

INDIANA UTILITY REGULATORY COMMISSION

RM 15-03

Development of Rules Regulating Sales Practices and Regulatory Compliance
Standards for Lifeline Services

Comments of Telrite Corporation d/b/a Life Wireless and Boomerang Wireless, LLC d/b/a enTouch Wireless.

I. Introduction

Telrite Corporation d/b/a Life Wireless and Boomerang Wireless, LLC d/b/a enTouch Wireless “Joint Commenters” respectfully submit the following comments in response to the preliminary issues list set forth in the *Development of Rules Regulating Sales Practices and Regulatory Compliance Standards for Lifeline Services*” issued by Indiana Utility Regulatory Commission (IURC or Commission) on May 13, 2015.

Joint Commenters are wireless Eligible Telecommunications Carriers (“ETCs”) operating in Indiana today, providing wireless Lifeline service to qualifying Indiana subscribers. The issues under consideration are matters with which this group has extensive experience and expertise and, as such, Joint Commenters look forward to working with the Commission on them.

At the outset, Joint Commenters note that most of the requirements under consideration in this proceeding are wholly unnecessary. As will be discussed in more detail herein, the problem each proposed requirement purports to solve is something that has already been addressed and in comprehensive fashion by, in most cases, the Federal Communications Commission (“FCC”) either through its rules or in approving the compliance plans that ETCs are required to have approved before they can commence providing non-facilities-based wireless Lifeline service. Indeed, these actions by the FCC have resulted in a program that already boasts extremely low levels of improper payments.

According to a 2015 report by the United States Government Accountability Office (“GAO”), government-wide, improper payments in 2014 are estimated to be *\$124.7 billion*. The report attributes the improper payments to 124 programs across 22 agencies.¹ For 2014, the government-wide error rate was *4.5 percent*. By contrast, as shown below, the Lifeline Program

¹ United States Government Accountability Office, Testimony Before the Committee on Homeland Security and Governmental Affairs, U.S. Senate, *Improper Payments, Government-Wide Estimates and Use of Death Data to Help Prevent Payments to Deceased Individuals*, March 16, 2015.

had estimated improper payments of roughly \$5 million and an extremely low error rate of .03 percent – *which is less than 1/10th of the federal government-wide error rate.*

The term “improper payment” stems from the Improper Payments Elimination and Recovery Act (“IPERA”), which requires federal agencies to develop an oversight process to identify and address improper payments from government disbursement programs. Using the IPERA’s definitions, Lifeline has a very low “improper payment rate,” and is shown to be one of the most efficient federal government programs. Please see Attachment 1 which provides additional detail regarding the IPERA and very low levels of improper payment in the Lifeline program. There is no reason to believe this is any different in Indiana than elsewhere and the very low levels of improper payment demonstrate that the compliance requirements under which wireless ETCs operate today are already sufficient to deter such problems.

Joint Commenters look forward to participating in the July 15 workshop to go over the matters addressed herein in more detail.

II. **Response to Issues Posed by IURC**

1. *Should the Commission prohibit or limit ETCs’ use of third-party agents to enroll subscribers in Lifeline service? If so, how should third-party agents and employees of the company be defined? How would a prohibition of agents be enforced?*

The Commission should not prohibit or limit ETCs’ use of third-party agents to enroll subscribers in Lifeline service. The Commission is rightly concerned that appropriate control is exercised over third party agents in order to ensure that only qualified subscribers are enrolled; rules are followed; and waste, fraud and abuse are minimized or eliminated. ETCs have been incented to want the same things.

Joint Commenters each use a system in which review and verification of an applicant’s eligibility is done by corporate employees, rather than agents. For example, a third party agent (after appropriate training, etc.) can go out into the field, identify likely qualified applicants and collect their information and applications. Determination of the sufficiency of information supplied, a dip in to the national duplicates database (“NLAD”), address check and final verification of eligibility is conducted by corporate employees (who are not paid on a commission basis) who give the thumbs up or thumbs down to agents in the field on each application.

The FCC determined in the Lifeline Reform Order that ETCs may permit agents or representatives to review documentation of consumer program eligibility for Lifeline because

“the Commission has consistently found that ‘[l]icensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors.’”²

Additionally, FCC compliance plans with which Joint Commenters are familiar require that applications be reviewed in this manner. See, for example, Attachment 2, the approved Compliance Plan of Telrite Corporation d/b/a Life Wireless:

Because Telrite is responsible for the actions of all of its employees and agents, including those enrolling customers in any Telrite owned or affiliated retail locations, and a Telrite employee will be responsible for overseeing and finalizing every Lifeline enrollment prior to including that customer on an FCC Form 497 for reimbursement, the Company always “deals directly” with its customers to certify and verify the customer’s Lifeline eligibility.³

Because eligibility verifications are made by non-commissioned employees, Joint Commenters believe that no advantage could be gained by the Commission’s prohibiting or limiting ETCs’ use of third-party agents to enroll subscribers. Joint Commenters serve some of the very neediest citizens in Indiana, conducting enrollment events where applicant eligibility is likely to be high, often reaching people with little if any information about Lifeline. Much of this work happens outside and is often, for that reason, quite seasonal. Joint Commenters would be unable to reach as many qualifying applicants in Indiana if they were not allowed to use third party agents. This would be to the clear detriment of the very neediest in the State.

2. *Rather than prohibiting agents, should the Commission set minimum standards for training and background checks for agents?*

Joint Commenters do not believe that the Commission should set minimum standards for training and background checks for agents. Joint Commenters already are committed to extensive training of agents and employees and conduct background checks of all such personnel. The requirement to do this is typically found in an ETC’s compliance plan. As an example, Telrite’s Compliance Plan states:

Telrite conducts background checks on all Company personnel interacting with existing and potential Lifeline customers and they must pass a complete onboarding process that includes a photo identification check. All such Company personnel also undergo training regarding the eligibility and certification

² See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report And Order and Further Notice Of Proposed Rulemaking, FCC 12-11 (Feb. 6, 2012) (“*Lifeline Reform Order*”) at ¶ 110.

³ Att. 2 at pp. 8 – 9.

requirements in the Lifeline Reform Order and this Compliance Plan. . . . These training documents are regularly updated to reflect the requirements of the Lifeline Reform Order and this Compliance Plan, and they are provided to existing Company personnel.⁴

The need for orders to be compliant in order to ensure payment, to avoid FCC enforcement action, etc. has caused wireless ETCs still operating to take these measures already. Adopting such requirements is unnecessary and would likely impinge on such successful efforts that are already in place.

3. *If the use of agents should not be prohibited, should the Commission prohibit agents from using their own laptops and interconnected devices to enroll subscribers in order to protect prospective Lifeline subscribers' sensitive information? If so, how should a prohibition be enforced?*

No, the Commission should not prohibit agents from using their own laptops and interconnected devices to enroll subscribers in order to protect sensitive information. Joint Commenters, as well as other ETCs in Indiana, have built sophisticated electronic enrollment applications that require all enrollments by agents to be completed on. These applications, whether downloaded on an individually owned or ETC owned device, prohibit any of the Lifeline subscriber's sensitive information collected during the enrollment process from being stored on the agent's personal device. Instead, the information is securely packaged and delivered off the agent's device to the ETC's internal servers for processing and retention.

4. *Should the Commission prohibit enrollment from temporary structures, such as tents, vans, and booths, at temporary locations?*

No. Joint Commenters strongly urge the Commission not to adopt such a prohibition. As stated in Attachment 3, the March 2015 Report of the US Government Accountability Office ("GAO Report") found that some eligible households face a variety of challenges enrolling in Lifeline and retaining benefits over time. Some challenges stem from eligible households' unawareness of or difficulty in applying for the program. Other challenges stem from FCC reforms, such as initial eligibility verification and annual recertification, which may inadvertently hinder participation by some eligible households while attempting to prevent participation by ineligible households.⁵

The GAO noted that prepaid wireless ETCs such as Joint Commenters conduct outreach, including in-person outreach and enrollment, to overcome challenges such as lack of customer knowledge about the program, inability to submit applications, and recertification.⁶ Moreover,

⁴ Att. 2 at p. 18.

⁵ GAO Report at pp. 27 – 30.

⁶ *Id.* at p. 30.

FCC and USAC officials report that states with more ETCs offering prepaid wireless service tend to have higher Lifeline participation rates due to greater outreach.⁷ The GAO noted that:

Representatives reported that they use mobile in-person enrollment events outside community locations such as thrift stores or food banks to effectively target the eligible low-income population. Some wireless ETCs noted that in-person enrollment agents can assist applicants by translating the application's legal language into layman terms, explaining program requirements, or verifying eligibility. These agents may verify eligibility by taking images of applicants' eligibility documentation with handheld tablet computers for review by ETC employees. Representatives from all nine of the prepaid wireless ETCs we interviewed also reported using a variety of channels to contact and solicit responses from customers during recertification, such as interactive voice response telephone systems. Some of these wireless ETCs noted that increased outreach can overcome the challenge of getting customers to respond to recertification.⁸

Joint Commenters strongly believe that use of temporary structures facilitates making Lifeline available to the neediest eligible consumers and should continue to be allowed.

5. *As an alternative to prohibition of Lifeline enrollment from temporary locations, should the Commission set standards for identification of the temporary structures and the representatives that staff them? For example, should the Commission consider rules similar to the Oklahoma Corporation Commission?*

Joint Commenters urge the Commission not to set such standards and not to adopt the Oklahoma Corporation Commission rules. It is already in any ETC's interest to keep a tight rein on where agents set up temporary locations as well as to set strict rules for notices that must be posted and similar site requirements. Indeed, in Telrite's Compliance Plan, it states:

Further, to ensure that Telrite can track the location of its enrollment initiatives, all representatives conducting a Telrite enrollment event are required to electronically check in with Telrite and provide their address before the representatives can submit orders and enroll customers in Telrite's Lifeline service.⁹

In addition to this check in requirement, Telrite conducts "photo audits" of all of its locations daily to ensure that each site is set up according to mandatory and company-imposed requirements each site must meet each time. Other wireless ETCs have similar requirements to ensure they are apprised of enrollment locations as well as requirements

⁷ *Id.*

⁸ *Id.*

⁹ Att. 2. at p. 5.

about exactly what must be displayed as well as other precautions designed to ensure complete compliance.

Additionally, the FCC requires all marketing materials used by ETCs describing the service, using easily understood language, to indicate that it is a Lifeline service, that Lifeline is a government assistance program, that the service is non-transferable, that only eligible consumers may enroll in the program, and that the program is limited to one discount per household.¹⁰ The FCC's current Lifeline regulations as well as an ETC's own compliance requirement provide a strong framework for ensuring temporary events are conducted appropriately, and any further rules from the Commission are not necessary.

6. *Do all or most wireless ETCs use MelissaData to determine if prospective Lifeline subscribers' addresses are valid?*

Yes. Joint Commenters, and most ETCs, use MelissaData or an equivalent vendor to determine whether a Lifeline subscriber's address is valid. Additionally, all ETCs, whether they use MelissaData or a third party equivalent, are required to validate that a Lifeline subscriber's address is valid with USAC's National Lifeline Accountability Database ("NLAD"). The NLAD provides real-time determination to ETCs whether a Lifeline subscriber's address is valid with the United States Postal Service. As an example, Telrite's approved compliance plan states,

Upon receiving an application for the Company's Lifeline service, Telrite validates and normalizes the address provided via the MELISSA database and then the name, address, date of birth and last four digits of the Social Security number are entered into Telrite's internal duplicate database to ensure that it does not already provide Lifeline-supported service to that individual or another person at the same address.¹¹

7. *TerraCom has agreed that when a prospective Lifeline subscriber's address is indicated as AS16 by MelissaData, it will take the additional step of seeking a recent utility bill or letter from a government agency to verify the subscriber's address. Should this procedure be required of all wireless ETCs? Is there another way to verify the subscriber's address is valid?*

The TerraCom procedure is unnecessary. Joint Commenters currently require applicants to provide a government issued ID and/ or documentation confirming address verification at time of enrollment. Joint Commenters require additional documentation for purposes of address validation, such as a utility bill or government-issued ID, to be provided by the subscriber if the

¹⁰ See 47 C.F.R. § 54.405 (c).

¹¹ Att. 2. at pp. 17 – 18.

address is not recognized by MelissaData or NLAD. ETCs that do not use MelissaData are able to validate addresses in real-time via the NLAD.

It is in the best interest of all ETCs to prohibit enrollments of subscribers at addresses that are not recognized by MelissaData or the NLAD. These issues lead to additional burdens on the Lifeline consumer with responding to notifications from the ETC (recertification, non-usage, etc.), and increased costs for the ETCs.

8. *How does your company obtain and document Lifeline certification forms from customers pursuant to 47 C.F.R. 54.410(d)? For example, does your company use recorded conversations, electronic checklists and signatures, paper application forms, or another form of documentation? How are these certifications verified and retained?*

Joint Commenters use multiple mediums for collecting certification forms including most typically use of an electronic enrollment application that includes an electronic signature in person, or by interactive voice response (“IVR”) recordings.¹² Each record, whether written or electronic, is verified and retained in compliance with all FCC and state requirements governing the Lifeline program.

9. *How does your company obtain LHWs from customers to determine if more than one household resides at one address? For example, does your company use recorded conversations, electronic checklists and signatures, paper application forms, or another form of documentation? How are these LHWs verified and retained?*

Joint Commenters use the same written and electronic means to obtain LHWs from customers as they do for collecting certifications from the Lifeline subscriber.

10. *Does your company use the FCC’s Lifeline Household Worksheet (see attached)? If not, what does your company use?*

Joint Commenters all use LHWs with slight variations to the one provided by USAC. All LHWs received by Joint Commenters are compliant with the requirements of the FCC’s *Lifeline Reform Order*. The FCC requires ETCs to collect a LHW that contains the following:

- (1) an explanation of the FCC’s one-per-household rule; (2) a checkbox that an applicant can mark to indicate that he or she lives at an address

¹² See Lifeline Reform Order, ¶¶ 168-69; section 54.519.

occupied by multiple households; (3) a space for the applicant to certify that he or she shares an address with other adults who do not contribute income to the applicant's household and share in the household's expenses or benefit from the applicant's income; and (4) the penalty for a consumer's failure to make the required one-per-household certification.¹³

11. *What prompts your company to require a prospective or existing Lifeline customer to complete a LHW?*

Joint Commenters rely on their internal subscriber databases and USAC's NLAD to determine whether a potential Lifeline subscriber resides at the same address as another Lifeline subscriber. The NLAD provides this information to the ETC in real-time allowing a LHW to be completed before the application process is completed.

12. *Are there any other considerations the Commission should address regarding the Lifeline program and its implementation in Indiana?*

Yes. Joint Commenters are very interested in state eligibility databases. Though the FCC promised such a national database in its Lifeline Reform Order,¹⁴ it has been unable to deliver. Largely because Joint Commenters do not expect the FCC to be able to implement such a database in the foreseeable future or perhaps ever, we strongly support state eligibility databases. Such databases can greatly facilitate ETCs' ability to quickly verify applicant eligibility and they are perhaps even more useful when it comes time for each subscribers' annual recertification of continuing eligibility.

Recently, (June 2, 2015) the United States Senate Commerce, Science & Transportation Subcommittee on Communications, Technology, Innovation & the Internet held a hearing entitled "Lifeline: Improving Accountability and Effectiveness." At the hearing, Commissioner Ronald Brisé from the Florida Public Service Commission testified on behalf of the National Association of Regulatory Utility Commissioners ("NARUC").¹⁵ He was commenting favorably on states having established their own eligibility databases and noted Indiana as such a state.¹⁶ Joint Commenters are unaware of such a database in Indiana but would either like more information about what exists and how to get access or would like to see such a database established for the State.

In particular, Joint Commenters believe that any new Indiana database should have the following characteristics:

¹³ *Lifeline Reform Order* at ¶ 78.

¹⁴ *Id.* at ¶97.

¹⁵ Testimony attached as Attachment 4.

¹⁶ *Id.* at p. 6, fn 11.

- Real-time API access to data (this is the most critical)
- Updated in a timely fashion, ideally real-time or within 24-hours
- Simple yes/no response without access to underlying data (to address privacy concerns)
- Match based on last name, date of birth and last four digits of the applicant's social security number (no address-related field)
- Efficient exceptions and dispute resolution process
- Provide access to the Commission, the FCC and USAC for audit purposes