

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

**COMMENTS OF
ADVOCATES FOR BASIC LEGAL EQUALITY, INC.,
COMMUNITY VOICE MAIL NATIONAL
CROSSROADS URBAN CENTER
DISABILITY RIGHTS ADVOCATES
THE LOW INCOME UTILITY ADVOCACY PROJECT
MINNESOTA LEGAL SERVICES ADVOCACY PROJECT
THE NATIONAL CONSUMER LAW CENTER, ON BEHALF OF OUR LOW-
INCOME CLIENTS
NEW JERSEY SHARES
OHIO POVERTY LAW CENTER
PRO SENIORS
SALT LAKE COMMUNITY ACTION PROGRAM
TEXAS LEGAL SERVICES CENTER
THE UTILITY REFORM NETWORK
TWIN CITIES COMMUNITY VOICEMAIL
("CONSUMER GROUPS")**

**IN RESPONSE TO THE FEDERAL-STATE JOINT BOARD REQUEST FOR
COMMENT**

Olivia Wein
Staff Attorney
National Consumer Law Center, Inc.
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036-5528
(202)452-6252, ext. 103
owein@nclcdc.org

Christine Mailloux
Telecommunications Attorney
The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94104
(415) 929-8876, ext. 353
cmailloux@turn.org

July 15, 2010

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I. INTRODUCTION

The listed organizations ("Consumer Groups") all represent low-income consumer groups and individuals who use the Lifeline and Link-up program. We

welcome the opportunity to comment on the Joint Board On Universal Service's June 15, 2010 request for public comment on the Lifeline and Link-up programs:¹

The Advocates for Basic Legal Equality (ABLE) is a regional non-profit law firm in Ohio that provides a full range of free, high quality legal services to low-income individuals and groups to help them achieve self-reliance, economic opportunity, and equal justice. ABLE serves clients in thirty-two counties in Northwest and Western Ohio as well as migrant farmworkers and immigrant workers statewide. Established in 1969, ABLE has a long history of representing low-income clients in all types of administrative advocacy and complex civil litigation, including consumer protection and utilities matters. Since 1995, ABLE attorneys have actively worked on behalf of community organizations to expand access and ensure affordability of telecommunications services.

Community Voice Mail (CVM) is a national federation of community based organizations that distribute free phone numbers and information to people who are living in homelessness, poverty, and crisis. Our services are distributed via a network of 2,000 health and human services agencies operating in 400 cities and towns across the country. In 2009, more than 54,000 people used Community Voice Mail services to stay connected to jobs, housing, healthcare, services, family and friends. Our participants receive our services free of charge.

Crossroads Urban Center (CUC) is a multipurpose non-profit, grassroots organization. Crossroads helps organize low income, disabled and minority Utahns to be advocates on their own behalf in addressing essential issues affecting the quality of their lives. We also provide direct services to help meet their basic survival needs."

Disability Rights Advocates (DRA) is a non-profit public interest law firm that specializes in high impact civil rights litigation and other advocacy on behalf of persons with disabilities throughout the United States. DRA works to end discrimination in areas such as access to public accommodations, public services, utility services, employment, transportation, education, and housing. DRA regularly represents low income people with disabilities before the California Public Utilities Commission to ensure that they have access to vital regulated services.

The Low Income Utility Advocacy Project (LIUAP) engages in administrative and legislative advocacy in Illinois in the utility/energy area on behalf of low income households and not-for-profits. It is a project of the Shriver Poverty Law Center, Voices for Illinois Children and Heartland Alliance for Human Needs and Human Justice."

¹ FCC 10J-2 (rel. June 15, 2010)("Public Notice"), citing *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order (rel. May 4, 2010)("Referral Order").

The Minnesota Legal Services Advocacy Project (MLSAP) is a division of Mid-Minnesota Legal Assistance, one of the seven Minnesota Legal Aid Programs. MLSAP advocates on behalf of low-income persons, those with disabilities, and seniors before the Minnesota Legislature and administrative agencies. In addition, MLSAP conducts research and policy analysis, and provides community education and training.

National Consumer Law Center (NCLC) is a non-profit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. NCLC has expertise in protecting low-income customer access to telecommunications, energy and water services and publishes *Access to Utility Service* (4th edition) as part of its Debtor Rights Series of legal manuals as well as NCLC's *Guide to the Rights of Utility Consumers* and *Guide to Surviving Debt*.

New Jersey SHARES (NJ SHARES) is a 501c3 non-profit organization that provides energy assistance to moderate and fixed-income households experiencing a financial crisis. We also partner with Verizon – New Jersey, New Jersey American Water and United Water to provide telephone and water assistance to their customers. Each program has different eligibility guidelines.

The Ohio Poverty Law Center (OPLC) is a non-profit legal organization dedicated to using the law to fight poverty in Ohio. OPLC does systemic policy and legislative and administrative advocacy on poverty law issues and provides assistance to the Ohio legal aid community through litigation support, training, specialty assistance and consulting, task forces, publication and resource development, and other activities.

Founded in 1975, **Pro Seniors** is a non-profit organization that provides free legal and long-term care help to older adults. Pro Seniors operates an Ohio legal hotline for senior Ohio residents, age 60 and older. Pro Seniors also represents senior clients with respect to legal issues of high impact on Ohio senior citizens.

Salt Lake Community Action Program (SLCAP) is a non-profit, community based organization that assists low income households in becoming self sufficient through the provision of direct services and advocacy.

Texas Legal Services Center (TSLC) is a statewide Legal Aid program that sponsors the TexasLawHelp.org website that provides Texans with free information concerning their legal rights. TSLC's attorneys recommended amendments to the Texas Public Utility Regulatory Act (PURA) that were adopted by the Texas Legislature. Those statutory changes coupled with the Texas third-party administered automatic enrollment process resulted in the

doubling of participation in the telephone Lifeline Program to nearly 1 million Texans.

The Utility Reform Network (TURN) is a state-wide California membership organization based in San Francisco advocating for sound, consumer friendly utility policies before the California Public Utilities Commission, California Legislature and federal regulatory agencies. TURN also does community outreach on energy and telecommunications issues, as well as serves as a complaint hotline for disgruntled utility consumers. For over thirty years, TURN has been representing consumers, keeping utility rates low, pushing for strong consumer protections and working toward cost-effective regulatory solutions.

Twin Cities Community Voice Mail (TCCVM) provides and advocates for communications services for very low income people. The foundation of our work is the active involvement of our participants in everything that we do. We operate across the state of Minnesota and have provided 57,000 very low income people with voice mail numbers; provide a limited number of cell phones to people who are homeless; and provide information to the people we serve through voice mail broadcasts and a shelter hotline.

The Lifeline program has been valuable in expanding access to telephone service throughout the country.² Now these programs face new opportunities and challenges. The rules for these programs should be reviewed to ensure that they are delivering the maximum possible benefit for the low-income customers they serve and for the rate payers who fund them.

As we explain in more detail below, Consumer Groups support NASUCA's recommendation regarding the adoption of minimum standards for all states governing eligibility, verification, and outreach for these programs and NASUCA's call for a rethinking of the fundamentals of the Lifeline program.³ We note at the outset that it is difficult to comment on the application of our Lifeline recommendations to a Broadband Lifeline service since the parameters of just what may constitute Broadband Lifeline have not been fleshed out. However, regardless of what a Broadband Lifeline service would look like, we argue that Lifeline program administration would be more efficient if the eligibility, certification, verification and outreach requirements were the same or extremely similar for a Broadband Lifeline program. We look forward to more fully

² In these comments we use "Lifeline" to encompass the Universal Service Low-Income Programs.

³ NASUCA's Comments in Response to the Joint Board Request for Comment (July 15, 2010)("NASUCA").

commenting on low-income broadband issues in future proceedings. The existing Lifeline programs are presently undersubscribed, so modified eligibility and verification processes must facilitate, not hinder enrollment, while also protecting the integrity of the programs. ETC outreach responsibilities must be clarified and expanded to improve program participation. We also urge the Joint Board to make specific recommendations to the Commission regarding adequate and appropriate wireless Lifeline services. Our comments discuss some of the promise and challenges posed by pre-paid wireless Lifeline products in particular.

II. THE ELIGIBILITY PROCESSES SHOULD FACILITATE NOT HINDER ENROLLMENT INTO LIFELINE

A. The Use of a Federal Floor For Lifeline Certification will Facilitate Customer Participation

The current regulations for Lifeline provide states that have their own Lifeline programs wide latitude to establish separate eligibility criteria.⁴ However, the majority of those states, thirty-one, use more stringent, and in some cases far more stringent, eligibility criteria than the federal default eligibility criteria.⁵ In order to design a federal Lifeline program that is accessible to low-income consumers, “in all regions of the Nation”⁶ the Commission should adopt minimum standards for all states governing aspects of the Lifeline program including eligibility. The federal default criteria should be a floor upon which states are free to set income eligibility higher and add additional state or federal qualifying programs. However, if all states receiving federal funding had to comply with a federal floor that would ensure that a basic level of eligibility would apply to all potential Lifeline consumers nationwide thereby allowing these consumers to receive federally supported discounts on telecommunications services. This is a

⁴ 47 C.F.R. §§ 54.409, 54.415.

⁵ Alabama, Arizona, Colorado, Connecticut, Georgia, Idaho, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

⁶ 47 U.S.C. § 254(b)(3).

continuation of the Commission's decision in its *Universal Service First Report and Order*, to make Lifeline available to low-income consumers in states that did not participate in Lifeline.⁷ NASUCA notes that despite the fact that the majority of states have their own Lifeline programs, the vast majority of Lifeline support is from the federal program.⁸ Consumer Groups agree with NASUCA that it would thus be reasonable to require the Lifeline standards for the default states, as modified by this proceeding, be adopted as a minimum standard for the benefit of all consumers in all the states.

1. The Lifeline programs are undersubscribed

According to recent USAC analysis, using each state's eligibility criteria, USAC estimates that in 2009, 25.7 million households qualified for Lifeline support, but only approximately 8.2 million households were enrolled.⁹ This is a participation rate of approximately 32 percent. While less than half a dozen states had participation rates above 50 percent, over half the states had participation rates at or below, and often well below, 25 percent.¹⁰ While these numbers are unacceptably low, USAC's 2009 analysis also indicates that there is growing interest in Lifeline as thirty-one states have experienced an increase in Lifeline participation.¹¹ However, as we discuss in these comments, we believe the main underlying problems behind the low penetration rate are lack of awareness and barriers to applying rather than a lack of interest in Lifeline assistance. As discussed below, the Joint Board should look at recommendations designed to correct these failings of the system, to encourage ongoing participation, and to attract new program participants through a set of minimum requirements for eligibility as well as verification and outreach and by allowing states with robust programs to go beyond those minimum requirements and serve their distinct communities.

2. The income eligibility for Lifeline should be raised to at least 150 percent of poverty

⁷ *Universal Service First Report and Order*, 12 FCC Rcd at 8952, ¶326.

⁸ NASUCA at 6.

⁹ USAC, Lifeline Participation Rate Study 2009.

¹⁰ *Id.*

¹¹ *Id.*

One potential barrier to participation is an income eligibility standard that is set too low. In 2007, NCLC and Texas Legal Services Center submitted comments on the Lifeline Program urging the Commission to increase the federal default income-based eligibility for Lifeline to 150 percent of poverty.¹² Unfortunately, economic conditions have worsened since those comments were submitted. According to the Pew Economic Policy Group report, in March 2010 over 44 percent of the 15 million unemployed Americans had been unemployed for 6 months or longer.¹³ This is the highest rate of long-term unemployment since World War II. The “underemployment” rate in March 2010 is 16.9 percent.¹⁴ CBO’s budget and economic outlook report projects that unemployment will not drop to 5 percent, CBO’s estimate of a “natural rate of unemployment,” until 2016.¹⁵

In this environment of growing poverty and working poor, the federal poverty formula has been criticized as a dated and inaccurate measurement of poverty, yet it remains the basis for eligibility determinations for many federal programs. Some states and localities have turned to alternative tools to assess poverty resulting in broader eligibility for those with income higher than the current Lifeline income levels.¹⁶ An analysis of the “self-sufficiency” standard¹⁷ for Ohio in 2008 found that even in the least expensive county in Ohio, the wages required to be self-sufficient were equivalent to 161 percent of poverty, thus other counties required even higher wages to be self-sufficient. Congress has acknowledged the inadequacy of the federal poverty level and has increased income eligibility well beyond the poverty level (100 percent of poverty). During the

¹² In the Matter of Lifeline and Link-Up, WC Docket No. 03-109, Comments of the National Consumer Law Center, on behalf of and in conjunction with the Texas Legal Services Center to Refresh the Record (2007).

¹³ Pew Economic Policy Group Fiscal Analysis Initiative, *A Year of More: The High Cost of Long-Term Unemployment*, April 2010, Executive Summary.

¹⁴ *Id.* Underemployment captures workers who became discouraged and stopped looking for work, older workers who opted to retire early instead of seek work, young people delaying entering the work force and those workers who want full-time work, but have been forced to accept part-time work instead.

¹⁵ CBO, *The Budget and Economic Outlook: Fiscal Years 2010 to 2020*, January 2010 at 25.

¹⁶ Vestal, Christine, *More Poverty by Any Measure*, *Pew Stateline*, July 9, 2010 available at <http://www.stateline.org/live/details/story?contentId=496895>.

¹⁷ Pearce, Diana M., Ph.D, *The Self-Sufficiency Standard for Ohio 2008*, Ohio Association of Community Action Agencies and Wider Opportunities for Women (Jul. 2008) at 13. (“The self sufficiency standard measures how much income a family of a certain composition in a given place needs to adequately meet their basic needs.”)

past two fiscal years, Congress has increased the maximum income eligibility for LIHEAP from the higher of 150 percent of poverty or 60 percent of state median income to 75 percent of state median income. In FY 2010, all but a dozen states set their LIHEAP eligibility at or above 150 percent of poverty or 60 percent state median income for low-income heating assistance.¹⁸ Also SNAP provides states with the option of using categorical eligibility for TANF recipients. According to the Food Research and Action Center, “States which provide TANF-funded benefits to SNAP/Food Stamp applicants and recipients have the option to use a *higher gross income test* – up to 200 percent of the federal poverty level – in calculating initial eligibility for SNAP/Food Stamp benefits.”¹⁹ HUD’s Section 8 income limits are 80 percent of area median income for low-income families and 50 percent of area median income for very low-income families.²⁰

Therefore, in light of the growing dissatisfaction among many social service agencies with the use of federal poverty standards and due to the significant downturn in the economy, the Joint Board should recommend an increase in the income eligibility criteria for Lifeline to 150 percent of poverty. This change should not be an economic burden on the Fund in light of the fact that so many qualifying programs already accept at least 150 percent of poverty, but such a change will bring benefit to a particularly vulnerable group of consumers who may fall through the cracks.

3. The income eligibility option should be available in all of the states

Income eligibility is an important avenue into the Lifeline program. There is a substantial population of eligible consumers that do not participate in the qualifying programs. The vast majority of consumers who can enroll in Lifeline through program eligibility will most likely choose that route because the application process for program eligibility is often streamlined. Income eligibility requires more work for the applicants as income documentation must be gathered, submitted and then verified. It helps

¹⁸ See State Percent of Poverty Guidelines for LIHEAP Components, compiled and published by the NCAT LIHEAP Clearinghouse at <http://www.liheap.ncat.org/tables/FY2010/POP10.htm>.

¹⁹ FRAC, *Heat and Eat: Using Federal Nutrition Programs to Soften Low-Income Households’ Food/Fuel Dilemma* (March 2009) at 6.

²⁰ 42 U.S.C. § 1437a(b)(2)(definition of “low-income families”).

consumers that numerous types of income documents are accepted for the default program, but there is no avoiding the need to gather the documents, mail them in and then wait for a state agency or ETC to verify them.²¹ In part because of the extra work required by the documentation requirement for income-eligibility, in California, a state with 1.9 million Lifeline households and a penetration rate of 63 percent,²² an estimated 80 percent of the Lifeline participants use program eligibility to enroll.²³

Currently only twenty-six states use income eligibility in their Lifeline program design.²⁴ While it is far easier and efficient to design streamlined program eligibility for Lifeline, not all low-income Lifeline-eligible households will be participating in one or more of the qualifying programs. In order for the Commission to achieve the goal of universal service for low-income consumers in all regions of the nation, equitable access to Lifeline should not fall by the wayside due to a desire by states or ETCs to run streamlined Lifeline programs using only program eligibility. Indeed, even in Ohio where as of 2008 only 4 percent of AT&T's Lifeline participants qualified under income eligibility, the option is still offered.²⁵ Therefore, Consumer Groups urge the Joint Board to ensure that all Lifeline participants have the option to qualify using income eligibility by recommending that this be part of a federal floor of minimum requirements.

4. Additional documentation should not be required

Consumer Groups find the current federal documentation requirements for enrollment into Lifeline are adequate. Program-based eligibility can be readily verified through coordination with the agencies administering the qualifying programs. The current income-eligibility documentation, already described in these comments, is far more onerous for applicants to gather and submit. No further documentation should be

²¹ 47 C.F.R. §54.410(a)(2).

²² USAC Lifeline Participation Rate Study 2009.

²³ See California Public Utilities Commission, Docket No. R.04-12-001, D. 08-08-029 (Aug. 21, 2008) Finding of Fact #18 (20 percent of Lifeline participants use income eligibility to enroll).

²⁴ Alaska, Arizona, Arkansas, California, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Montana, Nevada, New Hampshire, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah and Vermont.

²⁵ As raised in California Public Utilities Commission, Docket No. R.04-12-001, D. 08-08-029 (Aug. 21, 2008 at p. 47).

required. While enrollment levels could be higher if applicants could self-certify income eligibility, it is harder for states and ETCs to verify. The current level of documentation strikes the right balance and consumers and state programs have adjusted. As seen in California and Ohio, the vast majority of Lifeline applicants are using program eligibility, not income-eligibility to enroll. California made the shift from self-certification of income as the means of qualifying for Lifeline to self certification of participation in one of a broad array of qualifying programs and income eligibility with documentation. Despite initially losing a number of Lifeline customers after the dramatic wholesale change in program design and implementation, which included a shift from ETC administration to a central third-party administrator, California aggressively worked to increase enrollment . Through outreach and education in multiple languages, branding a California Lifeline product, creation of a web portal for certification and verification, provision of a toll free number for help to applicants and more, California remains a state with one of the highest penetration rates.²⁶

5. The definition of “income” must be amended to avoid conflicts with the federal default qualifying programs

The current definition of “income” for the purposes of determining Lifeline eligibility in default states currently requires households to report public assistance benefits.²⁷ However, Lifeline qualifying programs such as the Supplemental Nutrition Assistance Program (“SNAP”)²⁸ (formerly Food Stamps) and the Low Income Home Energy Assistance Program (“LIHEAP”)²⁹ prohibit the inclusion of such federal benefits in the calculation of income. This is not an unusual practice and the Social Security Administration publishes a list of federal benefits and resources that must be excluded

²⁶ See California Public Utilities Commission Decision Adopting Strategies to Improve the California Lifeline Certification and Verification Processes, and Reinstating Portions of General Order 153, D.07-05-030 (May 3, 2007).

²⁷ 47 C.F.R. § 54.400(f).

²⁸ 7 U.S.C. § 2017(b).

²⁹ 42 U.S.C. § 8624(f).

from the calculation of income.³⁰ The definition of “income” for the purpose of qualifying for Lifeline should be revised to exclude “public assistance benefits.”

B. Eligibility Criteria Should Not Vary Based Upon the Offering of Discounts on Different Technologies

At this early juncture, Consumer Groups see no reason why different eligibility criteria should be used among federal low-income universal services support programs. Variations in eligibility criteria will generate consumer confusion, make outreach and education more difficult and will complicate future efforts to coordinate enrollment with qualifying programs. States that have, or plan to set up, automated verification with qualifying agencies for their Lifeline program will have to develop a parallel system for a Lifeline broadband program if eligibility varies. The mere fact that a different technology becomes available as a discounted service should not automatically dictate the need for different eligibility criteria.

C. The Commission Must Address The Equity Issues Regarding Lifeline Access For Those In Group Housing and Homeless Populations.

The Commission asks the Joint Board, whether certain classes of individuals, such as residents of homeless shelters, should be automatically eligible for participation in the low-income programs.³¹ NCLC, on behalf of Greater Boston Legal Services, submitted comments to the Commission urging the Commission to remove the barrier to Lifeline caused by using a street address as a proxy for “household” under the one-per-

³⁰ See, Social Security Online, *Appendix to Subpart K of Part 416—List of Types of Income Excluded Under the SSI Program as Provided by Federal Laws Other Than the Social Security Act* available at: http://www.ssa.gov/OP_Home/cfr20/416/416-ap01.htm. See also, US, Dept. HHS, ACF, LIHEAP Information Memorandum No. LIHEAP-IM-2010-7 (5/6/10), Exclusions from Income When Determining LIHEAP Eligibility available at http://www.acf.hhs.gov/programs/ocs/liheap/guidance/information_memoranda/im10-07.html.

³¹ Referral Order at ¶15.

household rule.³² Consumers living in homeless shelters, domestic violence shelters and other forms of group housing tend to be amongst the most vulnerable low-income consumers. Access to Lifeline phone service for these households is essential for personal safety, for finding work and more permanent housing, maintaining connections with health care providers, social service agencies, counselors, family and friends, the school community, etc.. There are two barriers to the provision of Lifeline service in group housing that the Commission can and should remove. The first involves recognizing that sometimes group housing is classified as commercial property by the postal system or other directories used by the ETCs.³³ The other barrier is that the practice of relying on a street address as a proxy to identify a “household” restricts the availability of Lifeline service to the first applicant at a particular group housing address.

To address the limitations on the current administration of the one-per-household rule, the Joint Board should recommend that the Commission require states to develop a separate, simple certification and verification form for group housing providers that would provide a contact’s name, and contact information, the building address, and a statement certifying that they provide group housing with a one or two-sentence description of population served (e.g., victims of domestic violence, homeless families, frail elderly, individuals with disabilities). A list of certified group housing facilities should be provided or made available to ETCs in that state. When a resident of a group home submits an application for Lifeline, and the application is initially rejected because the address is already “taken” by someone receiving Lifeline who also lives at that same premise, the ETC or state agency can then reference this list and know the applicant comes from a group home and may also qualify for Lifeline. The states should also use this list to determine when an address listed a commercial property may be a group home and therefore the residents are eligible for residential Lifeline service. This list would allow the provision of Lifeline service to more than one eligible household in a group housing facility and open up the option to many vulnerable customers.

³² In the Matter of Lifeline and Link Up, WC Docket No, 03-109, Comments of the National Consumer Law Center, on Behalf of Greater Boston Legal Services (Nov. 20, 2009).

³³ For example, in Massachusetts, many single-room-occupancy buildings (SROs) are listed as commercial properties instead of residential despite housing very low-income tenants.

A greater challenge is the provision of Lifeline to the homeless. Groups providing front line service to the homeless have proposed that the Commission allow non-profits serving the homeless to act as intermediaries in the provision of wireless Lifeline service. The Commission could require dual certification by the applicant and by the non-profit, with the non-profit's address listed instead of a residential address. Consumer Groups urge the Joint Board to recommend that the Commission work closely with the federal agencies³⁴ and NGOs with homelessness initiatives to identify modifications to the administration of the Lifeline program that will serve this very vulnerable population. Just because the solution may be complicated, does not mean it is not worth finding.

One issue with the administration of Lifeline for those in group housing and the homeless involve controlling for waste, fraud and abuse. Consumer Groups note at the outset that these problems are not limited to the context of group housing, but related more generally to the significant use of prepaid wireless services by homeless customers and residents of group housing. Unlike the traditional phone service model based on a contract between the consumer and the carrier and service at a fixed premise, households with pre-paid wireless Lifeline products are not billed and do not have a "service" address. Without any additional controls, it is possible for a pre-paid wireless Lifeline phone to be lost, stolen or broken soon after it is received. If the consumer does not notify the ETC immediately, it is possible that a set number of minutes will be preloaded every month and the ETC will seek reimbursement for providing Lifeline service to the consumer even though the consumer is not using the service. As discussed in more detail below, Florida has required that pre-paid wireless ETCs contact any Lifeline customer whose account has been inactive for a sixty-day period to determine if that customer is still an active Lifeline customer. If the ETC cannot establish that the customer is an active Lifeline customer, that account is closed.³⁵ The Joint Board should consider this and other recommendations to ensure that the goal of bringing communications services

³⁴ *E.g.*, HUD, the Veterans Administration, FEMA.

³⁵ *See* In the Matter of Lifeline and Link Up, WC Docket No, 03-109, Comments of Fla. PSC/OPC. *See* also Minnesota Public Utilities Commission, Order Granting One-Year Conditional ETC Designation and Opening Investigation, Dkt. P-6823/M-09-802 and P-6823/CI-10-519 (Iss'd June 9, 2010) at 13 (also requires 60-day inactivity report) and Public Utilities Commission of Ohio, Entry, Case No. 97-632-TP-COI at 2 (also requires 60-day inactivity report).

to as many low income consumers as possible is achieved while still protecting against waste, fraud and abuse.

D. Automatic Enrollment Facilitates Eligible Consumer Participation in Lifeline

The Referral Order requests the Joint Board revisit the question of whether automatic enrollment should be required in all states.³⁶ In this context, automatic enrollment should be viewed broadly as encompassing a wide continuum of coordinated enrollment strategies. At one end of the continuum is the “automatic enrollment” from a consumer’s perspective that is facilitated by a common application process by one or more qualifying program agencies. The qualifying agency then transfers the list of Lifeline eligible customers to the ETC or state administrator through a range of technologies from an emailed spreadsheet to a secure electronic data interface between a state agency that administers one or more of the qualifying programs and the carrier or state administrator of the Lifeline program. This interface shares information based on queries from various stakeholders and allows for multiple levels of administrative efficiency (e.g., avoids duplication of income-based eligibility determinations by the ETC or state Lifeline administrator) and allows consumers to start the enrollment process for more than one discounted program using a single application. At the other end is a fully integrated, real time system that performs automatic data matching and is highly automated not only starting an application process for multiple benefits but enrolling the customer as well.

Consumer Groups urge the Joint Board to look closely at the less resource intensive form of “automatic” enrollment through data sharing as an initial way to increase automation in the Lifeline enrollment process. Iowa, which is a default state, has increased its Lifeline enrollment in large part through a common application process set up by the state’s LIHEAP office. When LIHEAP applicants go to a LIHEAP intake site, the intake workers are trained to help the LIHEAP customers enroll in Lifeline.

³⁶ Referral Order at ¶19.

Customers are asked if they have Lifeline service and if they do not, whether they would like Lifeline service and from which carrier. The intake workers gather and input the information into the LIHEAP database which was modified to facilitate Lifeline enrollment. The LIHEAP office then generates lists of Lifeline-eligible households for the different ETCs. The efforts of this one qualifying agency has substantially increased the Lifeline participation in the state. Roughly 14,500 households have been certified as Lifeline eligible in FY 2010 by the state LIHEAP program (in 2009 there were roughly 49,000 Lifeline accounts in Iowa).³⁷

The enrollment systems in Florida are even more integrated. In Florida, consumers applying for assistance from a qualifying program (e.g., SNAP, Medicaid) run by the Florida Department of Children and Family Services (DCF), can check a “yes” or “no” box on the web application to indicate permission to apply for Lifeline assistance. Applicants are asked additional questions such as whether they currently receive Lifeline service. There is an additional drop down box that provides a list of ETCs for the consumer to choose a provider. The DCF forwards to the Florida Public Service Commission (FPSC) an electronic spreadsheet with a list of clients that have been approved for benefits that have also indicated a desire to enroll in Lifeline service. The FPSC electronically sorts this list by ETC and places the information on a secure website for ETCs to access and the ETC is automatically sent an email that a Lifeline application is awaiting retrieval. Where the consumer already has phone service, but is not on Lifeline, the ETC automatically enrolls that consumer on Lifeline with his or her current carrier. Where the consumer does not have phone service, the applicant must complete the Lifeline application.³⁸

From the state and ETC perspective, this automatic enrollment process facilitates certification, but does not go as far as conforming data fields and automating real-time data matches. This initial approach to automatic enrollment is flexible enough to be used with paper applications for a qualifying program. There are three key components for this form of automatic enrollment:

³⁷ USAC Lifeline Participation Rate Study 2009 and conversation with Jerry McKim, Director of the Iowa LIHEAP program July 13, 2010.

³⁸ Fla. PSC, *Facts and Figures of the Florida Utility Industry* (Apl. 2010) at 25; Fla. PSC, *Florida Link-Up Lifeline Assistance: Number of Customers Subscribing to Lifeline Service and the Effectiveness of Procedures to Promote Participation* (Dec. 2009) at 11-12.

- Agencies administering the qualifying programs to would need to modify their application
- The modified application would gather consumer permission to have data shared for the purposes of enrolling in Lifeline and the desired ETC for Lifeline service
- There needs to be a secured means of transferring lists of eligible Lifeline consumers to the ETC. It makes sense for the state utility commission to serve as the trusted intermediary as in the Florida example. The intermediary would also need a secured means of transferring the data to the ETCs.

On the other side of the automatic enrollment spectrum, the Joint Board can examine the processes in Texas. Texas has a state law requiring an automatic enrollment process into Lifeline for consumers participating in qualifying programs administered by the Texas Health and Human Services Commission. A third-party administrator matches over 8 million telephone customer records a month against nearly 2 million records provided by the state's Health and Human Services Commission to develop a list of Lifeline eligible consumers. This form of automatic enrollment requires a high level of data standardization to identify matches and remove duplicates.³⁹ As such, this is a resource intensive process that requires significant cooperation among multiple agencies. While this may be the ultimate goal of the Commission, the Joint Board's recommendation may suggest an evolutionary process for data automation.

There is a continuum of coordinated enrollment strategies from the Texas model of computerized data matches to Florida's process for sharing lists of eligible consumers to the PSC to distribute to the ETCs, to Iowa's modification of one qualifying program's application process to create lists of Lifeline eligible households for the ETC.⁴⁰ Consumer Groups urge the Joint Board to recommend that the Commission create an incentive for states to begin to move along the continuum of automatic enrollment

³⁹ Public Utility Commission of Texas, Report to the 80th Texas Legislature: Review and Evaluation of the Texas Universal Service Fund Pursuant to PURA Section 56.029 (Jan. 2007); Solix, *Best Practices in Centralized Administration* available at <http://www.solixinc.com/internet/source/news.aspx?id=1834>.

⁴⁰ Iowa, a default state, has a pro-active LIHEAP administrator who was willing to modify the LIHEAP form to facilitate enrollment into Lifeline.

activities. One way to do this is to enhance the federal match Tier 3⁴¹ support for states that have coordinated with at least one federal default qualifying program to share lists of eligible consumers who have expressed an interest in enrolling in Lifeline to automatically enroll those consumers. However, programs must meet their own minimum requirements such as the use of a secured means of transferring consumer data and ensuring that consumers' privacy is safeguarded.⁴²

An incentive program for the states could also include grants to help defray the costs of adjusting IT systems so information can be transferred between the program administrator and program participant such as an on-line system that allows for participants to certify eligibility or verify continued eligibility where no documentation is required. This on-line access, while it cannot be the sole method of certification or verification, can streamline the process for those with on-line access.⁴³

E. Electronic certification and verification of consumer eligibility.

One recommendation in the National Broadband Plan (NBP) is to create a centralized database for certification and verification.⁴⁴ The Commission seeks comment on how state databases for qualifying programs might interface with a centralized database and seeks comment on different architectures for certification and verification. In particular, the Commission is looking for mechanisms that are “reasonably practical, efficient, accurate, secure, and respectful of customer privacy.”⁴⁵ A centralized database for certification and verification is an attractive concept because it allows for consistent certification and verification processes, independent of the ETC, it also provides the agency overseeing Lifeline a method to help enforce the one-per-household rule. However, as some lessons from the states demonstrate, moving beyond a state-wide database may not be workable or necessary in the near term.

⁴¹ 47 C.F.R. § 54.403(a)(3).

⁴² We note that in states with automatic enrollment programs consumers can demonstrate their willingness to have their data shared for the purposes of enrolling in Lifeline by checking off a box next to a statement to that effect.

⁴³ In accord with NASUCA comments (July 15, 2010) at 7-8.

⁴⁴ Referral Order at ¶20.

⁴⁵ *Id.*

As described above, Florida has an automated data sharing arrangement for auto-enrollment with the DCF. In Florida, the ETCs have access to a secured web portal to verify current qualifying program participation. California and Texas use a third-party administrator for certification and verification. These states already have centralized databases of Lifeline participants. Texas's automatic enrollment program means that its third-party administrator is already matching data fields from agencies administering qualifying programs. In California, even though the Lifeline database is only for use within the program, it took a great deal of effort to synch up the IT systems of the California ETCs and the third-party administrator in order to process over a million new Lifeline applications and two million renewals a year. All of these statewide efforts took a great deal of effort and coordination.

A shift to a nationwide administrator who would have to arrange data sharing with state qualifying agencies would be a mammoth undertaking and it is not clear to the Consumer Groups whether, in the end, such an effort it would achieve better results than a state-wide administrator of Lifeline. It is relevant to note that many qualifying programs may be federally funded, but administered by state agencies and developed through state-run databases. Furthermore, we are concerned that a national Lifeline administrator would not be as responsive to an applicant's questions about his or her particular certification or verification questions or problems.

Consumer Groups recognize that a state-federal collaborative effort may be necessary as not all states will likely act in such a centralized capacity. In those instances, an entity like USAC may need to step in. We note that some federal programs like those overseen by HUD are moving toward a national income verification mechanism, e.g., the Enterprise Income Verification System.⁴⁶ It might be appropriate for a centralized state administrator, acting as an agent of the state or a federal Lifeline administrator to seek access to such federal databases for the limited purpose of checking certification and verification of Lifeline income-eligibility.

⁴⁶ EIV is "A HUD provided Internet-based tool that allows PHAs to view employment information, wages, unemployment compensation and social security benefit information at any point in time. The system also compares PHA verified/tenant reported wages, unemployment compensation and social security benefit information reported on HUD form 50058 with the UIV-reported amounts for the same income sources to identify families that may have substantially under reported their household income."

The Commission also seeks comment on the proposal that consumers receive a USAC pin number as a way to implement the one-per-household rule.⁴⁷ However, if the Joint Board issues such a recommendation, Consumer Groups urge the Commission not to use a social security number as the PIN . California’s third-party administrator generates a unique PIN for each Lifeline customer’s certification and verification forms without relying on the SSN. Lifeline customers can use this PIN to enroll online if using program eligibility and to verify continued eligibility online.⁴⁸

As a final note on this issue, Consumer Groups urge the Joint Board not to over-emphasize on-line applications and verification. While increased automation is an important goal that will help keep costs down and encourage participation, on-line access by participants cannot be the only method of certification or verification. As the Joint Board and Commission are well aware, a significant portion of low income consumers, especially limited English speaking and those with disabilities, do not have easy access to on-line materials or would have trouble navigating an on line system. These people must continue to have paper or telephonic methods to enroll in these important programs.

F. Application of the Certification and Verification Recommendations to the Expansion of Lifeline and Link-Up to Broadband.

At this point in time there is no Lifeline Broadband program in existence, so it is difficult to comment on appropriate certification and verification processes for a Broadband Lifeline program. However, Consumer Groups believes that consistent application of the certification and verification requirements, unless there is a good reason to deviate from that, will make the new program less confusing and more efficient to administer. There are similar concerns regarding avoidance of waste, fraud and abuse while at the same time facilitating enrollment of eligible consumers. Future Lifeline Broadband programs in the states could more seamlessly integrate into the Lifeline automatic enrollment activities, common applications, data sharing for certification and

⁴⁷ Referral Order at ¶20.

⁴⁸Information on the California Lifeline program, including certification and verification processes is available at www.CaliforniaLifeline.com, see also, <http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/lifelinedetails.htm#enroll>.

verification checks. Issues like the application of the one-per-household rule will also be present with broadband through wireless devices.

III. VERIFICATION

Even with the development of the most effective certification scheme, federal and state Lifeline programs could still suffer from inefficiencies without an equally effective verification process. Verification is the process by which a Lifeline program ensures existing participants continue to be eligible for benefits under that program's specific eligibility guidelines. In the 2004 Lifeline and Link Up Order, the Commission acknowledged the need and value of an effective verification process, rejecting arguments that the costs may outweigh benefits and agreeing with the Joint Board that, "verification is an effective way to prevent fraud and abuse and ensure that only eligible consumers receive benefits."⁴⁹ The current federal rules on verification require that ETCs in default states and states that elect to follow the federal guidelines randomly sample a statistically valid number of program participants to determine if those participants remain eligible through either program or income requirements.⁵⁰ ETCs offering Lifeline in states with their own programs must comply with the state's specific verification procedures.⁵¹

The Referral Order requested comment on a number of issues related to the verification process to determine if the Commission is taking "all appropriate steps to ensure program integrity."⁵² While Consumer Groups believe that the Lifeline program is sound, we propose several changes to the verification process. As the Commission acknowledges, there has been considerable growth in the Fund, including both an increased participation rate in certain states,⁵³ but also an increased number of

⁴⁹ In the Matter of Lifeline and Link-Up, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, FCC04-87, Rel. April 29, 2004 (2004 Lifeline and Link Up Order) at ¶ 33.

⁵⁰ 47 C.F.R. §54.410(c)(2).

⁵¹ 47 C.F.R. §54.410(c)(1).

⁵² Referral Order at ¶26.

⁵³ E.g., Florida has recently experienced a dramatic increase in Lifeline participation from 15.5percent in 2008 to 52.5percent in 2009. See Fla. PSC, *Facts and Figures of the Florida Utility Industry* (Apr. 2010)

telecommunications carriers that participate as ETCs and offer qualifying services.⁵⁴ In light of this growth, it is important to improve existing verification requirements to meet the goals of preventing fraud and abuse and ensuring that limited funds are properly distributed.

A. Consistency Among the States Through a Federal Floor of Minimum Requirements for Verification

As a general issue, the Referral Order requests that the Joint Board investigate the need for increased consistency in Lifeline verification processes among the states.⁵⁵ The Consumer Groups support increased consistency among states in order to assist USAC in spotting trends and helping prevent fraud in the system.⁵⁶ Consistency, however, should not be imposed at the expense of effective and consumer-friendly individual state policies. As discussed above, Consumer Groups support the concept of the Commission setting a federal floor of basic requirements that all state Lifeline programs must meet in order to qualify for federal funding.⁵⁷ This floor should include specific verification processes. In addition to the floor, however, there should be an opportunity for states with their own programs to set requirements *beyond* the floor that, for verification for example, would be stricter and perhaps impose additional requirements on ETCs or program participants to limit fraud in the system.

Setting a federal floor for verification processes naturally creates increased consistency among state programs. While there may be states that go beyond the set floor, the Commission and USAC will have a consistent minimum standard by which to review each program. This floor should include, at a minimum, requirements that:

at 25; Fla. PSC, *Florida Link-Up Lifeline Assistance: Number of Customers Subscribing to Lifeline Service and the Effectiveness of Procedures to Promote Participation* (Dec. 2009) at 29 percent.

⁵⁴ Referral Order at ¶11.

⁵⁵ Referral Order at ¶28.

⁵⁶ As the Referral Order notes, NARUC recently spoke to this issue and encouraged the FCC and states to work together to implement best practices to verify applicant eligibility. Referral Order at ¶20.

⁵⁷ The concept of imposing certain requirements on ETCs and all states and then giving those states with their own programs additional flexibility to go beyond the federal requirements is consistent with the approach taken by the Commission in its 2004 Lifeline and Link Up Order. See, 2004 Lifeline and Link-up Order at ¶37.

- All ETCs or relevant state authorities report results of the random sample audit to both the state and federal program administrators;
- All ETCs or relevant state authorities conduct a statistically valid random sample of program participants of a flat, standard percentage amount to determine continued eligibility; and
- All program participants be required to annually verify continued eligibility through self-certification to an ETC or relevant state authority; and,
- The Commission develops minimum notice requirement and reimbursement policies for customers who are found ineligible through an audit.

1. Reporting Requirements

As discussed above, the federal rules already require certain ETCs to perform a random sample audit of existing program participants and to report the results of that audit to USAC. The Consumer Groups urge the Joint Board to take up the Commission’s suggestion to expand this requirement to include ETCs (or an alternative reporting source) across all states, not just federal default states. Broadening the reporting requirements would ensure that USAC received information from all states and could therefore consistently monitor for trends and possible fraud on a nationwide basis.

2. Strengthen Audits

In addition to the reporting requirements, Consumer Groups have recommendations for two additional changes to the auditing process. The Referral Order requests a recommendation from the Joint Board on possible expansion of audits.⁵⁸

⁵⁸ Referral Order at ¶27.

Instead of the current standards for creating a “statistically valid” sample, which can create significantly different audit numbers from carrier to carrier, Consumer Groups recommend that the Commission set a specific, standard percentage of Lifeline program participants to be audited each year by each ETC. This percentage would be the federal floor, and states could require higher percentages if necessary. This audit should require each participant selected to verify their continued eligibility through documentation for income eligibility and a check of program participation for program eligibility. Under the current federal rules, the number of subscribers to be included in the audit is based on the percentage of customers found ineligible to receive the discount in the previous year’s audit.⁵⁹ Consumer Groups believe this formula is too complicated and the audit should be consistent across the states at a flat percentage amount of Lifeline subscribers. If an ETC is performing the audit, then the requirement would be the flat percentage for of subscribers, statewide, for that ETC. If an entity other than the ETC is performing the audit, then it would be a flat percent of Lifeline subscribers statewide across all carriers.⁶⁰ This standard percentage would also be easier for the ETCs to implement and for USAC to analyze results.

Second, Consumer Groups urge the Joint Board to take the verification process a step further and recommend that ETCs or state program administrators be required to verify continued eligibility of all program participants through a self-certification process either annually or once every two years. The Commission considered such an option as part of a menu of options in its 2004 decision, however it adopted a less stringent verification procedure without specific comment as to why it rejected annual verification.⁶¹ Changed circumstances, including increased customer and carrier participation dictate that stricter verification processes, including annual verification, would be more than justified. As the Commission determined in its 2004 Lifeline

⁵⁹ 47 C.F.R. §54.410(c)(2), See also, 2004 Lifeline and Link-Up Order at Appendix J.

⁶⁰ In some states, such as California, there may be LifeLine subscribers served by a carrier that is not an ETC and does not receive reimbursement from the federal fund, but only the state fund. In that circumstance, the state will have to determine if those customers should be included in a state-wide audit.

⁶¹ 2004 Lifeline and Link Up Order at ¶33. The Joint Board also considered an annual verification process but did not specifically recommend this option to the FCC as part of its Recommended Decision. Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, 18 FCC Rcd 6589 (Recommended Decision) at ¶41.

decision, the benefits of such verification, including cost savings through minimizing fraud, outweigh costs to conduct the verification.

3. Consumer Protection

Finally, the Joint Board should continue to support a critical consumer protection requirement by setting a minimum amount of notice given to program participants found ineligible as a result of a verification or random audit and at risk of losing their discount. In 2003, the Joint Board recommended that subscribers found ineligible should be given 60 days to try and reverse that determination and that states should have a specific appeals process.⁶² The Commission did not explicitly adopt this recommendation. This oversight should be corrected and the notice requirement should be included as part of the federal floor, allowing states with their own programs to provide a more generous time frame for subscribers to dispute or appeal a determination of ineligibility.

B. Best Practices for Verification Include Annual Verification and Random Audits

The Commission recommends that the Joint Board look at “best practices” in determining whether to change or expand the current verification processes.⁶³ Below is a description of the California process to be considered in making changes to the federal verification requirements.

In California, the third party that administers the Lifeline program also conducts all certification and verification correspondence with the subscriber and maintains the state-wide database of program participants. The third party administrator annually verifies each subscriber’s continued eligibility through a self-certification process using the anniversary date for each subscriber. Additionally, the third party administrator performs annual mandatory random audits of 3 percent of program participants spread across all participating carriers state-wide. To conduct this audit, the third party

⁶² Recommended Decision at ¶43.

⁶³ Referral Order at ¶28.

administrator sends out special verification forms requesting specific documentation to verify either program or income eligibility. The most recent numbers for April 2010, shows that 70 percent of those audit forms were returned by subscribers and of those, approximately 55 percent were approved for continued participation in the program.⁶⁴ California has very strict timelines for the verification and audit process, requiring subscribers to turn in their forms within 44 days from receipt and for the third party administrator to notify the subscriber of the results within 7 days.⁶⁵ California also has a detailed appeal process for those customers who fail to satisfy either the verification or audit process and become at risk of losing their discount. The California program has experienced significant bumps in the road toward implementation of these processes. In fact, the program has experienced erosion of participation rates over the past four years, and it attributes that erosion, at least in part, to the new processes.⁶⁶ However, California's detailed verification processes should be considered by the Joint Board in looking at best practices.

C. Prepaid Wireless and Verification

As discussed below, Consumer Groups note the distinct absence of any mention or request for comment, regarding the impact prepaid wireless ETCs have had on the program. As with the certification process and other elements of the program, these ETCs and the services they offer may not fit exactly within the four corners of the recommended verification processes. Most notably, because these carriers steadfastly

⁶⁴ California has a successful on-line verification process, but it cannot be used for the purpose of responding to an audit form or any circumstance where additional documentation will be required. The standard annual verification process utilizes the on-line system and the majority of program participants use the on-line system to verify their continued eligibility. Even as early as 2008 when the system was first turned on, over 800 people a day used the database. See California Public Utilities Commission D.08-08-029, *see also* minutes of meetings of the California Lifeline Working Group at http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/FormNotices_Public+Program.htm.

⁶⁵ For a detailed description of the California program, including a timeline for the certification and verification process, see General Order 153, Eff. May 3, 2007 at http://162.15.7.24/PUBLISHED/GENERAL_ORDER/70322.htm.

⁶⁶ See, California Public Utilities Commission Report to the California Legislature, *Residential Telephone Subscribership and Universal Service*, December 2009 at pp. 18-19 Available at <ftp://ftp.cpuc.ca.gov/Telco/2009percent20Universalpercent20Telephonepercent20Servicepercent20Report.pdf>.

maintain that they do not have a “billing relationship” with the end user customer, the carriers claim it would be difficult to communicate with the customer beyond the initial application process. The verification processes spelled out above, would require such on-going ability to communicate with the Lifeline customer to verify continued eligibility. The Joint Board should look closely at this issue because Lifeline-eligible prepaid wireless services are growing exponentially.⁶⁷ Prepaid wireless carriers should have some method of contacting current Lifeline subscribers for the purpose of verification because these carriers, or an agent, had to gather information about these subscribers to initially certify them as eligible for the Lifeline program.

The Joint Board should look at ways to design the verification processes to deter such fraud. For example, Consumer Groups are aware of problems with prepaid wireless Lifeline subscribers attempting to sell their Lifeline qualified phone and minutes allowance through on-line services such as E-Bay and Craig’s List in certain states.⁶⁸ One possibility may be the use of a unique identifier so that the original subscriber would be given a PIN number during the initial certification process or sent a PIN number at the last known address prior to the renewal period and that PIN number would be required to renew eligibility. If the PIN number is not provided, then the account is canceled. Another source of fraud raised by prepaid wireless carriers for verification is the possibility that a subscriber is receiving more than one Lifeline discount per household. Even if a subscriber has already signed up for wireline Lifeline at his or her place of residence, it could be possible to then sign up for a second discounted service for a wireless phone using a different billing address than the place of residence. Of course, any application for Lifeline should require the subscriber to certify, under penalty of perjury that he or she is receiving only one Lifeline discount. However, Consumer Groups encourage the Joint Board to consider other independent methods to detect and deter such types of fraud. We discuss the process that Florida has developed below.

⁶⁷ Prepaid wireless subscribership equaled over 20 percent of all wireless connections in 2009 and continues to grow. *See*, Comments of CTIA- The Wireless Association, In the Matter of Measures Designed to Assist U.S. Wireless Consumers to Avoid “Bill Shock” , CG Docket No. 09-158, filed July 6, 2010 at p. 13 citing to CTIA, *Prepaid Wireless Service in the United States: A Snapshot from CTIA based on CTIA’s Semi-Annual Wireless Industry Survey Results: Year-End 2009 Results* (March 2010).

⁶⁸ The Public Utility Law Project of New York (PULP), *TracFone Lifeline Phones Sold on Craigslist* (June 18, 2010) available at <http://pulpnetwork.blogspot.com/2010/06/tracfone-lifeline-phones-sold-on.html>.

They require prepaid carriers to shut off Lifeline accounts that have been inactive for 60 days if the customer fails to confirm ongoing eligibility. Finally, Consumer Groups note that prepaid wireless Lifeline raises issues of state jurisdiction. As the Commission noted in the US Cellular decision, not all states find that they have jurisdiction over wireless carriers to impose specific Lifeline related requirements, even if these carriers are offering Lifeline services within those states.⁶⁹ Consumer Groups agree with the Commission's determination in that case that in the event a state refuses to apply or enforce its own Lifeline requirements on a wireless carrier, then that carrier must comply with the federal default requirements, including verification. This stop-gap measure may prove effective over the short-term. However, in the long term Consumer Groups encourage the Commission and others to work with those states that disavowed jurisdiction over wireless to try and get that policy reversed.

IV. OUTREACH

A. Elevating Lifeline Awareness is Critical

Consumer Groups strongly agree with the Commission's statement in the Referral Order that,

The Commission's and the states' shared interest in ensuring that eligible consumers are well-informed about the availability and benefits of the low-income programs is even more critical in these challenging economic times.⁷⁰

The Referral Order also makes pointed statements about the current outreach rules that suggest the Joint Board should be looking to significantly strengthen outreach guidelines and requirements with its recommendations. In particular, the Commission acknowledges the importance of outreach for a successful Lifeline program and, notes that current outreach efforts have been "hampered" by the lack of specificity in the current rules.⁷¹ So while carriers are explicitly required to publicize the availability of Lifeline to their customers,⁷² there are no enforceable rules to ensure that publicity is

⁶⁹ Lifeline and Link up; Petitions for Declaratory Ruling and Requests for Waiver by US Cellular Corporation, et al., WC Docket No. 03-109, Order and Declaratory Ruling, 25 FCC Rcd 1641 (2010) at ¶9.

⁷⁰ Referral Order at ¶34.

⁷¹ *Id.*

⁷² 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. §§ 54.405(b) and 54.411(d).

effective. The fact that program participation rates range anywhere from 10 percent to 50 percent for the vast majority of states, means that outreach efforts have not been successful to date.⁷³ The Joint Board should attempt to correct the current failings in the system through a set of comprehensive and aggressive recommendations that include:

- Adopt specific outreach *requirements* as a federal floor that must be performed before an ETC is reimbursed from the federal fund;
- Revise current Outreach Guidelines to be more direct and comprehensive;
- Impose specific reporting requirements to the Commission detailing ETCs' and/or state administrators' outreach efforts and budgets;
- Look at best practices and design recommendations that significantly rely on one-on-one outreach through non-profits, community based organizations and social service agencies.

B. Joint Board Should Recommend Mandatory Outreach Efforts

In 2004, the Commission declined to impose specific outreach requirements, instead it developed unenforceable guidelines for states and carriers stating that, “We do not believe it is necessary at this time to prescribe specific outreach procedures. ... States and carriers will still have the flexibility to determine the most appropriate outreach mechanisms for their consumers.”⁷⁴ Unfortunately, over the years, states and carriers did not develop their own detailed outreach mechanisms on a wide scale. Importantly, data shows that where states and/or carriers took aggressive action with regard to outreach, the customer participation rate increased significantly.⁷⁵ Therefore, the Commission must take this opportunity to develop a more comprehensive and concrete outreach program for Lifeline. Consumer Groups recognize, however, that designing an outreach program inevitably creates tension between cost and effectiveness. If cost was no object, the Joint

⁷³ USAC 2009 Participation Rate by State report.

⁷⁴ 2004 Lifeline and Link Up Order ¶44.

⁷⁵ Referral Order at ¶32, footnote 69 (re: Maine outreach). Also see, 2009 CPUC Report to the Legislature, supra at note 63, noting that decreased participation could be blamed, in part on a lack of outreach for 9 months. Further, the correlation between aggressive marketing by prepaid wireless carriers of their Lifeline eligible services have contributed to a direct increase in participation rates in those states.

Board could certainly create recommendations for an outreach program that would get the word out and result in significantly increased participation. However, cost must always be a major consideration when designing a proper outreach project. As such, primetime television ads and full page newspaper ads may not be an option for some states or ETCs. The Joint Board must strike a balance in its recommendations and push the Commission to create an aggressive and clear outreach program while ensuring money is spent in the most cost effective manner.

One way to ensure cost effectiveness is to develop a federal floor of requirements, similar to the federal floor discussed above, that would serve as the bare minimum a carrier or state agency must put in place for an outreach program. This federal floor should not replace the federal Outreach Guidelines, nor should it prevent states with their own programs from designing more robust state-specific outreach programs. However, if every Lifeline provider performed a basic and consistent level of outreach, there will be more certainty that these programs are being properly publicized.

Consumer Groups propose that the following basic elements of an outreach program be required from the ETC itself or by a state administrator or a combination of the two entities.

- Include information about discounted telephone programs on the providers' website with a reference to the program on the "home page" of the carrier (or state agency) and then comprehensive information about the program only one "click" away either on the carriers' website or a third party website.
- Provide state-specific and program-specific material about Lifeline, translated into languages other than English and in formats accessible to those with disabilities. These materials should be available on the ETC's and/or state agency website or upon request in hard copy from the carrier or state agency.
- The ETC must inform new customers about the discounted telephone program either verbally or through a separate mailing within 14 days from the customer's service initiation.
- Provide additional annual notice to all subscribers of the availability of the program and a reference to the website or to a phone number to call for more information.
- Provide additional notice to customers who are at risk of service termination due to non-payment.⁷⁶

⁷⁶ See, NARUC Committee on Consumer Affairs, *Resolution on Furthering Lifeline Participation Through Outreach* (November 15, 2005) wherein NARUC provides a substantial number of recommendations

These requirements are focused and cost-effective. They only require the ETC to maintain a website or phone number for information, to provide in-language materials, and to provide specific notices to their own customers about the Lifeline programs. While the current Outreach Guidelines encourage carriers not to rely on the Internet or hotlines as a “primary means” of outreach, websites and hotlines can be a valuable and cost-effective part of a larger outreach strategy. The Commission must impose some basic requirements regarding outreach and these methods are appropriate as more and more customers have access to on line information.

It is unfortunate that as web-based material becomes an increasingly important source of consumer information, carriers have not done more to increase access to information about Lifeline on their websites as they have with information about bundles and triple plays on each and every page. AT&T, for example, makes no mention of Lifeline or discounted home phone service on their home page. It is only after clicking through a minimum of three pages (if you chose the “right” links) do you come to a very bland and vague paragraph that says,

AT&T CALIFORNIA ALSO OFFERS CALIFORNIA LIFELINE: A discounted program for eligible low income customers. If you qualify, you will receive a discount on the new service connection fee and the monthly rate for basic local service. To find out more information about qualifying for California LifeLine, please visit www.att.com/lifeline or call 1-800-288-2020.

Verizon’s website requires even more “clicks” and has buried vague references to Lifeline in the “Support” link of their website. Smaller carriers, or carriers that have made Lifeline an important part of their business model may have more prominent material on their websites, but clearly a requirement for use of web based outreach is necessary because the ETCs themselves have not been motivated to develop their own workable solutions.⁷⁷

including the recommendation to encourage all ETCs to include information about Lifeline on disconnection notices and payment plan confirmation letters. *See also*, companion NASUCA Resolution at http://www.nasuca.org/archive/Resolutions/NASUCA_Lifeline-Resolutionpercent202006-01.doc

⁷⁷ Even Tracfone prepaid wireless, a company with significant business plans to offer Lifeline telephone service, makes no mention of the service on their website. Customers would have to know to search for the company’s specific product name, Safelink, in order to find information about Lifeline. The Safelink

C. Outreach Guidelines Should Be Revised and Strengthened

Naturally, annual notices and web pages cannot be the only methods used for outreach by either the ETC or the state agency. The existing Outreach Guidelines must be improved so that ETCs and state agencies can work with the guidelines to develop a state-specific, or carrier-specific, effective outreach program. Also, as the Commission acknowledges, a more comprehensive and concrete set of guidelines would allow the Commission to enforce the publicity requirements for federal funding. The Guidelines should be revised to include the following categories and within each category specific activities could be specified as *examples* of effective outreach efforts:

- Development and distribution of outreach materials, including in-language materials and accessible materials for disability communities;
- Contacts and coordination with local, state and federal social service agencies;
- Contacts and coordination with local, state, and federal non-profit and community based organizations;
- Development of incentive programs for customer service representatives or outreach partners to enroll new participants in the Lifeline program;
- Public service announcements and other media advertising; and,
- Participation in statewide, regional or national outreach activities such as community advisory board, coalitions, and task forces (Lifeline Awareness Week⁷⁸ is an example of a national outreach effort).

Once the Outreach Guidelines are revised, Consumer Groups urge the Joint Board to recommend specific reporting requirements for ETCs and state agencies based on the new Guidelines. The Commission should develop a standardized form, perhaps a matrix with each outreach category. Carriers should be required to fill out the matrix annually detailing the types of outreach projects the carrier has embarked upon within each category and the general level of spending for each category. This detailed analysis would help the Commission monitor outreach activities for different carriers or different areas of the country and compare that data with participation rates in those areas to

website is appealing, but would be difficult to find without a direct link from the TracFone home page or prior knowledge of the product name.

⁷⁸ The second National Telephone Discount Lifeline Awareness Week is September 12-18, 2010. This outreach effort is a product of the FCC, NARUC and NASUCA joint task force on Lifeline.

determine if the outreach has been effective. In addition, Consumer Groups hope that the requirement to report outreach activities in such a specific and detailed manner, even if just to the Commission or USAC, would motivate carriers to commit additional resources to outreach.

A reporting requirement may identify those carriers attempting to blur the distinction between comprehensive and effective outreach versus carrier public relations and advertising of that carriers' services. When revising the Outreach Guidelines and looking at the specific categories of outreach, Consumer Groups recommend that the Joint Board specify types of materials and activities that would not be considered effective outreach, but would instead constitute heavy marketing and advertising of a specific carriers' service. While this distinction can be a very fine line, it is an important distinction. ETCs cannot use the advertising and marketing requirements as an excuse to merely promote its own services, especially with emphasis on its non-Lifeline services that may be included in Lifeline promotions. For those carriers that have a significant number of their customers as Lifeline customers, it would be tempting to advertise its services with marketing hype and sales pitches while calling it "outreach." Outreach should be non-biased, straightforward facts about the program and the services that carrier offers that qualify for a Lifeline discount.

D. Joint Board Should Encourage Use of Third Party Resources for Outreach

It is the fine line between advertising and outreach that drives Consumer Groups to recommend that outreach efforts be delegated wherever possible to a third party contractor or to the state agency administering the program. While Consumer Groups are very sensitive to the extra cost associated with retaining a third party organization, we believe the cost benefit results would justify any additional burden. The involvement of a third party could cover a wide spectrum of scenarios. On the one hand, a state agency responsible for administering the Lifeline program could be considered the "third party" and serve merely as a centralized resource or coordination point for ETC outreach

efforts.⁷⁹ On the other side of the spectrum is a scenario that makes the third party contractor responsible for all outreach and marketing activities, including the design of material, distribution, coordination of community groups and other state agency efforts. For many states the right mix of third party involvement and carrier outreach may be the middle of the spectrum. In states where carriers have the primary responsibility to administer the certification and verification process, it makes sense to maintain most outreach activities with those same carriers. However, a third party could be employed to help standardize outreach materials, monitor carrier outreach to ensure it is fair and objective, help coordinate outreach activities on a statewide level to ensure consistency and coverage and to serve as a resource for non profits, community based organizations and other social service agencies for information on Lifeline generally and referrals to proper carriers.

The Commission should be encouraged to look at best practices in the area of outreach. Here too, California has a third party outreach model that may be instructive in designing an effective outreach program. For many years the California Commission has relied on some type of third party contractor to conduct outreach for its Lifeline program and has also required annual notices and notices to new customers about Lifeline sent by the carriers. Prior to 2005, individual carrier participants were responsible for administering the Lifeline program for their own customers. Even under that model, the Commission paid for a contractor to conduct numerous types of outreach activities with a particular emphasis on limited English speaking and hard-to-reach populations. The contractor was paid out of the state's Lifeline Fund created by end user surcharges. In addition, marketing and outreach efforts were coordinated and overseen by a board that consisted of members from the carrier community, non-profit agencies and the Commission itself.

In 2005, when the California Commission moved to a third party administrator, the Commission also changed its marketing and outreach efforts. It has several contracts with third party contractors to administer a toll free hotline, to do outreach on Lifeline and handle Lifeline complaints, to conduct a comprehensive media buying campaign, and

⁷⁹ Consumer Groups note that in the existing Outreach Guidelines USAC already sees itself as a resource for carriers.

to do outreach on a variety of telecommunications issues, including Lifeline. As an example of this aggressive outreach, in January 2009, the California Commission reported that it purchased over 2, 300 T.V. and radio spots, 29 percent of which were free. These spots reached over 9.3 million people. Numerous other outreach efforts, including one-on-one outreach using community based organizations, have been handled by these third parties. Here again, however, the tension between cost and effectiveness exists. Consumer Groups recognize that this type of reliance on third parties, and the methods of outreach for a state of 36 million people do not come cheap. The California Commission staff projected a marketing budget alone for the Lifeline program to be \$6.8 million for the 2009-2010 fiscal year.⁸⁰

In 2005 NARUC, NASUCA and the Commission formed a Working Group to obtain information on existing Lifeline outreach strategies. This Working Group made several observations regarding Lifeline outreach in a 2006 study. As part of their investigation into the effectiveness of various outreach techniques, the working group found that “one-on-one outreach is critical.”⁸¹ The Working Group saw that door-to-door canvassing, work with community organizations that have direct contact with customers such as Meals on Wheels or Head Start, and outreach through community centers were very effective in getting the word out about the program and perhaps more importantly providing detailed and direct information to consumers about the certification process and eligibility requirements.⁸² This Task Force also helps coordinate outreach activities on a nationwide-scale including the creation and promotion of Lifeline Awareness Week, reaching millions of households.

Consumer Groups urge the Joint Board to place heavy emphasis on outreach tools and programs that utilize non-profit and community based organizations to not only educate their constituencies about the program, but to assist potential Lifeline recipients with the application process. In order to encourage these organizations to dedicate their own resources to Lifeline outreach, the Joint Board should look at the potential to provide different types of reimbursement or incentives to these organizations for the time spent

⁸⁰ See, California Public Utilities Commission Resolution T-17161, mailed August 22, 2008.

⁸¹ *Report of the FCC/NARUC/NASUCA Working Group on Lifeline and Link-Up: “Lifeline Across America”*, 2007 at p. 9. Available at <http://www.lifeline.gov/LLLUReport.pdf>.

⁸² *Id.*

by their staff promoting the program and helping with sign ups, recognizing that these groups are essentially performing the outreach duties of either an ETC or state agent. The Joint Board should also consider programs that may provide incentives to carrier customer service representatives (“CSRs”) for their time and encouragement for successfully signing up an eligible customer to the Lifeline program. Carriers regularly provide performance incentives to customer service representatives who sell premium packages and high-priced services. Most consumers are unaware that these CSRs are paid commission. If the Commission has a stated goal of increasing program participation, one way to help reach that goal is to give CSRs an incentive to recommend the Lifeline program to those customers that express an interest or acknowledge that they are qualified for the program.⁸³ The Joint Board, and the Commission, must develop creative solutions for outreach efforts. Because the success of these types of incentive programs is very dependent on the circumstances in a specific state, Consumer Groups recognize that the Joint Board could not recommend that the Commission *require* states to develop these programs. However, the Joint Board should recommend that the Commission encourage states to investigate this option and consider the possibility of an incentive program.

V. PRE-PAID WIRELESS LIFELINE

The Commission’s referral order describes the deep and dramatic penetration of wireless phones since the last look back at the Lifeline program and the growth of the Low-Income support due to the recent addition of wireless CETCs.⁸⁴ Yet, the issues raised for comment in the referral order skirt an underlying issue regarding wireless Lifeline service and prepaid wireless Lifeline in particular. As raised in NASUCA’s

⁸³ Indeed, several years ago the Public Utilities Commission of Ohio found that Ameritech Ohio was not living up to a commitment to increase enrollment in Lifeline. In that case it emerged that customer service representatives working for Ameritech Ohio received performance incentives for selling extra services and premium packages but, because there were no equivalent incentives for enrolling customers in lifeline they avoided doing it. Ameritech was required to improve enrollment procedures and publicity for the program. As a result, Lifeline enrollment in the Ohio Ameritech service territory increased. Ellis Jacobs, *Fighting to Turn the Promise of Universal Telecommunications Service into Reality*, Georgetown Journal on Poverty Law and Policy, Volume VIII, Number 1, Winter 2001.

⁸⁴ Referral Order at ¶¶ 10 and 11.

recently adopted resolution, *Reform of the Lifeline Program, Including Reform for Prepaid Wireless Lifeline Services*, the Commission and a great number of states have allowed, on an ad hoc basis, a category of low-income ETCs that only seek funding from the Low-Income support and not the High-Cost support.⁸⁵ The pre-paid wireless Lifeline offerings have resulted in substantial growth to the Low-Income programs and the Universal Service Fund, yet there has been no determination of whether the products are of adequate value to the Lifeline customer.

As pointed out in the NASUCA resolution, there needs to be a balance between the maximum value for low-income customers and the costs imposed on all the customers who pay for the Lifeline programs. Pre-paid wireless Lifeline services currently available differ from the traditional Lifeline service in that the pre-paid service offers a very limited number of minutes covered by the federal Lifeline reimbursement as opposed to a discount off the ETC's retail rate. What is missing is the lack of an analysis of whether the pre-paid Lifeline offerings are comparable to the plans offered by the Lifeline plans provided by the ILECs.⁸⁶ In many respects the train has almost completely left the station as pre-paid wireless Lifeline is available in over half of the states. It is clear that there is demand for a wireless Lifeline product and a need for wireless Lifeline in certain segments of the low-income population, such as those in group housing situations and the homeless. But the rationale for pre-paid wireless should not be, "Something is better than nothing." To say that the pre-paid Lifeline service is "free" to the consumer is only half the picture as the people holding the tab are those that contribute to the universal service fund in their monthly bills. The Commission has a duty to be a good steward of the public universal service funds.

As we can see from the initial roll out, there is an urgent need for the Commission to undertake a very detailed look at the pre-paid wireless Lifeline product and adopt basic minimum standards to ensure adequate value to the Lifeline consumers and to the ratepayers who subsidize the Universal Service Fund. One concern that has been raised by front line groups in different states in state pre-paid wireless ETC proceedings is that the offered number of monthly minutes for pre-paid wireless is inadequate to meet the

⁸⁵ NASUCA Resolution 2010-02, Calling for Reform of the Lifeline Program, Including Reform for Prepaid Wireless Services (Appv'd June 15, 2010).

⁸⁶ [47 CFR 54.202\(a\)4](#).

needs of low-income households they serve. For example, the typical TracFone Safelink product offered in many states provides: 67 minutes of call time (incoming and outgoing, with fractions of minutes rounded up to a full minute of use); rollover of unused minutes into the next month. Once allotted minutes per month have been used the Lifeline customer will not have service unless additional minutes are purchased at a proposed price of 20 cents per minute; calls to 911 would still go through even if all the minutes per the month have been exhausted.

The Minnesota consumer advocates and the commission also sought clarification that calls to TracFone's customer service line would not count against the 67 minutes. Twin Cities Community Voice Mail, also a party to these comments, had participated in the Minnesota TracFone ETC proceeding. They pointed out that 65 percent of their clients are homeless and that their clients would quickly exhaust the roughly 2.23 minutes per day provided by the Safelink Lifeline phone as waiting times would quickly eat into the allotted minutes when calling schools, healthcare providers, social service agencies, employers and potential employers.⁸⁷ They also point out that 300 minutes a month translates into only 10 minutes per day (for incoming and outgoing calls) and that 20 cents per each additional minute was high. These concerns about the adequacy of the minutes led the Minnesota PUC to require that TracFone's pre-paid Lifeline product in Minnesota provide the highest number of minutes offered by TracFone Safelink in any other jurisdiction, and offer additional minutes at 10 cents per minute.⁸⁸ The Washington Utilities and Transportation Commission was also greatly concerned about the low number of minutes. In their recent Order approving the settlement regarding TracFone ETC designation, the Washington Commission states:

However, the meager 65 minutes of free air time could lead to substantial purchases of more minutes by low-income consumers such that the net service acquired may not be nearly as inexpensive as TracFone represents. Because we do not have a history of TracFone's service in Washington, the ultimate impact of these services on low-income consumers is not

⁸⁷ Minnesota Public Utilities Commission, Order Granting One-Year Conditional ETC Designation and Opening Investigation, Dkt. P-6823/M-09-802 and P-6823/CI-10-519 (Iss'd June 9, 2010) at 5-6.

⁸⁸ Minnesota Public Utilities Commission, Order Granting One-Year Conditional ETC Designation and Opening Investigation, Dkt. P-6823/M-09-802 and P-6823/CI-10-519 (Iss'd June 9, 2010) at 13.

clear. As a result, it is very difficult to determine whether granting this petition would be in the “public interest.”⁸⁹

Minnesota Legal Assistance Services Advocacy Project, also a party in these comments, had similar strong reservations with the adequacy of the Safelink product and recommended that the Minnesota PUC adopt a conditional approval of one-year.⁹⁰ The Minnesota PUC discussed the requirement that all ETCs must offer “a local usage plan *comparable to the one offered by the incumbent LEC [local exchange carrier]* in the service areas for which it seeks designation” (emphasis added). The Minnesota PUC observes that the Commission has the authority to set a monthly minimum usage amount, but has chosen not to do so and that states are not precluded from doing so.⁹¹ It goes on to discuss the Safelink number of minutes:

The real issue, then is whether 67 minutes of this valuable service (with all fractional minutes rounded up), coupled with the availability of additional minutes at 20 cents each, will meet the basic telecommunications needs of Lifeline households as effectively as the unlimited fixed-location local usage offered by the incumbent LECs. The Commission finds this unlikely. . . . [The community organizations that represent low-income consumers] fear that TracFone’s service offering will degrade the level of telecommunications service available to many low-income households and increase overall telecommunications costs for many more. This is a reasonable projection based on known facts, and it reveals a substantial and troubling lack of comparability between TracFone’s local usage plan and those of the local LECs.⁹²

⁸⁹ Washington State Utilities and Transportation Commission, Dkt. UT-093012, Order 03, Final Order Adopting Settlement Agreement; Granting, On Condition , Designation as an Eligible Telecommunications Carrier and Exemption From Provisions of WAC 480-123-030; Granting WITA’s Petition to Withdraw Intervention (June 24, 2010) at 22.

⁹⁰ Ohio and Washington also granted TracFone a conditional 1-year ETC approval. *See*, Public Utilities Commission of Ohio, Entry, Case No. 97-632-TP-COI and Washington State Utilities and Transportation Commission, Dkt. UT-093012, Order 03, Final Order Adopting Settlement Agreement; Granting, On Condition , Designation as an Eligible Telecommunications Carrier and Exemption From Provisions of WAC 480-123-030; Granting WITA’s Petition to Withdraw Intervention (June 24, 2010).

⁹¹ Minnesota Public Utilities Commission, Order Granting One-Year Conditional ETC Designation and Opening Investigation, Dkt. P-6823/M-09-802 and P-6823/CI-10-519 (Iss’d June 9, 2010) at 6. We also note that TracFone’s ETC petitions in other states aver that “As a designated ETC, TracFone will comply with any applicable minimum local usage requirements adopted by the FCC.” (see e.g., Petition of TracFone Wireless, Inc., For Designation as an Eligible Telecommunications Carrier in the State of Rhode Island for the Limited Purpose of Offering Lifeline Service to Qualified Households at 10 and Petition of TracFone Wireless, Inc., For Designation as an Eligible Telecommunications Carrier in the State of Maryland for the Limited Purpose of Offering Lifeline Service to Qualified Households at 10).

⁹² Minnesota Public Utilities Commission, Order Granting One-Year Conditional ETC Designation and Opening Investigation, Dkt. P-6823/M-09-802 and P-6823/CI-10-519 (Iss’d June 9, 2010) at 7-8.

The Minnesota PUC opted to provide a conditional one-year ETC designation conditioned on the provision of the highest value usage plan offered in any other jurisdiction, the offer of supplementary minutes at 10 cents per additional minute and not counting calls to the TracFone customer service line against the allotted monthly minutes.⁹³ The one-year designation will allow the Minnesota PUC to evaluate the Safelink product based on actual experience and empirical evidence as to whether to local usage plan merits permanent approval. While this example points to a specific prepaid wireless product, Consumer Groups are aware of other very similar offerings by other prepaid wireless providers and we offer this example to highlight the need for minimum standards from the Commission regarding an adequate prepaid-wireless Lifeline product.⁹⁴ Consumers in different states will be offered different pre-paid wireless Lifeline packages from the same ETC based on whether their state commissions or the Commission seek a better value for the Lifeline customer.

Consumer Groups are aware of some states that have gathered critical data from TracFone regarding its prepaid Lifeline offerings in particular states. In order for the Joint Board and the Commission to determine the components of an appropriate wireless Lifeline product, we recommend the Joint Board, the Commission, and USAC gather the readily available data from the states. For example, Ohio requires TracFone to Ohio-specific information on a monthly basis:

1. The number of Lifeline application received
2. The number of Lifeline applications approved (and a break out by income-eligibility versus program-eligibility)

⁹³ Minnesota Public Utilities Commission, Order Granting One-Year Conditional ETC Designation and Opening Investigation, Dkt. P-6823/M-09-802 and P-6823/CI-10-519 (Iss'd June 9, 2010) at 13. California, on the other hand, rejected a similar TracFone service. *See*, California Public Utilities Commission, Order Instituting Investigation Into The Operations Of Tracfone Wireless, Inc., I. 09-12-016 (Dec. 17, 2009).

⁹⁴ Naturally, the importance of ensuring that Lifeline participants are receiving comparable services is not limited to prepaid wireless carriers. For example, in Ohio the Commission is considering an application for ETC status from a company called Budget Prepay. This wireline phone company is offering what it deems a Lifeline service for rates four times higher than AT&T's wireline Lifeline service in Ohio. The customers of this company appear to be paying outrageous rates for similar services to AT&T Lifeline service, while Budget Prepay pockets the federal subsidy money. The FCC must set a floor for the elements of a Lifeline service and recalculate how the customer discount is calculated. *See*, Public Utilities Commission of Ohio, Case No. 10-668-TP-UNC. *See also*, NASUCA Resolution 2010-02, Calling for Reform of the Lifeline Program, Including Reform for Prepaid Wireless Services (Appv'd June 15, 2010).

3. The current total number of Lifeline customers served by the company
4. The number of Lifeline applications denied (and a break out of the reason for the denial)
5. The number of handsets deactivated after 60 days of inactivity
5. The number of handsets deactivated due to a failure of the subscriber to recertify or verify
6. The number of subscribers whose handsets were deactivated that re-enrolled
7. The number and percentage of Lifeline customers who depleted the standard 69 minutes by the end of the month? What is the number and percentage of Lifeline customers who deplete the standard 68 minutes within the first two weeks of the month?
8. The number of contacts to Safeline from Ohio customers each month (with break out of the reason for the contact)
9. The number of Lifeline customers who purchased additional minutes
10. The average number of additional minutes purchased
11. The percentage of Lifeline customers minutes were used for voice and text applications⁹⁵

Massachusetts's Department of Telecommunications and Cable has similar information from a Department Records Request which include the average additional minutes purchased by Massachusetts SafeLink subscribers; the percentage of customers who voluntarily disconnected service; the percentage of customers who de-enrolled for any reason.⁹⁶ The Joint Board should seek this information from the states that have already gathered it and the Commission should seek this information from the pre-paid wireless Lifeline ETCs that are currently providing service in the assessment of the minimum standards for a pre-paid wireless Lifeline product.

Pre-paid wireless Lifeline poses additional challenges regarding ensuring the benefits are being used for their intended purposes. Prepaid wireless Lifeline phones could be broken, lost or put away and forgotten, and the ETC, unless contacted by the customer, would not know there is a problem. The minutes could just be loaded on every month

⁹⁵ Ohio Public Utility Commission, Case No. 97-632-TP-COI, Entry (Nov 18, 2009) at 2-3.

⁹⁶ Massachusetts Department of Telecommunications and Cable, TracFone Wireless, Inc., Annual Verification of Safelink Wireless Lifeline Subscribers, Order, D.T.C. 09-9 (June 30, 2010) at 8.

until it was time for the annual verification. In Florida, TracFone voluntarily reports to the PSC a 60-day inactivity report.⁹⁷ Customers who fail to confirm that the phone is still in use are removed from the Lifeline program. This is also required of Virgin Mobile's pre-paid wireless Lifeline service. In Florida, TracFone must also verify all customers on an annual basis. TracFone can contact customers through a text message to the handset, a phone call or through the US Postal system to request that they self-certify their continued eligibility for the program. ETCs in Florida also have access to a secure web portal of the states Department of Children and Families to check program eligibility.

The Massachusetts Department of Telecommunications and Cable (DTC) had initially granted TracFone a waiver of its certification and verification processes (generally, in Massachusetts, ETCs certify and annually verify each customers eligibility) so that TracFone could use a self-certification process to enroll customers and then conduct an annual audit of a random, statistically valid sample of its customers for verification. The first audit report was filed in November and the results are troubling. TracFone was able to successfully verify only 51 percent of its Lifeline subscribers. The Massachusetts DTC found that the ineligible rate of 49 percent was “unacceptably high and raises considerable concern.”⁹⁸ Many of the customers were deemed ineligible due to a failure to respond to the verification audit. This is very troubling. It is not clear if the low response rate is because pre-paid wireless Lifeline service has a more distant relationship to the Lifeline customer or if there has been a lack of outreach and education on the importance of responding to the verification requests, or both. TracFone in Massachusetts contacted customers through numerous channels: direct mailing, electronic mail, text messages and audit. Programs can be designed to improve the return rates on forms. California has gone to great lengths to improve the rates of returns for the certification and verification forms. Their certification and verification process includes several customer “touches,” branding of the California Lifeline product, provision of lead time for the verification process to include several customer contacts and requests for

⁹⁷ Minnesota also requires a 60-day inactivity report. *See* Minnesota Public Utilities Commission, Order Granting One-Year Conditional ETC Designation and Opening Investigation, Dkt. P-6823/M-09-802 and P-6823/CI-10-519 (Iss'd June 9, 2010) at 13.

⁹⁸ Massachusetts Department of Telecommunications and Cable, TracFone Wireless, Inc., Annual Verification of Safelink Wireless Lifeline Subscribers, Order, D.T.C. 09-9 (June 30, 2010) at 13.

additional forms before the anniversary date, etc.⁹⁹ We note that the TracFone Forbearance Order is conditioned on TracFone annually verifying that each of its Lifeline customers are the head of the household and receive Lifeline service from only TracFone and that TracFone has petitioned the Commission to modify this condition so that it can just verify a statistically-valid sample of its customers.¹⁰⁰

Another challenge with pre-paid wireless Lifeline discussed above is designing a program structure that can check for whether a household is getting Lifeline service from two different carriers. Florida's PSC is in the midst of a manual check of all the major Lifeline ETCs to assess whether there is an issue with low-income households securing Lifeline from two different carriers. In Massachusetts, of the twenty-one TracFone pre-paid wireless Lifeline subscribers out of the forty-three sampled that were deemed ineligible, the audit also revealed one customer was receiving Lifeline from two different carriers. The Massachusetts DTE also notes the need for safeguards to ensure against double dipping. The DTE is opening an investigation to establish appropriate certification and verification procedures for TracFone to address these shortcomings. There is the need for the Commission to develop strong baseline certification and verification requirements for pre-paid wireless Lifeline as pre-paid Lifeline is responsible for the growth in the Lifeline enrollment rates.

Consumer Groups support the NASUCA resolution on reforming Lifeline and pre-paid wireless Lifeline and cite portions specific to pre-paid Lifeline:

RESOLVED, That the FCC should require any forbearance petition or petition for low-income ETC designation filed for a low-income ETC service to include a complete description of the service to be offered; and be it further

RESOLVED, That the FCC should consider establishing minimum standards of service for prepaid wireless Lifeline service that would apply

⁹⁹ See California Public Utilities Commission Decision Adopting Strategies to Improve the California Lifeline Certification and Verification Processes, and Reinstating Portions of General Order 153, D.07-05-030 (May 3, 2007). See also, California Public Utility Commission Communications Division Staff Report on September 29, 2008 Workshop Regarding Implementation of California Lifeline Telephone Program's Pre-Qualification Requirements, R.04-12-001 (Feb. 27, 2009).

¹⁰⁰ TracFone Petition for Modification (April 27, 2009).

to all prepaid wireless Lifeline services, facilities-based or not, and satisfy the public interest by providing adequate value for Lifeline recipients and comply with the universal service mandates of the Act; and be it further

RESOLVED, That the FCC should specifically adopt a minimum standard to ensure adequate value to prepaid Lifeline wireless customers from the service (i.e., minimum number of monthly minutes, maximum price for additional minutes and maximum price for text messages, etc.); and be it further

RESOLVED, That there should be continued evaluation of appropriate default rules for ongoing support when there is no monthly billing, carrier contributions to state funds, quality of service obligations, double billing, protection from fraud, recertification, and audits; and be it further¹⁰¹

VI. THE COMMISSION SHOULD INVESTIGATE ALTERNATIVE TO THE PRACTICE OF APPLYING THE LIFELINE DISCOUNT TO THE RETAIL RATE BECAUSE WE ARE IN AN ERA WHERE SERVICES ARE RAPIDLY NOT PRICE-REGULATED

The NASUCA resolution makes the observation that the telecommunications landscape is changing in other ways. Commissions are no longer regulating wireline phone rates and wireless rates were never were regulated. Thus the Commission should explore alternatives to taking the Lifeline discount off the retail rate. It would be a better value to customers to for the Commission look at some measure of wholesale or forward looking cost.

¹⁰¹ NASUCA Resolution 2010-02, Calling for Reform of the Lifeline Program, Including Reform for Prepaid Wireless Services (Appv'd June 15, 2010).

VII. CONCLUSION

These comments reflect the collective experience of our consumer organizations from throughout the country. We recommend that the Joint Board issue a recommended decision to the Commission that reflects the concerns and includes the proposals contained in these comments.

Respectfully submitted,
on behalf of the Consumer Groups,

Olivia Wein
Staff Attorney
National Consumer Law Center, Inc.
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036-5528
(202)452-6252, ext. 103
owein@nclcdc.org

Christine Mailloux
Telecommunications Attorney
The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94104
(415) 929-8876, ext. 353
cmailloux@turn.org

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