NCLC
NATIONAL CONSUMER LAW CENTER®
Advancing Fairness in the Marketplace for All

Commissioner Geoffrey G. Why
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500

May 14, 2013

RE: D.T.C. 13-4 Lifeline Investigation

Dear Commissioner Why:

The National Consumer Law Center (NCLC) welcomes the opportunity to offer testimony regarding the implementation of the Federal Communications Commission's *Lifeline Reform Order*.[1] NCLC is a nonprofit organization that works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation and training. NCLC has long been involved in the policy issues around the design of the Lifeline program as part of its work to ensure affordable, reliable access to essential utility service to consumers with limited means. NCLC intends to use the opportunity presented by this public hearing to respond to some of the suggestions made in the initial round of comments.

Lifeline's eligibility criteria and qualifying income level should be expanded

NCLC fully supports expanding the Lifeline eligibility criteria to include additional qualifying programs such as the Women, Infants, and Children (WIC) program and income-based Veteran Services programs. NCLC also supports raising the Lifeline-qualifying income level from 135% to 150% below the Federal Poverty Guidelines. We disagree, however, with the suggestion that the Department of Telecommunications and Cable (DTC) must or should seek federal approval to modify eligibility criteria.[2] As the *Lifeline Reform Order* makes clear, the DTC has the authority to adopt additional eligibility criteria and need not seek permission from the FCC to do so:[3]

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[1] *In the Matter of Lifeline & Link Up Reform & Modernization, et al.*, WC Docket No. 11-42, et al., *Rep. & Order & Further Notice of Proposed Rulemaking*, FCC 12-11 (rel. Feb. 6, 2012).
[2] *See Initial Comments of T-Mobile Northeast* at 14, D.T.C. 13-4 (Apr.29, 2013).
[3] FCC, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) at para.65. See also, 47 C.F.R. § 54.409 (3)("The consumer must meet eligibility criteria established by a state for its residents, provided that such state-specific criteria are based solely on income or factors directly related to income.)

> We amend our rules to requires all states to utilize at a minimum, the income and program criteria currently utilized by federal default states.[fn omitted] In so doing, we establish baseline eligibility requirements on top of which states may adopt additional program or income criteria to address the unique circumstances facing consumers in their states.[fn omitted]

But expanding eligibility criteria does not guarantee universal service. To further advance this goal, the DTC must find ways to simplify the application process. One way to do this would be to develop an expedited electronic application process for LIHEAP customers. Before the *Lifeline Reform Order*, Community Action Program (CAP) agencies automatically provided carriers with proof of income-eligibility for fuel assistance clients applying for Lifeline in Massachusetts. This system worked very well and helped reduce fraud, waste and abuse, in part, because the income certification process for the fuel assistance program is rigorous. With the changes brought about by the Lifeline Reform Order, CAP agencies can no longer automatically certify fuel assistance clients but nothing in the federal rules precludes them from submitting an application for fuel assistance clients, at their request.

In light of that, NCLC urges the DTC to work with the CAP agencies and ETCs to develop an expedited electronic application process whereby CAP agency staff complete and submit Lifeline applications to the ETC of the low-income consumer's choice. This process must be electronic to avoid the administrative burden to CAP agency staff that would accompany a paper application process. The intent of this proposal is not to replace but augment the ways in which individuals can apply for the Lifeline program while removing some of the barriers associated with the application process, which include multi-page applications, complicated language that applicants may not understand and a phone application that consumers may have trouble navigating due to hearing loss or difficulties with language-comprehension.

The DTC should be notified of any changes to the rates, terms, or conditions of an ETC's Lifeline service at least 30 days prior to the implementation of the change

In the initial round of comments, several ETCs expressed opposition to this proposal. Were Lifeline a program that was not tied to a federal Universal Service Fund subsidy, these ETCs might be justified in resisting efforts to impose such requirement. But in implementing the *Lifeline Reform Order*, the DTC is tasked with being a good steward of the Lifeline program as well as advocating for the low-income consumers the program aims to benefit. As such, it is entirely appropriate for the Department to request prior notification of certain changes before they occur. It makes little sense for the DTC to learn of important changes to the rates, terms or conditions of an ETC's Lifeline service after they have been implemented. We cannot assume the market will always result in outcomes that benefit consumers, especially consumers of limited means. If that were the case, these kinds of proceedings would be unnecessary. Furthermore, as voluntary participants in the Lifeline program, ETCs should expect to

accommodate these kinds of reasonable requests as they benefit directly, and sometimes substantially, from the Universal Service Fund subsidy for Lifeline.

ETCs should be required to file wireless applications with the DTC on an annual basis

NCLC is generally supportive of the suggestion that copies of certifications or reports filed with the Federal Communications Commission (FCC) or Universal Service Administrative Company (USAC), per the *Lifeline Reform Order*, be filed with the DTC in lieu of a separate Massachusetts annual ETC certification.

However, NCLC does believe it is necessary to require ETCs to submit a current copy of their Lifeline subscriber application to the DTC on an annual basis. It requires little extra effort on the part of the ETCs and will save DTC staff the time needed to track down applications on every ETCs website. This is an important consideration because while downloadable versions of applications may be available online for several of the ETCs, some are easier to find than others, while some are not available at all. For example, the applications for Budget Pre-pay, YourTel and Tracfone are entirely web-based. One has to pretend they are applying for Lifeline service, and click through multiple windows, in order to view the entire application.

NCLC believes the DTC should have ready access to wireless applications; staff should not have to spend time searching multiple websites and filling out forms to review them. In that regard, a request for ETCs to furnish the Department, on an annual basis, with a copy of their subscriber applications is reasonable.

Review and approval of Lifeline advertising and marketing materials before they are finalized is efficient and cost-effective

NCLC supports T-Mobile's proposal that ETCs submit draft materials for the DTC to comment on and review.[4] This is an efficient and cost-effective way for the DTC to ensure an ETC's advertising and marketing materials are complying with all of the necessary requirements.

NCLC would also like to emphasize, once again, the importance requiring ETCs to place the DTCs toll-free consumer complaint number on all advertising and marketing materials. This requirement will facilitate DTC's oversight of the Lifeline program while allowing it to resolve consumer complaints. The DTC cannot effectively monitor patterns or problems with the Lifeline program if it does not hear from consumers; nor can it intervene on a consumer's behalf if consumers don't know they can call.

Dissemination of DTC's consumer line will not serve as barrier to dispute resolution or deprive companies of the opportunity to resolve a customer's concerns.[5] The toll-free number for the DPU's Consumer Division, for example, is printed on every electric and gas utility bill. Yet in

[4] *See Initial Comments of T-Mobile Northeast* at 9, D.T.C. 13-4 (Apr.29, 2013).
[5] *Id.* at 11.

NCLC's experience, most consumers remain completely unaware of the Division's existence or that the DPU stands ready to help. Even when consumers are aware of the Consumer Division's existence, they frequently call the utility company first to resolve a dispute. The DPU Consumer Division even instructs consumers to try and solve their problem with the utility company before it will intervene.

The same will almost certainly be true for the DTC. As such, far from needing to hide the phone number for the Consumer Division from Lifeline applicants and subscribers, it should be publicized as widely as possible.

NCLC supports DTC proposal to require a minimum 90 day warranty or return policy for refurbished phones provided to Lifeline subscribers

NCLC supports a 90-day warranty or return policy for refurbished phones as a way to increase consumer protections against defective handsets. A warranty such as this is not unreasonable in light of the one year warranty against defects automatically granted as part of some non-Lifeline wireless service offerings. Verizon Wireless, for example, warrants a new handset up to one year and will replace a defective device at no cost to the customer.[6] Regardless of whether the DTC decides to require ETCs to offer a 90-day warranty or return in this proceeding, however, the Department should be tracking consumer complaints to see if there are any complaints about handsets and their performance.

Specific Massachusetts-based outage reporting requirements can await the outcome of FCC proceedings

NCLC is aware that the FCC is looking at outage reporting such that it's advisable for the DTC to await the outcome of that process before drafting Massachusetts-specific requirements. That being said, it is NCLC's position that DTC have access to information on outages. It is critical for the DTC to know that the Lifeline products being offered in the Commonwealth are reliable and that the Lifeline phone service is providing access to emergency services and facilitating public safety. Having access to information on outages is essential for the DTC to make that determination.

NCLC thanks the DTC for the opportunity to testify on this matter and for helping that the Lifeline program remains a viable and effective service for Massachusetts' low income consumers.

Respectfully,

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[6] *See* Verizon Wireless, Device Replacement Program, available at:http://support.verizonwireless.com/information/device_replacement_program.html (accessed May 13, 2013).