

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Lifeline and Link Up Reform and Modernization) WC Docket No. 11-42
Wireline Competition Bureau Seeks Comment on) DA 13-2016
the Lifeline Biennial Audit Plan)
)

To: The Chief, Wireline Competition Bureau

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
I. The Bureau Should Modify Elements of the Draft Audit Plan That Will be Wasteful and Duplicative, and Will Not Result in any Measurable Benefit to the Program.....	2
II. The Granular Approach in the Draft Plan Does Not Conform to the Scope of the Commission’s Directive.....	5
III. An Efficient Audit That Begins After NLAD Implementation and Resolution of Reconsideration Issues Will Best Serve the Commission’s Goals	7
IV. The Audit Report Production Process Must Afford ETCs Sufficient Time to Review and Respond to Tentative Conclusions.....	9
V. Before Implementing the Audit Program, The Bureau Should Clarify Other Administrative Issues.....	10

EXECUTIVE SUMMARY

In these reply comments, Cox brings to bear its experience as the largest cable telephony operator participating in the Lifeline program, with approximately 90,000 customers in 14 states. Cox was a contributing participant in the development of the original IDV process in 2011, and has been included in six IDVs in two of its operating states. The company also has experience with both the USAC PQA reviews and BCAP audits.

Cox applauds the Commission for its efforts to address waste, fraud, and abuse and for directing the Bureau to develop standard procedures for independent biennial audits of carriers receiving at least \$5 million annually from the Lifeline program. However, Cox agrees with the overwhelming majority of the commenters that the Bureau should modify the draft *Audit Plan* to avoid imposing on carriers a number of unnecessary burdens and costs that will not increase program effectiveness. For example, the biennial audit should not include information that will be cross-checked effectively with the forthcoming implementation of the NLAD, nor should it duplicate USAC's existing BCAP or PCA programs. The Bureau also should relieve carriers of the obligation to perform subsequent biennial audits if there are no material findings in the first biennial audit cycle or, at a minimum, limit further audits to areas of non-compliance.

In addition, the scope of the audit program should better conform to the Commission's vision of a review that focuses on carrier-wide patterns of procedural compliance. The draft *Audit Plan* ignores the broad scope of the Commission's directive and instead contemplates an improperly granular review that could undermine carrier participation in the Lifeline program.

Next, to maximize efficiency and value, the Commission should refrain from implementing the biennial audit program until *after* the NLAD has been implemented and certain audit-related petitions for reconsideration have been addressed. More generally, an audit "period" in the traditional sense may not even be applicable here, where what is required actually is a sufficient length of time for an auditor to access the data required to produce a report. If the Bureau insists on specifying an audit period, it should be shorter than six months, and should fall within a single calendar and standard fiscal year. No audit should commence until the auditor training and certification process is complete.

Further, the Bureau should ensure that the audit report production process affords ETCs sufficient time to review and respond to tentative conclusions, consistent with the timeline set forth in the Nexus comments. While draft reports need not be submitted to the Commission at all, if they are, carriers' confidentiality must be protected.

Finally, the Bureau should adopt a number of other important administrative improvements to the *Audit Plan*, many of which were raised in the comments. By modifying these elements of the draft *Audit Plan* and those discussed in more detail in these reply comments, the Bureau can tailor the audit process to increase its value and best meet the overall goals of Lifeline reform, while ensuring continued carrier interest in participating in the program.

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To: The Chief, Wireline Competition Bureau

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. (“Cox”) hereby replies to comments filed in response to the Wireline Competition Bureau’s (“Bureau”) Public Notice regarding its draft Lifeline biennial audit plan.¹ In these reply comments, Cox brings to bear its experience as the largest cable telephony operator participating in the Lifeline program, with approximately 90,000 customers in 14 states. Cox was a contributing participant in the development of the original In-Depth Data Validation (“IDV”) process in 2011, and has been included in six IDVs in two of its operating states. The company also has experience with both the Universal Service Administrative Company’s (“USAC”) Payment Quality Assurance (“PQA”) reviews and Beneficiary and Contributor Audit Program (“BCAP”) audits.

Cox applauds the Commission for directing the Bureau, in conjunction with the Office of Managing Director, to develop standard procedures for independent biennial audits of carriers receiving at least \$5 million annually from the Lifeline program. As the *Public Notice* explains,

¹ *Wireline Competition Bureau Seeks Comment on the Lifeline Biennial Audit Plan*, WC Docket No. 11-42, Public Notice, 28 FCC Rcd 14016 (WCB 2013) (“*Public Notice*” or “*Audit Plan*,” as appropriate).

this major reform will help protect the universal service fund (“USF”) from waste, fraud, and abuse.² Cox consistently has been a proponent for eliminating waste, fraud, and abuse and increasing efficiency in the Lifeline program and continues to support the Commission’s efforts in these areas. As just one example, Cox advocated for the creation of the National Lifeline Accountability Database (“NLAD”) and is in the process of spending hundreds of thousands of dollars in information technology (“IT”) development funds to implement it.

That said, as discussed in more detail herein, Cox agrees with the overwhelming majority of the commenters that the Bureau should modify the draft *Audit Plan* to avoid imposing unnecessary burdens on carriers that will not increase program effectiveness. In addition, the scope of the audit program should better conform to the Commission’s direction to focus on carrier-wide patterns of procedural compliance. Further, to maximize efficiency and value, the Commission should refrain from implementing the biennial audit program until *after* the NLAD has been implemented and certain audit-related petitions for reconsideration have been addressed. Finally, the Bureau should clarify the audit report production process and other administrative issues. By modifying these elements of the draft *Audit Plan*, the Bureau can tailor the audit process to increase its value and best meet the overall goals of Lifeline reform while ensuring continued carrier interest in participating in the Lifeline program.

I. THE BUREAU SHOULD MODIFY ELEMENTS OF THE DRAFT AUDIT PLAN THAT WILL BE WASTEFUL AND DUPLICATIVE, AND WILL NOT RESULT IN ANY MEASURABLE BENEFIT TO THE PROGRAM

Cox recognizes that efforts to eliminate waste, fraud, and abuse in the Lifeline program will necessarily impose some costs on program participants, but any such costs should be

² See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6782, para. 291 (2012) (“*Lifeline Reform Order*”); *Public Notice* at 1.

minimized and directly tied to improvements in the program. To the extent new burdens measurably and efficiently improve compliance within the Lifeline program, Cox supports them. However, Cox's internal estimates confirm other commenters' projections that the Commission's estimates of the burdens on Eligible Telecommunications Carriers ("ETCs") are substantially understated.³ Further, many of these burdens will provide little or no marginal benefit to the program. As CenturyLink points out, the Commission "should take care to assure that the administrative costs and burdens of the Lifeline program do not ultimately undermine desired carrier participation in the program."⁴ To avoid such a result, the Bureau should modify the draft *Audit Plan* to eliminate the unnecessary costs and burdens that would be wasteful and duplicative, as discussed below.

First, as a number of commenters point out, the biennial audit need not validate information that will be cross-checked effectively with the forthcoming implementation of the NLAD.⁵ As noted above, Cox currently is spending hundreds of thousands of dollars on IT development to implement the NLAD, and other ETCs certainly are spending similar funds. Cox supports the NLAD because it will provide a solution to the duplicates problem that is workable for ETCs, customers, and regulators. There is no basis, however, to require ETCs to expend considerable resources to participate in NLAD to scrub their Lifeline subscriber rolls of duplicates, and then require them to expend additional resources generating a national subscriber list in a different format and paying an outside auditor to scrub that list for duplicates again.

³ See, e.g., CenturyLink comments at 3-4; Verizon comments at 2-3.

⁴ CenturyLink comments at 4.

⁵ See, e.g., ITTA comments at 3-4; Smith Bagley comments at 6; TracFone comments at 5.

Instead, the biennial audit simply should verify that the ETC has a firm procedure in place requiring that all Lifeline subscribers be verified in NLAD.⁶

Second, the biennial audit should not duplicate USAC's existing BCAP or PCA programs.⁷ As discussed below, the Commission's intention was that the biennial outside audits would not involve the detailed, subscriber-by-subscriber reviews that characterize BCAP, IDV, and PCA audits.⁸ The existence of BCAP and PCA audits is another reason that the biennial outside audits should not be so granular – it would be overly burdensome to require ETCs to pay an outside auditor to go through the same process that USAC undertakes through its own audit programs. To the extent that the Bureau retains a granular biennial outside audit requirement, however, ETCs subject to the biennial audit requirement absolutely should not be subject to BCAP or PCA reviews.⁹

To minimize unnecessary burdens, the Commission also should heed commenters' calls to use existing data and resources wherever possible, rather than requiring the creation of new records or forms of data. For example, the *Audit Plan* should not require the creation of a national subscriber list that effectively duplicates the information that ETCs are about to submit to and maintain in the NLAD, but in a different format.¹⁰ In the same vein, the *Audit Plan*

⁶ As discussed in more detail below, the Commission did not intend for the biennial outside audits to verify subscriber-specific data in any event. *See infra* Section II. The audits also should not commence until after NLAD has been implemented. *See infra* Section III.

⁷ *See, e.g.*, CenturyLink comments at 8.

⁸ *See infra* Section II.

⁹ *See, e.g.*, Smith Bagley comments at 3; Verizon comments at 3-4.

¹⁰ *See, e.g.*, CenturyLink comments at 10; USTelecom comments at 4-5; Verizon comments at 5. In fact, after the implementation of the NLAD, ETC's should not be required to produce any electronic subscriber files for use by the audit firms. Rather, USAC should provide the firms with files of the ETC's subscribers as they exist within the NLAD from which the firms may select samples to validate procedures associated with the preparation of Forms 497, 555 and 481. Where an ETC is operating within a state that enjoys and NLAD opt-out (presently CA, TX, VT,

should not require independent auditors to verify data or procedures of parties other than the ETC, such as state Commissions or USAC,¹¹ and should not require auditors to check any requirements that are not firmly rooted in the Lifeline rules.¹²

Finally, as various commenters have noted, the Bureau should relieve carriers of the obligation to perform subsequent biennial audits if there are no material findings in the first biennial audit cycle or, at a minimum, should limit further audits to areas of non-compliance.¹³

Eliminating or modifying these elements of the draft *Audit Plan* that would impose costs and burdens without any corresponding benefit will help ensure continued carrier interest in the Lifeline program. This also is consistent with the Commission's overall goal to reduce waste.

II. THE GRANULAR APPROACH IN THE DRAFT PLAN DOES NOT CONFORM TO THE SCOPE OF THE COMMISSION'S DIRECTIVE

Carrier interest in Lifeline participation may similarly be affected by the scope of the audit process. The draft *Audit Plan* ignores the broad scope of the Commission's directive and instead envisions an improperly granular review. This approach is inconsistent with the Commission's stated goals and could undermine participation.

As a number of commenters point out, the Commission had a specific vision for the scope of the biennial outside audits:

OR and Puerto Rico) the firms should obtain the same information from the state. By definition a state with an opt-out has functionality equivalent to the NLAD.

¹¹ See, e.g., Smith Bagley comments at 9; Verizon comments at 4-5.

¹² See, e.g., Verizon comments at 4.

¹³ See, e.g., CenturyLink comments at 5, citing *Lifeline Reform Order*, 27 FCC Rcd at 6783-84, ¶ 295 (“[T]o the extent that the Commission moves forward with implementing this burdensome requirement, the Commission and the Bureau should at least honor the Commission’s statement that ‘[i]f there are no material findings in a carrier’s first independent audit report, the Wireline Competition Bureau may, in its discretion, relieve the carrier of its obligation to perform an independent audit in the next biennial audit cycle.’”).

Rather than performing an audit at the individual study area level, we expect these audits to focus on the company's overall compliance program and internal controls regarding Commission requirements as implemented on a nationwide basis. For instance, when 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.¹⁴

Similarly, the Commission's rules state that the biennial independent audits should be designed "to assess the company's *overall* compliance with rules and the company's *internal controls*."¹⁵ The Commission thus expressed that biennial independent audits should be nationwide in scope, but also that they should focus on verifying ETCs' "*methods and procedures*" and "*internal controls*" as opposed to confirming specific instances of compliance.

The draft *Audit Plan*, however, ignores this direction and envisions a granular, study-area-by-study-area audit reviewing comprehensive customer-by-customer information to identify any possible individual instances of non-compliance.¹⁶ To comply with the Commission's original audit vision, the Bureau should substantially revise the *Audit Plan* to limit the audit requirements to ETCs' methods and procedures as opposed to exhaustively checking all data to identify any potential instances of non-compliance.

The Bureau also should revise the *Audit Plan* to clarify the scope of the independent audits in terms of geography and entities covered. The Commission's direction, quoted above, makes clear that audits should be conducted broadly at a holding company level ("nationwide"), and should not focus on individual study areas or operating entities. Yet the *Audit Plan* proposes

¹⁴ *Lifeline Reform Order*, 27 FCC Rcd at 6783 ¶ 292. See, e.g., AT&T comments at 5; Smith Bagley comments at 2-3.

¹⁵ 47 C.F.R. § 54.420(a) (emphasis added).

¹⁶ See, e.g., AT&T comments at 5-6; Smith Bagley comments at 5-6; TracFone comments at 4-5.

to require ETCs to submit extensive data at the study area and operating company level – effectively turning the audit into a study-area-by-study-area, entity-by-entity audit program.¹⁷

The *Audit Plan* should clearly specify the geographic scope of the audits, and that scope should conform to the Commission’s direction to focus on company-wide, nationwide procedural compliance efforts. This can be verified with testing of corporate procedures, verification of whether specific operating entities or local entities deviate from corporate procedures, and if necessary testing of sample data.

III. AN EFFICIENT AUDIT THAT BEGINS AFTER NLAD IMPLEMENTATION AND RESOLUTION OF RECONSIDERATION ISSUES WILL BEST SERVE THE COMMISSION’S GOALS

The goal of the Lifeline audit is to help protect the USF from waste, fraud, and abuse.¹⁸ It would not make sense to establish audit rules that would promote inefficiency and result in limited or no utility to the Commission or industry. Yet the proposed timing and duration of the action set forth in the *Audit Plan* would do just that. Accordingly, as initial commenters have argued, the biennial independent audits should begin after the NLAD has been implemented and the pending petitions for reconsideration of audit-related issues have been resolved, and the audit period should be shorter than currently proposed and contained within a single year.

First, the independent audits will proceed more efficiently if they begin after the NLAD has been implemented. As discussed above, the NLAD will address duplicate subscriber issues comprehensively, obviating all other existing duplicate checks, such as IDVs, as well as the need for specific duplicates checking in the independent audits.¹⁹ Conversely, to the extent that any

¹⁷ *Id.*

¹⁸ *See supra* p. 1; *Public Notice* at 1.

¹⁹ *See supra* Section I. The NLAD will be “live” for all ETCs in all states on March 27, 2014, less than 6 weeks before the close of the current proposed audit period. *See* <http://www.usac.org/li/tools/nlad/nlad-migration.aspx>. Any ETC procedures audited prior to the

specific duplicates are checked nonetheless in the independent audits, carriers should be permitted to use the data that they have uploaded to the NLAD, in the same format, for that purpose.²⁰ For both of these reasons, there is no benefit to commencing the first biennial independent audits until *after* the NLAD is implemented. Specifically, Cox proposes that the audit period should not commence until 120 days after the NLAD is fully implemented nationwide. During this timeframe the audit plan must be finalized and the training and certification discussed in detail below completed. This will allow all ETCs to gain comfort with using the NLAD process and allow the audits to focus solely on NLAD data, of which a small sample should provide more than enough information to confirm each auditee’s policies for preventing duplicates.

Commenters also raise important questions about the length and timing of the audit period. As a threshold matter, Cox notes that an audit “period” in the traditional sense may not be applicable here. Rather, what is required is a sufficient length of time for an auditor to access the data required to produce a report based on the requirements contained in the final *Audit Plan*. The *Public Notice*, without explanation, sets a six-month audit period from November 1 to April 30.²¹ Cox agrees with commenters that six months is longer than necessary for a valid audit, and that auditors should be permitted to select a reasonable audit period in months other than November through April.²² To facilitate the audit process, the audit period also should not span more than one funding (calendar) year *or* more than one ETC corporate fiscal year (typically

implementation of NLAD will be superseded when its use becomes mandatory, and audit reports about their effectiveness thus would be meaningless.

²⁰ *Id.*

²¹ *Public Notice* at Attachment 2, 28 FCC Rcd at 14029.

²² *See, e.g.,* CenturyLink comments at 8-9; US Telecom comments at 6-7; Verizon comments at 5-6.

July-June).²³ The Bureau should allow auditors to select the months to be audited, including the length of the audit period. If the Bureau insists on specifying an audit period, it should be shorter than six months, and should fall within a single calendar and standard fiscal year.

Finally, the audit program should not begin until important audit-related reconsideration petitions have been resolved. As commenters point out, petitioners have asked the Commission to reconsider the entire audit program, as well as key questions about the audit process, such as the submission of draft audit reports.²⁴ It makes little sense to attempt to finalize plans for the audit program – or, even worse, proceed to commence an audit – while these central questions are outstanding.

IV. THE AUDIT REPORT PRODUCTION PROCESS MUST AFFORD ETCs SUFFICIENT TIME TO REVIEW AND RESPOND TO TENTATIVE CONCLUSIONS

As urged by commenters, the Bureau should clarify the audit report production process to ensure that ETCs have adequate time to provide comments on draft audit conclusions. This is particularly true in light of the novelty of independent auditors' conducting Lifeline compliance audits, as discussed above.²⁵ For example, Nexus has submitted a proposed timeline in this regard, which appears to provide sufficient time for ETC review.²⁶ In addition to increasing fairness to program participants, affording adequate time for ETC feedback will benefit the Bureau by minimizing the extent to which the Bureau will be called upon to mediate

²³ See US Telecom comments at 6-7. The proposed audit period (November-April) necessarily would span two calendar years.

²⁴ See, e.g., AT&T comments at 3-4.

²⁵ Even with a training and certification program, the prospect for an occasional glitch or other error warrants ETC review before an audit report is finalized.

²⁶ Nexus comments at 2-3.

disagreements between covered ETCs and their independent auditor. The Bureau thus should incorporate a reasonable schedule in the *Audit Plan*.

In addition, the Bureau should ensure that carriers' confidentiality is protected in the audit process. As noted above, a pending petition for reconsideration raises the question of whether auditors should be required to provide the Commission and USAC with "draft" reports.²⁷ Cox sees no particular value in requiring auditors to provide draft reports to the Commission or USAC and believes the provision of final reports is sufficient to meet the Commission's goals without expending unnecessary agency resources. If the Commission nonetheless determines that draft reports are required, however, Cox agrees that their confidentiality must be protected given the tentative nature of the information.²⁸

V. BEFORE IMPLEMENTING THE AUDIT PROGRAM, THE BUREAU SHOULD CLARIFY OTHER ADMINISTRATIVE ISSUES

The Bureau should adopt a number of other important administrative improvements to the *Audit Plan*, many of which were raised in the comments. For example, the proposal to require auditors to reconcile information in fundamentally different documents – such as the Forms 497 and Forms 555 – is unworkable and must be modified.²⁹ As noted above, the Commission never expected the biennial independent audits to be this granular.³⁰ To the extent that more detailed data review is retained, however, there is no benefit to attempting to reconcile the Forms 497 and Forms 555. Because these two forms use different reporting periods, there is no reason to expect their data to match up even in case where the audit firm might select the

²⁷ See *supra* Section III; see also AT&T comments at 3.

²⁸ See, e.g., CenturyLink comments at 9; Nexus comments at 3-4.

²⁹ See, e.g., Smith Bagley comments at 6-8.

³⁰ See *supra* Section II.

February data month for the 497 exercise. Attempting to reconcile the two reports will create senseless work for auditors and ETCs.

In addition, the *Audit Plan* provides that an auditor's use of internal auditors/employees will be limited to the provision of general assistance and the preparation of schedules and gathering of data for use in the engagement, and that "[u]nder no circumstances shall the internal auditors of the ETC subject to the engagement perform any of the procedures contained in [the *Audit Plan*]." ³¹ However, in Cox's audit-related experience, it would be fully appropriate for an ETC's internal auditors to perform additional work under the supervision of the engaged firm – perhaps up to 50 percent of the field work hours. Modifying the *Audit Plan* to allow this additional work would significantly reduce the financial burden of audits on ETCs and potentially increase their efficiency, all without compromising the integrity of the result.

The *Audit Plan* also should allow more than one individual to certify to the Internal Control Questionnaire. ³² Most large organizations will not have a single individual that can attest to all of the information included in the questionnaire. Cox also supports the use of recorded customer care calls for monitoring purposes, rather than live calls. ³³

Finally, although this reply does not specifically itemize every administrative issue raised by the *Public Notice* or in the initial comments, Cox believes that the commenters raise many valid questions, and urges the Commission to consider the initial comments carefully in reformulating the *Audit Plan*.

³¹ *Audit Plan* at 6.

³² See, e.g., CenturyLink comments at 11-12.

³³ See, e.g., US Telecom comments at 7.

CONCLUSION

To best meet the Commission's Lifeline reform goals, Cox urges the Bureau to modify the *Audit Plan* as set forth in these reply comments.

Respectfully submitted,

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