Wiley Rein LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

December 10, 2012

Bennett Ross
202.719.7524
bross@wileyrein.com

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Virgin Islands Telephone Corp. d/b/a Innovative Telephone's Petition for Clarification and Waiver; Lifeline and Link Up Reform and Modernization*, WC Docket 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

Dear Ms. Dortch:

On November 29, 2012, the Virgin Islands Telephone Corp. d/b/a Innovative Telephone ("Innovative") filed a Petition for Clarification and Waiver ("Petition") in the above-referenced proceedings seeking guidance on – as well as additional time to implement – the Commission's recent Lifeline reforms. As explained in the Petition, the United States Virgin Islands ("USVI") faces unique circumstances in making Lifeline eligibility determinations, which the Commission's Lifeline rules do not expressly address.

Accordingly, Innovative's Petition seeks clarification or, in the alternative, waiver of section 54.409(a) of the Commission's rules in the USVI. In addition, in order to protect low-income consumers during the pendency of its Petition, Innovative requested that the Commission: (1) extend the waiver of sections 54.410(b)(2)(ii) and 54.410(c)(2)(ii) and portions of section 54.407(d) previously granted to the USVI; and (2) waive section 54.410(f) of its rules and the December 31, 2012 deadline for completing the process for recertifying the eligibility of Lifeline subscribers in the USVI.

In response to questions from Commission staff regarding the scope of the Petition, Innovative respectfully submits this letter to clarify and amend the relief it is seeking as it relates to the requested waiver of section 54.410(f) and the December 31, 2012 recertification deadline. Specifically, Innovative clarifies that its request for a waiver includes: (i) the de-enrollment requirements set forth in section 54.405(e)(4) of the Commission's rules, specifically the requirement that an eligible telecommunications carrier provide subscribers who have failed to respond to a recertification request with 30 days' notice that such failure will trigger de-

enrollment and to de-enroll a non-responding subscriber five (5) business days thereafter; and (ii) the reporting requirement set forth in section 54.416(b) of the Commission's rules, specifically the obligation of an eligible telecommunications carrier to report the results of the re-certification process to the Commission and USAC by January 31, 2013 using FCC Form 555. Innovative also amends its Petition to request that the Commission waive sections 54.410(f), 54.405(e)(4), and 54.416(b) for 30 days, which would give the parties until January 30, 2013 by which to complete the recertification process in the USVI and give Innovative until March 1, 2013 to file its FCC Form 555 reflecting the results of that process.

As noted in the Petition, the Virgin Islands Department of Human Services ("DHS") makes Lifeline eligibility determinations regarding Innovative's customers, and Innovative has been working diligently with DHS and the Virgin Islands Public Services Commission ("VIPSC") in implementing the Commission's Lifeline rules. These efforts have been complicated by the unsettled issues surrounding Lifeline eligibility in the USVI, as explained in the Petition.

Nonetheless, Innovative, DHS, and the VIPSC are committed to protecting against waste, fraud, and abuse in the Lifeline program. In fact, prior to the Commission's recent reforms, Lifeline subscribers in the USVI have been required to recertify their eligibility for benefits every six or twelve months, depending upon the method used to establish eligibility. There is no reason to believe that the Lifeline program in the USVI has been or is being abused by the granting of benefits to ineligible subscribers. Indeed, Innovative currently has fewer than 800 Lifeline subscribers in the USVI, which is somewhat surprising given that the USVI has a higher cost of living and greater levels of poverty as compared to the mainland.

In implementing the Commission's recertification requirements, Innovative provided DHS earlier this year with a list of its Lifeline subscribers. It is Innovative's understanding that DHS either maintains or has access to a database that it uses to determine Lifeline eligibility based on participation in certain of the federal assistance programs set forth in section 54.409(a)(2) of the Commission's rules, which Innovative further understands DHS consulted in recertifying at least some of Innovative's Lifeline subscribers as required by section 54.410(f). Although Innovative does not have insight into the process used by DHS to recertify the eligibility of Lifeline subscribers whose participation in qualifying assistance programs cannot be confirmed through an available database, DHS has

been providing Innovative with the names of Lifeline customers who purportedly have been recertified.

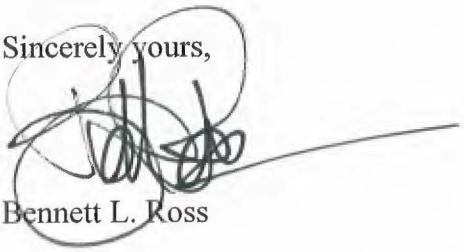
Unfortunately, although recertification information has been received for the vast majority of Lifeline subscribers, this process has taken DHS longer than expected. With the deadline for decertification fast approaching, Innovative has not received information regarding approximately 60 Lifeline subscribers whom DHS has yet to recertify. There is no reason to believe that these subscribers are ineligible for Lifeline benefits. Indeed, Innovative has not been notified by DHS that it has been unable to recertify these subscribers as contemplated by section 54.410(f)(4). For most, if not all of the subscribers for whom recertification information has not yet been provided, Innovative believes that DHS simply has not yet contacted these subscribers to request the requisite recertification.

Because most, if not all of these approximately 60 subscribers likely remain eligible for Lifeline benefits and will eventually be recertified by DHS, Innovative seeks to avoid setting the de-enrollment process in motion at this time. In fact, if it turns out that these subscribers have been contacted by DHS but nonetheless failed to provide a signed recertification form (which Innovative does not believe is the case), neither DHS nor Innovative is able to provide them with the requisite 30 days' advice notice of de-enrollment in time to meet the December 31, 2012 deadline. *See* 47 C.F.R. §§ 54.410(f)(5), 54.405(e)(4).

Under the circumstances, Innovative respectfully requests that the Commission grant the requested waiver as it relates to sections 54.410(f), 54.405(e)(4), and 54.416(b) of the Commission's rules, and: (i) extend for 30 days (until January 30, 2013) the deadline for DHS to complete its recertification process and for Innovative to de-enroll any subscribers whom DHS notifies Innovative it has been unable to recertify and who fail to respond to the required 30-day notice; and (ii) extend for 30 days (until March 1, 2013) the deadline for Innovative to submit its Form 555 to the Commission and USAC.

Thank you for your attention to this request, and please let me know if there are any additional questions.

Sincerely yours,



Bennett L. Ross

cc: Kim Scardino
Jonathan Lechter