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

In the Matter of	)	
	)	
Request for Review by Telrite Corporation Of Decision of the Universal Service Administrator	)	WC Docket 11-42 WC Docket 03-109

Accepted/Files

JAN 17 2014

Federal Communications Commission
Office of the Secretary

Telrite Corporation's Request for Review

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SUMMARY

Telrite Corporation ("Telrite") respectfully seeks review of two decisions of the Universal Service Administrative Company ("USAC") conducting in-depth validations ("IDVs") of Telrite's Low-Income Support Mechanism reimbursement claims in a total of five states. Telrite submits this request in order to confirm that, under existing Lifeline program rules and orders, Lifeline accounts containing different subscriber information are not "duplicates." Telrite requests that the Commission instruct USAC to cease classifying as a "duplicate" accounts where the subscriber data is similar but not identical. Further, if the Commission modifies its rules to address such similar accounts, it should provide specific guidance to enable USAC and the industry to determine with specificity which types of variances are significant and which are not. Commission action on this key point will benefit USAC and the industry alike in applying the Lifeline rules and ensuring that the program operates efficiently and minimizes the perception of or potential for waste, fraud and abuse.

In the decisions for which Telrite seeks review, USAC conducted an IDV of Lifeline subscribers in a total of five states. In the IDVs, USAC concluded that a small number (representing approximately 0.08% of the accounts reviewed) of Telrite accounts that contained similar but not the same subscriber information were nevertheless "duplicates." USAC does not reveal the methodology it used to determine duplicate subscribers. Clearly, USAC's conclusions require substantive policy determinations that go beyond the guidance the FCC has provided to USAC for conducting IDV reviews. Moreover, USAC's methodology appears to ignore differences in subscriber information fields required by the Commission to be collected as of June 2012. Telrite therefore requests that the Commission vacate the December 2013 IDV findings regarding intra-company duplicates. In so doing, Telrite requests that the Commission

take three actions to address uncertainties caused by accounts with similar, but not identical, customer information:

First, Telrite requests that the Commission clarify that a Lifeline account is a duplicate only if all of the mandated subscriber identification information matches. The Commission further should instruct USAC to cease classifying as a "duplicate" accounts where the subscriber data is similar, but not identical. Second, because the Commission has not previously determined that accounts with similar, but not identical, subscriber information are to be treated as duplicates, Telrite requests that the Commission vacate USAC's IDV findings with respect to the small number of alleged intra-company duplicates found. Third, Telrite requests that the Commission prospectively establish a safe harbor for Lifeline providers that engage in reasonable and diligent duplicates screening procedures. Under such a safe harbor, a Lifeline provider that has conducted appropriate due diligence to identify duplicate subscribers will not be liable for retroactive reimbursements to the Universal Service Fund and will not be subject to forfeitures or other penalties if USAC or the FCC, through additional scrutiny, concludes that the account belongs to the same subscriber despite the difference in subscriber data.

These actions will protect and promote the efficient administration of the Lifeline program. Today's confusion among Lifeline providers as to the standard to which they will be held – exacerbated by excessive and unreasonable Notices of Apparent Liability ("NALs") recently issued by the Commission – undermines the very foundation of the Lifeline program. If every Lifeline ETC were exposed to fines at levels consistent with the recent NALs for what USAC has identified as duplicates, no rational provider would remain in the program, and low-income consumers would be harmed by a scarcity of available services. Commission action to clarify the meaning of a "duplicate" and to establish a safe harbor for duplicate detection can restore balance to the program. By taking the actions above, the Commission will increase compliance with the Lifeline program's requirements, will promote responsible Lifeline practices and will further the policy goals of the program.

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REQUEST FOR REVIEW

Telrite Corporation ("Telrite"), by and through its attorneys, and pursuant to Section 54.719(c) of the Federal Communications Commission's ("FCC" or "Commission") rules, respectfully requests that the Commission review and vacate findings regarding intra-company duplicates rendered by the Universal Service Administrative Company ("USAC") in connection with in-depth validations ("IDVs") of Telrite's Low Income Support Mechanism benefits.[1] USAC's December 2013 IDV findings regarding intra-company duplicates exceed FCC guidance and otherwise reach results that impermissibly ignore differences in FCC-mandated subscriber data fields by concluding that accounts which contain similar but not identical subscriber information are nevertheless duplicates. Telrite respectfully submits that USAC has usurped the FCC's role and has engaged in substantive policy judgments that only the Commission, not USAC, may make. Therefore, Telrite requests that the Commission (1) confirm that, under existing policy, Lifeline accounts containing different subscriber and/or

[1] Letter from USAC to Brian Lisle, Telrite Corporation, re: Federal Universal Service Low Income Support Mechanism In-Depth Validation Phase 19, Dec. 30, 2013 (attached as Confidential Exhibit 1); Letter from USAC to Brian Lisle, Telrite Corporation, re: Federal Universal Service Low Income Support Mechanism In-Depth Validation Phase 21, Dec. 30, 2013 (attached as Confidential Exhibit 2).

address information cannot be deemed duplicates, (2) vacate the intra-company duplicate findings in these IDVs and (3) establish a safe harbor that will ensure Lifeline ETCs conduct a reasonable level of due diligence in detecting potential duplicates.

I. FACTUAL BACKGROUND AND STATEMENT OF ISSUES

A. The Commission's Duplicates Policy

The Lifeline program was established by the Commission in the 1980s with the purpose of providing telecommunications service to low-income households. 47 U.S.C. § 254. Codified by Congress in 1996, the program initially provided a discount to eligible consumers for a single telephone landline at a principal residence. In 2005 and in recognition of the changing marketplace, the FCC expanded the program to include non-facilities based providers, including wireless carriers. More recently, the Commission recognized that "a cell phone can literally be a Lifeline for families and provide low-income families, in particular, the means to empower themselves." *In re Lifeline and Link-Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, ¶ 17 (rel. Feb. 6, 2012) ("2012 Lifeline Reform Order").

Seeking to balance the availability of Lifeline with the funds available for the program, the Commission limits a subscriber to receiving only one Lifeline-supported service. 47 C.F.R. § 54.409(c); *see In re Lifeline and Link-Up Reform and Modernization*, Report and Order, FCC 11-97, ¶ 2 (rel. June 21, 2011) ("2011 Duplicative Payments Order"). In 2011, the Commission clarified that each eligible consumer is entitled to only one Lifeline benefit and required Lifeline ETCs to inquire whether a subscriber or potential subscriber is already receiving a Lifeline discount from another carrier. 2011 Duplicative Payments Order, ¶¶ 8, 9. The Commission also ordered USAC to develop a process for detecting and resolving duplicative claims and outlined the basics of a de-enrollment process when duplicate accounts were discovered. *Id.*, ¶¶ 13-15.

The Commission further addressed duplicate subscriptions in its seminal Lifeline Reform Order in February 2012. *See generally,* 2012 Lifeline Reform Order. In the 2012 Lifeline Reform Order, the Commission's principal focus was to address acknowledged shortcomings in its Lifeline rules that contributed to real and perceived waste, fraud and abuse in the Lifeline program. *Id.* To that end, the Commission imposed significant new procedural requirements for qualifying and enrolling new Lifeline subscribers. *See, e.g.,* 2012 Lifeline Reform Order, ¶¶ 60-285 (requiring Lifeline ETCs to review eligibility documentation and requiring proof of eligibility to be presented at the time of enrollment). In addition, the new rules required certain disclosures to be made to consumers – including, notably, the disclosure that only one Lifeline benefit per household is permitted – and required new subscribers to sign a certification under penalty of perjury that they are not already receiving Lifeline supported service. *See, id.*, ¶¶ 69, 91. Further, the new rules expanded the identifying information to be collected when enrolling subscribers, such as requiring Lifeline ETCs to collect the subscriber's date of birth and last four digits of his or her Social Security Number ("SSN"). *See, id.*, ¶ 118. Finally, the Commission adopted measures to resolve potential duplicates, such as the Independent Economic Household form for use when multiple economic units reside at the same address. *See, id.*, ¶¶ 69, 76-78.

Notably, however, neither the 2011 Duplicate Payments Order nor the 2012 Lifeline Reform Order defined a "duplicate" for these purposes. Neither order defines a "subscriber" for purposes of determining whether the subscriber receives more than one Lifeline-supported service. In order to thwart duplicate enrollment attempts, the Commission now requires Lifeline ETCs to obtain multiple pieces of information about each subscriber: first name, last name, address, date of birth and last four digits of the subscriber's SSN. No Commission rule, however, addresses how to handle variations in that information. Finally, although the

Commission adopted a one-per-household rule and defines "household," it does not have any rules in place for resolving conflicts in address information in order to determine whether the one-per-household rule comes into play.

The Commission's signature long-term protection against duplicate enrollments will be the National Lifeline Account Database ("NLAD"). The FCC directed USAC to create a database of Lifeline subscribers so that duplicates can be identified and eliminated. *Id.*, ¶¶ 179-187. As the Order states "[t]here is widespread agreement that a permanent solution to duplicative claims requires that ETCs are able to determine if a prospective subscriber is already receiving a Lifeline benefit at the time the subscriber requests service or seeks a Lifeline benefit from that ETC" and, to that end, directed USAC to create a database that is capable of providing verification upon inquiry of whether a subscriber is already receiving Lifeline support. *Id.* ¶ 199. The Commission's Wireline Competition Bureau ("WCB") and USAC have been working to develop the NLAD with input and support from Telrite and other industry stakeholders. The database currently is not scheduled to become fully operational until early in 2014 – more than a year after the Commission's deadline.[2]

B. The USAC December 2013 IDV Findings

USAC conducted two IDVs at issue in this request for review. The first IDV examined April 2013 Lifeline reimbursement claims in the states of Arkansas, Illinois and West Virginia. On December 30, 2013, USAC issued a decision finding **BEGIN CONFIDENTIAL END CONFIDENTIAL** intra-company duplicates out of the **BEGIN CONFIDENTIAL END CONFIDENTIAL** customers listed on the Form 497 for Arkansas, **BEGIN**

[2] According to the revised schedule released on December 27, 2013, the first NLAD state (Maryland) will not go into "live" production until February 13, 2014 and the final group of states will not go into "live" production until March 27, 2014. *See* http://usac.org/li/tools/nlad/nlad-migration.aspx (last checked Jan. 17, 2014).

CONFIDENTIAL END CONFIDENTIAL intra-company duplicates out of the **BEGIN CONFIDENTIAL END CONFIDENTIAL** customers listed on the Form 497 for Illinois, and **BEGIN CONFIDENTIAL END CONFIDENTIAL** intra-company duplicate out of the **BEGIN CONFIDENTIAL END CONFIDENTIAL** customers listed on the Form 497 for West Virginia ("Phase 19 IDV Finding"). *See* Confidential Exhibit 1. The alleged duplicates found by USAC in the IDV represented only 0.03%, 0.11%, and 0.02% of Telrite's Lifeline subscribers in each state, respectively.

The second IDV examined April 2013 Lifeline reimbursement claims in Louisiana and Maryland. On December 30, 2013, USAC issued a decision finding **BEGIN CONFIDENTIAL END CONFIDENTIAL** intra-company duplicates out of the **BEGIN CONFIDENTIAL END CONFIDENTIAL** customers listed on the Form 497 for Louisiana, and **BEGIN CONFIDENTIAL END CONFIDENTIAL** intra-company duplicates out of the **BEGIN CONFIDENTIAL END CONFIDENTIAL** customers listed on the Form 497 for Maryland[3] ("Phase 21 IDV Finding"). *See* Confidential Exhibit 2. The alleged duplicates found by USAC represented only 0.04% and 0.01% of Telrite's Lifeline subscribers in each state, respectively.

Even if the Commission determines that every one of the alleged duplicates actually is a duplicate, Telrite's effective duplicate detection rate would be 99.92%.

Despite USAC's findings, these alleged duplicates are not, in fact, duplicates. In each case, the accounts alleged to be duplicates contain different subscriber data. The differences in subscriber data fall into several categories. All of the alleged intra-company duplicate accounts

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[3] It appears that these IDV findings – like many others – are duplicative. For example, **BEGIN CONFIDENTIAL END CONFIDENTIAL** of the alleged duplicates listed on the spreadsheet for Phase 21 in Louisiana and Maryland already included on the list of alleged duplicates for Phase 17 for the same states. *See* Telrite Corporation Request for Review, WC Docket Nos. 11-42, 03-109 (Dec. 30, 2013).

contain differences in name and/or address data. All of the alleged intra-company duplicate accounts contain differences in the subscriber last name, date of birth, and/or SSN information (last four digits). A single letter or digit difference in any one of these subscriber information fields would result in the accounts passing the duplicate detection screening now in place for seeding the NLAD (*i.e.,* the NLAD would not identify these accounts as duplicates).

C. Question Presented

The December 2013 IDVs find that certain accounts containing similar information are intra-company "duplicate" accounts belonging to the same subscriber. This request for review challenges these findings and the standard used by USAC to render them. Specifically, this request raises the following central question for review: can accounts with subscriber information that is similar but not identical be deemed a "duplicate" under the Commission's current Lifeline program rules and orders?

II. THE FCC MUST ESTABLISH ADDITIONAL RULES TO DETERMINE WHAT VARIANCES IN SUBSCRIBER INFORMATION CAN CONSTITUTE A "DUPLICATE"

The intra-company duplicate findings in the December 2013 IDVs exceed USAC's role as an impartial administrator of the Fund because they represent an attempt by USAC to fill a gap in the FCC's rules and orders. Several relevant FCC orders reference duplicates but none provides adequate guidance for determining when an account that contains different information from that contained in another account can constitute a duplicate. While this may seem at first blush to be a simple task, in practice, it is not. With electronic screening, a potential duplicate will not have an exact match in every data field relating to a subscriber (name, address, date of birth, SSN, etc.). Instead, variations appear in accounts, such as differences in customer names, dates of birth, SSN information and addresses. The Commission has never concluded that such variances may be dismissed and, as a result, accounts with similar but not identical subscriber information can constitute a duplicate. Even if some variations were to be deemed insignificant, the determination of which variations are significant and which are not requires subjective decisions to evaluate the differences in required customer information. The Commission, not USAC, is the only entity empowered to render such a policy decision.[4]

A. The FCC Has Not Defined an Account with Different Information as a "Duplicate"

Notably, despite Commission decisions that eligible subscribers should not receive more than one Lifeline-supported service, no FCC rule or order defines or describes what constitutes a duplicate. In the *Duplicate Payments Order*, the Commission adopted a rule that "no qualifying customer" is permitted to receive more than one Lifeline subsidy concurrently. Duplicative Payments Order, 26 FCC Rcd at 9027 (¶ 8).[5] 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*." *Id.* at 9028 (¶ 11) (emphasis in original). Again, what subscriber data determines whether an individual is the same is not defined.

Concurrent with the Duplicative Payments Order, the WCB issued instructions to USAC for conducting IDVs. *See* DA 11-1082, Letter from Sharon E. Gillett, Chief, WCB, to D. Scott Barash, Acting Chief Executive Officer, USAC (June 21, 2011) ("IDV Guidance Letter"). With respect to duplicates on the same provider's network, the Bureau's guidance refers to only two types of such "duplicates," both of which require an exact match of relevant information. First, in what it refers to as Track 2-A duplicates, the Bureau describes "different individuals, same address" as duplicates. For these duplicates, the provider will look for "other information in its

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[4] 47 C.F.R. § 54.702(c); *see The Conference Group, LLC v. FCC*, 720 F.3d 957, 960 (D.C. Cir. 2013) (USAC "has no policy or interpretive role").

[5] 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.*

possession" which either validates or refutes the existence of a duplicate. Second, the Bureau refers to "intra-company duplicates," which it describes as "same name, same address" duplicates. *Id.* at 5. Critically, no guidance is provided for determining whether variations in a name or address can somehow constitute the "same name" or "same address."

USAC, which may only implement FCC policies, not create them,[6] similarly has provided little to describe how it interprets the FCC's guidance concerning these two categories of duplicates. In its IDV training materials, USAC states only that it has built a "Low Income Duplicate Detection System" to (1) "standardize addresses" through the U.S. Postal Service's address matching system and (2) conduct name comparison using "lexical and phonetic approaches" to determine name variances. 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.[7] USAC also does not state how, if at all, other subscriber information (date of birth, last four digits of SSN) the Commission has required to be collected will be used in examining accounts and determining whether any are duplicates. Moreover, nothing in the IDV decisions explains how USAC concluded that accounts with variances in information were deemed to constitute a duplicate.

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[6] 47 C.F.R. § 54.702(c) ("The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.").

[7] Most recently, the WCB has proposed audit procedures for the Lifeline Biennial Audits that would require independent auditors to define a "subscriber" as having a match of name, date of birth **and** last four digits of the SSN. *See Wireline Competition Bureau Seeks Comment on the Lifeline Biennial Audit Plan*, Public Notice, DA 13-2016, at Attachment 2, p. 15 (rel. Sept. 30, 2013) ("Lifeline Biennial Audit Plan Notice") (emphasis added). Moreover, independent auditors are instructed to conduct this review "using computer-assisted audit techniques," suggesting that an electronic data matching is an acceptable duplicate screening process. *Id.*

B. <u>USAC Could Not Have Concluded That the Listed Accounts Were Duplicates Without Applying an Additional Standard</u>

None of the FCC's orders provides sufficient information for USAC to make the intra-company duplicate findings that it rendered in the December 2013 IDVs. The FCC's IDV Guidance to USAC only addresses situations where the relevant information is an exact match (*i.e.,* involves the "same name" or "same address"). Critically, this now-dated guidance includes no instruction as to the consideration of other required subscriber information, including date of birth and SSN information. Because none of the accounts found by USAC to be intra-company duplicates involves identical customer account information, USAC was unable lawfully to conclude based solely on the FCC's guidance – or otherwise in a manner consistent with Lifeline program rules – that the accounts were duplicates.

Each of the duplicate accounts identified by USAC contains one or more differences in subscriber information. In all instances, the alleged duplicate accounts contain some variation in the customer name and/or address data. All of them also contain differences in subscriber information fields, including differences in last name, date of birth and SSN information, that would result in these accounts not being rejected as duplicate accounts by the NLAD as it is presently set for seeding. For example, USAC identified accounts where the customer name differed <u>and</u> the account contained a difference in customer date of birth, last four digits of SSN, or both. USAC also identified accounts with address differences <u>and</u> a difference in date of birth, last four digits of SSN, or both. Not one of these accounts fits within the "same name, same address" category specified in the IDV Guidance Letter. In order to address these accounts, USAC would have had to apply an additional standard to determine whether, despite the differences in information, the account was sufficiently the same to constitute a "same name" or "same address." That standard, of course, is not contained in the FCC's guidance to USAC.

Similarly, the FCC's guidance is not helpful in determining how other differences in subscriber information may be ignored or disregarded so as to reach the conclusion that two accounts belong to the same individual. The IDV Guidance Letter was issued before the Commission amended its rules in the 2012 Lifeline Reform Order to require ETCs to collect identifying information such as date of birth and the last four digits of SSN. The IDV Guidance Letter only discusses two pieces of information that an ETC collects – customer name and customer address. None of the FCC orders provide guidance on how the additional information that ETCs now are required to collect – such as date of birth and SSN information – are to be considered to determine whether a similar customer name and/or address represents one or two individuals. Here again, USAC appears to have impermissibly filled in the gap in guidance with its own (undisclosed) standard that appears to simply disregard differences in date of birth and SSN information. A standard that ignores such information cannot be squared with Commission's requirement to collect such information.

These problems demonstrate the core deficiency in the Commission's "duplicates" guidance to date. Electronic screening techniques typically are used to identify accounts with identical information. Electronic screening techniques are not particularly effective in identifying or resolving other variations that may appear in subscriber data. Names may have different spellings or different suffixes, such as "Sr." or "Jr." Addresses may have different house numbers, apartments and unit numbers. For others, the name and/or address information may be the same, but the SSN or date of birth information may differ.[8] Every one of these

[8] Under the Commission's rules, June 2012 and later accounts contain additional subscriber information fields (*i.e.,* date of birth and last four digits of SSN) not required to be collected upon enrollment for accounts established prior to that date. These discrepancies make it impossible to compare the two accounts on an apples-to-apples basis. *See* Lifeline Biennial Audit Plan Notice, at Attachment 2, p. 18 n. 20 (discarding pre-June 2012 accounts from the process review portion of the audit).

variances requires a rule to resolve whether the differences indicate a separate subscriber account or a duplicate. The FCC's guidance to date, however, does not supply a rule for addressing such differences.

C. The FCC Must Clarify its Guidance for Evaluating Duplicates

In order for USAC and the industry to address these types of differences, additional guidance from the Commission is necessary. Telrite respectfully submits that this guidance should be provided promptly.

The Commission must clarify that, under existing policy, a Lifeline account may be deemed a duplicate based on subscriber provided information only if all of the mandated subscriber identification information matches. The Commission should instruct USAC to cease classifying as a "duplicate" accounts where the subscriber data is similar, but not identical. Unless and until the Commission modifies its rules to establish standards for addressing similar, but not identical, account information, USAC simply cannot conclude based on available information that accounts with different subscriber information are duplicates.

If the Commission modifies its rules to address such similar accounts, its guidance should be as specific as possible in identifying which types of variances are significant and which are not. If, for example, the Commission requires Lifeline ETCs to collect name, date of birth and last four digits of SSN, should all three of those pieces of information be an exact match in order to conclude that the person is the "same individual?"[9] If some variances in these data points will be disregarded, the Commission should identify which ones those are.[10]

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[9] This is the standard proposed for the Lifeline Biennial Audits. *See* Lifeline Biennial Audit Plan Notice, at Attachment 2, p. 18.

[10] As of this date, the NLAD's duplicate detection logic differs from that proposed for Biennial Audits in that differences in first names would be disregarded.

Similarly, with respect to addresses, the Commission would need to identify how conflicting information should be resolved. For example, if two accounts have different apartment numbers (Apt. 101, Apt. 304, etc.), is a Lifeline ETC permitted to conclude that this information, by itself, represents a different household?[11] Similarly, if one address lacks a unit number while the other contains one, can the Lifeline ETC treat these as different households?[12] If not, the FCC should specify when such accounts involve the "same address" and when they do not.

The development of such "conflict resolution" rules will be helpful in a number of respects. First, such rules will of course provide greater predictability to the low-income enrollment process. Second, such rules will allow Lifeline ETCs to develop methods and procedures to incorporate the conflict resolution into their enrollment processes. ETCs must be able to develop real-time electronic systems to identify such conflicts and resolve them according to the rule. The result of such systems would be fast and reliable decisions regarding eligibility of subscribers and fewer actual duplicates that successfully make their way through the process.

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[11] Other carriers have noted the same concerns. In their comments on the Lifeline Biennial Audit Plan, Verizon and Verizon Wireless provided the following comment:

> In Verizon's experience, USAC sometimes identifies subscribers as receiving duplicate support when, in fact, they do not. 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. In other words, USAC sometimes identifies customers as duplicates when they actually appear to be separate, eligible subscribers.

Comments of Verizon and Verizon Wireless, Lifeline Biennial Audit Plan, WC Docket No. 11-42, at 12-13 (filed Dec. 13, 2013).

[12] In such instances, the differences may represent a spare room for rent or a garage apartment. Both such examples would constitute different households under Lifeline program rules.

Third, standards for the resolution of such subscriber information differences will help to ensure uniform and non-discriminatory application of the FCC's rules. For example, with no standards for resolving such differences during an IDV, USAC might pick and choose which accounts with similar but not identical information it considers to be "duplicates" in an inconsistent manner. Worse, there would be nothing to prevent USAC from applying a stricter interpretation of duplicates against a disfavored ETC or based on some other reason unrelated to the IDV review itself.[13] Whether a duplicate is found should never depend on which staffer reviews the information and/or which ETCs are or are not in favor at the particular time.

III. USAC'S IDV FINDINGS MUST BE VACATED

Based solely on the FCC rules and guidance to date, USAC could not have determined whether the particular accounts it identified as intra-company duplicates represent prohibited "duplicative support." A review of the December 2013 IDV data shows that none of the accounts fit the criteria established in the IDV Guidance Letter of either a "different individuals, same address" duplicate or a "same name, same address" duplicate. *See* Confidential Exhibits 1 and 2. Accordingly, there is no basis on which USAC may conclude that the small number of accounts identified in the December 2013 IDVs are intra-company duplicates. For these reasons, the USAC findings must be vacated.

Telrite notes that USAC has announced its intention to recover the Lifeline support associated with the alleged intra-company duplicate accounts identified in the December 2013 IDVs. Each IDV states that USAC will net the amount identified in the IDV **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** against the company's low-income

[13] Discretionary scrutiny also could implicate the rights of Lifeline subscribers themselves. Without definitive rules, it is possible that customers in certain ethnic groups could face additional scrutiny and, ultimately, de-enrollment due to what may constitute impermissible profiling or disparate impact.

support payment that would be disbursed at the end of January 2014. In addition, pursuant to the December 2013 IDV, Telrite has de-enrolled the Lifeline subscribers that USAC identified as intra-company duplicates.

Although the December 2013 IDVs regarding intra-company duplicates are not supported and must be vacated, Telrite clarifies that it is not seeking reversal of either the reimbursement or de-enrollment of the identified customers in this instance. That is, despite this request for review, Telrite voluntarily agrees in this instance to treat the alleged duplicates as though they are duplicates and to forego the Lifeline support that USAC seeks to withhold from the January 2014 disbursements. Further, despite this request for review, Telrite voluntarily de-enrolled the subscribers that were identified as duplicates. Telrite simply seeks a ruling vacating USAC's findings of intra-company duplicates.

IV. THE FCC SHOULD ESTABLISH A SAFE HARBOR FOR LIFELINE PROVIDERS TO DETECT DUPLICATES

In addition to providing the guidance described above and vacating the unsupported December 2013 IDV findings regarding intra-company duplicates, the Commission should establish prospective standards for Lifeline ETCs to use for duplicate screening. Specifically, Telrite requests that the FCC establish a safe harbor reflecting a minimum level of due diligence that a Lifeline ETC should employ to detect for duplicates. This safe harbor would work like the safe harbor the FCC applies to wholesale telecommunications carriers in determining whether a customer's services are exempt from USF contribution obligations because they are purchased for resale.[14] That is, so long as a Lifeline ETC employed the safe harbor practices, it would not

[14] *In Re Universal Service Contribution Methodology, et al.*, Order, 27 FCC Rcd 13780 (rel. Nov. 5, 2012) (the "Wholesaler-Reseller Clarification Order").

face retroactive liability or forfeiture penalties for any duplicates that might nevertheless evade detection.

A. The FCC Has Not Established a Standard of Conduct for Detecting Duplicates

The FCC's Lifeline rules do not provide instruction to Lifeline ETCs regarding the actions needed to be taken in order to detect duplicates (however the term might be defined). The Lifeline program rules are extensive and detailed. 47 C.F.R. §§ 54.400 *et seq.* The goal of many rules undoubtedly is to help prevent subsidies being paid for ineligible subscriber accounts. However, the Lifeline regulatory framework is a process-based, not a results-based, framework. 47 C.F.R. §§ 54.405, 54.407, 54.410, 54.417, 54.222. And while ETCs must "implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services," this rule leaves it to the ETC to determine what policies and procedures to implement. 47 C.F.R. § 54.410(a). Because no standard of conduct has been set, it is impossible for an ETC to know at this time what actions will be sufficient for screening for duplicates.

The need for such a standard is critical. Nowhere in the Lifeline program is perfection in fraud detection required. For example, the FCC itself is not held to a standard of perfection in administering the Lifeline program. The IPERA sets forth an acceptable error rate for federal executive agencies managing disbursement programs. *Improper Payments Elimination and Recovery Act of 2010*, P.L. 111-204 (Jul. 22, 2010); 31 U.S.C. § 3321, note. Under the IPERA, federal agencies are required to conduct risk assessments of programs the agencies administer and identify programs susceptible to "significant improper payments." *Id.* "[S]ignificant improper payments" under the IPERA are, for fiscal years prior to September 2012, those that exceed either (1) 2.5% of program outlays and $10 million of all program payments or (2) payments of $100 million.[15] The IPERA's establishment of additional compliance requirements that are applicable only to those improper payments defined as significant[16] is a tacit acknowledgement by Congress that it is not reasonable to expect that a federal agency disbursement program will ever be completely error-free.

Nor will Lifeline ETCs be held to a standard of perfection in the upcoming biennial audits that must be conducted by ETCs that receive $5 million or more in Lifeline support in a year. The WCB released draft standards for the audits on September 30, 2013. *See Wireline Competition Bureau Seeks Comment on the Lifeline Biennial Audit Plan*, Public Notice, DA 13-2016 (rel. Sept. 30, 2013) ("Lifeline Biennial Audit Plan Notice"). With respect to an ETC's procedures for determining subscriber eligibility (Objective III), the Biennial Audit Plan proposes a reasonable standard for a significant error rate rather than an expectation of 100% perfection. In the fieldwork test procedures for examination of the ETC's policies and procedures, the Biennial Audit Plan directs auditors to randomly select at least 100 subscribers from the ETC's subscriber list for testing. Testing would examine the eligibility information collected on subscriber certification forms to ensure its completeness. *Id.*, Attachment 2 at 17-18. This analysis, however, does not require that certification forms be complete in every single instance. Instead, auditors are directed to test the first 50 subscribers randomly sampled. If – and only if – the auditor finds an error rate of more than 5% during its examination of the first 50 forms, then the auditor proceeds with a more in-depth assessment and examines the remaining

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15 The IPERA's 2.5% significant improper payment threshold decreases to 1.5% for fiscal years beginning after September 30, 2012. IPERA §§ 2(a)(3)(A)(ii)(I). Notably, according to the Commission, Lifeline is the only major USF program operating within this standard. *See* Federal Communications Commission, Fiscal Year 2012 Agency Financial Report (Oct. 1, 2011 – September 30, 2012) at 85 (rel. Feb. 27, 2013) ("FCC FY2012 Financial Report") (identifying the Connect America Fund (High Cost) and Schools and Libraries (E-rate) programs as susceptible to significant improper payments).

16 *See e.g.*, IPERA § 2(c).

selected subscribers. *Id.*[17] Thus, the Plan adopts thresholds that recognize a certain level of error is inevitable and does not threaten program objectives.

These standards (and others like them) recognize that a certain level of errors will occur regardless of the robustness of the procedures that are followed. Such errors are inevitable. Because of this, it is critical that an ETC know what procedures it may follow to insulate itself from potential liability for duplicates that nevertheless may escape detection. Such protection can come from the establishment of a safe harbor for duplicate prevention.

Safe harbors are used by the Commission for precisely this purpose. For example, in the context of Universal Service Fund contributions, the Commission has a long-established safe harbor for wholesale carriers to use in determining whether its customers are resellers. *See* 2013 Form 499-A, Instructions at 22-23. Under that safe harbor, if a wholesale provider follows the guidance provided in the FCC's instructions, it will be deemed to be in compliance with FCC rules. Wholesaler-Reseller Clarification Order, ¶ 51 ("A wholesale provider that complies with all of the guidance in the Form 499-A instructions will be afforded a "safe harbor"-*i.e.*, that provider will be deemed to have demonstrated a reasonable expectation"). Critically, this safe harbor applies (and the wholesale provider is not required to make USF contributions on the revenues) even if the reseller ultimately fails to make its required contributions on the resold revenues. That is, even if an error actually occurs, the wholesale provider is absolved of liability if it has followed the safe harbor procedures. *Id.*, ¶ 38.

B. <u>The Commission Should Establish a Safe Harbor</u>

Telrite requests that the Commission establish a safe harbor for Lifeline providers that engage in reasonable and diligent duplicates screening methods and procedures. Under such a

[17] Notably, for purposes of this examination, auditors are instructed to disregard forms collected from subscribers before the effective date of the most recent Lifeline reforms, in June 2012. Lifeline Biennial Audit Plan Notice, Attachment 2 at 18 n. 20.

safe harbor, a Lifeline provider that has conducted appropriate due diligence to identify duplicate subscribers will not be liable for retroactive reimbursements to the Universal Service Fund and will not be subject to forfeitures or other penalties if USAC or the FCC, through additional scrutiny, determines that an account is a duplicate.

The safe harbor should identify the steps a Lifeline ETC should take in order to check for duplicate enrollments in its own records. Telrite respectfully suggests that these steps should be satisfied by evidence that the ETC (1) has obtained a valid certification from the subscriber attesting, under penalty of perjury, that the subscriber is not receiving another Lifeline-supported service, *and* (2) has submitted the subscriber's record to an electronic screening process using the NLAD (when available) or, where the NLAD is not available, using a state database, a third-party database of subscribers or the ETC's own subscriber records.

The first element of this proposed safe harbor flows from the 2012 Lifeline reforms. Under those reforms, the Commission requires Lifeline ETCs to obtain certifications from prospective customers that contain certain required information. Among such information, these forms must inform customers that:

- Only one Lifeline service is available per household;
- A household is not permitted to receive Lifeline benefits from multiple providers, and;
- Violation of the one-per-household limitation constitutes a subscriber's violation of the Commission's rules and will result in the subscriber's de-enrollment from the program.

47 C.F.R. § 54.410(d)(1). Further, the rules require that the subscriber certify under penalty of perjury that:

- The subscriber meets the income-based or program-based eligibility criteria for Lifeline benefits;
- The subscriber will notify the carrier within 30 days if for any reason he or she "is receiving more than one Lifeline benefit";

- The subscriber's household will receive only one Lifeline service and, to the best of his or her knowledge, the subscriber's household is not already receiving a Lifeline service; and
- The subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law.

47 C.F.R. § 54.410(d)(3).

Receipt by a Lifeline ETC of a certification from each relevant subscriber that satisfies Section 54.410(d) of the rules should satisfy the first prong of the safe harbor.

The second prong – electronic screening of the subscriber records – should be satisfied by evidence that the Lifeline ETC follows acceptable procedures to check for duplicates prior to enrollment and submission of a request for reimbursement from the Fund. Where the NLAD or a state database is available, the ETC should be required to screen using that database in order to benefit from the safe harbor. Absent the NLAD or a state database, the ETC should have the option to use a third-party database or its own database of subscribers to conduct a duplicates check.

Importantly, this prong of the safe harbor would be satisfied by the use of an electronic screening process. If the records match using the logic employed in the database, then the carrier must treat the subscriber as a duplicate subject to exceptions.[18] If the records do not match using the logic employed in the eligibility database, however, then the subscriber is not a duplicate for purposes of the safe harbor.

Provided that the Lifeline ETC can demonstrate compliance with both prongs of the safe harbor – (1) receipt of a certification form satisfying Section 54.410(d) and (2) electronic screening through the NLAD or other appropriate database – then the ETC would not be subject

[18] In such an instance, an ETC could obtain additional evidence in order to demonstrate the subscriber's eligibility for a Lifeline benefit. This additional evidence may consist of an Independent Economic Household form or other evidence demonstrating that the subscriber is not a duplicate.

to retroactive liability for enrollment of the subscriber. If, after additional review via an IDV or otherwise, USAC or the FCC concludes that an account is a duplicate, the Lifeline ETC would be required to de-enroll the account as instructed. However, the Lifeline ETC would not be required to return any Lifeline benefits received prior to the determination that the account is ineligible. Moreover, the Lifeline ETC would not be subject to any potential fines or penalties for having enrolled the subscriber or having requested reimbursement for the subscriber prior to the USAC or FCC determination. As with the safe harbor for wholesale providers in the USF contributions process, compliance with the safe harbor procedures would be sufficient to discharge the Lifeline ETC's duties to check for duplicate enrollments.

CONCLUSION

For the reasons explained above, Telrite requests that the Commission vacate the December 2013 IDV findings regarding intra-company duplicates. In so doing, Telrite requests that the Commission further clarify that under existing policy, only accounts with exact matching information in all required fields may be deemed to be duplicates based on available subscriber information. Finally, Telrite requests that the Commission establish a safe harbor for Lifeline providers to follow in the future when checking for duplicate enrollments.

These actions will protect and promote the efficient administration of the Lifeline program. Commission action to clarify its duplicates policy, correct the erroneous USAC findings and to establish a safe harbor for duplicate detection can restore balance to the program. By taking the actions above, the Commission will increase compliance with the Lifeline program's requirements, will promote responsible Lifeline practices and will further the policy goals of the program.

Respectfully submitted,

TELRITE CORPORATION

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CONFIDENTIAL EXHIBIT 1
(REDACTED)

CONFIDENTIAL EXHIBIT 2
(REDACTED)