

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Lifeline and Link Up Reform and) WC Docket No. 11-42
Modernization)
)

COMMENTS OF THE JOINT COMMENTERS

The Joint Commenters,¹ by and through their attorneys, respectfully submit these comments in response to the Federal Communications Commission’s (“Commission’s”) Public Notice regarding the Lifeline biennial audit plan.² The Joint Commenters support the Commission’s efforts to reform the Lifeline program, including through the imposition of additional auditing requirements, such as the biennial audits for large ETCs. The Joint Commenters provide the following comments to clarify and improve the proposed audit procedures and standards.

First, audit firms should generally include findings of potential rule violations in the draft and final Attestation Reports, and should only be required to immediately notify the Commission and the Universal Service Administrative Company (“USAC”) in instances where the audit firm uncovers indications of actual fraud committed by the ETC, or a pattern of clear and material law or rule violations. Second, although no Commission rule or order defines or describes what constitutes a duplicate Lifeline enrollment, the Joint Commenters agree that the

¹ The Joint Commenters are Telrite Corporation; i-wireless LLC; Boomerang Wireless, LLC; Global Connection Inc. of America and Blue Jay Wireless, LLC. All of these companies are competitive eligible telecommunications carriers (“ETCs”) that provide wireless Lifeline service to eligible low-income consumers in numerous states.

² See *Wireline Competition Bureau Seeks Comment on the Lifeline Biennial Audit Plan*, WC Docket No. 11-42, DA 13-2016 (Sept. 30, 2013) (“Public Notice”).

proposed guidance provided in the Public Notice for determining when two accounts belong to the same subscriber – that is, exact same name, birth date and last four digits of Social Security Number (“SSN”) – is reasonable. If the Commission wants to establish a different definition of a “duplicate” for purposes of the biennial audits or otherwise, such as similar-looking name and address, then it should do so in a rulemaking.

I. Audit Firms Should Only Be Required to Immediately Notify the Commission and USAC If They Uncover Actual Fraud Committed by the ETC, or a Pattern of Clear and Material Violations of Laws or Rules

In the Engagement Plan, the Commission proposes a requirement that “if the audit firm identifies or becomes aware of any situation that *indicates waste, fraud, or abuse* of the Lifeline program or of any other USF programs while performing the audit, the audit firm has an obligation to **immediately notify** the Commission and USAC, as required by [Generally Accepted Government Auditing Standards (“GAGAS”)] paragraphs 5.58 and 5.59.”³ According to the cited GAGAS paragraphs, “auditors are required to communicate ‘significant deficiencies, material weaknesses, instances of fraud, *noncompliance with provisions of laws, regulations, contracts, or grant agreements, or abuse that comes to the auditors’ attention during an agreed-upon procedures engagement.*”⁴

This is an open-ended and ambiguous standard that could result in an endless stream of “immediate notifications” to the Commission and USAC for every potential technical rule violation, no matter how minor or speculative and unproven. Without further guidance, some auditors may read this requirement to impose an obligation on them to immediately notify the Commission and USAC of any situation that indicates any perceived noncompliance with any provisions of laws or regulations.

³ Public Notice, Attachment 2 at 6 (emphasis added).

⁴ *Id.* at n. 18 (emphasis added).

Further, almost any indication of a potential rule violation could be interpreted as potential “waste” or “abuse” of the Lifeline program. For example, as part of its Fieldwork Testing Procedures under Objective III, an audit firm could find a subscriber certification form that does not include one of the many required disclosures, such as “Lifeline is a federal benefit and that willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment or being barred from the program” or “Lifeline is a non-transferable benefit and the subscriber may not transfer his or her benefit to any other person,” or the language is modified slightly.⁵ Based on the language in the Public Notice, an audit firm might interpret the situation to mean that the Lifeline enrollment is invalid and any reimbursements received for that subscriber indicates waste or abuse of the Lifeline program such that the audit firm must immediately notify the Commission and USAC.

As a further example, Objective III requires audit firms to “compare the ETC’s subscriber eligibility criteria on the certification forms to the federal eligibility criteria list in...47 C.F.R. ¶ 54.409” and note any discrepancies.⁶ Putting aside the fact that the list of eligibility programs may be state-specific and impacted by state waivers, if the audit firm finds a discrepancy in the listed programs, it might interpret the situation to mean that any reimbursements received for that subscriber indicates waste or abuse of the Lifeline program such that the audit firm must immediately notify the Commission and USAC.

Generally, any auditor findings should be included in the draft and final Attestation Report. The Engagement Plan requires audit firms to “describe in the draft and final reports all instances of noncompliance with applicable Commission rules or its related implementing orders that were noted by the audit firm in the course of the engagement, or that

⁵ *Id.* at 18.

⁶ Public Notice, Attachment 2 at 19.

were disclosed by the ETC during the engagement....”⁷ However, only a small subset of such “instances of noncompliance” should meet the threshold requiring “immediate notification” to the Commission and USAC. Immediate notification should be limited to instances where the audit firm uncovers indications of actual fraud committed by the ETC or a pattern of clear and material law or rule violations. Such a standard will free ETCs, the Commission and USAC from having to address minor issues in a piecemeal fashion prior to the final Attestation Report.

II. The Joint Commenters Agree That the Proposed Guidance for Determining That Two Accounts are Duplicate Enrollments For Purposes of the Biennial Audits is Reasonable

Although no Commission rule or order defines or describes what constitutes a duplicate Lifeline enrollment, the Joint Commenters agree that the proposed guidance provided in the Public Notice for determining that two accounts are duplicates is reasonable. Objective II of the Fieldwork Testing Procedures would require audit firms to use “computer-assisted audit techniques” to examine each ETC’s subscriber list and note if there are any “Duplicate addresses, same subscribers (same name, birth date, and last four of Social Security Number).”⁸ Therefore, audit firms are to report only those instances where electronic screening techniques identify accounts that have the exact same name, birth date and last four digits of the SSN.

If the Commission wants to establish a different definition of a “duplicate” for purposes of the biennial audits or otherwise, such as similar-looking name and address, then it should do so in a rulemaking where it can consider and decide how best to draw these lines while avoiding the unintended consequence of rejecting eligible consumers. At a minimum, guidance would be necessary because no Commission rule or order defines what constitutes a duplicate. In the 2011 Duplicate Payments Order, the Commission adopted a rule that “no qualifying

⁷ *Id.* at 7.

⁸ Public Notice, Attachment 2 at 15.

customer” is permitted to receive more than one Lifeline subsidy concurrently.⁹ A “qualifying customer” is not defined in the order. The Commission states only that this rule addresses “duplicative Lifeline subsidies received by the *same individual*.”¹⁰ Concurrent with the 2011 Duplicative Payments Order, the Wireline Competition Bureau (“Bureau”) issued instructions to USAC for conducting in-depth validations (“IDVs”).¹¹ As relevant to duplicates on the same provider’s network, the Bureau’s guidance refers to “intra-company duplicates,” which it describes as “same name, same address” duplicates.¹²

None of the Commission’s orders provides guidance for ETCs or audit firms on how to resolve information variances in customer names and addresses. Similarly, none of the orders provides guidance of how “other information” in the Lifeline ETC’s possession – such as the SSN or date of birth required to be collected by the 2012 Lifeline Reform Order – are to be considered to determine what in fact constitutes a duplicate. However, the proposed guidance in the Public Notice that intra-company duplicates for the same subscriber are defined as exact same name, birth date and last four digits of the SSN is reasonable.

⁹ See *Lifeline and Link-Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Report and Order, FCC 11-97, ¶ 8 (rel. June 21, 2011) (“2011 Duplicative Payments Order”). The Commission adopted a parallel rule to require a Lifeline ETC to offer one Lifeline service per “qualifying low-income consumer” that is not currently receiving Lifeline service from that or any other provider. *Id.*

¹⁰ *Id.* at ¶ 11 (emphasis in original).

¹¹ See Letter from Sharon E. Gillett, Chief, WCB, to D. Scott Barash, Acting Chief Executive Officer, USAC, DA 11-1082 (June 21, 2011).

¹² USAC, which may only implement Commission policies, not create them, similarly has provided little to describe how it interprets these two categories. In its IDV training materials, USAC states only that it has built a “Low Income Duplicate Detection System” to (1) “standardize addresses” through the USPS’s address matching system and (2) conduct name comparison using “lexical and phonetic approaches” to determine name variances. See Presentation, FCC-USAC Joint Training Event, In-Depth Data Validations, June 19, 2012, at 11. USAC does not disclose what “lexical and phonetic approaches” are used, nor does it state whether any manual processes or judgments are used to identify or resolve conflicts.

III. Conclusion

The Commission should provide additional clarification of the requirement that an audit firm immediately notify the Commission and USAC when it identifies a situation that *indicates waste, fraud, or abuse* of the Lifeline program. Audit firms should generally include findings of potential rule violations in the draft and final Attestation Reports, and only be required to immediately notify the Commission and USAC in instances where the audit firm uncovers indications of actual fraud committed by the ETC or a pattern of clear and material law or rule violations. In addition, although no Commission rule or order defines or describes what constitutes a duplicate Lifeline enrollment, the Joint Commenters agree that the proposed guidance provided in the Public Notice for determining that two accounts are duplicates belonging to the same subscriber – that is, exact same name, birth date and last four digits of SSN – is reasonable.

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