COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Investigation by the Department on its Own Motion into the Implementation in Massachusetts of the Federal Communications Commission's Order Reforming the Lifeline Program	)))))	D.T.C. 13-4

INITIAL COMMENTS OF YOURTEL AMERICA, INC.

Introduction and General Comments

YourTel America, Inc. ("YourTel" or the "Company") is a national leader in providing Universal Service Fund ("USF") supported and unsupported wireless services to low income customers. YourTel is certified to provide supported Eligible Telecommunications Carrier ("ETC") Lifeline services in eight states. YourTel currently has a fully-briefed application for ETC status pending before the Department of Telecommunications and Cable ("Department" or "DTC") in Docket 11-1 and the Company looks forward to serving Lifeline and other customers in the Commonwealth upon Department approval.

YourTel appreciates the Department's efforts, by means of this docket, to standardize state law requirements applicable to ETC providers in the Commonwealth. Imposition of Massachusetts-specific requirements during the review of the host of ETC applications that have flooded the Commonwealth over the past three years has been understandably inconsistent, given the nature of case-by-case adjudication. Having different substantive regulatory requirements for similarly situated competitors raises fairness concerns and risks competitive imbalance in the Lifeline marketplace. YourTel has strongly supported, and continues to support, the Department's use of a generic proceeding to develop a uniform set of fair and reasonable regulatory requirements applicable to all Massachusetts ETCs. See YourTel Brief at p. 10.

Given this opportunity, as discussed below, YourTel raises issues with several of the potential regulatory requirements discussed in the Order Opening Investigation ("Order"), Request for Comment and Notice of Public Hearing ("Request") and Exhibit to the Request ("Exhibit"). YourTel also is generally concerned with the extent of state level regulations that the Department has either imposed on certain ETCs or is considering imposing on all ETCs in this proceeding. Given competition and virtually no barriers to customer migration, ETCs have strong incentives to treat customers fairly so as to encourage customer retention and achieve the scale necessary to overcome an offering that generates revenue of only 25% of the wireless industry average.

Furthermore, as a small provider, YourTel does not have the same financial advantages as several wireless industry participants. The wireless industry is accustomed to average yearly revenues $158 billion dollars,[1] with average revenue per unit of $50.72.[2] The Lifeline wireless model only has average revenues of $9.25 (Average Federal support). Furthermore, the industry average cost per gross add ("cpga") is $358.00.[3] Because of entrepreneurial efficiencies, YourTel's cpga is significantly less, but still high. Wireline carriers report a margin around $22.82 per subscriber which affords them a payback period on cpga costs of approximately 16 months. A carrier like YourTel that must purchase a portion of its services from an

[1] http://files.ctia.org/pdf/CTIA__Survey_Midyear_2010_Graphics.pdf, page 2.
[2] http://www.wikinvest.com/stock/MetroPCS_(PCS).
[3] Ibid.

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underlying carrier has margins closer to $3, in a payback period approaching three years. YourTel is concerned that additional regulatory procedures and associated costs will adversely affect the economics of entry and burden competition.

Furthermore, constraint will deter or slow the ETCs' ability to bring new and innovative products and offerings to the marketplace. In particular, YourTel has begun marketing smartphones with aggressive and affordable data plans for low income consumers. In contrast, unique state-specific requirements require additional work and regulatory, operational and systems costs for providers that could be better devoted to service delivery and growth to the benefit of low income consumers. Finally, as an additional reason to take care regarding excessive state-specific regulation of ETCs, ETCs' customer service interactions already are strictly regulated on a nation-wide basis under federal law, affording ample customer service protections. In fact, the State of Maine recently opened a Lifeline rulemaking proposing to eliminate state-based requirements and proposing instead to adopt the federal rules in recognition of this fact.

Accordingly, the Department should not impose state-specific requirements unless they are both (1) necessary to meet a demonstrated state specific public interest concern and (2) narrowly tailored to minimize adverse impacts on ETC operations and cost structures. As discussed below, several of the proposed Department regulations do not meet this test and should not be adopted.

Specific Comments

I. Existing Department Requirements (Exhibit, pp. 1-3).

A. Notice of Changes to Rates, Terms or Conditions (Exhibit, 1(e)).

The Department references a potential obligation to report "any changes" to "rates, terms, or conditions of the ETC's Lifeline service 30 days prior to implementation, unless such change is "clearly benefitting Lifeline subscribers (e.g., the *only* change is the additional minutes or reduced cost)," in which case the change must be reported contemporaneously with implementation. Exhibit, p. 2. This should be modified in several respects. First the Department should clarify that reporting obligations should be limited to "material" changes. Second, the Department should avoid confusion by keeping the "clearly benefiting" standard but deleting the confusing "only change" example. Many customer-favorable changes can be envisioned that do not involve increased program minutes or reduced offering costs, and the "clearly benefiting" requirement is sufficient for the ETCs to make judgments about which changes fall outside of the general reporting rule. Third, the Department should delete the requirement that customer-favorable changes be reported to the Department "contemporaneously" upon implementation. ETCs should have a reasonable time following such changes, such as within 30 days, to update the Department regarding service enhancements. As mentioned previously, YourTel is bringing new and affordable data plans to its markets. Rules of this nature delay competition and hinder innovation in the one sector of the industry that has not benefitted from it to the extent seen in more lucrative wireless market segments.

B. Dispute Resolution (Exhibit, 1(g)).

This potential requirement would obligate ETCs to participate in "dispute resolution by the Department's Consumer Division to resolve Lifeline subscriber disputes" and cites to Part 6 of the Department's 1977 billing and termination rules order ("B&T Rules"). YourTel has several concerns regarding this requirement as worded in the Exhibit. First, under Department precedent the B&T Rules do not apply to wireless carriers such as YourTel, appropriately so given differences between the fully regulated monopoly service of New England Telephone 35 years ago when the B&T Rules were promulgated versus highly competitive, substantially regulated under federal law, and relatively lightly regulated under state law wireless ETC services. Second, the Department itself is currently reviewing and updating the B&T Rules, so there is an excessive risk that any reference in ETC rules to specific B&T Rules may well become outdated or inappropriate. Third, the entirety of the Part 6 dispute resolution process is grossly excessive and would impose unnecessary and unreasonable costs on ETC providers. YourTel would accept – indeed, welcome – a Department requirement to work in good faith with the Consumer Division to resolve subscriber disputes. Nevertheless, the Company would oppose any effort to impose the entirety of Part 6, including (but not limited to) the requirements that the provider must communicate unfavorable results to the subscriber in writing (section 1(a)); the subscriber has a right of appeal to the Department within three months (Id.); the subscriber is entitled to an informal hearing with Department staff and the ETC (section 1(b)); within seven days after the Department's ruling on the informal appeal request a formal hearing with the Department under the State's Administrative Procedure Act (section 1(c)); the ensuing formal hearing is governed by detailed procedural rules (including the subscriber's right to counsel) and requires a formal Department written decision (sections 6.3-6.11). Alternatively, to the extent the Department insists on something more than a good faith consultation requirement, the Department should specify precisely which activities the ETC are required to comply with in order to satisfy the dispute resolution participation requirement.

C. Department Contact and Dispute Information on Applications, Bills and Marketing Materials (Exhibit, 1(h)).

YourTel opposes any broad-based requirement that the Department's contact information and dispute resolution requirements be included on all customer-facing documents and electronic resources. Many materials listed by the Department pose either evident or potential compliance difficulties (e.g., Lifeline applications are closely regulated by the FCC and may not have adequate room for Department contact and/or dispute resolution information; adding Department contact information to television, radio or nationally-based internet marketing may not work well or prove excessively costly, etc.). YourTel would agree a requirement that Department contact information be included on terms and conditions documents, the Company website, and Massachusetts-specific print advertisements.

D. Annual Reporting of PSAP Self-Certification (Exhibit, 1(i)).

YourTel opposes this requirement as a mandatory ETC obligation as being both unnecessary and excessively burdensome. ETCs have every possible business incentive to remain in full compliance with applicable Public Safety Answering Point ("PSAP") requirements, and ought not be required across the board to prepare and file a self-certification on an annual basis. Additionally, YourTel's underlying carriers already must remain compliant. The Department would, of course, be free to discuss imposition of such a requirement on a case by case basis in the event a particular ETC request raised legitimate questions regarding PSAP compliance.

II. Annual ETC Certification and Reporting Obligations (Exhibit, pp. 3-5).

YourTel does not see the point of the annually requiring a sworn statement with respect to federal or state laws, as required by the Exhibit at sections 2(a)(i) – (iv), and (vi), or re-filing its application on an annual basis (Exhibit at section 2(d)). ETCs have strong business incentives to operate in a manner compliant with applicable laws, and should be assumed to comply until demonstrated otherwise, in which case the Department can undertake targeted solutions. YourTel does not oppose requirements that address change information (section (2(a)(v)) and legal/regulatory findings or judgments (section 2(a)(vii) and (viii)) should be reported to the Department within 30 days of occurrence. YourTel also does not oppose providing certified copies of periodic filings (annually or within 30 days after occurrence) of forms containing federally mandated data (sections 2(b) and 2(c)) or the results of federally mandated audits.

III. Lifeline Eligibility Criteria (Exhibit, pp. 5-6).

YourTel supports proposals to expand Lifeline eligibility requirements in the Commonwealth. Exhibit, p. 5. The Department should, of course, give serious consideration to the funding implications of any such expansion beyond FCC guidelines. With respect to disclosure, YourTel opposes mandatory minimum disclosure requirements regarding such changes in Lifeline eligibility requirements. ETCs will have substantial business and FCC regulatory incentives to provide appropriate notice to affected consumers via application forms, marketing materials and the like. Exhibit, pp. 5-6.

IV. Outreach, Consumer Safeguards and Service Quality (Exhibit, pp. 6-10).

YourTel respectfully recommends that it would be counterproductive and inappropriate to establish requirements for the manner in which ETCs communicate with customers and potential customers regarding Lifeline outreach, including the specific means discussed in the Exhibit at pp. 6-7 (email, texting, company websites, social networking media, printed brochures). ETCs should be permitted to use the means of communication best suited to their particular business models and strategies.[4] The industry's experience during the 2012 nationwide recertification clearly demonstrated the need to be creative and flexible in contacting a disparate and diverse customer base while balancing the need to communicate the importance of the process without being intrusive. Exhibit, p. 7. Given strong business incentives to provide good quality service and the desirability of allowing certain ETCs to use service quality as a point of competitive differentiation, YourTel strongly opposes minimum quality service mandates for ETC providers. Exhibit, pp. 8-9. Providers should have the ability to develop and market competitive offerings that suit their business strategies.

Furthermore, among additional concerns, several of the suggested service quality standards are excessive (e.g., a minimum 90 day warranty or return policy is substantially longer than that offered by many providers) or unduly vague and impossible to administer (e.g., "adequate" resources, "prompt processing," "prompt and

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[4] YourTel takes no position on the continuing validity or appropriateness of the nearly 20 year old disclosure requirements applicable to the incumbent local exchange carrier and any other wireline ETCs.

satisfactory" customer service and complaint resolution). Exhibit, pp. 8-9. Additionally, outage reporting is problematic because most ETCs are served by underlying carriers (such as Verizon, Sprint or AT&T) that cannot and will not provide useful information on the precise number of an ETC's customers who are affected by a particular service outage.[5] Determining this information for a particular ETC in a particular staff would require staff to engage in full-time monitoring rather than delivering quality services to Massachusetts customers.

With respect to transition issues in the event an ETC seeks to stop providing Lifeline services in the Commonwealth, YourTel strongly opposes adoption of the Docket D.T.E. 02-28 Mass Migration requirements or a 60 day advance notice requirement. Exhibit, pp. 9-10. The D.T.E. 02-28 requirements are not by their terms applicable to wireless providers. Moreover, both the 02-28 requirements and related 60 day advance notice period are needed to ensure adequate time for customers of wireline local exchange carriers to solicit and identify an alternative provider and effectuate any needed facilities changes. These transition concerns are simply not present in the ETC space, in which customers can drop and add new service providers in very short order.

V. Other Related Matters.

YourTel has no additional comments.

Conclusion

YourTel appreciates the opportunity to provide the instant comments to assist the Department in developing uniform minimum regulatory requirements for Massachusetts

[5] Notwithstanding the above objections, YourTel is happy to continue to furnish a customer service point of contact available to Department staff. Exhibit, p. 9.

ETCs, an endeavor YourTel strongly supports for efficiency and competitive purposes. YourTel cautions the Department to avoid unnecessary and costly regulation, in addition to that required by federal law, which will divert resources from ETC efforts to ensure that low income customers in the Commonwealth have the opportunity to benefit from supported Lifeline service and cost-effective unsupported services.

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