

**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
)	

**JOINT COMMENTS IN RESPONSE TO
FURTHER NOTICE OF PROPOSED RULEMAKING**

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I. Introduction and Summary.

Carolina West Wireless, Inc., Nex-Tech Wireless, LLC, Thumb Cellular, United States Cellular Corporation and United Wireless Communications (collectively, the “Parties”) hereby file these Joint Comments in response to the above-captioned Further Notice of Proposed Rulemaking (“*Further NPRM*”).¹

In the *Further NPRM*, the FCC seeks comment on AT&T’s proposal to “allow incumbent wireline Lifeline providers to choose whether to participate in the Lifeline program....”² The Parties strongly support AT&T’s proposal, *provided that all ETCs, not just ILECs, are able to choose whether to participate in the Lifeline program.* The FCC must treat all ETCs – whether wireline or wireless – in a competitively neutral fashion.

Competitive ETCs should no longer be obligated to participate in the Lifeline program, particularly when the high-cost support needed to build out is being drastically reduced by the FCC’s recent USF reform measures, phasing out competitive ETC support completely. Many of these competitive ETCs have a small customer base in rural areas, and have a minimal number of Lifeline customers, making compliance with the new group of Lifeline regulations extraordinarily expensive on a per-customer basis. It is hardly productive for the FCC to audit a small wireless carrier with 500 Lifeline customers in its rural market, compared to a national Lifeline provider that may have tens or hundreds of thousands of Lifeline customers in a number of geographic locations. The costs of compliance, the risk of substantial forfeitures and the cost

¹ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012), 77 FR 12952 (“*Lifeline Reform Order*”) and 77 FR 12784 (“*Further NPRM*”).

² *Further NPRM* at ¶ 503.

of audits simply make continued participation in Lifeline cost-prohibitive for many carriers and, as a result, these carriers should be given the choice of not participating in the Lifeline program.

II. Public Policy Supports De-Linking Lifeline Obligations from Eligibility for High Cost Support for All ETCs.

The Parties strongly support de-linking the obligation to provide Lifeline support from an ETC's eligibility for High Cost support, *provided that all ETCs, not just ILECs, are able to choose whether to participate in the Lifeline program.* Section 54.405 of the FCC's Rules requires "all eligible telecommunications carriers to make available Lifeline service ... to qualifying low-income consumers."³ In adopting this requirement, the FCC made no distinction between wireless and wireline carriers.⁴

With regard to terminating the requirement of ETCs to offer Lifeline, the FCC must treat all ETCs – whether wireline or wireless – in a competitively neutral manner.⁵ It would make no sense to allow ILECs to choose whether to participate in Lifeline, while continuing to require wireless ETCs to participate in Lifeline. AT&T argues that wireline providers are no longer dominant in the provision of voice services.⁶ Most wireless ETCs have never been dominant providers of voice services.

³ 47 C.F.R. § 54.405.

⁴ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45 (adopted May 7, 1997), 62 FR 32862, 32891 (June 17, 1997) (¶ 200 of Federal Register summary). The FCC also found that all ETCs, not just ILECs, should be able to receive low-income support. *Id.* at ¶ 209 of Federal Register summary.

⁵ *See e.g., In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 47 (1997) ("Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality 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.").

⁶ *See AT&T Ex Parte Letter*, filed Jan. 24, 2012 in WC Docket Nos. 11-42 and 03-109, at 1.

There are compelling policy reasons for not requiring ETCs to offer Lifeline service. Reducing the number of Lifeline providers will help the Commission to achieve its overarching goal of controlling the overall size of the Universal Service Fund. In addition, robust competition between and among wireless and wireline providers for Lifeline customers – as well as the proliferation of Lifeline-only competitive ETCs across the country – obviates the need for the Commission’s current mandate that all wireline and wireless ETCs provide Lifeline service.

There has been a meteoric expansion of the geographic availability, and subscriber uptake, of wireless services since the Commission linked Lifeline support to high-cost support in 1997. In 1996, wireless penetration in the United States was 14%; today it is over 102%.⁷ Consumers who previously relied on wireline service as the only voice service available to them, today have a choice of wireless and wireline service – and in many urban and suburban areas, multiple facilities-based and non-facilities-based wireless service providers provide Lifeline to qualifying customers. As the Commission is well aware, many consumers have cut the cord and rely solely on wireless service today. From 2006 to 2011, the number of households with wireless-only service tripled from 10.5% to 31.6%.⁸ In addition, many markets now have 5-10 (or more) service providers offering Lifeline to qualifying customers.

In sum, the market for voice services – as well as Lifeline service – has changed drastically since 1997. Market forces and the proliferation of carriers offering Lifeline are now

⁷ See <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>, last visited on March 28, 2012.

⁸ *Id.*, citing Midyear 2006 wireless-only data from Early Release of Estimates from the National Health Interview Survey, July-December 2009. National Center for Health Statistics, May 2010. The data for June 2011 is from Early Release of Estimates from the National Health Interview Survey, January – June 2011. National Center for Health Statistics, December 2011.

more than adequate to ensure that Lifeline services are offered to low-income customers. The need for a regulatory mandate is obsolete.

III. There Are No Legal Impediments to De-Linking Lifeline and High Cost Support.

There is no statutory requirement mandating that ETCs must provide Lifeline service. Section 214(e)(1)(A) of the Act provides, in relevant part, that ETCs must “offer the services that are supported by Federal universal service mechanisms under Section 254(c)...”⁹ In turn, Section 254(c) provides that the Commission shall establish, upon recommendation by the Joint Board, “the definition of the services that are supported by Federal universal service support mechanisms”¹⁰ In making this determination, the Commission is instructed to consider, *inter alia*, the extent to which such telecommunication services “have, through the operation of market choices, been subscribed to by a substantial majority of residential customers....”¹¹

Section 54.101(a) of the FCC’s rules implements Section 254(c) of the Act, and sets forth the “services” supported by the universal service program, and in turn, the “services” required to be provided by ETCs.¹² Prior to adoption of the *USF/ICC Transformation Order*,¹³ Section

⁹ 47 U.S.C. § 214(e)(1)(A).

¹⁰ 47 U.S.C. § 254(c)(1). In adopting the requirement that all ETCs must offer Lifeline service, the Commission stated that it was “acting under [its] general authority in sections 1, 4(i), 201, and 205 of the Act, as well as [its] authority under section 254.” *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45 (adopted May 7, 1997), 62 FR 32862, 32891 (June 17, 1997) (¶ 200 of Federal Register summary).

¹¹ 47 U.S.C. § 254(c)(1)(A).

¹² 47 C.F.R § 54.101(a).

¹³ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and

54.101(a) of the FCC’s Rules set forth a list of nine required, supported services. The revised version of Section 54.101(a) sets forth a list of four required, supported services. These “services” are functionalities – not support mechanisms or programs. In adopting the requirement for all ETCs to provide Lifeline services, the Commission stated that:

In requiring all eligible telecommunications carriers to offer Lifeline service to qualifying low-income consumers, we make Lifeline part of our universal service support mechanisms.¹⁴

Lifeline is clearly not a “service”; rather, it is a low-income support mechanism supported by the Federal Universal Service Fund.

Even if Lifeline were somehow considered to be a “service”, Section 254(c)(1)(B) explicitly requires the Commission to consider the extent to which such “services” have been adopted by a substantial majority of residential customers.¹⁵ Obviously, Lifeline is not available to, nor has it been adopted by, a substantial majority of residential customers. Thus, the FCC lacks statutory authority to add Lifeline as a supported service.

IV. Procedural Mechanisms for De-Linking Lifeline Support.

The Parties propose two options for de-linking Lifeline support. First, the Commission could allow carriers that have already been designated as ETCs to “opt-out” of Lifeline. Section 54.405 of the FCC’s rules would need to be revised accordingly. ETCs would be required to provide notice of their “opt-out” decision to the state regulatory agency responsible for designating ETCs, or to the FCC for states that do not elect or do not have jurisdiction to

Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011), 76 Fed. Reg. 78384 (Dec. 16, 2011), 76 Fed. Reg. 81562 (Dec. 28, 2011) (“*USF-ICC Transformation Order*”), recon., FCC 11-189 (rel. Dec. 23, 2011).

¹⁴ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45 (adopted May 7, 1997), 62 FR 32862, 32891 (June 17, 1997) (¶ 200 of Federal Register summary).

¹⁵ 47 U.S.C. § 254(c)(1)(B).

designate competitive ETCs. In addition, ETCs would have to demonstrate how the ETC will assist its Lifeline customers in transitioning to another non-Lifeline service plan (for subscribers who choose to remain with the “opting-out” carrier) or to another carrier offering Lifeline and ensuring that this transition will occur without financial penalty to their Lifeline customers that choose to switch to another carrier offering Lifeline. Opt-out elections would be placed on public notice. If there are no objections, opt-out elections would be deemed effective 30 days after expiration of the public notice period, without further action. If there are objections, the relevant agency would have to consider these objections. In such event, the burden of proof should be placed on the objecting party, and the ETC should be afforded a presumption that its opt-out election is in the public interest.

Carriers applying for new ETC designations would be required to specify in their application whether they seek to provide Lifeline service. If the carrier does not seek Lifeline authority, the carrier would not be required to offer and advertise Lifeline in its ETC service area and would be ineligible for the Lifeline subsidy.

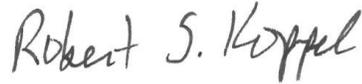
Alternatively, ETCs should be permitted to “relinquish” the Lifeline portion of their ETC designation. Section 214(e)(4) of the Act provides that “a State commission ... shall permit an eligible telecommunications carrier to relinquish its designation ... in any area served by more than one eligible telecommunications carrier.”¹⁶ Relinquishment of the Lifeline portion of an ETC designation would follow the same procedures set forth above for “opting out” of Lifeline.

¹⁶ 47 U.S.C. § 214(e)(4).

V. Conclusion.

The Parties urge the Commission to allow all high-cost support ETCs to choose voluntarily whether to continue participating in the Lifeline program.

Respectfully submitted,



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