



## COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 13-4

August 1, 2014

Investigation by the Department on its Own Motion into the Implementation in Massachusetts of the Federal Communications Commission's Order Reforming the Lifeline Program

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### **ORDER IMPLEMENTING REQUIREMENTS AND FURTHER REQUEST FOR COMMENT**

#### **I. INTRODUCTION**

Pursuant to the *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, *Order Opening Investigation* (Apr. 1, 2013) ("*Order Opening Investigation*"), and consistent with the procedures agreed to by the participants at the May 14, 2013, public hearing on this matter, the Massachusetts Department of Telecommunications and Cable ("Department") streamlines and unifies certain of its Lifeline requirements in Massachusetts by adopting the requirements attached to this Order. *See* Appendix. In addition, the Department requests further comment on additional issues related to the efficiency of the Lifeline program in Massachusetts, the annual Lifeline subscriber recertification process, and Lifeline subscriber protections.

#### **II. PROCEDURAL HISTORY**

The Federal Communications Commission's ("FCC") 2012 *Lifeline Reform Order* updated the Lifeline program, seeking to strengthen protections against waste, fraud, and abuse,

and improve the program's efficiency.<sup>1</sup> *Lifeline Reform Order*, ¶ 1. The FCC imposed new requirements on eligible telecommunications carriers ("ETCs") and outlined specific instances of states' authority to implement requirements, consistent with those of the FCC, to "preserve and advance universal service." 47 U.S.C. § 254(f); *Lifeline Reform Order*, ¶¶ 65, 140.

Accordingly, the Department determined that an investigation into the implementation of these changes was appropriate. *Order Opening Investigation* at 4. On April 1, 2013, the Department requested comment on the implementation in Massachusetts of the *Lifeline Reform Order*.

D.T.C. 13-4, *Request for Comment & Notice of Public Hearing* (Apr. 1, 2013).

On May 14, 2013, the Department held a public hearing and a procedural conference in this proceeding. The Department presented the parties in attendance with a proposed procedural schedule.<sup>2</sup> The parties present were given an opportunity to comment on the proposed schedule, and they all agreed that the issues the Department raised could be addressed, at least in the first instance, through comments filed in the proceeding, rather than through an evidentiary hearing. The parties present encouraged the Department to issue proposed Lifeline requirements for further comment following the close of the comment period ending May 28, 2013, and to determine later the need for an evidentiary hearing. The Department then issued a Notice to the Parties summarizing the procedural conference and giving parties that were not present an opportunity to comment. D.T.C. 13-4, *Notice to the Parties* (May 14, 2013). The Department received no comments on or objections to this Notice to the Parties. Accordingly, on August 21, 2013, the Department issued a Notice of Proposed Requirements and Further Request for

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<sup>1</sup> The term "*Lifeline Reform Order*" refers to *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).

<sup>2</sup> The attending parties were the National Consumer Law Center; Budget PrePay, Inc., d/b/a Budget Mobile; T-Mobile USA, Inc.; YourTel America, Inc.; Verizon New England Inc., d/b/a Verizon Massachusetts; and Nexus Communications, Inc.

Comment (“Notice of Proposed Requirements”), containing proposed Lifeline requirements and seeking further comment on those proposed requirements. D.T.C. 13-4, *Notice of Proposed Requirements and Further Request for Comment* (Aug. 21, 2013). In this Order, the Department adopts final Lifeline requirements in Massachusetts. To the extent that Lifeline requirements previously agreed upon in individual proceedings are inconsistent with the requirements adopted herein, the requirements herein prevail. *See* Appendix.

### **III. THE DEPARTMENT’S NOTICE OF PROPOSED REQUIREMENTS AND FURTHER REQUEST FOR COMMENT**

In its Notice of Proposed Requirements, the Department sought comment on a specific list of reporting requirements and consumer protections related to the Lifeline program in Massachusetts. In general, commenters were pleased with the Department’s decision to forego a number of requirements, and with the Department’s tailoring of certain requirements to certain types of low-income ETCs. *See* Verizon Comments at 1; T-Mobile Comments at 1-2; Boomerang Comments at 1-2; Budget PrePay Reply Comments at 1-2. The Attorney General supports all of the proposed requirements and also proposes that the Department revive certain requirements that the Department declined to adopt in the Notice of Proposed Requirements. *See generally* Attorney General Comments. The Department addresses each proposed requirement in turn, below. Each of the highlighted point headings below corresponds directly to the Appendix to the Notice of Proposed Requirements.

#### **A. Reporting Requirements**

The Department requested comment on a number of reporting requirements, some of which the Department previously established as part of individual ETC designation proceedings.

Notice of Proposed Requirements at Appendix. The Department adopts some of the requirements as proposed and modifies some of the proposed requirements as discussed below.

**1. Each newly designated ETC (those ETCs designated following the implementation of these requirements) shall, within 60 days of designation and prior to offering Lifeline service, submit to the Department:**

**(a) a copy of the Lifeline application form that it will use for consumers in Massachusetts;**

The Department adopts this requirement as proposed. The Attorney General and T-Mobile support this requirement and no commenters object to this requirement in response to the Notice of Proposed Requirements. Attorney General Comments at 2; T-Mobile Comments at 2 n. 2. Accordingly, and for the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 20.

**(b) copies of all advertising and marketing materials that it plans to use in Massachusetts, including but not limited to print, audio, video, Internet (including email, web, and social networking media), and outdoor signage;**

The Department adopts this requirement as proposed. The Attorney General supports this requirement and no commenters object to this requirement in response to the Notice of Proposed Requirements. Attorney General Comments at 2. Accordingly, and for the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 8-10.

**(c) rates, terms, and conditions of its Lifeline service offering(s) in Massachusetts;**

The Department adopts this requirement as proposed. No commenters address this requirement in response to the Notice of Proposed Requirements. Accordingly, for the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 6-7.

**(d) contact information for the ETC's customer service designee;**

The Department adopts this requirement as proposed. No commenters address this requirement in response to the Notice of Proposed Requirements. Accordingly, and for the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 23-24.

**(e) the ETC's proposed method(s) and timing of annual recertifications and a sample recertification notice.**

The Department adopts this requirement as proposed. No commenters address this requirement in response to the Notice of Proposed Requirements. Accordingly, and for the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 27.

**2. By March 1 of every year, each ETC shall submit to the Department:**

**(a) a copy of the certifications filed annually with USAC pursuant to 47 C.F.R. § 54.416(a);**

The Department adopts this requirement as proposed.<sup>3</sup> The Attorney General supports this requirement and no commenters object to this requirement in response to the Notice of Proposed Requirements. Attorney General Comments at 2. Under 47 C.F.R. § 54.416(a), ETCs are required to make certain certifications to the Universal Service Administrative Company ("USAC") as part of the ETCs' submission of annual re-certification data (i.e., as part of the FCC Form 555). In adopting this requirement, the Department does not require ETCs to report this information separately from the FCC Form 555. Rather, ETCs must provide a copy of the FCC Form 555 to the Department by March 1 of each year. For the reasons set forth in the

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<sup>3</sup> This is a modification to a previously adopted Department requirement. *See* Dep't Notice to Mass. ETCs (May 24, 2012).

Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 17-18.

**(b) the number of subscribers de-enrolled for non-usage, by month, pursuant to 47 C.F.R. § 54.405(e)(3), if applicable, and the results of the ETC's annual recertification of Massachusetts subscribers as required by 47 C.F.R. § 54.416(b). (FCC Form 555 or its equivalent);**

The Department adopts this requirement and will require that any revisions to the FCC Form 555 are also filed with the Department.<sup>4</sup> No commenters object to this requirement in response to the Notice of Proposed Requirements. The Attorney General, Tracfone, and T-Mobile support this requirement. Attorney General Comments at 2; Tracfone Comments at 1; T-Mobile Comments at 2 n.2, 3-4. T-Mobile suggests that the Department require ETCs to provide a copy of the FCC Form 555 in lieu of individual requirements mandating the same report. T-Mobile Comments at 3-4. The requirement does exactly what T-Mobile proposes, as ETCs will be required to file a copy of the FCC Form 555 by March 1 each year. For the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 3-4, 17-18.

**(c) a report of marketing or promotional activities for the previous calendar year, to include a description of media services used; methods of marketing; samples of advertisements published in Massachusetts from a variety of media; event appearances and zip codes of those events; and any other mass marketing activities conducted;**

The Department adopts this requirement as proposed. Tracfone supports this requirement and no commenters object to this requirement in response to the Notice of Proposed Requirements. Tracfone Comments at 1. Accordingly, and for the reasons set forth in the

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<sup>4</sup> Section 54.405(e)(3) of the FCC's rules applies only to ETCs that do not assess or collect a monthly fee from their subscribers. 47 C.F.R. § 54.405(e)(3).

Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 9-10.

**(d) the ETC's proposed method(s) and timing of annual recertifications and a sample recertification notice.**

The Department modifies this proposed requirement to require that each ETC notify the Department within 30 days if there are any material changes to its methods or timing of annual recertifications, or to the sample recertification notice filed pursuant to Requirement A(1)(e).<sup>5</sup> *See* Appendix. Tracfone does not object to the proposed requirement, but notes that plans reported by March 1 may change during the year. Tracfone Comments at 2. Similarly, T-Mobile states that an annual report of this information due March 1 is not practicable because the timetable of recertification may differ from year to year. T-Mobile Comments at 4. T-Mobile suggests that no additional approvals be required by the Department unless changes to an ETC's process occur. *Id.* The Department adopts T-Mobile's suggestion. *See* Appendix. To maintain uniformity under this requirement, the Department requires that each existing low-income ETC file with the Department by September 30, 2014, its method(s) and timing of 2013 recertification and a sample recertification notice used in 2013.

**3. By October 15 of every year, each ETC shall submit to the Department:**

The Department changes the proposed due date in this section of the Massachusetts Lifeline Requirements to July 1 of every year. As T-Mobile notes, the October 15 due date for the FCC Form 481 was only for 2013. T-Mobile Comments at 5. Beginning in 2014, the FCC Form 481 is due July 1 on an annual basis. *See* 47 C.F.R. § 54.313(j); *Wireline Competition*

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<sup>5</sup> In addition, the Department maintains the requirement that if any ETC elects to have USAC conduct its annual recertification, the ETC shall notify the Department at the same time that it notifies the FCC and USAC. *See Tracfone Audit Order* at 8; Dep't Notice to Mass. ETCs (May 24, 2012); Notice of Proposed Requirements at 27 n.25.

*Bureau Announces Filing Deadline of Oct. 15, 2013 for Eligible Telecommunications Carriers to File High-Cost & Low-Income Annual Reports, & Announces Filing Deadline of Dec. 16, 2013 for States & ETCs to File Annual Use Certifications*, WC Docket Nos. 10-90, 11-42, *Public Notice* at 1 n.1 (rel. Aug. 6, 2013) (noting that the FCC waived the July 1 deadline for high-cost ETCs in 2013). T-Mobile proposes that the Department set a deadline of 30 days after the federal deadline. T-Mobile Comments at 5. The Department rejects this proposal because the Department requires concurrent filing of the FCC Form 481 by all ETCs in accordance with federal rules. Dep't Notice to All Mass. ETCs Receiving Fed. USF Support (High-Cost and/or Low-Income) (Sept. 26, 2013); *see also* 47 C.F.R. § 54.313(j).

**(a) the company name; names of the company's holding company, operating companies and affiliates; and any branding (a "dba," or "doing-business-as company" or brand designation) as well as relevant universal service identifiers for each such entity by Study Area Code, as required by 47 C.F.R. § 54.422(a)(1). (Part of FCC Form 481 or its equivalent);**

The Department adopts this requirement and, in addition, will require filing with the Department of any revisions to an ETC's FCC Form 481. The Attorney General supports this requirement. Attorney General Comments at 2. Verizon notes that it must report to the Department the information in this requirement under federal rules and argues that this requirement is unnecessary as a result. Verizon Comments at 1-2. This requirement establishes a firm deadline for submission to the Department. *See* 47 C.F.R. § 54.422(a). The Department does not require that ETCs report this information separately from the FCC Form 481, but rather that ETCs must provide a copy of the FCC Form 481 to the Department. *See infra* pp. 9, 13-14. Indeed, Tracfone asserts that because "reporting of this data is already required as part of an ETC's FCC Form 481 obligations, the requirement to provide this information to the Department should not be considered burdensome." Tracfone Comments at 1.



- (b) Information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan, as required by 47 C.F.R. § 54.422(a)(2). If the ETC offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public website outlining the terms and conditions of such plans. (Part of FCC Form 481 or its equivalent);**

The Department adopts this requirement and, in addition, will require that each ETC file with the Department any revisions to its FCC Form 481. Verizon objects that this requirement is duplicative, while the Attorney General supports the requirement and Tracfone asserts that it is not burdensome. Verizon Comments at 1-2; Attorney General Comments at 2; Tracfone Comments at 1. The Department agrees with the Attorney General and Tracfone and adopts this requirement, establishing a deadline for submission to the Department. To be clear, the Department will not require that ETCs report this information separately from the FCC Form 481. Rather, ETCs must provide a copy of the FCC Form 481 to the Department by July 1 of each year.

- (c) a report of the number of complaints related to the Lifeline program during the previous calendar year per 1,000 Lifeline subscribers in Massachusetts (if not provided as part of FCC Form 481).**

The Department adopts this requirement as proposed.<sup>6</sup> The Attorney General and Tracfone support this requirement. Attorney General Comments at 2; Tracfone Comments at 1. Verizon, relying on its previously filed comments, asserts that this requirement “would impose additional compliance costs on ETCs with little resulting public benefit.” Verizon Comments at 2 (citing Verizon Reply Comments (May 28, 2013)). As stated in the Notice of Proposed Requirement, the Department disagrees with Verizon, because it believes that the importance of receiving Massachusetts Lifeline complaint data outweighs any burden of identifying those

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<sup>6</sup> This requirement is in addition to any complaint data high-cost ETCs are required to report.

complaints. Notice of Proposed Requirements at 4-6; *see also Lifeline Reform Order*, ¶ 297 (concluding that administrative costs associated with compliance with Lifeline rules are outweighed by the benefits associated with protecting the Universal Service Fund (“USF”) from waste, fraud, and abuse). The Department can use this complaint data to identify and analyze complaint trends in the Lifeline program, with a goal of improving the program in Massachusetts. As the only commenter objecting to this requirement in response to the Notice of Proposed Requirements, Verizon has not persuaded the Department that any resulting burden from reporting these data will outweigh the benefit the Department and Lifeline program beneficiaries will receive. Accordingly, and for the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 4-6.

**4. Each ETC shall notify the Department of the following events within 30 days of the event’s occurrence:**

- (a) its ETC designation has been suspended, revoked, relinquished, or in any way withdrawn or removed in any jurisdiction;**

The Department adopts this requirement as proposed. No commenters address this requirement in response to the Notice of Proposed Requirements. Accordingly, for the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement. Notice of Proposed Requirements at 16-17.

**(b) the FCC, a state utilities commission, a court, or any government agency has rendered or entered a finding, civil judgment, or settlement (including consent decrees and money judgments) related to the Lifeline program, or a criminal conviction (including plea agreements) related to a dishonest act, false statement, or misuse of the Lifeline program against the ETC, its executive(s), or its senior manager(s);**

The Department adopts this requirement as proposed. The Attorney General supports this requirement. Attorney General Comments at 2. Tracfone objects to the breadth of this requirement and suggests that the requirement “be limited to material actions related to the ETC’s administration of Lifeline.” Tracfone Comments at 3. Specifically, Tracfone submits that under the requirement as proposed, ETCs could be required to “notify the Department of every small claims case settled for a nominal amount anywhere in the country.” *Id.* Tracfone’s interpretation of the proposed requirement reflects a fundamental misinterpretation of the proposed requirement. Tracfone will, of course, have to report to the Department any small claims settlement that is “related to the Lifeline program.” However, Tracfone will have no duty to report small claims settlements (or any other settlements) that concern disputes over Tracfone’s terms and conditions of service or rates that have no relation to the Lifeline program. As the Department strives to uphold the integrity of the Lifeline program in Massachusetts, it must monitor the integrity of the ETCs that provide Lifeline service. Accordingly, the Department adopts this requirement as proposed.

**(c) any change(s) to the ETC’s corporate ownership structure or principal address.**

The Department adopts this requirement as proposed. The Attorney General supports this requirement and no commenters object to this requirement in response to the Notice of Proposed Requirements. Attorney General Comments at 2. Accordingly, and for the reasons set

forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 15.

**5. Each ETC shall provide to the Department a copy of any final audit report generated pursuant to 47 C.F.R. § 54.420(b) within 30 days of the issuance of the final audit report.**

The Department adopts this requirement as proposed.<sup>7</sup> The Attorney General supports this requirement and no commenters object to this requirement in response to the Notice of Proposed Requirements. Attorney General Comments at 2. Accordingly, and for the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 20-21.

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In addition, the Department maintains the requirement that each ETC submit to the Department a copy of any biennial audit conducted pursuant to 47 C.F.R. § 54.420(a) within 30 days of the issuance of the final audit report. *See* 47 C.F.R. § 54.420(a)(4); *Tracfone Audit Order* at 9; Dep't Notice to Mass. ETCs (May 24, 2012). ETCs must submit the first biennial audit report to the Department no later than April 2, 2015. *See Wireline Competition Bureau Announces Release of Final Biennial Audit Plan*, WC Docket 11-42, *Pub. Notice* at 2 (Apr. 2, 2014).

6. By October 15 of each year, each wireless ETC shall submit to the Department all information specified in 47 C.F.R. § 54.422(b) (as part of FCC Form 481 or its equivalent), including:
- (a) Detailed information on any outage in the prior calendar year, as that term is defined in 47 C.F.R. § 4.5(a), of at least 30 minutes in duration for each service area in which the ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect:
    - (i) At least ten percent of the end users served in a designated service area; or
    - (ii) A 911 special facility, as defined in 47 C.F.R. § 4.5(e).
    - (iii) Specifically, the ETC's annual report must include information detailing:
      - (A) the date and time of onset of the outage;
      - (B) a brief description of the outage and its resolution;
      - (C) the particular services affected;
      - (D) the geographic areas affected by the outage;
      - (E) steps taken to prevent a similar situation in the future; and
      - (F) the number of customers affected.
  - (b) Certification of compliance with applicable service quality standards and consumer protection rules; and
  - (c) Certification that the carrier is able to function in emergency situations as set forth in 47 U.S.C. § 54.202(a)(2).

For the same reasons stated in Section III(A)(3), the Department changes the proposed due date for the submissions in this section of the Massachusetts Lifeline Requirements to July 1 of every year. *See supra* pp. 7-8. Otherwise, no commenters address these requirements in response to the Notice of Proposed Requirements. The Attorney General requests that the Department require ETCs “to provide the Department with information related to major outages or other lapses in service or safety within one business day of the event.” Attorney General Comments at 4. T-Mobile and Verizon object to the Attorney General’s proposal. T-Mobile Reply Comments at 2-3; Verizon Reply Comments at 3.<sup>8</sup> The Department determines that the minimal added benefit that the Attorney General’s proposal would provide as compared to the outage reporting requirement as proposed does not justify the additional burden the Attorney General’s proposal would impose on ETCs. Accordingly, the Attorney General’s proposal is not

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<sup>8</sup> Verizon’s Reply Comments were filed on October 3, 2013, one day late. *See* 220 C.M.R. § 1.02(2)(a). The Department nevertheless will accept the filing into the record in this instance.

warranted at this time, but rather the outage reporting requirement as proposed is sufficient for the Department's oversight purposes. *See* Notice of Proposed Requirements at 25. Accordingly, the Department adopts these requirements as proposed and will require that any revisions to an ETC's FCC Form 481 are also filed with the Department.

**7. Each wireless ETC shall notify the Department of any material change(s) to the rates, terms, or conditions of the ETC's Lifeline service in Massachusetts at least five business days prior to the implementation of the change(s).**

The Department adopts this requirement as proposed. T-Mobile, Tracfone, and Budget PrePay each object to this requirement. T-Mobile Comments at 3; Tracfone Comments at 2; Budget PrePay Reply Comments at 4. T-Mobile and Budget PrePay are concerned with the practicality of the requirement as well as the potential for competitive harm. T-Mobile Comments at 2; Budget PrePay Reply Comments at 4. Tracfone and Budget PrePay do not see the purpose of the requirement. Tracfone Comments at 2; Budget PrePay Reply Comments at 4.

Notwithstanding the fact that T-Mobile and Budget PrePay previously agreed to more stringent reporting requirements regarding changes to their rates, terms, and conditions, the Department is not persuaded by T-Mobile and Budget PrePay's claims of operational burden. *See T-Mobile Ne. LLC Petition for Ltd. Designation as an Eligible Telecomms. Carrier for Purposes of Low Income Support Only*, D.T.C. 12-4, *Order Approving Petition* at 20 (Aug. 30, 2012) (implementing with T-Mobile's agreement a requirement to provide 30 days' advance notice of changes to Lifeline rates, terms, or conditions); *Petition of Budget PrePay, Inc. for Limited Designation as a Lifeline-Only Eligible Telecommunications Carrier*, D.T.C. 11-12, *Order Approving Petition* at 15 (Mar. 5, 2013) (same). The Department is merely requesting

prior notice of material changes. Nothing in the record in this proceeding persuades the Department that this is impracticable or a heavy burden.<sup>9</sup>

In terms of competitive harm, an ETC is free to file a motion for confidential treatment with its notice of change to its rates, terms, or conditions. Information filed with the Department contemporaneously with a motion for confidential treatment will be granted temporary confidential treatment pending a final determination on the motion. *Review by the Department of Telecommunications and Cable of Federal Communications Commission Forms 1240 and 1205 filed by CoxCom, Inc. d/b/a Cox Communications New England*, D.T.C. 08-8, *Hearing Officer Ruling* at 3 n.3 (June 23, 2009). Accordingly, concerns that this requirement will result in competitive harm are at best premature.

Finally, while Tracfone and Budget PrePay claim that they do not see the purpose of this requirement, the Department outlined its purpose in the Notice of Proposed Requirements. Notice of Proposed Requirements at 8. The FCC has encouraged state commissions to conduct outreach and respond to consumer inquiries about ETCs' Lifeline offerings. *See Lifeline Reform Order*, ¶ 279 (encouraging states to provide ETCs' rates, terms, and conditions to low-income consumers). The Department cannot undertake either of these tasks properly or accurately if it does not have the most up-to-date information from ETCs. Accordingly, the Department adopts this requirement as proposed.

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<sup>9</sup> The State of Washington similarly requires prior notification of such changes. *See, e.g., In the Matter of Telrite Corp. Petition for Designation as an Eligible Telecomms. Carrier (ETC)*, Docket No. UT-110321, *Final Order* at Appendix A (June 13, 2013) (requiring notification one day prior to implementation).

**8. By March 1 of each year, each non-facilities-based ETC shall submit to the Department:**

- (a) a public safety answering point (PSAP) self-certification, confirming that the ETC provides its subscribers with 911 and E911 access;**

The Department adopts this requirement as proposed. The Attorney General and T-Mobile support this requirement and no commenters object to this requirement in response to the Notice of Proposed Requirements. Attorney General Comments at 2; T-Mobile Comments at 2 n.2. Accordingly, and for the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 13-14.

- (b) a certification that the ETC paid all applicable 911 fees in the Commonwealth for the previous year.**

The Department adopts this requirement as proposed. The Attorney General supports this requirement and no commenters object to this requirement in response to the Notice of Proposed Requirements. Attorney General Comments at 2. Accordingly, and for the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 14.

**B. Consumer Safeguards**

The Department requested comment on a number of consumer protections, some of which the Department previously established as part of individual ETC designation proceedings. Notice of Proposed Requirements at Appendix. The Department adopts some of the requirements as proposed and modifies some of the proposed requirements as discussed below.

In addition, the Attorney General requests that the Department revive certain requirements the Department chose not to adopt, including requiring ETCs to offer a voice-service-only option with no associated contract term or early termination fee and requiring ETCs



to offer a 90 day warranty for handsets. Attorney General Comments at 3-4. T-Mobile and Verizon object to each of these proposals, while Budget PrePay objects only to the latter. T-Mobile Reply Comments at 2-3; Verizon Reply Comments at 4; Budget PrePay Reply Comments at 2-4. The Department affirms its determination that requiring a voice-service-only option is not necessary at this time, as each Massachusetts ETC already offers that option. *See* Notice of Proposed Requirements at 22. Similarly, the Department affirms its determination not to adopt a warranty for Lifeline handsets at this time, but it will continue to monitor the complaints it receives on this issue, and also seeks further comment on more rigorous complaint reporting related to this issue. *See infra* pp. 27-29.

**1. Each wireless ETC shall:**

- (a) participate in the Department’s dispute resolution process by working in good faith with Department staff to resolve Lifeline subscriber disputes;**

The Department modifies this proposed requirement to require that each wireless ETC work in good faith with Department staff to resolve Lifeline subscriber disputes. Boomerang objects to the requirement as proposed, arguing that a reference to “the Department’s dispute resolution process” is inappropriate because it is similar to language contained in the Department’s Residential Billing and Termination Practices, which Boomerang argues should not apply to wireless Lifeline ETCs. Boomerang Comments at 2 (citing D.P.U. 18448 (1977)). Boomerang proposes removing the words “dispute resolution process” from the requirement. *Id.* at 3. The Department determines that, at this time, Boomerang’s proposed language is appropriate and achieves a desirable outcome. Therefore, the Department adopts Boomerang’s language and will require that each wireless ETC work in good faith with Department staff to resolve Lifeline subscriber disputes.

**(b) include the Department's Consumer Division contact information on the ETC's website, Lifeline marketing materials, Lifeline applications, initial sales receipts for Lifeline service, and Lifeline terms and conditions;**

The Department modifies this proposed requirement to remove the requirement that each wireless ETC include the Department's Consumer Division contact information on television and radio advertising. The Attorney General supports the inclusion of the Consumer Division's contact information "on all communications." Attorney General Comments at 3. Boomerang supports the proposed requirement to the extent it requires the Department's contact information on an "ETC's website on posters and banners that are state specific and on the materials that are taken home with the customer when he or she signs up for Lifeline service, namely, the initial sales receipt and the ETC's terms of service." Boomerang Comments at 3. However, Boomerang objects to the proposed requirement that the contact information be included on ETCs' Lifeline applications. *Id.* at 3-4. Boomerang argues that space on Lifeline applications is limited and that consumers generally do not retain applications for reference. *Id.* at 4. In addition, Boomerang objects to including the contact information on "the 'generic' large marketing banners or substantial preprinted posters or forms of television, radio or web advertising that are not intended to be state-specific." *Id.* at 5. Tracfone, while harboring no "philosophical objection" to including the Department's contact information on its Lifeline materials in Massachusetts, notes that this inclusion may result in increased call volume at the Department. Tracfone Comments at 3. The Department acknowledges Tracfone's concerns, but notes that if Lifeline providers offer poor service, increased call volume to the Department is precisely the point of the proposed requirement. The Department believes that the benefits to Lifeline-eligible consumers in Massachusetts provided by inclusion of the Department's contact information will far outweigh the minimal additional burden imposed by any increase in phone calls the Department receives.

Moreover, the Department determines that the benefit to having the Consumer Division's contact information on Lifeline applications outweighs any potential burden on ETCs. Contact information does not take up a significant amount of room. Notice of Proposed Requirements at 12. In addition, while the Department monitors Massachusetts Lifeline applications, companies are free to tailor the required information—both federal and state—how they see fit. In addition, contrary to Boomerang's argument, the Department routinely receives calls from consumers who have retained a copy of their Lifeline application. Accordingly, the Department determines that this aspect of the proposed requirement is valuable and will be retained.

The Department recognizes that some television and radio advertising may be multi-state in nature, and because of the unique nature of advertising on these media, the Department removes these media from this requirement. However, the Department is not persuaded that adding the Consumer Division's contact information to all web and print advertising constitutes an unreasonable burden. Any burden this requirement might add will be outweighed by the benefit of the increased awareness of Massachusetts Lifeline-eligible consumers' of how to reach the Department's Consumer Division. Further, Boomerang supports its objection for non-state-specific advertising by arguing that other, more pertinent information should be the focus of the advertising. Boomerang Comments at 5. However, Boomerang identifies as this "pertinent information" the date, time, and location of an event, which are inherently state-specific, and eligibility requirements, which are also state-specific. Boomerang Comments at 5; *see Lifeline Reform Order*, ¶ 22 (indicating that eligibility requirements vary from state to state). In any event, the Department is not persuaded that the Consumer Division's contact information will take the focus away from the intended message of the advertising.

Finally, T-Mobile requests that the Department “not require ETCs to include Lifeline information on their website unless/until the FCC requires the same.” T-Mobile Comments at 4. Contrary to T-Mobile’s submission, however, the Office of Management and Budget has approved the referenced federal regulation, and, as a result, the FCC requires certain disclosures on all Lifeline materials, including web materials. *Lifeline & Link Up Reform and Modernization, Advancing Broadband Availability Through Digital Literacy Training*, 77 Fed. Reg. 71,712 (Dec. 4, 2012); *see also* 47 C.F.R. § 54.405(c); *Lifeline Reform Order*, ¶ 275; T-Mobile Comments at 4 n. 12. Accordingly, T-Mobile’s request is moot.

**(c) include information about the availability of the Department’s Consumer Division for handling Lifeline complaints on the ETC’s website and in its Lifeline terms and conditions.**

The Department adopts this requirement as proposed. No commenters address this requirement in response to the Notice of Proposed Requirements. The Attorney General requests that the Department revive certain requirements that the Department declined to adopt, including requiring certain training of customer service representatives, prompt processing of Lifeline applications, and prompt response to Department inquiries. Attorney General Comments at 3. T-Mobile and Verizon object to the Attorney General’s proposal. T-Mobile Reply Comments at 2; Verizon Reply Comment at 2. The Department declines to revive these requirements at this time, concluding that the consumer protections adopted herein are a proper first step toward strengthening protections for Lifeline-eligible consumers. *See* Appendix at iii. However, in Section IV, the Department seeks further comment on additional consumer protections. *See infra* pp. 27-29.

For these and the reasons set forth in the Notice of Proposed Requirements, the Department adopts this requirement as proposed. *See* Notice of Proposed Requirements at 11-13.

- 2. Each ETC that plans to discontinue offering Lifeline service in Massachusetts shall, at a minimum: (1) notify its Lifeline subscribers and the Department 60 days in advance of the ETC's planned discontinuance of Lifeline service in Massachusetts; and (2) work in good faith with its Lifeline subscribers and the Department in order to facilitate smooth transition of subscribers to alternative ETCs of the subscribers' choice.**

The Department adopts this requirement as proposed. Boomerang supports part (1) of this requirement, but objects to part (2). Boomerang Comments at 6-7. Specifically, Boomerang argues that part (2) is unnecessary in the Lifeline context because there are no term commitments and Lifeline subscribers can switch ETCs without involvement of the former ETC. *Id.* at 7.

Boomerang's contention with respect to part (2) is troubling, both in light of the absence of any other commenters objecting to the requirement and because it is not the case that all Lifeline subscribers can switch ETCs without assistance. The Department receives calls daily from consumers with questions about the program and specifically how to enroll. Lifeline-eligible consumers represent some of the most vulnerable citizens in Massachusetts and safety nets such as part (2) of this requirement remain necessary. *See Lifeline Reform Order*, Statement of Comm'r Mignon Clyburn, Approving in Part, Concurring in Part at 1, 2. Accordingly, the Department adopts this requirement as proposed.

- 3. Each ETC shall update its Massachusetts Lifeline application within 30 days of changes in eligibility criteria, including Federal Poverty Guideline calculations.**

The Department adopts this requirement as proposed. The Attorney General supports this requirement and no commenters object to this requirement in response to the Notice of Proposed Requirements. Attorney General Comments at 2. Accordingly, and for the reasons set

forth in the Notice of Proposed Requirements, the Department adopts this requirement. *See* Notice of Proposed Requirements at 22.

#### **IV. FURTHER REQUEST FOR COMMENT**

In addition to the Lifeline requirements the Department implements herein, the Department seeks further comment on certain issues related to the implementation of the *Lifeline Reform Order*. Specifically, based on the comments received to date in this proceeding, the Department determines that further comment is warranted on the efficiency of the Lifeline program in Massachusetts, the annual Lifeline subscriber recertification process, and Lifeline subscriber protections.

Parties wishing to comment may submit their comments in writing and electronically to:

Catrice C. Williams, Secretary  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 820  
Boston, MA 02118-6500  
catrice.williams@state.ma.us

Initial comments must be received by 5:00 P.M. on September 15, 2014. Reply comments must be received by 5:00 P.M. on September 30, 2014. For questions relating to this proceeding, please contact Catrice C. Williams at (617) 305-3580 or at catrice.williams@state.ma.us. Please reference “D.T.C. 13-4 Lifeline Investigation” in the subject line of all submissions to the Department on this matter.

##### **A. The Efficiency of the Lifeline Program in Massachusetts**

In light of recent reports on the state of the Lifeline program,<sup>10</sup> the Department seeks comment on ways to limit waste, fraud, and abuse in the program. *See Lifeline Reform Order*,

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<sup>10</sup> *See, e.g., In the Matter of Lifeline & Link Up Reform & Modernization*, WC Docket No. 11-42, *Order*, ¶ 2 & n.2 (rel. June 25, 2013).

¶ 299 (“Protecting the fund against waste, fraud and abuse helps further Congress’s objectives in section 254(b) of the [Communications Act of 1934].”). For example, many ETCs use commission-based third party agents to solicit potential Lifeline subscribers. *In the Matter of Petition for Rulemaking to Further Reform the Lifeline Program, et al.*, WC Docket No. 11-42, et al., *Nexus Comments* at 5 (Aug. 14, 2013). Should the Department regulate the commission-based compensation model, including restricting the use of the commission-based compensation model altogether as it relates to Lifeline applicants? *Cf. In the Matter of Petition for Rulemaking to Further Reform the Lifeline Program, et al.*, WC Docket No. 11-42, et al., *Lifeline Reform 2.0 Coalition Reply Comments* at 9-11 (Aug. 29, 2013) (proposing that “ETCs conduct a non-commission-based review and approval of all enrollments before the ETC activates service or seeks reimbursement from the Lifeline program.”).

In light of recent reports of unwelcome ETC agent conduct outside of Massachusetts Department of Transitional Assistance (“DTA”) offices, should the Department impose a limited buffer zone around DTA offices, within which an ETC and its agents may not solicit potential Lifeline subscribers? *See, e.g., In the Matter of Petition for Waiver of Lifeline Rules Prohibiting Retention of Income-Based & Program-Based Eligibility Documentation*, WC Docket No. 11-42, *NCLC Ex Parte Notice* (Mar. 26, 2014).

Should the Department require a carrier to provide non-Lifeline service in Massachusetts for a certain amount of time (e.g., six months) prior to approving its ETC petition? *See Lifeline Reform Order*, ¶ 388 (listing “whether the applicant previously offered services to non-Lifeline consumers” as a factor in determining an ETC petitioner’s technical and financial capability). Should the Department require that a certain amount (e.g., 20 percent) of an ETC’s subscribers in Massachusetts be non-Lifeline subscribers? *See id.* (listing “whether the applicant intends to rely

exclusively on USF disbursements to operate” as a factor in determining an ETC petitioner’s technical and financial capability). Should the Department require that ETCs de-enroll subscribers upon request (e.g., within five business days) without requiring a reason or any documentation, including a personal identification number (PIN)? *See In the Matter of Petition for Rulemaking to Further Reform the Lifeline Program, et al.*, WC Docket No. 11-42, et al., *Petition for Rulemaking* at 14-15 (June 28, 2013).

Additionally, the Department seeks comment on requiring all ETCs to verify with a Massachusetts state agency (e.g., the DTA or MassHealth) Lifeline applicants’ initial program-based eligibility prior to commencing Lifeline service. *See* 47 C.F.R. § 54.410(C)(1)(i)(A) (requiring that when a Lifeline applicant seeks to qualify using program-based criteria, the ETC—before seeking reimbursement—must verify the applicant’s eligibility through an eligibility database if one is available).<sup>11</sup> The Department seeks comment on requiring ETCs to compensate these state agencies for the administrative costs associated with these verifications, as well as how such a compensation system would be implemented. *See, e.g., Lifeline Reform Order*, ¶ 297 (finding that administrative costs borne by ETCs to comply with Lifeline rules are outweighed by the benefit of protecting the USF from waste, fraud, and abuse); *In the Matter of Lifeline & Linkup Reform*, New Jersey Board of Public Utilities Docket No. TO12050367, *Order* at 6 (Apr. 24, 2014) (mandating that ETCs bear the costs of a state eligibility database in New Jersey). The Department seeks comment on requiring that if a Lifeline applicant claiming program-based eligibility is not deemed eligible by the relevant state agency, the ETC may not

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<sup>11</sup> According to its 2012 FCC Form 555, Tracfone reviewed the eligibility of 8,645 Massachusetts Lifeline subscribers by accessing an eligibility database in 2012. *In the Matter of Lifeline Reform & Modernization*, WC Docket No. 11-42, *Tracfone Wireless, Inc. FCC Forms 555* at 71-72 (Feb. 12, 2013).



enroll that applicant in the Lifeline program. *But see Lifeline Reform 2.0 Coalition*, WC Docket Nos. 11-42, 09-197, *Notice of Oral Ex Parte Presentation* at 5-6 (June 20, 2014).

Would additional, targeted reporting requirements give the Department a better sense of the effectiveness and efficiency of the program in Massachusetts and help the Department identify potential abuses and other potential shortcomings? Specifically, the Department seeks further comment regarding whether it should impose any of the following reporting requirements, either monthly or annually:

1. A report of Lifeline subscriber usage metrics by month, including total minutes used, median minutes used, number of Lifeline subscribers with zero activity, and number of Lifeline subscribers with maximum activity under their plan. *See* NCLC Comments at 3; *In the Matter of Technology Transitions Task Force Seeks Comment on Potential Trials*, GN Docket No. 13-5, *AT&T Comments* at 35 (July 8, 2013);
2. A report of the number of Lifeline subscriptions added by month;
3. A report of the number of Lifeline subscriptions dropped by month;
4. A report of the number of Lifeline applications denied by month;
5. A report of the number of total active Lifeline subscriptions in Massachusetts by census tract;
6. A report of the number of Lifeline subscriptions in Massachusetts by qualifying program (or income); or
7. A report of the number of complaints related to the Lifeline program during the previous calendar year per 1,000 Massachusetts Lifeline subscribers broken down by complaint category (e.g., application denials, customer service, failures to apply the Lifeline discount, quality of service, erroneous de-enrollments, and problems with handsets).<sup>12</sup>

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<sup>12</sup> *See, e.g., In the Matter of Telrite Corp. Petition for Designation as an Eligible Telecomms. Carrier (ETC)*, Docket No. UT-110321, *Final Order* at Appendix A (June 13, 2013). This report would supersede the requirement adopted herein that requires an annual report of the number of Lifeline complaints per 1,000 Lifeline subscribers. *See* Appendix.

The Department also seeks comment on how it should define “complaint” for purposes of its Lifeline requirements. Do ETCs currently define “complaint” internally? Should the Department define “complaint” for Lifeline requirements similar to the way it defines “complaint” for the FCC Form 500? *See* Department of Telecommunications and Energy, *Order Adopting Revised Form 500* at 4 (June 11, 1999) (defining “complaint” as “Any written or verbal contact with a cable operator in connection with a subscription in which a person expresses dissatisfaction with an act, omission, product or service that is (1) within the operator’s control, and (2) requires a corrective measure on the part of the operator.”).

Finally, would a requirement that ETCs meet with the Department as requested (but not more than once annually) in order to discuss complaint trends, regulatory compliance issues, and any other areas of concern be appropriate or useful to ETCs?

The Department also welcomes comment on any other proposals to reduce waste, fraud, and abuse in the Lifeline program in Massachusetts.

## **B. Annual Subscriber Recertification**

The Department seeks further comment on improving the annual Lifeline subscriber recertification process in Massachusetts. *See Lifeline Reform Order*, ¶ 140 (authorizing states to “supplement the federal re-certification methodology with their own procedures specifically tailored to state-specific program requirements”); D.T.C. 13-4, Public Hearing Transcript at 10-19 (May 14, 2013) (“Tr.”). For example, given the high number of subscriber non-responses to recertification attempts in 2012 and 2013,<sup>13</sup> should the Department mandate that ETCs make multiple attempts to contact Lifeline subscribers during recertification? Alternatively, should the

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<sup>13</sup> According to Department staff analysis of FCC Forms 555 filed in Massachusetts, approximately 23% of Lifeline subscribers contacted for recertification in 2013 did not respond to the recertifications attempt(s). FCC Forms 555 are available on the FCC’s website, at WC Docket No. 11-42.

Department require that at least one recertification attempt be a voice call? What would be the value of a Department mandate that USAC perform recertification for Massachusetts ETCs? Should the Department require ETCs to verify as part of annual recertification with the National Lifeline Accountability Database that each subscriber's household is receiving only one Lifeline discount? Should the Department mandate that ETCs require Lifeline subscribers to demonstrate their Lifeline eligibility with documentation annually? Is there anything else that might improve the recertification process in Massachusetts?

### **C. Lifeline Subscriber Protections**

The Department also seeks further comment on improving Lifeline subscriber protections and customer service in the Lifeline program.

The Department seeks comment regarding streamlining and simplifying the Lifeline application process. *See* Tr. at 24; NCLC Written Testimony at 2; Kermit Goodman Written Testimony at 1 (rev. May 15, 2013). The Department seeks comment on what is a reasonable amount of time needed to process a Lifeline application. The Department seeks comment concerning best practices used to assist consumers applying for Lifeline service. The Department seeks comment on mandating for all ETCs that the effective date of a Lifeline application approval (i.e., when Lifeline benefits start) is retroactive to the day on which the ETC received the application. *See Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, § 105 & G.L. c. 164 § 76, to investigate increasing the penetration rate for discounted, electric, gas and telephone service*, D.T.E. 01-106, Verizon Mass. Comments at 7 (Jan. 24, 2002); *In the Matter of Lifeline & Link Up Reform & Modernization, et al.*, WC Docket No. 11-42, et al., *Petition & Certification of the Public Utility Commission of Oregon to Opt-out of the National Lifeline Database* at 3 (Nov. 30, 2012).

The Department seeks comment on requiring that the Department's Consumer Division contact information is included with all Lifeline application denial notices. The Department seeks comment on requiring ETCs to notify the Department in advance (e.g., five business days) of any material change(s) to their Massachusetts Lifeline application.<sup>14</sup>

The Department seeks comment regarding the extent to which ETCs offer Lifeline materials in languages other than English and Spanish, including, but not limited to, Portuguese, Chinese, Haitian Creole, Vietnamese, and Khmer/Cambodian. The Department seeks further comment on NCLC's proposal to require that ETCs offer Lifeline materials in these languages. *See* NCLC Comments at 2.

The Department seeks comment regarding calls made by Lifeline applicants and subscribers to customer service representatives of ETCs. Specifically, testimony indicates that Lifeline subscribers may experience wait times as long as 45-60 minutes to speak with a representative, dropped customer service calls, long hold times after connecting with customer service, and general difficulty in communicating with ETCs' customer service representatives. *See* Tr. at 10-19; Kermit Goodman Written Testimony at 2; Rosie's Place Written Testimony. The Department seeks comment concerning best practices necessary to alleviate or prevent these challenges. The Department seeks comment on whether all ETCs undertake such best practices. If ETCs are not employing such practices or if such challenges are not being addressed properly, the Department seeks further comment regarding to what extent and in what manner the Department should address these issues directly. Additionally, the record indicates that certain wireless ETCs deduct customer service calls from subscribers' available Lifeline minutes

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<sup>14</sup> This requirement would not alter ETCs' obligations under Requirement B(3) adopted herein. *See* Appendix.

without replacing the minutes. Rosie's Place Written Testimony; NCLC Comments at 4; *see also In the Matter of Petition for Rulemaking to Further Reform the Lifeline Program, et al.*, WC Docket No. 11-42, et al., *Lifeline Reform 2.0 Coalition Reply Comments* at 11-12 (Aug. 29, 2013) (requesting that the FCC impose a requirement that Lifeline subscribers are able to dial customer service with no decrement to their allotted minutes). The Department seeks comment on whether this is standard practice by wireless ETCs. The Department seeks comment on whether this practice is appropriate. The Department also seeks comment on whether and to what extent the Department should address or limit this practice. In addition, the Department seeks comment on the value of mandating that calls from Lifeline handsets to toll free numbers do not deduct from available Lifeline minutes. *See In the Matter of Petition for Waiver of Lifeline Rules Prohibiting Retention of Income-Based and Program-Based Eligibility Documentation*, WC Docket No. 11-42, *NCLC Ex Parte Notice* (Mar. 26, 2014).

The Department also seeks comment on other current ETC practices. Specifically, what are ETCs' current practices with regards to notifying Lifeline subscribers about changes to Lifeline service offerings (e.g., rates and minutes)? Are subscribers given advance notice of changes? Should they be? Additionally, what are ETCs' current practices with regards to lost or stolen Lifeline handsets? Do ETCs terminate a subscriber's Lifeline account if a handset is lost or stolen? Do ETCs simply deactivate the handset? Is it unreasonable for ETCs to charge a Lifeline subscriber for a replacement handset if a handset is lost or stolen? What best practices should be implemented if a Lifeline subscriber loses a handset or has a handset stolen?

Furthermore, the Department seeks comment on imposing limitations on ETCs' efforts to sell optional/top-up services and features to Lifeline subscribers.

#### **D. Other Related Matters**

Finally, the Department invites comment on any additional matters reasonably related to the implementation of the *Lifeline Reform Order* in Massachusetts, and any procedures or requirements needed to implement the *Lifeline Reform Order*, advance universal service, and safeguard the USF. For example, does the Department have authority to charge an annual assessment to wireless ETCs? *See* G. L. c. 25C, § 7. Would such a mandate be appropriate given the Department's utilization of staff and resources to administer the Lifeline program in Massachusetts? Should wireless ETCs be required to file annual returns with the Department? *See* G. L. c. 159, § 12(d).

#### **V. CONCLUSION**

The requirements as stated in the Appendix adequately balance burdens on Massachusetts ETCs and the Department's mandate to protect consumers and uphold the integrity of the Lifeline program. In this vein, by requesting further comment on certain targeted issues, the Department seeks to further its goal of maximizing Lifeline subscriptions by eligible consumers while minimizing waste, fraud, and abuse of the Lifeline program.

## **VI. ORDER**

Accordingly, after notice, hearing, and consideration, it is hereby

ORDERED: that, consistent with the above, the Massachusetts Lifeline Requirements as listed in the Appendix are hereby ADOPTED; and it is

FURTHER ORDERED: that each low-income ETC in Massachusetts as of the date of this Order file with the Department by September 30, 2014, its method(s) and timing of 2013 recertification and a sample recertification notice used for recertification in 2013.

By Order of the Department:

/s/ \_\_\_\_\_

Karen Charles Peterson  
Commissioner

## **RIGHT OF APPEAL**

Pursuant to G. L. c. 25, § 5 and G. L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court.

## **Appendix – Massachusetts Lifeline Requirements<sup>1</sup>**

### **A. Reporting Requirements**

1. Each newly designated ETC (those ETCs the Department designates following the implementation of these requirements) shall, within 60 days of designation and prior to offering Lifeline service, submit to the Department:
  - a. a copy of the Lifeline application form that it will use for consumers in Massachusetts;
  - b. copies of all advertising and marketing materials that it plans to use in Massachusetts, including but not limited to print, audio, video, Internet (including e-mail, web, and social networking media), and outdoor signage;
  - c. rates, terms, and conditions of its Lifeline service offering(s) in Massachusetts;
  - d. contact information for the ETC's customer service designee; and
  - e. the ETC's proposed method(s) and timing of annual recertifications and a sample recertification notice.
2. By March 1 of each year, each ETC shall submit to the Department:
  - a. a copy of the certifications filed annually with USAC pursuant to 47 C.F.R. § 54.416(a) (to be filed on FCC Form 555);
  - b. the number of subscribers de-enrolled for non-usage, by month, pursuant to 47 C.F.R. § 54.405(e)(3), if applicable, and the results of the ETC's annual recertification of Massachusetts subscribers as required by 47 C.F.R. § 54.416(b) (to be filed on FCC Form 555, including any revisions); and
  - c. a report of marketing or promotional activities for the previous calendar year, to include a description of media services used; methods of marketing; samples of advertisements published in Massachusetts from a variety of media; event appearances and zip codes of those events; and any other mass marketing activities conducted.
3. By July 1 of each year, each ETC shall submit to the Department:
  - a. the company name; names of the company's holding company, operating companies and affiliates; and any branding (a "dba," or "doing-business-as company" or brand designation) as well as relevant universal service identifiers for each such entity by Study Area Code, as required by 47 C.F.R. § 54.422(a)(1) (to be filed on FCC Form 481, including any revisions);
  - b. information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan, as required by 47 C.F.R. § 54.422(a)(2). If the ETC offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public website

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<sup>1</sup> Unless otherwise noted, these requirements shall be effective 30 days after the issuance of this Order and shall apply only to ETCs receiving low-income support from USAC for Massachusetts subscribers during the relevant reporting period.



- outlining the terms and conditions of such plans (to be filed on FCC Form 481, including any revisions); and
- c. a report of the number of complaints related to the Lifeline program during the previous calendar year per 1,000 Lifeline subscribers in Massachusetts (if not provided on FCC Form 481).
4. Each ETC shall notify the Department of the following events within 30 days of the event's occurrence:
- a. its ETC designation has been suspended, revoked, relinquished, or in any way withdrawn or removed in any jurisdiction;
  - b. the FCC, a state utilities commission, a court, or any government agency has rendered or entered a finding, civil judgment, or settlement (including consent decrees and money judgments) related to the Lifeline program, or a criminal conviction (including plea agreements) related to a dishonest act, false statement, or misuse of the Lifeline program against the ETC, its executive(s), or its senior manager(s);
  - c. any change(s) to the ETC's corporate ownership structure or principal address; and
  - d. any material change(s) to the ETC's method(s) or timing of annual recertifications, or to the sample recertification notice filed pursuant to Requirement A(1)(e).
5. Each ETC shall provide to the Department a copy of any final audit report generated pursuant to 47 C.F.R. § 54.420(b) within 30 days of the issuance of the final audit report.
6. By July 1 of each year, each wireless ETC shall submit to the Department all information specified in 47 C.F.R. § 54.422(b) (to be filed on FCC Form 481, including any revisions), including:
- a. detailed information on any outage in the prior calendar year, as that term is defined in 47 C.F.R. § 4.5(a), of at least 30 minutes in duration for each service area in which the ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect:
    - i. at least ten percent of the end users served in a designated service area; or
    - ii. a 911 special facility, as defined in 47 C.F.R. § 4.5(e).
  - iii. Specifically, the ETC's annual report must include information detailing:
    - (A) the date and time of onset of the outage;
    - (B) a brief description of the outage and its resolution;
    - (C) the particular services affected;
    - (D) the geographic areas affected by the outage;
    - (E) steps taken to prevent a similar situation in the future; and
    - (F) the number of customers affected.
  - b. certification of compliance with applicable service quality standards and consumer protection rules; and
  - c. certification that the carrier is able to function in emergency situations as set forth in 47 C.F.R. § 54.202(a)(2).

7. Each wireless ETC shall notify the Department of any material change(s) to the rates, terms, or conditions of the ETC's Lifeline service in Massachusetts at least five business days prior to the implementation of the change(s).
8. By March 1 of each year, each non-facilities-based ETC shall submit to the Department:
  - a. a public safety answering point (PSAP) self-certification, confirming that the ETC provides its subscribers with 911 and E911 access; and
  - b. a certification that the ETC paid all applicable 911 fees in the Commonwealth for the previous year.

B. Consumer Safeguards

1. Each wireless ETC shall:
  - a. work in good faith with Department staff to resolve Lifeline subscriber disputes;
  - b. include the Department's Consumer Division contact information on the ETC's website, Lifeline marketing materials (except for television and radio advertising), Lifeline applications, initial sales receipts for Lifeline service, and Lifeline terms and conditions; and
  - c. include information about the availability of the Department's Consumer Division for handling Lifeline complaints on the ETC's website and in its Lifeline terms and conditions.
2. Each ETC that will discontinue offering Lifeline service in Massachusetts shall, at a minimum:
  - a. notify its Lifeline subscribers and the Department 60 days in advance of the ETC's planned discontinuance of Lifeline service in Massachusetts; and
  - b. work in good faith with its Lifeline subscribers and the Department in order to facilitate smooth transition of subscribers to alternative ETCs of the subscribers' choice.
3. Each ETC shall update its Massachusetts Lifeline application within 30 days of changes in eligibility criteria, including Federal Poverty Guideline calculations.