

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

**PETITION FOR RECONSIDERATION AND CLARIFICATION OF  
GENERAL COMMUNICATION, INC.**

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Pursuant to Section 1.106 of the Commission's rules, General Communication Inc. ("GCI") respectfully petitions the Commission to reconsider and/or clarify certain aspects of the Commission's recent order regarding the low-income or "Lifeline" program of the Universal Service Fund ("USF").<sup>1</sup>

## **I. INTRODUCTION AND SUMMARY**

The recent Lifeline Order enacted a massive and necessary overhaul of the complex Lifeline support system, and the full administrative implications of this considerable undertaking may not be understood for some time. A few administrative problems, however, are apparent on its surface and merit reconsideration and correction. This petition identifies and respectfully seeks reconsideration and/or clarification of five specific administrative issues which the Commission can address without deviation from the fundamental policy choices it made in the recent reform. In particular, GCI requests that the Commission:

- 1) Reconsider the Lifeline Order's requirement that eligible telecommunications carriers ("ETCs") track subscribers who list temporary addresses on their Lifeline forms and, every 90 days, obtain from each such subscriber a new address verification;
- 2) Reconsider the Lifeline Order's requirement that the ETCs receiving larger Lifeline reimbursements must commission biennial third party audits of their "overall compliance" with Lifeline regulations, and particularly that those outside auditors submit two reports of their findings, a draft and a final, to both the FCC and to the Universal Service Administrative Company ("USAC");

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<sup>1</sup> 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").

3) Reconsider the requirement, implemented by USAC, that ETCs submit completely recalculated Form 497s in order to make adjustments to prior month reimbursements, rather than a simple schedule of prior-month adjustments offset against a current-month 497;

4) Clarify that ETCs may recertify subscribers' eligibility outside of the context of the annual recertification effort, and that those certifications will remain effective for one year; and

5) Clarify the marketing disclosure requirements to provide that reference to lengthier disclosures on the internet will suffice in cases where lengthy disclosures are impracticable in context.

With respect to the issues on which GCI seeks reconsideration, the first requirement—verifying every three months the addresses of all low-income consumers without permanent addresses—will require new tracking methods and intense outreach efforts, the burden of which the Commission clearly does not appreciate. This burden is particularly unnecessary given the host of other newly enacted requirements designed to catch all but a few, exceptional cases of Lifeline ineligibility. The second, requiring that covered ETCs commission a biennial audit, is extremely expensive overkill (and the requirement of a draft audit report as well as a final for the same time period is sheer waste). The third, requiring ETCs to submit a completely recalculated Form 497 for every month in order to adjust prior months' reimbursements is unnecessarily burdensome, especially now that the Commission has tightened the window for filing revised Form 497s.

With respect to the issues on which GCI seeks clarification, GCI first asks the Commission to clarify that ETCs may recertify subscribers' eligibility outside of the context of the annual recertification effort, and that those certifications are effective for one year, such that

ETCs would not have to recertify the same subscriber a second time. Any other application of the rule would be inefficient, would overly burden ETCs, and could deter eligible subscribers from participating (or continuing to participate) in the program. Second, GCI asks the Commission to clarify, or if necessary, to reconsider its one-size-fits all disclosure for all marketing, which, as originally written, effectively prohibits 30-second radio or television ads or billboards, in which the lengthy disclaimer would take up substantially all of the allotted time or space. The required disclaimer is, in any case, superfluous, as it requires the repetition of disclosures already required elsewhere.

## **II. ARGUMENT**

The Communications Act provides for reconsideration of Commission orders as follows: “After an order, decision, report, or action has been made or taken in any proceeding by the Commission, ... any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for reconsideration only to the authority making or taking the order, decision, report, or action.”<sup>2</sup> The Commission’s implementing regulations further provide that “[a]ny interested person may petition for reconsideration of a final action” in a rulemaking proceeding.<sup>3</sup> “The petition for reconsideration shall state with particularity the respects in which petitioner believes the action taken should be changed.”<sup>4</sup>

### **A. The Commission Should Eliminate the Rule Requiring Verification of Temporary Addresses Every Three Months.**

In the Lifeline Order, the Commission required ETCs to direct prospective Lifeline subscribers (on their application forms) and existing subscribers (on their certification forms) to

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<sup>2</sup> 47 U.S.C. § 405.

<sup>3</sup> 47 C.F.R. § 1.429(a).

<sup>4</sup> 47 C.F.R. § 1.429(c).

indicate whether their residential address is permanent or temporary.<sup>5</sup> The Commission also required that prospective and existing subscribers must certify, under penalty of perjury, that if the subscriber provided a temporary residential address to the ETC, he or she will be required to verify his or her temporary residential address every 90 days.<sup>6</sup> Finally, the Commission required ETCs to contact every subscriber who resides at a “temporary” address and require the subscriber to recertify, every 90 days, his or her residential address.<sup>7</sup> If the subscriber fails to respond within 30 days of the ETC’s attempts to verify the temporary address, the ETC must disenroll the subscriber from Lifeline.<sup>8</sup>

The temporary address rule is flawed for two reasons. First, the rule is unnecessary, presenting a burden dramatically disproportionate to the very limited benefit it offers, yet the Commission did not assess the burden/benefit tradeoff, notwithstanding GCI’s expressly pointing out the excessive burden and extremely limited benefit in ex parte presentations made after GCI learned of the proposal. The failure to consider GCI’s arguments was arbitrary and capricious. Second, the Commission failed to define “temporary address” in the new rule, a fundamental flaw that means that ETCs and subscribers alike will learn its meaning – or meanings – only after the fact, in the context of USAC-sponsored audits or Commission investigations and enforcement actions.

**1. The Temporary Address Rule is Unnecessary, Overly Burdensome, and Futile.**

The Commission adopted a host of rules to ascertain whether a subscriber is complying with its newly articulated “one-per-household” requirement, one of which requires ETCs to re-

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<sup>5</sup> Lifeline Order, Appendix A, Rule 54.410(d)(2)(iii).

<sup>6</sup> *Id.*, Appendix A, Rule 54.410(d)(3)(iv).

<sup>7</sup> *Id.*, Appendix A, Rule 54.410(g).

<sup>8</sup> *Id.* ¶ 89.

verify a subscriber's temporary address every 90 days. Others include: a requirement that the subscriber himself acknowledge, under penalty of perjury, that the subscriber must notify the ETC if he or she is receiving more than one Lifeline benefit or if another member of the subscriber's household is receiving a Lifeline benefit, and that he or she must provide any new address to the ETC within 30 days if he or she moves;<sup>9</sup> a requirement that the ETC collect the subscriber's date of birth and last four digits of his Social Security number, in addition to the name and physical address;<sup>10</sup> a requirement that all subscribers (whether or not with a temporary address) recertify their eligibility (and address) every year;<sup>11</sup> and a requirement that ETCs submit subscribers' name, address, telephone number, date-of-birth and last four digits of the Social Security Number to a central Lifeline database.<sup>12</sup> On top of all of this, the Commission adopted the rule requiring ETCs requiring to "re-certify, every 90 days, the residential address of each of its subscribers who have provided a temporary address as part of the subscriber's initial certification or recertification of eligibility."<sup>13</sup>

The temporary address re-verification requirement appears to be targeted at an extremely narrow case of potential ineligibility. Temporary address re-verification is clearly not needed to determine whether an individual consumer may be receiving more than one Lifeline benefit from two separate addresses: that case will be detected much more reliably by comparing name, date of birth and last four digits of the Social Security number – information the FCC also requires ETCs to collect. Conducting a temporary address re-verification in this case adds no practical

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<sup>9</sup> See *id.*, Appendix A, Rule 54.410(d)(3).

<sup>10</sup> See *id.*, Appendix A, Rule 54.410(d)(2).

<sup>11</sup> See *id.*, Appendix A, Rule 54.410(f)(1).

<sup>12</sup> See *id.*, Appendix A, Rule 54.404(b)(6).

<sup>13</sup> *Id.*, Appendix A, Rule 54.410(g); see also *id.* ¶ 89.

utility, as any consumer who lies about his date of birth and last four digits of the social security number will also lie about the whether the person was still at the same address.

Nor does temporary address re-verification have any significant practical utility for preventing subscribers from receiving more than one Lifeline benefit per household. The FCC defined a “household,” appropriately, as “any individual or group of individuals who are living together at the same address as one economic unit,” with an “economic unit” defined as “all adult individuals contributing to and sharing in the income and expenses of a household.”<sup>14</sup> For temporary address re-verification to have practical utility, therefore, there would have to be a significant number of subscribers in temporary addresses who subsequently move into an abode with another Lifeline subscriber and begin sharing not just expenses, but also income. As GCI argued in *ex parte* presentations prior to the adoption of the Lifeline Order, and which the Commission does not controvert in the Order, it is extremely unlikely that a Lifeline subscriber in a temporary address will merge households with the household of another Lifeline subscriber.<sup>15</sup> Simply moving one family into an apartment with another family does not suffice to merge households, unless the families not only share expenses, but also income. Many such multifamily arrangements are not single family households, including multigenerational living situations and unrelated adult roommates.<sup>16</sup> The Commission never even attempts to estimate the incremental benefit of the temporary address re-verification requirement, *i.e.*, the number of times in which a Lifeline subscriber will move and actually merge households with another Lifeline subscriber and not report the move to the ETC in a timely manner.

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<sup>14</sup> Lifeline Order ¶ 74 (internal quotation marks omitted); Appendix A, Rule 54.400(h).

<sup>15</sup> See GCI Notice of *Ex Parte* Presentation at 1-2, WC Docket Nos. 11-42, 03-109 (filed Jan. 24, 2012).

<sup>16</sup> Lifeline Order ¶ 74 n.195.

The Commission similarly neglects to address the need for a 90-day temporary address verification requirement in light of the fact that it has separately adopted a rule requiring ETCs to obtain the same information from every subscriber as part of the annual recertification process.<sup>17</sup> This new requirement will require ETCs to develop systems to track subscribers at such addresses and to follow up on their continual recertifications. Carriers have no pre-existing regulatory or business reason, and therefore will generally lack pre-existing systems, to track customers in temporary living situations separately from those in permanent ones. While the Order downplays the burden on ETCs, suggesting that no more than a text message to the subscriber or call to someone like a shelter official is required,<sup>18</sup> that simply ignores the related requirements to review any recertifications subscribers submit, follow up with subscribers when they are ambiguous, act on them when they suggest ineligibility, store them to comply with record-keeping requirements, and review and produce them for audits. In its Paperwork Reduction Act submission, the Commission acknowledges that the 90-day requirement actually imposes a substantial burden, which it estimates at 1 million hours per year in subscriber time alone.<sup>19</sup>

The Commission also fails to take into account the historically low response rates to recertification attempts. For instance, in GCI's last annual verification effort, only 32% of the sampled subscribers recertified their eligibility by the recertification date. Another 28.4%

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<sup>17</sup> See Lifeline Order ¶ 115; see also *id.*, Appendix A, Rule 54.410(f)(2)(iii), (d)(2)(jj) (identifying the requirements of the annual re-certification process, including re-certification of residential address).

<sup>18</sup> See Lifeline Order ¶ 89 nn.239 and 240.

<sup>19</sup> As GCI argues explains in its Paperwork Reduction Act comments, the Commission grossly miscalculates the paperwork burden the temporary address rule imposes. See Paperwork Reduction Act Comments of General Communication Inc., WC Dockets No. 12-23, 11-42, 03-109, CC Docket No. 96-45 (filed Mar. 23, 2012).

recertified only after their Lifeline service was suspended, and 6.7% recertified after their Lifeline service was disconnected. In total, only 67% of the sampled subscribers recertified. The marginalized populations living in temporary housing situations, such as in homeless shelters, are less likely to respond to attempts to verify an address. The temporary address rule will not only impose a much greater burden on carriers to serve as social-service caseworkers for marginalized and difficult-to-serve populations, it will effectively eliminate Lifeline service for those who most need it but fail to respond.

**2. The Commission Failed to Define “Temporary Address,” Leaving the New Rule Subject to Varying Interpretations.**

The Commission failed to define “temporary address” in the Lifeline Order or in the new regulations, leaving ETCs and subscribers to guess at the varying definitions that will be supplied after the fact by USAC, USAC-retained auditors, third-party auditors, and FCC enforcement personnel. This omission will only add to the burden on ETCs, as they will have to expend more time and resources trying to determine whether or not an address is temporary, and guarding against the unpredictable views of that question that might be taken by the variety of enforcing authorities unbounded by any regulatory definition at all. For instance, a college student or soldier might not consider his or her current address to be permanent, but it would make no sense to verify such addresses every 90 days. Similarly, a long-term homeless person might spend years without a permanent address, yet nothing is gained by tracking him or her down and collecting a duplicative certification every 90 days. Many of the people who benefit from Lifeline live in a constantly evolving variety of arrangements. It is fundamentally unfair to ETCs to find out after the fact the rules by which any such arrangement will be found “temporary” and thus requiring continual recertification. At the very least, therefore, the Commission should amend the rule to define “temporary address” to provide some notice to

ETCs and subscribers and to guide the enforcement of the law as to the scope of this requirement.<sup>20</sup>

**B. The Commission Should Eliminate The Requirement for Biennial Outside Audits of Lifeline Compliance by All ETCs Receiving More Than \$5 Million in Lifeline Support, or At Least the Requirement to Submit Two Versions of the Audit Report.**

The Commission adopted a rule requiring ETCs that receive \$5 million or more annually in the aggregate, on a holding company basis, in Lifeline reimbursements to commission a third-party biennial audit to “assess the ETC’s overall compliance with the program’s requirements.”<sup>21</sup> As with the other rules at issue here, this requirement is superfluous because there are already multiple reviewers of the “overall compliance” of such ETCs.

The outside-audit requirement is pure administrative overkill. The ETCs at issue are generally corporations, which presumably face audits by their own outside auditors, which will include Lifeline revenues whenever material. They also face periodic audits by outside auditors hired by USAC and the possibility of investigations by the FCC’s own Office of Inspector General and Enforcement Bureau. The threat of enforcement actions by an FCC that has signaled an increasing interest in using such actions to decrease Lifeline outlays and increase revenues by itself provides ample incentive to comply with the law in this highly regulated industry. The ETCs’ own personnel, their auditors, outside auditors hired by USAC, and FCC enforcement officials thus already enforce “overall compliance with the program’s requirements.” Under these circumstances, the added requirement that ETCs commission and

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<sup>20</sup> See *DiCola v. FDA*, 77 F.3d 504, 508 (D.C. Cir. 1996) (explaining that due process requires government enactments to be sufficiently definite to give fair notice of what conduct they prohibit and to channel the discretion of those who enforce them).

<sup>21</sup> Lifeline Order ¶ 291; see also *id.*, Appendix A, Rule 54.420(a).

undergo a special Lifeline audit so that a *fifth* party may also review compliance, then prepare and submit to the government a report on that compliance, is simply unnecessary.

Moreover, the scope of the biennial audits – to assess “overall compliance with the program’s requirements” – is extraordinarily broad and will quickly lead either to a logjam of FCC interpretive proceedings or a logjam of unresolved audits. The Commission requires the audits to be conducted by “a licensed certified public accounting firm,”<sup>22</sup> not a law firm, but asks the auditors to opine on ETCs’ compliance with the law governing Lifeline.<sup>23</sup> Anticipating that accountants will, for good reason, be unable and unwilling to make legal determinations as to the interpretation of the federal Lifeline regulations, the new regulation calls for audit firms to “submit to the Commission any rule interpretations necessary to complete the biennial audit, and the Administrator shall notify all firms subject to the biennial audit requirement of such requests. The audit issue will be noted, but not held as a negative finding, in future audit reports for all carriers subject to this requirement unless and until guidance has been provided by the Commission.”<sup>24</sup> Thus the biennial audits can be counted on to generate a constant flow of new FCC proceedings interpreting the application of the Lifeline regulations.

The USAC Lifeline audit program as it has existed to date, under the old Lifeline regulations, has generated ample regulatory uncertainty. The multiplication of Lifeline auditors and the implementation of these new and much more complicated procedural requirements will predictably lead to a mushrooming of that uncertainty and, consequently, of regulatory

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<sup>22</sup> *Id.*, Appendix A, Rule 54.420(a)(2)(i).

<sup>23</sup> The new regulation requires the audit to assess “compliance with the rules in this subpart” and “the company’s overall compliance with rules and the company’s internal controls regarding these regulatory requirements.” *Id.*, Appendix A, Rule 54.420(a).

<sup>24</sup> *Id.*, Appendix A, Rule 54.420(a)(3).

proceedings to resolve it. Thus massive new audit bills will be the beginning, but not the end, of the burden created by the new biennial third-party audit requirement.

As if the third-party audit requirement were not enough, the Commission even requires that the third-party auditor, within 60 days after completion of the audit work, but prior to the finalization of the report, also submit a *draft* of that report to the Commission and the Administrator.<sup>25</sup> The Commission offers no justification for the draft audit report rule in the Lifeline Order.

The Commission does not explain how the draft audit reports will be used, but in any event, draft audit reports would be of little utility to the Commission and USAC. A draft is by definition tentative, incomplete, subject to further review, not held out to invite reliance, and superseded by the final report. Moreover, draft audit reports can be misleading, because they may reflect tentative views based on an incomplete or incorrect understanding of the fact, processes, or the law. Requiring submission of draft audit reports is also likely to lack practical utility because it will mean, for all intents and purposes, that auditors only prepare “drafts” when they are near “final.” For these reasons, and entirely separate from the reasons for eliminating the third-party Lifeline audit requirement in whole, the Commission should eliminate the rule requiring submissions of draft audits.

### **C. The Commission Should Simplify the Process for Prior Month Adjustments.**

The Commission modified USAC’s administrative procedures for revised support claims, reducing the deadline for ETCs to submit original or revised Form 497s from 15 months after the end of a calendar year to one year after the original due date for a given month.<sup>26</sup> Given the tightened timeframe for adjustments, the Commission should reconsider and ease the

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<sup>25</sup> *Id.*, Appendix A, Rule 54.420(a)(4).

<sup>26</sup> *Id.* ¶ 305.

administrative burden on ETCs that must make prior-period adjustments. In particular, the Commission should reform USAC's practice of forcing ETCs to adjust prior periods by recalculating the month at issue and filing complete amended Form 497s for every such month.<sup>27</sup>

Currently, if an ETC wishes to make a prior-period adjustment, it must prepare and file a completely amended Form 497 for every single month affected. But an entire amended form is generally unnecessary to calculate the financial effect of such adjustments, which are generally the product of the number of subscribers at issue, the number of months at issue, and the appropriate support amount for the ETC (subscribers x months x rate).

The Commission could ease the administrative burden on carriers by simply adding a new field to Form 497 to report the dollar value of prior-period adjustments, and requiring the ETC to submit a brief explanation of the basis for and calculation of the adjustment. This minor revision would not only ease the administrative burden on subscribers but mirror the process by which USAC processes such adjustments financially.<sup>28</sup> The Commission should adopt this burden-reducing revision in this proceeding as it would offset some of the new burden created by the tighter timelines for submitting upward revisions to USAC.

#### **D. The Commission Should Clarify the Annual Recertification Requirement.**

The Commission adopted a rule requiring all ETCs to recertify annually the eligibility of their entire Lifeline subscriber base.<sup>29</sup> Specifically, all ETCs must obtain from each Lifeline subscriber by the end of 2012 a recertification form that contains each of the certifications

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<sup>27</sup> USAC's practice does not appear required by any federal law or regulation.

<sup>28</sup> USAC processes such prior-period adjustments by simply varying a current-period reimbursement upwards or downwards as required.

<sup>29</sup> Lifeline Order, Appendix A, Rule 54.410(f).

required under Section 54.410(d) of the Commission's rules.<sup>30</sup> The recertification may be done on a rolling basis "throughout the year," apparently including the time before June 1, 2012.<sup>31</sup>

Two relatively simple clarifications would ease the initial implementation burden on ETCs: 1) limit the annual recertification requirement to subscribers who have not certified their eligibility within the past 12 months and 2) make clear that ETCs *may* solicit recertifications at any time, provided that every subscriber has been recertified within the past 12 months, while requiring termination only if a subscriber fails to respond to the annual recertification requirement.

The first clarification would ease implementation for ETCs and reduce the burden on subscribers by making clear, for instance, that if a new subscriber certifies eligibility pursuant to the new requirements between now and May 31, 2012, he will not have to recertify later this year simply because he is on the Lifeline rolls as of June 1, 2012.<sup>32</sup>

The second clarification will facilitate opportunistic and *ad hoc* recertification efforts in addition to the new mandatory annual one. As the new regulations are currently written, ETCs who might offer subscribers recertification opportunities more often than once per year risk inadvertently triggering the requirement to terminate a subscriber who fails to recertify within 30 days,<sup>33</sup> and hence the attendant administrative burdens of tracking any such additional recertification requests and ensuring the ETC's own compliance. The Commission should clarify that ETCs *may* offer subscribers optional recertification at any time—separate from the

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<sup>30</sup> See *id.*, Appendix A, Rule 54.410(d), (f).

<sup>31</sup> *Id.* ¶ 130.

<sup>32</sup> This is how GCI understands the new rule. See *id.* (noting that certification information can be obtained "throughout the year," which logically includes information obtained in advance of June 1, 2012).

<sup>33</sup> See *id.*, Appendix A, Rules 54.405(e)(4), 54.410(d)(3)(viii).

annual recertification process—without triggering the 30-day termination requirement. (The ETC would still be required to terminate a subscriber who fails to respond within 30 days to a recertification request needed to satisfy the carrier’s annual obligation under new 47 C.F.R. §54.410(f)(1).)

Such a clarification would ease the administrative burden on ETCs by allowing them to obtain recertifications opportunistically, when they “touch” Lifeline subscribers for other reasons, such as phone replacement at a retail store or resolution of non-Lifeline account issues. It would also allow recertification efforts organized around *ad hoc* factors other than the anniversary of subscribers’ last certification, such as recertifications focused on certain stores, regions, or subscriber subgroups, *e.g.*, the residents of a single shelter. And, it would cost nothing in terms of compliance, because any subscriber who had not been recertified in the previous 12 months would still be subject to the annual mandatory recertification effort, enforced by the obligation to terminate for nonresponse within 30 days.<sup>34</sup>

The proposed clarifications would both ease the burdens on ETCs and also help alleviate the problem of non-responses to recertification attempts.<sup>35</sup> By limiting the administrative burden on subscribers while preserving the requirement to gather the listed certifications, the proposed clarifications would guard against a rule that could otherwise deter eligible subscribers from participating (or continuing to participate) in the Lifeline program.

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<sup>34</sup> Again, GCI understands the new rule to allow for such “opportunistic” recertifications separate from the annual recertification process. *See supra* n.32. To the extent the Commission holds the view that the new rule does not permit “opportunistic” recertifications, GCI respectfully requests that the Commission reconsider.

<sup>35</sup> *See supra* at 10-11.

**E. The Commission Should Clarify or Modify the Requirement to Add Lengthy Disclosures to All Marketing Materials.**

The Commission has ordered ETCs to “make specific disclosures in *all* marketing materials related to the supported service.”<sup>36</sup> In particular, they must “explain in clear, easily understood language” that “the offering is a Lifeline-supported service; that only eligible consumers may enroll in the program; what documentation is necessary for enrollment; and that the program is limited to one benefit per household, consisting of either wireline or wireless service.”<sup>37</sup> These disclosures must also warn that “Lifeline is a government benefit program, and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program.”<sup>38</sup> The Lifeline Order requires that these disclosures appear in *all* “marketing materials,” which includes “materials in *all* media, including but not limited to print, audio, video, Internet (including email, web, and social networking media), and outdoor signage, that describe the Lifeline-supported service offering, including application and certification forms.”<sup>39</sup>

The Commission’s new marketing rule is simply unworkable for certain types of marketing material, such as newspaper, radio and television advertisements, and outdoor signage. It takes over 30 seconds to read out loud a statement of these required disclosures – thereby precluding marketing via standard 30-second radio or television advertisements. The

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<sup>36</sup> Lifeline Order ¶ 275 (emphasis added); *see also id.*, Appendix A, Rule 54.405(c).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* (emphasis added). The Lifeline Order goes farther than the text the Commission would codify by regulation. *Compare* Lifeline Order ¶ 275 (specifying marketing disclosure requirements) with *id.*, Appendix A, Rule 54.405(c) (codification). The Commission has said it will regard statements it publishes in its Orders as rules of general applicability notwithstanding the failure to codify them as regulations. *See* Lifeline Order ¶76 (asserting that Commission had enacted an enforceable “rule” limiting Lifeline support to one account per household despite never codifying any such rule in the Code of Federal Regulations).

space taken up by the required text would also make outdoor signage effectively unreadable. For many marketing materials, and, most importantly, for application and certification forms, it will be possible for ETCs to include the full text of the required disclosures. But the burden applies indiscriminately to all marketing, including newspaper, radio and television advertisements, and outdoor signage.

Moreover, the requirement is again duplicative. The Commission already requires carriers to make the same disclosures to all Lifeline applicants in the required initial-eligibility paperwork.<sup>40</sup> Thus, even without this new proposed requirement, no one can actually apply for Lifeline benefits without being confronted with the same warnings.

To the extent there is any value at all in providing subscribers with these warnings twice, or in providing them to non-subscribing members of the general public,<sup>41</sup> the Commission could revise the marketing rule to allow ETCs to include in advertising on which the full disclosures are impracticable a link to a website providing the disclosures in full. This is the approach the Commission has taken with respect to disclosure requirements in its Open Internet rules.<sup>42</sup> There is nothing in the Lifeline Order explaining why this far less burdensome alternative would not provide the same benefit without generating the same needless cost. Indeed, such a revision would make the rule more practical and would still accomplish the Commission's goal of

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<sup>40</sup> Lifeline Order ¶ 275.

<sup>41</sup> While all who might apply for Lifeline will see the required warnings in their application paperwork, also requiring them in advertising would obviously extend the warning to people who do *not* apply, but there is no obvious utility in this addition.

<sup>42</sup> In the recently issued Advisory Guidance for Compliance with Open Internet Transparency Rule, the Office of General Counsel and the Enforcement Bureau clarified that “[b]roadband providers can comply with the point-of-sale requirement by, for instance, directing prospective customers at the point of sale . . . to a web address at which the required disclosures are clearly posted and appropriately updated.” *FCC Enforcement Bureau and Office of General Counsel Issue Advisory Guidance for Compliance with Open Internet Transparency Rule*, Public Notice, GN Docket No. 09-191, WC Docket No. 07-52 (rel. June 30, 2011).

ensuring that “only eligible consumers enroll in the program and that those consumers are fully informed of the limitations of the program, so as to prevent duplicative or otherwise ineligible service as well as other forms of waste, fraud, and abuse.”<sup>43</sup>

### III. CONCLUSION

The new requirements imposed by the Lifeline Order suffer from a variety of flaws. The temporary address rule is flawed because the Commission failed to define the rule’s operative phrase: “temporary address.” In addition, it is unnecessary because the Commission has adopted other measures that will be more effective at uncovering cases of Lifeline ineligibility. The biennial audit requirement is also unnecessary because ETCs are already subject to scrutiny from a host of outside reviewers, such as the ETCs’ own auditors and USAC, and it threatens enormous cost and administrative burden for the industry and the Commission alike. And the existing administrative requirements that ETCs submit complete amended Form 497s for prior month adjustments is unnecessarily burdensome, particularly in light of the shortened revision period now imposed, but the Commission could easily remedy this by amending the Form 497 to add a field for adjustments. For all of the foregoing reasons, GCI respectfully requests that the Commission reconsider these issues.

GCI also respectfully requests that the Commission clarify that ETCs may recertify subscribers’ eligibility outside of the context of the annual recertification effort and that all certifications are effective for one year. The Commission should also clarify that ETCs may fulfill the Lifeline Order’s marketing requirement by including on advertising on which it is impracticable to include the full disclosure a link to a website that contains the full disclosures.

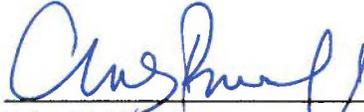
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<sup>43</sup> Lifeline Order ¶ 275; *see also id.*, Appendix A, Rule 54.410(b),(c) and (d).

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