

**Before the
FEDERAL COMMUNICATIONS INDIANA COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90
)	

**COMMENTS OF
THE INDIANA UTILITY REGULATORY COMMISSION**

I. Introduction

On June 22 2015, the Federal Communications Commission (“FCC” or “Commission”) released its Second Further Notice of Proposed Rulemaking (“FNPRM”) regarding the Lifeline program and the process to designate Eligible Telecommunications Carriers (“ETCs”). Among many considerations, the FCC sought comment on proposals to streamline the ETC designation process, reduce burdens that may discourage potential Lifeline providers from seeking or keeping their ETC designations, or potentially separate providers’ participation in the Lifeline program from the ETC designation process.

The Indiana Utility Regulatory Commission (“Indiana Commission”) appreciates the opportunity to comment on potential changes and reforms to the Lifeline program and the process to determine carriers eligible to provide Lifeline services. The Indiana Commission would like to share:

- Indiana specific background regarding the ETC designation process;
- why we believe the FCC should encourage states to review and reduce unnecessary duplication in their ETC designation process, but not mandate a process; and,
- why we believe the ETC designation process is the best process to determine which companies should be eligible to participate in the Lifeline program within a given state.

II. Background on the Lifeline Providers in Indiana

Indiana does not have a state fund that serves the purpose of contributing to the monthly federal subsidy for Lifeline subscribers. In 2006, Indiana attempted to institute a state Lifeline fund; however, the budget for the state Lifeline program was not approved.¹ The Indiana Code setting up the program was repealed by P.L.256-2013, SEC.16. In addition, the Indiana Commission does not have its own database, or access to a state-run database, with which to verify the eligibility of Lifeline subscribers.

Although Lifeline providers serving Indiana customers are reimbursed solely by federal funds, the Indiana Commission takes seriously its responsibility to designate ETCs and believes it should work in partnership with the FCC to encourage responsible implementation of federal universal service programs, both Lifeline, and High Cost or Connect America Funds. There are three reasons for this belief: 1) state commissions are often in a better position to observe ETC operations and their impact on consumers at the state level; 2) Indiana communications service providers and subscribers contribute to the federal universal service fund by paying assessments on interstate revenues or through surcharges on their communications service bills; and 3) if communications service providers are not implementing the program as intended, state commissions, as well as the FCC, can be approached by state legislators, local media, and the public for explanations or solutions.

There are three types of ETCs in Indiana:

1. Incumbent Local Exchange Carriers – These providers were designated as ETCs by the IURC in 1997 after the passage of the Telecommunications Act of 1996 (TA96) and are required to provide Lifeline services due to their ETC status. Lifeline customers of these carriers receive a \$9.25 discount on their bill and are responsible for paying the remainder of the bill. Indiana currently has forty-three (43) ILECs that provide Lifeline service.
2. Competitive Facilities-based Carriers - These consist of Wireless or Local Exchange Carriers that wish to receive high-cost support to build and maintain their networks. Indiana currently has three (3) CLEC ETCs that fall into this category. Formerly, two facilities-based wireless carriers also fell into this category, but those companies both relinquished their ETC designations. Lifeline customers of these carriers receive a \$9.25 discount on their bill and are responsible for paying the remainder of the bill.
3. Wireless Lifeline-only ETCs – These carriers seek ETC status only for the purpose of receiving support from the Lifeline fund. They are often wireless resellers that do not have their own facilities and they offer a prepaid plan that appears to be free to the Lifeline customer. Between 2009 and 2014, these were the only ETC designation petitions the Indiana Commission received. Indiana currently has twelve (12) Lifeline-

¹ Indiana Utility Regulatory Commission Cause No. 43082

only providers that fall into this category. Only one provider, Virgin Mobile, is considered a facilities-based provider.²

Previously, Indiana had two additional facilities-based, wireless providers that offered Lifeline plans that required a monthly payment by the Lifeline customer in addition to the monthly federal subsidy – T-Mobile Central LLC and PowerTel/Memphis (T-Mobile) and Cricket Communications, Inc. (Cricket). These providers' plans included a more substantial number of minutes per month than the typical "free" plans. However, both Cricket and T-Mobile have relinquished their ETC designations in Indiana.

III. Streamlining the ETC Designation Process

a. Increasing Competition and Innovation in the Lifeline Market Place

In the FNPRM³, the FCC states it seeks "comment on ways to increase competition and innovation in the Lifeline market place. We believe the best way to do this is to increase the number of service providers offering Lifeline services." The FCC indicates that streamlining the ETC designation process may be the best way to increase competition.⁴

Indiana agrees that healthy competition in the provision of Lifeline service should be the goal. However, because Lifeline-only providers do not work under a typical competitive model and have access to public funds, we believe there should be limits on how much the ETC designation process is streamlined. The Indiana Commission contends that because they are supported, in some cases almost entirely, by public funds, a Lifeline-only provider is different than a typical communications service provider entering a competitive market.

We share the FCC's goal of having a high participation rate in the program among eligible households. The Indiana Commission would like to see a variety of types of providers offering Lifeline services, such as local exchange carriers, digital phone providers, and facilities-based wireless carriers, in addition to the prepaid wireless Lifeline providers which currently serve the majority of Lifeline customers in Indiana. However, in order for a competitive market to work, competing providers must be able to receive and have incentive to react to market signals. When it comes to the Lifeline program, the challenge is to have informed consumers that can easily switch to a new provider if they receive poor service. Lifeline providers need to receive feedback (both positive and negative) from their customers

² In the Matter of Telecommunications Carriers Eligible for Support, WC Docket No. 09-197, DA 10-2433, Released December 29, 2010

³ Para 121

⁴ Para 122

to spur improved service and products. The Indiana Commission has received some anecdotal information which suggests that this isn't always the case.

Although we currently have no system to track the number or types of calls we receive regarding Lifeline services, the IURC has experienced calls from Lifeline customers indicating the current Lifeline market may not be as approachable or responsive as it should be. Typical issues include:

- A customer was given a Lifeline phone, but does not know who their service provider is.
- A customer cannot get Lifeline service because they are told their household is already receiving the Lifeline subsidy, yet the caller insists this is not the case.
- A customer cannot reach their Lifeline provider to discontinue their Lifeline service or to resolve other complaints.

Indiana Commission staff estimates it receives on average four (4) calls per month pertaining to the aforementioned issues. It is also likely that the number of calls that come into our office is not an accurate reflection of the number of Lifeline customers experiencing problems. Lifeline customers having issues with their phone, often their only means of communication, may be unable to access assistance and provide feedback to Lifeline providers because they have no working phone. Additionally, customers who receive Lifeline phones from providers that are less thorough in providing customers information may also have difficulty cancelling their Lifeline services to switch to a competing provider.

We are concerned that Lifeline-only providers may not have the same incentive to provide a standard level of service as a typical communications service provider, because the Lifeline-only provider is paid by the federal universal service fund as opposed to the Lifeline customer. If the measures taken by the FCC to avoid duplication and other forms of waste fraud and abuse are not working with a high degree of accuracy, Lifeline-only providers may not be getting the proper signals to improve services.

b. Suggestions for How the FCC Can Refine the ETC Designation Process

The FCC expresses concern in the FNPRM⁵ that some providers are unwilling to become ETCs or have relinquished their ETC designations because of burdensome obligations. The Indiana Commission recommends that the FCC encourage states to review and streamline their ETC designation process and reduce or eliminate any compliance reporting requirements that are no longer necessary or duplicative of federal requirements. Our commission does not recommend that the FCC mandate a one-size-fits-all process.

It should be noted that the FCC already took meaningful steps to make it easier for Lifeline-only providers to enter the market in the 2012 *Lifeline Reform and Modernization*

⁵ Para. 123

Order. First, the FCC granted blanket forbearance from the requirement that a Lifeline-only ETC be a facilities-based provider, as long as the applicant had a compliance plan approved by the FCC.⁶ Additionally, the FCC clarified that a five-year service quality improvement plan was not necessary for Lifeline-only ETCs.⁷ Finally, on April 15, 2013, the FCC granted forbearance for Lifeline-only ETCs from section 214 (e)(5) of the Communications Act of 1934, as amended, and section 54.207(b) of the FCC's rules, relieving them of the obligation that the service area of the competitive ETC conform to the service area of any rural telephone company serving the same area.⁸

When prepaid wireless Lifeline-only ETCs first began petitioning the IURC in 2009, there were questions to be resolved, because Lifeline-only ETCs posed new considerations and challenges when using rules largely developed around the wireline model. Since the 2012 *Lifeline Reform and Modernization Order* and since the FCC has resolved service area requirements that were not easily applied to Lifeline-only ETCs, the process has become more straightforward. In addition, to provide further guidance the Indiana Commission issued a General Administrative Order (GAO 2013-2) to inform prospective ETC petitioners of IURC filing requirements.

After the FCC resolved policy questions and created reporting requirements specifically tailored to Lifeline-only ETCs, questions from the Indiana Commission and from Interveners in the ETC petition process were reduced. ETC petitioners no longer need to provide evidence that they use their own network facilities to provide the supported services. ETC petitioners no longer need to demonstrate they will serve rural ILEC study areas in their entirety. Most of the reporting requirements in the Indiana Commission's ETCs Designation Orders remind the designated ETC of federal compliance reporting requirements that require a copy to the relevant state commission. Examples of such requirements are annual reporting requirements in 47 C.F.R. 54.422 (c) and annual certification requirements in 47 C.F.R. 54.416(b)

We have seen encouraging evidence that the Lifeline participation rate is increasing in Indiana. In 2009 and years prior, many were concerned with estimates that indicated Indiana's participation rate among eligible subscribers was below ten percent.⁹ However as new Lifeline-only ETCs were approved beginning in 2010, Lifeline subscribership numbers increased substantially. In a presentation before the Communications & Technology Subcommittee, Energy & Commerce Committee and United States House of Representatives, Billy Jack Gregg presented a report and an analysis of Lifeline trends across the country. A state level comparison

⁶ Para. 379

⁷ Para. 386

⁸ FCC 13-44

⁹ 2009 Lifeline Participation Rates by State, Universal Service Administrative Corporation

of Lifeline subscribership numbers between 2010 and 2013 indicates Lifeline subscribership increased by 136,000.¹⁰

Indiana agrees that the ETC designation process should not be overly burdensome for Lifeline-only ETCs and designation criteria should directly reflect attributes that the carrier needs to provide Lifeline service. However, we also believe it is important that a Lifeline-only provider understand state laws and requirements and be responsive to state commission inquiries that are sometimes necessary due to complaints from customers or questions from state legislators. An ETC applicant should first be certified to provide the services for which they seek universal service support. An ETC should be compliant with state rules and meet the same obligations as required of other communications service providers in the state. Lifeline-only providers should contribute to all applicable public interest funds, such as state universal service funds, telecommunications relay funds for speech and hearing impaired individuals, and 911 funds. If these requirements are not enforced, the result will be Lifeline-only providers not only benefiting from a federal subsidy, but also receiving an unfair advantage over unsubsidized competitors.

Lifeline-only providers with the ability to provide a competitive service should be able to define their service territory and explain how it will be served. Those that are solely wireless resellers or Mobile Virtual Network Operators (“MVNOs”), should be able to explain what facilities-based provider(s) they use to cover the area. This is necessary so that state 911 administrators know who is providing 911 service in the state and where.

Due to the fact that MVNOs can enter a state market with few to no employees or oversight and limited state specific knowledge, the Indiana Commission believes that ETCs should demonstrate their technical and financial capability as determined in 2012 in the *Lifeline Reform and Modernization Order*:

“Among the relevant considerations for such a showing would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action of ETC revocation proceedings in any state.”¹¹

If these requirements are difficult for a Lifeline-only provider, other due diligence requirements necessary for Lifeline providers, including those associated with protecting customers’ private information, may be difficult for the company as well.

¹⁰ *Options for managing Growth in the Federal Low-income Fund for Telecommunications*, Testimony of Billy Jack Gregg, Universal Consulting, April 25, 2013.

¹¹ Para. 388

c. Proposal for Process and Mechanism Separate from the ETC Designation Process

The FCC seeks comment in the FNPRM¹² on the possibility of creating a process for providers to participate in Lifeline that is separate from the ETC designation process. The FCC asks if it should use a process similar to the E-rate or rural health care programs. The Indiana Commission urges the FCC not to create a process separate from the ETC designation process for the Lifeline program.

State commissions are natural stakeholders in the Lifeline program and the FCC should continue to use the ETC designation process to work in partnership with state commissions to implement the program. Lifeline providers must provide voice grade access to the public switched network to low-income consumers. Lifeline funds are dispersed to communications service providers offering a service typically considered to be a public utility service and associated with, at least in part, intrastate jurisdiction. Conversely, the E-rate program and rural health care program distributes funds to schools and libraries or rural health care providers, which are not typically under the oversight of state utility commissions.

A state certification would not be a good indicator that a communications service provider has the ability to provide voice grade access to the public switched network. Indiana State statute requires a streamlined certification process for all communications service providers, including, Internet Service Providers, Toll Resellers, Video Service Providers, in addition to facilities-based local exchange carriers and wireless providers.¹³

In Indiana, there is a distinct difference between the process to be certified to provide communications services and the ETC designation process. In Indiana, retail rates for communications services have been deregulated. To encourage competition within the state, Indiana has streamlined the approval process to become authorized to provide communications services. In order for a communications service provider to become authorized they must complete a concise six page application that is verified for completeness and accuracy. Depending on the type of communications service a provider wishes to offer, the information may be as limited to the applicant's contact information, a signed affidavit, and a certificate of authorization to do business in Indiana from the Secretary of State. This "light touch" approach is based upon the concept that a competitive communications service provider that does not provide adequate service will lose customers and eventually exit the market.

¹² Para. 132

¹³ Indiana Code 8-1-32.5

However, for ETC designations, there is more scrutiny because the carrier is seeking access to public funds and dealing with sensitive information from low-income consumers. We are concerned about what role state commissions would have if a new process is created. It is important for State Commissions to be able to protect citizens in this arena that is so susceptible to waste, fraud and abuse. Many times the state is in a better position to determine what companies are best suited to provide Lifeline services within their jurisdiction. Additionally, if an ETC does not use the public funds as intended, this can cause negative public perception of government programs, and spur questions to the Indiana Commission from the public and state legislators. We believe that states have an important role in discouraging waste, fraud, and abuse of the Lifeline program. We believe the current ETC designation process is a good process to determine what companies have the technical and financial capabilities to provide Lifeline services.

IV. Summary

Indiana agrees with the FCC that healthy competition among Lifeline providers is an important goal. The FCC should encourage states to review and streamline their ETC designation processes with the goal of removing unnecessary barriers for prospective Lifeline providers, but the FCC should not mandate a one-size-fits-all ETC designation process. The FCC should not separate the process of determining which companies are qualified to participate in the Lifeline program from the ETC designation process.

V. Conclusion

The Indiana Commission appreciates the opportunity to comment and we hope the FCC finds this background on Indiana Lifeline policies helpful in formulating efficient ETC designation policies and further reforms to the Lifeline program. The Indiana Commission looks forward to continuing the coordinated state-federal partnership with the FCC.

Respectfully submitted this 31st day of August, 2015


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