



N A R U C
National Association of Regulatory Utility Commissioners

April 19, 2013

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce

The Honorable Joe Barton
Chairman Emeritus
Committee on Energy and Commerce

The Honorable Marsha Blackburn
Vice Chairman
Committee on Energy and Commerce

The Honorable Greg Walden
Chairman, Subcommittee on
Communications and Technology

The Honorable Tim Murphy
Chairman, Subcommittee on Oversight and
Investigations

The Honorable Robert Latta
Vice Chairman, Subcommittee on
Communications and Technology

Re: Response to March 26 letter for information on State actions to combat waste, fraud and abuse in the Lifeline Low-income USF Program

Dear Chairman Upton, Chairman Walden, Chairman Emeritus Barton, Chairman Murphy, Vice Chairman Blackburn and Vice Chairman Latta:

Thank you for allowing NARUC to provide the Committee with information on what States are doing to combat waste, fraud, and abuse in the Lifeline Program. We answer your four questions below using information from a recent informal survey of our member public utility commissions, other sources and anecdotal information. To date, thirty-one NARUC member commissions responded to that preliminary survey.

1. What innovative steps and best practices are States taking to combat waste, fraud and abuse in the Lifeline program that might be a model for other States or the Federal Communications Commission (FCC)?

States often act as laboratories for experiments that can provide both useful and tested templates to guide federal (and other State) policy makers' decisions. Lifeline programs are no exception. The FCC's addition of wireless carriers to the federal lifeline programs, which began in 2005, presents new challenges for State oversight.

Screening Databases: *As the FCC continues work on databases to eliminate duplicate support and verify eligibility, some States moved ahead and created their own. For example, California, Texas, Vermont, Oregon, and Puerto Rico each have established programs to eliminate duplicative support and have been allowed to opt out of the FCC's National Lifeline Accountability Database. States can opt out of the national database if they demonstrate to the FCC showing there is a state-wide system in place to detect, eliminate, and prevent duplicate Lifeline claims at least as robust as what the FCC plans for the national database.*

Several States have also established programs to verify subscriber eligibility in qualifying low-income/assistance programs, including the home States of Chairman Walden (Oregon) and Ranking Members Eshoo (California). At least eleven States in our informal survey use State social service databases to confirm consumer eligibility for participation in the Lifeline program.¹ But more States are considering establishing such database verification systems. The cost of establishing such databases can be prohibitive and States, like the federal government, have not been immune from the financial and fiscal troubles in recent years. As often happens, the expectation that the FCC will create federal databases may cause some States to wait to leverage the federal databases and avoid the costs of creating standalone State databases.

States that do not mandate Lifeline support, i.e., “federal default States”, do not have their own Lifeline programs. Carriers in these States follow the federal Lifeline rules and eligibility criteria. The FCC lists the following as federal default States and/or territories: American Samoa, Delaware, Hawaii, Indiana, Iowa, Louisiana, New Hampshire, North Dakota, Northern Mariana Islands, and South Dakota. For these States and territories, federal databases on accountability and eligibility would be particularly useful.

Recertification/Compliance Audits: Eleven responding States have programs to periodically conduct compliance audits on ETCs and/or of Lifeline recipients.² In some cases, the ability of States to audit and/or investigate waste, fraud, and abuse may be hampered by State rules or statute. This is the case for several States with respect to wireless.

On the other end of the spectrum is California. In addition to financial and compliance audit provisions, the State has had annual renewal/recertification requirements since 2006. As a result the FCC’s recent annual recertification requirement has had a negligible impact on California’s program.³ Their experience has also shown that some consumers do indeed reapply after being de-enrolled from the program during recertification.

In Kansas, the KUSF third party administrator conducts compliance audits on sixteen carriers per year. The carriers are randomly selected and may or may not be ETCs. The results of these random audits are made publicly available online.⁴

¹ States responding they have a system or program in place to confirm the eligibility of Lifeline subscribers by using social service agency databases: AK, CA, FL, IL, IN, KS, NE, NY, OR, WA, WI.

² States responding that have requirements for requiring periodic compliance audits on lifeline carriers or recipients: CA, CO, FL, KS, ME, MA, NE, NJ, OR, WI, WY.

³ Data on Lifeline participation in California is publicly available. Data for years 2012 and 2011 are available at the following links – 2012: http://www.cpuc.ca.gov/NR/rdonlyres/E4B485AD-B084-41D0-944D-4D3620C72104/0/Solix_XeroxLifeLineSubscriberCounts2012.xls. 2011: <http://www.cpuc.ca.gov/NR/rdonlyres/67F037FB-43FB-4F27-9A11-8F90BD2CBB9E/0/SolixLifeLineSubscriberCounts2011.xls>

⁴ Kansas’ USF third party administrator conducts random audits of carriers each year. See, e.g., 2011 audit of Virgin Mobile: <http://estar.kcc.ks.gov/estar/ViewFile.aspx/20110609112330.pdf?Id=454bc32c-c31e-4292-a934-038b354bc1c6>. Other orders/audit information is available at: <http://estar.kcc.ks.gov/estar/portal/kcc/portal.aspx>.

Massachusetts, which wasn't able to complete our survey because it has recently opened an investigation into its Lifeline programs, requires ETCs to regularly report data as a condition of ETC designation. Specifically, the Department of Telecommunications and Cable requires ETCs to file each of the following 1) quarterly reports on the number of Lifeline subscriber accounts terminated for non-usage each month; 2) quarterly reports on the number of consumer complaints from Massachusetts subscribers regarding its Lifeline service; 3) quarterly reports on the amount of Universal Service Fund support received for Massachusetts Lifeline subscribers each month; and 4) participation in dispute resolution by the Department's Consumer Division to resolve Lifeline subscriber disputes (including eligibility disputes, program offering issues, and limited equipment related issues, but not matters related to rates or entry).

Florida has been very active in combating waste, fraud and abuse in the program. The Florida Public Service Commission (FPSC) staff review USAC disbursements to ETCs data on a monthly basis to watch for abnormalities. Staff also checks the number of Lifeline customers claimed by each Florida ETC by taking the total USAC amount reimbursed for Lifeline and dividing it by \$9.25, the Federal amount reimbursable for each Lifeline customer. If a disbursement or series of disbursements appear questionable, the FPSC has the ability to issue subpoenas to landline carriers to determine the number of lines purchased by ETCs to provide Lifeline service. The FPSC also has the authority to review books and records of wireline ETC, but NOT wireless ETCs. However, Florida also established by statute the Florida Lifeline Work Group which includes the Public Service Commission, the Department of Children and Families, the Office of Public Counsel, and each eligible telecommunications carrier offering Lifeline services. Its purpose is to determine how the eligible Lifeline subscriber information will be shared, the obligations of each party with respect to the use of that information, and the procedures to be implemented to increase enrollment and verify eligibility in these programs. The FPSC generates an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of customers subscribing to Lifeline service and the effectiveness of procedures to promote participation in the program.⁵

Prohibit Free Service: *The federal Lifeline program did not contemplate consumers getting free service when it was created in 1985. Until 2005, the federal program only allowed consumers to receive a discount on their monthly bill. When Lifeline expanded to include prepaid wireless carriers, several companies developed specific business models based primarily on free phones and service. At least one State has adopted rules prohibiting free Lifeline service, instead requiring subscribers to pay a*

⁵ Florida Public Service Commission Report on Lifeline 2012. Link to 2012 Lifeline Report: <http://www.floridapsc.com/publications/pdf/telecomm/tele-lifelinereport2012.pdf>.

minimum amount each month. Currently, Oklahoma requires a Lifeline subscriber to pay \$1 a month minimum. Georgia is considering a requirement that Lifeline subscribers pay \$5 a month minimum fee. The minimum amount, which is similar to the federal tribal lands Lifeline \$1 a month program, ensures the consumer has “skin in the game” and should provide some deterrence to duplicative subsidies as customers would pay monthly fees for each phone they acquired.

State Recourse on Bad Actors: *One key capability States have to ensure carriers follow rules is ability to pull/not grant ETC designation. Six States responding to our survey have in the past refused an application for ETC designation filed by a carrier. Seven others have pulled the ETC designation of a carrier for questionable practices and/or violating program rules.⁶ But these numbers do not tell the whole story. In many cases, a carrier whose application for or existing ETC designation is being challenged will often withdraw its application or relinquish its ETC status once it becomes clear it will not be granted/may be pulled. Such actions are not reflected in any statistics on State actions. Many States require ETCs to certify - when they are seeking designation or submitting annual filings - that it is in compliance with all federal and State rules and whether the provider’s ETC designation has been suspended or revoked in any jurisdiction.*

Many States can and, when necessary, do initiate investigations into the program generally or on a specific carrier. The previously referenced Massachusetts Department of Telecommunications and Cable April 1, 2013 investigation into the federal Lifeline program is one example. They are examining the implementation of the FCC’s 2012 Lifeline Order, as well as ways the Department can protect against waste, fraud, and abuse. The investigation will include: (1) compliance with existing Department Lifeline ETC requirements; (2) annual ETC certifications and other reporting obligations; (3) expansion of Lifeline eligibility criteria; (4) outreach, consumer safeguards, and service quality; and (5) related matters.

Florida’s monthly review of data, referenced earlier, resulted in, among other things, investigations of two ETCs whose designations were eventually revoked for questionable monetary claims at USAC. Another company claiming to be a Florida ETC was also caught before it was given any USAC money.

2. What States designate and recertify wireless prepaid eligible telecommunications carriers (ETCs) and which ones leave that to the FCC?

So far, 31 States have responded to NARUC’s survey. Of those, 26 public utility commissions do designate wireless ETCs, while five do not. Based on the survey and literature search, we believe States that do NOT designate wireless ETCs include:

⁶ States responding they had pulled a carriers ETC designation: FL, KS, KY, MI, MN, WA, WI.

Alabama, Connecticut, Delaware, New Hampshire, North Carolina, New York, Tennessee, Texas, Virginia, Florida, and the District of Columbia (10 States plus D.C.). Wireless/prepaid carriers seeking ETC designation in these States must file their application with the FCC. While these States do not handle the ETC designation, in some cases, they may have a role in certifying Lifeline subscribers signed up by the wireless ETCs since consumers may qualify under State-based criteria. Obviously, in some of these jurisdictions, a State's ability to effectively oversee program compliance may be hampered when the ETC is a wireless provider.

3. Are the recent reforms adequate to address waste fraud and abuse in the fund?

The recent reforms are a significant and positive step forward to clean up crucial abuses in the Lifeline program. The FCC reform, among other things, required annual recertification of recipients' eligibility; detailed audits every two years for carriers that receive over \$5 million in Lifeline monies, and new Lifeline recipient eligibility certifications. These are all important and needed steps that have already improved accountability and eliminated some of the more egregious abuses to the program.

Meanwhile, the FCC continues to move forward with proposals to create databases to address problems of duplicate support (accountability database) and eligibility verification (eligibility database). These databases, once up in running, will improve program accountability. The first database, on duplicates, we hope will be up in the next year. The eligibility database is more complicated and the FCC continues to seek input from stakeholders. The difficulty in creating one database that combines the many federal and State eligibility standards is not to be understated.

Whether these reforms solve all the problems or require additional refinement is an open issue. The inaugural 2012 recipient recertification requirement process led to de-enrollment of a large number of Lifeline subscribers. It seems likely that this procedure has resulted in some non-insignificant percentage of qualified and deserving Lifeline subscribers being de-enrolled. The majority of those de-enrolled were subscribers who failed to respond to the recertification notice. For example, in Florida 99.42% of de-enrolled subscribers were de-enrolled for not responding to the recertification letter. What we don't know is why all these people didn't respond. Did they simply overlook the notice? Did they disregard it since they had not been asked to recertify before? Did they not understand, or was the process too difficult for many of the low-income recipients? Were some of the non-responses from subscribers who had duplicate Lifeline service and choose the one they preferred to recertify? Additional investigation seems warranted.

The next logical question is: Will some percentage of subscribers that were de-enrolled for not responding to the notifications – but do qualify for the program – migrate back into the program in the coming months? Getting the answer could take months. A couple of States are reporting a slight uptick in Lifeline subscription. This might be because at least some of those de-enrolled are re-entering the program. This was the experience in California, which has had a recertification program since 2006. Further analysis is needed to answer these and many more questions.

4. Do States have any recommendations on how the FCC can further improve the program?

Below is a list of ideas offered by individual NARUC members and staff that work on Lifeline issues on a regular basis. These suggestions were collected to respond to your request. The suggestions have not been studied or endorsed by NARUC. The association has taken no position on the relative merits of any. Similarly, they are not necessarily the policy of any particular State. We specified in asking this question that we would not be attributing particular response to any state or individual. This anonymity encouraged a broader range of recommendations for the consideration of the Committee.

- *The FCC should get the national duplicates and eligibility databases online as soon as possible as it will help eliminate much waste, fraud and abuse. (4 States)*
- *The FCC should examine the provision of Lifeline Service at NO cost to the subscriber. If a consumer has to pay some amount each month for the service it may deter duplicative support. (2 States)*
- *The FCC should simplify the recertification process to assure eligible customers remain on the program. (2 States)*
- *The FCC should rescind the blanket forbearance on the facilities requirement given to prepaid wireless carriers. (2 States)*
- *The FCC/Congress should prohibit the practice of advertising “free government cellphones” and handing out free cellphones from tents and temporary kiosks. Providing information on the program and how to apply could be allowed at such temporary locations but the customer should be directed to a permanent facility before obtaining a phone after eligibility is verified.*
- *The FCC should prohibit the use of third-party agents hired by carriers to sign up Lifeline subscribers (2 States)*
- *The FCC should prohibit activation of handsets before eligibility is verified.*
- *The FCC should prohibit someone that falsifies an application from participating in the program for some period of time and/or require reimbursements to the fund of any losses caused by the fraud prior to re-qualifying for the program. (3 States)*
- *The FCC should impose significant fines and, when appropriate because of the magnitude of the abuse (and the threshold should be small) suspend companies AND their officers from any participation in the Lifeline programs when ETCs or their officers/principals/owners/third party vendors violate rules. Repeat offenders should be permanently banned program participation. (2 States)*
- *The FCC should prohibit any ETCs with a validation/recertification rate of less than a reasonable benchmark, such as 75%, from enrolling new customers and subject them to an FCC/USAC/State audit.*
- *The FCC should grant the USTelecom petition filed April 2, 2012 for reconsideration of 47 C.F.R. §§ 54.410(b)(2)(ii) and 54.410(c)(2)(ii) to allow States that administer the Lifeline program and determine eligibility to provide lists to carriers of subscribers that qualify for Lifeline instead of requiring that copies of application forms be provided to carriers.*

- *The FCC should require more than one month of reimbursement of lifeline funds whenever duplicate Lifeline recipients are discovered.*
- *The FCC should consider requiring all ETCs located in a particular State to use the same Lifeline application form that lists all Lifeline providers in that State so applicants will be more likely to ask questions if they already have service.*
- *The FCC should require ETCs to obtain and retain proof of eligibility.*
- *The FCC should require all ETCs to call their service “Lifeline” and prohibit the misleading practices used by some carriers of “doing business as”, e.g., Assurance Wireless and SafeLink to avoid customer confusion.*

If you have questions about NARUC’s positions or would like to discuss it further, please contact NARUC Legislative Director Brian O’Hara at (202)898-2205, bohara@naruc.org or NARUC General Counsel Brad Ramsay at (202)898-2207, jramsay@naruc.org.

Sincerely,

/s/Chuck Gray
NARUC Executive Director