g.*, GCI Comments at 35-37; AT&T Comments at 15; COMPTTEL Comments at 2; CTIA Comments at 13; TracFone Comments at 12; United States Telecom Association (“USTA”) Comments at 19. Accordingly, even if the FCC elects to adopt such a rule despite the devastating consequences it will cause for low-income consumers, the rule can have prospective effect only.

¹⁶ *See* GCI Comments at 37-40.

¹⁷ *See* Media Action Grassroots Network Comments at 17; *see also id.* (“The growing use of mobile wireless services demands . . . reconsideration [of the proposed rule].”).

¹⁸ New York PSC Comments at 4; *see also* AT&T Comments at 16-17 (explaining that a one-per-residence rule would deny a “critical” benefit to otherwise eligible consumers).

¹⁹ *See* New York PSC Comments at 5.

Association notes that the proposed rule reflects “an antiquated perspective where a black telephone sits on a small table in the hallway or hangs on a kitchen wall.”²⁰ Similarly, Smith Bagley—which provides service on tribal lands in the southwest—comments that a one-per-residence rule would leave qualified consumers “stranded without the ability to communicate” whenever the single authorized subscriber-per-residence “leaves the home carrying a mobile phone.”²¹ Smith Bagley explains further that this outcome is guaranteed in tribal areas since carrying a mobile phone “is vitally needed when travelling in remote areas.”²²

To be sure, some commenters support the promulgation of a one-per-residence rule, generally for cost-savings reasons.²³ In the first instance, these commenters’ turn the concept of

²⁰ See Alaska Telephone Association Comments at 2.

²¹ Smith Bagley Comments at 8.

²² *Id.*

²³ See, e.g., USTA Comments at 19; Ohio Public Utility Commission (“Ohio PUC”) Comments at 6-7; New Jersey Rate Counsel Comments at 9; Consumer Groups Comments at 6. The Ohio PUC’s support for a one-per-residence rule runs especially far off the rails as it proposes blacklisting addresses that are affiliated with more than one subscriber and leaving it to the head-of-household to reestablish eligibility. See Ohio PUC Comments at 6-7 (suggesting that “USAC should block” Low Income Program services at addresses with more than one account). Setting aside the administrative burden this would impose on USAC and ETCs, the Ohio PUC’s proposal would deny service to eligible subscribers in the myriad legitimate situations in which apparently duplicate addresses might appear—such as moves from one residence to another, time lags in collecting account data, or data inaccuracies (e.g., residents of different apartments in a single building treated as residents at the same address). The proposal is also patently unconstitutional. It would punish innocent and substantively eligible poor people, such as the resident of a group house with one or more housemates who fail to disclose to others that their cell phones are supported by Lifeline. The Ohio PUC proposes to blacklist all such housemates, depriving them of Lifeline eligibility on the basis of the happenstance that two others in the house obtained service. Other eligible poor with better luck in housemates, however, would remain eligible. Such arbitrary discrimination among similarly situated people advances no rational government interest and thus violates the Equal Protection Clause. See *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000). Even were the Ohio PUC’s proposal limited to blacklisting the resident family of an individual subscriber who obtained a second line, punishing innocent individuals not for their own actions but for the offenses of their relations is fundamentally troubling and violates the Constitutional prohibition against a Bill of Attainder. U.S. Const., Art. I, § 9, cl.3. See *United States v. Brown*, 381 U.S. 437, 441-42 (1965).

“affordability” on its head, as they suggest that the entire program should be more affordable as an aggregated budgeting matter, not that individual service plans should be affordable for individual low-income consumers. The fundamental purpose of Lifeline, however, is to ensure that Americans with the most limited financial resources—that is, those who are most cost-sensitive—can afford telephone service because Lifeline rates are set below those that apply to their more affluent neighbors. Although courts have recognized that limiting overall universal service support can be justified by concerns that the universal service contribution burdens may cause some consumers to drop telephone service,²⁴ that logic makes little sense in the context of low-income support. Lifeline reduces the rates for low-income consumers far more than any federal universal service surcharge raises rates, and non-Lifeline-eligible consumers are by definition more affluent and thus less likely to drop telephone service because of a modest rise in universal service contribution charges.

Moreover, the commenters that support the proposed one-per-residence rule (and the corresponding limit on support available to low-income consumers) fail to acknowledge the transformational impact of wireless technologies and how it has completely altered the landscape for Low Income Program services, particularly in tribal lands and other remote regions. Each of the commenters that supports a one-per-residence rule fails to address either (1) the Low Income Program’s core objectives of protecting public safety and enabling low-income consumers to engage in other critical communications or (2) the statutory requirement that “sufficient”

²⁴ See *Alenco Commc’ns, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) (“Because universal service is funded by a general pool subsidized by all telecommunications providers—and thus indirectly by the customers—excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.”).

mechanisms are in place to provide universal service to low-income “consumers,” not residences.

Ignoring the wireless transformation undermines the public policy foundations of the Low Income Program and directly contravenes the statute. Section 254(b)(3) calls for access to telecommunications and information services for “low-income consumers”—not for households or residences. Moreover, Section 254(b)(5) requires the implementation of “sufficient” mechanisms to advance “universal service,” which is defined in Section 254(c)(a) as “an evolving level of telecommunication services . . . taking into account advances in telecommunications and information technologies and services.” Far from adhering to the statutory requirements, the proposed one-per-residence rule would ignore technological advances and impermissibly deny service to thousands of low-income consumers as a result.

Moreover, there is widespread agreement—among state commissions,²⁵ consumer advocates,²⁶ service providers operating on tribal lands,²⁷ and even supporters of the proposed rule²⁸—that a one-per-residence requirement would create a thicket of administrative complexities requiring the FCC, USAC and ETCs to continually assess whether various living arrangements constitute a single residence for purposes of the rule. In turn, ETCs would be obliged to pry into consumers’ living arrangements and lifestyles (a role more suitable for a

²⁵ See, e.g., Connecticut Department of Public Utility Control (“Connecticut PUC”) Comments at 6; Massachusetts Department of Telecommunications and Cable Comments at 7; New York PSC Comments at 8; National Association of State Utility Consumer Advocates (“NASUCA”) Comments at 18.

²⁶ See, e.g., Benton Foundation Comments at 4; Minority Media and Telecommunications Council Comments at 5-7; New Jersey Rate Counsel Comments at 13; Consumer Groups Comments at 18.

²⁷ See, e.g., GCI Comments at 42-44; Gila River Telecommunications Comments at 12; Smith Bagley Comments at 10-11, 15.

²⁸ See, e.g., Cricket Comments at 8-9; Sprint Nextel Comments at 11-12; TracFone Comments at 13; Verizon Comments at 9.

public assistance agency than a telephone company) to try to determine if an exception to the general rule applies. Among other atypical housing arrangements, the FCC's rules would need to carve out exceptions for at least the following categories, and USAC and ETCs would then need to strive (and pry) to determine which subscribers fit into them: homeless shelters; homeless persons not living in shelters who identify the residence of a relative or friend; domestic violence shelters; nursing homes; multiple families sharing a single home; multigenerational families; unrelated roommates; families that take in boarders to offset housing costs; residences on Tribal Lands; commercially-zoned buildings; and single-room occupancies. As Smith Bagley has explained, the rule would also fail to account for the lack of traditional addressing conventions on tribal lands, where "it is not uncommon for subscriber listings . . . to provide an address like: '5 MI NE OF ROCKWELL STORE.'"²⁹ The myriad exceptions that would be required would make a one-per-residence limitation essentially impossible to administer and therefore potentially unenforceable.

Because a one-per-residence rule would undermine public policy in the wireless era, contravene the statute, and generate a quagmire of operational complexities, several commenters concur with GCI that the FCC should adopt a one-per-eligible-adult rule instead—at a minimum on tribal lands.³⁰ As the New York PSC observes, "[a]ccess to emergency services may require multiple wireless phones for family members, so that when one individual leaves the home, the other members of the household have access to their own wireless phones to contact emergency

²⁹ Smith Bagley Comments at 15.

³⁰ See, e.g., AT&T Comments at 19 (suggesting that the Commission should adopt a "one-per-qualifying-individual" rule rather than a "one-per-residence" rule); COMPTTEL Comments at 15; Smith Bagley Comments at 8.

services or to maintain their own important family communications during an emergency.”³¹

Likewise, the Alaska Telephone Association notes that more than one line per residence is required to the extent that “universal service support was (or is) intended to offer less affluent members of the population comparable access to telecommunications service.”³² As Budget PrePay explains, “[r]eplacing the one-per-residence rule with an eligibility standard that permits each adult in a single household to receive Lifeline assistance aligns more fully with the Commission’s commitment and is more reflective of the importance of each adult having access to mobile communications in low-income communities, especially those in remote rural areas.”³³ A one-per-adult rule would preserve “the well-documented benefits of mobility, including the potential for using the Lifeline service in an emergency situation outside the home.”³⁴

As a last resort, in the event the FCC adopts a one-per-residence rule notwithstanding the myriad problems identified in the comments, commenters concur with GCI that the Commission should define one-per-residence to mean one-per-nuclear-family.³⁵ Sprint Nextel, for instance,

³¹ New York PSC Comments at 5; *see also* Media Action Grassroots Network Comments at 17 (“Rather than fighting in this manner the obvious changes in the nature of and need for personalized and mobile communications devices, the Commission should instead adopt the suggestions made during the Joint Board proceeding and in other Lifeline/Link Up proceedings to limit assistance to one supported service per eligible adult. . . . The growing use of mobile wireless services demands such reconsideration.”).

³² Alaska Telephone Association Comments at 2.

³³ Budget PrePay Comments at 9.

³⁴ Conexions Wireless LLC Comments at 6.

³⁵ *See* GCI Comments at 43-44. GCI urges the FCC to adopt the same kind of limiting definition in 47 C.F.R. § 54.400(f), which defines “income” for purposes of determining income-based eligibility under 47 C.F.R. § 54.409(b). Section 54.400(f) defines income as “all income actually received by all members of the household.” 47 C.F.R. § 54.400(f); *see also* 3 AAC § 53.390(b)(1), (k)(1). Without limiting the word “household” to the members of a nuclear family sharing a single residential address, then one adult roommate’s relatively high income could disqualify an otherwise eligible low-income adult roommate – even if they have no meaningful contact with each other.

proposes that the FCC limit Low Income Service to each “nuclear family unit that shares a residential address, where the family unit corresponds to IRS filing status.”³⁶ Likewise, in the words of the U.S. Telecommunications Association, “[a] reasonable definition of a household might be those individuals who are living together and functioning as one economic unit and whose relationship is based upon a blood and/or legal relationship.”³⁷

In short, there is widespread agreement among commenters that the Commission’s proposed one-per-household rule was designed for the wireline era. They agree as well that adopting such a rule today would deny service to thousands of qualifying low-income consumers and effectively strand them without service. Since this defeats the foundational purpose of the Low Income Program and contravenes the statute, the Commission should decline to adopt it. It should instead implement a one-per-qualifying-adult rule, which (unlike a one-per-residence rule) would advance universal service, enable critical communications (like calls to 911), achieve administrative simplicity, and adhere to the requirements of the statute.

III. ELIMINATING SELF-CERTIFICATION WOULD DENY SERVICE TO THOUSANDS OF ELIGIBLE SUBSCRIBERS.

The comments reflect broad opposition to the FCC’s proposal to eliminate the self-certification system that has helped bring Lifeline service to millions of qualified subscribers and, instead, to require all applicants to present proof of program participation.³⁸ GCI explains in its comments that this proposed rule would punish subscribers who have imperfect record-

³⁶ Sprint Nextel Comments at 12.

³⁷ USTA Comments at 20; *see also* Smith Bagley Comments at 13 (“[T]he Commission should clarify its one-per-residence rule by indicating that, in the case of single-room Navajo hogans, each separate nuclear family residing in the hogan is eligible for Lifeline assistance.”); Consumer Groups Comments at 6 (urging the FCC “to define ‘household’ as ‘any individual or group of individuals who are living together as one economic unit’”).

³⁸ *See* Lifeline NPRM Section VII.B, ¶¶ 170-171.

keeping habits or who have forgotten to bring documents with them when they visit town to sign up for service.³⁹ These are characteristics that apply to many of the relatively marginalized individuals who qualify for the Low Income Program, however, which means that the FCC's proposal would punish subscribers based on the very circumstances that qualify them for Lifeline service in the first place. Considering that only 33 percent of low income households subscribe to Low Income Program services today,⁴⁰ there is no defensible reason to suppress new activations from eligible subscribers.

Others agree that the impact on low-income consumers would be disastrous. The reaction among consumer advocacy groups has been particularly pointed. The Rainbow Push Coalition, for instance, explains in its comments that this proposed change “will discourage poor Americans from applying” and “create[] an additional hurdle or barrier to overcome to obtain Lifeline and Link-Up benefits in the worst U.S. economy since the depression.”⁴¹ The Media Action Grassroots Network likewise explains that the rule “could diminish the effectiveness of the Lifeline and Link Up programs,” heighten “the stigma associated with admitting and then proving need,” and “unfair[ly] burden . . . an already vulnerable population.”⁴² In other words, “[a]dding new and unduly burdensome verification requirements to an already complicated, stigmatized, stressful, and oftentimes byzantine application process for need-based programs would diminish the Low-Income program's effectiveness rather than improve it.”⁴³

³⁹ See GCI Comments at 48.

⁴⁰ See Lifeline NPRM ¶ 25.

⁴¹ Rainbow Push Coalition Comments at 1; see also Minority Media and Telecommunications Council Comments at 8; Consumer Groups Comments at 7.

⁴² Media Action Grassroots Network Comments at 20.

⁴³ *Id.*

A wide array of service providers and state regulators shares the same concern. TracFone notes that “many low-income consumers do not have readily available documentation of participation in qualifying programs.”⁴⁴ Likewise, Nexus observes that eliminating the self-certification approach “while the country is in the midst of a severe recession would only serve to punish consumers.”⁴⁵ Moreover, Nexus and NASUCA both argue that the proposed change is unwarranted in any event considering the absence of evidence suggesting that self-certification is a source of widespread ineligibility or fraud.⁴⁶ The U.S. Telecommunications Association concurs that the FCC’s proposal would “add substantially to the burdens placed on the providers of Lifeline service, currently tasked with determining eligibility,” and it proposes that the FCC retain the self-certification system on tribal lands.⁴⁷

While a small group of commenters support the elimination of self-certification,⁴⁸ none of them recognizes the absence of any evidence suggesting that the self-certification system is a source of fraudulent enrollments. Even more fundamentally, however, they all fail to acknowledge that this rule change would create a substantial new hurdle for otherwise eligible subscribers by imposing requirements that many marginalized individuals are simply unable to meet. For instance, the Ohio PUC voices its support for the rule and, without any support or citation, contends that it would not “work a hardship on those subscribers who should have some

⁴⁴ TracFone Comments at 28; *see also id.* at 30 (“Requiring persons facing difficult circumstances to produce government-issued documentation of program-based eligibility will preclude many such persons from enrolling.”).

⁴⁵ Nexus Comments at 21.

⁴⁶ *See id.*; NASUCA Comments at 23 (“Given that the Commission has no idea of the size of the problem with current self-certification, the proposals to require documentation for enrollment from all Lifeline customers are more than problematic.”).

⁴⁷ USTA Comments at 6.

⁴⁸ *See, e.g.*, Ohio PUC Comments at 18-19; Consumer Cellular Comments at 19-20; New York PSC Comments at 7.

form of readily available documentation.”⁴⁹ In effect, the Ohio PUC suggests that vulnerable individuals should not be entitled to Low Income Program service if they lack the wherewithal to retain records effectively.

In sum, GCI and a broad spectrum of other commenters urge the FCC to preserve the self-certification system. Requiring applicants to provide documentation of program participation would impose a substantial new burden on the vulnerable population that qualifies for Low Income Program Service, and it would effectively punish applicants based on the very circumstances that qualify them for Lifeline service in the first place.

IV. RATHER THAN MANDATE PARTIAL MONTH REPORTING, THE FCC SHOULD PERMIT ETCs TO SEEK REIMBURSEMENT BASED ON SNAPSHOT LINE COUNTS.

In Section IV.B of the NPRM, the FCC proposes to adopt a rule requiring ETCs report partial or pro rata dollars when claiming reimbursements for Lifeline customers who receive service for less than a month.⁵⁰ As GCI and several other commenters explain, however, such a rule would generate layers of administrative complexity and burden without improving accuracy.⁵¹ Rather, the Commission should permit ETCs to achieve the same result without the corresponding administrative entanglements by tallying line counts based on a snapshot of eligible subscribers on a given day every month.⁵²

Many providers simply do not use billing systems that are capable of partial month reporting. Verizon, for instance, informs the Commission that a partial-month reporting requirement “would be extremely difficult to implement [because] customer billing systems and

⁴⁹ Ohio PUC Comments at 18-19.

⁵⁰ See Lifeline NPRM ¶ 67.

⁵¹ See, e.g., GCI Comments at 28-30.

⁵² See *id.*

systems used to calculate Lifeline reimbursements are entirely different.”⁵³ Instead, Verizon (like GCI) supports a snapshot approach under which “carriers [would] report Lifeline counts used for reimbursement claims on a fixed day each month.”⁵⁴ Since “Lifeline additions and drops during the course of a month off-set each other,” Verizon explains, “[t]here is no reason to believe that, over time, reporting on this basis substantially overstates or understates a carrier’s monthly count of eligible Lifeline customers.”⁵⁵

Similarly, Cincinnati Bell notes that “[p]ro rata reporting would require a fundamental change to CBT’s systems that would entail programming updates, additional storage, and potentially the creation of a new database.”⁵⁶ An end-of-month snapshot approach “would result in Lifeline reimbursements that are essentially the same as what pro rata reporting would yield,” Cincinnati Bell explains, because “some customers with partial month service will be included in the end of month counts, [and] some would not.”⁵⁷ Conexions Wireless makes the same point: “If the Commission adopted a uniform rule requiring reporting as of a specific date, new and

⁵³ Verizon Comments at 11; *see also* AT&T Comments at 27 (describing ETCs’ “inability to track and calculate pro-rata support attributable to subscribers who obtain Lifeline service for only part of the month in any mechanized fashion”); CTIA Comments at 22 (“Pro-rata reporting would impose prohibitive expenses on providers that could require costly daily data analysis. . . . Even if the costs of a pro-rata calculation are lower for ETCs with the ability to bill partial months, the NPRM offers no evidence to demonstrate that a pro-rata requirement would eliminate waste, fraud, or abuse.”); USTA Comments at 15 (“The Commission should not adopt a rule stipulating that all ETCs must report partial or pro rata dollars when claiming reimbursement for Lifeline customers who receive service for less than a month. Such a rule would add needless burdens and complexity without a concomitant increase in accuracy.”).

⁵⁴ Verizon Comments at 12.

⁵⁵ *Id.*

⁵⁶ Cincinnati Bell Comments at 14-15.

⁵⁷ *Id.* at 15.

departing subscribers should balance each other out. This would result in an outcome that is just as fair to all concerned and substantially less burdensome.”⁵⁸

Because of its administrative complexities, the proposed partial-month reporting requirement also runs afoul of the Paperwork Reduction Act (“PRA”), which directs the Commission to minimize information collection burdens.⁵⁹ Considering the administrative burden the proposed rule would impose, and considering that the “snapshot” approach achieves the same end with much less burden, the proposed rule is simply not demonstrably necessary to advance universal service or safeguard the universal service fund. Accordingly, the PRA bars the Commission from adopting it.⁶⁰

TracFone and two state government entities support the FCC’s proposed pro rata reporting requirement, but none of them addresses the less burdensome snapshot approach or offers any evidence indicating that a snapshot rule would result in higher Lifeline payments than a pro rata reporting rule.⁶¹ Unlike the state entities, TracFone also makes the self-serving contention that the pro rata rule should apply only with respect to the postpaid service plans that it does not offer.⁶² TracFone contends that partial month reporting is unnecessary for its prepaid

⁵⁸ Conexions Wireless Comments at 7.

⁵⁹ See 44 U.S.C. § 3501 *et seq.*

⁶⁰ See 44 U.S.C. § 3506(c)(1) (requiring agencies to conduct a review of any proposed collection of information, including evaluating the need for the collection of information and a creating a plan for the efficient and effective management and use of the information to be collected); 44 U.S.C. § 3506(c)(2)(A)(iv) (directing agencies to “minimize the burden of the collection of information on those who are to respond”).

⁶¹ See TracFone Comments at 35-36; Massachusetts Department of Telecommunications and Cable Comments at 3; New Jersey Rate Counsel Comments at 13-14.

⁶² See TracFone Comments at 35-36. This proposed distinction is glaring because TracFone, throughout the rest of its comments, argues vigorously that the FCC must apply the Lifeline rules in a neutral manner that does not distinguish between prepaid and postpaid services. See *id.* at 18 (arguing that the FCC must take a technology-neutral approach to the “no use” rule).

services because subscribers receive a full month’s worth of minutes even if they are active for less than a full month.⁶³ This argument suggests quite clearly that TracFone seeks a full month’s reimbursement for every subscriber who receives any amount of service at any point during a month—a highly aggressive approach that a snapshot rule would address.

V. THE COMMISSION SHOULD ADOPT A “NO PAY” RULE FOR POSTPAID LIFELINE SUBSCRIBERS AND A “NO USE” RULE ONLY FOR PREPAID LIFELINE SUBSCRIBERS.

The record reflects broad agreement that the Commission should adopt a variation of a “no use” rule that acknowledges fundamental differences between prepaid and postpaid services,⁶⁴ rather than adopt the proposed blanket “no use” rule that would require all ETCs to refrain from seeking reimbursement from customers who do not use their Lifeline service for a designated amount of time.⁶⁵ As explained in the NPRM, the Commission’s goal is to ensure that ETCs do not seek reimbursement for subscribers who should be viewed to have discontinued service.⁶⁶ For customers of prepaid ETCs—which the FCC has described as the “greatest” concern⁶⁷—a “no use” rule is the only reliable means of determining whether a subscriber has discontinued service. For postpaid customers, by contrast, a “no pay” rule is more appropriate because regular payments clearly indicate that a subscriber values the service and intends to keep it in active status.

⁶³ *See id.* at 35-36.

⁶⁴ *See GCI Comments* at 30-33.

⁶⁵ *See Lifeline NPRM* § IV.E, ¶¶ 82-84.

⁶⁶ *See id.* ¶ 82.

⁶⁷ *See id.* ¶ 84.

A wide array of commenters echoes this view.⁶⁸ As NASUCA explains in its comments, imposing a no-use rule on postpaid ETCs would address “a problem that does not exist.”⁶⁹ Because postpaid customers must make periodic payments to keep their service active and prevent disconnection, “[w]hether the customer uses the service or not during any given period of time is totally irrelevant.”⁷⁰ Likewise, Verizon notes that “the fact that customers remain current on their accounts demonstrates that the service continues to have value.”⁷¹

Sprint Nextel suggests that the rule should assess whether “the subscriber is using the service, retains possession of the handset (and, particularly in the case of wireless devices, that the handset is charged and turned on), or is otherwise aware of and wishes to retain the service.”⁷² Accordingly, Sprint Nextel proposes that the rule should permit an ETC to include a subscriber in its line count if, during the designated period of time, the subscriber uses the line, places a text message via the line, submits some payment on a postpaid account, “tops up” a prepaid account, answers an incoming call, checks voicemail, or confirms via direct contact with the ETC that she wants to keep the line.⁷³ The Indiana Utility Regulatory Commission has

⁶⁸ See, e.g., USTA Comments at 18 (arguing that the proposed no-use rule “should be imposed only on providers that do not charge a monthly fee for service”); CenturyLink Comments at 9 (“If a low-income customer is paying a periodic fee for the service, such as a monthly bill charge, this should be sufficient to justify Lifeline reimbursement so long as the customer remains otherwise eligible for the support.”); Consumer Cellular Comments at 14 (“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.”); Cricket Comments at 5 (supporting the adoption of a no-use rule for prepaid wireless ETCs “to ensure that support is not provided for fictitious ‘service’”).

⁶⁹ NASUCA Comments at 14-15.

⁷⁰ *Id.* at 15.

⁷¹ Verizon Comments at 12.

⁷² Sprint Nextel Comments at 10-11.

⁷³ *Id.*

already implemented rules that reflect this difference between prepaid and postpaid services: while a 90-day no-use rule applies to prepaid wireless services because they “may be especially vulnerable to misapplication of the program due to the appeal of free phones and free minutes,” the state “has not imposed similar conditions upon traditional local exchange ETCs or postpaid wireless ETCs.”⁷⁴

While several commenters support adoption of a no-use rule, none of them explains why a no-pay rule would not be more appropriate for postpaid services.⁷⁵ Indeed, both TracFone and the Consumer Groups voice support for the FCC’s proposed rule on the ground that it would assess subscribers’ “intent” with regard to the service,⁷⁶ but neither of them even considers whether a no-pay rule would be a superior measure of intent as applied to postpaid subscribers.

Considering that the record demonstrates clearly that a no-pay rule is the most appropriate means of achieving the Commission’s goal with respect to postpaid subscribers—and considering the complete absence of any contrary evidence or argument—the Commission should adopt a no-use rule for prepaid Lifeline subscribers and a no-pay rule for postpaid Lifeline subscribers. As GCI explains in its comments, however, a 60-day period is simply too short for either rule because, at least on tribal lands, there are myriad valid reasons why a

⁷⁴ Indiana Utility Regulatory Commission Comments at 5; *see also* New York State Public Service Commission Comments at 8-9 (“The NYSPSC supports the FCC’s rule changes to ensure that pre-paid wireless carriers are reimbursed only for the provision of Lifeline services to current customers. . . . The NYSPSC has some concerns regarding [the proposal to extend these rules to all types of service], due to the multitude of reasons for periods of inactivity on wireline and other types of wireless phones, and the different terms and conditions of these services, including monthly billing and association of the service with a billing address.”).

⁷⁵ *See, e.g.*, TracFone Comments at 17-18; Ohio PSC Comments at 9; Consumer Groups Comments at 32-33; Mississippi PSC Comments at 5.

⁷⁶ *See* TracFone Comments at 17-18; Consumer Groups Comments at 32-33.

subscriber may not be able to use or pay for service for such a short period. A 120-day limitation is therefore more appropriate for either a no-use rule or a no-pay rule.⁷⁷

VI. REQUIRING CENSUS-BASED VERIFICATION OR CERTIFICATION WOULD GENERATE ENORMOUS COSTS AND DENY SERVICE TO THOUSANDS OF ELIGIBLE SUBSCRIBERS.

In Section VII.B, the Commission proposes onerous new double-barreled census procedures. First, it proposes to require all ETCs to conduct an annual census of all subscribers to obtain a new certification from them regarding their compliance with a one-per-residence rule.⁷⁸ Second, it proposes a conditional sample-and-census based approach to annual verifications under which an ETC would be required to undertake a similar census-based approach to substantive (program or income) eligibility verification in the event a sampled rate of ineligible subscribers exceeded a certain threshold.⁷⁹

As explained above, GCI and many others have explained in detail that a one-per-residence rule would subvert sound public policy, would lead to extreme administrative complexity, and should be rejected. No matter how the Commission limits Lifeline subscriptions, it should refrain from imposing any requirement to conduct a census of all Lifeline subscribers.⁸⁰ Other commenters have echoed GCI's observations that an annual census requirement would be extraordinarily expensive and burdensome.⁸¹ And, even more significantly, they have joined in GCI's warning that, given the evidence on current response

⁷⁷ See GCI Comments at 32-33.

⁷⁸ See Lifeline NPRM ¶ 169.

⁷⁹ See *id.* ¶¶ 183-186.

⁸⁰ See GCI Comments at 49-51.

⁸¹ See Tracfone Comments at 32 (estimating a cost of \$30 per subscriber); CTIA Comments at 20 (warning that ETCs would require a "significant amount of staff and equipment to contact subscribers"); CenturyLink Comments at 18 (warning that a census requirement threatens "an unduly burdensome, expensive process for ETCs serving large numbers of Lifeline customers").

rates to surveys, conditioning the subsidy on a census response threatens to cause needy and eligible low-income subscribers to lose their Lifeline subsidy.⁸²

The main support offered in the comments for any requirement to conduct an annual census of subscribers and condition the Lifeline subsidy on an adequate response is TracFone's inconsistent support for the full census requirement when applied to an anti-duplicates provision and its opposition to a census requirement regarding substantive eligibility. Both would be extremely burdensome for the ETC and will trigger loss of support by eligible subscribers simply because they do not or cannot respond.⁸³

VII. THE FCC SHOULD ADOPT THE INDUSTRY'S PROPOSED INTERIM SOLUTION INSTEAD OF THE JANUARY 21 LETTER.

In Section IV.A of the NPRM, the FCC proposes to codify the WCB's January 21 letter as a means of addressing duplicate accounts.⁸⁴ The commenters who addressed this issue almost unanimously oppose adoption of the January 21 letter because it would impose an undue burden on ETCs and Lifeline subscribers alike yet likely would fail to prevent the recurrence of duplicate accounts.⁸⁵ Instead, they—like GCI—urge the Commission to implement the interim solution the industry group proposed in its April 15 submission.⁸⁶

The few commenters who support the proposal in the WCB's January 21 letter, in contrast, fail to analyze the issues of burden on the ETC and customer, efficacy of the proposals,

⁸² See CTIA Comments at 20; CenturyLink Comments at 19; TracFone Comments at 32-33.

⁸³ TracFone Comments at 32-33.

⁸⁴ See Lifeline NPRM ¶ 58.

⁸⁵ See CTIA Comments at 9-10; Conexions Wireless Comments at 5; Consumer Cellular Comments at 9; Cox Comments at 6-7; NTCA Comments at 4; TracFone Comments at 15; USTA Comments at 13; Verizon Comments at 9.

⁸⁶ See GCI Comments at 25-28; CTIA Comments at 11; Conexions Wireless Comments at 5; Consumer Cellular Comments at 9-10; Cox Comments at 6-7; NTCA Comments at 4; TracFone Comments at 16; USTA Comments at 11; and Verizon Comments at 9-10.

equity toward carriers who cannot detect subscribers' violations, or even the legality of the punitive proposals at issue. The Mississippi PSC, for example, "suggests that each ETC should be charged with the responsibility of contacting multiple subscription violators, communicating the nature of these violations and eliminating duplicate subscriptions," with no analysis whatsoever of the burdens involved for either the ETC or the subscriber, and no analysis of the efficacy of the January 21 WCB Proposal.⁸⁷ Moreover, it supports the imposition of this proposal nationwide, on all carriers and in all circumstances, despite explaining that its concerns are driven by problems it perceives with "Mississippi's three designated *prepaid* wireless [ETCs]."⁸⁸

The Ohio PUC would have the FCC be slightly less punitive, urging that only the ETC ultimately deselected by the violating subscriber should retroactively lose reimbursement for the discounted service it provided, on the grounds that "the non-selected ETC would be *presumed* to have improperly enrolled the subscriber...."⁸⁹ But the Ohio PUC offers no reasoning at all for that conclusory presumption, no analysis of ETCs' inability to detect subscribers who subscribe to duplicative Lifeline service through another carrier, nor any explanation for why it thinks the carrier ultimately deselected by the offending subscriber did anything at all wrong in processing that subscriber's original service.

The New Jersey Division of Rate Counsel (NJDRRC) asserts, without analysis, that the approach advocated in the WCB's January 21 letter "seems reasonable and not unduly burdensome for consumers or providers."⁹⁰ But its comments on the industry proposal make

⁸⁷ Mississippi PUC Comments at 3.

⁸⁸ *Id.* at 2 (emphasis added).

⁸⁹ Ohio PUC Comments at 6 (emphasis added).

⁹⁰ New Jersey Rate Counsel at 10.

clear that it *does* recognize that any anti-duplicates mechanism will necessarily involve some cost and burden; NJDRC is simply unconcerned with that burden as long as it is imposed primarily on the carriers.⁹¹ But it is entirely appropriate that the administrative burdens and costs of a universal-service anti-duplicates regime should be borne by the Universal Service Administrative Company—the entity specifically responsible for program administration—and by any subscribers found to have obtained duplicative service in violation of relevant regulations. Imposing such burdens on carriers who processed Lifeline subscriptions according to the governing regulations is clearly inequitable. Moreover, to the extent the administrative burden is necessarily an implicit cost of the Lifeline subsidy, imposing it on the carriers without compensation would violate the prohibition against implicit subsidies.⁹²

The comments received, therefore, confirm rather than resolve the policy and legal objections that have been raised to the WCB's January 21 proposal, and they clarify the prudence and efficacy of the alternative proposals submitted by the industry on April 15, 2011.

VIII. WITH VIRTUAL UNANIMITY, COMMENTERS SUPPORT THE CREATION OF A LIFELINE DATABASE

In Section VII.D, the Commission proposes to establish a national Lifeline database that could be used to verify eligibility, track verification, and check for duplicates.⁹³ GCI and virtually every other commenter to address the proposal agree that in the longer-term a database could be a substantial leap forward and enable ETCs for the first time to determine in real-time

⁹¹ See *id.* at 11 (arguing that the industry proposal shifts costs from carriers to consumers and USAC).

⁹² See 47 U.S.C. § 254(e) (requiring universal-service support to be explicit) and *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999) (finding all implicit universal-service subsidies unlawful); see also *Comsat Corp. v. FCC*, 250 F.3d 931, 939 (5th Cir. 2001) (same).

⁹³ See Lifeline NPRM ¶¶ 205-222.

whether an applicant already receives Lifeline service from another carrier.⁹⁴ While issues of scope, responsibilities, and costs must be analyzed and addressed carefully, it is clear that the Commission's proposal to develop and implement the national Lifeline database has great potential and should be pursued.

IX. CONCLUSION

For the reasons presented above, GCI and many other commenters urge the Commission to: adopt a one-per-eligible-adult rule instead of a one-per-residence rule; preserve the self-certification system; permit ETCs to employ a "snapshot" approach instead of partial-month reporting; adopt a "no use" rule for prepaid services and a "no pay" rule for postpaid services; decline to impose census-based reporting; adopt the industry's proposed interim rules rather than the January 21 letter; and move forward toward development of a national Lifeline database.

Respectfully submitted,

Tina Pidgeon
Senior Vice President,
Governmental Affairs and Senior
Counsel
Martin Weinstein
Regulatory Counsel
Chris Nierman
Director, Federal Regulatory
Affairs
GENERAL COMMUNICATION, INC.
1350 I Street, N.W., Suite 1260
Washington, D.C. 20005
(202) 457-8812

_____/s/_____
John T. Nakahata
Patrick P. O'Donnell
Charles D. Breckinridge
Jacinda A. Lanum
WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
(202) 730-1300

Counsel for General Communication, Inc.

May 10, 2011

⁹⁴ See, e.g., GCI Comments at 27-28, 51; CGM Comments at ¶7; Connecticut PUC Comments at 6; Cox Comments at 3; Verizon Comments at 5; USTA Comments at 13; TracFone Comments at 16; Ohio PUC Comments at 20.