



June 6, 2012

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: *In the Matter of Lifeline and Link-Up Reform and Modernization,*
WC Docket No. 11-42

Dear Ms. Dortch:

On June 4, 2012, Cathy Carpino and Mike Tan (of AT&T) and the undersigned (of USTelecom) spoke on June 4, 2012, via telephone with Garnet Hanly of the FCC's Wireline Competition Bureau regarding the FCC's recently released Order¹ granting USTelecom's Petition for Waiver.²

In particular, we expressed our concerns regarding paragraph 5 of the order, which reads:

During the waiver period, in accordance with sections 54.410(b)(2)(i) and 54.410(c)(2)(i), these states must provide notice to the ETCs that their subscribers have complied with the Lifeline eligibility requirements and have executed a certification form.

While this language may address the issue of whether ETCs are entitled to seek reimbursement prior to having received customer certifications, it takes for granted a very important factual matter, that is, whether states have *actually* modified (or intend to modify during the waiver period) their processes to seek and collect end-user certifications. After all, it stands to reason that a state cannot send notice to ETCs that customers have executed a

¹ See *Waiver Order*, Lifeline and Link Up Reform and Modernization, (WC Docket No. 11-42), Lifeline and Link Up (WD 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), released May 31, 2012.

² See USTelecom Lifeline and Link Up Reform and Modernization *et al.*, Petition for Waiver, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (filed April 25, 2012) (USTelecom Petition).

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certification form if it has not actually required customers to execute such form. And this concern is not merely a hypothetical one, as the regulatory agencies from at least two jurisdictions that are covered by the waiver have already acknowledged that they will not be able to comply with the June 1st requirement to collect end-user certifications.³

Of course, whether states are taking the necessary steps to comply with the FCC's certification requirement is and always will be outside of the control of ETCs. This lack of control over state processes was the very impetus behind the USTelecom Petition for Waiver in the first instance. So absent written confirmation of state receipt of customer certifications (in states that have not yet modified their process to comply with the FCC's requirements), ETCs are still in the position where they may be required to decline to enroll otherwise eligible customers in the Lifeline program in order to comply with the FCC's rules.⁴

In order to prevent this from occurring, the FCC should consider ETCs who enroll Lifeline customers for whom the state has provided notice of eligibility to the ETC to be in compliance with the Commission's rules. To best effectuate Commission policy, the Commission should require states to possess the requisite customer certification prior to sending notice of customer eligibility to ETCs, not place the burden of compliance on ETCs who have no ability to determine state action. USTelecom recognizes that the FCC wishes to maintain the incentives on states to act quickly to modify their processes, but it should rely on the fact that the waiver period is limited to accomplish that purpose, rather than to deprive otherwise eligible customers from receiving Lifeline discounts.

Should you have any questions regarding the above or the attached, please feel free to contact me directly.

Sincerely,



David B. Cohen

cc: Garnet Hanly
Kimberly Scardino
Jonathan Lechter

³ See Public Service Commission of the District of Columbia, *Ex-Parte*, WC Docket Nos. 11-42, 03-109, 12-23, and CC Docket No. 96-45 (filed May 31, 2012); and Washington Utilities and Transportation Commission, *Ex-Parte*, WC Docket Nos. 11-42, 03-109, and CC Docket No 96-45 (filed May 15, 2012).

⁴ Washington Utilities and Transportation Ex-Parte at 2.