

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 on Draft Strawman Rule.

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 on the draft strawman rule discussed at the rule development workshop on July 15, 2015.

As noted in earlier comments filed in this proceeding, 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.

Joint Commenters would point the Commission to their earlier comments as those are more comprehensive than these and address the issues more globally. Because Staff requested that interested entities file comments on the draft strawman rule specifically, these comments do only that. They do not, however, change Joint Commenters’ general position the requirements under consideration in this proceeding are wholly unnecessary and unhelpful. 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 as detailed extensively in our earlier comments.

II. Comments on Strawman Draft Rules

Draft Rule 270 IAC 7-8-3 would require wireless-only ETCs to perform criminal background checks on each employee or agent who interacts with participants or prospective participants on the ETC’s behalf. Given that Joint Commenters already perform such background checks for agents, this rule is relatively harmless but it does not accomplish more than is already in place for most or all ETCs operating in Indiana. A more efficient method of

introducing this requirement could be for the Commission to impose it on companies as they go through the process of obtaining certification as an ETC.

The requirement to perform such background checks is already 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 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.¹

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, introduces the possibility of inconsistency between state and federal requirements and would not add anything to successful efforts that are already in place.

Draft Rule 170 IAC 7-8-4 would restrict enrollment of prospective participants in Lifeline from temporary structures unless certain conditions are met. Joint Commenters urge the Commission not to set such standards and not to adopt rules similar to those in place in Oklahoma. It is already in any ETC's interest to keep a tight rein on the appearance of 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.²

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 company-imposed requirements each site must meet each time. Boomerang similarly checks its agents sites to ensure compliance with company-imposed requirements intended to accomplish the same things this proposed rule would accomplish. Other wireless ETCs have similar requirements to ensure they are apprised of enrollment locations as well as requirements about exactly what must be displayed as well as other precautions designed to ensure complete compliance.

¹ Att. 2 at p. 18.

² Att. 2. at p. 5.

Moreover, 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.³ All ETCs underwent “Biennial Audits” earlier this year which confirmed that these requirements are being met already. 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.

The most problematic section of this draft strawman rule, from the perspective of Joint Commenters is:

- (1) The wireless lifeline-only ETC must provide the commission a list of locations by email where mobile marketing is taking place, including the date, time and location, at least two weeks prior to the marketing from temporary structures,

To begin with, the great majority of such locations are not known as early as two weeks prior to the event. Weather can be an important factor and, while an agent may have tentatively planned to set up a temporary structure to distribute Lifeline phones and service, such an event might be scrapped due to rain or other inclement weather. Likewise, an unexpected nice day can cause agents to set up tents they might not have otherwise intended to set up on very short notice. Similarly, an agent may learn of an event at which he or she may wish to set up such a temporary location the day before or the very day of that event. Requiring that ETCs inform the Commission two weeks prior to the establishment of each temporary site location could well be the death knell of such a distribution model. Joint Commenters believe that this would be to the detriment of the very neediest subscribers who are the ones most often enrolled at such events.

As set forth in more detail in our June 12 comments, the March 2015 Report of the US Government Accountability Office (“GAO Report” attached in its entirety as Attachment 3 to those comments) found that some eligible households face a variety of challenges enrolling in Lifeline and retaining benefits over time. Specifically, the GAO found:

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. . . . Some of these wireless ETCs noted that increased outreach can overcome the challenge of getting customers to respond to recertification.⁴

³ See 47 C.F.R. § 54.405 (c).

⁴ GAO Report at pp. 27 – 30.

Joint Commenters know the locations and dates that their agents set up such temporary locations. Should questions arise after the fact or, in most cases, even during the time the temporary structure is put up, ETCs can aid the Commission in resolving any concerns or complaints about things that may take place at such locations. The need for the Commission to have the information in advance of the establishment of locations at all, much less with two weeks notice, is not well established. It is not clear what the Commission would do with such information in the great majority of instances. Joint Commenters urge that, if the rules are not scrapped altogether, that at least this one section be removed.

Draft Rule IAC 7-8-5 would establish a new required procedure to verify subscriber addresses. Joint Commenters believe this new rule is wholly unnecessary and would be burdensome to providers while adding nothing of value. 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.⁵

Additionally, 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 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.

⁵ Att. 2. at pp. 17 – 18.