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EXECUTIVE SUMMARY

The New Jersey Division of Rate Counsel (“Rate Counsel”) continues to support the adoption by the Federal Communications Commission (“FCC” or “Commission”) of reasonable measures to curtail inefficiency and duplicate claims in the Lifeline and Link Up programs provided that such measures do not discourage program participation or otherwise undermine the success of the program in enabling low-income households to obtain and sustain connections to the public network. New Jersey low-income households increased their penetration rate from 83.2% in 1984 (when the Lifeline Program began) to 92.1% in March 2009.¹ The statewide penetration in New Jersey for households of all incomes in March 2009 was 95.1%.² Any reform that the FCC adopts should not jeopardize continuing progress toward narrowing the telephone gap between low-income households and other households.

Comprehensive reform is long overdue whereby the procedures and processes for providing eligible households with telephone support would mirror those that are in place for other low-income support programs. Just as food is essential, so too are telecommunications services. If the FCC were to provide income-eligible customers with the telephone equivalent of food stamps (*i.e.*, Supplemental Nutrition Assistance Program (“SNAP”)), consumers could apply a fixed subsidy against the telecommunications services offerings from the supplier of their choice that best suit their needs, which would maximize the economic efficiency of the

¹ / Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Penetration by Income by State (Data through March 2009)*, rel. May 2010, at Table 3.

² / *Id.*

program. A telecommunications voucher would best accommodate the wide range of individual needs that now exists in today's society (e.g., an elderly person relying on landline, whose bill is sent not to his residence but to a relative's address; a woman escaping domestic violence living in a shelter; an adult seeking employment and living temporarily in a rooming house with other unrelated individuals; a single mother seeking to stay in communication with her teenagers, etc.). Furthermore, a voucher program would eliminate many of the problems that the reform seeks to address. The proposed rules seek a one-size-fits-all remedy to the evolving and varied ways that low-income households are connected to the telecommunications network, and, therefore are cumbersome. Rate Counsel supports interim measures to detect and to prevent inefficiency and duplicative support but urges the Commission to take a broader view of how better to adapt the program to today's telecommunications markets, which differ vastly from the markets that existed in 1984, when the programs were established. With Lifeline participation rates "stuck" at about 33%, it is essential that any reform not discourage program participation.

Regarding the specific topics about which the FCC seeks comment for this pleading cycle:

Duplicate claims: Rate Counsel does not oppose the adoption of an interim solution to the problem of duplicative support being rendered to some customers, but Rate Counsel is concerned with certain aspects of the April 15 Industry Proposal. Eligible Telecommunications Carriers ("ETCs"), who already have a relationship with consumers, should bear responsibility for notifying consumers with respect to duplicate claims. Also, any interim plan should recognize that there will be exceptions to the rules and should not be unfairly punitive to consumers that

may not knowingly be breaking program rules. ETCs have obligations as part of their participation in the program and should be required to make program rules and requirements clear to consumers to whom they market and provide services.

Pro-rata reporting requirements: Rate Counsel urges the Commission to require carriers to bill only the pro-rata portion of billing cycles, rather than allowing them to “round up” to a whole month.

Toll Limitation reimbursement: The FCC should not allow ETCs to discontinue the ability of consumers to opt for toll limitation service. To the extent that there are legitimate costs associated with provisioning such service, the FCC should adopt a flat reimbursement rate based on incremental cost.

Link Up: The FCC should adopt rules that prevent providers from creating “fictitious” nonrecurring charges solely for the purpose of collecting Link Up monies.

Customer usage: The FCC should not impose minimum usage charges because such a rule could thwart the goal of ensuring that consumers can place calls when they need to (such as in an emergency). Furthermore, the FCC should carefully examine the impact of proposals to end service because of “non-use” and limit any de-enrollment requirements to prepaid wireless services.

One-per-residence rule: Any rule that the FCC adopts to enforce a “one-per-residence” rule should explicitly include exceptions for situations such as rooming houses and shelters where unrelated and qualifying individuals share the same address.

Certification and verification of consumer eligibility: Rate Counsel supports the proposed requirements for incorporating consumer acknowledgement about Lifeline rules into the consumer certification process. ETCs bear some responsibility for checking eligibility. The FCC should also adopt minimum verification procedures which states can supplement.

Database: The FCC should pursue the development of a national database, but the proposal requires more analysis and planning as well as a thorough review of the estimated costs.

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

In the Matter of

Lifeline and Link Up Reform and
Modernization

Federal-State Joint Board on Universal
Service

Lifeline and Link Up

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WC Docket No. 11-42

CC Docket No. 96-45

WC Docket No. 03-109

**REPLY COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL**

I. INTRODUCTION

The New Jersey Division of Rate Counsel (“Rate Counsel”) hereby replies to the comments of other parties³ filed in response to Sections IV, V (Subsection A), and VII (Subsections B and D) of the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) seeking input on proposals to

³ / Rate Counsel reviewed some and responds to a limited number in these comments, including those of the following parties: Leap Wireless International, Inc. and Cricket Communications, Inc. (“Cricket”); The Leadership Conference on Civil and Human Rights (“Leadership Conference”) whose members include American Civil Liberties Union, Asian American Justice Center, Communications Workers of America, National Urban League, NAACP, National Coalition on Black Civic Participation, National Consumer Law Center, on behalf of its low-income clients, National Disability Rights Network, National Hispanic Media Coalition, National Organization for Women Foundation, United Church of Christ, Office of Communication, Inc.; National Association of State Utility Consumer Advocates (“NASUCA”); Verizon and Verizon Wireless; New York Public Service Commission (“New York PSC”); Sprint Nextel Corporation (“Sprint”); CenturyLink; CTIA – The Wireless Association (“CTIA”); and the Massachusetts Department of Telecommunications and Cable (“Massachusetts DTC”).

“comprehensively reform and modernize” the Lifeline and Link Up programs.⁴ It is important to place recommendations for reform in the context of the overall beneficial impact of the Lifeline and Link Up Programs in assisting the United States in pursuing its goal of universal service. For example, the New York Public Service Commission (“New York PSC”) cites a 78.4% penetration rate for New York state low-income households in 1984 (pre-Lifeline), which increased to 90.1% in 2009.⁵ Similarly, New Jersey low-income households increased their penetration rate from 83.2% in 1984 to 92.1% in March 2009.⁶ Rate Counsel concurs with the New York PSC that the Commission should be careful not to jeopardize the success of a program that seemingly has bolstered connection to the public telecommunications network by those least able to afford service.⁷

II. IMMEDIATE REFORMS TO ADDRESS WASTE, FRAUD AND ABUSE

As stated in initial comments, Rate Counsel supports rules that would limit subsidies to no more than one telephone per residence (provided that such rules would not prevent unrelated individuals in, for example, group living situations from receiving assistance), improve audits, reimburse carriers for providing service only to current customers, and reduce reimbursements

⁴ / *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, *Notice of Proposed Rulemaking*, rel. March 4, 2011 (“NPRM”). Reply comments on the topics raised in the remaining sections are due May 25. *NPRM*, at 1.

⁵ / New York PSC, at 1.

⁶ / Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Penetration by Income by State (Data through March 2009)*, rel. May 2010, at Table 3. The statewide penetration in New Jersey for households of all incomes in March 2009 was 95.1%. *Id.*

⁷ / *See e.g.*, New York PSC, at 2.

for unnecessary or inflated costs.⁸ As CenturyLink observes, “[i]ncreases in the size of the low-income fund contribute to increased costs of telephone service for the average consumer.”⁹ Rate Counsel supports reform that would eliminate or reduce fraud and waste; however, such efforts should not become either so zealous or so burdensome as to discourage participation in the program by low-income consumers.

Duplicate claims

The Commission proposes to adopt new rules and amendments to current rules that would assist in enforcing the limitation of support to one subscription per household¹⁰ including the creation of a “unique household identifier.”¹¹ Rate Counsel continues to support those rules provided “that the anticipated cost of implementing them does not exceed the projected savings”¹² and with the caveats outlined below. Also, the FCC’s implementation of a national database (discussed later in these comments) would minimize duplicate claims.

Detection

Rate Counsel’s review of others’ comments does not alter its concern with “the drawback that the Commission identifies – requiring detailed information from subscribers may deter subscription.”¹³ Rate Counsel also reiterates that: “The Commission should not hesitate to

⁸ / Rate Counsel, at 8.

⁹ / CenturyLink, at 4.

¹⁰ / *NPRM*, at para. 54. The Commission proposes to amend section 54.400, 54.405, and 54.410 and adopt a new section 54.408. *Id.*

¹¹ / *Id.*, at para. 56.

¹² / Rate Counsel, at 9.

¹³ / *Id.*, citing *NPRM*, at para. 56.

require eligible telecommunications carriers (“ETCs”) to provide data in a format that minimizes administrative burden.”¹⁴

Remedies

The FCC proposes to require the Universal Service Administrative Company (“USAC”) to notify providers that they must stop including subscribers in a reimbursement request when the requests are found to be duplicates, and further require the ETC to notify subscribers by phone or in writing (if possible) that they have 30 days to select just one provider of Lifeline service or they will be “de-enrolled.”¹⁵ The subscriber would then select one ETC, enabling the customer-selected ETC to re-submit a reimbursement request for the subscriber. As the following section of these comments discusses, on April 15 Proposal, various industry members submitted an alternative proposal that seeks to minimize instances of duplicate support.

Addresses

The Commission seeks comment on its proposal to require subscribers to provide a residential address to receive Lifeline service.¹⁶ In initial comments Rate Counsel supported the adoption of various exceptions to the rules.¹⁷ The Commission acknowledges that circumstances may exist when the requirement for a residential address is unworkable.¹⁸ Rate Counsel reiterates that: “One advantage to the growth in cell phone use and the drop in price over the past several years is that people who do not have permanent, stable living arrangements can still

¹⁴ / *Id.*, at 10.

¹⁵ / *NPRM*, at para. 58.

¹⁶ / *Id.*, at para. 63.

¹⁷ / Rate Counsel, at 13.

¹⁸ / *NPRM*, at para. 64.

connect with society and can, for example, give contact information such as a telephone number to a potential employer.”¹⁹

CenturyLink opposes the Commission’s proposal to require ETCs to provide information such as customer names, addresses, social security numbers, birthdates or other unique household-identifying information to USAC on their “Form 497s” as a way to reduce duplicate claims for various reasons including that CenturyLink would then be required to submit the forms confidentially, the process could be “needlessly tedious and very expensive” to do so for large volumes of customers, and because customers may not want to provide such information to providers.²⁰ Rate Counsel echoes CenturyLink’s concerns about using social security numbers and also reiterates its earlier concern that requiring the information could discourage program participation.²¹

CenturyLink also seeks clarification for those instances where more than one individual residing at the same address is receiving Lifeline support, and each is Lifeline-eligible, but only one may receive support, and specifically regarding which individual the ETC should de-enroll and how to inform customers of the situation.²² Rate Counsel concurs that such clarification is appropriate.

Massachusetts DTC supports the FCC’s proposed rules to require ETCs to report unique household identifiers and to codify the Wireline Competition Bureau’s rules addressing duplicate

¹⁹ / Rate Counsel, at 13.

²⁰ / CenturyLink, at 6-7.

²¹ / Rate Counsel, at 13.

²² / CenturyLink, at 9-10.

claims.²³ New York PSC asks that the FCC recognize group living situations,²⁴ a recommendation that Rate Counsel supports. The most difficult to define households may be the ones most vulnerable and in need of Lifeline service. As noted by Cricket: “Excluding these residents from the Lifeline and Link Up programs would fatally undermine the Commission’s efforts to achieve the objectives of universal service.”²⁵

April 15th Industry Proposal

On April 15, 2011, various ETCs and industry associations submitted a proposal to the FCC “to reduce the number of individual qualified Lifeline subscribers that are simultaneously receiving Lifeline-supported service from multiple ETCs.”²⁶ Under the recent industry proposal:

- The FCC would issue an interim order establishing a rule that precludes any individual who qualifies for low income consumer benefits from simultaneously receiving more than one Lifeline supported service;
- Provide a mechanism for de-enrolling an individual consumer who is simultaneously receiving Lifeline supported service from more than one ETC; and
- Collect additional information about those instances in which multiple residents of a single postal address may be receiving Lifeline supported services.²⁷

²³ / Massachusetts DTC, at 3.

²⁴ / New York PSC, at 8.

²⁵ / Cricket, at 9.

²⁶ / Letter to Marlene Dortch from United States Telecom Association, AT&T, Cox Communications, Inc., CTIA – The Wireless Association,® CenturyLink, General Communication, Inc., Nexus Communications, Inc., Sprint Nextel Corp., Tracfone Wireless, Inc., and Verizon Communications, Inc., April 15, 2011 Letter (“April Industry Letter”), at 1.

²⁷ / *Id.*

Furthermore the interim proposal would require USAC rather than the carrier to notify Lifeline customers of potential de-enrollment.²⁸

The recent proposal recommends that the FCC adopt proposed interim rules and procedures pending its adoption of final rules “under the ‘good cause’ exception to notice and comment informal rulemaking procedures”²⁹ to provide time for the FCC and or USAC to obtain the abilities to “operate a more permanent duplicate enrollment resolution process.”³⁰ The interim process would sunset after six months unless the FCC specifically re-instates the process in an order.³¹ Furthermore, the process assumes voluntary participation by ETCs.³² Recognizing that ETCs presently have no way to ascertain whether any particular Lifeline customer is already receiving Lifeline service from another ETC, ETCs would continue to be reimbursed for any Lifeline benefits they may provide until they are directed by USAC to de-enroll such customers, and, furthermore, ETCs would not be subject to retroactive denial of reimbursement for the time period before USAC’s directive to de-enroll a customer.³³ The April 15th proposal recommends that the FCC:

- Amend rule 54.405(a) “to provide that ETCS are obligated to provide service only to qualifying low-income consumers who are not simultaneously receiving Lifeline service from that or any other ETC.”

²⁸ / *Id.*, at 3.

²⁹ / *Id.*, at 1.

³⁰ / *Id.*

³¹ / *Id.*

³² / *Id.*

³³ / *Id.*, at 2.

- “Amend rule 54.405 by adopting a new subsection (e) mandating the immediate de-enrollment of subscribers receiving duplicate benefits.”³⁴

Furthermore, under the proposal, USAC, rather than providers, would notify Lifeline customers of possible de-enrollment.³⁵

The proponents of the industry solution also filed a four-page description of the proposal.³⁶ As described in this document, the interim process would be implemented on a state-by-state basis, starting with the states where audits have revealed significant numbers of duplicate enrollments or where prepaid wireless Lifeline providers have been active.³⁷

Rate Counsel certainly supports the implementation of reasonable measures to eliminate duplicative Lifeline support. However, as is discussed in these comments, Rate Counsel prefers broader reform to the existing Lifeline Program, and specifically recommends that the FCC replace the current administratively burdensome enrollment process with a process that mirrors the process used for the Supplemental Nutrition Assistance Program (“SNAP”) so that income-eligible customers receive portable subsidies for broadly defined telecommunications services. The same procedures that are in place to prevent duplicative receipt of SNAP support would prevent duplicative receipt of “telecommunications support,” rendering the April 15 proposal moot. Just as a SNAP recipient today can choose whether to use the food subsidy toward items purchased at a national grocery chain or from a local farmers’ market, so too could a

³⁴ / *Id.*, at 2; see also Appendix A, “Proposed Rules.”

³⁵ / *Id.*, at 3.

³⁶ / The document is entitled “Interim Duplicate Resolution Process” (“Description”).

³⁷ / Description, at 1.

“telecommunications support” recipient choose the most appropriate supplier of broadly defined and essential telecommunications services, provided that such suppliers were deemed eligible by the FCC. Standard and widely accepted economic theory demonstrates that consumers, with a budget limit, maximize their utility when given flexibility to make purchases that correspond with their individual utility curves. As Rate Counsel stated in its initial comments: “Ultimately each household needs to be able to decide the way in which it can most effectively stay connected to the network.”³⁸

Pending the adoption of this more economically efficient and consumer-friendly approach to subsidizing low-income consumers’ ability to partake of today’s vast array of telecommunications services, however, Rate Counsel does not oppose the adoption of an interim solution to the problem of duplicative support being rendered to some customers, but Rate Counsel is concerned with certain aspects of the April 15 Industry proposal. As explained more fully in Rate Counsel’s initial comments, it would seem preferable that providers, rather than USAC, bear the burden of notifying Lifeline customers of potential de-enrollment.³⁹ In discussing an earlier industry proposal, Rate Counsel stated:

The trade association plan clearly shifts all of the burdens to USAC in terms of notification and leg work. Moreover, the Commission is properly concerned that subscribers might be less likely to respond to contact from USAC “an entity they likely are unfamiliar with as opposed to their service provider.” Clearly, the answer to the Commission’s question on whether this alternative proposal would add administrative costs for USAC is yes.⁴⁰

³⁸ / Rate Counsel, at 17.

³⁹ / See *id.*, at 10-11 (cites omitted).

⁴⁰ / *Id.* (cites omitted).

Rate Counsel continues to be concerned that burdens should not be shifted from the industry to USAC. Furthermore, Rate Counsel is not persuaded that the Commission must preempt state or local requirements or tariff requirements;⁴¹ instead, during the interim time period, states should be permitted to continue their own policies.

Rate Counsel is also concerned about the potentially punitive implications of the proposal's recommendation that "the Commission's Order must make clear that any customer found to be receiving duplicative benefits from a state Universal Service or Lifeline fund must be de-enrolled from both the federal and the state program upon receipt by the provider of a de-enrollment notice from USAC."⁴² The intent of this sentence is ambiguous: as explained in the Description, it would seem that those individuals receiving Lifeline benefits from two service providers would be randomly assigned to a "default carrier" and, therefore, not "de-enrolled" entirely, but rather simply de-enrolled from one of the ETC's Lifeline programs, which is reasonable.⁴³ In no event, however, should a customer be de-enrolled entirely simply because she, perhaps mistakenly, received support from two different suppliers. Indeed, the FCC should avoid rules that are "risk-free" for ETCs (for example, entitling them to reimbursement until USAC informs them that they must de-enroll customers, and letting customer education be optional) and yet put consumers at risk of being barred from Lifeline programs. As Rate Counsel explained in its initial comments:

The Commission seeks comment on whether consumers involved in duplicate support situations should be barred from the Lifeline program (temporary or

⁴¹ / April 15 Industry Letter, at 4.

⁴² / *Id.*

⁴³ / Description, at 2.

permanently) and asks whether this would be applied to the consumer or the entire household. Mistakes and misunderstandings do happen and although Rate Counsel supports measures that discourage waste and fraud, the Commission should balance carefully this objective with that of encouraging consumers to enroll in the program. Some low-income households may move among apartments frequently, creating situations where someone new moves into an apartment and gets Lifeline, but the previous tenant also has Lifeline through a cell phone. The situations become complicated because of tenants changing and the mixture of wireline and wireless service. Rate Counsel urges the Commission not to establish rules that would unintentionally harm households with frequently changing residences or who may not fully understand the program rules.⁴⁴

Rate Counsel supports reasonable measures to prevent, detect, and remedy fraud, but urges the Commission to avoid the implementation of unduly punitive measures that could jeopardize the Commission's goal of achieving universal service.

Furthermore, simply because multiple customers reside at the same address does not necessarily mean that support is inappropriate⁴⁵ because, for example, unrelated customers residing in a rooming house may share the same address. Any interim process should include a mechanism for determining whether there is a compelling reason for different individuals to share an address and each obtain support (such as in a homeless shelter or single occupancy rooming house).

Also, as described by the industry proposal, Lifeline providers in the states targeted for the interim process "may conduct consumer education campaigns in advance of the process being implemented."⁴⁶ Education should not be optional – instead providers should be *required* to inform Lifeline customers that they are eligible for support from only one provider.

⁴⁴ / Rate Counsel, at 11-12 (cite omitted).

⁴⁵ / Description, at 1. See also Description, at 3-4, describing "Track 2 – Different individuals, same address."

⁴⁶ / *Id.*, at 1.

Pro Rata Reporting Requirements

In its initial comments, Rate Counsel stated:

The Commission should clarify its rules such that there is no question that ETCs may not claim reimbursement for an entire month from the fund when they provide service to a consumer only for a partial month. The protestations of Qwest and Verizon that it is simply too burdensome to report partial-month subscription data is incredible! Telecommunications companies bill consumers for partial months all the time, as the Commission observes. Instead, it sounds as if the carriers may be hoping to reap the benefit of “rounding” up subscription data. Rate Counsel supports, in no uncertain terms, the Commission’s proposal to clarify its rules that ETC must report pro-rata information to USAC for reimbursement purposes.⁴⁷

Verizon and Verizon Wireless oppose pro rata billing requirements.⁴⁸ However, Verizon and Verizon Wireless provide no support for their claims that because current rules “allow” carriers to claim reimbursement based on the number of lines served on a fixed day per month, that the partial month customers essentially off-set each other,⁴⁹ customer billing systems for Lifeline are completely different than other carrier billing systems and thus ETCs are unable to pro-rate for Lifeline customers as they can for all other customers;⁵⁰ and the cost of necessary changes to Verizon’s billing system would be high.⁵¹ CTIA contends that for prepaid wireless service, ETCs are not able to calculate partial month enrollment counts, and that there is no evidence that pro-rata reporting would address waste, fraud or abuse.⁵² By contrast, others, in addition to Rate

⁴⁷ / Rate Counsel, at 13-14.

⁴⁸ / Verizon and Verizon Wireless, at 11-12.

⁴⁹ / *Id.*, at 12.

⁵⁰ / *Id.*, at 11.

⁵¹ / *Id.*

⁵² / CTIA, at 22-23.

Counsel, support reporting based on actual usage.⁵³ Rate Counsel urges the Commission to explore more fully with wireless providers the ways in which they receive Lifeline reimbursement. Furthermore, the purported inability of wireless carriers to pro-rate subscriptions provides yet further evidence that it would be far preferable to provide a monthly voucher to eligible customers, who then would use the support as suits their particular situations. The FCC should require pro rata reporting.

Eliminating Toll Limitation Reimbursement

Rate Counsel's review of initial comments does not alter its previously expressed opposition to allowing ETCs to discontinue toll service limitation.⁵⁴ Rate Counsel instead supports the Commission's alternative proposal that the Commission adopt a flat reimbursement amount based on incremental cost, which would address CenturyLink's concern about the costs that ETCs incur.⁵⁵ As stated in initial comments: "Consumers should not be penalized for the fact that ETCs are trying to over-recover funds for services with very little incremental cost."⁵⁶ Sprint, on the other hand, asserts that toll limitation is no longer needed and calls the service "extraneous" reasoning that many calling plans bundle local and toll calls.⁵⁷ What Sprint fails to acknowledge, however, is that the "no-frills," non-bundled packages for which Lifeline support may be used do not provide free toll service or unlimited minutes. For these various reasons, the FCC should not permit ETCs to discontinue toll service limitations.

⁵³ / See, e.g., NASUCA, at 11, Massachusetts DTC, at 3.

⁵⁴ / Rate Counsel, at 14.

⁵⁵ / CenturyLink, at 8. By establishing a cost-based reimbursement mechanism, the FCC would not be subjecting carriers to the "unfunded mandate" that CenturyLink describes. *Id.*

⁵⁶ / Rate Counsel, at 14.

⁵⁷ / Sprint, at 9.

Customary Charges - Link Up

Rate Counsel continues to support the FCC's proposed rule changes to ensure that Link Up charges are only charged to Lifeline recipients when such charges are applied to non-Lifeline recipients, in order to avoid the creation of "fictitious" charges designed solely to increase carriers' Link Up reimbursement levels. In initial comments, Rate Counsel supported a requirement that ETCs submit records for Link Up reimbursement to USAC.⁵⁸ However, Rate Counsel also sees the merit in Cricket's argument that if the Commission caps reimbursement at half the customary charges and carriers may only apply such charges if they are applied to all consumers regardless of Lifeline status, the cost support may be unnecessary.⁵⁹ Sprint also favors the elimination of the subsidy, citing an "ever-increasing level of automation."⁶⁰

De-Enrollment Procedures

As stated in initial comments: "Rate Counsel does not agree with the non-usage de-enrollment, but does agree that 60 days is adequate notice. If consumers are genuinely defrauding the program, 60 days is enough and more would cost the program funds."⁶¹ Non-usage need not be a criterion for de-enrollment except in specific circumstances (*i.e.*, prepaid wireless). The adoption of a general 60-day non-usage criterion puts far too many households at risk of losing their Lifeline service for very little gain. Like Rate Counsel, the New York PSC, while supporting inactivity-based de-enrollment on prepaid service, does not agree that this rule

⁵⁸ / Rate Counsel, at 15-16.

⁵⁹ / Cricket, at 6.

⁶⁰ / Sprint, at 9.

⁶¹ / Rate Counsel, at 16.

should extend to all types of services because of the many reasons that may exist for inactivity.⁶² If, contrary to the input of many commenters, the Commission does adopt non-usage de-enrollment it should consider, at a minimum, the list denoting an “active” account put forth by Sprint.⁶³

Rate Counsel concurs with CenturyLink that any prohibition on Lifeline support for a customer who has not used the service for sixty consecutive days should not apply to wireline service for which customers pay on a periodic basis because, among other things, the proposed rule would be “counter to the very purpose of a ‘Lifeline’ service, which is to ensure that a telephone connection is available when the customer needs it.”⁶⁴ Rate Counsel favors NASUCA’s position that any non-usage enrollment only be applied to prepaid wireless. As noted by NASUCA, “the FCC proposal to extend the rule to postpaid customers is directed toward a problem that does not exist.”⁶⁵

However, the Commission should examine if there is there is evidence that a distinction should be made between different types of prepaid wireless plans. Cricket expresses a concern that some prepaid wireless ETCs are “gaming” the program by offering Lifeline-specific services: “Such Lifeline-specific offerings, in contrast to unlimited monthly calling plans that are available to the general public, are placing significant strains on the Lifeline program and yet are failing to ensure that low-income consumers will have continuous access to the public switched

⁶² / New York PSC, at 9.

⁶³ / Sprint, at 10.

⁶⁴ / CenturyLink, at 9.

⁶⁵ / NASUCA, at 14-15.

telephone network.”⁶⁶ Rate Counsel disagrees with Cricket’s self-serving contention that the Lifeline program was meant to offer discounts on monthly telecommunications service plans, but not free service.⁶⁷ While continuous access to the network is preferable (through plans with unlimited minutes) the elimination of the choice for consumers to obtain a prepaid small “bucket” of service is not desirable. Some consumers may not be able to afford to put money towards telephone service. While continuous access is preferable, there is some comfort to consumers that those phones must be able to reach 911 even after their initial “bucket” of minutes has been depleted. To the extent that there are carrier plans “that exist to generate windfalls for participating providers”⁶⁸ the Commission should certainly investigate whether evidence of fraud exists and what implications the distinction between prepaid and “pay-in-advance monthly services” that Cricket identifies are relevant in program administration.⁶⁹ Furthermore, the Commission should take into consideration the Leadership Conference’s concern about “substandard services” provided to Lifeline customers: “For example, some offer a very low number of minutes per month and then charge rates as high as 20 cents per minute after the monthly minimums are exhausted.”⁷⁰

⁶⁶ / Cricket, at i.

⁶⁷ / *Id.*, at 2.

⁶⁸ / *Id.*, at 4.

⁶⁹ / See *id.*, at 5. It would seem to be common sense that if a consumer buys “buckets” of minutes as opposed to monthly service that there would be a method by which the service provider is only reimbursed for each “bucket” the consumer buys instead of on a monthly basis.

⁷⁰ / Leadership Conference, at 9.

The Commission should not, however, adopt a minimum monthly fee as proposed by the Commission⁷¹ and supported by Cricket.⁷² Numerous commenters similarly oppose the adoption of a minimum monthly fee.⁷³ NASUCA's observation is on point:

Although the notion of requiring all Lifeline customers to “have some skin in the game” may have some superficial attractiveness, that superficiality is far outweighed by the very real fact that the recent substantial growth in Lifeline subscription has been almost entirely the result of the availability of prepaid wireless service that is provided at no up-front cost to the Lifeline customer. For the Commission to assume that such payments are needed “to ensure that Lifeline consumers genuinely want phone service” is an unreasonably paternalistic attitude; as if a customer would obtain this vital means of communication frivolously and merely because it is free. Likewise the assumption that such payments are required to ensure “that low-income households have the incentive to make appropriate use of their Lifeline-supported services....”⁷⁴

Rate Counsel echoes NASUCA's sentiments. CTIA similarly opposes a mandatory minimum charge because it would be administratively burdensome for consumers and carriers; could create costs that would outweigh the savings; and “would be a form of rate and service regulation which the Commission should not impose in a competitive marketplace.”⁷⁵ Rate Counsel does not agree with CTIA that the Commission's proposal would be objectionable because it purportedly would “improperly” regulate rates and services nor that the marketplace is competitive. These Lifeline services are not being offered in a competitive marketplace and are subsidized by consumers. However, Rate Counsel agrees with CTIA that a minimum charge

⁷¹ / NPRM, at para. 86.

⁷² / Cricket, at 5.

⁷³ / See, for example, CTIA, at 23; Verizon and Verizon Wireless, at 12; NASUCA, at 15-16; Sprint, at 18.

⁷⁴ / NASUCA Comments at 15-16 (footnotes omitted).

⁷⁵ / CTIA, at 23.

could discourage enrollment in the Lifeline program.⁷⁶ The theory that consumers need an “incentive” to “make appropriate use”⁷⁷ of their service should be dismissed. Rate Counsel has not seen evidence that suggests that a small monthly fee would solve problems related to duplicate Lifeline service or fraud. If there is indeed an issue related to prepaid bundles of minutes (as suggested by Cricket) then the solution to that problem lies with program administration and ETC reporting and reimbursement solutions not on the backs on consumers with limited resources.

Finally, de-enrollment as a result of non-usage should not impact access to emergency services. The Commission should re-emphasize that carriers must continue to route 911 calls even when service is terminated. However, with respect to this “non-usage” issue, the Commission should enlarge its understanding of “emergency” calls beyond access to 911 services. Consumers may keep telephone service for “emergencies” that include the ability of persons in ill health to reach family members; children to reach parents while at work; child care providers’ ability to contact parents; vehicle breakdowns, etc . . . The Commission should ensure that these genuine needs are not overlooked.

III. CONSUMER ELIGIBILITY RULES -- “One-Per-Residence”

Rate Counsel observed, in initial comments: “While a majority of households continue to have a wireline telephone in the home, the incidence of ‘wireless only’ households is higher

⁷⁶ / *Id.*

⁷⁷ / *NPRM*, at para. 86. See, also, Sprint, opposing a minimum monthly payment: “A token payment is unlikely to deter any end user intent on committing fraud, and a substantial payment may pose a barrier that deters low income consumers from obtaining Lifeline service.” Sprint, at 18.

among adults living in poverty or ‘near’ poverty.”⁷⁸ Yet, as the Commission suggests, the development of wireless Lifeline services has “also made it difficult to limit low-income support to a single line per residence.”⁷⁹

Commenters tend to support a one-per-household requirement, but also acknowledge that the challenge is to define household appropriately.⁸⁰ While a national administrator may resolve the issue in part,⁸¹ the nitty-gritty details pose significant complexities with important implications (*e.g.*, would a national administrator verify that two Lifeline accounts that originate from same postal address are really two households, and if so, how). It is more likely that a national database and administrator would more easily identify instances in which more than one Lifeline account corresponds to one address. Numerous commenters raise serious concerns about using postal addresses to enforce a one-per-household limit.⁸² Leadership Conference expresses concern that the Commission “incorrectly characterized the Lifeline eligibility limitation as a ‘one per address’ limit, when in fact the limit is one per *household*.”⁸³ The Commission must address these important distinctions.

CenturyLink recommends that if the Commission retains the one-line-per-residence approach, it adopt a rule that explicitly limits support to one Lifeline discount and one Link Up

⁷⁸ / Rate Counsel, at 17, citing Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January – June 2010*, released December 21, 2010, available at: <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.pdf>, at 3.

⁷⁹ / *NPRM*, at para. 105.

⁸⁰ / *See, e.g.*, Verizon and Verizon Wireless, at 8-9.

⁸¹ / *Id.*, at 9.

⁸² / Cricket, at 8; Verizon and Verizon Wireless, at 8-9; Sprint, at 11;

⁸³ / Leadership Conference, at 8 (emphasis in original).

discount per residential address, and require subscribers to certify that they are receiving Lifeline support for only one line at only one residential address, which is their primary address.⁸⁴ Rate Counsel does not oppose these recommendations as interim measures pending the adoption of a more efficient telephone voucher program. Furthermore, Rate Counsel concurs with CenturyLink that there should be “appropriate exceptions” such as arrangement where unrelated adults share a residence, or a house that has a basement apartment.⁸⁵

The Massachusetts DTC supports the FCC’s proposal to adopt a one-per-residence rule but similarly is “concerned that because the one-per-residence rule is address-based, it will unintentionally deny benefits to those individuals who have a substantial need, and who are likely eligible, for Lifeline support” and urges adoption of exceptions.⁸⁶ The Massachusetts DTC details the results of a recent hearing in Massachusetts wherein numerous commenters provided detailed and specific concerns related to the use of addresses.⁸⁷

Rate Counsel shares similar concerns with those of New York PSC that access to emergency services for the entire households may be limited when the wireless telephone is the Lifeline connection (because when one adult leaves the house with the wireless phone, then the rest of the household members would no longer have telephone access to emergency services) and supports New York PSC’s call for the FCC to conduct a study regarding how low-income families use mobile phones and an assessment of the cost of changing the one discount per

⁸⁴ / CenturyLink, at 12-13.

⁸⁵ / *Id.*, at 13.

⁸⁶ / Massachusetts DTC, at 5.

⁸⁷ / *Id.*, at 5-7.

household policy to one discount per adult.⁸⁸ Precisely because consumers’ use of and need for diverse telecommunications services are evolving, it is essential that the program evolve accordingly to ensure that subsidies support differing and vital needs.⁸⁹ Rate Counsel reiterates its earlier recommendation: “If the Commission maintains its requirement of limiting one Lifeline account to one residence, then it should incorporate consumer acknowledgement into the consumer certification process. It is important to ensure that providers are properly informing consumers of the requirement and that consumers are fully aware of the rules.”⁹⁰

The Leadership Conference proposed definition of a household has merit: “any individual or group of individuals who are living together as one economic unit” (based on the Low Income Energy Assistance Program (“LIHEAP”) definition).⁹¹ Similarly, the FCC’s current income eligibility criterion does include “all income received by all members of the household,”⁹² which is consistent with the Leadership Conference’s proposed definition.

Rate Counsel also concurs with CenturyLink that the Commission should not use the language of “billing residential address” because, for example, another family member, who resides elsewhere, may handle the bills for an elderly or disabled individual.⁹³

CTIA, however, contends that the “one-per-residence” proposal “raises substantive policy issues that require the full notice-and-comment process to properly address” and should

⁸⁸ / New York PSC, at 4-5.

⁸⁹ / *See, e.g.*, CTIA, at 3, stating that “[w]ireless services have become a key part of all consumers’ lives, including low-income consumers.”

⁹⁰ / Rate Counsel, at 21.

⁹¹ / Leadership Conference, at 8.

⁹² / *Id.*

⁹³ / CenturyLink, at 13-14.

be prospective-only in effect.⁹⁴ Among the substantive policy issues that CTIA identifies are the definition of a household, the definition of a residential address, and the consequences of the rule on group living facilities, public safety, migrant or seasonal workers, and cord-cutting trends.⁹⁵

Rate Counsel reiterates its support for providing all income-eligible individuals and households with a voucher, which would resolve the types of complexities that CTIA identifies. Pending such reform, however, Rate Counsel supports the Commission's adoption of a rule that would limit support to one-per-residence, provided that the Commission adopts exceptions for certain extenuating circumstances such as group living facilities and migrant or homeless consumers who make lack a residence. CTIA contends that such a rule "may only apply on a prospective basis and the Commission may not penalize past actions taken in full compliance with the then-existing laws"⁹⁶ and further asserts that the Commission and USAC should suspend any investigations or audits involving issues of duplicate Lifeline support.⁹⁷ Rate Counsel can understand CTIA's interest in ensuring that wireless customers can continue to receive Lifeline support, but if the FCC determines that consumers should not, at this time, receive support for both their wireless and their wireline services concurrently, Rate Counsel is confident that the FCC will rely on the proper legal authority to establish such rules. Again, a form of telecommunications voucher that would provide a specific and capped subsidy would enable consumers to select the services and providers that best suit their particular needs and would address CTIA's concerns.

⁹⁴ / CTIA, at 11-12. *See also, id.*, at 13-16.

⁹⁵ / *Id.*, at 12.

⁹⁶ / *Id.*, at 15.

⁹⁷ / *Id.*, at 15-16.

In a similar vein, Verizon and Verizon Wireless assert that the program focus should be fundamentally changed by “discarding the provider based Lifeline model altogether and instead provide discount vouchers to qualified beneficiaries to spend at their election on specified services offered by their preferred provider” and further explains that “[w]ith beneficiaries empowered to make service selections using a voucher with a pre-set value that can only be used once, claim duplication – a substantial focus of fraud and abuse today – would be largely avoided.”⁹⁸ The Leadership Conference also recommends that the FCC learn from the experience of other federal benefits programs such as SNAP.⁹⁹ Five years ago, Rate Counsel discussed the theoretical possibility of consumer vouchers for telecommunications services in the context of the high-cost fund.¹⁰⁰ In the context of Lifeline service, the implementation of this theoretically appealing idea is much more straightforward, and should be considered by the FCC as a way to resolved various administrative complexities and also to provide consumers with flexibility in how they choose to purchase the “bundle” of telecommunications services that best suits their specific requirements.

IV. IMPROVING PROGRAM ADMINISTRATION

The FCC seeks comment on “how to improve key aspects of the current administration of Lifeline/Link Up, consistent with our goals of reducing waste, fraud, and abuse and modernizing

⁹⁸ / Verizon and Verizon Wireless, at 3.

⁹⁹ / See, generally, Leadership Conference 4-7.

¹⁰⁰ / *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *High-Cost Universal Service Support*, WC Docket No. 05-337, Comments of the New Jersey Division of the Ratepayer Advocate, March 27, 2006, at 17-18.

the program.”¹⁰¹ Among other things, the FCC proposes to establish a core set of requirements for eligibility, certification and verification requirements, which states could then complement.¹⁰² In these reply comments, consistent with the FCC’s notice, Rate Counsel addresses Section B (certification and verification of consumer eligibility) and Section D (database), and will address other aspects of improving program administration (eligibility criteria, coordinated enrollment and electronic signature) in the May 25th reply comment cycle, as requested by the FCC.

The FCC has expressed concern about self-certification (specifically that the self-certification process “offers minimal protection against those intentionally seeking to defraud the program and fails to exclude customers that are not eligible to participate but simply misunderstand the eligibility requirement”)¹⁰³ and proposes to eliminate it.¹⁰⁴ Rate Counsel did not address this issue in initial comments, but it seems that the FCC’s concern about self-certification and fraud would be largely addressed by the use of coordinated enrollment, a topic that the FCC has reserved for the subsequent round of reply comments. Furthermore, as NASUCA points out, consumers only engage in self-certification if they are participating in federal assistance programs,¹⁰⁵ and therefore a shared database and/or coordinated enrollment process could deter fraud, rendering the FCC’s concerns about self-certification largely moot. NASUCA opposes the elimination of self-certification noting that the FCC has no data on the occurrence of fraud regarding this issue and states: “That is not exactly a “data-driven” basis for

¹⁰¹ / *NPRM*, at para. 150.

¹⁰² / *Id.*

¹⁰³ / *Id.*, at para. 170.

¹⁰⁴ / *Id.*, at para. 171.

¹⁰⁵ / *NASUCA*, at 23.

a regulatory decision.”¹⁰⁶ Rate Counsel concurs with NASUCA that the FCC’s reasoning for eliminating self-certification is not persuasive.

Providers’ role in determining consumers’ eligibility is another issue before the FCC.

Verizon and Verizon Wireless state:

Imposing additional obligations on ETCs to review and verify eligibility documents, for instance, is the wrong approach. ETCs do not have the expertise needed to execute these functions – which are fundamentally functions better suited for social service or government agencies – and assigning responsibility for enrollment decisions to multiple ETCs leads to inconsistent eligibility determinations.¹⁰⁷

Rate Counsel agrees that consistency among eligibility determinations is a problem and that social service agencies are better suited to determine eligibility than providers. However, comments by industry claiming that increased requirements for ETCs are too expensive are not supported. For example, Verizon and Verizon Wireless suggest with respect to additional eligibility and verification responsibilities on the part of ETCs: “The Commission should avoid adopting rules that add significant administrative costs (which are ultimately paid by consumers) and that undermine the modernization of fund administration.”¹⁰⁸ The solution, from the perspective of Verizon and Verizon Wireless, is the development of a national database and administrator whose costs are unknown, but certainly not insignificant, and which will also ultimately be paid by consumers.

¹⁰⁶ / *Id.* See also, CTIA, at 21 (opposing the elimination of the self-certification option).

¹⁰⁷ / Verizon and Verizon Wireless, at 8.

¹⁰⁸ / *Id.*

The Massachusetts DTC was precluded from commenting on many topic areas because it has its own investigation currently open.¹⁰⁹ However, it asks the FCC to “preserve the states’ crucial role in the administration of the Program and to include in any certification and verification reforms state authority to adopt additional procedures.”¹¹⁰ CenturyLink also recommends that the Commission allow states to maintain state-specific eligibility criteria that supplement the federal criteria.¹¹¹ Rate Counsel supports standard minimum criteria, and concurs that states should retain the flexibility to supplement such criteria.

The FCC has sought comment on the development of a national database or information management system to assist with online certification and verification of low-income households.¹¹² Initial comments support a national data base to streamline enrollment, reduce and perhaps eliminate the need for annual verification, and address duplicate Lifeline claims.¹¹³ A national database should be pursued, but requires more analysis and planning.¹¹⁴ While the database may weed out some duplication issues and resolve some of the other issues that the NPRM seeks to address, it will not resolve all issues, including for example, the thorny problem

¹⁰⁹ / Massachusetts DTC, at 1. See *Investigation by the Dep’t on its Own Motion into the Lifeline and Link-Up Programs for Mass. Tel. Customers*, D.T.C. 10-3, *Order Opening Investigation*, rel. Sept. 17, 2010. On June 30, 2010, the Department concluded its investigation into the annual verification audit conducted by TracFone Wireless, Inc. *TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers*, D.T.C. 09-9, *Order*, June 30, 2010, at 15-16. The Massachusetts DTC states that “In that Order, the Department found that the existing certification and verification procedures were insufficient to ensure that only eligible consumers receive Lifeline services and to prevent fraud.” It is currently examining in DTC 10-3 what verification procedures it can adopt. *Id.*

¹¹⁰ / *Id.*, at 9.

¹¹¹ / CenturyLink, at 16.

¹¹² / NPRM, at paras. 205-207.

¹¹³ / New York PSC, at 11 (“as long as the benefits outweigh the costs”); Verizon and Verizon Wireless, at 5; Cricket, at 7 (stating that the national database has “obvious benefits” and should be paid for by the USF); Sprint at 2; CenturyLink, at 20-21; CTIA at 4-7.

¹¹⁴ / Rate Counsel, 22.

of defining “household.” Rate Counsel also echoes NASUCA’s support for a national database along with its position that ETCs should bear some responsibility for implementing Lifeline service to fulfill the requirements of the Telecommunications Act:

NASUCA suggests that the motivation of some service providers to assign the responsibility for Lifeline program management may be self-serving. NASUCA believes that the obligation of an ETC to provide Lifeline service throughout its service territory represents a critical national priority that is embodied in the Telecommunications Act. NASUCA further believes the ETC benefits that are liberally spread throughout the Telecommunications Act must be coupled with multiple obligations that are in the public interest, not the least of which is the expectation that each ETC will implement procedures to promote continued availability of Lifeline service to all low-income Americans. We believe that the national database being considered by the FCC should be coupled with an obligation for each ETC to manage its own Lifeline program to achieve the requirements of the Act. This expectation includes processing the customer application for service, providing an interface with the customer and coordinating the eligibility verification process to its conclusion.¹¹⁵

V. CONCLUSION

Rate Counsel reiterates its support for reasonable measures to curtail inefficiency and duplicate claims but urges the Commission to tailor any reform in such a way as not to discourage appropriate enrollment in the Lifeline program, consistent with the recommendations set forth in Rate Counsel’s initial comments and in these reply comments.

¹¹⁵ / NASUCA, at 25.

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