

**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)
)

REPLY COMMENTS OF THE JOINT COMMENTERS

The Joint Commenters,¹ by and through their attorneys, respectfully submit these reply comments in response to the comments filed on 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 reply comments to support the efforts of several parties to clarify and improve the proposed audit procedures and standards.

The Joint Commenters support the efforts of the parties to restrain the biennial audits to the intended purpose as determined by the Commission in the *Lifeline Reform Order* to “assess the company’s overall compliance with rules and the company’s internal controls regarding these regulatory requirements”³ as opposed to repeating the more detailed and specific

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”).

³ 47 C.F.R. § 54.420(a). See also *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice Of Proposed Rulemaking, FCC 12-11, ¶292 (2012) (“*Lifeline Reform Order*”).

audits that are already separately conducted by the Universal Service Administrative Company (“USAC”). Specifically, the Joint Commenters agree that the Commission should define a “duplicate” enrollment and apply a reasonable error threshold for purposes of reviewing subscriber lists for duplicates. Further, the Joint Commenters agree with the majority of commenters that ETCs should be permitted to respond to communications between the auditors and the Commission or USAC, including regarding draft audit reports, and that such communications and reports should be confidential.

I. PARTIES AGREE THAT THE COMMISSION SHOULD DEFINE A “DUPLICATE” ENROLLMENT

The comments of Verizon and Verizon Wireless support the Joint Commenters’ statement that no Commission rule or order defines or describes what constitutes a duplicate Lifeline enrollment.⁴ The Joint Commenters support Verizon’s and Verizon Wireless’ request for clarification on this point related to the five day de-enrollment requirement, however, the Joint Commenters continue to agree that the 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, the five-day de-enrollment requirement or otherwise, such as similar-looking name and address, then it should do so in a rulemaking.

(“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.”).

⁴ See Comments of the Joint Commenters, WC Docket No. 11-42 at 4 (filed Dec. 13, 2013) (“Joint Comments”) and Comments of Verizon and Verizon Wireless, WC Docket No. 11-42 at 13 (filed Dec. 13, 2013) (“Verizon Comments”).

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).”⁵ 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. As described in detail in the comments filed by the Joint Commenters, the Commission has given varying guidance on what constitutes a duplicate.⁶ However, 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 on how “other information” in the Lifeline ETC’s possession – such as the SSN or date of birth required to be collected by the *Lifeline Reform Order* – are to be considered to determine what in fact constitutes a duplicate.

The comments of Verizon and Verizon Wireless indicate that Verizon is struggling with this same ambiguity in a different context. Verizon and Verizon Wireless are justifiably concerned about the requirement in Appendix B., Requests C.5 and C.7 that providers identify when they terminate Lifeline service for subscribers who are identified by state commissions, USAC or others as receiving duplicate support or otherwise no longer being eligible for Lifeline service.⁷ The Commission’s rules require that ETCs de-enroll Lifeline subscribers within five business days of receiving notice that a subscriber is receiving duplicate support.⁸

⁵ Public Notice, Attachment 2 at 15.

⁶ See Joint Comments at 4-5.

⁷ See Verizon Comments at 12-14.

⁸ See 47 C.F.R. § 54.405(e)(2).

Verizon and Verizon Wireless are concerned that “USAC sometimes identifies customers as duplicates when they actually appear to be separate, eligible subscribers” and the five-day de-enrollment period does not permit the ETC or the subscriber to defend the subscriber’s eligibility.⁹ For example, “USAC has identified persons with the same last name who live in the same apartment building (i.e., who have the same street address) as receiving duplicate support, when those persons had different first names and lived in different apartments.”¹⁰ Verizon and Verizon Wireless call on the Commission to “adopt an approved standard of what constitutes a duplicate.”¹¹ This is necessary because, as the Joint Commenters described in detail in our comments, no Commission rule or order defines or describes what constitutes a duplicate Lifeline enrollment.

Verizon and Verizon Wireless assert that the Commission should clarify that, in order to require a de-enrollment in five days, USAC must show (1) a same name, same address match (*including secondary address information such as apartment numbers*); (2) there is no independent economic household (“IEH”) worksheet to demonstrate a separate household; and (3) the carrier cannot provide additional information indicating the customer is part of a separate household.¹² The Joint Commenters submit that this standard is helpful, but the additional information from prong 3 is likely to be date of birth and last four digits of the subscriber’s SSN, so those categories should be a match in order to identify a duplicate subscriber, as proposed in the Public Notice. Regardless, if the Commission wants to establish a definition of a “duplicate” for purposes of the biennial audits, the five business day de-enrollment requirement or otherwise, then it should do so in a rulemaking. There must be a single, clearly defined standard. In the

⁹ Verizon Comments at 13.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 14.

meantime, the Joint Commenters continue to agree that the 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 SSN – is reasonable.

II. TRACFONE’S PROPOSED FIVE PERCENT DUPLICATES THRESHOLD IS CONSISTENT WITH THE SCOPE OF THE BIENNIAL AUDITS AS DEFINED IN THE *LIFELINE REFORM ORDER*

As the vast majority of commenting parties have noted, the Commission’s rules and the *Lifeline Reform Order* state that the biennial audits should be limited to an assessment of ETCs’ overall compliance and internal controls.¹³ The audits should not attempt to review all enrollments and evaluate entire subscriber lists. Further, one hundred percent perfect compliance with all rules and requirements should not be expected in an assessment of overall compliance and review of internal controls. As an example, in Objective III of the Fieldwork Testing Procedures, the Public Notice proposes to test 50 subscriber enrollments and, only if the error rate is higher than five percent, test another 50 subscriber enrollments.¹⁴ Presumably, if the error rate is five percent or lower, there is no indication of a failure of overall compliance or faulty internal controls. The Joint Commenters agree.

TracFone has proposed to apply this same framework to the analysis of duplicate enrollments in Objective II, consistent with the required scope of the biennial audits.

TracFone recommends that the audit look at a sample of subscribers, such as an ETC’s subscribers from a particular state, and check whether there are duplicates in that sample...For purposes of evaluating whether an ETC has procedures to

¹³ See Comments of Nexus Communications, Inc., WC Docket No. 11-42 at 5 (filed Dec. 13, 2013) (“Nexus Comments”); Comments of TracFone Wireless, Inc., WC Docket No. 11-42 at 2 (filed Dec. 13, 2013) (“TracFone Comments”); Comments of AT&T, WC Docket No. 11-42 at 5-7 (filed Dec. 13, 2013) (“AT&T Comments”); Comments of the United States Telecom Association, WC Docket No. 11-42 at 4 (filed Dec. 13, 2013) (“USTelecom Comments”); Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 11-42 at 1 (filed Dec. 13, 2013); and Comments of Smith Bagely, Inc., WC Docket No. 11-42 at 2 (filed Dec. 13, 2013).

¹⁴ See Public Notice, Attachment II at 18.

identify duplicate subscribers, TracFone recommends that if there is an error rate of higher than 5 percent (i.e., more than 5 percent of the total number of subscribers for a state are duplicates), then the auditor should review a list of subscribers for an additional state.¹⁵

The Joint Commenters agree that such an error threshold is consistent with the limited scope of the biennial audits established in the Commission’s rules and the *Lifeline Reform Order* (i.e., assessment of overall compliance and internal controls). However, it should also be clear that the applicable standard for a “duplicate” should be the standard proposed in the Public Notice – exact same name, birth date and last four digits of the SSN.¹⁶

III. THE JOINT COMMENTERS AGREE THAT ALL PRELIMINARY REPORTS AND CORRESPONDENCE SHOULD GIVE ETCS AN OPPORTUNITY TO RESPOND AND SHOULD BE CONFIDENTIAL

The Joint Commenters agree with the majority of commenters that ETCs should have an opportunity to respond to draft audit reports and other submissions to the Commission and USAC, and that draft audit reports should be treated as confidential. AT&T states that “to the extent the Commission or USAC has any communication with the auditor about the auditor’s draft report, out of fairness, AT&T recommends that any such communication include the audited carrier.”¹⁷ AT&T further asserts that auditors should be directed to file draft reports on a confidential basis because “a draft is by definition tentative, incomplete, and subject to further review and revision.”¹⁸ CenturyLink notes that “[r]equiring a draft audit report and related documents to be filed publicly is fundamentally inconsistent with the long-standing recognition

¹⁵ TracFone Comments at 5-6.

¹⁶ See Public Notice, Attachment II at 15.

¹⁷ AT&T Comments at 3-4.

¹⁸ *Id.* at 3.

that it is presumptively not in the public interest to make audit materials publicly available.”¹⁹ CenturyLink and the United States Telecom Association (“USTelecom”) highlight the fact that Section 0.457(d)(1)(iii) of the Commission’s rules automatically treats information submitted in connection with audits as confidential.²⁰

USTelecom asserts that the *Lifeline Reform Order* “requires the third-party auditor to submit a draft of the audit report to the Commission and USAC and specifically states that the audit reports will not be considered confidential.”²¹ Nexus Communications, Inc. (“Nexus”) asserts that “the draft attestation reports, and any written comments prepared by ETCs in response to those draft reports should be afforded confidential treatment” and with respect to the denial of confidential treatment “Nexus understands the *Lifeline Reform Order* to refer only to final attestation reports, not any draft versions thereof.”²² The *Lifeline Reform Order* may allow for the interpretation that draft audit reports will not be given confidential treatment, however, it is ambiguous²³ and the language of Section 54.420(a)(4) of the Commission’s rules is more clear. The Commission rule first refers to draft reports, then switches to a discussion of final audit reports and states that “the reports” will not be considered confidential.

¹⁹ Comments of CenturyLink, WC Docket No. 11-42 at 9 (filed Dec. 13, 2013) (“CenturyLink Comments”).

²⁰ See *id.* and USTelecom Comments at 6.

²¹ USTelecom Comments at 5-6.

²² Nexus Comments at 3.

²³ *Lifeline Reform Order*, ¶ 294 (“Within 60 days after completion of the audit work, but prior to finalization of the report, the third party auditor shall submit a *draft* of the audit report to the Commission and USAC. In order to maximize the administrative efficiency and benefit of these audits, we mandate that covered ETCs provide audit reports to the Commission, USAC, and relevant state and Tribal governments within 30 days of issuance of *the final report*, and that the Commission and USAC be deemed authorized users of *such reports*, as proposed in the *NPRM*.²³ *These audit reports* will not be considered confidential and requests to render them so will be denied.”) (emphasis added). This language allows for the interpretation that the Commission first referred to draft reports and then switched to a discussion of final audit reports and “these audit reports” refers only to the last referenced final reports.

Within 60 days after completion of the audit work, but prior to finalization of the report, the third party auditor shall submit a *draft* of the audit report to the Commission and the Administrator, who shall be deemed authorized users of such reports. *Finalized audit reports* must be provided to the Commission, the Administrator, and relevant states and Tribal governments within 30 days of the issuance of the *final audit report*. *The reports* will not be considered or deemed confidential.²⁴

The more reasonable read of the Commission rule and the *Lifeline Reform Order* is that final audit reports will not be treated as confidential, but draft audit reports can be considered confidential because, as the majority of parties have stated, draft reports are by their very nature tentative, not fully vetted by ETCs and subject to change. This is especially true for the first audits when the auditors are still learning the Lifeline rules and requirements and ETC practices.

For better or worse there is intense scrutiny placed on the Lifeline program by Congress and the media, and the biennial audit process should not be permitted to unnecessarily raise concerns before they have been fully considered and addressed by the auditors, ETCs, USAC and the Commission. To this point, the Joint Commenters reiterate that audit firms should generally include findings of potential rule violations in the draft and final reports, and should 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.²⁵ In such instances, the auditor should be required to first contact the ETC and allow the ETC a reasonable amount of time to respond to the allegation.

III. CONCLUSION

The Joint Commenters support the efforts of the parties to restrain the biennial audits to the intended purpose as determined by the Commission in the *Lifeline Reform Order* to assess the company’s overall compliance with rules and internal controls. Specifically, the Joint

²⁴ 47 C.F.R. § 54.420(a)(4) (emphasis added).

²⁵ See Joint Comments at 2-4.

Commenters agree that the Commission should define a “duplicate” enrollment and apply an error threshold for purposes of reviewing enrollments for duplicates. Further, the Joint Commenters agree with the majority of commenters that ETCs should be permitted to respond to communications between the auditors and the Commission or USAC, including regarding draft audit reports, and that such communications and reports should be confidential.

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