

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

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

WC Docket No. 11-42

WC Docket No. 03-109

CC Docket No. 96-45

WC Docket No. 12-23

**OPPOSITION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
AND THE PEOPLE OF THE STATE OF CALIFORNIA TO PETITIONS
FOR RECONSIDERATION OF THE *LIFELINE REFORM ORDER***

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I. INTRODUCTION AND SUMMARY

On April 5, 2012, the Federal Communications Commission (FCC or Commission) issued Public Notice - Report No. 2948 - setting a pleading cycle for Petitions for Reconsideration of the *Lifeline Reform Order*¹ filed by: (1) The United States Telecom Association (USTelecom); (2) TracFone; (3) Sprint Nextel Corporation (Sprint); (4) Nexus Communications, Inc. (Nexus); (5) American Public Communications Council, Inc. (APCC); (6) General Communication, Inc. (GCI); and (7) T-Mobile USA, Inc. (T-Mobile).² The California Public Utilities Commission and the People of the State of California (CPUC or California) file this Opposition to Petitions for Reconsideration.

The CPUC opposes:

1. USTelecom's request to limit states' authority to adopt additional regulations for the Lifeline program;
2. Nexus' request to "encourage" states to process a carrier's application for eligible telecommunications carrier (ETC) status even if the carrier has not obtained an approval from the FCC of its compliance plan;
3. TracFone's request to eliminate the documentation requirement for program-based eligibility applicants; and
4. GCI's request to eliminate the audit requirement for carriers that receive more than \$5 million per year in federal Lifeline reimbursements.

II. DISCUSSION

A. The CPUC opposes USTelecom's request to limit states' authority to adopt additional regulations for the Lifeline program.

USTelecom states that the Commission should clarify the *Lifeline Reform Order* to prohibit states from adopting additional certification requirements for the Lifeline

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

² Oppositions are due May 7, 2012 and Replies to Oppositions are due May 15, 2012 according to the FCC's Public Notice – DA 12-655 – released on April 25, 2012.

program.³ California strongly opposes USTelecom’s request because it violates 47 U.S.C. § 254(f). Section 254(f) authorizes states to adopt additional regulations for the Lifeline program if they are consistent with the Commission’s rules:

A State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service . . . A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service mechanisms.

Thus, if the additional requirements that a state wishes to adopt do not conflict with the FCC’s rules, the state should be permitted to adopt them.

Additionally, in the *Lifeline Reform Order*, the Commission held that “states may adopt additional program or income criteria to address the unique circumstances facing consumers in their states.”⁴ Because states know more about the unique needs of the consumers in their state than the federal government, the Commission should continue to allow states to adopt additional regulations – including additional certification requirements – as long as they are consistent with the federal Lifeline rules.

The California LifeLine program includes additional measures to better meet the needs of low-income Californians. Our LifeLine program:⁵

- Allows customers to avoid bill shock by requiring carriers to sign them up for telephone service at regular rates until they are approved for the LifeLine program;
- Subsidizes connection and conversion charges for LifeLine customers; and
- Has two more public assistance programs on the eligibility list than the FCC’s program list.

³ USTelecom’s Petition for Reconsideration at p. 7.

⁴ *Lifeline Reform Order* at para. 65; *See also* 47 C.F.R. 54.409(a)(3).

⁵ *See* CPUC’s General Order 153.

Because these measures are consistent with the FCC’s rules and allow more low-income persons to enroll in the LifeLine program, the Commission should continue to allow California – and other states – to adopt additional Lifeline measures.

B. The CPUC opposes Nexus’ request to “encourage” states to process a carrier’s ETC application even if the carrier has not obtained an approval from the FCC of its compliance plan.

In the *Lifeline Reform Order*, the Commission held that it would forebear the “own facilities” requirements of 47 U.S.C. § 214(e)(1)(A)⁶ for carriers that seek to become Lifeline-only ETCs if they demonstrate to the Commission that they will comply with the following federal Lifeline requirements:

1. The carrier must comply with certain 911 requirements; and
2. The carrier must file with the Wireline Competition Bureau, and the Bureau must approve, a compliance plan providing specific information regarding the carrier’s service offerings and outlining the measures the carrier will take to implement the obligations contained in this Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary.⁷

In its Petition for Reconsideration, Nexus states that some state commissions have dismissed Lifeline-only ETC applications and have informed the ETCs that they will not process the applications until their ETC compliance plan is approved by the Wireline Bureau.⁸ Nexus opposes this approach and states that “[t]here is no reason for a state commission to dismiss a pending ETC petition and require carriers to bear the expense and delay associated with ‘restarting’ the application process anew.”⁹ Nexus states that state commissions should review the ETC applications at the same time the Wireline Bureau is reviewing the ETC’s compliance plan.¹⁰

⁶ See also 47 C.F.R. §54.201(d)(1)(i).

⁷ *Lifeline Reform Order* at para. 368.

⁸ Nexus’ Petition for Reconsideration at pp. 8-9.

⁹ *Id.*

¹⁰ *Id.*

Currently, the CPUC dismisses Lifeline-only ETC applications if the carrier has not obtained an approval of its compliance plan from the Commission. We dismiss the ETC applications because: (1) the CPUC has limited staff resources; (2) the CPUC staff time and costs would be wasted if the ETC applications that we approve are subsequently rejected by the Commission; and (3) it is unknown how long the Commission will take to approve an ETC's compliance plan. The CPUC therefore urges the FCC to leave this matter to the discretion of states that designate ETC status. States should not be required to process or hold an ETC application when the carrier's compliance plan is still pending before the Commission.

C. The CPUC Opposes TracFone's request to eliminate the documentation requirement for program-based eligibility applicants.

In the *Lifeline Reform Order*, the Commission established a mandatory documentation requirement for program-based eligibility applicants.¹¹ Under Section 54.410(c)(1)(i)(B), if a state does not have an electronic eligibility database that carriers can access to determine an applicant's eligibility, the carrier - or the state administrator, where applicable - is required to obtain documentation from the applicant:

If an eligible telecommunications carrier cannot determine a prospective subscriber's program-based eligibility for Lifeline by accessing eligibility databases, the eligible telecommunications carrier must review documentation demonstrating that a prospective subscriber qualifies for Lifeline under the program-based eligibility requirements.

TracFone requests the Commission to eliminate the documentation requirement for program-based eligibility applicants. TracFone states that this requirement is unnecessary and burdensome.¹²

The CPUC disagrees with TracFone and recommends that the Commission retain the documentation requirement. The CPUC does not have an automated electronic eligibility database that carriers can use to verify an applicant's eligibility. Without the

¹¹ Prior to the *Lifeline Reform Order*, the Commission only required carriers to obtain documentation from applicants that applied under the income-based criterion.

¹² TracFone's Petition for Reconsideration at p. 3.

documentation requirement, the CPUC is unable to verify whether an applicant is eligible for the Lifeline program.

Additionally, while customers are required to undergo an annual re-certification of their eligibility, they are not required to provide any documentation to re-certify their eligibility for the program. Under Section 54.410(f)(3)(iii), customers can simply self-certify that they continue to meet the eligibility requirements:

Where a state Lifeline administrator or other state agency is responsible for re-certification of a subscriber's Lifeline eligibility, the state Lifeline administrator or other state agency must confirm a subscriber's current eligibility to receive a Lifeline service by:

- (iii) obtaining a signed certification from the subscriber that meets the certification requirements in paragraph (d) of this section.

But, a self-certification method is insufficient to detect fraud or prevent ineligible customers from enrolling in the Lifeline program. Therefore, the Commission should require all Lifeline applicants – program-based and income-based – to submit documentation that substantiates their eligibility.

D. The CPUC Opposes GCI's request to eliminate the audit requirements for carriers that receive more than \$5 million per year in federal Lifeline reimbursements.

GCI requests that the Commission eliminate Section 54.420, which requires carriers that receive more than \$5 million per year in Lifeline reimbursements, to undergo an audit every two years. These audits are to be conducted by a third-party to assess a carrier's compliance with the FCC's Lifeline program requirements. GCI states that the audit requirement is superfluous because carriers already undergo a number of other reviews that assess their overall compliance with the program rules.¹³

The FCC should not eliminate the new audit requirement. The CPUC agrees with the FCC that an independent audit of the larger carriers is necessary because:

- The Lifeline program has grown significantly;

¹³ GCI Petition for Reconsideration at pp. 9-10.

- To ensure that the Lifeline program effectively serves those most in need;
- Carriers that draw \$5 million from the fund on an annual basis collectively draw more than 90% of the Lifeline support from the program; and
- These carriers pose the biggest risk to the program if they lack effective internal controls to ensure compliance with Commission requirements.¹⁴

The FCC also held that, if no material findings are found in the first audit report, a carrier's subsequent biennial audit may be waived.¹⁵

Additionally, the FCC should not eliminate the audit requirement because California – and likely many other states - does not have the resources to conduct audits of these large multi-state carriers on a regular basis.

II. CONCLUSION

For the foregoing reasons, the FCC should deny: (1) USTelecom's request to limit states' authority to adopt additional regulations for the Lifeline program; (2) Nexus' request to "encourage" states to process a carrier's ETC application even if the carrier has not obtained an approval from the FCC of its compliance plan; (3) TracFone's request to eliminate the documentation requirement for program-based eligibility applicants; and (4) GCI's request to eliminate the audit requirement for carriers that receive more than \$5 million per year in federal Lifeline reimbursements.

¹⁴ *Lifeline Reform Order* at para. 295.

¹⁵ *Id.*

Respectfully submitted,

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