**Before the**

**Federal Communications Commission**

**Washington, D.C. 20554**

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| In the Matter ofLifeline and Link Up Reform andModernizationLifeline and Link-UpFederal-State Joint Board on UniversalServiceAdvancing Broadband Availability Through Digital Literacy Training | :::::::::::: | WC Docket No. 11-42WC Docket No. 03-109CC Docket No. 96-45WC Docket No. 12-23 |

**COMMENTS**

**SUBMITTED ON BEHALF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

March 28, 2012

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# INTRODUCTION AND SUMMARY

 On February 6, 2012, the Federal Communications Commission (FCC) issued a sweeping Report and Order (Order)[[1]](#footnote-1) to comprehensively reform and modernize the Uni­versal Service Fund’s (USF) Lifeline program (Lifeline). Accompanying the Order, the FCC also issued a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on matters related to its February 6, 2012 Order.[[2]](#footnote-2) The Public Utilities Commission of Ohio (Ohio Commission) will limit its comments to sec­tions A, D, H and J of the FNPRM that pertain to establishment of an eligibility database, support amount for voice service, mandatory application of the Lifeline discount to bundled service offerings and eligible telecommunications carrier (ETC) requirements, respectively. The Ohio Commis­sion appreciates the opportunity to present these comments for the FCC’s studied consideration.

# DISCUSSION

## Establishing an Eligibility Database

The FCC has directed the Wireline Competition Bureau and the Universal Service Administrative Company (USAC) to take “all necessary actions” to establish, by no later than the end of 2013, an automated means to determine Lifeline eligibility for, at a mini­mum, the three most common programs under which consumers qualify for Lifeline.[[3]](#footnote-3) To achieve this end, the FCC has proposed the creation of a national eligibility database,[[4]](#footnote-4) to be created in lieu of or in addition to any state databases.[[5]](#footnote-5) The Ohio Commission believes that a national eligibility database would be effective in preventing waste, fraud and abuse of the USF and, therefore, it supports the FCC’s proposal.

The FCC invites comment on whether a national eligibility database can be estab­lished without the need to access or obtain eligibility data housed at the state level.[[6]](#footnote-6) The Ohio Commission believes that it can, but, as discussed *supra*, supports state cooperation with the FCC to the extent possible and permissible under all applicable laws. As the FCC correctly points out, there are presently several national databases at various stages of development that contain information relevant to certain Lifeline qualifying federal programs and permit authorized parties to check federal program eligibility.[[7]](#footnote-7) Because, as the FCC notes, most subscribers qualify for Lifeline on the basis of federal program eligibil­ity,[[8]](#footnote-8) particularly Medicaid, Food Stamps and SSI,[[9]](#footnote-9) the Ohio Commission agrees with the FCC’s approach to initially focus on those three programs to the extent that pro­gram data at the federal level is used to establish a national eligibility database. Focusing on those programs potentially impacts the largest number of Lifeline beneficiaries and may leverage the work already done by the U.S. Department of Health and Human Ser­vices and the Office of Management and Budget.[[10]](#footnote-10) The Ohio Commission believes that a national eligibility database can, and should, be established without the need to access or obtain eligibility data housed at the state level. In those few cases where a subscriber finds it necessary to establish eligibility based upon participation in a non-federal pro­gram, the subscriber would be required to provide documentation to support his or her eligibility. To facilitate annual re-certification, ETCs must, in such instances, provide subscriber eligibility data directly to USAC for inclusion in the national eligibility data­base if they wish for USAC to perform the re-certification function on their behalf.

To facilitate reforms adopted in the Order, the FCC has directed USAC to develop a plan for USAC, rather than the ETCs, to conduct annual Lifeline eligibility re-certifica­tions.[[11]](#footnote-11) As such, the FCC asks whether USAC should also perform the initial certifica­tion of subscriber Lifeline eligibility given its role in the annual re-certification process.[[12]](#footnote-12) The Ohio Commission believes that this is a sensible approach given USAC’s dual role in re-certification as well as administering the National Lifeline Accountability Database.[[13]](#footnote-13) Placing responsibility for initial program eligibility verification, re-certification and duplic­ity prevention with USAC will facilitate efficiencies in cost and time that will be beneficial to subscribers, ETCs, ratepayers and the USF. Furthermore, privacy concerns should be minimized as USAC would be the only entity with access to subscriber infor­mation.

The FCC notes that much of the relevant federal eligibility data is housed at the state level.[[14]](#footnote-14) To encourage the accelerated deployment of widespread state databases that can be accessed directly by ETCs, and potentially also to a national eligibility database, the FCC asks whether it should condition a state’s receipt of federal Lifeline funds upon the state’s implementation of an eligibility database.[[15]](#footnote-15) The Ohio Commission does not support such a mandate upon the states to create state-specific eligibility databases.

 As noted above, the Ohio Commission supports state cooperation in creating a national database by providing, to the extent possible and permissible under state and fed­eral law, available data to USAC to populate the database. To that end, the Ohio Commis­sion believes that it is essential, to the extent such federal-state coordination is necessary, to provide support from the USF to assist states in transferring state eligibility data to a national database. This will help mitigate the costs incurred by the states in transfer­ring such data and likely result in the most efficient and cost-effective means of gathering eligibility data since a similar process already exists for other federal programs that could serve as a model for implementation.[[16]](#footnote-16) If the FCC requires state-specific eligibil­ity databases, it is imperative that it also provide support from the USF to offset the costs to be incurred by the states in creating such databases. To that end, the Ohio Commission encourages a collaborative effort between the FCC and the states to explore the processes required for sharing subscriber eligibility data as well as the funding neces­sary for the states to carry out this function.[[17]](#footnote-17) In the absence of such support, Ohio and other states will be left with unfunded mandates that will directly and negatively impact their most economically at-risk citizens. This, in the Ohio Commission’s opinion, would undermine the longstanding Congressional principle of universal service[[18]](#footnote-18) because many low-income subscribers could be forced from the network if they lose their Lifeline sup­port. The Ohio Commission does not believe that this is the FCC’s intent and it encour­ages the FCC to refrain from taking action that could lead to this outcome.

## Lifeline Support Amount for Voice Service

To reform and modernize the Lifeline program, the FCC has revised the Lifeline reimbursement structure for non-Tribal support.[[19]](#footnote-19) To simplify program administration and revise its rules in light of current market conditions, the FCC has adopted an interim uniform flat rate reimbursement of $9.25 per line per month.[[20]](#footnote-20) The FCC’s initiative to protect the USF from waste, fraud and abuse is not only laudable, but also essential to pro­tect the USF on behalf of the ratepayers who support the Lifeline program through their contributions into the USF. The FCC seeks comment on what a modernized Lifeline support amount should be, including how this amount should be determined and structured.[[21]](#footnote-21)

 In determining an optimal support level for Lifeline service, the Ohio Commission encourages the FCC to remain mindful that Lifeline support is intended to reimburse carri­ers for the discounts provided to low-income subscribers, and believes that it was not established to provide a profit center or revenue stream for carriers. Historically, this was not a concern as the incumbent local exchange carrier (ILEC) in a service area was the only ETC in that area and it was reimbursed from the USF for rate discounts provided to low-income subscribers. With the arrival of competitive ETCs, particularly those offer­ing free services to low-income subscribers, this dynamic has changed, as competitive ETCs are reimbursed, not based upon their own costs, but rather, based upon the costs of the ILECs. The potential benefits to customers notwithstanding, the Ohio Commission recognizes that this Lifeline reimbursement framework has created windfall opportunities for many competitive ETCs as evidenced by the number of providers entering the Lifeline market to provide a free service.

 In April, 2011, the Ohio Commission staff (Ohio staff) submitted comments address­ing the issue of the Lifeline reimbursement framework.[[22]](#footnote-22) In those comments, the Ohio staff proffered for, the FCC’s consideration, the possibility of basing a flat rate reim­bursement upon the costs incurred by the least-cost provider within a given area.[[23]](#footnote-23) Noting the Ohio staff’s suggestion, the FCC has similarly proposed basing reimburse­ment on the lowest-priced available offering in a geographic area.[[24]](#footnote-24) The Ohio Commis­sion believes that actual costs rather than price should serve as the basis for reimburse­ment. Otherwise, Lifeline support may cease to be a reimbursement and become a reve­nue stream that presents providers with an incentive to artificially inflate their Lifeline rates.

 While the Ohio Commission generally supports the concept of basing Lifeline sup­port on costs, it does not, upon further consideration of the Ohio staff’s proposal, necessarily believe that such support should be based upon the costs of a least cost pro­vider or be uniformly provided across multiple technologies. Such an approach could, in the Ohio Commission’s estimation, lead to inequitable and unintended consequences because of the difference in cost structures between technologies. Accordingly, the Ohio Commission supports establishing a uniform reimbursement amount based upon the voice component costs incurred by the lowest-priced Lifeline provider on a technology-specific basis. Such an approach could be implemented by reviewing the voice costs of the lowest-priced Lifeline provider for each technology from a representative number of exchanges within a state. To avoid making an unrepresentative determination of the Lifeline support amount, price would need to be evaluated over a period of time. By focus­ing on the voice costs of a limited number of Lifeline providers, the analysis, then, becomes tractable.

 Under the Ohio Commission’s proposed approach, there would be multiple technol­ogy-specific uniform rates (e.g., a wireline rate and a wireless rate) based upon the voice component costs of the least-priced provider within a specific geographic area. A competitively neutral reimbursement framework such as this would not unfairly burden any provider based upon its technology. Further, by applying the voice costs of the low­est priced representative carrier, the amount of the flat-rate reimbursement would reflect the voice costs of a relatively efficient carrier. This would make it realistic for other effi­cient providers using the same technology to adjust their cost structures to accommodate uniform reimbursement if they so choose. Providers no longer wishing to offer Lifeline service due to the amount of the uniform reimbursement could avail themselves of the ETC relinquishment process set forth in section 214(e) of the Act as discussed in Section IV *infra*.

## Mandatory Application of Lifeline Discount to Bundled Service Offerings

 Noting that it has amended its rules to provide ETCs the flexibility to allow Lifeline subscribers to apply their Lifeline discount to bundled service packages or pack­ages containing optional calling features, the FCC seeks comment on whether it should further revise its rules to require ETCs to permit subscribers to apply their Lifeline dis­count on any bundle that includes a voice component.[[25]](#footnote-25) While the permissiveness of newly adopted section 54.403 is not readily apparent, the Ohio Commission believes that the approach espoused in the Order provides a good balance between the interests of Lifeline subscribers and those of ETCs and it recommends that the FCC not adopt further amendments.

 Unlike Oregon, Texas and Kansas, Ohio has enacted a permissive rule that allows ETCs to offer to Lifeline subscribers any other services and packages or bundles at prevail­ing prices, less the Lifeline discount.[[26]](#footnote-26) The Ohio rule allows ETCs to be respon­sive to market demand within the context of their business models without imposing require­ments that could force ETCs to modify, perhaps significantly, their respective business plans. Additionally, a permissive rule, like Ohio’s, allows Lifeline service options to grow without requiring providers to assume the risks involved with offering high-cost services and bundles to Lifeline subscribers who may be less likely to afford them. The growing availability of new Lifeline service offerings in Ohio demonstrates the effectiveness of this approach. Accordingly, the Ohio Commission applauds the FCC for the permissive approach toward packages and bundles adopted in the Order, but does not believe additional amendments are necessary to ensure that Lifeline subscribers have access to additional service offerings.

## Eligible Telecommunications Carrier Requirements

 AT&T has suggested that the FCC should provide incumbent wireline Lifeline provid­ers with the option to participate in the Lifeline program, contending that wireline telephone companies are no longer the dominant provider of voice services.[[27]](#footnote-27) Recogniz­ing that section 214(e)(4) of the Act governs relinquishment of ETC status, the FCC seeks comment on this proposal as well as how it would be implemented within the frame­work of section 214.[[28]](#footnote-28) To the extent that AT&T suggests that incumbent wireline carriers should be permitted to unilaterally and arbitrarily choose whether to participate in the Lifeline program, the Ohio Commission does not believe this to be a permissible result under either the Act or the FCC’s rules.

 Section 54.504 of the FCC’s rules requires all ETCs to make one Lifeline service available to all qualifying low-income subscribers.[[29]](#footnote-29) To accomplish what AT&T sug­gests, the FCC would be required to either forbear or amend its rule. The Ohio Commis­sion does not believe that the rationale offered by AT&T satisfies the statutory criteria for forbearance[[30]](#footnote-30) nor does it warrant an amendment to the FCC’s current rule. The Ohio Com­mission believes that section 214(e)(4) of the Act already provides an appropriate remedy for wireline Lifeline providers that wish to terminate their participation in the Lifeline program. As noted in the FNPRM, this section of the Act permits an ETC to relinquish its ETC designation in any area served by more than one ETC. This section further requires the relinquishing ETC to ensure that all of its customers will continue to be served. As such, the Ohio Commission believes that an ETC wishing to be relieved of its Lifeline obligations should be required to demonstrate, on an exchange basis, that at least one other ETC provides service to all subscribers within the exchange and that its Lifeline customers will continue to receive Lifeline service following the ETC’s relinquish­ment. Accordingly, the Ohio Commission urges the FCC to retain section 54.405 and reject AT&T’s inconsistent proposal and simply require any ETC that is no longer willing to serve Lifeline customers to avail itself of relinquishment process set forth in section 214(e)(4) of the Act.

 Designation as an ETC comes with both benefits and obligations. The ETC receives the benefit of high-cost support while incurring the obligation of providing Lifeline service to low-income subscribers. In recent years, some providers have, for busi­ness reasons, elected to become Lifeline-only ETCs without receiving the benefit of high-cost support. ETCs have not, however, been permitted to receive the benefit of high-cost support without taking on the corresponding Lifeline obligation. Accordingly, the Ohio Commission strongly believes that ETCs that relinquish their ETC designation to avoid their Lifeline obligations should also forfeit any claim to high-cost support in any area in which they have relinquished their ETC designation. In the Ohio Commis­sion’s opinion, sections 214 and 254 of the Act as well as the FCC’s rules demand no less.

# CONCLUSION

The Ohio Commission, like the FCC, recognizes the importance of the Lifeline program in making telecommunications service available to low-income subscribers through­out the country. The Ohio Commission also understands the necessity to modern­ize the program and implement reforms to guard against waste, fraud and abuse of the USF to ensure the long-term viability of the Lifeline program. As such, the Ohio Commis­sion appreciates the FCC’s efforts to reform and modernize the program and thanks the FCC for the opportunity to provide its thoughts and recommendations for the FCC’s studied consideration.

Respectfully submitted,

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**On behalf of**

**The Public Utilities Commission of Ohio**

Dated: March 28, 2012

1. *In the Matter of 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) (Rel. Feb. 6, 2012) (R&O/FNPRM). [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. R&O/FNPRM at 169, ¶ 403, n. 1051. The three most common programs are Medicaid, Food Stamps and Supplemental Security Income (SSI). [↑](#footnote-ref-3)
4. *Id.* at 171, ¶ 408. [↑](#footnote-ref-4)
5. *Id*. [↑](#footnote-ref-5)
6. R&O/FNPRM at 171, ¶410. [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. *Id*. at 50, ¶104. [↑](#footnote-ref-8)
9. *Id*. at 169, fn 1051. [↑](#footnote-ref-9)
10. *Id.* at 172, ¶411. [↑](#footnote-ref-10)
11. R&O/FNPRM at 61, ¶133. [↑](#footnote-ref-11)
12. *Id*. at 173, footnote 1065. [↑](#footnote-ref-12)
13. In the Order, the FCC directed USAC to develop a National Accountability Database to help pre­vent duplicative Lifeline support. *See R&O/FNPRM* at 14, ¶ 179. [↑](#footnote-ref-13)
14. *Id*. at 170, ¶ 404. [↑](#footnote-ref-14)
15. R&O/FNPRM at ¶¶ 404, 406. [↑](#footnote-ref-15)
16. *See id*. at 170, ¶ 406. The FCC cites the Medicaid program under which states must, as a condi­tion of receiving federal funds, transmit beneficiary data to the PARIS database. [↑](#footnote-ref-16)
17. A federal-state collaborative approach may involve work groups and/or technical conferences. [↑](#footnote-ref-17)
18. *See* 47 U.S.C. § 254(b) (2012). [↑](#footnote-ref-18)
19. R&O/FNPRM at 27, ¶ 54. [↑](#footnote-ref-19)
20. *Id*. at 27, 28, ¶¶ 54, 58. [↑](#footnote-ref-20)
21. *Id.* at 190, ¶ 463. [↑](#footnote-ref-21)
22. *In the Matter of Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-10 (Comments Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio) (filed April 21, 2011). [↑](#footnote-ref-22)
23. *Id.* at 25-26. [↑](#footnote-ref-23)
24. R&O/FNPRM at 190, ¶ 463. [↑](#footnote-ref-24)
25. R&O/ FNPRM at 137-138, 197, ¶¶ 315-320, 488-490. [↑](#footnote-ref-25)
26. *See* Ohio Admin. Code §4901:1-6-19(C) (2012). “The ILEC ETC may offer to lifeline service custom­ers any other services and bundles or packages of service at the prevailing prices, less the lifeline dis­count.” Ohio Admin. Code 4901:1-6-19(U) extends the provisions of Rule 19(C) to competitive ETCs. [↑](#footnote-ref-26)
27. R&O/FNPRM at 201, ¶ 503. [↑](#footnote-ref-27)
28. R&O/FNPRM at ¶¶ 502, 503. [↑](#footnote-ref-28)
29. 47 C.F.R. § 54.405(a) (2012). [↑](#footnote-ref-29)
30. The criteria for forbearance set forth in section 160(a) are as follows: (1) enforcement of such regula­tion or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reason­able and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provi­sion is not necessary for the protection of consumers; and (3) forbearance from applying such provi­sion or regulation is consistent with the public interest. (b) Competitive effect to be weighed In making the deter­mination under subsection (a)(3) of this section, the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. 47 U.S.C § 160(a) (2012). [↑](#footnote-ref-30)