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December 16, 2011

Via ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Written Ex Parte Presentation – Lifeline Reform (WC Docket Nos. 11-42, 03-109)

Dear Ms. Dortch:

T-Mobile USA, Inc. (“T-Mobile”) supports constructive change to the Commission’s Lifeline program.¹ Primarily, T-Mobile strongly endorses the Commission’s efforts to implement a national database of Lifeline-eligible consumers populated by agencies that administer social welfare programs.² Pending implementation of the national database, interim changes to the program may improve its effectiveness and limit waste, fraud, and abuse. In this letter, T-Mobile recommends interim program changes and offers proposals for Commission-sponsored pilot programs to examine how to transition the Lifeline program to include a broadband subsidy.

Any interim program changes must not undermine the Commission’s statutory responsibility to ensure that service is “available, so far as possible, to all the people of the United States,”³ and that service is “affordable” for “low-income consumers.”⁴ As the Joint Board and the Commission long have recognized, a substantial number of eligible consumers do

¹ See, e.g., *Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up*, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011).

² See, e.g., *Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up*, 26 FCC Rcd 9022, 9028 ¶ 12 & n.40 (2011) (“*Interim Order*”) (citing widespread industry support for a national eligibility database).

³ 47 U.S.C. § 151.

⁴ *Id.* § 254(b)(1), (b)(3).

not take advantage of Lifeline discounts,⁵ and as a result, telephone subscribership among low-income Americans is substantially below the national average.⁶ The expansion of Lifeline service by wireless carriers has made the service accessible to more eligible consumers, but considerable work remains to be done. The most recent USAC data show that only six states have Lifeline participation rates above 50 percent of eligible consumers, and fully 17 states have participation rates below 20 percent of eligible consumers.⁷ To the extent that the Lifeline fund grows because more eligible consumers avail themselves of the benefit, this should be viewed as a sign of the program's long-overdue success. After long lamenting the program's underutilization, the Commission should not now withdraw support just as the program is beginning to succeed. The Commission also should protect contributors by minimizing waste, fraud, and abuse and ensure that the program rules are unambiguous and create correct incentives for compliance. Finally, as the universal service program transitions to funding the deployment of broadband services, Lifeline service likewise should reflect this transition by making affordable broadband service available to qualified low-income consumers in addition to voice service. T-Mobile offers the following proposals in furtherance of these goals.

**I. MAKE TARGETED AND EFFECTIVE CHANGES TO PROTECT THE FUND
PENDING ADOPTION OF A NATIONAL ELIGIBILITY DATABASE**

A. Expand the Duplicate Resolution Process to Include All ETCs and All States

In the *Interim Order*, the Commission ordered the Bureau to “work with USAC to implement a process consistent with the ETCs’ Industry Duplicate Resolution Process,”⁸ which requires selected carriers to submit Lifeline enrollment data to USAC for identification of duplicate customers.⁹ It is T-Mobile’s understanding that the Duplicate Resolution Process has been deployed with respect to certain carriers in certain states, but not all carriers in all states. T-Mobile recognizes that the Duplicate Resolution Process may be a constructive means to identify waste, fraud, and abuse of the Lifeline program. We urge the Commission to continue to evaluate the merits of this process through consideration of public and carrier input in the operation and efficacy of the program. Based on such evaluation, we recommend that the Commission review and modify the process to enhance its operation and expand it to cover all ETCs, wireline and wireless, in all states.

⁵ *Federal-State Joint Board on Universal Service; Lifeline and Link Up*, Recommended Decision, 25 FCC Rcd 15598, 15618-19 ¶ 59 (Jt. Bd. 2010).

⁶ Industry Analysis Div., FCC, Telephone Subscribership in the United States (Data Through July 2010) 1 (May 2011).

⁷ USAC, 2010 Lifeline Participation Rates by State (Feb. 15, 2011), *available at* http://www.usac.org/_res/documents/li/pdf/li-participation-rate-map-2010.pdf.

⁸ *Interim Order*, 26 FCC Rcd at 9029 ¶ 13.

⁹ *Id.* at 9025-26 ¶ 6.

B. Require Lifeline Consumers To Make a Minimum Payment for Lifeline Service

The Commission and commentators have recognized that in order to ensure the availability of Lifeline service to all eligible consumers, reducing waste, fraud, and abuse in the operation of Lifeline is critical. T-Mobile believes that a crucial element in the success of this effort is to make Lifeline consumers more accountable. One approach would be to require that Lifeline service be offered for a low minimum rate. Economic theory suggests that when a consumer has to pay even a nominal amount for a product or service, the consumer gives more thought and consideration to the purchase decision than he or she otherwise might. Individuals required to pay a relatively modest amount for Lifeline service would be less likely to sign up for it if they do not need it or are not entitled to receive it. Lifeline customers residing on tribal lands pay at least \$1.00 per month for Lifeline service, and the evidence to date shows less fraud in the Tribal Lifeline program than in the non-Tribal program where service is free.¹⁰ T-Mobile, therefore, advocates that all qualified low-income consumers should be required to pay at least a nominal \$5.00 per month for service, except for qualified consumers residing on tribal lands, who would continue to pay at least \$1.00 per month for service.

C. Adopt Reasonable Measures To Establish Lifeline Customers' Eligibility

T-Mobile recognizes that the implementation of a national eligibility database will require substantial effort and urges the Commission to take the necessary steps to implement this program as soon as possible.

T-Mobile also suggests that the Commission require carriers themselves (not their agents or representatives) to review all documentation of eligibility. For example, the Indiana Utility Regulatory Commission has adopted procedures requiring carriers to deal directly with consumers to reduce incentives for illicit third party behavior. If the Lifeline program is to continue to serve low income individuals and eventually to expand to broadband, it is incumbent on all involved – the Commission, state regulatory agencies, carriers providing Lifeline service, and consumers receiving Low-Income benefits – to be active participants in the effort to control waste, fraud and abuse.

D. Recognize the Unique Benefits of Mobile Service

By more broadly implementing the Industry Duplicate Resolution Process, the Commission can effectively prevent a single individual from receiving multiple Lifeline subsidies.¹¹ It would be an entirely different matter, however – and a grave mistake – for the Commission to adopt a rule limiting support to a single Lifeline connection per household. The

¹⁰ An additional problem with the free service programs is that they tend to include fewer minutes than minimum payment programs and often have much higher replenishment costs.

¹¹ See *supra* Section I.A.

recent success of the Lifeline program can be attributed largely to wireless providers' participation in providing Lifeline service. As T-Mobile has observed in other universal service dockets, today's consumers want and need mobile service.¹² The Commission itself has correctly noted that mobile services "are increasingly important to consumers and to our nation's economy."¹³

By their very nature, however, mobile services are not tied to any residence or physical location. If the Commission adopted a one-per-household rule, and as a result, a low-income family could afford only a single wireless phone, what would they do if a child was injured in an accident at home while the phone was with a parent in the car on the way to a job interview? What if the phone was at home with the other parent and the child, but the parent en route to the interview had an accident?

Forcing poor families to make these kinds of choices – between safety and economic opportunity, for example – would deny low-income families one of the advantages of mobility – an advantage that middle-class families take for granted.¹⁴ Such an outcome would be inconsistent with the purpose of the universal service program and inconsistent with the requirement of retaining technological and competitive neutrality.

Certain reasonable measures, however, can be imposed while allowing a Lifeline subsidy that reflects consumers' actual use of wireless services in the market. Specifically, the Lifeline subsidy should be reduced for second (and subsequent, if applicable) household members, in recognition that wireless carriers generally offer family plans with lower rates for additional connections. For example, if the first connection was eligible for \$10 in support, the second line could be eligible for \$5 in support.

With that limitation, support should be provided for the head of household, a spouse (if applicable), and any dependents age 13 or older. Taxpayers identify their spouses and any other dependents, *i.e.*, children or parents, on federal income tax forms so their qualification for Lifeline service could readily be documented to the ETC. This approach would ensure that low-income consumers have access to mobile services that is "reasonably comparable" to that enjoyed by other consumers.

E. A Cap on Lifeline Support Is Inconsistent with Fund Objectives

An artificial cap on Lifeline support would be inconsistent with the goals of the program and would actually increase ETCs' incentives to sign up ineligible and duplicate customers.

¹² See, e.g., T-Mobile Comments, WC Docket Nos. 10-90 *et al.* at 22-23 (filed Aug. 24, 2011).

¹³ *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 *et al.*, FCC 11-161 ¶ 295 (rel. Nov. 18, 2011) ("*CAF/ICC Order*").

¹⁴ See also Comments of General Communications, Inc., WC Docket No. 11-42 at 12-13 (filed Aug. 26, 2011).

Unlike the high-cost fund, the Lifeline fund is subject to a built-in cap based upon the limited universe of eligible low-income consumers. As noted above, the most recent USAC data show that only six states have Lifeline participation rates above 50 percent of eligible consumers, and fully 17 states have participation rates below 20 percent of eligible consumers.¹⁵ Given the chronically low levels of Lifeline program utilization, there is no current or historic Lifeline fund size that reasonably approximates “sufficient” support to achieve the statutory objective.¹⁶ The only potentially reasonable cap level would be the amount of support necessary to cover full utilization by eligible consumers. Particularly in today’s environment, with unemployment at historic highs and the economy persistently sluggish, it is more important than ever to make Lifeline service available to all qualified consumers. There is no way to square an artificial cap with the statutory purpose.

More pragmatic reasons, however, exist for rejecting a cap. First, a cap would exacerbate the kind of perverse incentives leading to increased fraud that the Commission is trying to eliminate. A cap would result in a “fixed pie” of support, which presumably would be divided among ETCs based on market share. This would encourage carriers to find ways to increase their market share – *i.e.*, to sign up more Lifeline customers than their competitors. Certainly some ETCs would address this challenge by improving their service offerings to attract more customers, but other less scrupulous carriers may relax their compliance programs, signing up ineligible or duplicate customers simply to obtain a larger slice of the pie.

Second, a cap on the Lifeline fund would reduce the power of the market to improve prices and services for Lifeline consumers. Depending on how it was implemented, a cap would mean that new customers would represent either reduced or no support for ETCs. This would minimize carriers’ incentives to offer lower prices, improved service, or innovative service offerings. The rigidity of a cap also may prevent new, rule-abiding carriers from entering the Lifeline market, while allowing some existing carriers with poor compliance records to continue to receive support.

Finally, the practical difficulties inherent in implementing a cap have been discussed at length in the record. In short, there is no orderly or administrable way to implement a cap in the Lifeline context. Would the cap reduce benefits across the board and, if so, how would carriers market and bill for their service?¹⁷ Alternatively, would the cap limit the number of customers eligible to receive Lifeline and, if so, how would that be implemented? Would existing customers who have already received benefits be grandfathered, while new customers who have not yet received benefits be excluded? Or would customers that have come to depend on

¹⁵ See *supra* note 7, citing the 2010 Lifeline Participation Rates by State.

¹⁶ See 47 U.S.C. § 254(b)(5).

¹⁷ This question is particularly relevant to carriers that market prepaid service and service for term contracts.

Lifeline be removed from the program to accommodate new customers? There are no satisfactory answers to any of these questions.

In sum, a cap on the Lifeline fund would conflict with the Congressional mandate for sufficient support for low-income consumers and would also result in significant administrative problems. Rather than implementing a cap, the Commission should instead focus on eliminating waste, fraud, and abuse to ensure that Lifeline funds are spent for their intended purpose.

F. Eliminate Link Up Support, But Prohibit Service Initiation Charges For Lifeline

T-Mobile supports the Commission's proposal to eliminate Link Up support.¹⁸ While Link Up may have made sense in an earlier era when initiating service was more costly, it is no longer an effective use of low-income universal service funding. While it is unquestionable that certain carriers (including T-Mobile) incur costs to initiate service to both traditional and qualifying low-income consumers, some carriers do not routinely charge traditional consumers a connectivity fee and should not be allowed to create an artificial connectivity fee for qualifying low-income consumers to seek Link Up support. Additionally, while many carriers who incur service initiation costs for all consumers ensure that Link Up support is being properly used to subsidize reduce those up-front costs for qualifying consumers, others do not. Finally, the rules that accompany an offering of a Link Up subsidy to consumers, in particular the requirement that ETCs offer up to 12 months of interest-free deferred payments for the remainder of the service initiation fee, are difficult to implement and impractical in today's environment where the customary connectivity charges are much lower than they used to be. The Commission should, therefore, eliminate Link Up and use this funding to provide Lifeline support for additional eligible consumers. This would free up approximately \$136 million per year to control the size of the low-income fund while helping to ensure sufficient Lifeline support for eligible customers.¹⁹ If it decides against eliminating Link Up entirely, the Commission should establish a flat initiation of fee of no more than \$5.00, say.

The elimination of Link Up should not subject consumers to new service initiation charges. The Commission should prohibit ETCs from imposing service initiation charges in excess of that applicable to non-Lifeline customers.

¹⁸ See *Further Inquiry into Four Issues in the Universal Service Lifeline / Link Up Reform and Modernization Proceeding*, Public Notice, 26 FCC Rcd 11098, 11103-04 (WCB 2011).

¹⁹ Figure represents an annualized amount based on USAC's fourth quarter 2011 projection of \$34 million. USAC, Low Income Support Projected by State by Study Area– 4Q2011 REVISED, Appendix LI-01 at 35 (Sept. 1, 2011), *available at* <http://www.usac.org/about/governance/fcc-filings/2011/Q4/LI01%20-%20Low%20Income%20Support%20Projected%20by%20State%20by%20Study%20Area%204Q2011-%20REVISED.pdf>.

G. Establish ETC Standards for The Designation of Lifeline-Only ETCs

The Commission should continue to apply the requirements for designation as an ETC found in 47 C.F.R. §§ 54.201 - 54.202 to Lifeline-only applicants with the following modifications and exceptions. First, the Commission should affirm that carriers must demonstrate that they are financially and technically capable of providing Lifeline service. To date, numerous carriers have entered the Lifeline universal service market, many of which appear to be small, undercapitalized entities, such as non-facilities-based resellers with limited resources. In such cases, the Commission and the states should consider whether additional requirements, such as performance bonds, should be imposed on certain ETCs (those falling below certain revenues thresholds or having network assets values below certain amounts) in order to ensure compliance with the Lifeline rules and prevent waste, fraud, and abuse. This is consistent with Chairman Genachowski's recent recommendation that regulators should "closely scrutinize the requests for ETC designation" and "be on guard for abuse."²⁰

Second, in determining the standards for designation of Lifeline ETCs, the Commission should conform the Lifeline rules to the type of carrier providing service. There is no reason to require wireless Lifeline-only ETCs to serve a geographic area that is tied to wireline service areas.²¹ To the extent that the statutory standards for ETC designation suggest otherwise, those requirements are relevant only in the high-cost context. The Commission has forborne from these requirements or waived them,²² and it should apply a blanket forbearance or waiver so that the rules allow designation of Lifeline-only ETCs based on the ETC's own service territory.

Third, the Commission's service provisioning requirements found in 47 C.F.R. § 54.202(a)(1) require ETCs to undertake a six-step service provisioning process to meet requests for service and submit a Service Improvement Plan ("SIP") evidencing use of high-cost universal service funding. To the extent these rules require the construction of network facilities that would be funded through the use of high-cost universal service funding, the Commission should clarify that they do not apply to Lifeline providers that do not receive high-cost universal service support. Such a rule is necessary because it would be fundamentally unfair to require a carrier that does not receive high cost universal support to construct network facilities out of its internal funds while another carrier is constructing network facilities using government- provided funding. The inevitable result of failing to implement such a rule is that carriers not receiving high cost support will either drop out from the Lifeline program or elect not to participate. Additionally, to the extent that the Commission or state regulatory agencies with authority have

²⁰ Letter from Julius Genachowski, Chairman, FCC, to State Commissioners, WC Docket No. 11-42 at 2(Dec. 12, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311472A1.pdf.

²¹ See, e.g., *Telecommunications Carriers Eligible for Universal Service Support, NTCH, Inc. and Cricket Communications, Inc., Petitions for Forbearance*, Order, 26 FCC Rcd 13723 (2011).

²² *Id.*

designated reseller companies – companies who primarily if not wholly rely upon other carriers’ network infrastructure required to provide service – as ETCs for the purposes of low-income universal service funding, those companies have no mechanism by which they can facilitate such service provisioning. It would be inconsistent and competitively unfair to require that facilities-based carriers that seek to be designated for the sole purpose of low-income universal service funding comply with any service provisioning process with which its non-facilities based counterparts are not required to comply.

II. THE COMMISSION SHOULD SEEK APPLICATIONS FOR MEANINGFUL PILOT PROGRAMS TO DETERMINE HOW TO TRANSITION LIFELINE TO SUPPORT BROADBAND

T-Mobile applauds the Commission’s commitment to conduct pilot programs to obtain information about how best to transform the current telephony program into one that helps low-income consumers obtain both voice service and broadband access. As Commissioner Clyburn has stated, “[w]e know that one-third of Americans have not adopted broadband, and affordability is the most significant reason why consumers have not subscribed. For low-income consumers, the cost of service and equipment is especially acute, as adoption for this segment of the population lags significantly. While private sector broadband adoption programs are promising, this Commission has a role to play in ensuring that low-income consumers can be connected.”²³

T-Mobile recommends that the Commission construct a flexible framework that allows ETCs to test a variety of strategies to stimulate low-income consumers’ broadband adoption. Flexibility is necessary because of the rapid pace of technological change and the importance of ensuring that Lifeline consumers are not left behind as technology advances.

In particular, there should be multiple pilot programs that explore the effectiveness of offering wireless broadband in conjunction with different equipment and bundling alternatives. These alternatives should include, without limitation, smartphones, tablets, dongles, and hotspots. Non-Lifeline consumers currently use wireless broadband through all of these modalities, and each one should be tested to determine its effectiveness in the low-income context.

The Commission should provide general guidance on what is to be included in a pilot program, and carriers should be allowed to tailor a program to their unique circumstances and offerings. Carriers operating in the market are in the best position to identify useful pilot programs using their networks and devices.

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²³ *Interim Order*, 26 FCC Rcd at 9054 (Statement of Commissioner Mignon L. Clyburn).

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T-Mobile applauds the Commission's commitment to improving and modernizing the Lifeline program, and looks forward to contributing to the reform process.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen O'Brien Ham". The signature is fluid and cursive, with the first name "Kathleen" being the most prominent.

Kathleen O'Brien Ham,
Vice President, Federal Regulatory Affairs

cc: Zac Katz
Sharon Gillett
Carol Matthey
Trent Harkrader
Kimberly Scardino