

June 13, 2011

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *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

Dear Ms. Dortch:

With respect to the proposals for a process to resolve situations in which a single individual receives Lifeline service from multiple subscribers, we understand that the Commission may be considering requiring carriers to notify customers that receive periodic bills who are de-enrolled from a duplicative Lifeline service of the rates under which they would continue to receive service. The contemplated notice requirement may include the specific rate the customer will be charged. The Commission should not adopt such a requirement, which goes far beyond the requirements in place today when a carrier is required to de-enroll a Lifeline subscriber (such as when the subscriber fails to respond to a request for eligibility verification).

In the first instance, at least with respect to non-CMRS services, the Commission lacks jurisdiction over the rates, terms and conditions under which a carrier provides non-Lifeline, intrastate local services. Section 2(b), 47 U.S.C. § 152(b), precludes the FCC from regulating charges, classifications, practices, services or facilities “for or in connection with intrastate communication service by wire or radio.” The Commission has been down this road before. When it tried to prohibit ETCs from disconnecting a Lifeline subscriber for non-payment of intrastate toll charges, the Fifth Circuit ruled that the FCC exceeded its jurisdiction. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 421 (5th Cir. 1999) (“The agency has no “unambiguous or straightforward” grant of authority [in Section 254] to override the limits set by § 2(b).”). Nor does the impossibility exception justify such a requirement because there is no basis for concluding that the FCC’s antifraud objectives would be “negated” by permitting carriers to use existing practices to handle changes to non-Lifeline services. *See id.* at 422.

In addition, any such requirement to inform individuals who signed up for two Lifeline services of the rate for continuing the non-Lifeline service would be an information collection requiring approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act. The Paperwork Reduction Act covers, among other things, requirements for disclosures to third parties or the public. 44 U.S.C. 3502(3)(a)(i). Such a requirement therefore could not be enforced until approved by OMB and issued a control number. That would delay the implementation of the duplicate resolution process.

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Furthermore, there is no current requirement for such post-de-enrollment disclosure of the non-Lifeline specific service rate as part of the Lifeline program today or, as far as we are aware, in the states. Nonetheless, today there are situations in which carriers de-enroll and even terminate Lifeline services, such as when a subscriber fails to respond to requests to verify continued eligibility or when carriers discover suspected incidents of fraud. Some carriers provide general, rather than specific rate, notices in advance that rates may change; some provide bill messages on subsequent bills for some states, but not necessarily in all states that they serve; some carriers suspend service and route non-911 calls to a customer service center in order to have the customer choose whether they wish to keep the service or terminate it. There is no reason for the FCC to mandate specific procedures here that are different from those that carriers are already using in analogous situations.

Finally, were the Commission to mandate disclosure of specific non-discounted rates, that could be complex and burdensome. Lifeline rates are not necessarily uniform throughout a state, as the amount of both the local rate and Lifeline discounts can vary among different exchange areas within a state.

Between June 8 and 10, variously Melissa Newman of CenturyLink spoke with Zachary Katz, Legal Advisor to the Chairman and Kimberly Scardino of the Wireline Competition Bureau, John Nakahata, on behalf of General Communication Inc., spoke with Kimberly Scardino, and Scott Bergmann, of CTIA-The Wireless Association, spoke with Angela Kronenberg, Legal Adviser to Commissioner Clyburn and Margaret McCarthy, Legal Adviser to Commissioner Capps. This letter summarizes the points raised collectively in these conversations.

Sincerely,



John T. Nakahata

cc: Zachary Katz  
Margaret McCarthy  
Christine Kurth  
Angela Kronenberg  
Trent Harkrader  
Kimberly Scardino