

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
)	

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. (“Cox”), by its attorneys, hereby submits its reply comments in response to the Commission’s *Further Notice* in the above-referenced proceeding.¹

Cox appreciates the opportunity to respond to the initial comments filed in this proceeding. Cox agrees with the many commenters that called for a single national database or interface for eligibility and program participation.² Cox also agrees that providers should have the discretion to offer Lifeline discount pricing for bundled packages that include supported services.³ These reply comments, however, focus on three other issues – support for secondary connections in households with both landline and wireless service, funding for the eligibility database and the proposal to extend the document retention period. As shown below, while Cox

¹ Lifeline and Link Up Reform and Modernization, *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, FCC 12-11 (rel. Feb. 6, 2012) (the “*Further Notice*”).

² See Comments of AT&T at 3-10, Comments of CTIA-The Wireless Association (“CTIA”) at 2-4, Comments of T-Mobile USA, Inc. (“T-Mobile”) at 3-5, Comments of Verizon at 2-3, Comments of United States Telecom Association (“USTA”) at 2-3, Comments of CenturyLink at 2-4, Comments of Public Utilities Commission of Ohio (“PUCO”) at 2-6.

³ See Comments of AT&T at 27, Comments of CTIA at 4-5, Comments of Leap Wireless International, Inc. and Cricket Communications, Inc. at 11-12, Comments of T-Mobile at 7-8, Comments of USTA at 7, Comments of CenturyLink at 7, Comments of PUCO at 9-10.

does not think it is necessary to provide support for secondary connections, at a minimum the Commission should ensure any such support also is available to wireline providers. In addition, the costs associated with creation and implementation of an eligibility database, as well as ongoing costs of using that database for verification, should be funded from the Low Income Fund. Finally, the document retention rules should not be changed because the costs of a longer retention period would far exceed the benefits.

I. If Support for Secondary Lines Is Permitted, It Should Be Made Available in a Technology-Neutral Manner.

In its comments and ex parte filings, T-Mobile has suggested that the Commission provide what it describes as “additional support for second and subsequent mobile connections in Lifeline-eligible households.”⁴ T-Mobile argues that the Commission should make a smaller subsidy, perhaps half of the standard subsidy, available for each additional mobile line, with a household cap on total subsidies.⁵ Cox does not believe that it is necessary for the Commission to adopt this proposal, but if it is adopted, it should not be implemented until the Commission has realized the anticipated savings from reducing waste and abuse of the Lifeline program, and it should be implemented in a technologically-neutral fashion.

Initially, to the extent that the goal of Lifeline service is to ensure that consumers have access to basic telecommunications service, T-Mobile’s proposal is unnecessary to achieve that goal. The current rules already allow Lifeline participants to choose whether they wish to obtain landline service or wireless service, so consumer choice is ensured. Further, T-Mobile’s proposal would effectively undermine the Commission’s efforts to manage the Low Income Fund by limiting the number of supported lines.

⁴ T-Mobile Comments at 6; *see also Further Notice*, ¶ 471 (seeking comment on T-Mobile proposal).

⁵ *Id.* at 6-7.

Moreover, to the extent the Commission wishes to permit support for secondary lines, it should not implement such a program immediately. Instead, it should wait until the program reforms adopted in February bear fruit and produce the anticipated savings, so as to be able to determine how much secondary support can be made available. This delay also will provide sufficient time to develop the database capabilities necessary to ensure that households receive the right amount of support.⁶

To the extent that the Commission does conclude that it should permit customers to obtain support for secondary lines, the Commission should not adopt the proposal as articulated by T-Mobile. Instead, the additional line subsidy, if adopted, should be made available for either landline or wireless service, in a technologically neutral fashion.

There is no good reason why the additional line subsidy should be available only for wireless service. As a practical matter, more than half of all U.S. households have both landline and wireless service.⁷ Thus, if it believes that access to wireless is necessary to maintain “reasonably comparable” access, the Commission should ensure that Lifeline households can have both services most commonly purchased by all households.

In addition, adopting a rule that makes the additional line subsidy available to both landline and wireless service would be technologically neutral. The Commission’s current rules already provide for designation of qualifying carriers as eligible telecommunications carriers (“ETCs”) “irrespective of the technology used by such carrier.”⁸ There is no reason that the

⁶ The Commission already has directed the Wireline Competition Bureau to monitor, analyze and report to each Commissioner on the impacts of the reforms that were adopted in the first phase of this proceeding. *Further Notice*, ¶ 358.

⁷ The most recent Centers for Disease Control report on telephone service subscribership shows that 55.0% of surveyed households have both landline and wireless service. S.J. Blumberg and J.V. Luke, “Wireless Substitution: Early release of estimates from the National Health Interview Survey, January-June 2011,” National Center for Health Statistics, Dec. 2011, at Table 1, available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201112.pdf>.

⁸ 47 C.F.R. § 54.201.

Commission should abandon that principle if it extends Low Income Fund support for additional lines. As the Commission has noted in this and other proceedings, technology neutral rules are beneficial because they allow markets to function more efficiently and enhance consumer choice.⁹ There are no benefits, on the other hand, to adopting rules that limit Lifeline support based on the technology used to provide service.

Cox believes that there are concerns about how to implement reduced support for secondary lines.¹⁰ If the Commission were to adopt a rule permitting secondary support, the Commission could include information about support being received in the eligibility database, so that a provider would be able to tell immediately whether a household already is receiving primary support or secondary support, and if the household is receiving the maximum support available. This approach would greatly reduce the risk that the wrong amount of support would be requested and potentially provided.

II. The Eligibility Database Should Be Funded from the Low Income Fund.

In its comments, NASUCA suggests that the costs of any database created to assist in determining customer eligibility should be borne by ETCs, rather than by the states.¹¹ The Commission should not adopt this approach, and instead should pay the costs of creation, implementation and use of the database from the Low Income Fund.¹²

NASUCA proposes, in essence, that ETCs do all the work to check eligibility, acting through state commissions and the Commission, without actual access to the databases, and foot the bill for creating and maintaining those databases through a “cost recovery mechanism,”

⁹ See, e.g., *Further Notice*, ¶¶ 48 (redefining eligible Lifeline services in a technologically neutral fashion), 250 (noting “desire to maintain a technology-neutral approach”); *Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, FCC 11-161 (rel. Nov. 18, 2011), ¶¶ 1 (establishing “technologically neutral” universal service framework), 78 (noting that change in definition of supported voice services to include voice over IP is technologically neutral and will benefit both providers and consumers)

¹⁰ *Further Notice*, ¶ 471.

¹¹ Comments of National Association of State Utility Consumer Advocates (“NASUCA”) at 6-8.

¹² See *Further Notice*, ¶¶ 355-60.

presumably a new customer charge.¹³ NASUCA goes on to assert that the expenses of the state and federal databases should not be paid by the Low Income Fund and instead should be borne by ETCs because they “receive compensation from the fund.”¹⁴

This proposal is unreasonable. First, unlike the high cost program, which provides support directly to carriers, Lifeline is a subsidy for consumers, not a profit center for ETCs.¹⁵ Lifeline support is intended to flow through directly to consumers as a dollar-for-dollar discount on the services they buy, and no additional funds go to ETCs for providing Lifeline service.¹⁶ That is the case even as ETCs already have administrative costs connected to their participation in the program. The NASUCA proposal would impose extra costs on ETCs without any additional benefit.¹⁷

Second, the Low Income Fund is a more appropriate source to fund database costs. The Commission already has determined that the accountability database will be paid for out of the Low Income Fund, and it is logical to extend this principle to the eligibility database.¹⁸ It also is logical to combine the two databases, since they will contain much of the same information. Combining the databases will increase efficiency for ETCs, which otherwise would have to check two sources to determine customer eligibility for support. In addition, maintaining a

¹³ Comments of NASUCA at 7-8.

¹⁴ *Id.* at 8.

¹⁵ The Commission has acknowledged that “the program was never intended to provide a profit for service providers.” Lifeline and Link Up Reform and Modernization, *Notice of Proposed Rulemaking*, 26 FCC Rcd 2770, 2776 (2011).

¹⁶ See 47 C.F.R. §§ 54.403, 54.407 (requiring pass-through of all Lifeline support). In fact, serving Lifeline customers costs more than serving non-Lifeline customers, because ETCs are required to advertise the availability of Lifeline and to expend resources verifying customer eligibility. 47 C.F.R. §§ 54.405(b), (c), (d), 54.410.

¹⁷ It bears noting here, and with respect to the discussion below of recordkeeping requirements, that the more expensive it is to serve low income customers, the more difficult the economics of providing competitive services to this population become. While each provider approaches this market differently (from those that are required to provide Lifeline service under the terms of their CLEC certificates to others that enter the market as a way to address an underserved segment), additional administrative expenses related to participation in Lifeline will lower the margins to serve low income customers. That could result in fewer providers competing for those customers or, worse, providers exiting the market entirely.

¹⁸ *Further Notice*, ¶ 225.

single database will be less expensive than maintaining two databases, particularly given the duplication in the information that will be managed. Just as the Commission concluded that the savings from the accountability database will far exceed the costs of creating and maintaining it, the Commission reasonably can conclude that the savings from a combined accountability and eligibility database will be far greater than the costs that will be incurred.

III. The Commission Should Not Modify the Retention Period for Lifeline Documentation.

In the *Further Notice*, the Commission proposes to extend the current document retention period for Lifeline from three years to ten years.¹⁹ The sole reason for this proposed change is to facilitate potential claims under the False Claims Act. As many commenters explained, this proposal should be rejected, both because it would be burdensome and because there is no need for it.²⁰

First, expanding the record retention requirement would be enormously burdensome. A ten year period would more than triple the minimum time that an ETC must maintain records. That means that the ETC not only would need to keep those records, but would have to maintain mechanisms for retrieving them as well. The cost of maintaining obsolete systems or of converting records for individuals who have not been customers for years would be significant.²¹

At the same time, the potential benefits to the public interest from extending the record retention period are not meaningful. While the *Further Notice* suggests that a ten-year period is consistent with the requirements of the False Claims Act, Leap notes that in practice most claims

¹⁹ *Id.*, ¶ 506.

²⁰ *See, e.g.*, Comments of CenturyLink at 7-8, Comments of COMPTTEL at 29-32, Comments of General Communications, Inc. (“GCI”) at 11-13, Comments of Leap at 12-14, Comments of Verizon at 9.

²¹ *See* Comments of GCI at 12 (describing impact of “constant evolution of communications technologies, business structures, and Lifeline regulations” on costs of compliance over a long period); Comments of CenturyLink at 8 (noting the “very real burden” of maintaining “all documentation pertaining to support received under the program for ten years”).

under the False Claims Act are barred after six years.²² Further, there is no indication that there has been *any* False Claims Act litigation concerning the Lifeline program, let alone any claims that would have been facilitated by a longer retention period.²³

The potential benefits from extending the retention period are further attenuated by the nature of the current rule and by other steps the Commission is taking to reduce fraud. Under the current rule, documents are retained for no less than three years, but in fact often are retained longer because they must be maintained for as long as the customer purchases service.²⁴ In addition, the Commission's new enforcement programs, including the eligibility database, the Lifeline Duplicate Resolution Process and the strengthened USAC oversight process, will greatly reduce the likelihood that fraud will occur, let alone going unnoticed for any significant period of time.²⁵ Thus, given the significant additional burdens that would be imposed by extending the retention period, the balance of costs and benefits plainly favors maintaining the existing three year retention period.

²² Comments of Leap at 13.

²³ Comments of CenturyLink at 8, Comments of Verizon at 9.

²⁴ 47 C.F.R. § 54.417.

²⁵ See Comments of COMPTTEL at 31.

