

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

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link Up	)	WC Docket No. 03-109

**T-MOBILE USA, INC.**  
**PETITION FOR RECONSIDERATION**

T-Mobile USA, Inc. (“T-Mobile”) requests reconsideration, pursuant to Section 1.429 of the Commission’s rules,<sup>1</sup> of the “one-per-household” limitation on Lifeline support established in the Lifeline Reform Order.<sup>2</sup>

T-Mobile commends the Commission for its commitment to reform and modernize the Lifeline system and wholeheartedly believes that efforts to curb waste, fraud, and abuse within the system can succeed. The Lifeline Reform Order made great strides in modernizing the system, with the exception of the one-per-household limitation that denies families the benefits of mobile technology. The rule is discriminatory, and the Commission failed to address this and other concerns raised in the record about the rule, contrary to statutory objectives and judicial precedent.

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<sup>1</sup> 47 C.F.R. § 1.429.

<sup>2</sup> Report and Order and Further Notice of Proposed Rulemaking, *Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 11-42, *et al.*, FCC 12-11 (Feb. 6, 2012) (“Lifeline Reform Order” or “Order”), 77 Fed. Reg. 12952 (Mar. 2, 2012).

In adopting the one-per-household rule, the Lifeline Reform Order failed to address significant arguments in the record from T-Mobile and other parties that the rule would deny Lifeline consumers the fundamental benefits of mobility that are enjoyed by non-Lifeline consumers, thereby violating the universal service principles of reasonable comparability and technological neutrality. The Commission has not shown that the cost of supporting additional lines – the sole basis for the rule – outweighs these significant concerns, nor has it accounted for the savings that will be realized as a result of reforms made in the Order. Accordingly, it should reconsider the rule and allow support for additional mobile connections for a spouse and dependents age 13 and up in Lifeline-eligible households. Such additional connections can be supported at a reduced level, consistent with the pricing of wireless family plans.<sup>3</sup>

#### **I. THE LIFELINE REFORM ORDER FAILED TO ADDRESS SIGNIFICANT ARGUMENTS IN THE RECORD**

Under judicial precedent, the Commission must “demonstrate the rationality of its decision-making process by responding to those comments that are relevant and significant.”<sup>4</sup> T-Mobile and other commenters raised a number of significant concerns about the proposed one-per-household rule, discussed below, but the Order did not respond to them on their merits. This would be reversible error on appeal,<sup>5</sup> and thus clearly is grounds for reconsideration.<sup>6</sup>

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<sup>3</sup> See also Comments of T-Mobile USA, Inc., WC Docket Nos. 11-42 *et al.* (filed April 2, 2012) at 6-7; Letter from Kathleen O’Brien Ham, T-Mobile, to Marlene H. Dortch, FCC, WC Docket Nos. 11-42 *et al.* (filed Dec. 16, 2011) at 3-4.

<sup>4</sup> *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760, 765 (D.C. Cir. 2000) (*quoting Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 468 (D.C. Cir. 1998)).

<sup>5</sup> *Id.*

<sup>6</sup> As a result of this failure, these arguments have not been “fully considered and rejected by the Commission in the same proceeding.” 47 C.F.R. § 1.429(l)(3).

**A. The Rule Deprives Low-Income Consumers of Reasonably Comparable Service**

The Communications Act requires that the Commission “base policies for the preservation of universal service, *inter alia*, on the principle that “low-income consumers ... should have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas....”<sup>7</sup> T-Mobile and other parties have demonstrated in this proceeding that a one-per-household limit on Lifeline support denies low-income consumers the fundamental benefits of mobile wireless services that are enjoyed by non-Lifeline consumers.

Because mobile wireless services are not tied to any physical location, a one-per-household limit means that, for much of the time, some individuals in a household will have no access to telephone service.<sup>8</sup> One adult in the household likely will have the single cellphone supported by Lifeline service and, if that person is at work or elsewhere outside of the house, no one else in the household will be able to place or receive calls and be connected for basic communications needs, including emergency calls, or calls to monitor children at home. Similarly, if the adult with the phone is at home, then a spouse working outside the home would again be disconnected and unable to call 911 in the event of an emergency, follow up on better employment opportunities, or do any of the things that non-Lifeline customers take for granted with their mobile phones. Denying basic connectivity to low-income consumers in this way will deprive them of a primary benefit of mobile service. This problem is particularly acute given the

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<sup>7</sup> 47 U.S.C. § 254(b)(3).

<sup>8</sup> See Letter from Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, at 4, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 (Dec. 16, 2011) (“Ham Letter”); Comments of General Communication, Inc. at 38-39, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 (Apr. 21, 2011) (“GCI Comments”).

substantial increase in wireless-only households – estimated at 31.6 percent of all U.S. households and 46.8 percent of adults living in poverty during the first half of 2011.<sup>9</sup>

As a result, while the one-per-household rule was appropriate in the wireline era, when all residents had the same ability to use the hard-wired telephone, it makes no sense in today’s mobile era. Indeed, a main benefit of mobile service, and the factor driving the tremendous growth of the wireless industry, is *mobility*, which enables family members and others to communicate at all times. This benefit is significantly compromised if only one member of a family has a cellphone. The one line per household rule thus ensures that Lifeline users will not have mobile service “reasonably comparable” to other consumers’ mobile service.<sup>10</sup>

#### **B. The One-Per-Household Rule Is Not Competitively Neutral**

The Joint Board and the Commission, working pursuant to the Communications Act, have the authority to add to the list of principles for universal service and, pursuant to this authority, have adopted the principle of “competitive neutrality.”<sup>11</sup> This principle means that “universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”<sup>12</sup> In adopting this principle, the Commission concluded that “competitively neutral

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<sup>9</sup> Centers for Disease Control and Prevention, “Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January–June 2011” (Dec. 2011), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201112.htm>.

<sup>10</sup> The one-per-household rule also threatens another stated Lifeline goal – increasing voice service penetration rates, at least for wireless services, among low-income Americans. See Lifeline Reform Order at ¶¶ 27-32.

<sup>11</sup> *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8801 ¶ 47 (1997), *aff’d in part, rev’d in part, remanded in part sub nom., Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000) (“First Universal Service Order”).

<sup>12</sup> *Id.*

rules will ensure that [competitive] disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace.”<sup>13</sup>

The one-per-household rule unfairly disadvantages wireless providers and disfavors wireless technology because it eliminates the fundamental benefits of mobility, for the reasons discussed above.<sup>14</sup> The impact of the rule falls disproportionately on mobile wireless providers, while wireline providers largely are unaffected by it. As a result, the rule is not competitively neutral and must be reconsidered.

## **II. THE COMMISSION’S COST CONCERNS ARE INSUFFICIENT TO OUTWEIGH THE RULE’S DEFICIENCIES**

The Lifeline Reform Order does not directly respond to the record arguments discussed above. It fails to address reasonable comparability or competitive neutrality at all. It mentions T-Mobile’s and others’ safety concerns, but the Order’s response is really no response at all – it states that low-income consumers may need to supplement their Lifeline wireless service with other alternatives, such as non-Lifeline prepaid wireless service, and may choose to apply their Lifeline discount to wireless family calling plans.<sup>15</sup> In other words, low-income consumers seeking benefits of mobility comparable to those enjoyed by other Americans will have to find a way to pay for it themselves, and should not look to the Lifeline program for it. The Order does not attempt to address how consumers that are eligible for Lifeline – consumers, in other words, that may not be able to subscribe to telephone service at all absent a discount – would afford to do so.

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<sup>13</sup> *Id.* at 8802 ¶ 48.

<sup>14</sup> *See supra* Section I.A.

<sup>15</sup> Lifeline Reform Order at ¶¶ 82-83.

Instead of addressing these significant defects in the rule, the Lifeline Reform Order finds that the rule is necessary to limit the size of the universal service fund and the resulting contribution burden. The Order makes no effort, however, to demonstrate that the one-per-household rule is necessary to achieve the Commission’s reform goals. The Order includes no discussion of the cost of supporting other reforms in the Order, particularly the national database; nor does it discuss the impact of other steps taken to eliminate duplicative support and other forms of waste, fraud, and abuse that will reduce costs and minimize the future growth of the program.<sup>16</sup> In identifying what it considers significant sources of duplicative support, the Commission identifies not only the receipt of Lifeline benefits by two or more individuals in a household, but also receipt by any one individual of two or more Lifeline benefits.<sup>17</sup> Once the latter source of duplication is eliminated, the one-per-household rule is no longer necessary to prevent a significant expansion of the program, given all of the other restrictions and safeguards that have been implemented. In short, the Commission has not demonstrated that the deprivation of the economic and public safety benefits of mobility resulting from the rule is justified by the incremental cost savings that may result from the rule.

Moreover, the Commission presents no justification for why controlling the fund size – which is not even a universal service principle<sup>18</sup> – should trump the specifically articulated universal service principles of reasonable comparability and competitive neutrality.

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<sup>16</sup> *See id.* at ¶¶ 41, 91-148, 167-299.

<sup>17</sup> *Id.* at ¶ 180.

<sup>18</sup> The Lifeline Reform Order adopts a “performance goal” of minimizing the contribution burden on consumers and businesses, but this principle has not been codified as a universal service principle pursuant to section 254(b)(7). *Id.* at ¶ 37.

### III. CONCLUSION

For the reasons above, the Commission should reconsider the one-per-household rule and allow Lifeline-eligible households to use mobile wireless services in the same manner as non-Lifeline customers.

Respectfully submitted,

T-MOBILE USA, INC.

By: /s/ Kathleen O'Brien Ham  
Kathleen O'Brien Ham  
David R. Conn  
Luisa L. Lancetti  
Indra Sehdev Chalk

T-Mobile USA, Inc.  
601 Pennsylvania Ave., N.W.  
North Building, Suite 800  
Washington, D.C. 20004  
(202) 654-5900

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