

February 15, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW,
Room TW-A325
Washington, DC 20554

Re: In the Matter of Lifeline and Link-Up, WC Docket No. 03-109

Dear Ms. Dortch,

On January 21, 2011, the Wireline Competition Bureau (Bureau) sent a letter to the Universal Service Administrative Company (USAC) directing it to implement a process to address the situation of duplicate Lifeline claims (i.e., when USAC determines that consumers are receiving Lifeline benefits from multiple ETCs).¹ While we fully recognize the Commission's desire to implement a solution to the duplicate Lifeline problem, it is a problem with broad ramifications and thus it can only be addressed in a rulemaking proceeding. The Bureau, which lacks authority to promulgate substantive Lifeline rules, developed these rules without public input. At a minimum, implementation of the new Bureau rules must be suspended pending a rulemaking. In addition to suffering from significant legal infirmities,² these rules raise a number of operational issues of significant concern to the undersigned parties, which represent many of the state- or Commission-designated ETCs.

From an operational perspective, the rules that the Bureau directed USAC to implement would be burdensome and costly to Lifeline providers who are, as the Bureau itself acknowledges, in compliance with the Lifeline rules.³ More importantly, the Bureau's rules would confuse Lifeline customers and would be ineffective at resolving duplicate Lifeline claims. Below we address a number of deficiencies in the Bureau's process. In addition, we outline an alternative process that we believe would be substantially more efficient if the

¹ Letter from Sharon Gillett, FCC, to Richard A. Belden, USAC (dated Jan. 21, 2011) (Bureau Letter).

² We will detail these concerns in a forthcoming PFR and Motion for Stay unless, of course, the Bureau rescinds or directs USAC to hold in abeyance implementation of the rules contained in the Bureau letter before 30 days after the issuance of the Bureau Letter elapses.

³ Bureau Letter at 2 ("There is no comprehensive database in place for ETCs to determine whether an eligible consumer is enrolled in Lifeline with another ETC, and ETCs are not in the position to share customer information with one another. ETCs therefore lack the data needed to prevent the occurrence of duplicate Lifeline claims.").

Commission is determined to implement an interim solution prior to approving a national Lifeline database and national administrator for Lifeline enrollment, certification, and verification. We urge the Commission to request public comment on this alternative interim proposal as part of its upcoming Lifeline/Link-Up NPRM—notwithstanding the fact that the only workable solution in a competitive environment is for the Commission to centralize the Lifeline administrative functions on a national level.

The Bureau Process

The Bureau's rules require that after USAC finds two ETCs have Lifeline customers in common, both ETCs must call those customers, each informing the consumer that they have 30 days to select one provider and submit a new Lifeline self-certification form to the chosen provider. The ETC that receives the customer's self-certification form is then supposed to notify the other ETC and USAC of that fact, and ETCs are supposed to rely on the information they receive from each other to de-enroll customers. The primary problem with the Bureau process is that it continues to rely on ETCs for implementation of the Lifeline program and thus it suffers from the same weaknesses that created the duplicate problem in the first place. Despite recognizing this weakness ("ETCs are not in the position to share customer information with one another"),⁴ the Bureau relies on it yet again to try to "fix" the problem. Just a few examples quickly illustrate the confusion that could be caused by the Bureau's rules. We list others that the Commission will have to confront with any interim duplicate Lifeline resolution process, *infra*, on page 4.

The process calls for each carrier to contact the customer by phone and, if possible, in writing. This means that the customer will be contacted by two different providers, potentially weeks apart, by different methods, each describing the situation in a different manner. As a threshold matter, it is very difficult to contact customers by phone. How many attempts constitute "contact?" Are ETCs required or permitted to leave voice messages? And most importantly, will customers understand verbal contacts from different ETCs? What will competing ETCs be able to say (both verbally and in their letters to customers)?⁵

Given the inevitable customer confusion caused by making competing phone calls to and written contact with Lifeline customers, it is very possible that customers will provide both ETCs with new certifications, requesting that Lifeline service be maintained with both providers. An ETC will not be aware of this until the other ETC notifies it that it, too, received a self-certification form from the same customer. How is this "new" duplicate resolved? And by whom? ETCs are instructed to notify USAC of a customer's provider selection, but what does

⁴ *Id.*

⁵ For example, ETC representatives who call these customers -- absent specific and enforceable rules -- may also use the contact to aggressively sell to the customer and use questionable "slamming" tactics to ensure that the customer selects that ETC.

USAC do if both ETCs notify it that each has received a self-certification form from the same customer? In this situation—a likely outcome even when a customer does make an affirmative provider selection—“duplicate” Lifeline claims will remain unresolved.

Alternative Process

We firmly believe that there is no effective resolution of the issue of duplicate Lifeline subscriptions without a database. No other solution can prevent duplicates from recurring. Nonetheless, to the extent the Commission seeks a temporary solution with respect to current duplicates, such a temporary solution will only be workable if it puts a neutral third party in the lead role. The logical choice to play this role is USAC, subject to specific, Commission-imposed guidelines. We recognize that the Bureau intended its rules to be an “interim” solution while the Commission considers whether and how to establish a national Lifeline database. A database will take time to design and construct. However, a national Lifeline database can only prevent duplicates prospectively as new Lifeline consumers enroll. As the database is populated with the embedded Lifeline subscriber base, additional duplicates are very likely to be found and will need to be resolved. Thus a robust, efficient and effective duplicate resolution process will be critical to the success of any database project. It behooves the Bureau and the Commission to take the time now to establish a workable, competitively neutral, and consumer friendly process to resolve duplicates. Any “interim” solution is unlikely to be worth the considerable time expense it will take to implement.

We provide an outline of an alternative duplicate resolution process that we believe addresses many of the infirmities of the Bureau’s process. We ask the Commission to include this proposal in its upcoming NPRM on Lifeline/Link-Up reform.

- a. USAC sends written notification on behalf of the Commission to all customers it identified as receiving duplicate Lifeline benefits. The letter, which will have been approved—if not written—by Bureau staff, explains situation, requires customer to select one of the listed carriers by checking a box on a form, and directs the customer to a USAC toll-free number if the customer has any questions about this letter.
- b. Customers must return the signed, completed form, which is not a self-certification form, to USAC within 30 days.
- c. USAC does not notify affected ETCs about when its written notification is occurring and to whom; thus, ETCs may not exert influence over their customers’ responses to USAC.
- d. Affected ETCs continue to provide Lifeline-supported service to these customers and seek reimbursement until USAC resolution process is complete.

- e. When USAC receives a completed form from the customer, it notifies only the ETC (and/or a third party administrator, if one exists) not selected by the customer. That ETC (and/or third party administrator, if one exists) must then de-enroll the customer from its Lifeline service. If that ETC is required to provide notice of change in rate to customers then it must promptly do so and de-enroll when rate notice requirements are met.
- f. The ETC selected by customer is not notified by USAC because doing so may reveal proprietary information about that customer's relationship to another provider. The chosen ETC simply continues to provide Lifeline-supported service and seek reimbursement.
- g. If USAC does not receive a completed form from the customer, USAC should be instructed to either notify both ETCs (and/or a third party administrator, if one exists) to de-enroll that customer, or contact the customer by phone to determine the customer's provider selection. If the Commission does not view either alternative as viable, the Commission should seek further comment on other options.

By assigning the responsibility for this resolution process to a single entity, it can be implemented more quickly and efficiently. While this proposal puts USAC in a role it has not played before in the Lifeline program, it is one that we believe USAC must play in order to shore up the administration of this vital consumer program. Some of the potential benefits of this industry proposal include the following:

- a. A single administrator of the resolution procedure is more efficient (fewer notices to customers) and effective (no new duplicates).
- b. Receiving a single notice from a single official source will reduce customer confusion.
- c. Making a "check box" selection on a single form will be easier for customers to understand. No new certifications to ETCs will be necessary.
- d. A third-party administrator ensures confidentiality of competitively sensitive subscriber information.
- e. ETCs can rely on official notice from USAC to de-enroll rather than notification from a competing ETC.

Other Matters

There are a number of other issues that will arise during the implementation of any duplicate resolution process that we encourage the Commission to address in a rulemaking:

1. The Bureau Letter directs USAC to use the results of recently completed audits to begin its Lifeline duplicate resolution process; however, the subscriber lists from those audits are, in some cases, two years old. Since that time, many customers may have moved and/or de-enrolled. Any duplicate resolution process must be conducted based on ETCs' latest subscriber information.

This is only one of many operational issues where close coordination between service providers, USAC, and the Commission would save all parties time and resources. We strongly urge the Commission to establish a working group with industry, USAC, and Bureau representatives to help ensure that the development and implementation of any duplicate resolution process is as smooth as possible for everyone, particularly consumers.

2. Any duplicate resolution process must be consistent with Commission rule 54.405(d), which requires ETCs to give 60 days notice to customers prior to terminating their Lifeline benefits.⁶ In addition, ETCs may be required by state law or by the terms of their customer contracts to provide advance notice of any price increase. The Bureau's rule directing ETCs to de-enroll customers immediately upon notification by the other ETC does not take these federal and state regulatory, and contractual requirements into account.

3. Finally, once a duplicate resolution procedure has been completed for a set of customers, what can be done to keep the duplicate from recurring? An ETC that is directed to de-enroll a subscriber (via either the Bureau or the alternative process described above) may receive an application/self-certification form from the same customer a few weeks or months later. Current rules require ETCs to accept the customer's self-certification and enroll the customer in Lifeline again, possibly re-establishing duplicative Lifeline service. But of course, until a national Lifeline database is implemented, the ETC still has only the customer's certification that he/she qualifies for Lifeline service on which to rely.

Overall, these and other issues highlight the need for the Commission and the Bureau to fully comply with Administrative Procedure Act notice and comment procedures when adopting new rules and imposing substantive new requirements on providers and universal service program beneficiaries. As providers of Lifeline benefits to millions of customers we share the

⁶ 47 C.F.R. § 54.405(d) (applicable in federal default states).

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Commission's commitment to ensuring that the program functions in as cost-effective manner as possible. We would welcome the opportunity to meet with you to discuss the issues and proposals raised in this letter and look forward to working with the Commission as it moves forward to modernize the Lifeline program.

Sincerely,

United States Telecom Association

CTIA – The Wireless Association®

Independent Telephone and
Telecommunications Alliance

National Telecommunications
Cooperative Association

Organization for the Promotion
and Advancement of Small
Telecommunications Companies

Rural Cellular Association

AT&T

CenturyLink

Qwest

Tracfone Wireless, Inc.

Windstream Communications, Inc.

Verizon

cc: Sharon Gillett, Wireline Competition Bureau
Trent Harkrader, Telecommunications Access Policy Division
Richard Belden, Universal Service Administrative Company

Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 2011215413837

Proceeding

Name	Subject
03-109	In the Matter of Lifeline and Link-Up

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Details

exparte: YES
Type of Filing: NOTICE OF EXPARTE

Document(s)

File Name	Custom Description	Size
Lifeline Duplicate Letter - Final.pdf		23 KB

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