

**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 SMITH BAGLEY, INC.**

Smith Bagley, Inc, (“SBI”) pursuant to the Commission’s Public Notice,<sup>1</sup> submits these comments regarding the proposed audit plan (“Audit Plan”) for the Biennial Independent Audits required for certain Lifeline providers (“Independent Audits”).

SBI commends the Wireline Competition Bureau (“Bureau”) and the Office of the Managing Director (“OMD”) on their efforts in crafting an Audit Plan to serve the Commission’s stated goal of assessing the areas of greatest risk in program compliance. While it serves this objective in certain key respects, many aspects of the proposed Audit Plan raise significant concerns that it would duplicate USAC audits and other program oversight activities. As discussed below, SBI urges the Commission to modify or replace certain provisions of the Audit Plan to ensure that it conforms to the objectives set out in the Commission’s rules and orders.

**I. Introduction and Background.**

In the *Lifeline Reform Order*, the Commission adopted “a requirement that every ETC providing Lifeline services and drawing \$5 million or more in the aggregate on an annual basis ... hire an independent audit firm to assess the ETC’s overall compliance with the program’s

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<sup>1</sup> Public Notice, DA 13-2016, rel. Sept. 30, 2013.

requirements.”<sup>2</sup> The FCC specified that such audits will be performed once every two years,<sup>3</sup> and later clarified that “[i]f there are no material findings in a carrier’s first independent audit, the Wireline Competition Bureau has the authority to relieve the ETC of its obligation to perform the Independent Audits going forward.”<sup>4</sup>

The *Lifeline Reform Order* defines the scope of the Independent Audits as follows:

- The purpose of the audit is “to develop an understanding of the areas of biggest risk once the new [Lifeline] rules have been implemented.”<sup>5</sup>
- The audit should be designed “to assess the ETC’s *overall compliance* with the [Lifeline] program’s requirements.”<sup>6</sup>
- Instead of assessing compliance “at the individual study area level,” the audit should “focus on the company’s *overall compliance program and internal controls* regarding Commission requirements *as implemented on a nationwide basis*.”<sup>7</sup>
- “[W]hen an ETC has an automated system to verify initial and ongoing eligibility, the biennial independent audit should focus on whether *the methods and procedures* of such automated systems are appropriately structured to ensure compliance with program rules.”<sup>8</sup>
- Independent Audits shall be an agreed upon procedures (“AUP”) attestation rather than a compliance attestation audit.<sup>9</sup>

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<sup>2</sup> *In the Matter of Lifeline and Link Up Reform et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6782 (¶291) (2012) (“*Lifeline Reform Order*”).

<sup>3</sup> *Id.*

<sup>4</sup> *Information Collection Being Submitted to Office of Management and Budget (“OMB”) for Emergency Review and Approval*, Notice and Request for Comments, 77 Fed. Reg. 52,718 (Aug. 30, 2012) and *FCC Supporting Statement* (Sep. 2012) at 6, OMB Control Number 3060-00819.

<sup>5</sup> *Lifeline Reform Order* at 6784, ¶ 295.

<sup>6</sup> *Id.* at 6782, ¶291 (emphasis added).

<sup>7</sup> *Id.* at 6783, ¶292 (emphasis added).

<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> *Id.* See also 47 C.F.R. § 54.420(a) (“such [audit] engagements shall be agreed upon attestations to assess the company’s *overall compliance with rules* and the company’s *internal control* regarding these regulatory requirements.” (emphasis added)).

Because of the different focus and purpose of Independent Audits, the Commission explained that these audits would not replace existing USAC oversight activities, including the Beneficiary and Contributor Audit Program (“BCAP”), Payment Quality Assurance (“PQA”) reviews, and In-depth Data Validations (“IDV”).<sup>10</sup>

On June 12, 2013, SBI submitted an *ex parte* letter to the Commission that discussed the appropriate scope of the Independent Audits in light of these objectives. SBI emphasized that the Commission clearly intended the principal objective for the Independent Audits to be a risk assessment that could guide USAC in allocating its limited audit resources. As such, the Independent Audits should be complementary, not duplicative, of existing audit and review procedures, including BCAP, PQAs and IDVs. As such, SBI noted, *Independent Audits should focus on a high-level review of internal company procedures and controls* regarding the aspects of the Lifeline program that present the greatest risk to the program – for example, the initial subscriber eligibility determination and the identification and elimination of duplicate Lifeline discounts.

SBI also emphasized that, with risk assessment as their primary objective, Independent Audits should focus on whether a carrier complies with appropriate procedures, and should not involve an exhaustive compliance review of specific Lifeline requirements on a customer-by-customer basis. Such in-depth examinations are more appropriately within the scope of USAC’s regular audits. For example, an Independent Audit should not conduct a line-by-line review of a carrier’s customer lists supporting the numbers reported on Form 497, or review all filings, certifications, and billing records supporting a Lifeline disbursement. Independent Audits should be limited to a review of controls and a sampling of customers to determine whether the ETC has

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<sup>10</sup> *Id.* at 6783-84, ¶295.

in place the appropriate procedures to comply with the Lifeline rules. Lastly, an appropriately tailored Audit Plan is required in order for the FCC to stay within the administrative burden estimate presented to, and approved by, the Office of Management and Budget (“OMB”).

## **II. Discussion.**

SBI appreciates the careful consideration the Bureau and OMD obviously gave to the proper form and scope of the Audit Plan. Overall, the procedures proposed in the Public Notice appropriately define the scope of the Independent Audit consistent with the text of the *Lifeline Reform Order* and with SBI’s *ex parte* recommendations. For example, in many instances the proposed Audit Plan appropriately directs the examination of a sampling of customers rather than the entire customer base.<sup>11</sup>

At the same time, SBI believes there are several important areas in which the proposed Audit Plan departs from the Commission’s stated objective for a high-level risk assessment that can be an effective guide for USAC’s deployment of limited audit resources. Despite the use of sampling in some instances, several aspects of the proposed Audit Plan depart from the Commission’s objectives and impose excessive burdens without providing a corresponding benefit. For example, the proposed Audit Plan would require a comparison of the audited company’s entire Lifeline subscriber base (“National Subscriber List” or “NSL”) to the annual re-certification numbers reported on Form 555, despite the fact that those numbers will seldom match due to the particular requirements for re-certification. The proposed Audit Plan also

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<sup>11</sup> See, e.g., Public Notice at Attachment 2, p. 26 (“For accounts listed as de-enrolled or scheduled for de-enrollment, select a sample of at least 10 accounts and request copies of the non-usage termination notifications sent to the subscribers. ... Review the carrier’s policy and procedures for de-enrolling a Lifeline subscriber that does not respond to the carrier’s attempts to obtain re-certification, as part of the annual eligibility re-certification process. For any subscribers identified in Item 9.i, j and m of Appendix A, select a random sample of at least 30 and request copies of the notice of impending de-enrollment letters and all other communications sent to the subscribers involving recertification...”)

requires a comprehensive review of the audited company's NSL to identify suspected duplicates and other discrepancies. This is a redundant and unnecessarily burdensome process in light of existing USAC audits focused on checking for duplicates as well as the imminent launch of the National Lifeline Accountability Database ("NLAD") which is designed for the same purpose.

**A. A Check of Every Subscriber for Duplicates and Other Discrepancies is Duplicative, Unnecessary and Burdensome.**

The FCC proposes that the auditor examine the NSL – that is, every customer reported on Form 497 for reimbursement during the audit month – and note if there are any duplicate phone numbers, duplicate addresses, blanks or missing data, or unusual notations.<sup>12</sup> The auditor must then report the number of instances found for each category.<sup>13</sup>

Analyzing the audited company's entire nationwide subscriber listing goes far beyond the stated objective of determining whether the ETC "has procedures in place to limit Lifeline to qualifying low income consumers and ensure that Lifeline service is limited to a single subscription per household."<sup>14</sup> Because of the large number of customers involved, there will almost certainly be apparent discrepancies. For example, the auditor's review may find numerous "discrepancies" in addresses that are not recognized by the U.S. Postal Service database, including descriptive addresses that are widely used in Tribal and near-reservation areas and in insular areas.<sup>15</sup> Other addresses may contain misspellings or have blanks or nonstandard notations. The ETC will then be "permitted" to explain these discrepancies – which may require the ETC to review hundreds, if not thousands, of subscriber records for what will likely turn out

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<sup>12</sup> See Public Notice at Attachment 2, p. 15.

<sup>13</sup> See *id.*

<sup>14</sup> *Id.*

<sup>15</sup> See Reply Comments of Smith Bagley, Inc., CC Docket Nos. 96-45 and WC Docket Nos. 11-42, 03-109 and 12-23 (filed Dec. 10, 2012) at pp. 2-6.

to be non-material discrepancies. The opportunity to explain these discrepancies is hardly voluntary – any responsible ETC will have no choice but to explain each and every discrepancy, thereby creating a massive and unnecessary burden.

This detailed, system-wide review of subscriber lists is duplicative, unnecessary and burdensome, particularly for small businesses like SBI. In past audits and other reviews, SBI has had to devote significant employee time to reviewing inquiries from the auditor, analyzing data, and preparing responses to explain the data to the auditor. If applied to all of its study areas, the burden would be exponentially greater. The analysis would have no practical utility; a company's procedures for complying with the Lifeline rules can and should be tested using a statistically significant, random sample of customers drawn from the NSL. Moreover, in the very near future this type of review will be entirely redundant since duplicate addresses and other data irregularities will be detected by NLAD and returned to the carrier for resolution.<sup>16</sup>

Instead of this detailed analysis of an ETCs entire Lifeline subscriber list, the Independent Audit should appropriately review the audited company's procedures and controls, and carry out targeted sampling. Analysis of this statistically significant, random sample would be sufficient to assess overall risk and therefore be consistent with the stated objectives of the Independent Audit.

**B. The Audit Plan Should Not Require a Customer-by-Customer Comparison of Subscriber Lists Against Filed Forms.**

The proposed Audit Plan also would impose a huge and unnecessary burden on ETCs by requiring the auditor to “square” different data sources that inevitably will not match up. For example, the proposed Audit Plan would require the auditor to verify that the subscriber count on

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<sup>16</sup> After NLAD is fully operational, it would be consistent with the Biennial Audit process to modify the scope of the Audit Plan to examine the high-level process and procedures by which the ETC exchanges data with NLAD.

the Form 555 (Annual Lifeline Eligible Telecommunications Carrier Certification Form) agrees with the total subscriber count on the Form 497 for the selected audit month.<sup>17</sup> This task would be an exercise in futility as it will, almost by definition, result in discrepancies. Form 555 is based on the number of subscribers who were reported on Form 497 for the February data month and who were Lifeline recipients as of December 31 of the previous year.

If an auditor chooses an audit month other than February, this will automatically result in a mismatch between Form 497 and Form 555. Even if the auditor chooses February as the audit month, the numbers reported on Form 497 will probably not correspond to those reported on Form 555 because the latter form must exclude any customers who enrolled in Lifeline during January. Thus, there is very little chance that the comparison of the different data sources would yield useful information.

As with discrepancies within the NSL, the ETC will be “permitted” to explain these discrepancies. This process will be even more difficult than explaining discrepancies within the NSL. Here, the ETC will first have to figure out which of its thousands, hundreds of thousands or even millions of customers, are listed in one database but not the other. The audit will not be able to provide such specifics. Then the ETC will have to determine the underlying reason for the discrepancy – a discrepancy which is likely to be immaterial to the ETC’s practices and procedures for compliance with the Lifeline rules. And as before, the opportunity to explain these discrepancies is hardly “voluntary” – any responsible ETC will have no choice but to explain each and every discrepancy, thereby creating another massive and unnecessary burden.

The proposed Audit Plan would also require the audited company to provide a list with detailed information concerning each and every subscriber who the company attempted to re-

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<sup>17</sup> See Public Notice at Attachment 2, p. 20.

certify “during the audit period”.<sup>18</sup> The auditor must then “[v]erify that the data reported on Form 555 agrees with the detailed re-certification results.”<sup>19</sup> In the first instance, such verification greatly exceeds the prescribed scope of the Biennial Audit.

Second, the analysis is not meaningful because some or all of the audited company’s customers may have been re-certified outside of the audit period.<sup>20</sup> Depending on the use of the list, an incomplete list of subscribers re-certified during the applicable calendar year could lead to an unjustified finding of discrepancies. Again, the ETC would be faced with the daunting task of examining and explaining each and every one of these discrepancies, despite the fact that the vast majority will be unrelated to any failure to comply with the Lifeline rules.

This requirement is unduly burdensome, wholly unnecessary, and inconsistent with a high-level review of the ETCs processes. Instead of this line-by-line comparison, the Independent Audit should include appropriate data sampling and a review of the carrier’s procedures and controls to ensure that only active, eligible customers are reported on Form 497. As noted in the preceding section, this would be far less burdensome while fulfilling the stated objective of performing a risk assessment.

**C. Audit Questionnaires Should Be Streamlined and Focus Primarily on Controls, Safeguards, and Processes Ensuring Compliance on a Nationwide Level.**

The proposed audit process includes scores of questions that management must answer. Some of these questions should be directed to parties unrelated to the audited company. For

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<sup>18</sup> *See id.* at Appendix A, Request #9.

<sup>19</sup> *See id.* at p. 21.

<sup>20</sup> A subscriber must be re-certified at least once per calendar year, and the re-certification need not occur within 12 months of the subscriber’s last re-certification. A carrier may choose to conduct all re-certifications during a concentrated effort late in the year, in several waves throughout the year, by service anniversary, or via other methods.



example, Questions A(4)-(6) and B(4)-(6) of the Background Questionnaire ask for information regarding the methods used by state commissions or third-party Lifeline administrators to determine subscriber eligibility.<sup>21</sup> ETCs do not necessarily have this information and, in any event, should not be asked to answer questions about how the methods used by third parties. Some questions ask about compliance with procedures that are not required by the FCC.

For example, Questions 20, 21 and 22 of the Background Questionnaire ask, respectively, about whether a formal fraud policy exists, whether a whistleblower program is in place, and whether a formal Information Security policy exists. ETCs should not be asked about compliance with procedures that are not required by the FCC.<sup>22</sup> Other questions (taken directly from the basic USAC audit questionnaire) seek opinions. For example, the Internal Control Questionnaire asks questions such as, “Is there appropriate assignment of responsibility of authority for reporting decisions?”, and “Does management promote an environment of integrity and high values?”<sup>23</sup> These questions are subjective in nature and appear to have no useful purpose.

SBI urges the Commission to reformulate the questionnaires to ensure that they only seek information that is within the knowledge of the ETC and serves the specific purposes of the Independent Audits. Specifically, SBI proposes that these questions be replaced with questions that more appropriately, and specifically, focus on the effectiveness of internal controls, safeguards, and processes designed to ensure compliance by the audited company with the Lifeline rules – which is the very purpose of the Independent Audits. These questions should

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<sup>21</sup> See Public Notice at Attachment 2, Appendix B

<sup>22</sup> See *id.* at Appendix C.

<sup>23</sup> See *id.*

focus on how information, documents, and accountability flows between corporate offices, affiliates, stores, agents, and others involved in compliance.

**III. Conclusion.**

SBI respectfully requests the Commission to adopt a final Audit Plan consistent with the foregoing discussion.

Respectfully submitted,

Smith Bagley, Inc.



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