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March 29, 2012

By Electronic Mail

Nicholas A. Fraser
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Office of Management and Budget
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[Nicholas A. Fraser@omb.eop.gov](mailto:Nicholas.A.Fraser@omb.eop.gov)

Re: OMB Control Number: 3060-0819; WC Docket Nos. 12-23, 11-42, 03-109,
CC Docket No. 96-45

Dear Mr. Fraser,

Smith Bagley, Inc. (“SBI”) hereby submits the following comments on the emergency request submitted by the Federal Communications Commission (“FCC” or “Commission”) to the Office of Management and Budget (“OMB”) for approval, under the Paperwork Reduction Act (“PRA”), of the Commission regulations pending under the above control number.¹ SBI operates a commercial mobile wireless network in Arizona, New Mexico, Utah and Colorado. SBI has extensive wireless coverage throughout Native American lands, providing service to approximately 123,000 customers, of which approximately 70,000 are Lifeline customers, many residing on Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo lands. SBI will be directly affected by the pending regulations and has concerns with three specific requirements which will impose burdens that will outweigh the benefits claimed by the Commission. SBI

¹ See *Information Collection Being Submitted to the Office of Management and Budget (OMB) for Emergency Review and Approval*, Notice and Request for Comments, 77 Fed. Reg. 13,319 (Mar. 6, 2012) (“Emergency Request”). Note SBI submits these comments on an expedited basis due to the Commission’s request for emergency review and approval by March 30, 2012 - six days before the April 15, 2012, deadline identified in the Federal Register notice. See *id.* To the extent the Commission submits further justifications for these regulatory burdens, SBI may submit supplemental comments.

supports the arguments raised by at least one other party who filed comments raising similar concerns under this OMB control number.²

I. COMMENTS

The FCC recently enacted substantial changes to the low-income or “Lifeline” program rules of the Universal Service Fund (“USF”).³ The Lifeline program has been in place in one form or another for decades and is intended to ensure that all households have telecommunications service. The program was codified by statute as part the 1996 Telecommunications Act and re-implemented by the FCC with revised rules thereafter. While the Commission has updated program rules from time-to-time since then, telecommunications technologies have continued to rapidly evolve. With the increasing availability and affordability of wireless telephones and other factors driving increased demand for Lifeline funding, the FCC has responded with a major revision to the Lifeline program’s rules and requirements.

While many of the Commission’s Lifeline reforms are warranted and, in some cases long-overdue, SBI shares the concerns of GCI that the Commission has understated or failed to quantify costs of, and failed to quantify the benefits of, three new requirements:

- 1) 90-day re-certification of temporary addresses;
- 2) Self-funding of biennial audits; and
- 3) Inclusion of fine print regulatory disclosures in *all* marketing materials.

Notably, on March 20, 2012, OMB issued a Memorandum exhorting agencies “to simplify requirements on the public and private sectors; to ensure against unjustified, redundant, or excessive requirements; and ultimately to increase the net benefits of regulations.”⁴ The specific requirements noted above fail to meet this standard by being unjustified, excessive, or failing to establish a net benefit by inadequately estimating expected costs.

² See *Comments of General Communication Inc.* (“GCI”), In re OMB Control Number: 3060-0819; WC Docket Nos. 12-23, 11-42, 03-109, CC Docket No. 96-45, dated March 23, 2012 (“GCI Comments”).

³ See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23 (rel. Feb. 6, 2012) (“Lifeline Order”).

⁴ See MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, Office of Management and Budget, at 1 (March 20, 2012).

A. The FCC Understates the Cost of the 90-Day Re-Certification Process and Fails to Adequately Quantify the Benefit

The 90-day re-certification process is targeted to Lifeline beneficiaries who change addresses or who have temporary addresses at the time of program enrollment. Beneficiaries with temporary addresses will tend to disproportionately include the homeless, migrant workers, soldiers and other transient populations. These are precisely the populations that will be the hardest to reach, will have the lowest response rates, and will thus impose the most costs in administering the requirement. The expected benefits of such a re-certification requirement presumably would be elimination of a certain number of potential duplicate subscribers⁵ during a period between initial enrollment and the annual re-verification requirement that has been put in place. However, the Commission fails to estimate this number of subscribers.

We also agree with GCI that the Commission's cost calculations for the 90-day re-certification requirement appear flawed. For example, the Commission expects "1 million subscribers will be subject to a change of address or a temporary living situation where their address needs to be re-certified every 90 days"; however, the Commission inexplicably assumes carriers will only have to re-certify 2,500 subscribers per quarter (25 per quarter for each of 100 affected carriers) – or 10,000 per year for an annual cost of \$100,000 (.25 hours x \$40/hour x 10,000). But if the number of affected subscribers is actually 4 million (1 million subscribers every 90 days), the annual cost will be \$40 million (.25 hours x \$40/hour x 4,000,000). Because re-certification will require activity by the carrier for each of the 1 million subscribers each quarter, the latter calculation appears more accurate.

Finally, SBI and presumably other carriers have previously had no business reason to distinguish between a permanent and a temporary address.⁶ This requirement will thus involve implementing significant changes to billing systems to capture this additional information adding further un-quantified compliance costs.

B. The FCC Drastically Understates the Expected Cost of the Biennial Audit Requirement

The FCC seeks to impose a self-funded biennial Lifeline audit requirement on companies receiving \$5 million or more in annual Lifeline program support. The Commission estimates that such audits will cost \$1,000 per audit, assuming that audits will take on average 25 hours at an average cost of \$40 per hour. However, these assumptions are totally unsupported and, more importantly, contradicted by public information and the FCC's experience with prior USF audits which indicate costs will be orders of magnitude greater. For example, as GCI points out, the \$40 cost per hour for auditors assumed by the Commission is contradicted by public information

⁵ These are *potential* duplicate subscribers because a failure to respond to the re-verification request does not necessarily mean the subscriber is violating the one-per-household rule. Moreover, we reasonably expect higher than average non-response rates associated with transient populations.

⁶ See *GCI Comments* at 10, n.33. We also agree with GCI that the FCC has not provided a definition of what constitutes a "temporary" address. See *id* at n.32.

showing average outside auditor fees more than five times higher.⁷ Moreover, the historical cost of USF programmatic audits conducted by outside audit firms dramatically contradict both the Commission's cost and time estimates.

USAC, the administrator of the FCC's USF programs, has used outside independent audit firms to conduct similar audits in the past and reported per-audit costs exceeding \$59,000.⁸ In addition, these costs were for the outside audit firms alone. Thus, they excluded substantial additional costs incurred by the audited companies themselves in responding to audit information requests and preparing responses to potential audit findings.⁹ These historical average costs for USF programmatic audits are 59 times greater than the per audit costs estimated by the FCC for biennial Lifeline audits.

Moreover, because these actual USF programmatic audit costs are from over five years ago, costs now are likely to be greater. This is because audit firm hourly rates are likely to be higher now and, with the recent Lifeline program changes, the Lifeline rules are now substantially more complex. For example, we respectfully note that the FCC's Lifeline Order was 299 pages long and included 31 pages of new program rules. The Lifeline program rules are more detailed and more voluminous than when Lifeline audits were last conducted by USAC and the time needed to conduct such audits will likely be greater than before.

SBI is not suggesting that Lifeline program audits, even regular biennial audits, are not warranted or beneficial. The point is that very specific evidence already on record with the FCC shows the costs will be much greater than the FCC has estimated. While the FCC has argued that imposing these costs only on large recipients of Lifeline funding is reasonable given the benefits, such a claim is hard to support with the costs so obviously and vastly understated. Moreover, whatever the benefit, the same benefit could be obtained by having these audits paid for by USAC and the costs spread across the entire program. Indeed, because of the economies of scale of auditing companies receiving \$5 million in annual program support, it is actually less

⁷ *GCI Comments* at 13 (noting survey showing hourly fees ranging from \$185 to \$218).

⁸ *See Comments of the Universal Service Administrative Company* at 18 (“USAC NOI Comments”), in *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service*, WC Docket No. 05-195, Notice of Inquiry, FCC 08-189 (2008) (noting \$27.5 million cost to employ 13 outside audit firms to perform 459 audits across all four USF programs, including the Lifeline program, and USF contributors). Dividing the total cost by the total number of audits reveals an average cost per audit in excess of \$59,000. The 459 USF audits included 60 Lifeline program audits, *see id.*, Appendix A at 3, as well as audits of other USF programs whose rules are more and less complex than Lifeline program rules. *See id.* In addition, because the 459 audits were random, they included many companies that were smaller than the companies that will be subject to the biennial Lifeline audit requirement. *See id.*, Appendix A.

⁹ *See Letter from Jonathan Banks, Senior Vice President, Law and Policy, United States Telecom Association and Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA – The Wireless Association, to Acting FCC Chairman Michael J. Copps and FCC Commissioners Robert J. McDowell and Jonathan L. Adelstein in FCC WC Docket No. 05-195 (April 24, 2009) at 4 (noting average cost of \$20,000 to USF beneficiaries in complying with USAC High Cost program audits) (citing USAC Analysis of the FCC Office of Inspector General 2008 Reports on the USF at n.9). While the average cost of compliance with Lifeline program audits is not cited, the point is that paying for the auditors is only part of the total cost of compliance with the requirement.*

costly per program dollar received to audit such companies. This fact favors imposing these costs on USAC, the Lifeline administrator, not on Lifeline beneficiaries.

SBI also agrees with GCI that the requirement that companies submit draft audit reports is burdensome and will result in the presentation of incomplete and potentially incorrect and misleading information to USAC and the Commission.¹⁰ Submitting draft reports could result in wasted effort fielding potential questions about incomplete information or findings that would have been cleared by the time the final report is issued.

C. The FCC Failed to Even Consider the Costs of Requiring “Fine Print” Disclosures on All Advertising

GCI points out the Commission failed to provide a PRA justification for requirements it imposed with respect to new required disclosures to be contained in all Lifeline marketing materials.¹¹ These “fine print” disclosures must, among other things, provide notice to potential customers that the service offered is supported by the Lifeline program, notify them of certain rules related to the program and inform them about potential consequences for violating these rules.¹² SBI shares GCI’s concerns that these requirements are impractical for certain types of advertising, including radio and television advertisements and outdoor signage such as billboards. SBI also agrees that FCC has failed to balance the need for disclosures against the fact that disclosures are redundant because they already required at the time each customer signs up for the service. The FCC has also failed to consider that these disclosures could take place in a less burdensome fashion, such as a link to a website that would take potential customers through the disclosures.¹³

¹⁰ See *GCI Comments* at 15.

¹¹ See *GCI Comments* at 15-17 (citing Lifeline Order at ¶ 275).

¹² See Lifeline Order at ¶ 275.

¹³ See *GCI Comments* at 17.

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II. CONCLUSION

SBI respectfully urges OMB to carefully review the specific FCC Lifeline requirements discussed above. OMB should recognize that the FCC has failed to meet its burden of demonstrating that these requirements are necessary for the proper performance of its Lifeline oversight functions. Rather, as we have shown, the FCC has failed to adequately and accurately calculate the expected burdens of these requirements, and has failed to show how these requirements are not redundant or excessive in light of other program protections in place.

Respectfully submitted,



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