

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Lifeline Reform 2.0 Coalition’s Petition for) **WC Docket No. 11-42**
Rulemaking to Further Reform the)
Lifeline Program)

To: The Commission
(Filed electronically through ECFS)

COMMENTS OF NTCH, Inc.

1. Introduction. NTCH, Inc. ("NTCH") hereby submits these Comments in response to the Commission’s request for comments to the above captioned petition for rulemaking, released July 15, 2013. The instant petition for rulemaking seeks to reform a program which has already been the subject of similar reform attempts. While particular provisions of the above-captioned petition may have the effect of marginally reducing the ongoing waste, fraud and abuse in the Lifeline program, the Commission would more effectively reform Lifeline if it simply rescinded its waiver of the Communication Act’s “facilities only” requirement.

2. Discussion. As we stated in our August 8, 2012, Petition to Rescind Forbearance, by waiving the Section 214(e)(1)(A) facilities-based requirement, the Commission created the opportunity for waste, fraud and abuse by allowing mobile virtual network operators (MVNO’s) to participate in Lifeline. Such Lifeline providers have regularly and on a massive scale offered Lifeline service to customers who did not qualify under the Commission's rules. These abuses continue, and tinkering around the edges of reform will not suffice to ensure the effectiveness of the Lifeline program. The Commission should enforce the statute as written and designate only facilities-based carriers as Lifeline ETCs.

3. In our August 8, 2012, Petition to Rescind Forbearance, NTCH addressed the statute's requirement that an entity be facilities-based in order to be eligible as a Lifeline ETC and laid out the specific elements necessary for forbearance – elements which are not present. Section 214(e)(1)(A) of the Communications Act requires an Eligible Telecommunications Company to offer service "either by use of its own facilities or a combination of its own facilities and resale of another carrier's services." None of the factors the Commission relied on to forbear from applying this facilities-based requirement remain true, if indeed they were ever true to begin with. That being the case, the Commission not only should, but in fact is required to, rescind its forbearance determination and resume applying the statute as written and enacted by Congress.

4. In addition to the well-known abuses, the waiver harms both the public generally, and low-income consumers specifically, through “predatory pricing by proxy.” Allowing MVNO’s to participate in the Lifeline program not only results in harm through the broad-based waste, fraud and abuse; through diminished trust in the efficacy of federal subsidy programs; through low-income consumers induced into unlawful subsidies; but also through pushing out small facilities-based service providers who compete against the major carriers. Major carriers unable to engage in anti-competitive activities benefit from MVNO’s providing service on leased facilities at cutthroat rates subsidized by the Lifeline program. Lifeline-subsidized MVNO’s riding on the facilities maintained by the major carriers have demonstrated their willingness to offer free service to Lifeline subscribers. “Free” and “nearly-free” are near-impossible service offerings for facilities-based providers to compete against. MVNO’s supported by Lifeline subsidies are running out of business the small facilities-based entities that would normally hold down costs for customers by competing with the major carriers – and particularly for the

business of low-income customers. The intent of the program was not to reduce competition for the major carriers, but one of its effects has been “predatory pricing by proxy.”

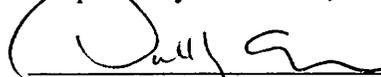
5. The most effective means to end the waste, fraud and abuse is to remove the eligibility for non-facilities-based carriers to be Lifeline ETCs. An alternative to entirely removing MVNO’s from the program would be to require non-facilities-based ETCs to identify the underlying facilities-based carrier. The identity of the facilities-based ETCs should be made transparent to the public so that (i) the underlying carriers can be held responsible for the acts of those with whom they do business and (ii) so that consumers can evaluate the reliability and scope of the actual service they are signing up for.

6. Conclusion. In the above-captioned petition several iterative changes in the Lifeline rules are suggested. Reviewing government ID’s may help – in fact some providers already do so. Providing customer service is suggested as a reform – this already has been a feature of our offerings. Other suggested changes may have additional positive but marginal impact. For the Commission to truly address the ongoing waste, fraud and abuse in the Lifeline program it should simply grant NTCH’s Petition to Rescind Forbearance – submitted over a year ago without any opportunity for Public Comment – and cease the eligibility for the greatest abusers of the Lifeline program.

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Respectfully submitted,



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