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April 14, 2014

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Lifeline Reform 2.0 Coalition Written *Ex Parte* Presentation; WC Docket No. 11-42

Dear Ms. Dortch:

On June 28, 2013, the Lifeline Reform 2.0 Coalition¹ filed a Petition for Rulemaking requesting that the Commission initiate a rulemaking proceeding to consider and adopt additional reforms designed to further reduce waste, fraud and abuse in the Lifeline program.² On July 15, 2013, the Wireline Competition Bureau (“Bureau”) released a Public Notice seeking comment on the Petition³ and on August 29, 2013, the Coalition filed reply comments noting the widespread support amongst the commenting parties for the Commission to initiate a rulemaking proceeding to consider further Lifeline reforms.⁴ Although a substantial consensus developed around a core set of proposed reforms, the Commission has not acted on

¹ The Lifeline Reform 2.0 Coalition is presently comprised of Telrite Corporation; Blue Jay Wireless, LLC; Global Connection Inc. of America; and i-wireless LLC.

² See Lifeline Reform 2.0 Coalition’s Petition for Rulemaking To Further Reform The Lifeline Program, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed June 28, 2013) (“Petition”).

³ See *Wireline Competition Bureau Seeks Comment on Lifeline Reform 2.0 Coalition’s Petition for Rulemaking To Further Reform The Lifeline Program*, WC Docket No. 11-42, Public Notice, DA 13-1576 (rel. July 15, 2013).

⁴ See Reply Comments of the Lifeline Reform 2.0 Coalition, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed Aug. 29, 2013) (“Coalition Reply Comments”).

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the Petition. Due to regulatory and market changes that have occurred since last summer, the Coalition hereby revises and re-prioritizes its proposals for further Lifeline reform.

In particular, one of the Coalition's core proposals had been to require ETCs to verify a Lifeline applicant's identity by checking an appropriate database, viewing photo identification or other reasonable means.⁵ At the time, the Lifeline rules did not require identity verification and the Coalition members saw their company policies to verify identity as a core measure to combat fraud and abuse by ensuring that the documentation of eligibility matches the applicant's identity.⁶ The Coalition noted at the time that the National Lifeline Accountability Database ("NLAD") would use an identity verification database, but argued that it should include an exceptions process to allow applicants not found in the database to prove their identity, such as by showing a photo ID.⁷ As of last month, the NLAD is now in live production for all participating states and the database includes a third party identity verification ("TPIV") through a Lexis-Nexis check.⁸ In addition, there is a resolution process for "TPIV_FAIL" error messages, which allows ETCs to submit a dispute after reviewing documentation to confirm the identity of the applicant, such as a driver's license, pay stub or utility bill.⁹ Therefore, the

⁵ See Petition at 5-6 and Coalition Reply Comments at 4-7.

⁶ With limited exception, such as a parent applying for Lifeline service based on the eligibility of his or her child for the National School Lunch Program's free lunch program.

⁷ See Coalition Reply Comments at 5.

⁸ While the Commission's rule reforms largely have succeeded in eliminating waste, fraud and abuse in the Lifeline program, it is regrettable that the Commission missed by more than a year its own deadline for implementing this most critical reform – a solution called for five years ago and which only the Commission could build. Nevertheless, the Coalition applauds the Commission on the successful launch of the NLAD and the continuation of the collaborative process that helped produce that result. The Lifeline program now is on stable ground and is ready to follow the transformation of all other federal Universal Service programs to broadband. It is unfortunate that the universal service program dedicated to providing low-income Americans with access to affordable communications services does not provide support for broadband services needed to apply for jobs, collect homework assignments and to participate fully in the nation's economy and communities. Mobility and broadband in the hands of low-income Americans holds the potential for being a uniquely disruptive force capable of breaking the cycle of poverty faced by many low-income Americans.

⁹ See USAC NLAD FAQs, available at <http://www.usac.org/li/about/getting-started/faq-nlad.aspx> ("This error message is generated because the subscriber has failed the Third Party Identity Verification (TPIV). In order to resolve this error message, the ETC must collect documentation, such as current utility bills, pay stubs, or a driver's license to confirm the identity of the subscriber.").

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Coalition will focus on streamlining and improving the TPIV failure dispute process within NLAD.

Despite the passage of time, several proposals from the Coalition's Petition remain high priorities for further reform to eliminate waste, fraud and abuse in the Lifeline program:

Retention of Proof of Eligibility

The Coalition remains convinced that the Lifeline program will benefit from a rule change that would permit ETCs to retain proof of eligibility for audit purposes and in order to respond to negative media stories that claim an ETC did not require proof of eligibility.¹⁰ The Coalition understands the Commission's and other parties' concerns raised by this proposal regarding Lifeline subscriber privacy rights, and the Coalition also seeks to ensure that strict privacy controls are maintained. For that reason, the Coalition proposed in its Petition that the Commission require that the electronic storage of documentation of eligibility be encrypted according to a reasonable standard.¹¹ Further, the Coalition has proposed a limited retention period to allow for Universal Service Administrative Company ("USAC") auditing and to respond to media inquiries or reports.¹² In addition, after discussions with Lifeline stakeholders, the Coalition also supported the concept of having a trusted third party such as USAC or another entity retain the documentation of eligibility, rather than the ETCs.¹³ In this manner, a single encryption standard can be chosen and all private information can be stored in a single location rather than at multiple locations with multiple ETCs.

Since the Petition and commenting period, TracFone Wireless, Inc. ("TracFone") filed a petition for waiver of the Commission's rules prohibiting retention of documentation of eligibility.¹⁴ On March 3, 2014, the Coalition filed comments supporting TracFone's petition in principle, however, as TracFone's petition applied only to TracFone, the Coalition asserted that

¹⁰ See Petition at 6-7 and Coalition Reply Comments at 7-8.

¹¹ See Petition at 7.

¹² See Notice of Ex Parte Presentation of Telrite Corporation, Boomerang Wireless and i-wireless, WC Docket No. 11-42 at 6 (filed Dec. 11, 2013) ("December 2013 Ex Parte").

¹³ See Coalition Reply Comments at 8.

¹⁴ See TracFone Wireless, Inc. Petition or Waiver of Lifeline Rules Prohibiting Retention of Income-Based and Program-Based Eligibility Documentation, WC Docket No. 11-42 (filed Jan. 22, 2014).

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any relief granted should be applied to all Lifeline ETCs.¹⁵ Ultimately, a further rulemaking proceeding is the more appropriate means to modify the Commission's rules prohibiting retention of eligibility proof.

Requiring Non-Commission Based Review and Approval of Enrollments, Regardless of Where the Enrollment Takes Place

Some have suggested that because the Lifeline benefit is disbursed on a per-month, per-subscriber basis, it is irreparably prone to errant payments.¹⁶ Others suggest that the in-person distribution of handsets is more prone to abuse than delivery by mail (notwithstanding that company's solicitations to a sitting United States Senator highlighting the fact that the Commission's prior rules required consumers to show no proof of eligibility¹⁷ and other media coverage featuring phones being mailed to the deceased).¹⁸ Some suggest that moving agents under a permanent roof will somehow reduce opportunities for waste, fraud and abuse.¹⁹ We respectfully disagree. Agents or employees behaving poorly is not caused by tents or tablets and is not cured by putting them in call centers or under a roof. Rather, it is a byproduct of inadequate controls.

¹⁵ See Comments of the Lifeline Reform 2.0. Coalition on TracFone Petition for Waiver, WC Docket No. 11-42 (filed Mar. 3, 2014).

¹⁶ See McCallister, Laura and Olivas, Sandra, *McCaskill says free cell phone program filled with fraud*, KCTV 5, (Feb. 11, 2014), available at <http://www.kctv5.com/story/24697648/mccaskill-says-free-cell-phone-program-filled-with-fraud> ("When you pay people per person, you are creating an incentive for them to manufacture applications.").

¹⁷ See TracFone Notice of Ex Parte Presentation; WC Docket No. 11-42 (Dec. 23, 2011) (expressing regrets that the mailer was sent to Senator McCaskill at her residence in Washington, DC and noting that it discontinued use of mailers that say "no proof necessary" or "pre-approved.").

¹⁸ See *Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers; Lifeline and Link Up Reform and Modernization et al.*, Petition for Rulemaking, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (May 13, 2013) ("TracFone Petition") and Barnini Chakraborty, *Lawmaker looks to rein in program after free cellphones sent to dead people*, FoxNews.com (Mar. 11, 2013); Ben Terris, *2 Dead People Got Free Phones, 1 GOP Lawmaker Eyes an Opening*, National Journal (Feb. 26, 2013).

¹⁹ See Nexus Communications, Inc. Ex Parte Communication, WC Docket Nos. 11-42 and 03-109 (May 10, 2013) (proposing to limit Lifeline enrollments to brick and mortar stores).

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To address the “real or perceived risks associated with [agent-initiated] enrollments” that could be attributable to “commission-based compensation,”²⁰ the Coalition has proposed to require that ETCs conduct a non-commission-based review and approval of all enrollments.²¹ Under this proposal, an ETC could have an employee that is not paid a commission for approving Lifeline enrollments review the application and supporting documentation or have an independent party that is not compensated based on approving an enrollment conduct the eligibility review. The authorization for every enrollment is determined by the ETC and any commission-based agents or field representatives merely assist the applicant to review the appropriate disclosures, provide the required information and make the required certifications. The proposal garnered widespread support from the commenters and the Coalition believes it remains an important proposal for further reform.

The Coalition has also identified additional reforms that would improve the Lifeline program by ensuring that eligible consumers are not denied Lifeline service and supporting a healthy ecosystem of competing ETCs to serve low-income consumers:

Minimum Standards for State Eligibility Databases

The Commission has recognized that states may develop their own databases to address Lifeline applicant eligibility. However, as the Coalition has explained previously, there must be some standards set for those databases to enable real-time enrollment and to guard against denying Lifeline service to eligible consumers.²² In an October 2012 Public Notice, the Commission “provide[d] guidance to states regarding the process of opting out of the National Lifeline Accountability Database” and required states to build duplicates databases at least as robust as the NLAD.²³ If the state duplicates database fails to meet the minimum requirements, then ETCs in the state are required to use the NLAD for duplicate detection.

Unfortunately, the Commission has not provided any guidance to states or set minimum standards with respect to eligibility databases, which could have important

²⁰ Petition at 8.

²¹ *See id.* at 9. The Coalition originally proposed that an employee conduct the review, but based on feedback from other Lifeline stakeholders, modified its proposal to require the review prior to including a subscriber on a Form 497 reimbursement request by someone that is not paid on a commission basis for approving enrollments.

²² *See* December 2013 Ex Parte at 3-4.

²³ *See Wireline Competition Bureau Clarifies Minimum Requirements for States Seeking to Opt Out of National Lifeline Accountability Database*, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, Public Notice, DA 12-1624 (rel. Oct. 11, 2012) (“Opt Out Public Notice”).

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implications for Lifeline-eligible consumers. Therefore, the Coalition proposes that the Commission establish at least the following minimum requirements for state eligibility databases:

1. Real-time API access to data. In order to be effective, any eligibility database must function to allow ETCs to build an application programming interface (“API”) into the database for real-time responses. Many ETCs engage in face-to-face Lifeline enrollments either in ETC-branded stores or at mobile enrollment tents and events, which allow the ETCs to see the applicant, check photo ID (as necessary or desired) and show approved applicants how to activate and use their wireless handset. For such enrollments, ETCs like the Coalition members have real-time Internet connectivity to their enrollment backbone, which allows the ETCs to check their own subscriber databases, state duplicates databases and NLAD for duplicates and service territory databases prior to approving the application. If a state eligibility database requires an end-of-month batch submission process, rather than a real-time API access, ETCs are not able to check the applicant’s eligibility in real-time so that they can confirm eligibility and send the customer home with an activated handset that the applicant knows how to use to immediately connect to jobs, healthcare, emergency services and family.

2. Updated in a timely fashion, which ideally would be real-time or within twenty-four hours. It is important that an ETC get a real-time response from any state eligibility database, as described above, but it is also important that the eligibility database be updated either in real-time or within at most twenty-four hours. The longer it takes for a database to be updated, the more eligible consumers could potentially be denied their benefit because they are not found in the database. The Commission should neither accept nor embrace database solutions and audit processes that result in the denial of Lifeline benefits to eligible consumers.²⁴

3. Simple yes/no response without access to underlying data. An ETC that dips a state eligibility database needs only a “yes” or “no” response regarding the applicant’s eligibility. The ETC does not need access to the underlying information contained in that database and, to address privacy concerns, should not be given any such access. ETCs should be required to sign a Memorandum of Understanding with the state database administrator regarding the authorized uses of the database.

4. Match based on last name, date-of-birth and last four digits of the applicant’s social security number (no address-related field). While Lifeline applicants’

²⁴ See e.g., December 2013 Ex Parte at 2-3; Notice of Ex Parte Presentation, WC Docket No. 11-42 (Jan. 11, 2014); and Boomerang Wireless, LLC Request for Review, WC Docket Nos. 11-42, 03-109 at 13-15 (Jan. 7, 2014).

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names generally do not change, and their date of birth and social security number (“SSN”) cannot change, their addresses change frequently. Therefore, to avoid false negative responses from the eligibility database, only those fields that rarely if ever change should be used to identify the applicant as eligible. As an example, although there have been many improvements to the Texas duplicates and eligibility databases, *the Texas eligibility database continues to use applicant zip code as a required field for eligibility confirmation, which results in many eligible applicants being denied Lifeline service* because low-income consumers are more transient than the population in general.²⁵

5. Efficient exceptions and dispute resolution process. As the Commission, USAC and ETCs have learned through the process of developing and implementing the NLAD, an automated system cannot be perfect. It must be designed to efficiently address exceptions and resolve disputes when they arise. As discussed further above, an example would be the NLAD’s identity verification component. Due to the fact that the Lexis-Nexis database is based largely on credit history, many Lifeline applicants are not found in the Lexis-Nexis check. Therefore, the NLAD allows ETCs to submit a dispute after reviewing documentation to confirm the identity of the applicant, such as a driver’s license, pay stub or utility bill.

Further, the NLAD allows ETCs to submit a benefit transfer when an applicant shows up as a duplicate in NLAD, but tells the ETC that he or she wants to switch Lifeline providers. The Commission and USAC are currently working on the appropriate method to settle any disputes that arise from that process, either between consumers and ETCs or between ETCs. In the same manner, meeting the requirements discussed herein will allow state eligibility databases to adequately serve the identified need for a fast and reliable eligibility verification method for Lifeline enrollment, but the databases are unlikely to be perfect. Therefore, they should be designed with an exceptions and dispute resolution process that is, wherever possible, handled electronically and efficiently.

6. Provide access to the Commission and USAC for audit purposes. Any state eligibility database should of course provide access to the Commission and USAC for audit

²⁵ Note that the Melissa address data is generally updated at the end of the month. The Texas Low-Income Discount Administrator (“LIDA”) eligibility database currently requires ETCs to provide the applicant’s last name, date of birth, last four digits of the SSN and zip code for a real-time eligibility check. In many instances, an ETC will receive a response of “non-eligible” from the LIDA Health and Human Services Commission (“HHSC”) eligibility check even though the ETC is sitting in front of the applicant and looking at their photo identification and currently valid documentation of eligibility. This situation most likely occurs because the applicant’s zip code has changed since the time that they originally signed up for the qualifying program.

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purposes, and presumably state databases would not be designed without similar access to the state public utilities commission.

The Coalition believes that these are all essential elements of an effective state eligibility database. A database that meets these minimum criteria is unlikely to result in a frustrating and inefficient experience for eligible consumers or significant numbers of eligible Lifeline customers being denied the benefit. However, as discussed above, there should be an “exceptions management” process for situations where eligible consumers are not found in the applicable state eligibility database.

There is some ambiguity regarding the Commission’s rules governing the use of state eligibility databases, which can result in *eligible consumers being denied Lifeline benefits*. To avoid this untenable outcome, the most reasonable reading of the Commission’s Lifeline enrollment rules allows eligible Lifeline applicants to enroll in Lifeline service by showing documentation of eligibility even if they are not found in a state eligibility database. Section 54.410(c)(1)(i)(B) of the Commission’s rules regarding program-based eligibility provides, “If an [ETC] cannot determine a prospective subscriber’s program-based eligibility for Lifeline by accessing eligibility databases, the [ETC] must review documentation demonstrating that a prospective subscriber qualifies for Lifeline under the program-based eligibility requirements.”²⁶ Section 54.410(b)(1)(i)(B) of the rules provides the same language with respect to income-based eligibility.²⁷

If the applicant is found in the database, the applicant’s eligibility has been determined and the ETC can enroll the applicant in Lifeline. If the applicant is not found in the state eligibility database, then the applicant’s eligibility cannot be determined by the state database, and the ETC must review documentation of eligibility from the applicant to enroll the applicant in Lifeline. This reasonable interpretation of Sections 54.410(c)(1)(i)(B) and 54.410(b)(1)(i)(B) of the Commission’s rules allows ETCs to enroll demonstrably eligible low-income consumers in Lifeline rather than having to turn them away.

This interpretation of the rule also is consistent with the Bureau’s interpretation of the Lifeline re-certification requirement in situations where state eligibility databases are available. In an October 2012 Public Notice, the Bureau stated its policy with respect to re-certification:

If there is a database in the state, but the ETC or state agency cannot re-certify the subscriber through that database (*i.e.*, the subscriber cannot be found in the

²⁶ 47 C.F.R. § 54.410(c)(1)(i)(B).

²⁷ See 47 C.F.R. § 54.410(b)(1)(i)(B).

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database), the state agency or ETC may re-certify the continued eligibility of a subscriber by obtaining a signed certification from the subscriber that meets the requirements of 47 C.F.R. § 54.410(d).

For re-certification, the signed subscriber “self-certification” is the default when databases are not available just as providing proof of eligibility is the default for enrollment when databases are not available.

In order to prevent eligible consumers from being denied service, the Coalition has called on the Bureau to issue guidance that removes ambiguity and confirms that, if an applicant is not found in the state eligibility database, then the applicant’s eligibility cannot be determined by the state database, and the ETC must review documentation of eligibility from the applicant to enroll the applicant in Lifeline.²⁸ As an alternative, the Commission could eliminate the ambiguity in its rules by modifying them to clarify that ETCs may view documentation of eligibility where an applicant is not found in an eligibility database. That change would ensure that imperfections in state eligibility databases do not result in denial of Lifeline service to eligible low-income Americans that need it.

Establishing a Safe Harbor from Enforcement Action for Alleged Duplicate Enrollments for Any Lifeline Subscribers That Have Been Submitted to the NLAD or Similar State Database

The Coalition members have each made substantial commitments to combating duplicate enrollments in the Lifeline program, both within each company and between ETCs. For example, prior to the implementation of the NLAD, these companies joined with dozens of other ETCs to create an Inter-company Duplicates Database (“IDD”) developed by CGM, LLC with more than 2.2 million lines and prevented over 375,000 duplicate enrollment attempts.²⁹ That equates to savings to the Lifeline program of \$4.2 million per month, which would be \$50 million annually.

The Commission’s rules and orders do not define a “duplicate” for purposes of the one-per-household rule, nor do they define a “subscriber” for purposes of determining whether the subscriber received more than one Lifeline-supported service. Notably, when the Bureau has provided guidance on what it views to represent a duplicate, it has offered something different on no less than four occasions (In-Depth Validation or IDV instructions to USAC, Lifeline Biennial Audits initial proposal, NLAD seeding and in Public Notices requiring the use

²⁸ See December 2013 Ex Parte at 6.

²⁹ While Coalition members and other smaller ETCs voluntarily joined in this industry self-regulatory effort, some of the largest wireless ETCs declined to participate.

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of all subscriber data for detecting duplicates).³⁰ When USAC was asked by CGM on behalf of the Coalition members and other CGM clients for the duplicate detection methodology used in the IDVs (which clearly diverged from the definition supplied by the Bureau for that purpose), USAC refused to provide it citing purported benefits of keeping secret the standard by which ETCs would be judged and pursuant to which the Commission has selectively proposed more than \$90 million in fines. As discussed in detail below, now that the NLAD is in place with a clear and rational definition of what it will consider to be a duplicate (i.e., same exact last name, date of birth and last four digits of SSN), the Commission should establish an enforcement safe harbor for subscribers that have been cleared through the NLAD or a similar state duplicates database.

Despite the lack of clarity regarding duplicate accounts prior to NLAD implementation, the Commission has undertaken a misguided and harmful process of proposing multi-million dollar fines against ETCs for failing to eradicate 100 percent of end-user fraud allegedly perpetrated in the form of intra-company duplicate enrollments in the Lifeline program. In addition to several other ETCs arbitrarily held to a strict liability standard, Coalition members i-wireless, Telrite, and Global Connection each have received a Notice of Apparent Liability (“NAL”). Each company disputes the allegation of duplicate enrollments, but even if every one of the alleged intra-company duplicates were duplicates, the companies would have near-perfect track records at protecting the program from such duplicate enrollments – i-wireless 99.7 percent, Telrite 99.6 percent and Global Connection 99.4 percent. The Commission and USAC appear to expect perfection in guessing what USAC deems to be a duplicate, but these track records at blocking duplicate enrollment attempts are not the sign of ETCs that ignore the Commission’s rules or abuse the program by accepting duplicate enrollment attempts by end-users. In fact, if each company were subject to the Improper Payments Elimination and Recovery Act of 2010 threshold for government disbursement programs, none would be considered to be susceptible to “significant improper payments” because the alleged improper payments are less than 1.5 percent.³¹ Nonetheless, each ETC that has been arbitrarily selected to receive an NAL has to expend enormous resources defending itself before the Commission and in front of state commissions against allegations that it failed to anticipate perfectly those accounts USAC would deem to be duplicates (despite customer attestations and subscriber information differences the Commission requires ETCs to consider but permits USAC to ignore).

³⁰ See *Wireline Competition Bureau Announces Duty to Query the National Lifeline Accountability Database*, WC Docket No. 11-42, Public Notice, DA 14-40 (rel. Jan. 14, 2014) (“NLAD Query Public Notice”).

³¹ See *Improper Payments Elimination and Recovery Act of 2010*, P.L. 111-204 (Jul. 22, 2010, 31 U.S.C. § 3321).

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At the same time, Coalition members and other ETCs have worked extensively with the Bureau and USAC to vet and improve the NLAD, including by flying in technical advisors from the companies to meet with and assist USAC and its NLAD vendor and through CGM's consistent efforts to educate the Bureau and USAC on its experience building and operating a duplicates database. The companies are pleased that the NLAD is now "live" for real-time enrollment "dips" and is actively screening enrollments for duplicates based on defined fields – exact last name, date of birth and last four digits of SSN.

Therefore, going forward the Commission should establish a safe harbor reflecting a minimum level of due diligence that a Lifeline ETC should employ to screen for duplicates.³² Under such a safe harbor, a Lifeline provider that has conducted appropriate due diligence to identify duplicate subscribers would not be liable for retroactive reimbursements to the Universal Service Fund and would not be subject to forfeitures or other penalties if USAC or the Commission, 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. The Coalition 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 or an applicable state duplicates database.

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;

³² This proposal has been included in numerous IDV appeals pending with and past due for decision by the Bureau. *See, e.g.*, i-wireless LLC's Request for Review, WC Docket Nos. 11-42, 03-109 at 14-20 (Dec. 30, 2013); Telrite Corporation's Request for Review, WC Docket Nos. 11-42, 03-109 at 14-20 (Dec. 30, 2013); Notice of Ex Parte Presentation, WC Docket Nos. 11-42, 03-109 at 1-3 (Feb. 10, 2014).

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- 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.³³

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.³⁴

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.

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.³⁵ If the records do not match using the logic employed in the database, however, then the subscriber is not a duplicate for purposes of the safe harbor.

³³ See 47 C.F.R. § 54.410(d)(1).

³⁴ See 47 C.F.R. § 54.410(d)(3).

³⁵ 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.

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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 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.³⁶ 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 Commission determination. Compliance with the safe harbor procedures would be sufficient to discharge the Lifeline ETC’s duties to check for duplicate enrollments.

Establishing a “Shot Clock” Time Period for Bureau Review and Approval of Petitions for ETC Designation, Compliance Plans and to Complete Audits

The Lifeline program and its beneficiaries would be well served by the adoption of an improved governance framework. The database solutions all stakeholders declared essential to preserving the integrity of the Lifeline program and reform proposals such as the Lifeline Reform 2.0 Petition are not the only items the Commission has permitted to languish. Federal ETC applications, compliance plan approvals and audit appeals also have been left pending beyond the point of reasonable expectation – and in the case of the latter, beyond the time permitted by the Commission’s own rules. For the Lifeline program to remain viable, and to reach its full potential, all players in the Lifeline ecosystem, including regulators, consumers and service providers – must do their part. While we regularly have praised the Commission’s actions, we also have been candidly critical of its missteps and respectfully have submitted proposed solutions. Here, the Coalition respectfully submits a proposal designed to provide a level of governance, accountability and regulatory certainty essential to the success of the Lifeline program and its inevitable progression to broadband.³⁷

The Communications Act charges the states with designating ETCs,³⁸ however, several states do not regulate wireless services and do not wish to designate wireless ETCs, so they have passed the designation responsibility back to the Commission.³⁹ In addition, the

³⁶ This rule would not bar any service provider from voluntarily deciding to “make the Fund whole” for detected or suspected cases of consumer fraud or abuse. Indeed, Coalition members routinely make such voluntary decisions because they serve to preserve and protect the Lifeline program.

³⁷ This transition will require significant private investments in healthy ETCs.

³⁸ See 47 U.S.C. § 214(e)(2).

³⁹ See 47 U.S.C. § 214(e)(6).

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Commission's *Lifeline Reform Order* granted blanket forbearance from the requirement that ETCs provide service using, at least in part, their own facilities, conditioned on approval of a compliance plan describing how the ETC (or prospective ETC) would comply with the Commission's new requirements.⁴⁰

According to the Commission's website that tracks Lifeline petitions for ETC designation in the federal jurisdiction states and compliance plans, there are 39 federal ETC petitions and 55 compliance plans pending with the Bureau for action.⁴¹ Many of the federal ETC petitions have been pending for years, including at least one since 2010. The Bureau has not approved a compliance plan since December 2012 or a federal ETC petition since August 2012. These delays have artificially restricted competition among ETCs for Lifeline customers in all states, but especially in the twelve federal jurisdiction states. Restricting competition reduces the incentive to improve the Lifeline benefit for low-income consumers. Nearly a decade ago when there were only two major wireless Lifeline providers, the standard offering was a 68 minutes plan. As additional wireless competitors entered the market, the standard offering has increased to 250 minutes, for essentially the same reimbursement amount. Similarly, handset quality and customer care have improved in more competitive markets such as Oklahoma.⁴² That offering can continue to improve, and incorporate broadband data, if there is a healthy wireless Lifeline ecosystem with many ETCs approved to compete for low-income subscribers.

Further, the Lifeline benefit belongs to the eligible low-income individual, not any particular ETC. Therefore, there are a set number of eligible individuals at any given time no matter how many ETCs are designated to provide Lifeline service. With the NLAD now having completed a successful nationwide launch, designating more ETCs does not necessarily impact the size of the Low Income Fund. Prior to the implementation of the NLAD, however, a greater number of designated ETCs could result in additional duplicate accounts because ETCs

⁴⁰ See *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, ¶368 (Feb. 6, 2012) ("*Lifeline Reform Order*").

⁴¹ See <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions> (last checked Mar. 31, 2014). It is a near certainty that a number of these filings have been abandoned as investors and job creators could not tolerate the regulatory uncertainty created by the Commission's effectively having put on hold these items for as many as four years.

⁴² The Oklahoma Corporation Commission deserves credit for recognizing that consumers rather than regulators should pick winners and losers in the marketplace.

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did not know whether an applicant was served by another ETC. Now that the NLAD is in “live” production in all states, the duplicate accounts are being removed and this is no longer a concern for designating new ETCs to compete for Lifeline eligible customers. Therefore, the Bureau should begin acting on the pending federal ETC petitions and compliance plans.

In addition, delays in completing IDVs have resulted in confounding results offensive to notions of sound governance and due process. As an example, several ETCs have received NALs for audit findings that had not been issued by USAC and several ETCs have received NALs for audit findings that are on appeal before the Bureau. Further, some appeals now have been pending beyond the deadlines set by the Commission for acting on them.⁴³

As the Commission has recognized previously,⁴⁴ the regulatory certainty created by establishing predictable decision timelines is essential to maintenance of adequate investment in the markets it oversees and regulates. For those same reasons and mindful of the need for private capital to support the transition of Lifeline to broadband, the Commission should adopt “shot clock” deadlines for the Bureau and itself to act on federal ETC petitions, compliance plans and audits. In the Commission’s recent Notice of Proposed Rulemaking seeking to reform the E-rate program, due to the significant delays identified especially for state networks and consortia, the Commission sought comment on proposals to reduce the time it takes USAC to review applications and release funding commitment decisions, including a proposal that USAC act within 90 days.⁴⁵

Similar delays exist in the administration of the Lifeline program, as described above. Therefore, if no action is taken within 90 days of filing a federal ETC petition, it should be automatically granted. If no action is taken within 90 days of filing a compliance plan, it should be automatically approved. If no action is taken on an audit appeal within 90 days, it should be resolved to the benefit of the ETC. We are mindful that the Commission has many priorities and finite resources, therefore, consistent with the framework of Section 54.724, the

⁴³ See 47 C.F.R. § 54.724 (“The Wireline Competition Bureau shall, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it. The Wireline Competition Bureau may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days.”) Although i-wireless and Telrite filed requests for review on December 30, 2013 and the 90 day deadline was on March 30, 2014, the companies received no notice that the time period for taking action has been extended.

⁴⁴ See 47 C.F.R. § 54.724.

⁴⁵ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, FCC 13-100, ¶236 (July 23, 2013).

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Commission should have the ability to extend this deadline through public action by up to 90 days.

Allow Wireless Reseller ETCs to Define Service Territory Based on Zip Codes of Underlying Carrier Coverage and Disassociate Wireless ETC Service Territory From Wireline Carrier Territories Like Exchanges and Wire Centers

As part of the ETC petition process in most states and at the Commission, ETCs must define their proposed service territory by identifying the exchanges or wire centers in which they will provide service. In some states, ETC petitioners must generate expensive maps showing wireless coverage overlaid on the various exchanges and/or wire centers. Such exchanges and wire centers are wireline carrier service territories that bear no relationship to wireless coverage. Therefore, wireless reseller ETC petitioners generally must obtain their zip code lists from their underlying carriers and convert from zip codes to exchanges and/or wire centers for the ETC petitions. Although the states and the Commission grant the ETC designation within a service territory based on exchanges or wire centers, the wireless ETCs generally utilize an applicant's zip code to determine at enrollment that the applicant is in the ETC's service territory and therefore can be served.

This process of tying wireless ETC service territories to wireline exchanges or wire centers is nonsensical. The commercial mobile radio services offered by wireless ETCs are by definition mobile and the subscriber can use his or her phone anywhere within the coverage territory of the underlying wireless carrier, within or even outside of the applicant's state of residence. Further, the signal reach of the underlying carrier's nearest tower is not defined or impacted by exchange or wire center. The Coalition understands that states and the Commission may not want ETCs enrolling Lifeline subscribers that live in areas outside of the area in which the ETC can serve, but there is no reason to tie that coverage to wireline carrier territories. Therefore, wireless ETCs should be permitted to define their service territory in federal ETC petitions and at the states by zip code only. This simplified process would clearly define what applicants each ETC can serve based on the zip code collected at the time of enrollment, which also makes for simple and clear auditing by the Commission, USAC or state commissions.

The proposals for further reform described above should be considered in any further rulemaking seeking to improve the Lifeline program to further combat waste, fraud and abuse; ensure that eligible low-income consumers receive their Lifeline benefit and are not turned away by imperfect databases; and foster a healthy ecosystem with ETC competitors that will drive innovation and improvements to Lifeline service offerings.

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This letter is being filed electronically for inclusion in the public record of the above-referenced proceeding. Please feel free to contact the undersigned with any questions.

Respectfully submitted,

A handwritten signature in blue ink that reads "John J. Heitmann". The signature is written in a cursive style with a large, stylized initial "J".

John J. Heitmann
Joshua T. Guyan

Counsel to the Lifeline Reform 2.0 Coalition

cc: Kimberly Scardino, WCB
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