

**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 THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER  
ADVOCATES  
IN RESPONSE TO JOINT BOARD REQUEST FOR COMMENT**

**I. INTRODUCTION**

On June 15, 2010, the Federal-State Joint Board on Universal Service (“Joint Board”) issued a request for public comment on “questions regarding eligibility, verification, and outreach rules for the universal service low-income programs” that had been referred to the Joint Board by the Federal Communications Commission (“FCC” or “Commission”).<sup>1</sup> Also in response to the *Referral Order*, the Joint Board asked for comment on the “potential expansion of the low-income program to broadband, as recommended in the National Broadband Plan.”<sup>2</sup>

The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>3</sup> files these comments in response to the Joint Board’s request. But NASUCA also includes comments here

---

<sup>1</sup> 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, FCC 10-72 (rel. May 4, 2010) (“*Referral Order*”). Unless specifically identified, further references should be understood to be to WC Docket No. 03-109.

<sup>2</sup> Public Notice at 1, citing *Referral Order*.

<sup>3</sup> NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

on two issue areas that the Commission **should have** referred to the Joint Board, but failed to<sup>4</sup>: first, the need to re-examine some of the fundamental bases for Lifeline and Link Up; and second, the need for the Commission to adopt minimum standards for all states governing eligibility, verification, outreach, and other aspects of those programs.<sup>5</sup>

In these comments, the NASUCA-identified issues will be discussed first. Then the comments will address the issues raised by the Joint Board as directed by the Commission.

## **II. THE NEED TO ADDRESS THE FUNDAMENTALS OF THE LIFELINE AND LINK UP PROGRAMS**

In the Referral Order, the Commission identified the reasons for its referral to the Joint Board. Those reasons began with:

First, there have been tremendous changes to telephone service since 2000, when the Commission last referred questions about Lifeline and Link Up to the Joint Board. CTIA-The Wireless Association reports a 55 percent increase in the penetration of mobile phones in the United States between June 2000 and June 2009, with wireless services now reaching 89 percent of the population and approximately 22 percent of the population now relying exclusively on a mobile phone for telephone service. Additionally, competition has increased significantly in the residential telecommunications marketplace since 2000. Competitive local exchange carriers (CLECs) served approximately 4.6 million residential lines in June 2000, as compared to approximately 12.4 million residential lines in June 2008. Also, according to the National Cable and Telecommunications Association, approximately one million telephone customers were served via cable in 2000, as compared to approximately 22.2 million in 2009.

Second, since the Commission last received Joint Board guidance on low-income issues in 2004, both low-income support specifically, and Universal Service Fund support overall, have increased significantly. The universe of carriers participating in the low-income programs has expanded greatly, with the recent addition of competitive wireless providers as ETCs resulting in growth in the low-income programs. These changes have meant that low-income consumers have

---

<sup>4</sup> NASUCA realizes the procedural constraints on the Joint Board in addressing issues not directly referred to it by the Commission, but given the importance of the Lifeline program, the dialog on these issues should begin sooner rather than later.

<sup>5</sup> For convenience's sake, further reference to "Lifeline" should be understood to include, except where obviously not relevant, reference to Link Up as well.

more options to meet their communications needs. With greater participation in the low-income programs, it is an opportune time to revisit the programs to ensure that they are effectively reaching eligible consumers, and that our oversight continues to be appropriately structured to minimize waste, fraud, and abuse.<sup>6</sup>

This assertion of rationale both overstates, in some respects, and understates, in other respects, the need for a thorough re-examination of the Lifeline program, in order to ensure that the goals of the 1996 Act for low-income consumers are met.<sup>7</sup>

One respect in which the Commission overstates the impact on low-income consumers and the Lifeline program is in the reference to CLEC and cable competition. Few CLECs seek eligible telecommunications carrier (“ETC”) status, thus are not required to offer Lifeline; even fewer of the cable companies offer Lifeline.<sup>8</sup> Thus in this respect the appearance of competitive benefits for Lifeline customers is illusory.

On the other hand, the availability of wireless service – especially prepaid wireless service – for Lifeline customers cannot be exaggerated. A large number of wireless carriers – particularly prepaid wireless carriers – have applied to the Commission and state commissions for “Lifeline-only” ETC status, and have been granted that status. The Commission notes the recent growth in the low-income fund:

In 2004, the low income program disbursed \$763 million. ... According to preliminary USAC disbursement figures, low-income Support total outlays were \$930 million in FY 2009. Based on USAC’s most recent quarterly filing, total outlays for the low-income programs are forecast to be approximately \$1.4 billion in calendar year 2010.<sup>9</sup>

---

<sup>6</sup> Referral Order , ¶¶ 10-11 (footnotes omitted).

<sup>7</sup> Id., ¶ 6, referring to Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (“1996” Act), as expressed in 47 U.S.C. § 254(b)(3).

<sup>8</sup> See Universal Service Administrative Company (“USAC”) Appendix LI03, listing ETCs as of the first quarter of 2010; accessible at <http://www.universalservice.org/about/governance/fcc-filings/2010/Q3/LI03%20-%20Eligible%20Telecommunications%20Carriers%20-%20Q2010.xls>.

<sup>9</sup> Referral Order, n.34 , citing, in turn, FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE IN CC DOCKET NO. 98-45, UNIVERSAL SERVICE MONITORING REPORT, CC DOCKET NO. 98-202, 2-2, *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-295442A4.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A4.pdf) (2009); USAC, FEDERAL UNIVERSAL SERVICE SUPPORT MECHANISMS FUND SIZE PROJECTIONS FOR SECOND QUARTER 2010, at 15-17, app. LI06,

This growth is almost entirely attributable to the increase in payments for Lifeline customers of prepaid wireless ETCs.<sup>10</sup> And the low-income fund has the potential to increase to \$2.5 billion.<sup>11</sup>

In the face of similar growth in the high-cost funding for competitive ETCs, the Commission placed a state-by-state cap on their funding. And the National Broadband Plan includes a recommendation to eliminate CETC funding from the high-cost fund.

Clearly, neither result would be a desired outcome for the low-income fund. But such growth levels do demand a significant rethinking of the fundamentals of the program, far beyond the mere re-examination of eligibility, verification, and outreach.

In that regard, NASUCA recently adopted a resolution that addresses many of the broader and longer-term issues regarding the Lifeline and Link Up programs. That resolution is attached to these comments. Among the issues raised by the resolution are:

- Requiring carriers to offer discounted basic service while permitting Lifeline customers to purchase packages and bundles, and requiring carriers to apply the full federal Lifeline discount and any applicable state Lifeline discount to basic local service and to the price of any service package containing basic local service that they offer<sup>12</sup>;
- Ensuring that Lifeline customers with packages are not disconnected at a significantly greater frequency than Lifeline customers without packages;

---

available at <http://usac.org/about/governance/fcc-filings/2010/quarter-2.aspx> (2010) (USAC SECOND QUARTER 2010 LOW-INCOME PROJECTIONS) (support amounts claimed by ETCs each month, January 1998 through December 2009).

<sup>10</sup> See Billy Jack Gregg, “Determining the Potential Size of the Current USF Low-Income Fund and a Proposal to Mitigate the Impact of Adding Broadband as a Supported Service,” Universal Consulting (February 2010).

<sup>11</sup> Id.

<sup>12</sup> See also NASUCA Comments on Sprint Preemption Petition (August 9, 2007). A wireless carrier would have to allow customers to apply the discount to any of its packages.

- Requiring any forbearance petition or petition for low-income ETC designation to include a complete description of the service to be offered;
- Considering establishing minimum standards of service for prepaid wireless Lifeline service that would apply 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;
- Adopting 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.)<sup>13</sup>;
- A continued evaluation of appropriate federal 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
- Investigating whether the Lifeline discount should no longer be taken off the retail rate, but off some measure of wholesale or forward-looking cost, especially where the carrier's services are not price-regulated.

Given the rapidly changing telecommunications environment, these issues are important for the future of the Lifeline program. The Joint Board should recommend to the Commission that it act on these issues.

### **III. THE FCC SHOULD ADOPT MINIMUM STANDARDS FOR LIFELINE PROGRAMS.**

Up to now, the Commission has exercised very little actual control over state administration of Lifeline. The Commission has relied principally on guidelines and recommendations for most states, adopting rules that apply only when a state has declined

---

<sup>13</sup> See also NASUCA comments on TracFone Petition (July 6, 2009), and reply comments (July 20, 2009).

responsibility for Lifeline programs, or has decided to follow the federal guidelines. The rules apply in these so-called “default” states.<sup>14</sup>

Despite the fact that the majority of states have their own Lifeline programs and directly contribute to the Lifeline discounts,<sup>15</sup> the majority of Lifeline support is from the **federal** program, coming from customers around the nation.<sup>16</sup> It does not appear that the Commission has – since before the adoption of the First Report and Order in 1987 – examined the question of whether federal rules should establish minimum standards for this federal program.

NASUCA submits that the FCC should adopt the standards that it applies in default states – as modified as the result of this proceeding – as minimum standards that apply to all consumers in all states that benefit from this federal program. Where a state contributes to the federally-provided Lifeline amounts through Tier 3 support, the state should be permitted to be more generous in dispensing the support. In no case, however, should the state be permitted to restrict the program below the level provided for in the federal rules.

These federal minimum standards should cover all aspects of the Lifeline program, from eligibility and enrollment, through marketing, to recertification and removal from the program. This “leveling of the playing field” for Lifeline will ensure that this federal program will be available on as uniform a basis as is practicably possible.

#### **IV. THE FCC SHOULD ADOPT NASUCA’S PREVIOUS RECOMMENDATIONS FOR THE LIFELINE PROGRAM.**

NASUCA reiterates its previous recommendations to the FCC in this context. Those recommendations include:

---

<sup>14</sup> *Referral Order*, ¶¶ 4, 8.

<sup>15</sup> *Id.*, ¶ 3.

<sup>16</sup> Because USF dollars are not fungible.

- Adopting an eligibility criterion of 150% of the federal poverty level (“FPL”);
- Adopting rules for advertising and outreach for the Lifeline program<sup>17</sup>; and
- Clarifying the definition of “income” for determining Lifeline eligibility.<sup>18</sup>

NASUCA has also proposed, and again recommends to the Commission:

- Modifying the Commission’s rules on recertification; and
- Expanding the Lifeline program by funding voice-mail programs for persons in distress.<sup>19</sup>

NASUCA would incorporate those earlier comments here as if fully rewritten.<sup>20</sup>

NASUCA has also filed comments with regard to the issue of Lifeline benefits for multi-household addresses, including homeless shelters.<sup>21</sup> Those comments should also be deemed to be incorporated here.

Finally, NASUCA has also filed comments detailing its proposals for pilot programs to bring Lifeline to low-income customers. NASUCA would also reiterate those proposals here.<sup>22</sup>

**V. THE LIFELINE PROGRAM SHOULD INCLUDE INCENTIVES FOR STATES AND STATE AGENCIES TO ADOPT CAPABILITES FOR AUTOMATIC ENROLLMENT OF LIFELINE CUSTOMERS.**

It is widely accepted that processes for automatic enrollment are beneficial, increasing enrollment and decreasing the need for traditional marketing for Lifeline programs.<sup>23</sup> But such

---

<sup>17</sup> Such rules should also include enabling studies to determine the most effective ways of marketing Lifeline to low-income consumers.

<sup>18</sup> See NASUCA Comments on Further Notice of Proposed Rulemaking (August 20, 2004); Reply Comments (October 4, 2004); Comments to Refresh the Record (August 24, 2007).

<sup>19</sup> See NASUCA Comments to Refresh the Record (August 24, 2007); Reply Comments (September 10, 2007).

<sup>20</sup> See also NASUCA Comments to Refresh the Record in WC Docket No. 03-109, et al. (July 7, 2008) at 27-31.

<sup>21</sup> NASUCA Comments (November 20, 2009).

<sup>22</sup> NASUCA, et al. Comments on Further Notice of Proposed Rulemaking in WC Docket No. 03-109, et al. (November 26, 2008) at 32-37; Reply Comments (December 22, 2008) at 25-28.

efforts often involve state agencies for whom the Lifeline program is an incidental part of their statutory mission. These agencies – especially in these times of economic stress for consumers and state governments – often lack the resources to revamp their information systems and other processes to allow effective use of automatic enrollment. In order for the benefits of automatic enrollment to be more widely seen, the Commission should consider adopting grants for state agencies – particularly if the state is willing to contribute matching funds – in order to implement the changes to information systems.<sup>24</sup>

## VI. CONCLUSION

NASUCA recommends that the Joint Board issue a Recommended Decision that includes the proposals laid out in these comments.

Respectfully submitted,

David C. Bergmann  
Assistant Consumers' Counsel  
Chair, NASUCA Telecommunications  
Committee

Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
Phone (614) 466-8574  
Fax (614) 466-9475  
[bergmann@occ.state.oh.us](mailto:bergmann@occ.state.oh.us)

NASUCA  
8380 Colesville Road, Suite 101  
Silver Spring, MD 20910  
Phone (301) 589-6313  
Fax (301) 589-6380

July 15, 2010

---

<sup>23</sup> See *Referral Order* at ¶¶ 9, 17-18.

<sup>24</sup> This is consistent with the National Broadband Plan recommendation. *Referral Order*, ¶ 13.



# **THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

## **RESOLUTION 2010-02**

### **CALLING FOR REFORM OF THE LIFELINE PROGRAM, INCLUDING REFORM FOR PREPAID WIRELESS LIFELINE SERVICES**

- WHEREAS**, Low-income support mechanisms such as Lifeline have long been part of the national universal service goal;
- WHEREAS**, Lifeline has been an important means of achieving the goals of affordable universal service for all;
- WHEREAS**, wireless service has become an increasingly important part of telecommunications service, including Lifeline;
- WHEREAS**, unsettled economic times and changes in technology and consumer lifestyles have created the need for new approaches to low-income telecommunications assistance programs;
- WHEREAS**, this has created the need for the Federal Communications Commission (“FCC”) to reexamine its earlier decisions regarding the Lifeline program;
- WHEREAS**, carriers have sought and the FCC and state commissions have allowed on an ad hoc basis a category of “low-income” eligible telecommunications carriers (“ETCs”), that seek only low-income funding under the federal universal service fund and do not seek high-cost funding
- WHEREAS**, the purpose of Lifeline programs is to balance the maximum value for low-income customers with the costs imposed on all customers who pay for the Lifeline programs;
- WHEREAS**, the federal Lifeline discount for incumbent local exchange carriers (“ILECs”) not serving tribal lands consists of three tiers, with Tier 1 being a waiver of the subscriber line charge (“SLC”), Tier 2 being an additional \$1.75 discount off the retail rate for basic service, and Tier 3 being an additional \$1.75 discount off the retail rate for basic telephone service if the state matches the federal Tier 3 discount;
- WHEREAS**, the federal Lifeline discount for competitive local exchange carriers (“CLECs”) and wireless carriers has been the same dollar amount as for ILECs, even where the carrier does not charge a SLC;
- WHEREAS**, Lifeline service traditionally consisted of the most basic local service offered by the ILEC, which in many areas includes unlimited local calling;
- WHEREAS**, the FCC has required non-ILEC Eligible Telecommunications Carriers (“ETCs”) it designates to offer local calling usage that is comparable to the ILECs’ local calling usage;

**WHEREAS**, technology changes and lifestyle changes have led carriers to market numerous additional services, and to create bundles and packages of services that include basic service along with additional services;

**WHEREAS**, wireless carriers typically offer only packages that include services beyond basic and usage that goes beyond local usage;

**WHEREAS**, some state commissions and some carriers have limited Lifeline customers' access to packages that include more than basic service or, in the case of wireless carriers, to the lowest-usage package;

**WHEREAS**, in the National Broadband Plan, the FCC has recommended that the FCC and states should require ETCs to permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice service;

**WHEREAS**, the offering of service packages to Lifeline customers gives those customers choices, but there are concerns that carriers will heavily market packages to Lifeline customers that are beyond the customers' means, and that the Lifeline customers will therefore have service disconnected for non-payment at a rate significantly greater than that applicable to Lifeline customers who subscribe only to limited services;

**WHEREAS**, the FCC has designated and has allowed the states to designate Lifeline-only ETCs that do not receive high-cost funds;

**WHEREAS**, the FCC has placed conditions on grants of low-income ETC status, including conditions based on the carrier's status as a wireless reseller;

**WHEREAS**, these ETCs, principally prepaid wireless carriers, have brought telephone service to hundreds of thousands of low-income customers who have never had or have dropped their wireline service and previously could not afford wireless service;

**WHEREAS**, the existence of these prepaid wireless Lifeline-only ETCs has resulted in substantial growth to the federal USF paid by most customers, without a necessary assurance of adequate value provided to the Lifeline customer, or the most efficient use of Lifeline benefits;

**WHEREAS**, the appearance of prepaid wireless carriers as Lifeline-only ETCs that do not offer a Lifeline discount off their retail rate but instead offer "free" service (with or without a "free" handset) to Lifeline customers has also complicated the calculation of the value of Lifeline service, especially where the free service includes limited usage minutes and requires customers needing additional minutes to purchase those minutes from the carrier;

**WHEREAS**, the existence of wireless ETCs with limited usage plans, and especially prepaid wireless ETCs that offer extremely limited usage packages on their "free" plans, raises concerns about the equivalency of this calling to the ILECs' calling packages available to Lifeline customers;

**WHEREAS**, the existence of wireless ETCs, especially Lifeline-only wireless ETCs, raises concerns about ensuring that each household receives only one Lifeline benefit and ensuring that no carrier receives Lifeline support when customers opt for a different Lifeline service;

**WHEREAS**, there have been concerns raised about whether prepaid wireless carriers, especially prepaid Lifeline-only ETCs, do or should contribute to state funds, especially state 9-1-1 funds;

**WHEREAS**, in the National Broadband Plan, the FCC has noted that, in designing a Lifeline broadband program, it should consider the recent experience with expanding Lifeline to non-facilities-based prepaid wireless providers;

**WHEREAS**, wireline carriers' rates, including rates for basic service and for packages, are increasingly being rate-deregulated at the state level, and wireless carriers' rates, including prepaid wireless carriers' rates have not been rate-regulated, giving rise to additional concerns about the value and efficiency of Lifeline benefits;

**WHEREAS**, the FCC's rules for designating ETCs (including low-income ETCs) govern only ETC designations that the FCC makes, and are only suggestions for states that designate ETCs;

**WHEREAS**, a number of applicants for low-income ETC status have filed petitions for forbearance from statute or FCC rules that contain insufficient information to allow a determination of whether forbearance is in the public interest, specifically a description of the service(s) to be offered that will be subject to the Lifeline discount; *now, therefore be it*

**RESOLVED**, That the National Association of State Utility Consumer Advocates ("NASUCA") continues to support the Lifeline program, particularly for wireline service; *and be it further*

**RESOLVED**, That, given the use of dollars from around the country to support the federal Universal Service Fund, NASUCA supports the FCC's adoption of minimum standards for state ETC, especially low-income ETC, designation; *and be it further*

**RESOLVED**, That NASUCA supports a policy that requires carriers to offer discounted basic service while permitting Lifeline customers to purchase packages and bundles, and that requires carriers to apply the full federal Lifeline discount and any applicable state Lifeline discount to basic local service and to the price of any service package containing basic local service that they offer; and *be it further*

**RESOLVED**, That such policy should also include a prohibition on disconnection of the basic service portion of telecommunications service if the basic amount is paid, if the carrier offers a basic service, and if the carrier does not offer a stand-alone basic service, a provision that the lowest-price package be maintained if sufficient payment is made for that lowest-price package; *and be it further*

**RESOLVED**, That regulators should ensure that Lifeline customers with packages are not disconnected at a significantly greater frequency than Lifeline customers without packages; *and be it further*

**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 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 federal 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 further*

**RESOLVED**, that the FCC should investigate whether the Lifeline discount should no longer be taken off the retail rate, but off some measure of wholesale or forward-looking cost, especially where the carrier's services are not price-regulated; *and be it further*

**RESOLVED**, That the NASUCA Telecommunications Committee, with the approval of the Executive Committee of NASUCA, is authorized to take any and all actions consistent with this Resolution in order to secure its implementation.

Approved by NASUCA:  
Place: San Francisco, CA  
Date: June15, 2010

Submitted by:  
NASUCA Telecommunications Committee