

April 5, 2012

Via Email

Nicholas A. Fraser
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: OMB Control No. 3060-0819 – PRA Comments on FCC Lifeline Rules

Dear Mr. Fraser:

CTIA–The Wireless Association® (“CTIA”) offers the following comments on the emergency request from the Federal Communications Commission (“FCC” or “Commission”) for Office of Management and Budget (“OMB”) approval, under the Paperwork Reduction Act (“PRA”), of certain new Lifeline regulations under the above control number.¹

I. INTRODUCTION AND SUMMARY

Many of the new rules in the Order will improve the efficiency and effectiveness of the Lifeline program, and CTIA strongly supports them. However, certain discrete new rules are both unreasonably burdensome and unlikely to achieve the Commission’s goals. Specifically, CTIA urges OMB not to approve the following new rules:

- The rule requiring verification of Lifeline customers’ temporary addresses every three months.
- The biennial outside audit requirement for larger Lifeline recipients.
- The extensive disclosures required for all Lifeline marketing materials, regardless of medium.

¹ The FCC adopted the rules in *Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (the “Order”). *See also* “Information Collection Being Submitted to the Office of Management and Budget (OMB) for Emergency Review and Approval,” OMB Control No. 3060-0819, Public Notice, 77 Fed. Reg. 13319 (2012).

These elements of the information collection do not meet the requirements of the PRA because they will not “have practical utility” and thus are not “necessary for the proper performance of the functions of the Commission.”² With respect to these regulations, the FCC’s burden estimates are also grossly inaccurate.³ Eliminating these discrete requirements will help “minimize the burden of the collection of information” required by the Commission’s Lifeline reforms, in furtherance of the PRA’s objectives.⁴ As explained in these comments, these proposed information collections should not be approved.

In general, CTIA concurs with the PRA comments of General Communications Inc. (“GCI”) on these topics.⁵ As GCI points out, the considerable burdens that would flow from the regulations discussed in this letter would come on top of the already unprecedented regulatory burdens imposed on telecommunications carriers providing Lifeline service – which will amount to more than half of the total paperwork burden of *all* FCC regulations and two-thirds of the regulatory costs of *all* FCC regulations.⁶ Thus, OMB should be particularly wary about approving new paperwork burdens that are excessive and unnecessary.⁷

² 44 U.S.C. §§ 3506(c)(2)(A)(i), 3506(c)(3)(A), 3508.

³ 44 U.S.C. § 3506(c)(2)(A)(ii).

⁴ 44 U.S.C. § 3506(c)(2)(A)(iv). *See also id.* at § 3506(c)(3)(C).

⁵ Letter from John T. Nakahata, *et al.*, GCI, to Nicholas A. Fraser, OMB, OMB Control No. 3060-0819 (filed March 23, 2012) (“GCI PRA Comments”).

⁶ *Id.* at 6.

⁷ “[Our regulatory system] must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative.” **Executive Order 13563 of January 18, 2011, Improving Regulation and Regulatory Review**, <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

II. THE RULE REQUIRING VERIFICATION OF TEMPORARY ADDRESSES EVERY THREE MONTHS IS UNNECESSARY AND ENORMOUSLY BURDENSOME

The Commission imposes numerous new information collection and retention requirements on carriers in connection with its new rule restricting Lifeline support to a single connection per eligible household (the “one-per-household rule”). To enforce the rule, carriers will be required to collect a large amount of information about Lifeline subscribers which will be fed into a centralized database to identify households receiving duplicate benefits. This information includes subscribers’ full names, addresses, dates of birth, and the last four digits of their social security numbers.⁸ The rules also require carriers to obtain certifications from Lifeline subscribers that they understand the one-per-household rule and will inform the carrier of any change of address within 30 days.⁹ Carriers must verify this information and renew these certifications from every Lifeline subscriber every year.¹⁰

Nevertheless, the new rules also require Lifeline providers to identify and track any subscribers whose addresses are “temporary,” and re-verify their addresses every three months.¹¹ It is unclear, however, that this re-verification requirement would represent a significant improvement over the numerous other measures targeted at preventing Lifeline subscribers from receiving more than one benefit per household, including the information collection and initial

⁸ Order at App. A, 47 C.F.R. § 54.410(d)(2).

⁹ *Id.* at § 54.410(d)(3)(iii).

¹⁰ *Id.* at § 54.410(f).

¹¹ *Id.* at § 54.410(d)(3)(iv).

and annual certifications described above, sufficient to justify the additional burdens in the temporary address re-verification rule.

As GCI points out, the temporary address re-verification requirement seems to be directed at an exceedingly narrow case of potential ineligibility. The only way that a change of address by a Lifeline subscriber with a temporary address could result in a violation of the one-per-household rule is if the Lifeline subscriber moved into the same residence as another Lifeline subscriber *and* became part of the same “household” – that is, became part of the same “economic unit” by sharing both expenses and income, *and* did so before the next annual subscriber certification.¹² While not inconceivable, GCI posits that this outcome is at best unlikely – and certainly the Commission has not proffered evidence to suggest that it is sufficiently probable to justify the enormous burden that the re-certification rule imposes.

CGI also points out that the Commission has failed to demonstrate that such an outcome is probable enough to justify the burdens imposed by the re-verification requirement.¹³ In other words, the Commission has failed to estimate the incremental benefit of the temporary address re-verification requirement, which seems necessary for the Commission to determine that the practical utility of the new requirement is significant with regard to preventing Lifeline subscribers from receiving more than one benefit per household.

On the other side of the cost-benefit analysis, the re-verification requirements are overly burdensome. As GCI points out, carriers will have to (1) identify temporary addresses (a term the Order does not define), (2) develop and deploy systems to track subscribers with temporary

¹² GCI PRA Comments at 7-8.

¹³ *Id.* at 8–9.

addresses, (3) contact such subscribers every 90 days, and (perhaps most significantly) (4) follow up “when, as is often the case, the impoverished and marginalized population served by this program does not respond to initial queries.”¹⁴

The end result of all this effort? Every 90 days, the soldier, the student, the homeless person – any number of people in long-term yet impermanent living situations – must file an address certification that duplicates the one filed 90 days before, and ETCs must reach out to request the paperwork and attempt to track down others who, living at the margins of society, do not reliably respond.¹⁵

As GCI points out, the FCC’s estimate that these re-verifications will take carriers only 15 minutes per subscriber is wildly optimistic and not supported by carriers’ experience.¹⁶ Many of these customers will not respond to initial inquiries, and carriers will expend resources on repeated attempts through multiple channels to reach the subscriber – who otherwise will lose the Lifeline discount.

These repeated re-certifications will be repetitive of the initial certification that the customers provided, repetitive of the annual verification requirement, and repetitive of the customers’ certification that they will inform the carrier within 30 days in the event of any change of address. The Commission makes no attempt to explain how the re-verification requirement will result in a significant improvement over these other required certifications that is sufficient enough to justify the burdens imposed by the requirement. Consequently, the Commission has failed to satisfy the requirements of the PRA.

¹⁴ *Id.* at 11.

¹⁵ *Id.*

¹⁶ *Id.*

In short, the requirement that carriers re-verify the addresses every 90 days of any Lifeline subscriber with a “temporary” address is redundant, unnecessary, and overly burdensome. As pointed out by GCI and described above, in its request for emergency approval, the Commission fails to identify the most significant aspects of the burden, underestimates the burdens it identifies, and fails to show that the significant costs imposed by the requirements would result in more than a negligible benefit. Thus, the rule does not satisfy the requirements of the PRA and should not be approved.

III. THE BIENNIAL OUTSIDE AUDIT REQUIREMENT IS EXPENSIVE OVERKILL

The Commission underestimates the cost and burden of the biennial outside audit requirement and fails to account for duplicative audit procedures. As such, it should not be approved, or at minimum should be modified to address these unnecessary and burdensome duplications.

The FCC severely underestimates the cost and burden of requiring carriers that receive \$5 million or more annually in Lifeline support, on a holding company basis, to commission a biennial third-party audit of the carrier’s overall compliance with program requirements.¹⁷ The Commission’s estimate is based on 25 hours per audit at \$40 per hour. By comparison, as GCI points out, 2010 data suggests that financial audits of public companies require over 12,500 hours, and private companies over 3,000 hours, and auditors’ fees range from \$185 to \$218 per hour.¹⁸ The FCC’s estimate is thus a small fraction of the actual cost and burden that the rule is

¹⁷ Order at App. A, 47 C.F.R. § 54.420(a).

¹⁸ GCI PRA Comments at 12-13.

likely to impose. The FCC's estimates also do not include any estimate of fees for a legal opinion, which the rule seems to require, given that financial auditors may not be able to "assess the company's overall compliance with [the Lifeline] rules."¹⁹ Thus, the burden and expense estimates in the FCC's PRA submission are inadequate. The FCC should be required to submit a realistic cost and burden estimate, and OMB should consider whether the FCC has justified that burden before deciding whether to approve the rule.

The required audits also are unnecessary, because there are already multiple reviewers of the "overall compliance" of large recipients of Lifeline support. Large recipients of Lifeline support will be corporations that are otherwise required to submit to annual financial audits, which, as CGI points out, will include Lifeline revenues whenever material.²⁰ All Lifeline recipients also will face periodic random and for-cause audits by USAC, which act as a deterrent to wrongdoing. And they face investigation and penalty from the FCC if they violate program rules. As a result, the biennial outside audit requirement is not "necessary" to achieve the Commission's goals and will have no "practical utility." As a result, the rule should not be approved.

At minimum, OMB should not approve the requirement that the outside auditor submit a "draft" audit report to the FCC and USAC within 60 days of completion of the audit work but before the audit report is finalized.²¹ There is no question that this requirement would be "unnecessarily duplicative" because it would by definition repeat the information contained in

¹⁹ Order at App. A, 47 C.F.R. § 54.420(a).

²⁰ CGI Comments at 14.

²¹ Order at App. A, 47 C.F.R. § 54.420(a)(4).

the final audit report. It also would lack “practical utility” because a draft report is by definition incomplete and/or tentative – there is no value in providing it to the Commission or USAC.

IV. THE RULE REQUIRES EXCESSIVE AND INFEASIBLE MARKETING DISCLOSURES

The new rules require that carriers provide lengthy explanations of the program requirements in “all marketing materials related to the supported service,” made in “all media, including but not limited to print, audio, video, Internet (including email, web, and social networking media), and outdoor signage.”²² The disclosures must:

[E]xplain in clear, easily understood language ... that the offering is a Lifeline-supported service; that only eligible consumers may enroll in the program; what documentation is necessary for enrollment [which, as discussed above, is extensive²³]; and that the program is limited to one benefit per household, consisting of either wireline or wireless service. We also require ETCs to explain that Lifeline is a government benefit program, and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program.²⁴

As GCI points out, such lengthy disclosures are “simply unworkable for certain types of marketing material,” particularly radio spots and outdoor signage.²⁵ The required disclosures, for example, are so lengthy that they would take up the entirety of a 30-second television or radio ad. Even in other, less brief advertising media, the required disclosures would dominate the ad to an inordinate degree.

²² *Id.* § 54.405(c).

²³ *See supra* Section II.

²⁴ Order at ¶ 275.

²⁵ GCI PRA Comments at 16.

The requirement to include all of this detailed information in *all* advertising is unnecessary and duplicative because the same disclosures are required in all Lifeline application materials.²⁶ Thus, no consumers will be able to sign up for Lifeline without receiving the required disclosures. Moreover, there is an obvious less burdensome alternative: In advertising media where it would be infeasible to provide the full disclosure, carriers should be allowed to provide a briefer disclosure indicating that certain rules and restrictions apply, and directing the consumer to an external source (such as the carrier's website or toll-free number) for details.

OMB should direct the Commission to reduce the scope of the required advertising disclosures. The rule should not be approved in its current form.

²⁶ Order at App. A, 47 C.F.R. § 54.504(c).

CONCLUSION

While there are many meritorious elements of the FCC's new Lifeline rules, the temporary address re-verification rule, biennial outside audit requirement, and lengthy advertising and marketing disclosure obligations are clearly inconsistent with the provisions of the PRA. As such, they should not be approved, on either an emergency or permanent basis.

Respectfully submitted,

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