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

REPLY COMMENTS OF YOURTEL AMERICA, INC.

YourTel America, Inc. ("YourTel" or the "Company") filed Initial Comments with the Department of Telecommunications and Cable ("Department" or "DTC") in this proceeding on April 29, 2013 ("YourTel Comments"). YourTel also has reviewed Initial Comments and other pleadings, including statements of position, filed by other parties and limited participants and has heard a report on testimony given at the May 14, 2013 public hearing.[1] It now offers the following comments in reply to points made in writing and at the May 14 hearing.

Argument

I. Overview and Summary

YourTel and virtually all commenters: (1) welcome the Department's efforts to establish uniform guidelines rather than relying on inherently arbitrary case-by-case adjudication; (2) support expansion of current Lifeline eligibility categories in Massachusetts; and (3) oppose the necessity, appropriateness and/or legality of many,

[1] Comments filed in the proceeding that include potentially substantive statements of position include the following: (1) Comments of Virgin Mobile USA LP ("Virgin Comments"); (2) Comments of Budget PrePay, Inc. LP ("Budget PrePay Comments"); (3) Comments of T-Mobile Northeast LLC ("T-Mobile Comments"); (4) National Consumer Law Center Initial Comments LP ("NCLC Comments") and letter in lieu of comments for Verizon New England Inc. ("Verizon Letter"). In addition, there were intervention pleadings from TracFone, Granby Telephone, Nexus Communications, Inc., and the Attorney General.

if not most, of the potential state-specific regulatory requirements discussed by the Department in the April 1, 2013 Exhibit to the Request for Comments ("Exhibit"). YourTel and other commenters request that the Department not impose unnecessary and burdensome requirements on a quickly developing, competitive market with limited revenue opportunities compared to other wireless market segments.[2]

II. 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. YourTel proposed reasonable and necessary limits on this obligation. See YourTel Comments, p. 4. T-Mobile argues that any required reporting should be limited to within 30 days after implementation, with no advance notice to the Department required. T-Mobile Comments, pp. 8-9. T-Mobile argues that an advance notice requirement is operationally difficult and involves a risk of competitive harm through premature disclosure of confidential marketing and other strategies. Id. Finally, T-Mobile argues that given the current competitive environment, there is little risk of changes that would harm consumers and, therefore, "limited reason for governing bodies to receive advance notice of such changes." Id., p. 9. YourTel substantially agrees with T-

[2] The Verizon Letter questions the need for any state-level requirements at all, given the robust nature of federal protections. See Verizon Letter, pp. 1-2. YourTel generally supports this perspective to the extent it argues for Department restraint on imposing requirements proposed in the Exhibit.

Mobile's analysis. As mentioned in the YourTel Comments (at p. 4), YourTel is bringing new and affordable data plans to its markets. Advance disclosure rules may 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 continues to have serious concerns with this requirement on multiple grounds. See YourTel Comments, pp. 5-6. T-Mobile reiterates that the B&T Rules both do not apply to wireless carriers and are currently under Department review, and therefore urges that they not be applied to ETCs. T-Mobile Comments, p. 10.

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

The YourTel Comments opposed any broad-based requirement that the Department's contact information and dispute resolution requirements be included on all customer-facing documents and electronic resources. Instead, YourTel counter-proposed a targeted requirement that Department contact information be included only on the ETC's Massachusetts terms and conditions documents, website, and Massachusetts-specific print advertisements. YourTel Comments, p. 6. T-Mobile opposes the Department's recommendation in total, stating that the requirement is both unnecessary and duplicative of federal law obligations in 47 C.F.R. 54.2002(a)(3) to satisfy all applicable consumer protection and service standards. T-Mobile Comments, pp. 10-11. YourTel agrees that an ETC's overall federal law obligation to comply with applicable consumer protection and service standards provides substantial protections to consumers and supports limiting the scope of mandatory disclosures relative to Department contact information.

YourTel opposes any requirement, as suggested by the National Consumer Law Center ("NCLC"), that Lifeline materials (presumably including both applications and marketing materials) be offered in as much as a half-dozen languages other than English and Spanish. NCLC Comments, pp. 2-3. If an ETC wants to target additional non-English speaking customers voluntarily to achieve customer growth, it is free to do so and in its best interests. A proper effort to reach out to demographic subgroups with unique language and cultural barrier entails much more that just distributing materials in a particular language. Compelling translations of Lifeline materials into multiple additional foreign languages would be a misuse of resources that could be better utilized to focus more acutely on one group at a time to ensure that a group's unique needs are addressed fully before moving on to the next group.

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

As discussed in the YourTel Comments (at p. 7), YourTel does not see the point of 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 of re-filing its application on an annual basis (Exhibit at section 2(d)). T-Mobile agrees, and opposes these requirements as being "unnecessary, duplicative and burdensome on Massachusetts ETCs and may discourage additional ETC entries into the Massachusetts market," as well as effectively forcing ETCs to be subject multiple times to the Department's ETC designation process. T-Mobile Comments, pp. 12-13. ETCs are already subject to annual filling requirements per Study Area Code under FCC Rules at § 54.422 which includes filing those "...with the relevant state commissions...".

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

The YourTel Comments stated its support for proposals to expand Lifeline eligibility requirements in the Commonwealth. YourTel Comments, p. 7. Virgin Mobile's and Budget PrePay's targeted suggestions for additional eligibility categories are reasonable. See Virgin Mobile Comments at pp. 3-7 (proposing to add WIC, income-eligible Veteran's Services and increasing the 135% range to 150%); Budget PrePay Comments, pp. 1, 3-4 (same); see also Verizon Letter, p. 2 (supporting the 135% increase to 150%). YourTel opposes as unnecessary T-Mobile's recommendation that eligibility criteria be changed via a state petition for approval to the FCC as the FCC already gives the states leeway to adopt participation in additional eligible programs.[3] T-Mobile Comments, p. 14.

The YourTel Comments also oppose any requirement that ETCs be required to provide written or other notice to customers regarding changes in eligibility criteria. YourTel Comments, pp. 7-8. Budget PrePay concurs and, furthermore, argues that requiring provision of notice of eligibility changes to customers who remain eligible will cause customer confusion. Budget PrePay Comments, p. 5. Budget also supports its recommendation by stating the concern that increasing the number of mandatory notices involving matters that do not affect particular customers will have the unintended adverse effect of causing customers to disregard service-critical notices when they arrive. Id., pp. 4-5. YourTel views this as a valid concern, and recommends that the

[3] See WC Docket No. 11-42, In the Matter of Lifeline and Link Up Reform and Modernization, *Report and Further Order Notice of Proposed Rulemaking, (rel. February 6, 2012),* footnote 168.

Department limit mandatory customer notices to those that are truly necessary. T-Mobile separately concurs with YourTel's and Budget PrePay's position as to the lack of value in mandating ETCs to disclose eligibility changes. T-Mobile Comments, pp. 14-15.

YourTel supports the NCLC's suggestion that the Department help coordinate Lifeline outreach with the agencies that administer eligible low-income programs in the Commonwealth, to the extent practicable. NCLC Comments, p. 3. Increased Lifeline participation helps drive increased use of all such income eligible subsidy programs, thereby benefitting the public.

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

The YourTel Comments contend that it would be counterproductive and inappropriate to establish mandatory 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). YourTel Comments, p. 8. T-Mobile strongly agrees with this position, and suggests instead that the Department take action, if at all, only using a cooperative outreach approach to assist ETCs with improving their own efforts to reach out to potential customers. T-Mobile Comments, pp. 15-16.

Relative to service quality standards, YourTel pointed out that 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 satisfactory" customer service and complaint resolution). YourTel Comments, pp. 8-9. Budget PrePay concurs with YourTel's concerns, specifically referencing the warranty period issue. Budget PrePay Comments, pp. 1, 5-6. It also strongly opposes as federally preempted any proposal to require Massachusetts ETCs to offer the same services and benefits as are offered in other jurisdictions. Id., pp. 6-7.

Additionally, both Virgin Mobile and T-Mobile made clear their views that any outage reporting beyond that required by federal law would be unnecessary, counterproductive and potentially preempted by federal law. Virgin Mobile Comments, pp. 1-3; T-Mobile Comments, pp. 17-19.

Finally, while YourTel takes no position on NCLC's suggestion (NCLC Comments at p. 3) that the Department investigate the adequacy of 250 minutes per month for wireless Lifeline services, YourTel questions the need for such investigation. The competitive market has done a good job so far at increasing the minutes offered in Lifeline service packages, and one would expect this trend to continue so long as regulators avoid excessive entry barriers and continue to foster entry and choice among responsible ETC providers. In any event, YourTel would strongly oppose as a competitive barrier any state-mandated minimum that increased minutes beyond the current 250 offered by most operators.

Conclusion

YourTel appreciates the opportunity to provide the instant reply comments to assist the Department in developing uniform minimum regulatory requirements for Massachusetts ETCs. All providers caution 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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