

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Lifeline and Link Up Reform and ) WC Docket No. 11-42
Modernization )
Federal-State Joint Board on Universal Service ) CC Docket No. 96-45
Lifeline and Link Up ) WC Docket No. 03-109

REPORT AND ORDER

Adopted: June 17, 2011

Released: June 21, 2011

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, and Clyburn
issuing separate statements.

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I. INTRODUCTION

1. In this order we take immediate action to address potential waste in the universal service Lifeline and Link Up program (Lifeline/Link Up or the program) by preventing duplicative program

payments for multiple Lifeline-supported services to the same individual. On March 4, 2011, the Commission released a Notice of Proposed Rulemaking to reform and modernize Lifeline/Link Up.<sup>1</sup> In the *2011 Lifeline and Link Up NPRM*, the Commission underscored its commitment to eliminating waste, fraud, and abuse in Lifeline/Link Up and presented a comprehensive set of proposals to better target support to needy consumers and maximize the number of Americans with access to modern communications services.<sup>2</sup> We explained that, while we are considering broader reforms to the program, which we remain committed to complete as soon as possible, it may be necessary for the Commission to take action to immediately address the harm done to the Universal Service Fund (Fund) by duplicative claims for Lifeline support.<sup>3</sup> To ensure that Lifeline support is limited to the amount necessary to provide access to telecommunications service to qualifying low-income consumers, we adopt measures to prevent, detect and resolve duplicative Lifeline claims for the same consumer. The near-term reforms we adopt here will reduce waste in the Fund and give the Commission flexibility to modernize the program in order to align it with changes in technology and market dynamics, such as the proposal we are currently reviewing to support broadband pilot projects for low-income consumers.

2. In May 2010, the Commission asked the Federal-State Joint Board on Universal Service to review the low income program to ensure that it effectively reaches eligible consumers and that oversight continues to be appropriately structured to minimize waste, fraud, and abuse.<sup>4</sup> Meanwhile, under the Commission's oversight and pursuant to the Commission's rules, the Universal Service Administrative Company (USAC) has conducted a series of audits to test compliance with our low income program rules, including audits to determine if there was a problem with duplicative claims for Lifeline. The audits revealed that some low-income subscribers are receiving multiple Lifeline benefits, contrary to our program restrictions.<sup>5</sup> The agency has already taken steps to address the situation; in particular, the Office of the Managing Director (OMD) directed USAC to perform a significant number of in-depth data validations (IDVs), which are streamlined inquiries of Lifeline recipients targeted at uncovering duplicative claims for Lifeline support in select states.<sup>6</sup> To ensure prompt action to eliminate duplicative Lifeline support, we make clear that qualifying low-income consumers may receive no more than a single Lifeline benefit; we also require an ETC, upon notification from USAC, to de-enroll any subscriber that is receiving multiple benefits in violation of that rule. Further, we direct the Wireline Competition Bureau (Bureau) to send a letter to USAC to implement an administrative process to detect and resolve duplicative claims.

## II. BACKGROUND

3. To achieve the statutory goals of providing telecommunications access to low-income subscribers, while at the same time ensuring that universal support is sufficient but not excessively

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<sup>1</sup> *Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011) (*2011 Lifeline and Link Up NPRM*).

<sup>2</sup> See generally *2011 Lifeline and Link Up NPRM*.

<sup>3</sup> *Id.* at para. 53. Although this order focuses only on the issue of duplicative support, the Commission continues to evaluate comments filed generally on waste, fraud, and abuse as well as other issues, and expects to address those issues in a subsequent order.

<sup>4</sup> *Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order, 25 FCC Rcd 5079, 7558, para. 11 (2010).

<sup>5</sup> See, e.g., USAC Independent Auditor's Report, Audit No. LI2009BE006 (December 3, 2010).

<sup>6</sup> USAC is not conducting IDVs in states that presently screen or filter for duplicative Lifeline support, such as California and Texas.

costly,<sup>7</sup> the Commission has made clear that eligible consumers may receive discounted service for “a single telephone line in their principal residence.”<sup>8</sup> This restriction historically was intended to target support where it was needed most and to maximize the number of Americans with access to the telephone network. In practice, this restriction has been implemented by providing one Lifeline/Link Up discount per residential address, reflecting the fact that in the immediate wake of the 1996 Act, the program provided discounts predominantly for wireline service.

4. The telecommunications marketplace has changed significantly over the last fifteen years, with a wide array of wireline and wireless services that compete with traditional incumbent telephone companies.<sup>9</sup> In 2005, the Commission made the decision to permit non-facilities based providers, including prepaid wireless carriers, to obtain low income support from the universal service fund.<sup>10</sup> According to USAC’s most recent annual report, competitive ETCs, including wireless ETCs, now have more Lifeline subscribers than incumbent ETCs.<sup>11</sup> Notwithstanding existing program protections, including verification and certification requirements,<sup>12</sup> low-income consumers may be obtaining universal service discounts from more than one provider, either knowingly or unwittingly. In addition, multiple carriers may be seeking reimbursement for services provided to a single subscriber, potentially unaware that a supported service is duplicative.<sup>13</sup>

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<sup>7</sup> See 47 U.S.C. § 254(b)(1), (3), (5); see *Alenco Commc’ns, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000).

<sup>8</sup> *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8306, para. 4 (2004) (*2004 Lifeline and Link Up Order/FNPRM*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8957, para. 341 (1997) (subsequent history omitted) (*Universal Service First Report and Order*).

<sup>9</sup> The Commission promulgated rules under the 1996 Act that enabled competitive wireless and wireline carriers to be designated as ETCs eligible for federal universal service support. See *Universal Service First Report and Order*, 12 FCC Rcd at 8969-73, paras. 364-72.

<sup>10</sup> See *Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless Petition for Forbearance*, CC Docket No. 96-45, WC Docket No. 09-197, Order, 25 FCC Rcd 8784 (2010) (*i-Wireless Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, District of Columbia, Delaware, New Hampshire*, WC Docket No. 09-197, Order, 25 FCC Rcd 17797 (2010) (*Virgin Mobile 2010 ETC Order*); *Virgin Mobile USA, L.P. Petition for Forbearance*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) (*Virgin Mobile Forbearance Order*); *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*).

<sup>11</sup> In 2010, 54.65 percent of low-income program disbursements went to competitive ETCs, while incumbent ETCs received 45.35 percent of low-income disbursements. Universal Service Administrative Company, 2010 Annual Report, at 13 (2010), available at <http://usac.org/res/documents/about/pdf/usac-annual-report-2010.pdf>.

<sup>12</sup> See 47 C.F.R. §§ 54.409, 54.410. For example, currently, certification rules applicable in federal default states require consumers that receive income-based support to self-certify under penalty of perjury as to their qualification to receive support and as to the number of individuals in their household. See 47 C.F.R. § 54.410(b). Prior to designating a wireless carrier as a Lifeline-only ETC, the Commission has required each carrier to take specific steps to further comply with the single line per household rule and establish safeguards to prevent consumers from receiving Lifeline-supported service from multiple ETCs. See *i-Wireless Forbearance Order*, 25 FCC Rcd at 8784, 8790, para. 16; *Virgin Mobile 2010 ETC Order*, 25 FCC Rcd at 17797, 17804, para. 21; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3381, 3387, 3392, paras. 12, 25; *TracFone Forbearance Order*, 20 FCC Rcd at 15095, 15103-04, para. 18.

<sup>13</sup> See 47 C.F.R. § 54.405(a) (stating that “all eligible telecommunications carriers shall make available Lifeline service, as defined in [the Commission’s rules], to qualifying low-income consumers”).

5. On March 4, 2011, the Commission released the *2011 Lifeline and Link Up NPRM* in which it sought comment on both immediate and permanent measures to prevent duplicative claims for Lifeline support.<sup>14</sup> In the near term, the Commission proposed remedies to detect and address duplicative claims, including permanently codifying guidance provided by the Bureau concerning duplicative claims.<sup>15</sup> The Commission also proposed adopting rules that would require ETCs to de-enroll their Lifeline subscribers from the program under certain circumstances.<sup>16</sup> As a more effective, longer-term method of reducing duplicative support, the Commission sought comment on creating a national database.<sup>17</sup>

6. On April 15, 2011, a diverse group of ETCs providing Lifeline service, as well as other interested industry representatives, submitted a proposal for a limited-term Lifeline duplicative resolution process (“Industry Duplicate Resolution Process”).<sup>18</sup> The proposal is aimed at resolving duplicative claims in the near term while the Commission considers more comprehensive resolution of the many issues raised in the *2011 Lifeline and Link Up NPRM*.<sup>19</sup> Under the Industry Duplicate Resolution Process, a consumer will receive written notification that he or she has been identified as receiving multiple Lifeline benefits and has at least 30 days to select a single provider.<sup>20</sup> In addition to presenting a process that USAC and the Commission can use immediately to resolve duplicative claims,<sup>21</sup> the proposal

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<sup>14</sup> See *2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2788-93, paras. 52-64.

<sup>15</sup> On January 21, 2011, the Wireline Competition Bureau provided guidance to USAC on how to resolve duplicative subsidies when more than one ETC seeks support from USAC for the same subscriber. Letter from Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to Richard Belden, Chief Operating Officer, Universal Service Administration Company, DA 11-110 (Wireline Comp. Bur. Jan. 21, 2011), available at [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0209/DA-11-110A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DA-11-110A1.pdf).

<sup>16</sup> *2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2800, para. 93; see also *id.* at Appendix A, 47 C.F.R. § 54.405(e) (proposed rule) (De-enrollment for disqualification).

<sup>17</sup> *2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2833-38, paras. 205-22 (Database).

<sup>18</sup> See Letter from United States Telecom Association, et al. to Marlene Dortch, Secretary, Federal Communications Commission, Ex Parte, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109 (filed Apr. 15, 2011) (*Industry Duplicate Resolution Process*); see also Letter from John T. Nakahata, Counsel, General Communications, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, Ex Parte, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109 (filed Apr. 26, 2011) (correcting initial filing).

<sup>19</sup> See *Industry Duplicate Resolution Process*, at 1.

<sup>20</sup> *Industry Duplicate Resolution Process*, Attachment A at 2-3 (Two Track Process Proposal); Letter from AT&T, CenturyLink & Verizon to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed June 15, 2011) (noting that the ETCs support their third party vendor contacting duplicative subscribers by phone to remind them to make a selection of a single Lifeline provider). To the extent that the third party vendor, acting on behalf of the carriers, utilizes automated or prerecorded calls to contact duplicative Lifeline subscribers to remind them to make a selection of a single provider, such calls would generally not be barred by Section 227 (b)(1)(A) or (B). See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1992*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8775, para. 43 (1992) (finding that, for calls from cellular carriers to their cellular customers, the “TCPA did not intend to prohibit autodialer or prerecorded message calls to cellular customers for which the called party is not charged”); and *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of ACA International for Clarification and Declaratory Ruling*, Declaratory Ruling, 23 FCC Rcd 559 (2008) (subscriber providing phone number to carrier sending prerecorded or autodialed call on whose behalf the call is sent reasonably evidences prior express consent); 47 C.F.R. § 64.1200(a)(2)(ii) (exempting prerecorded calls to residential lines if “not made for a commercial purpose”). We believe that the calls made by the third party vendor on behalf of the carriers would fall within these scenarios and therefore would not be barred by section 227.

<sup>21</sup> See *Industry Duplicate Resolution Process*, Attachment A.

suggests several near-term amendments and additions to our rules.<sup>22</sup> Specifically, the proposal suggests that the Commission amend its rules to explicitly preclude an individual low-income consumer from receiving more than one Lifeline-supported service, and to specify that ETCs are not obligated to serve low-income consumers simultaneously receiving Lifeline discounts from other carriers.<sup>23</sup> As part of the Industry Duplicate Resolution Process, the proposal suggests that the Commission require ETCs to immediately de-enroll a subscriber from its Lifeline program when the ETC is notified by USAC that the subscriber is receiving duplicative Lifeline services from another ETC. Pursuant to that proposal, a subscriber found to be in receipt of duplicative Lifeline subscriptions will be de-enrolled from the Lifeline program by only one of the ETCs from which the subscriber is receiving discounted service, and the subscriber will maintain a single Lifeline subscription.<sup>24</sup>

### III. DISCUSSION

7. In this order, we amend sections 54.401 and 54.405 of the Commission's rules to codify the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time. We also amend section 54.405 of the Commission's rules to provide that, upon a finding by USAC that a low-income consumer is the recipient of multiple Lifeline subsidies, any ETC notified that it has not been selected to continue providing Lifeline-discounted service to the consumer shall de-enroll that subscriber from participation in that ETC's Lifeline program pursuant to the procedures described below.<sup>25</sup> As noted below, we do not require a total termination of Lifeline discounts to the consumer in this situation, as the consumer will be permitted to maintain a single Lifeline service with one of the ETCs. We expect USAC to continue to perform in-depth data validations targeted at uncovering duplicative claims for Lifeline support, and we direct the Bureau to send a letter to USAC to implement a process to detect and resolve duplicative claims that is consistent with the ETCs' proposed Industry Duplicate Resolution Process, as described below.<sup>26</sup> The process we direct USAC to implement is an interim measure that is aimed at resolving duplicative claims in the near term while the Commission considers more comprehensive resolution of this and other issues raised in the *2011 Lifeline and Link Up NPRM*.

#### A. One Discount Per Eligible Consumer

8. With limited exceptions,<sup>27</sup> the Commission has not previously explicitly required ETCs to inquire whether a subscriber is receiving a Lifeline discount from another carrier. In light of the importance of ensuring that eligible low-income consumers continue to receive sufficient but not excessive Lifeline support, we now codify the limitation that an eligible consumer may receive only one

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<sup>22</sup> See *Industry Duplicate Resolution Process*, at 2-5, Attachment B (Proposed Rules).

<sup>23</sup> See *Industry Duplicate Resolution Process*, at 3, Attachment B.

<sup>24</sup> See *Industry Duplicate Resolution Process*, Attachment A, at 2-3. We note that if a consumer were found to be receiving Lifeline service from more than two ETCs, all ETCs except for one would be required to de-enroll the subscriber.

<sup>25</sup> See *infra* paras. 15-18 (de-enrollment).

<sup>26</sup> See generally *Industry Duplicate Resolution Process*.

<sup>27</sup> As part of the process of designating certain non-facilities-based wireless carriers as ETCs for the purpose of receiving Lifeline support, the Commission directed those carriers to establish safeguards to prevent consumers from receiving Lifeline service from multiple ETCs, including requiring each such ETC to "require its Lifeline customers to self-certify under penalty of perjury upon service activation and then annually thereafter that they are the head of household and only receive Lifeline supported service from [that carrier]." See *TracFone Forbearance Order*, 20 FCC Rcd at 15103, para. 18; *i-Wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3387, para. 12; *Virgin Mobile 2010 ETC Order*, 25 FCC Rcd at 17805, para. 24.

Lifeline-supported service.<sup>28</sup> As noted above, recent audit results indicate that some consumers may be receiving Lifeline discounts for more than one service, resulting in potentially millions of dollars in wasteful, excessive support from the Fund.<sup>29</sup> We therefore amend section 54.401(a)(1) of the Commission's rules to adopt a definition of "Lifeline" that will ensure that consumers do not, whether inadvertently or knowingly, subscribe to multiple Lifeline-supported services:

*As used in this subpart, Lifeline means a retail local service offering . . . [t]hat is available only to qualifying low-income consumers, and no qualifying consumer is permitted to receive more than one Lifeline subsidy concurrently.*<sup>30</sup>

Similarly, multiple carriers may be seeking reimbursement for Lifeline-supported services provided to a single subscriber, potentially unaware that the subscriber is already receiving Lifeline-supported services from another carrier.<sup>31</sup> To prevent this, we also amend section 54.405(a) of the Commission's rules to require ETCs to offer Lifeline service only to those qualifying low-income consumers who are not currently receiving another Lifeline service from that ETC or from another ETC:

*All eligible telecommunications carriers shall . . . [m]ake available one Lifeline service, as defined in § 54.401, per qualifying low-income consumer that is not currently receiving Lifeline service from that or any other eligible telecommunications carrier.*<sup>32</sup>

9. When the program rules were initially adopted, most consumers had only one option for telephone service: their incumbent telephone company's wireline service. In light of the advent of multiple Lifeline options for consumers, we now find it necessary to establish this restriction in our rules to ensure that low-income support is being used for its intended purposes – to provide basic telephone service to low-income consumers, rather than to provide multiple supported services to such consumers. We emphasize the importance of ETCs communicating program rules with their subscribers pursuant to 47 C.F.R. § 54.405(b).<sup>33</sup> In particular, when enrolling new eligible low income consumers in Lifeline, we expect ETCs will explain in plain, easily comprehensible language that no consumer is permitted to receive more than one Lifeline subsidy. Some consumers may not adequately understand eligibility

<sup>28</sup> This rule does not replace the established requirement that eligible consumers may receive universal service low-income support for "a single line in their principal residence." *2004 Lifeline and Link Up Order/FNPRM*, 19 FCC Rcd at 8306, para. 4; *Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341. Similarly, it does not supplant or otherwise affect the Commission's separate proposal, set forth in the *2011 Lifeline and Link Up Order*, to codify a one-per-residential address rule. See *2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2805-08, paras. 106-16.

<sup>29</sup> See *supra* para 2 (audit findings); see also Mississippi Public Service Commission Comments at 2-3 (using a scientific sampling approach, the Mississippi Public Service Commission compared subscriber name and address information provided by ETCs as of December 31, 2010, and found hundreds of subscribers claiming Lifeline subscriptions from as many as three ETCs simultaneously).

<sup>30</sup> See Appendix A, § 54.401(a)(1).

<sup>31</sup> See *Industry Duplicate Resolution Process*, at 2.

<sup>32</sup> See Appendix A, § 54.405(a); see also *Industry Duplicate Resolution Process*, Attachment B. In the *2011 Lifeline and Link Up NPRM*, we proposed to further modify the definition of "qualifying low-income consumer" to clarify that, to qualify for Lifeline support, a consumer must comply with the one-per-residence limitation that we proposed to codify in the Commission's rules. See *2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2804-2810, paras. 103-25 (One-Per-Residence), Appendix A, §§ 54.400(a), 54.408. Today's order does not replace or alter that proposal.

<sup>33</sup> See, e.g., Verizon Communications, Inc., File No. EB-03-TC-125, Memorandum Report and Order, 20 FCC Rcd 4244, 4246, paras. 6-7 (EB 2005) (noting the importance under section 54.405(b) of keeping consumers informed of eligibility requirements).

qualifications for Lifeline services, and may not understand that if they already subscribe to a Lifeline-supported offering they may not subscribe to another such service. It may be important that potential subscribers be made aware of the fact that not all Lifeline services are currently marketed under the name “Lifeline.”

10. Further, Commission rules and orders specifically limit the amount of support available to qualifying subscribers. Section 54.403(a) of the Commission’s rules, for example, establishes the discount amount that ETCs receive for providing Lifeline service to an eligible low-income consumer.<sup>34</sup> When the Commission adopted the first three tiers of Lifeline support in the *Universal Service First Report and Order*, it noted that the selected discount amount would serve as a cap on the amount of support available to qualifying low-income consumers.<sup>35</sup> To the extent that a low-income consumer receives discounts for multiple Lifeline-supported services, this would be inconsistent with the per-consumer support amount that ETCs are authorized to receive pursuant to section 54.403(a).

11. While some argue that the FCC should allow for multiple subsidies per residence, that particular issue is not addressed in this Order.<sup>36</sup> This order instead focuses on a narrower problem – reducing duplicative Lifeline subsidies received by the *same individual* – and codifies that restriction in FCC rules. Therefore, this order should not be construed to address the one-per-residential address proposal in the *NPRM*.<sup>37</sup>

12. Most commenters responding to the *2011 Lifeline and Link Up NPRM* stress the importance of resolving duplicative claims for Lifeline service.<sup>38</sup> Several commenters note that a process to detect and resolve duplicative claims will provide an appropriate balance between providing services to eligible participants while guarding against waste, fraud, and abuse.<sup>39</sup> Commenters are split, however, on the methods that should be implemented to detect and address duplicative claims. Many commenters, for example, recommend a national database as the best tool to detect duplicative claims for Lifeline support,<sup>40</sup> while others support requiring ETCs to collect unique household-identifying or personal-

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<sup>34</sup> 47 C.F.R. § 54.403(a); *see also 2004 Lifeline and Link Up Order/FNPRM*, 19 FCC Rcd at 8306, para. 4 (providing that the Lifeline program “provides low-income consumers with discounts of up to \$10.00 off the monthly cost of telephone service for a single telephone line in their principal residence”).

<sup>35</sup> *See Universal Service First Report and Order*, 12 FCC Rcd at 8962-63, 8966-67, paras. 350-52, 359-60.

<sup>36</sup> The *NPRM* sought comment on adopting a formal rule limiting support to no more than one line per residence, and that issue has been subject to comment in the record. *See 2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2805-10, paras. 106-25; AT&T Comments at 19; GCI Reply Comments at 10-11; *see also 2004 Lifeline and Link Up Order/FNPRM*, 19 FCC Rcd at 8306, para. 4; *Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341.

<sup>37</sup> *2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2805-10, paras. 106-125.

<sup>38</sup> *See, e.g.*, Comcast Comments at 2; Cricket Comments at 7-8; Connecticut DPUC Comments at 7; District of Columbia PSC Comments at 3; Florida PSC Comments at 7; Indiana Commission Comments at 3; Massachusetts DTC Comments at 3; Mississippi PSC Comments at 3-4; NASUCA Comments at 9; NASUCA Reply Comments at 3; California PUC Reply Comments at 3.

<sup>39</sup> *See, e.g.*, Gila River Comments at 16; GCI Comments at 22; District of Columbia PSC Comments at 3; Ohio PUC at 4; Connecticut DPUC Comments at 7.

<sup>40</sup> *See, e.g.*, AT&T comments at 3; CGM comments at 3; Consumer Groups Comments at 16; Cricket Comments at 7-8; Emerios Comments at 2; GCI comments at 27-28; Ohio PUC Comments at 4; TracFone Comments at 16; YourTel Comments at 2

identifying information from consumers.<sup>41</sup> At the same time, many ETCs recognize the value in adopting a rule to immediately address potential duplicative claims, while we consider broader reforms.<sup>42</sup>

13. Commenters also have differing opinions on the appropriate remedy for resolving a duplicative claim that has been discovered. A number of commenters support the procedures for remedying duplicative claims set forth in the Bureau's January 21<sup>st</sup> guidance letter<sup>43</sup> or the alternative procedures proposed in the *2011 Lifeline and Link Up NPRM*.<sup>44</sup> Other commenters urge the Commission to adopt the Industry Duplicate Resolution Process submitted by a group of ETCs subsequent to release of the *2011 Lifeline and Link Up NPRM*.<sup>45</sup> For example, the U.S. Telecom Association recommends that the Commission adopt the Industry Duplicate Resolution Process proposal, noting that the proposal would "provide a mechanism for starting to address duplicate Lifeline accounts prior to the Commission adopting final rules pursuant to the Low-Income NPRM."<sup>46</sup> Other commenters concur.<sup>47</sup> We agree that it is important for the Commission to take immediate action to adopt a process for resolving duplicative claims identified by USAC. We, therefore, direct the Bureau to work with USAC to implement a process to resolve duplicative claims that is consistent with the ETCs' Industry Duplicate Resolution Process and also includes effective outreach to the subscribers identified by USAC as receiving duplicative support.<sup>48</sup>

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<sup>41</sup> See, e.g., Michigan PSC Comments at 3; California PUC Reply Comments at 3; District of Columbia PSC Comments at 3; Florida PSC Comments at 7-8; Indiana Commission Comments at 3, 11-12; Comptel Comments at 3; Missouri PSC Comments at 6.

<sup>42</sup> See, e.g., AT&T Comments at 2-3; CenturyLink Comments at i-ii, 4-5; Consumer Cellular Comments at 10; GCI comments at 27; PR Wireless Reply Comments at 4; TracFone Comments at 16.

<sup>43</sup> See, e.g., Connecticut DPUC Comments at 7; Mississippi PSC Comments at 3; New Jersey DRC Comments at 11; Gila River Comments at 16.

<sup>44</sup> See, e.g., Florida PSC Comments at 8-9; New York State PSC Comments at 7-8; Michigan PSC Comments at 4; NASUCA Comments at 9; Nebraska PSC Comments at 6; NCTA Comments at 3.

<sup>45</sup> See Cox Comments at 6-7; GCI Comments at 27; TracFone Comments at 16; AT&T Comments at 2 n.4; CenturyLink Comments at 5-6; Conexions Comments at 5; Consumer Cellular Comments at 9-10; CTIA Comments at 11; Nexus Comments at 24-25; GCI Reply Comments at 22-24; TracFone Reply Comments at i, 3-4; PR Wireless Reply Comments at 5-6.

<sup>46</sup> USTA Comments at 11-12.

<sup>47</sup> See *supra* note 45 (commenters expressing support for the Industry Duplicate Resolution Process Proposal). *But see, e.g.*, New Jersey DRC Reply Comments at 9-11 (raising concerns that, among other things, "providers, rather than USAC, [should] bear the burden of notifying Lifeline customers of potential de-enrollment"); NASUCA Comments at 9 (stating that it would support a procedure requiring USAC to notify ETCs of duplicative support but ETCs, not USAC, should notify subscribers and resolve the issue); YourTel Comments at 4 (stating that ETCs should be permitted to contact the customer to resolve a duplicative support situation and to provide a subsequent recertification form to USAC without losing support for that customer). The California, New York, Michigan, and Florida Public Service Commissions all support the proposal that we sought comment on in the NPRM providing that, if after a 30-day notice period, the subscriber does not make a selection between the carriers providing duplicative service, the carrier that has served the customer the longest should continue receiving support for that subscriber. See California PUC Reply Comments at 3; New York State PSC Comments at 7-8; Michigan PSC Comments at 4; Florida PSC Comments at 8-9.

<sup>48</sup> We conclude that production by the ETCs of Lifeline subscriber data necessary to identify duplicative Lifeline claims is consistent with section 222(d) of the Communications Act. See 47 U.S.C. § 222(d). To the extent that the information produced by ETCs is customer proprietary network information as defined in section 222(h), this disclosure is permitted by the exceptions in section 222(d). See 47 U.S.C. § 222(h); 47 U.S.C. § 222(d)(1)-(2) (permitting disclosure "to initiate, render, bill, and collect for telecommunications services" and "to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services"); see also *Industry Duplicate Resolution Process*, at 5; Emerios (continued...)

As discussed further below, we require that consumers found to be receiving Lifeline supported services from two or more ETCs receive written notification of this fact and be given 35 days from the date listed on the written notification<sup>49</sup> to select one Lifeline service provider. In that notice, consumers also must be given information on how they can continue receiving service under the Lifeline program from the ETC of their choosing. Finally, the ETC(s) not chosen by the consumer or otherwise not chosen through the resolution process, should the consumer not make a choice within the minimum 30-day timeframe, will have five business days to de-enroll the consumer upon receiving notification to do so from USAC.

14. At this time, we decline to adopt certification requirements akin to those contained in certain ETC designation orders.<sup>50</sup> We will continue to evaluate certification options in the context of broader reform contemplated in the *2011 Lifeline and Link Up NPRM*.<sup>51</sup>

#### **B. De-Enrollment**

15. We also amend section 54.405 of our rules and adopt a process for de-enrollment of a Lifeline subscriber for the limited near-term purpose of resolving currently known duplicative claims.<sup>52</sup> The de-enrollment process we adopt requires an ETC to de-enroll a subscriber from its Lifeline program within five business days of receiving de-enrollment notification from USAC.<sup>53</sup> An ETC may continue to serve the subscriber as a non-Lifeline subscriber.<sup>54</sup> We note the importance of ETCs communicating clearly with the consumer that he or she will no longer receive a discounted service, but instead must pay the full price for the service and when such payments will be required. The ETC that de-enrolls a subscriber shall not be entitled to receive federal or state Lifeline reimbursement pursuant to our rules following the date of de-enrollment.<sup>55</sup> We find that the adoption of an immediate de-enrollment rule is necessary to reduce the number of individual subscribers who are receiving Lifeline benefits from more than one service provider at the same time, pending fuller consideration of the issues raised in the *2011 Lifeline and Link Up NPRM*.

16. Commenters expressing support for the Industry Duplicate Resolution Process proposal also support the de-enrollment procedure recommended therein.<sup>56</sup> Other commenters recommend that we

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(Continued from previous page)

Comments at 18-19.

<sup>49</sup> We expect the notification letter will be received by the subscriber within 5 days of being dated and sent by USAC, which will give the subscriber at least 30 days to make a selection of a single Lifeline provider.

<sup>50</sup> See *supra* note 27. We note, however, that the ETCs designated in those orders are still required to adhere to any requirements provided therein.

<sup>51</sup> See, e.g., *2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2824, paras. 167-69 (seeking comment on amending the Commission's rules to require that all ETCs obtain a certification from every subscriber verified during the annual verification process that the subscriber is receiving a Lifeline discount for only one line per residence), 2789, para. 56 (seeking comment on whether to require ETCs to provide identifying subscriber information as names, addresses, birthdates, or other unique household-identifying information to USAC on their Forms 497), 2863-64, para. 307 (seeking comment on whether to apply certification requirements mirroring those in the ETC designation orders to all non-facilities-based wireless carriers seeking ETC designation to provide Lifeline service).

<sup>52</sup> See Appendix A, § 54.405(e); see also *Industry Duplicate Resolution Process*.

<sup>53</sup> This de-enrollment notification from USAC will come after the subscriber has had an opportunity to choose a single provider for Lifeline. See *Industry Duplicate Resolution Process*, Attachment A, at 2-3.

<sup>54</sup> See *Industry Duplicate Resolution Process*, at 4.

<sup>55</sup> See 47 C.F.R. §§ 54.403, 54.407.

<sup>56</sup> See Cox Comments at 5; GCI Comments at 27, 33; TracFone Comments at 16; AT&T Comments at 2 n.4; CenturyLink Comments at 5-6; Conexions Comments at 5; Consumer Cellular Comments at 9-10; CTIA Comments (continued....)

adopt a notice period – such as the 60 days provided for de-enrollment based on consumer ineligibility – during which consumers may be notified of their impending de-enrollment and, potentially, given an opportunity to cure the problem.<sup>57</sup> In this instance, however, the Administrator (USAC) will send a letter to each subscriber found to be receiving duplicative service, giving them 35 days from the date listed on the letter, which should result in at least 30-days notice after mail-processing time,<sup>58</sup> to choose between their current Lifeline providers or continue receiving service only from the ETC identified by USAC as the default ETC.<sup>59</sup> Under the de-enrollment rule we adopt in this order, a subscriber will maintain a single Lifeline service because, following the minimum 30-day notification period, he or she will only be de-enrolled from the Lifeline program by one of the ETCs from which the subscriber was receiving duplicative Lifeline service.<sup>60</sup> Therefore, unlike the process of de-enrollment for reasons of ineligibility that is currently in place under section 54.405(c), the rule we adopt today is not an ultimate termination of all Lifeline support. As such, we conclude that a notice period of at least 30 days is sufficient and will relieve the unnecessary burden on the Fund of providing duplicative support for individual Lifeline consumers.

17. A few commenters note that states may have their own procedures governing de-enrollment of Lifeline consumers, and recommend that the Commission take these state laws into account.<sup>61</sup> The record is unclear, however, on the scope of any potential conflict between the de-enrollment procedures we adopt herein and state de-enrollment procedures. In situations where a consumer is found to be in receipt of two or more federal subsidies, we believe that a uniform rule applicable to federal Lifeline support will better provide clarity to both ETCs and consumers and will be consistent with our prior rules and orders.<sup>62</sup> Accordingly, we adopt this de-enrollment process as an appropriate and necessary step towards reducing waste, fraud, and abuse of the federal Lifeline program. Further, because duplicative claims are wasteful and burden the fund, we find that it is in the public interest to swiftly de-enroll consumers who are found to be receiving duplicative federal Lifeline discounts. To the extent that existing state de-enrollment procedures applicable to the federal Lifeline program are in conflict with or serve as an obstacle to implementation of the de-enrollment procedures we adopt herein, they would be preempted.<sup>63</sup>

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at 11; Nexus Comments at 24-25; GCI Reply Comments at 22-24; TracFone Reply Comments at i, 3-4; USTA Comments at 11-12; PR Wireless Reply Comments at 5-6.

<sup>57</sup> See, e.g., Consumer Groups Comments at 32; CenturyLink Comments at 10-12; Ohio PUC Comments at 6; Mississippi PSC Comments at 3-4; Florida PSC Comments at 8-9; Michigan PSC Comments at 4; NASUCA Comments at 10; California PUC Reply Comments at 3.

<sup>58</sup> See *supra* note 49.

<sup>59</sup> *Industry Duplicate Resolution Process*, Attachment A, at 2-3.

<sup>60</sup> *Id.* at 3.

<sup>61</sup> See, e.g., Florida PSC Comments at 14; USTA Comments at 12; Nexus Comments at 27. The New Jersey Division of Rate Counsel states that it is “is not persuaded that the Commission must preempt state or local requirements or tariff requirements” with respect to de-enrollment processes and that “during the interim period, states should be able to continue their own policies.” New Jersey DRC Reply Comments at 10.

<sup>62</sup> Moreover, these new rules would apply to ETCs in all states, regardless of that state’s status as a federal default state or a non-default state.

<sup>63</sup> The doctrine of federal preemption arises from the Supremacy Clause of the U.S. Constitution, which provides that federal law is the “supreme Law of the Land.” U.S. Const. Art. VI, cl. 2; see *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 368 (1986). Courts have found that valid agency regulations will preempt any (continued....)

18. Finally, we note that in the *2011 Lifeline and Link Up NPRM* we asked for input regarding the de-enrollment process for several issues, including other administrative reasons.<sup>64</sup> Specifically, we proposed that ETCs be required to de-enroll their Lifeline subscribers when the subscriber does not use his or her Lifeline-supported service for 60 days and fails to confirm continued desire to maintain the service or the subscriber does not respond to the eligibility verification survey.<sup>65</sup> The rule adopted today is not intended to address the issues of administrative disqualification based on non-usage or failure to respond during the verification process. We take this action today to protect the Fund while we continue to evaluate other appropriate proposals and until we adopt a more comprehensive package of reforms in response to the *2011 Lifeline and Link Up NPRM*.

#### IV. PROCEDURAL MATTERS

##### A. Paperwork Reduction Act Analysis

19. This report and order adopts new or revised information collection requirements, subject to the Paperwork Reduction Act of 1995 (“PRA”).<sup>66</sup> These information collection requirements will be submitted to the Office of Management and Budget (“OMB”) for review under Section 3507(d) of the PRA. The Commission published a separate notice in the Federal Register inviting comment on the new or revised information collection requirement(s) adopted in this document.<sup>67</sup> The requirement(s) will not go into effect until OMB has approved it, and the Commission has published a notice announcing the effective date of the information collection requirement(s). In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” No comments were received.

##### B. Congressional Review Act

20. The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

##### C. Final Regulatory Flexibility Analysis

21. The Final Regulatory Flexibility Analysis is attached to this order as Appendix D.

#### V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, that this order IS ADOPTED.

23. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, sections 54.401 and

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(Continued from previous page)

state or local law that conflicts with or frustrates the purpose of such regulations. *See, e.g., City of New York v. FCC*, 486 U.S. 57, 64 (1988).

<sup>64</sup> *See 2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2790-92, 2797-98, 2800, 2829-30, paras. 58-62, 80-84, 93-94, 192, Appendix A, § 54.405(a).

<sup>65</sup> *2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2800, para. 93.

<sup>66</sup> The Paperwork Reduction Act of 1995 (“PRA”), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in 44 U.S.C. §§ 3501-3520).

<sup>67</sup> Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up, WC Docket Nos. 11-42 and 03-109, CC Docket No. 96-45; FCC 11-32, Proposed Rules, 76 FR 16482 (Mar. 23, 2011).

54.405 of the Commission's rules ARE AMENDED to the extent provided herein.

24. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE thirty (30) days after the publication of this order in the Federal Register.

25. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R.

Part 54 as follows:

**PART 54 - UNIVERSAL SERVICE**

1. Amend § 54.401 by revising subsection (a)(1), to read as follows:

**§ 54.401 Lifeline defined.**

(a) As used in this subpart, Lifeline means a retail local service offering:

(1) That is available only to qualifying low-income consumers, and no qualifying consumer is permitted to receive more than one Lifeline subsidy concurrently.

(2) \*\*\*\*\*

(3) \*\*\*\*\*

(b) \*\*\*\*\*

(c) \*\*\*\*\*

(d) \*\*\*\*\*

(e) \*\*\*\*\*

2. Amend § 54.405 by revising subsection (a), and adding new subsection (e), to read as follows:

**§ 54.405 Carrier obligation to offer Lifeline.**

All eligible telecommunications carriers shall:

(a) Make available one Lifeline service, as defined in § 54.401, per qualifying low-income consumer that is not currently receiving Lifeline service from that or any other eligible telecommunications carrier, and

\*\*\*\*\*

(b) \*\*\*\*\*

(c) Termination for consumer ineligibility. \*\*\*\*\*

(d) \*\*\*\*\*

(e) De-enrollment. Notwithstanding subsections 54.405(c) and (d) of this section, upon notification by the Administrator to any ETC in any state that a subscriber is receiving Lifeline service from another eligible telecommunications carrier and should be de-enrolled from participation in that ETC's Lifeline program, the ETC shall de-enroll the subscriber from participation in that ETC's Lifeline program within 5 business days. An ETC shall not be eligible for Lifeline reimbursement as described in sections 54.403 and 54.407 for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

## APPENDIX B

## List of Initial Comments

*Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service;  
Lifeline and Link Up*

WC Docket Nos. 03-109, 11-42; CC Docket No. 96-45

<u>Commenter</u>	<u>Abbreviation</u>
AARP	AARP
Advocates for Basic Legal Equality, Inc.	
Community Counseling Bristol County	
Community Voice Mail	
Crossroads Urban Center	
Disability Right Advocates	
Legal Services Advocacy Project	
Low Income Utility Advocacy Project	
National Center for Medical-Legal Partnership	
National Consumer Law Center, On Behalf of Our Low-Income Clients	
New Jersey Shares	
Ohio Poverty Law Center	
Open Access Connections	
Pennsylvania Utility Law Project	
Pro Seniors, Inc.	
Salt Lake Community Action Program	
Texas Legal Services Center	
Virginia Citizens Consumer Council	Consumer Groups
Alaska Telephone Association	ATA
American Library Association	ALA
American Public Communications Council, Inc.	APCC
Amvensys Telecom Holdings, LLC	Amvensys
AT&T	AT&T
Barbara B. Boyd, Ed. D.	
Benjamin S. Barnes	
Benton Foundation and Center for Rural Strategies	
Public Knowledge and United Church of Christ OC Inc.	
Box Top Solutions, Inc.	Box Top
Budget Prepay, Inc.	Budget PrePay
GreatCall, Inc.	GreatCall
and PR Wireless Inc. d/b/a Open Mobile	PR Wireless
CenturyLink	CenturyLink
CGM, LLC	CGM
Christopher J. England	
Cincinnati Bell Inc.	Cincinnati Bell
City of New York	City
City of North Las Vegas	
Comcast Corporation	Comcast

COMPTEL	Comptel
Conexions LLC d/b/a Conexion Wireless	Conexions
Consumer Cellular, Inc.	Consumer Cellular
Connecticut Department of Public Utility Control	Connecticut DPUC
Cox Communication Inc.	Cox
CTIA–The Wireless Association	CTIA
Daniel Reyes	
Daniel St. Hilaire	
Public Service Commission of the District of Columbia	District of Columbia PSC
Delegate Eileen Filler-Corn	
Demetrius C. Newton	
Denise Driehaus	
Educational Services Network, Corp.	EDNet
Florida Public Service Commission	Florida PSC
General Communication, Inc.	GCI
Gila River Telecommunications, Inc.	Gila River
House of Representatives Stacy Abrams	
Indiana Utility Regulatory Commission	Indiana Commission
Iridium Satellite LLC	Iridium
Jamie Benoit	
Jean (INFO PEWTRUSTS.ORG)_	
Jill Oberndorfer	
John C. Astle	
John F. Knight, Jr.	
John W. Rogers	
Keep USF Fair Coalition	
Kelvin E. Washington, Sr.	
Kevin Lee Deckelmann	
The Leadership Conference on Civil and Human Rights	
Leap Wireless International, Inc. and Cricket Communications, Inc.	Cricket
Massachusetts Department of Telecommunications and Cable	Massachusetts DTC
Mayor Jim Bouley	
Media Action Grassroots Network	MAG-Net
Michael Page	
Michigan Public Service Commission	Michigan PSC
Minority Media and Telecommunications Council	MMTC
Mississippi Public Service Commission	Mississippi PSC
Public Service Commission of the State of Missouri	Missouri PSC
National ALEC Association/Prepaid Communications Association	NALA/PCA
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and Advisors	NATOA
National Cable & Telecommunications Association	NCTA
National Telecommunications Cooperative Association	NTCA
Nebraska Public Service Commission	NPSC
New America Foundation	NAF
New Hampshire Coalition of Aging Services	NH Coalition of Aging Services
New Hampshire Coalition Against Domestic and	

Sexual Violence	
New Jersey Division of Rate Counsel	New Jersey DRC
New York State Public Service Commission	New York State PSC
Nexus Communications, Inc.	Nexus
Open Access Connections (formerly Twin Cities Community Voice Mail)	
Energy Cents Coalition	
Main Street Project	
Minnesota Center for Neighborhood Organizing Voices for Change	
Partnership for a Connected Illinois	PCI
Public Utilities Commission of Ohio	Ohio PUC
Public Utilities Commission of Oregon	Oregon Commission
Paula J. Miller	
Rainbow Push Coalition	
Ralph Howard	
Representative John Robinson	
Reunion Communications, Inc.	Reunion Communications
Richard Laird	
Ricki Y. Barlow	
Sally Jameson	
San Juan Cable LLC d/b/a OneLink Communications	OneLink
Sean Paulhus	
Senator Jason Wilson	
Several Members of the Texas State House Democratic Caucus	
Smith Bagley, Inc.	SBI
Solix, Inc.	Solix
Sprint Nextel Corporation	Sprint
State Representative Denise Harlow	
State Representative Leslie Milam Post	
State Representative Tony Payton	
Suzanne Burke	
TCA	
Texas State Representative J.M. Lozano	
TCA	
Thomas G. Bunnell	
Thomas M. Middleton	
TracFone Wireless, Inc.	TracFone
United States Telecom Association	USTA
Verizon and Verizon Wireless	Verizon
ViaSat, Inc.	ViaSat
WI State Reps. Cory Mason & Bob Turner	
YourTel America, Inc.	YourTel

## APPENDIX C

## List of Reply Comments

*Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service;  
Lifeline and Link Up*  
WC Docket Nos. 03-109, 11-42; CC Docket No. 96-45

<u>Commenter</u>	<u>Abbreviation</u>
Advocates for Basic Legal Equality, Inc.	
Community Voice Mail National	
Disability Rights Advocates	
Low Income Utility Advocacy Project	
The National Consumer Law Center, on Behalf of our Low-Income	
Clients	
Ohio Poverty Law Center	
Open Access Connections	
Pennsylvania Utility Law Project	
Pro Seniors, Inc.	
Texas Legal Services Center	
Virginia Citizens Consumer Council	Consumer Groups
American Public Communications Council, Inc.	APCC
Amvensys Telecom Holdings, LLC	Amvensys
AT&T	AT&T
California Public Utilities Commission	California PUC
COMPTEL	Comptel
CTIA–The Wireless Association	CTIA
Emerios	Emerios
General Communication, Inc.	GCI
Leap Wireless International, Inc. and Cricket Communications, Inc.	Cricket
Image Access, Inc. d/b/a New Phone	InComm
Media Action Grassroots Network	MAG-Net
Michigan Public Service Commission	Michigan PSC
Montana Independent Telecommunications Systems, LLC	MITS
National ALEC Association/Prepaid Communications Association	NALA/PCA
National Association of State Utility Consumer Advocates	NASUCA
National Hispanic Media Coalition	NHMC
New America Foundation	NAF
New Jersey Division of Rate Counsel	New Jersey DRC
Nexus Communications, Inc.	Nexus
One Economy	One Economy
Open Access Connections	Open Access Connections
PR Wireless, Inc. d/b/a Open Mobile	PR Wireless
Reunion Communications, Inc.	Reunion Communications
Sprint Nextel Corporation	Sprint
State of Alaska	

Texas Statewide Telephone Cooperative, Inc.  
TracFone Wireless, Inc.  
Verizon and Verizon Wireless  
YourTel America, Inc.

TSTCI  
TracFone  
Verizon  
YourTel

## APPENDIX D

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>1</sup> as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (NPRM) to this proceeding.<sup>2</sup> The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received comments on the IRFA.<sup>3</sup> This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>4</sup>

**A. Need for, and Objectives of, the Order:**

2. The Commission is required by section 254 of the Telecommunications Act of 1996, as amended, to promulgate rules to implement the universal service provisions of the Act.<sup>5</sup> Consistent with the requirements of the Act, the Commission adopted rules that reformed the universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.<sup>6</sup> Among other programs, the Commission adopted a program to provide discounts that make basic, local telephone service affordable for low-income consumers.<sup>7</sup> The Commission has not systematically re-examined the universal service Lifeline and Link Up program (Lifeline/Link Up or the program) since the passage of the 1996 Act.<sup>8</sup> During this period, consumers have increasingly turned to wireless service, and Lifeline/Link Up now provides many participants discounts on wireless phone service.

3. In this order we take immediate action to address potential waste in the program by preventing low-income consumers from receiving duplicative Lifeline-supported services. Specifically, we amend sections 54.401 and 54.405 of the Commission's rules to codify the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time. We also amend section 54.405 of the Commission's rules to provide that, upon a finding by USAC that a low-income

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612 has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> *Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up*; WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011) (NPRM).

<sup>3</sup> See NTCA Comments; MITS Reply Comments.

<sup>4</sup> See 5 U.S.C. § 604.

<sup>5</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>6</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8952, paras. 326-28 (1997); see also 47 U.S.C. § 254(b)(1), (3) (services should be available at "affordable" rates and "consumers in all regions of the nation, including low-income consumers, . . . should have access to telecommunications and information services").

<sup>7</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8952, paras. 326-28.

<sup>8</sup> In 2000, the Commission established enhanced benefits for households on Tribal lands. *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12231-32, paras. 42-43 (2000). In 2004, the Commission made a number of discrete changes to the program, including changing eligibility criteria for qualifying households in certain states and adopting outreach guidelines for carriers, but did not examine the overall program structure. See *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004).

consumer is the recipient of multiple Lifeline subsidies, any eligible telecommunications carrier (“ETC”) that is not selected to continue providing Lifeline-discounted service to the consumer shall de-enroll that subscriber from participation in that ETC’s Lifeline program.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA:**

4. In public comments filed in response to the IRFA, issues were raised regarding the Commission’s proposal to remedy duplicative claims for Lifeline support and the proposal’s effects on small businesses. The National Telecommunications Cooperative Association (NTCA) stated that the Commission’s initial proposal to detect and remedy duplicative claims, as set forth in a January 21 guidance letter, would put the burden of eliminating duplicative claims primarily upon ETCs and would constitute an untenable position for small businesses.<sup>9</sup> Specifically, NTCA stated that “the ETCs must chase down the consumer and the consumer will receive at least two confusing notifications. Once the subscriber chooses a provider, that provider must notify USAC and the other ETC that it is the chosen one.”<sup>10</sup> In its Reply Comments, Montana Independent Telecommunications Systems (MITS), an association of rural telecommunications providers, asserted that the proposed rules would require small carriers to assume multiple roles as “fact finders, decision makers, and enforcers,” which would be “costly and unduly burdensome to small telecommunications carriers.”<sup>11</sup> We have taken measures to address these concerns expressed by commenters.<sup>12</sup>

**C. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply:**

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>13</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>14</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>15</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>16</sup> Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>17</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>18</sup> Nationwide, as of 2002, there were approximately 1.6 million

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<sup>9</sup> See NTCA Comments at 4.

<sup>10</sup> *Id.*

<sup>11</sup> MITS Reply Comments at 3-4.

<sup>12</sup> See *infra* Part E.

<sup>13</sup> 5 U.S.C. § 603(b)(3).

<sup>14</sup> 5 U.S.C. § 601(6).

<sup>15</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>16</sup> Small Business Act, 15 U.S.C. § 632.

<sup>17</sup> See Small Business Administration, Office of Advocacy, Frequently Asked Questions, <http://www.sba.gov/advocacy/7495> (last visited March 2, 2011).

<sup>18</sup> 5 U.S.C. § 601(4).

small organizations.<sup>19</sup> The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>20</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>21</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>22</sup> Thus, we estimate that most governmental jurisdictions are small.

### 1. Wireline Providers

6. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>23</sup> Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.<sup>24</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>25</sup> Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.<sup>26</sup>

7. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>27</sup> Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and

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<sup>19</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>20</sup> 5 U.S.C. § 601(5).

<sup>21</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>22</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

<sup>23</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>24</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>25</sup> See *id.*

<sup>26</sup> U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ5: Employment Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517110 in the left column for “Wired telecommunications carriers”) (last visited March 2, 2011).

<sup>27</sup> 13 C.F.R. § 121.201, NAICS code 517110.

Other Local Service Providers can be considered small entities.<sup>28</sup> According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>29</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.<sup>30</sup> In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>31</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>32</sup> Seventy of which have 1,500 or fewer employees and two have more than 1,500 employees.<sup>33</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

8. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>34</sup> Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.<sup>35</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>36</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>37</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

9. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>38</sup> Census data for 2007 show that 1,523 firms provided resale services during that year.

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<sup>28</sup> U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ5: Employment Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517110 in the left column for “Wired telecommunications carriers”) (last visited March 2, 2011).

<sup>29</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>30</sup> See *id.*

<sup>31</sup> *Id.*

<sup>32</sup> See *id.*

<sup>33</sup> See *id.*

<sup>34</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>35</sup> U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ5: Employment Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517110 in the left column for “Wired telecommunications carriers”) (last visited March 2, 2011).

<sup>36</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>37</sup> See *id.*

<sup>38</sup> 13 C.F.R. § 121.201, NAICS code 517911.

Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.<sup>39</sup> Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>40</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>41</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

10. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>42</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.<sup>43</sup> Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data,<sup>44</sup> 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

11. *Pre-paid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for pre-paid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>45</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.<sup>46</sup> Thus under this category and the associated small business size standard, the majority of these pre-paid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of pre-paid calling cards.<sup>47</sup> Of these, an estimated all 193 have 1,500 or fewer employees and none have more

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<sup>39</sup> U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ5: Employment Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517911 in the left column for “Telecommunications Resellers”) (last visited March 2, 2011).

<sup>40</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>41</sup> *Id.*

<sup>42</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>43</sup> U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ5: Employment Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517911 in the left column for “Telecommunications Resellers”) (last visited March 2, 2011).

<sup>44</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>45</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>46</sup> U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ5: Employment Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517911 in the left column for “Telecommunications Resellers”) (last visited March 2, 2011).

<sup>47</sup> See *Trends in Telephone Service* at Table 5.3.

than 1,500 employees.<sup>48</sup> Consequently, the Commission estimates that the majority of pre-paid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

12. *800 and 800-Like Service Subscribers.*<sup>49</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>50</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.<sup>51</sup> Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.<sup>52</sup> According to our data, at of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers. We do not believe 800 and 800-Like Service Subscribers will be affected by our proposed rules, however we choose to include this category and seek comment on whether there will be an effect on small entities within this category.

## 2. Wireless Carriers and Service Providers

13. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

14. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>53</sup> Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless

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<sup>48</sup> *See id.*

<sup>49</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>50</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>51</sup> U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ5: Employment Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517911 in the left column for “Telecommunications Resellers”) (last visited March 2, 2011).

<sup>52</sup> *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

<sup>53</sup> U.S. Census Bureau, 2007 NAICS Definitions: Wireless Telecommunications Categories (except Satellite), <http://www.census.gov/naics/2007/def/ND517210.HTM> (last visited March 2, 2011).

Telecommunications.<sup>54</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>55</sup> For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.<sup>56</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.<sup>57</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>58</sup> Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

15. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>59</sup> The SBA has approved these definitions.<sup>60</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

16. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules.<sup>61</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>62</sup>

17. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and

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<sup>54</sup> U.S. Census Bureau, 2002 NAICS Definitions: Paging, <http://www.census.gov/epcd/naics02/def/NDEF517.HTM> (last visited March 2, 2011); U.S. Census Bureau, 2002 NAICS Definitions: Other Wireless Telecommunications, <http://www.census.gov/epcd/naics02/def/NDEF517.HTM> (last visited March 2, 2011).

<sup>55</sup> 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>56</sup> U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ5: Employment Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517210 in the left column for “Wireless Telecommunications Carriers (except Satellite)”) (last visited March 2, 2011).

<sup>57</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>58</sup> See *id.*

<sup>59</sup> *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>60</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

<sup>61</sup> 13 C.F.R. § 121.201, NAICS code 517410.

<sup>62</sup> 13 C.F.R. § 121.201, NAICS code 517919.

broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>63</sup> Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.<sup>64</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.<sup>65</sup> Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

18. The second category, i.e., All Other Telecommunications, comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”<sup>66</sup> For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.<sup>67</sup> Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49,999,999.<sup>68</sup> Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

19. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).<sup>69</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>70</sup> According to the *2008 Trends Report*, 434 carriers reported that they were engaged in wireless telephony.<sup>71</sup> Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.<sup>72</sup> We have estimated that 222 of these are small under the SBA small business size standard.

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<sup>63</sup> U.S. Census Bureau, 2007 NAICS Definitions, Satellite Telecommunications, <http://www.census.gov/naics/2007/def/ND517410.HTM> (last visited March 2, 2011).

<sup>64</sup> U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ4: Receipts Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517210 in the left column for “Satellite Telecommunications”) (last visited March 2, 2011).

<sup>65</sup> *Id.*

<sup>66</sup> U.S. Census Bureau, 2007 NAICS Definitions, All Other Telecommunications, <http://www.census.gov/naics/2007/def/ND517919.HTM> (last visited March 2, 2011).

<sup>67</sup> U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ4: Receipts Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517919 in the left column for “All Other Telecommunications”) (last visited March 2, 2011).

<sup>68</sup> *Id.*

<sup>69</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>70</sup> *Id.*

<sup>71</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>72</sup> *Id.*

### 3. Internet Service Providers

20. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.*, cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.*, dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,<sup>73</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>74</sup> The latter are within the category of All Other Telecommunications,<sup>75</sup> which has a size standard of annual receipts of \$25 million or less.<sup>76</sup> The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.<sup>77</sup> That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.<sup>78</sup> Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999.<sup>79</sup> Consequently, we estimate that the majority of ISP firms are small entities.

#### D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

21. This order has two components: clarification of the definition of Lifeline service and establishment of de-enrollment procedures for consumers receiving duplicative Lifeline supported services. These modifications of our rules are necessary to ensure that the statutory goals of section 254 of the Telecommunications Act of 1996 are met and to eliminate waste, fraud, or abuse in the Lifeline program.

22. *Clarification of the Definition of Lifeline & Carrier Obligation.* In this order, we modify the definition of Lifeline service to clarify that no qualifying low-income consumer is permitted to receive more than one Lifeline subsidy concurrently. This clarification places no additional burdens upon ETCs.

23. *De-Enrollment Procedures for Duplicate Service.* As part of the effort to reduce waste in the program, by this order, we adopt a rule requiring ETCs to de-enroll any Lifeline subscriber upon notification from the Universal Service Administrative Company (USAC) that the Lifeline subscriber should be de-enrolled from participation in that ETC's Lifeline program because the subscriber is receiving Lifeline service from another ETC. An ETC will be required to de-enroll a subscriber from its Lifeline program within five business days of receiving de-enrollment notification from USAC. Compliance with this requirement will place a burden on ETCs to de-enroll customers upon receiving notice from USAC. However, this burden will be minimal.

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<sup>73</sup> U.S. Census Bureau, 2007 NAICS Definitions: Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM> (last visited March 2, 2011).

<sup>74</sup> 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

<sup>75</sup> U.S. Census Bureau, 2007 NAICS Definitions: All Other Telecommunications, <http://www.census.gov/naics/2007/def/ND517919.HTM> (last visited March 2, 2011).

<sup>76</sup> 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

<sup>77</sup> U.S. Census Bureau, 2002 NAICS Definitions: Internet Service Providers, Web Search Portals, and Data Processing Services, <http://www.census.gov/epcd/naics02/def/NDEF518.HTM> (last visited March 2, 2011).

<sup>78</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," at Table 4, NAICS code 518111 (issued Nov. 2005).

<sup>79</sup> An additional 45 firms had receipts of \$25 million or more.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>80</sup>

25. We sought to minimize the burdens imposed on small entities where doing so would not compromise the goals of the universal service low-income mechanism. In order to minimize the impact on ETCs, and under the advisement of a number of industry representatives,<sup>81</sup> we have placed the burden of checking for duplicate claims upon USAC, rather than ETCs.<sup>82</sup> Furthermore, the duplicate resolution process set forth in the order requires USAC to notify an ETC which customers should be de-enrolled from the ETC's Lifeline program.<sup>83</sup>

**F. Report to Congress:**

26. The Commission will send a copy of the order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>84</sup> In addition, the Commission will send a copy of the order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>85</sup>

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<sup>80</sup> 5 U.S.C. § 603.

<sup>81</sup> See Letter from United States Telecom Association, et al. to Marlene Dortch, Secretary, Federal Communications Commission, Ex Parte, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109 (filed Apr. 15, 2011) (*Industry Duplicate Resolution Process*); Letter from John T. Nakahata, Counsel, General Communications, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, Ex Parte, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109 (filed Apr. 26, 2011) (correcting initial filing); see also NTCA Comments at 4; MITS Reply Comments at 3-4..

<sup>82</sup> *Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Report and Order, FCC 11-97, para. 7 (rel. June 21, 2011).

<sup>83</sup> *Id.* at para. 15.

<sup>84</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>85</sup> See *id.* § 604(b).

**STATEMENT OF  
CHAIRMAN JULIUS GENACHOWSKI**

Re: *In the Matter of Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-42;  
*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*,  
WC Docket No. 03-109

Today the Commission makes real progress to eliminate waste in the Lifeline program by strengthening protections against providing more than one discounted service to eligible consumers.

I commend those companies that have stepped up to this challenge and worked with Commission staff and USAC to address this serious problem. I expect other Lifeline recipients to play a similarly cooperative role in this ongoing effort to eliminate waste, fraud, and abuse.

Today's action is an important interim solution to the serious problem of duplicative Lifeline support. More remains to be done, including establishing a National Accountability Database to ensure that only eligible households are participating in the program. The Commission remains hard at work on this and other reforms proposed in our recent NPRM, such as modernizing Lifeline for a broadband world.

I'd like to thank the Commission's staff, particularly the staff of the Wireline Competition Bureau, for their outstanding work tackling this challenge.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42;  
*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*,  
WC Docket No. 03-109

Connecting all Americans to the wonders of communications is at the core of our agency's responsibilities. The Lifeline program is a central part of this important mission, connecting low-income Americans who may not otherwise be able to afford phone service. I support efforts to strengthen this critical program by ensuring that program dollars are put to their best use so that benefits can flow to as many low-income consumers as possible. As such, I approve the modification we adopt today, which makes clear to eligible telecommunications carriers (ETCs) and individual consumers that they are entitled to receive just one single Lifeline subsidy.

This Order proposes a path forward to address those instances where consumers are receiving duplicate support today. This process has been structured to preserve consumer choice while at the same time to ensure that eligible recipients continue to receive one, but only one, Lifeline-supported telephone service. However, I would have welcomed more specific measures in this Order to protect consumers—to give recipients more ample time to select the single Lifeline-supported service they want, and to ensure that participants fully understand their options and that they realize in the absence of response they could actually incur a higher phone bill after their de-enrollment.

As we implement this Order, it will be incumbent upon the Commission to coordinate extensively with USAC, the states, and participating ETCs during the duplicate resolution process. I am concerned that unintended consequences could accompany implementation of this Order and I urge the Commission to be keenly aware of any problems that arise. The Commission and USAC must monitor closely the initial phase of this process, especially, and should analyze the results and feedback we receive from this first group of states, revising our efforts accordingly, before the Order is applied to additional states. And let us be ever-mindful, as we go about this task, of the needs of low-income consumers.

Finally, it is my hope that today's Order is a preamble to more comprehensive reform of the Lifeline program by the end of the year. The Commission issued a Notice of Proposed Rulemaking earlier this year which included proposals to revise the certification and verification procedures for Lifeline and set up a database of participating consumers—proposals with the potential to address the cause of the symptoms that we address on an interim basis here. And as the Commission continues to work on reorienting our Universal Service mission to the realities of the 21<sup>st</sup> century, we simply must act to expand Lifeline to support broadband. Low-income consumers cannot and should not wait any longer for the benefits of broadband—which for millions of Americans may be out of reach because of affordability. One analyst recently noted that those with incomes in the bottom 40% of U.S. households have virtually zero discretionary spending power after they pay for food, shelter, transportation and healthcare. Any savings to the program that are recovered through the duplicate resolution process should be used to bring the tools of the Digital Age to low-income consumers.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

Re: *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42;  
*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*,  
WC Docket No. 03-109

In the context of universal service reform, I have often stressed that reducing waste, fraud and abuse should be one of the FCC's top priorities. This order takes a step in the right direction by ensuring that individuals do not receive duplicate subsidies from the Lifeline program. As such, I support this order. But, there is more to be done, and I look forward to working on additional reforms that will curb waste, fraud and abuse and adhere to Congress' intent for the Lifeline program.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *In the Matter of Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-42;  
*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*,  
WC Docket No. 03-109

The FCC and the carriers that participate in the Lifeline Assistance program have an obligation to act in the best interests of low-income consumers, as well as in the proper governance of the program and the Universal Service Fund. As such, I am supporting today's interim measure because it will ensure that qualifying consumers have access to telephone service, while addressing key issues when it comes to program inefficiency. By clarifying that our rules permit no more than one service per person, the Lifeline program will become more cost effective, and the savings realized can be used to benefit additional low-income consumers.

It is crucial that consumers understand our Lifeline rules, and the carriers participating in the Lifeline program are at the front lines of explaining the benefits to avoid individual duplicates. This item clarifies the expectations we have for those carriers when they are signing up a new Lifeline customer. In addition, this Commission is taking a close look at our own consumer information on the program, and we are modifying it as needed to ensure that consumers understand the benefits the Lifeline program affords.

It also is critical that those consumers who currently have more than one Lifeline-supported phone service are well informed of the situation, and that they have an opportunity to decide which phone service they prefer. The Bureau has been working closely with USAC and industry on the notification process; however, all parties involved must do their part to communicate clearly with consumers. This should include what the program rules are and what the resolution process for current duplicates entails. I would like to thank the staff for all of their efforts on this item, to ensure that consumers are properly notified of the duplicate issue and have the opportunity to select their Lifeline provider. It will be very important that we closely follow the duplicate resolution process during the first phase and modify it before the second and third phases, if there is significant consumer confusion.

There is no doubt that the Lifeline program is ripe for reform and modernization. It is important that we not take too long to address the issues teed up in our outstanding Notice of Proposed Rulemaking. That record is now complete, and we should act promptly so we can avoid having to take additional stop gap measures to fix the current program rules. Moreover, like the high-cost program, Lifeline needs to be modernized to reflect the current service needs of low-income consumers. We know that one-third of Americans have not adopted broadband, and affordability is the most significant reason why consumers have not subscribed. For low-income consumers, the cost of service and equipment is especially acute, as adoption for this segment of the population lags significantly. While private sector broadband adoption programs are promising, this Commission has a role to play in ensuring that low-income consumers can be connected. I believe the proposals for reforming the Lifeline program to support broadband service should be fully considered sooner rather than later, so that we may best meet the broadband needs of all American consumers.