

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

The Indiana Utility Regulatory Commission (IURC or Commission) is considering the development of rules for Lifeline-Only Eligible Telecommunications Carriers (ETCs) regarding at least the following:

1. *Use of agents rather than employees:* Whether to implement rules or policies that promote stricter oversight of agents used to enroll Lifeline subscribers.
2. *Temporary structures and marketing events:* Limiting or prohibiting the use of temporary or mobile structures at temporary locations (such as tents, booths, buses, or vans) to market Lifeline service or possibly prohibiting the direct distribution of phones at those locations.
3. *Process for checking accurate subscriber addresses:* As a result of the TerraCom Investigation, TerraCom agreed not to enroll subscribers whose address is indicated as vacant (AS16) by MelissaData without additional documentation indicating it is the applicant's current address. The Commission is exploring whether this process should be implemented by all ETCs.
4. *Form of household worksheet and other certification documents:* Formulating clear procedures and requirements for verifying one Lifeline discount per household and Lifeline certification forms to make them more easily audited and verifiable.

In IURC Cause No. 44332, TerraCom agreed to eliminate or address each of the above practices; other Lifeline only ETCs, however, have no such restrictions. Some ETCs have offered to pare back or limit some of the practices<sup>1</sup> in the ETC designation process; this, however, yields inconsistent conditions and standards. The rationale for investigating industry-wide rules for each of the business practices is explained more fully in the following.

### **Use of Agents Rather than Employees**

Many of Indiana's Lifeline-Only, wireless ETCs have little personnel and infrastructure in the state. Rather than leasing brick and mortar locations or negotiating with retail outlets to distribute its products, it has become common for ETCs to hire distributors who in turn hire third-party agents to market the ETCs' Lifeline products and services. The use of agents and agent

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<sup>1</sup> In Tempo Telecom LLC's ETC petition process, Petitioner stated that its primary marketing strategy will not include the use of temporary structures such as tents and buses, although it may use those means on a limited basis but only when direct employees of Tempo are present and when Tempo produces and sanctions the marketing material disseminated at such an event. See IURC Cause No. 41052 ETC 70. In the Q Link Wireless ETC Petition process, Petitioner testified that the company does not plan to use the "street agents" that have been generating negative publicity. Rather they would have interactive kiosks placed at various business locations which would enable customers to sign up directly with the company. See IURC Cause No. 41052 ETC 69.

distribution networks means the final sale to consumers can become far removed from the ETC approved to provide Lifeline service.

Commission staff understands that it is common practice for agents to have minimal vetting, and criminal background checks are usually not required. Agents are often required to use personal laptops or electronic devices for the transmission of sensitive customer proprietary information for enrollment purposes, including enrollment cards showing participation in a low-income assistance program (such as Medicaid), birthdates, social security numbers, and addresses. The Commission is concerned that this information could be abused or sold. At least one other state commission has explored implementing state standards for agents enrolling Lifeline customers.<sup>2</sup> Therefore, the Commission will consider whether it should require a minimum standard for vetting of agents, or any company representative that enrolls Lifeline subscribers. As an alternative, Commission staff would like to know if limiting or prohibiting the use of agents is a viable solution.

### **Marketing Events or Sales Using Temporary Structures**

Commission staff also understands Lifeline-Only ETCs often use tents, booths, and vans to market Lifeline services from temporary locations. These marketing events to distribute the phones may be set up on street corners, vacant lots or gas stations and move from day-to-day. It can be difficult to tell which ETC is represented because display signs may not list the name of the ETC or Lifeline provider. Instead the signs may read: “Free Government Cell Phones” or a similar message. It is often unclear if permission from the property owners or if the proper permits from local authorities are obtained at such temporary locations. If a problem is reported at one of these events, it is more difficult for the Commission to pinpoint which ETC to hold accountable than it would be if there were a fixed retail establishment.

In 2013, Nexus Communications, Inc. filed an Ex Parte communication with the Federal Communications Commission (FCC) recommending prohibitions of Lifeline enrollments from vans, tents, and temporary structures, in part, because ETCs’ control over sales practices are weakened at these temporary sites.<sup>3</sup> The Commission will consider regulating the temporary

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<sup>2</sup> The Oregon Public Service Commission opened an investigation exploring rules concerning the use of agents marketing Lifeline services. Considerations included establishing minimum training standards and a prohibition against agents using their own personal laptops or electronic devices. The Oregon Commission, however, decided against new rules specific to agents, with the reasoning that because Oregon has its own Lifeline fund (Oregon Telephone Assistance Program) the state commission staff has greater control over eligibility certifications, which serves as protection against fraud and the commission did not find significant abuse within the state warranting the rules. (*An Investigation into the Oregon Telephone Assistance Program and Lifeline Marketing Practices*, UN 1684.)

<sup>3</sup> *Ex Parte Communication in WC Dockets 11-42 and 03-109*, Nexus Communications, Inc., May 10, 2013.

structures or the use of distributors. In additions, the Commission will consider if it should implement a prohibition similar to the FCC, or as an alternative, consider rules requiring temporary structures to have necessary permits required by local authorities and to be clearly identified with the ETC marketing the services, including requirements that the agents/representatives wear identifiable clothing, and requirements to label the cell phones. Oklahoma is an example of a state with rules along these lines. (See attached *Oklahoma Corporation Commission, Title 165, Chapter 59, Permanent Rules Amended, Effective 7-11-2013.*)

### **Process for Checking Accurate Subscriber Address**

Many Wireless ETCs use a screening database to check the validity of prospective Lifeline customers' addresses.<sup>4</sup> MelissaData is a common screening database used to determine the status of an address. For example, an indicator that an address is not valid is AE01. An indicator that an address is vacant is AS16. In the TerraCom Investigation, TerraCom presented evidence that the AS16 address vacancy indicator on its MelissaData screenings of prospective Lifeline customers was ignored because the accuracy of the AS16 indicator is not trusted and accepting an AS16 address as valid is common industry practice. In TerraCom's work with Commission staff on the Joint Report, filed on October 7, 2014 in IURC Cause 44332, it agreed to take an additional step to verify that an address is valid when an AS16 indicator comes up.<sup>5</sup> Specifically, TerraCom agreed that it would request a recent utility bill or letter from a government agency that verifies the prospective Lifeline customer is living at the address in question. The Joint Report recommended that the Commission consider extending this requirement to all Lifeline-Only ETCs. The Commission staff would like to explore the question of whether all wireless ETCs use MelissaData to assist in verification that the Lifeline applicant is providing a valid, habitable address and if this is the case, whether industry-wide rules that require certain actions when an address is indicated as vacant should be implemented.

### **Form of Lifeline Eligibility Certification and Household Worksheet**

In the course of applying for Lifeline benefits, a prospective customer needs to certify eligibility by providing the applicant's name, address, whether the address is permanent or temporary, the last four digits of his/her Social Security number, and date of birth, among other personal information. The applicant also must certify that they understand Lifeline is a federal benefit and that willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment, or being barred from the program. Applicants must also certify that they are receiving only one Lifeline service per household.<sup>6</sup> If a prospective Lifeline customer shares the

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<sup>4</sup> *MelissaData Address Status Codes and Error Codes*, <http://www.melissadata.com/lookups/ResultCodes.asp>

<sup>5</sup> AS16 means the address is vacant, such as a vacant home; it, however, does not mean that address is invalid, uninhabitable or that it is a lot with no structure.

<sup>6</sup> 47 C.F.R. 54.410(d).

same address as another Lifeline subscriber, the customer is required to complete a Lifeline Household Worksheet (LHW) form to demonstrate the household is a separate economic unit.<sup>7</sup> It is Commission staff's understanding that Lifeline certification forms and LHW can take several forms:

- paper forms certified by written signature
- electronic forms certified by electronic signature (which can be printed out)
- audio recordings of scripts reciting the rules with customers' and recorded affirmations
- automated program to have Lifeline customers certify their eligibility or complete a LHW form by responding to automated questions and by pressing a number on the keypad of their phone to indicate "yes" or "no"

Each method presents its own challenges in the event an audit is necessary. The Commission would like to explore whether it should have uniform requirements for LHW and Lifeline certification forms.

In summary, Commission staff seeks comments from stakeholders and interested parties on at least the following preliminary issues:

#### **The Use of Agents to Enroll Lifeline Subscribers**

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

#### **Temporary Structures/Marketing Events**

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

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<sup>7</sup> *Lifeline Reform and Modernization Order*, FCC 12-11, Released February 6, 2012, ¶78.

### **Process for Checking Accurate Subscriber Addresses**

6. Do all or most wireless ETCs use MelissaData to determine if prospective Lifeline subscribers' addresses are valid?
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 current address. Should this procedure be required of all wireless ETCs? Is there another way to verify the subscriber's address is valid?

### **Form of Household Worksheet and Other Certification Documents**

8. How does your company obtain and document Lifeline certification forms from customers pursuant to 47 C.F.R. 54.410(d)?<sup>8</sup> 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?
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?
10. Does your company use the FCC's Lifeline Household Worksheet (see attached)? If not, what does your company use?
11. What prompts your company to require a prospective or existing Lifeline customer to complete a LHW?

### **Other**

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

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<sup>8</sup> ETCs must provide prospective subscribers Lifeline certification forms that make certain disclosures in clear, easily understood language, such as, the statement that Lifeline is a federal benefit and that willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment, or being barred from the program; and that only one Lifeline benefit is available per household. Prospective Lifeline subscribers are required to provide certain identifying information to ETCs, such as full name, address, and the last four digits of the applicant's Social Security number, among other information.