



Cathy Carpino
General Attorney

AT&T Services, Inc.
1120 20th Street NW Ste 1000
Washington, D.C. 20036
Phone (202)457-3046
Fax (202)457-3073
E-mail: cathy.carpino@att.com

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Via E-mail

Nicholas A. Fraser
Office of Information and Regulatory Affairs
Office of Management and Budget
[Nicholas A. Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov)

Judith B. Herman
Office of Managing Director
Federal Communications Commission
Judith.B.Herman@fcc.gov
PRA@fcc.gov

Re: OMB Control No: 3060-0819

Dear Mr. Fraser and Ms. Herman:

AT&T Inc. (AT&T), on behalf of its operating affiliates that are eligible telecommunications carriers (ETCs), hereby submits these comments in opposition to aspects of the Federal Communications Commission's (FCC) request for Office of Management and Budget (OMB) approval of various information collection and reporting requirements spawned from its *Lifeline Reform Order*. See *Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, 12-33; CC Docket No. 96-45, FCC 12-11, Report and Order and Further Notice of Proposed Rulemaking (rel. Feb. 6, 2012) (*Lifeline Reform Order*). Specifically, AT&T opposes a number of information collection and reporting requirements contained in the FCC's proposed Form 555

(Annual Lifeline Eligible Telecommunications Carrier Certification Form) and the FCC's biennial third-party audit requirement.¹

A. Certain Fields in Proposed Form 555 Are Unnecessary and Should Not Be Given Retroactive Effect.

In its *Lifeline Reform Order*, the Commission amended its rules to require all ETCs to confirm annually the continued eligibility of all of their Lifeline subscribers. *See Lifeline Reform Order* at ¶¶ 129-48; 47 C.F.R. § 54.410(f). The FCC seeks OMB approval for Form 555, which ETCs are to use when they submit the results of their recertification efforts to the Commission, the Universal Service Administrative Company (USAC), and the relevant state or Tribal government (where applicable). *See* FCC Supporting Statement at 4. ETCs have until the end of 2012 to recertify all of their Lifeline customers of record as of June 1, 2012, and must report the results to USAC by January 31, 2012. *Lifeline Reform Order* at ¶ 130.

Perhaps like most other ETCs, in order to complete the daunting recertification task by the end of the year, AT&T commenced its recertification efforts months ago. It did so without any OMB-approved recertification form in effect. Based on the *Lifeline Reform Order* and the accompanying rule (47 C.F.R. § 54.410(f)), it was reasonable for an ETC to assume that it would have to report the number of Lifeline customers of record as of June 1, 2012, the number of Lifeline customers it successfully recertified, and the number of Lifeline customers that it de-

¹ We note that there is a typographical error in the FCC's Supporting Statement discussing revised marketing and outreach requirements that should be corrected prior to OMB approval. In the first sentence, the FCC states that ETCs are required to explain in all of their Lifeline marketing materials "what documentation is necessary for enrollment." FCC Supporting Statement, OMB Control No. 306-0819, at 5 (September 2012) (emphasis added), available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201207-3060-011 (FCC Supporting Statement). In an erratum issued earlier this year, the FCC made clear that "what" should be changed to "that." *See Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 *et al.*, Erratum, at # 63 (rel. May 16, 2012). It appears that the FCC neglected to make this correction in its Supporting Statement. On the other hand, if this is *not* a typographical error, AT&T strenuously opposes having to detail the dozen or more types of acceptable documentation in all of its marketing materials and requests that the OMB disapprove this requirement. *See Lifeline Reform Order* at ¶ 101 (providing a non-exhaustive list of the types of acceptable documentation).

enrolled.² The *Lifeline Reform Order* offers no guidance to ETCs on the specific data elements that they would have to report to USAC and the FCC. Instead, the order states simply that ETCs will have “to submit their aggregated re-certification data to USAC and the Commission by January 31, 2013.” *Lifeline Reform Order* at ¶ 148. Furthermore, by emphasizing that the data submission format should be such that it “minimize[s] the administrative burdens for compliance with the rules [the FCC] adopt[s] today,” the order offered no hint that the FCC would require ETCs to provide anything other than the number of Lifeline customers recertified and the number of Lifeline customers de-enrolled. *Id.* at n.385 (“This format should be such that data can be easily submitted to USAC by ETCs, states, and third-parties, as applicable, and to minimize the administrative burdens for compliance with the rules we adopt today.”). Unfortunately, the FCC’s proposed Form 555 requires much more detailed data – data for which there is no “practical utility”³ and data that an ETC is unlikely to have, particularly those ETCs that are well into their recertification efforts.

For example, Column F of proposed Form 555 requires ETCs to “[r]eport the number of subscribers . . . who responded and indicated that they are no longer eligible. Do not include in Column F any consumers who failed to respond to the ETC’s contact.” Proposed Form 555 at 7. Nowhere in the FCC Supporting Statement does the FCC explain why such information is necessary. While it may be of interest to the FCC to learn how many Lifeline customers returned a fully completed recertification form stating that they are ineligible, this information has no “actual . . . usefulness.” 5 C.F.R. § 1320.3(l). Whether an ineligible customer returns a recertification form indicating that the customer is ineligible or whether the ineligible customer

² For this reason, AT&T does not oppose providing the data requested in Columns A, B, C, D, E, G (albeit modified by removing Column F), I, J or K of proposed Form 555.

³ Prior to providing approval of an information collection, the OMB must determine “whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.” 44 U.S.C. § 3508.

simply opts not to return the form, the result is the same: that customer will be de-enrolled from the Lifeline program. Because the effect is the same – de-enrollment from the Lifeline program – there is no reason for the FCC to require ETCs to track the data required in Column F. The OMB should expect that many carriers did not anticipate having to collect this information and, as a result, have not. To require a carrier to collect this information retroactively would be extraordinarily burdensome. If the OMB allows Column F to become effective in 2012, it will require carriers like AT&T’s ETCs to sift back through hundreds of thousands of already processed recertification forms looking for a relatively small number of completed forms indicating that the subscriber is ineligible for Lifeline. Such a labor intensive review would be extremely costly for no benefit since these customers were subsequently de-enrolled in accordance with the FCC’s rules. For these reasons, AT&T respectfully requests that the OMB disapprove Column F as violating the Paperwork Reduction Act (PRA). 44 U.S.C. § 3501 *et seq.* In the alternative, and at the minimum, the OMB should not give Column F retroactive effect and, instead, make clear that it is only permitting Column F to go into effect next year.

Columns H and L require ETCs to report the number of subscribers who de-enrolled prior to the recertification attempt. *See* Proposed Form 555 at 2, 7-8. While not entirely clear from the proposed instructions,⁴ it appears that the FCC is requesting ETCs to report the number of Lifeline customers who were Lifeline customers of record as of June 1, 2012 but who de-enrolled from the program prior to the ETC attempting to recertify that customer. If true, AT&T must request that the OMB disapprove this information collection, too, as lacking any practical utility and failing to “minimize the paperwork burden” on respondents.⁵ AT&T’s ETCs do not

⁴ “Report the number of subscribers – of those contacted directly by the ETC in an attempt to re-certify eligibility – who de-enrolled from Lifeline prior to the ETC’s attempt to re-certify continued eligibility.” *Id.* at 7.

⁵ 44 U.S.C. § 3501(1).

have any easy ability to obtain this information and the FCC has offered no explanation for why such information is necessary.

Based on its understanding of the rules and the *Lifeline Reform Order*, AT&T's ETCs compiled a list of all Lifeline customers of record as of June 1, 2012. AT&T's ETCs are mailing or have mailed recertification forms to all of those customers except to those customers (1) who are in states where there is a state administrator performing the recertification effort; (2) whose continued eligibility AT&T's ETCs verified via a database, where available; or (3) who have discontinued service altogether. For example, if a Lifeline customer of record as of June 1, 2012 discontinued *Lifeline* service in July 2012 but continues to receive *non-Lifeline* service from AT&T on October 1, 2012, when that customer is scheduled to receive a recertification form, AT&T will mail that customer the recertification form. Only after that customer fails to return his form by the due date will an AT&T customer service representative go into the account to de-enroll that customer and notice that the customer already has been de-enrolled from Lifeline. AT&T has no idea how many customers fall into this category.⁶ Because this information collection is not in effect and ETCs cannot be compelled to collect it absent OMB approval, AT&T's customer service representatives have not been instructed to track it. As a result, AT&T's ETCs have no ability to populate Columns H and L short of checking every de-enrolled customer's account to find out when the Lifeline discount was removed.⁷ Such an onerous task is unwarranted, particularly since the FCC has never offered a justification for why this

⁶ It also is conceivable that such a customer will call AT&T's customer service to explain that he no longer receives Lifeline service from AT&T and to inquire whether he nonetheless needs to complete the form. Again, AT&T's customer service representatives have not been instructed to take note of any such customer calls for tracking and reporting purposes and it would be impossible to recreate retroactively such information.

⁷ For AT&T's wireless ETC affiliates, the customer service representative would look for the date that the customer's rate plan changed from a Lifeline rate plan to a non-Lifeline rate plan.

information is necessary. For these reasons, AT&T recommends that the OMB disapprove Columns H and L.

Finally, although we do not oppose the inclusion of Columns J and K, which request ETCs to report the number of customers determined to be ineligible and de-enrolled based on an ETC's review of an eligibility database, the FCC, USAC, and the OMB should expect many carriers, like AT&T's ETCs, to populate those fields with "0." In two of AT&T's wireline ETC states, ETCs have access to a database that will confirm whether a particular person participates in one or more qualifying public assistance programs (e.g., Supplemental Nutrition Assistance Program or SNAP). Because the databases in these two states are not comprehensive – that is, they do not provide eligibility information for *all* federal qualifying public assistance programs – if AT&T's ETCs do not see a particular customer in that database, they do not assume that the subscriber is not eligible for Lifeline. Rather, AT&T's ETCs will send that customer a recertification form to complete in the event the customer participates in some other qualifying public assistance program (e.g., Medicaid). Consistent with the proposed instructions, AT&T's ETCs will report that customer using Columns C, D, E, and/or G (albeit modified based on AT&T's comments above about proposed Column F), and will report "0" in Columns J and K. *See Proposed Form 555 at 7* ("If any of these subscribers are subsequently contacted directly by the ETC in an attempt to recertify eligibility, those subscribers should be listed in columns C through H as appropriate and *not in columns J or K.*"). If AT&T's understanding of how Columns J and K and Columns C, D, E, and modified G are supposed to operate is correct, then AT&T does not oppose the OMB approving Columns J and K of proposed Form 555.

B. Aspects of the Commission’s Biennial Third-Party Audit Requirement Are Unnecessary and Should Not Be Approved.

Petitions for reconsideration notwithstanding,⁸ the FCC seeks OMB approval of its biennial third-party audit requirement. *See* FCC Supporting Statement at 6, 13. While AT&T opposes this FCC rule (47 C.F.R. § 54.420(a)) as overbroad and unnecessary, it takes particular issue with the requirement that the third party auditor submit a draft audit report to the FCC and USAC. *See* 47 C.F.R. § 54.420(a)(4). To date, the FCC has never explained what “practical utility” there is of compelling auditors to share draft audit reports with it and USAC. By their very nature, draft audit reports are subject to review and revision. As USTelecom stated in its Petition for Reconsideration, requiring third-party auditors to disclose draft audit reports is “grossly unfair to providers that may not have a reasonable opportunity to refute proposed findings and correct auditor errors.” USTelecom Petition for Reconsideration at 9.⁹ Unlike a typical third-party financial audit, in which independent auditors are well-versed, third-party auditors are not accustomed to auditing a carrier’s compliance with the FCC’s Lifeline requirements. As a result, the FCC should expect to see draft audit findings that will be amended based on the carrier’s response. In other words, there can be no “actual . . . usefulness”¹⁰ to requiring the disclosure of draft audit reports and doing so certainly does not further the goal of “minimiz[ing] the paperwork burden for individuals, small businesses, . . . and other persons resulting from the collection of information by or for the Federal Government.” 44 U.S.C. § 3501(1). At a minimum, AT&T requests that the OMB disapprove the FCC’s revised audit

⁸ *See, e.g.*, General Communication, Inc. Petition for Reconsideration and Clarification, WC Docket Nos. 11-42 *et al.*, at 9-11 (filed April 2, 2012); USTelecom Association Petition for Reconsideration and Clarification, WC Docket Nos. 11-42 *et al.*, at 9-10 (filed April 2, 2012).

⁹ *See also* GCI Petition for Reconsideration at 11 (“A draft is by definition tentative, incomplete, subject to further review, not held out to invite reliance, and superseded by the final report. Moreover, draft audit reports can be misleading, because they may reflect tentative views based on an incomplete or incorrect understanding of the fact[s], processes, or the law.”).

¹⁰ 5 C.F.R. § 1320(l).

requirements insofar as they require independent auditors to disclose draft audit reports to the FCC and USAC.

Respectfully submitted,

/s/ Cathy Carpino
Cathy Carpino

cc: Kimberly Scardino (FCC) (via e-mail)