

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

COMMENTS OF AT&T

AT&T Inc. (AT&T), on behalf of its wholly-owned operating affiliates that are eligible telecommunications carriers (ETCs), hereby submits these comments in support of USTelecom *et al.*'s Petition for Waiver and Clarification.¹ Among other things, Petitioners request that the Commission waive the effective date of the new flat-rate federal Lifeline discount amount of \$9.25 for postpaid ETCs because these carriers have to incorporate the new rate in their intrastate tariffs, comply with customer notification requirements for rate changes, and/or update billing systems as necessary to implement the new discount amount and structure. For similar reasons, Petitioners ask that the Commission delay the effective date of the rule amendments that eliminate the Link-Up discount for consumers not residing on Tribal lands. Additionally, Petitioners request that the Commission clarify that its new rule 54.407(d), which requires ETCs

¹ Petition for Waiver and Clarification of the United States Telecom Association, the Independent Telephone and Telecommunications Alliance, the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, the Western Telecommunications Alliance, and the Eastern Rural Telecom Association, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45 (filed March 9, 2012) (Petition).

to certify that they have obtained valid certification forms from each of the subscribers for whom they are seeking Lifeline reimbursement, does not apply to ETCs operating in states that direct ETCs to provide Lifeline discounts to consumers that the state or its designee has identified as eligible for the Lifeline program. AT&T supports the Petition and urges the Commission to grant it on an expedited basis.

AT&T commends the Commission for making sweeping reforms to its low-income program. In fact, AT&T has been urging the Commission to make these exact reforms for a number of years.² While we of course support the Commission's decisions to eliminate its tiered discount regime, which was confusing to consumers and challenging for ETCs to implement and maintain, and to eliminate as unnecessary Link-Up for most consumers, the implementation deadlines set forth in the *Lifeline Modernization Order*³ are unrealistic for many postpaid ETCs. The aggressive deadlines in this *Order* fail to account for state-mandated tariffing and/or customer notification requirements, contractual requirements between the ETC and its customers (retail and wholesale Lifeline customers), and necessary changes to billing systems. The fact that the effective date for new rule 54.403 has not yet been set⁴ has prevented many, if not most,

² See, e.g., Letter from Jamie M. Tan, AT&T, to Marlene Dortch, FCC, WC Docket No. 03-109, GN Docket Nos. 09-47, 09-51, 09-137, at 4 (filed Dec. 22, 2009) (“*Lifeline*: The FCC should establish a flat, fixed dollar amount that can be applied to the retail price of one eligible voice service. . .”).

³ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking (rel. Feb. 6, 2012) (*Lifeline Modernization Order* or *Order*).

⁴ See 70 Fed. Reg. 12952 (March 2, 2012) (“Effective April 2, 2012, *except* for the amendments to §§ 54.202(a), 54.401(c), 54.403, 54.407, 54.410, 54.416, 54.417, 54.420, 54.422, *which contain information collection requirements that are not effective until approved by the Office of Management and Budget*. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date for those sections. . .”) (emphases added). While it is clear from the Federal Register notice that the amendments to 54.403 are not effective until the Commission receives OMB approval, there appears to be some confusion about this fact. See, e.g., USAC’s web site at <http://www.usac.org/li/tools/frequently-asked-questions/faq.aspx> (stating, erroneously, that “the following substantive changes [] go into effect April 2, 2012: flat rate of \$9.25 for non-Tribal Lifeline . . .”). For

postpaid ETCs from filing amendments to their Lifeline tariffs, notifying customers of a rate increase in those states where the new federal Lifeline discount amount of \$9.25/month is less than what they currently receive, or from initiating changes to billing systems to implement the new discount amount and rate structure. This regulatory limbo necessitates the Commission granting the Petition and providing postpaid ETCs with additional time to implement the new requirements. To the extent that a postpaid ETC can implement these new requirements next month, the Commission should, of course, permit that ETC to do so.⁵ The Commission could require such an ETC to notify it and USAC when the ETC commenced providing the new Lifeline discount amount to ensure that USAC is appropriately reimbursing that ETC.

Attached to these comments, AT&T provides specific examples of tariffing and notice requirements that apply to its postpaid wireline ETCs. In addition to being required by many

this reason, the Commission should clarify that the amendments to section 54.403 are not effective until the Commission notifies the public that it has received OMB approval.

⁵ For example, AT&T Mobility is an ETC in 17 states. As a wireless provider subject to less state regulation than its ILEC affiliates, it concluded that it has the regulatory flexibility to implement the flat rate discount amount and eliminate Link-Up for non-Tribal lands residents next month. Additionally, its Lifeline agreements with customers provide that “Program assistance is applied as a credit against your monthly bill and is limited to the amount of federal and/or state universal service support available to the service area for which the Company has been designated as ETC. *These amounts will be reflected on your bill and may be changed from time to time without prior notice to you.*” (Emphasis added). In order to implement the Lifeline rate change in April, AT&T Mobility already initiated the billing system changes necessary to both change the discount amount and insert a bill message on April bills to consumers that the federal Lifeline discount amount is changing to \$9.25 effective that month. AT&T Mobility’s April bill message will read: “Attention Lifeline Customers: Due to new rules issued by the Federal Communications Commission, the federal discount for Lifeline customers in all states will now be \$9.25 a month. This is an increase for most customers. For Lifeline customers in Oregon, Idaho and Puerto Rico, however, the new federal discount represents a \$0.75 reduction.” If it had not initiated these billing changes when it did, it could not have implemented the new discount amount until May. Because it did not know whether it would receive a reprieve from the April effective date since it does not have the same state regulatory constraints as its ILEC affiliates, AT&T Mobility made the decision to proceed as though it would not receive any extension of the \$9.25/month effective date. In its order granting the Petition, the Commission should make clear that postpaid ETCs that were able to implement the new discount amount at the beginning of April because they had the regulatory flexibility to do so will be reimbursed accordingly by USAC. To rule otherwise would penalize these carriers for acting in good faith and in reliance of the Commission’s efforts to secure emergency approval from OMB.

states or by the terms of their service agreements to notify Lifeline subscribers of a rate change, AT&T's ILECs that are required to wholesale Lifeline service to other carriers also may be required by their interconnection agreements (ICAs) to notify those resellers of changes to the Lifeline discount amount and/or the effective Lifeline rate. Some of the agreements require advance notice of rate changes.⁶ In addition, while the effective date for the elimination of Link-Up on non-Tribal lands is known – April 1, 2012⁷ – this date, too, may afford inadequate time for ETCs that must amend their tariffs before those Link-Up changes can become effective or

⁶ In response to any suggestion that the need to provide resellers with advance notice of the Lifeline rate change can be addressed by the ILEC invoking the “change of law” provisions under some of the ICAs, we note that such an approach does not appear to be appropriate or necessary to implement the prescribed Lifeline rate change. The change of law process permits a carrier to have the terms of the carrier’s ICA modified to conform them to a change in the law. For example, the AT&T ILEC 22-state generic resale interconnection agreement provides, in relevant part, that:

If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) (“Provisions”) of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, the Affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party in accordance with Section 20.0 above (“Written Notice”). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to reach agreement on appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications within sixty (60) days from the Written Notice, any disputes between the Parties concerning such actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

To implement the new Lifeline discount amount, an ICA amendment does not appear to be necessary. Resale rates are generally expressed in the ICAs as discounts off the retail rates for the same services. For example, in Alabama, the discount percentage is 16.40%. If the Lifeline rate is effectively increased in Alabama due to the lower federal Lifeline discount amount, the wholesale rate will increase proportionally and no amendment to the ICA is required to implement the change. Of course, even if it were applicable, the change of law process can easily take 60+ days (and in some case months and even years) to resolve. Thus, even if one were to argue that the Commission’s effective date of the new Lifeline discount amount “trumped” the contractual notice requirements contained in two carriers’ ICA and therefore allowed one of the carriers to invoke the change of law process, it likely would take longer to amend the ICA than to provide the reseller with advance notice of the \$9.25 rate change.

⁷ 70 Fed. Reg. 12952 (March 2, 2012) (“the amendments contained herein to 47 C.F.R. 54.411, 54.412, 54.412, and 54.414 [] shall become effective April 1, 2012”).

provide notice to their wholesale customers. For such ETCs, AT&T agrees with Petitioners that the Commission should waive the effective date to give these parties some additional time to come into compliance with the new rule.

In addition to describing many postpaid ETCs' challenges associated with implementing the \$9.25 flat rate discount amount by early April due to state tariffing and customer notification requirements, Petitioners also explain how these ETCs will have to modify their billing systems prior to the new discount amount becoming effective, further hindering their ability to meet an April effective date. Petition at 6-7. AT&T agrees. Unlike prepaid Lifeline providers, postpaid ETCs obviously issue bills to their Lifeline customers and thus must make changes to their billing systems in order to implement the new flat-rate Lifeline discount amount. To the extent that AT&T's ETCs may treat the new discount amount as a simple rate change, we believe that most, if not all, of AT&T's ETCs could complete these changes within approximately 30 days. Of course, this figure does not account for any delays associated with tariffing and/or customer notification requirements, the timing of which must be synchronized with those billing changes. If, however, the Commission intended for ETCs to modify how the Lifeline discount amount is calculated and displayed on the customer's bill, such a change could require a lead time of many months. For example, a number of AT&T's ILECs list the subscriber line charge (SLC, aka, end user common line charge (EUCL)) amount on their Lifeline customers' bills. In the discounts or credits section of these customers' bills, the ILECs fully offset the SLC charge with a credit or discount called "Lifeline."⁸ In its new rule 54.403(b)(1), the Commission requires ETCs "that charge federal End User Common Line charges or equivalent federal charges [to] apply federal Lifeline support to waive the federal End User Common Line charges for Lifeline subscribers."

⁸ Although not relevant here, at least one of AT&T's state commissions requires it to use a different term to describe the Lifeline credit. In North Carolina, ETCs refer to the Lifeline discount on customers' bills as the "AFDC/SSI Credit."

AT&T believes that its affiliates' bill presentation (i.e., listing the SLC charge and then fully offsetting it with the Lifeline discount) complies fully with the Commission's rules since these customers do not pay the SLC but if the Commission disagrees, it should so clarify. In that event, a number of AT&T's ILECs are likely to need even longer than the amount of time requested in the Petition (i.e., October 1, 2012) to modify their billing systems to remove the SLC charge from the customer's bill and recalculate the amount charged to the customer.

AT&T also asks that the Commission clarify how carriers should implement the new rule limiting Link-Up to "those ETCs that also receive high-cost support on Tribal lands." *Order* at ¶ 245. If the Commission intended to limit the availability of Link-Up to just those Tribal lands where the ETC actually receives high-cost support, ETCs that are high-cost recipients will require some time to develop the capability to identify which consumers live on Tribal lands where the ETC also is receiving high-cost support in order to ensure that eligible consumers receive Link-Up benefits. *See* Petition at 7.⁹ On the other hand, if the Commission did not intend for its new rule to be interpreted so narrowly, it should clarify that any ETC that receives high-cost support anywhere within its service area shall make Link-Up available to any eligible consumer residing on Tribal lands within that service area. With this clarification, which AT&T supports, an ETC would not have to verify that the requesting consumer resides in a particular geographic area where it is currently receiving high-cost support. Such a clarification makes sense since the areas where an ETC receives high-cost support can change over time and it would be extraordinarily confusing to consumers if Link-Up was available one year but not the next because the ETC was no longer receiving high-cost support for that area.

⁹ Requiring these ETCs to undertake this development work seems particularly burdensome given that the Commission is considering whether to maintain Link-Up on Tribal lands in the *Further Notice* proceeding. *See Further Notice* at ¶¶ 479-82.

Finally, Petitioners ask the Commission to clarify that its new rule requiring all ETCs to certify that they have certification forms for every single subscriber for whom they are seeking reimbursement does not apply to those ETCs that do not have such forms because the state commission or its designee determines which consumers are eligible for Lifeline. Petition at 9-10. AT&T's affiliates are ETCs in eight states where some or all of their Lifeline customers are automatically enrolled into the Lifeline program based on some state-determined criteria or where the state or its designee reviews consumer-supplied information to determine whether the consumer is eligible Lifeline and, if so, AT&T's affiliates are instructed to commence providing Lifeline discounts to that consumer.¹⁰ In these states, ETCs do not have customer certification forms for some or any of their current Lifeline customers, and thus cannot certify that they have "obtained a valid certification form for each customer for whom my company seeks Lifeline reimbursement," which is the certification that the Commission has proposed for its revised FCC Form 497. While a number of these states have already commenced proceedings to revise their state Lifeline programs to bring them into compliance with the Commission's *Order for new* Lifeline customers, there will be some amount of time before ETCs collect recertification forms from their embedded base of Lifeline subscribers. Until such time, ETCs operating these states should be permitted to obtain Lifeline reimbursement from the universal service fund just as they do today. Because ETCs have until the end of the year to complete the recertification process, AT&T recommends that the Commission exempt ETCs operating in automatic or coordinated enrollment states from having to make this certification until at least those ETCs submit the results of their recertification to USAC by January 31, 2013.

¹⁰ The eight states are Florida, Idaho, Kansas, Ohio, Oregon, Nevada, Texas, and Wisconsin.

In sum, AT&T supports Petitioners' request for additional time for postpaid ETCs that have to amend their tariffs, are under a regulatory or contractual requirement to notify customers (retail and resale) of the rate change, or have to make billing system changes in order to implement the new \$9.25 federal Lifeline discount amount and cease offering Link-Up discounts on non-Tribal lands. For those postpaid ETCs that have the regulatory flexibility to implement these new rules by the beginning of April, the Commission should, of course, permit them to do so. For this reason, AT&T urges the Commission to require postpaid ETCs to comply with these new rules *no later than* a date certain. The Commission could direct postpaid ETCs, like AT&T Mobility's ETCs, that are able to implement the rules on a faster track to notify the Commission and USAC when they have implemented the new rules to ensure that USAC provides these carriers with the appropriate amount of reimbursement. A targeted delay in these rules also would afford state commissions some additional time to make any changes to their state Lifeline discount amounts that they deem necessary in light of the Commission's new federal Lifeline discount amount and structure.

Respectfully Submitted,

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ATTACHMENT

State	Impact to consumer rate	Lifeline Tariffed	Link-up Tariffed?	Customer Notice	Tariff (or Guidebook) effective date
AL	Increase	(Guidebook)	(Guidebook)	30 days	Same day
AR	No change	Yes	Yes	None	1 day
CA	Decrease	Yes	Yes	No (customer held harmless)	Same day (if not increase)
CT	Decrease	Yes	Yes		5 days
FL	Increase	No	No	None	N/A
GA	Increase	(Guidebook)	(Guidebook)	30 days	Same day
IL	Decrease	Yes	Yes	30 days (if change in benefits)	1 day
IN	Decrease	Yes	Yes	None (if decrease)	30 days
KS	Decrease	Yes	Yes	None (if decrease)	Effective upon filing
KY	Increase	Yes	Yes	30-days	15 days
LA	Decrease	Yes	Yes	None (if decrease)	10 days
MI	Decrease	Yes	Yes	None	1 day
MS	Increase	Yes	Yes	30-days	30 days
MO	Decrease	Yes	Yes	None (if decrease)	1 day
NV	Decrease	Yes	Yes	30 days	45-55 (max)
NY	Decrease	Yes	Yes	30 days	30 days
NC	Increase	Yes	Yes	None	14 days
OH	Decrease	Yes	No	15-days	30 days
OK	Decrease	Yes	Yes	None (if decrease)	1 day
SC	Increase	No	No	No	N/A
TN	Increase	Yes	Yes	30-days	21 days
TX	Decrease	Yes	Yes	No	Same day
WI	Decrease	(Guidebook)	(Guidebook)	25-90 days ("if material change")	1 day