

**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
)	

**COMMENTS ON PETITIONS FOR RECONSIDERATION
OF
SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint”), on behalf of its affiliate Virgin Mobile USA, L.P., which offers Lifeline service under the brand name Assurance Wireless Brought To You By Virgin Mobile (“Assurance Wireless”), submits its comments on the petitions for reconsideration filed on April 2, 2012 on various aspects of the Commission’s *Lifeline Reform Order*.¹ As discussed below, Sprint supports the requests for reconsideration of the temporary address rules filed by GCI, TracFone and US Telecom; of the audit rules as requested by GCI and US Telecom; and of the \$9.25 flat-rated Lifeline benefit filed by TracFone. Sprint opposes the petition filed by APCC to provide Lifeline support for pay telephones. Finally, Sprint agrees with several parties

¹ *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; *Report and Order and Further Notice of Proposed Rulemaking*, FCC 12-11, released Feb. 6, 2012 (“*Lifeline Reform Order*”).

that clarification of certain aspects of the *Lifeline Reform Order* would be helpful at ensuring smooth implementation of the new rules.

1. Temporary Addresses

Sprint, GCI, TracFone, and US Telecom have each requested reconsideration of the rules requiring Lifeline service providers to contact customers who indicated that they reside at a “temporary address” every 90 days to confirm the customer’s address, and to de-enroll from the Lifeline program those customers who fail to respond to the 90-day address confirmation request.² As petitioners correctly point out, the temporary address rules were adopted without sufficient notice; will be burdensome on both the service provider and customer;³ are unnecessary, given other rules requiring annual re-certification of the entire Lifeline customer base, requiring customers to notify their service provider of any change of address, and requiring collection of end user name, date of birth, and last four digits of Social Security number; and are unclear (“temporary address” has not been defined). On balance, the costs associated with the temporary address rules far outweigh any putative benefits.

The Commission’s decision to withdraw its request for OMB approval of the temporary address rules was a step in the right direction.⁴ Given the negative cost-benefit ratio for these rules, and taking into consideration what appears to be concerns on OMB’s part about whether these rules meet Paperwork Reduction Act standards, the Commission

² See Sprint, p. 2; GCI, p. 3; TracFone, p. 22; US Telecom, p. 2.

³ See, e.g., Sprint, p. 4 (estimating \$800,000 per year in recurring costs and an additional \$350,000 in one-time costs to upgrade administrative systems).

⁴ See Notice of Office of Management and Budget Action dated April 13, 2012, ICR Reference Number 201203-3060-002 (noting under “Terms of Clearance” that the temporary address confirmation and recertification rules had been removed from the FCC’s information collection request).

should rescind its temporary address policy and delete Sections 54.410(g), 54.410(d)(2)(iii) and 54.410(d)(3)(iv) from the Rules.

2. Biennial Audits

Sprint supports petitions filed by GCI and US Telecom to reconsider the biennial audit rules.⁵ Requiring carriers who receive \$5 million or more in Lifeline benefits a year to commission a third party biennial audit is costly and unlikely to generate meaningful program benefits given other extensive safeguards against waste, fraud and abuse in place today or scheduled for implementation within a matter of weeks. Indeed, as GCI states, the biennial audits are “pure administrative overkill,”⁶ given the existing Lifeline audit and review activities performed the ETC’s own employees, the ETC’s general independent auditors, and Lifeline-specific audit activities performed by USAC, third party auditors under USAC’s direction, and FCC personnel.

At a minimum, the Commission should rescind the requirement that the third-party auditor file draft audit reports with the Commission and USAC. Draft reports are subject to potentially significant revisions. Review of draft audit report by the Commission or USAC would serve no useful purpose and would divert resources away from other, more productive and critical work.

3. Flat-Rated Lifeline Benefit

TracFone has requested reconsideration of the level of the flat-rated Lifeline benefit, arguing that the \$9.25 is arbitrary and its calculation unexplained.⁷ Sprint agrees that the \$9.25 average Lifeline flat-rate should be reconsidered. Use of a nationwide average will give a windfall to certain carriers that happen to offer service in a state in

⁵ GCI, p. 9; US Telecom, p. 9.

⁶ GCI, p. 9.

⁷ TracFone, p. 25.

which the ILEC has a low subscriber line charge (SLC), at the expense of carriers that happen to offer service in a state with a high SLC. If a state with a low SLC also happens to have a large number of Lifeline subscribers (*e.g.*, California), its impact on the nationwide average is even more pronounced, to the particular detriment of carriers that do not offer service in the low-SLC state.

The future level of the Lifeline benefit is currently under active consideration in the Lifeline FNPRM proceeding.⁸ If the Commission has not issued an order addressing this matter before August 1, 2012 (when the \$9.25 flat rate becomes mandatory for all Lifeline ETCs), Sprint suggests that the Commission waive for an additional period of time the implementation of the mandatory \$9.25 flat-rated Lifeline benefit.⁹

4. Lifeline Support for Payphones

In the *Lifeline Reform Order*, the Commission denied two petitions filed by APCC requesting Lifeline support for all publicly available phones, correctly concluding that “Lifeline is intended to benefit eligible low-income consumers, not service providers,”¹⁰ and that payphone service fails the standard set forth in Section 254 of the Act, which requires the Commission to define services eligible for universal service support based in part on a determination that the services “have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential

⁸ *See, e.g.*, Sprint’s comments in WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45 and WC Docket No. 12-23, filed April 2, 2012, pp. 8-11, explaining the basis for a \$10.00 per month flat-rated Lifeline benefit.

⁹ The Commission waived on its own motion the requirement that all ETCs seek \$9.25 flat-rate support for Lifeline service provided through July 31, 2012. *See* Public Notice DA 12-689 released May 1, 2012, p. 2.

¹⁰ *Lifeline Reform Order*, para. 396.

customers....”¹¹ APCC has filed for reconsideration of the denial of Lifeline support for payphones.

APCC’s petition should be dismissed on both statutory and procedural grounds. First, APCC has failed to rebut the Commission’s finding that payphone service does not meet the initial hurdles of Lifeline eligibility: it is not used by a majority of residential customers (a requirement – not an optional consideration -- under Section 254(c)(1)(B) of the Act); and payphone providers are not qualifying low-income *consumers* eligible to receive Lifeline service support (*see, e.g.*, Section 54.400 of the Commission’s Rules).¹²

Second, the Commission may grant a petition for reconsideration “if it is based on new evidence, changed circumstances or if reconsideration is in the public interest.... The Commission, however, does not grant reconsideration for the purpose of allowing a petitioner to reiterate arguments already presented. This is particularly true, where a petitioner advances arguments that the Commission previously considered and rejected in prior orders.”¹³

Under these standards, APCC’s request for reconsideration must be denied.

APCC has not provided any new facts or arguments which would warrant grant of its

¹¹ *Id.*, para. 397, quoting 47 U.S.C. § 254(c)(1)(B).

¹² Oddly enough, APCC asserts that “it is not at all clear that wireless mobile services are subscribed to by a majority of ‘residential customers’” (p. 12), and that the Commission “did not explain why the extraordinary efforts [to provide Lifeline support] were warranted for wireless but no resources were worth expending to even examine the role of payphones in providing voice services to low income consumers” (p. 17). To the contrary, the Commission did indeed explain that payphone providers, unlike wireless service subscribers, are not qualifying low-income *consumers* eligible to receive Lifeline service support. Moreover, to suggest that a majority of residential customers do not subscribe to wireless service is passing strange, given the hundreds of millions of wireless service subscribers.

¹³ *See Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability, Fourth Order on Reconsideration* (FCC 07-65) released April 26, 2007, para. 5, citing 47 C.F.R. § 1.429(b)(3).

petition and reversal of the Commission's order. For example, APCC again expresses its belief that payphone service contributes to universal service because it is an on-demand service available 24/7, and which does not require the end user to invest in equipment.¹⁴ It also complains that existing Lifeline support for mobile service is contributing to the removal of payphones.¹⁵ Neither of these points is new, and the Commission has already considered and appropriately addressed both contentions. Further reconsideration is neither warranted nor procedurally appropriate.

Finally, APCC has failed to demonstrate that the public interest would be served by grant of its petition. There is very little public interest benefit to be gained by artificially supporting an industry segment that is dying because it is unable to compete with other technologies such as wireless and because of lack of demand for the service being offered. To allocate scarce USF resources¹⁶ to prop up the dying payphone industry is the very antithesis of the competitive neutrality standard APCC purports to espouse.¹⁷

5. Additional Clarifications

Various parties have requested clarification of the new Lifeline rules. Sprint agrees that specific Commission guidance on the following issues will help to ensure smooth and fair implementation of the new rules:

- TracFone has requested reconsideration of Section 54.407(c)(1) of the Rules, which requires prepaid Lifeline service customers to activate their service “by whatever means specified by the carrier, such as completing an outbound call,”

¹⁴ See APCC Petition for Rulemaking to Provide Lifeline Support to Payphone Line Service filed December 6, 2010, p. 6; and Petition for Partial Reconsideration, p. 6.

¹⁵ APCC Petition for Rulemaking, p. 19; Petition for Reconsideration, p. 16.

¹⁶ APCC estimates that providing \$9.25 in Lifeline support per payphone would cost approximately \$48 million per year (APCC Petition for Reconsideration, p. 18).

¹⁷ See APCC, p. 19 (“competitive and technological neutrality require the Commission to match its support of mobile wireless phones with support for payphones”).

before the carrier may receive Lifeline support.¹⁸ TracFone has interpreted this rule as prohibiting it from sending its customers an activated handset. However, Sprint believes that Section 54.407(c)(1) does in fact allow the service provider to send the customer a live handset (that is, a handset that has been prepared so that the end user may immediately use it to place or receive a call). The Commission should clarify that this rule requires the subscriber to affirmatively use the service (e.g., to place or receive a call, check a voice mail message, etc.) as a precondition to the ETC's requesting Lifeline support for that line.

- GCI has requested that the Commission clarify that all of the disclosures adopted in the *Lifeline Reform Order* need not be included in all marketing materials.¹⁹ Sprint agrees that, so long as the requisite disclosures are appropriately presented in the Lifeline service application, are on its website, and can be explained by its customer service representatives, that they need not be included in “newspaper, radio and television advertisements and outdoor signage” (*id.*). Commission clarification in this regard would be useful.
- Nexus (p. 6) and US Telecom (p. 10) have requested that the Commission clarify what constitutes acceptable documentation of program eligibility. Sprint supports this request. To ensure that all ETCs comply with the documentation requirement, and to avoid negative audit results and possible mandated de-enrollments based on an unclear standard, the Commission should provide specific and detailed guidance regarding acceptable documentation.
- TracFone has requested clarification of “usage” for purposes of the 60-day non-usage requirement and proposes additions to the list of transactions that constitute usage.²⁰ Sprint agrees that the Commission should expand the list of transactions considered legitimate forms of usage for determining account activity. A revised list should also include the sending of a text message or e-mail from the Lifeline telephone line; “topping up” a prepaid Lifeline account to purchase additional voice or data services; and checking a voice mail message left on the Lifeline telephone line. These actions indicate that the subscriber is using the service, retains possession of the handset (and, in the case of wireless devices, that the handset is charged and turned on), or is otherwise aware of and wishes to retain the service.

¹⁸ TracFone, p. 19; *see also*, Nexus, p. 11.

¹⁹ GCI, p. 15.

²⁰ TracFone, p. 15. Section 54.407(c)(2) defines usage to include placing an outbound call; purchasing minutes from the ETC; answering an inbound call from anyone other than the ETC; and responding to direct contact from the ETC and confirming that the customer wants to continue to receive Lifeline service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing “Comments on Petitions for Reconsideration” of Sprint Nextel Corporation was filed electronically or via US Mail on this 7th day of May, 2012 to the parties listed below.

/s/ Norina T. Moy

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