



FEDERAL COMMUNICATIONS COMMISSION

September 27, 2013

Mignon L. Clyburn
Acting Chairwoman

The Honorable Jeff Sessions
United States Senate
326 Russell Senate Office Building
Washington, DC 20510 - 0104

Dear Senator Sessions:

Thank you for your inquiry concerning the Lifeline program, which provides a veritable lifeline to millions of families who otherwise might not have access to affordable phone service in our increasingly connected world. I agree with your statement that all federal programs should “be effectively administered” and “adhere to the highest standards,” and I am proud to have been a part of efforts that have fundamentally reformed all of the Commission’s universal service programs, including Lifeline.

While the Commission’s 2012 reforms to the Lifeline program have made significant progress to address concerns about the program, I also recognize that our work is not complete. The Commission is continuing to monitor the impact of its reforms and evaluating what additional measures are appropriate to ensure the integrity of the Lifeline program. I appreciate your views and am grateful for the opportunity to share my own, and to address some of the concerns you may have. To provide context for my responses, I think it is important to first provide a brief overview of the history of the Lifeline program and the Commission’s recent reforms.

Overview of Lifeline History and Recent Program Reforms

The Federal Communications Commission established the Lifeline program in 1985 in the wake of the divestiture of AT&T to ensure that low-income consumers had access to affordable telephone service. That original program supported the prevailing technology of the day—wired phone service delivered through one wire into the home. In the Telecommunications Act of 1996, Congress codified the principle of ensuring that all Americans, including low-income consumers, should have access to telecommunications services, including “advanced” telecommunications services. As American consumers increasingly began to adopt wireless services, the universal service program adapted to support wireless service in rural areas through the high-cost fund and for low-income families under Lifeline. In 2005, the FCC determined that, under certain conditions, non-facilities-based wireless providers could participate in the program as Lifeline-only Eligible Telecommunications Carriers (ETCs).¹ The Commission’s goal was to foster more competition among providers to improve consumer choice. In 2008 under the Bush Administration, the first such providers were authorized to receive Lifeline funding. Unfortunately, those decisions did not include sufficient safeguards to protect the program, and, as a result, the Lifeline program became susceptible to waste and abuse.

¹A carrier must be designated as an ETC, usually by a state public utility commission, but in some instances by the FCC, before it can receive federal Lifeline support.

The Commission took corrective action once it became clear that sufficient protections were not in place in the Lifeline program. In the spring of 2010, the FCC asked the Federal-State Joint Board on Universal Service (Joint Board) for input on reforming the Lifeline program. Building on recommendations from the Joint Board, as well as recommendations in a 2010 report from the Government Accountability Office (GAO), the FCC initiated reforms of the Lifeline program in 2011, not only by commencing a comprehensive rulemaking, but also by implementing intermediate steps directed at reducing duplicative support to subscribers. The rulemaking ultimately culminated in a complete overhaul of the program in early 2012 when the Commission approved the Lifeline Reform Order.

The tough, comprehensive reforms unanimously adopted by the Commission last year to combat waste, fraud and abuse have already resulted in hundreds of millions of dollars in savings to the Universal Service Fund. The Lifeline program is currently on track to save approximately \$2 billion by the end of 2014. These savings will be achieved through reform and modernization of all aspects of the program. The reforms include: (1) requiring consumers to provide proof of eligibility to participate in the Lifeline program at enrollment; (2) requiring consumers to certify that they understand key program rules at enrollment; (3) requiring consumers to recertify annually their continued eligibility for support; (4) limiting the Lifeline benefit to one per household; (5) eliminating Link Up support (a one-time payment for initiating service) for all providers except those that receive high-cost universal service support on Tribal lands; (6) establishing a uniform, nationwide floor for consumers' eligibility to participate in the program, which states may supplement; (7) enhancing requirements concerning marketing and advertising practices of supported carriers; (8) eliminating support for customers who have not used the service in over 60 days; and (9) putting in place a robust audit requirement for providers entering the Lifeline program and an ongoing independent biennial audit requirement for all providers receiving \$5 million or more from the Fund per year (a requirement that applies to carriers receiving approximately 88% of total annual Lifeline disbursements).

In addition, the FCC, in partnership with the Universal Service Administrative Company (USAC), the administrator of the Fund, has also identified and cut substantial amounts of duplicative Lifeline support, resulting in the de-enrollment of hundreds of thousands of subscribers with more than one Lifeline supported service. And, at the FCC's direction, USAC is building the National Lifeline Accountability Database that will be operational by the end of this year and will detect and prevent duplicative support before consumers are enrolled in the program. These reforms are in place, are working as intended, and are cutting waste, fraud and abuse from the program while ensuring that low-income consumers have access to basic voice communications.

Finally, while these significant reforms to the Lifeline rules are being implemented, the Commission has also stepped up its efforts to enforce the rules. In addition to the \$1 million in consent decrees entered into with two providers this year, the FCC's Enforcement Bureau has issued citations to more than 300 Lifeline customers with duplicative subscriptions and has launched numerous investigations of company practices that appear to violate our rules. Separately, the FCC's Inspector General is investigating allegations of fraud on the Low Income Program and is supporting active investigations in coordination with the U.S. Department of Justice and the FBI. We also work closely with our partners in the Lifeline program – the states – to enforce our rules. Just last week, the Nebraska Commission expelled from the program a provider that failed to comply with eligibility verification requirements and earlier this month, an Oklahoma provider withdrew from the program in response to state allegations.

1.) What is the process for verifying eligibility from those seeking to enroll? Is this controlled by the FCC, the states, or the service providers?

In reforming the Lifeline program, the Commission took several steps to ensure that only eligible consumers that affirmatively request Lifeline service are able to receive the benefit. All ETCs must adhere to the Commission's requirements, and states may add additional requirements that go beyond the Commission's rules.

The Commission's reforms also require that ETCs affirmatively verify a prospective subscriber's eligibility at the time of enrollment and prior to activating a Lifeline service for that consumer, in addition to obtaining the written self-certification from the subscriber. A subscriber is eligible if he or she can show that his or her household income is at or below 135% of the Federal Poverty Guidelines, or by showing proof of participation in one of seven federal assistance programs, or certain state assistance programs. The ETC can verify eligibility by querying a state eligibility database (e.g., a state database of food stamp recipients) where available, obtaining verification from a state Lifeline administrator that the prospective consumer is eligible, or by a review of documentation provided by the consumer.

Consumers must also certify their eligibility for Lifeline at the time of enrollment as under the prior rule. In addition, ETCs now must disclose to consumers the rules of the Lifeline program (e.g. only one Lifeline benefit permitted per household) and consumers must attest under penalty of perjury that they understand and will comply with the Lifeline program rules. These certification and disclosure requirements work in tandem with the proof requirement described above to ensure that only eligible consumers sign up for support.

In states that have chosen to take a more active role in the Lifeline program, such as California and Oregon, a state administrator may examine these certification forms prior to forwarding them to ETCs; in other states, ETCs handle the certification process on their own. (Please also see response to Question 3 below, which concerns the initial verification process)

2.) Is there a verification process for those currently enrolled to assure continued eligibility? Please provide the details of the process and the number of individuals found ineligible through this review.

In the *Lifeline Reform Order*, the Commission put in place a robust recertification requirement to ensure that subscribers in the program remain eligible for the benefit because they are still at or below 135% of the Federal Poverty Guidelines, or continue to participate in one of the designated assistance programs. ETCs must recertify the continued eligibility of all of their Lifeline subscribers each calendar year. Subscribers can be recertified in one of two ways: 1) an ETC contacts the subscriber and obtains a certification from the subscriber who attests under penalty of perjury that he remains eligible for the program; or 2) the ETC can verify that the consumer remains eligible by querying a state database or receiving notice from a state Lifeline administrator that the consumer remains eligible.

Subscribers who fail to respond to recertification attempts will be de-enrolled from the Lifeline Program. Pursuant to the *Lifeline Reform Order*, by December 31, 2012, ETCs were required to obtain certifications for all the subscribers to whom they were providing service as of June 2012. Based on the results of the 2012 Lifeline recertification process, approximately one-third of all subscribers that were enrolled in the program in June 2012 were de-enrolled for failure to recertify their eligibility. Approximately 0.5% of all subscribers subject to recertification

responded that they were no longer eligible. Just under 4% of the total subscribers subject to recertification were determined to be ineligible via a state administrator or an ETC accessing a state eligibility database. The remaining consumers were de-enrolled for failure to respond to the recertification attempts. Subscribers in this last group are not necessarily ineligible for service; some may have simply failed to recertify or decided they no longer wanted the benefit.

3.) In the initial verification process, how does the FCC or service provider crosscheck to see whether a participant is participating in a qualified federal program or not living in a household where a Lifeline phone is already present?

As noted above, the National Lifeline Accountability Database will be operational by the end of the year and will ensure that prospective subscribers or members of their household do not already receive a Lifeline benefit. Even pending the completion of the database, ETCs must disclose to consumers that there is only one Lifeline service permitted per household, that a household is not permitted to receive Lifeline benefits from multiple providers, and that violation of the one-per-household limitation constitutes a violation of the program rules. Consumers must certify that, to the best of their knowledge, no other members of their households already participate in Lifeline. The Commission's reforms also require that ETCs verify a prospective subscriber's eligibility at the time of enrollment, rather than obtaining and relying on the subscriber's self-certification alone, as under the prior rule, and ETCs are required to make specific disclosures to consumers regarding the nature of the Lifeline benefit and the consumers' duty to comply with the rules. Consumers must certify their eligibility at the time of enrollment, attesting under penalty of perjury that they understand and will comply with program rules. As previously noted, providers may not activate Lifeline service for a consumer until completing the entire enrollment process. An ETC therefore may not provide a service that it represents to be a Lifeline service, even on an interim basis while the consumer's application is being processed, before verifying eligibility.

In certain states, state authorities play a significant role in verifying whether a potential subscriber qualifies to receive Lifeline service. For example, Texas, California, and Oregon all have state eligibility databases.

4.) How long does it take to process an application for Lifeline service and are providers required to delay providing a phone or service if they become aware that another application is pending or that another provider is servicing an account?

The Commission estimates that it takes, on average, a consumer approximately twenty minutes to complete the Lifeline application process, although it can vary depending on how the consumer is enrolled. All ETCs must determine a subscriber's eligibility prior to enrolling a new subscriber in Lifeline. Some ETCs may verify eligibility on-site and activate the subscriber's Lifeline service at that time. Others may make the determination off-site and only then initiate service. As explained above, providers must explain, and prospective subscribers must certify, that they will comply with the Lifeline program rules, including the one-per-household rule. If the ETC knows or has reason to believe that the prospective subscriber is already receiving Lifeline service, the ETC must not provide service to that prospective subscriber. Any ETC that knows or has reason to believe that a prospective subscriber is already receiving Lifeline service from another ETC violates the FCC rules by providing Lifeline service to, or seeking reimbursement from the Fund for, that subscriber.

In addition, once the National Lifeline Accountability Database becomes operational by the end of this year, an ETC must check the database to determine if a prospective subscriber is already enrolled with another carrier prior to providing service to that subscriber. The database provides an important additional means to eliminate waste, fraud, and abuse in the Lifeline program.

5.) The underlying intent of Lifeline was to provide "security." Are the phones, often provided free-of-charge by providers, limited in capability? That is, are the phones capable of texting or using social media or other web-enabled applications?

The flat-rate monthly Lifeline support amount can only be used to support the provision of voice telephony service. The Commission's rules do not permit Lifeline support to be used to support a phone or any other device. If an ETC chooses to offer a free or discounted device to Lifeline subscribers, similar to that offered to non-Lifeline subscribers, that is an independent business decision of the ETC. Similarly, any decisions to offer services beyond voice telephony service are independent business decisions of the ETCs, but such services are not supported by the Lifeline program.

6.) How much service does participation in the Lifeline program provide? Does the program provide any funding for data or text transmissions? How many minutes per month does the program pay for participants?

In the *Lifeline Reform Order*, the FCC considered but declined to adopt minimum Lifeline service requirements. The flat-rate support amount of \$9.25 per month can only be used to support the provision of voice telephony service. Texting is not a supported service. As noted above, any decisions to offer services beyond voice telephony service are independent business decisions of the ETCs, but such services are not supported by the Lifeline program. As the FCC noted in the *Lifeline Reform Order*, the typical market-driven offering for pre-paid Lifeline wireless service supports 250 minutes per month.

7.) How are participating service providers selected and are there eligibility requirements for providers? Explain the financial incentives for providers and how they are compensated.

The states have an important role in overseeing the Lifeline program — they have been partners with the FCC in reform and in oversight and enforcement. Under section 214(e)(2) of the Communications Act, states designate providers as ETCs to participate in the Lifeline program, and to receive Lifeline support, including, in most cases, wireless ETCs. Currently, all but ten states and the District of Columbia handle the designation of Lifeline-only wireless ETCs to participate in the program. States have broad authority to conduct thorough reviews of ETC applications.

In addition to the statutory requirements, the FCC's reforms require that providers demonstrate that they are "financially and technically capable of providing Lifeline service in compliance with program rules." In deciding whether to designate a provider to participate in Lifeline, a state or the FCC must, among other things, examine how long the company has been in business, whether the provider intends to rely exclusively on universal service disbursements to operate its business, whether the provider receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state. As part of the Commission's ongoing commitment to combat waste, fraud, and abuse in the program, all non-

facilities-based providers seeking to become Lifeline-only ETCs are now required to have a compliance plan approved by the FCC staff before being designated as an ETC by a state or the FCC. FCC staff thoroughly reviews these plans to ensure that providers have procedures in place to adhere to the new stringent program requirements.

A provider's decision whether to seek designation as an ETC is based on its business judgment. Properly designated providers of Lifeline service are compensated by the Fund each month, based on a submission to USAC showing the number of Lifeline subscribers actually served.

- 8.) There appears to be an ongoing recruitment process to enroll people in Lifeline. Is the FCC in charge of the recruiting process and how are those recruiters paid? Is payment for recruiters provided through USF? Are recruiters offered bonuses for the number of individuals enrolled or for those who apply, or are you aware of any other type of incentives that could increase taxpayer costs by targeting individuals for enrollment beyond the intended scope of the program? The USAC Annual report indicates that in 2012, administrative expenses were \$110 million. Of that, how much was spent on recruitment material and personnel for the Lifeline program?**

Neither the FCC nor USAC provides Lifeline service directly to consumers, and neither entity is involved in recruiting or enrolling Lifeline subscribers. Section 214 of the Communications Act requires ETCs to advertise the availability of Lifeline service in a way that will reasonably reach qualified individuals. The Commission's *Lifeline Reform Order* specifically requires that such advertising to include specific information, including the rules of the program.

ETCs use company employees, agents or contractors to enroll qualified subscribers. The Commission's rules make clear that ETCs' marketing and recruiting costs are not paid for or reimbursed by the Lifeline program.

To the extent your question is based on concerns about the actions of sales representatives, we note that the ETCs are liable for the actions of such representatives. To that point, the FCC's Enforcement Bureau recently issued an advisory reminding ETCs that they are liable for the actions of their agents, contractors, and representatives.

As you note in your letter, USAC's annual report indicated administrative expenses of \$110 million in 2012. None of this money was spent on recruitment material and personnel for the Lifeline program. Of USAC's \$110 million administrative budget in 2012, USAC attributes \$8.4 million to administration of the Lifeline program. Of that, just over \$1.3 million was attributed to USAC salary and payroll expenses for USAC employees specifically assigned to the Lifeline program. USAC's Lifeline team is particularly focused on implementing the *Lifeline Reform Order*, which, among other things, directed USAC to continue targeted checks for duplicate Lifeline subscribers and create the National Lifeline Accountability Database for eliminating and preventing duplicative support. USAC is also responsible for conducting audits of Lifeline providers to ensure they are in compliance with FCC rules.

- 9.) What is the process for monitoring provider activity? Have any providers been sanctioned or debarred by the FCC for over-enrollment or failing to properly verify eligibility?**

The Commission takes seriously its responsibility to ensure its rules are followed and to identify and deter any program abuse, and the Commission has worked on several fronts to eliminate

waste, fraud and abuse prior to the release of the *Lifeline Reform Order*. For example, to eliminate duplicative support, the Commission in conjunction with USAC initiated targeted audits known as In-Depth Data Validations (IDVs) in 2011. To date, through the identification and elimination of duplicate subscriptions, the IDV process has produced savings of over \$200 million on an annualized basis. The *Lifeline Reform Order* contained new requirements to increase oversight of Lifeline providers and enhance the auditing program. USAC must now audit all newly designated Lifeline providers that have not previously provided Lifeline service to ensure they have established effective controls and procedures to comply with the Commission's rules. As part of vigorous accountability and oversight for the largest recipients in the program, the Commission's reforms require all Lifeline providers that draw \$5 million or more from the Lifeline program on an annual basis to hire an independent audit firm to assess the ETC's overall compliance with the program's requirements.

In addition to the audit requirements, the Commission is actively enforcing its rules. Recently, the Commission's Enforcement Bureau pursued actions against two providers that resulted in an enforcement action worth over \$1 million; other investigations of company practices that appear to violate our rules are ongoing. These investigations concern possible enrollment of ineligible subscribers, failure to de-enroll ineligible subscribers, and seeking support for customers who did not actually apply for service. Separately, the FCC's Inspector General is investigating allegations of fraud on the Low Income Program and is supporting active investigations in coordination with the U.S. Department of Justice and the FBI.

In addition, the Enforcement Bureau has issued nearly 300 citations to individuals in eight states notifying them that they violated the Lifeline program rules by receiving multiple Lifeline benefits. These citations order the consumers to cease and desist from applying for—or receiving—more than one Lifeline-supported phone service, and warn them that the Commission may impose a monetary fine if the violations continue. Beyond this, the FCC has launched a dedicated tip line and conducted outreach campaigns to make consumers and companies aware of our rules – and the penalties for violating them.

10.) According to the FCC's own review, a number of customers have been found to be in violation of the one phone per household limit. In those instances, are those customers disqualified from participation the program? Are there any sanctions for customers that violate the parameters of the program, criminal or otherwise?

The FCC's Enforcement Bureau has issued citations to nearly 300 consumers for violating the FCC's rules by obtaining and receiving more than one Lifeline supported service. Under section 503(b)(5) of the Act, the Commission may not impose forfeiture on a person if the person does not hold a license, permit, certificate, or other authorization issued by the FCC. In situations where such a person violates the FCC's rules, the Act forbids the FCC from proposing a forfeiture unless the FCC issues a citation and provides the person an opportunity to talk directly with the FCC, and the person subsequently engages in the same illegal conduct described in the citation. Section 54.8 of the FCC's rules also permits the FCC to debar persons by excluding them from activities associated with or relating to the universal service programs. Causes for debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out activities associated with or related to the universal service programs.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, consisting of a stylized, cursive 'M' followed by a long horizontal line extending to the right.

Mignon L. Clyburn
Acting Chairwoman
Federal Communications Commission