

LUKAS, NACE, GUTIERREZ & SACHS, LLP

8300 GREENSBORO DRIVE, SUITE 1200
MCLEAN, VIRGINIA 22102
703 584 8678 • 703 584 8696 FAX

WWW.FCCLAW.COM

RUSSELL D. LUKAS
DAVID L. NACE
THOMAS GUTIERREZ*
ELIZABETH R. SACHS*
DAVID A. LAFURIA
PAMELA L. GIST
TODD SLAMOWITZ*
BROOKS E. HARLOW*
TODD B. LANTOR*
STEVEN M. CHERNOFF*
KATHERINE PATSAS NEVITT*

CONSULTING ENGINEERS
ALI KUZEHKANANI
LEILA REZANAVAZ
—
OF COUNSEL
GEORGE L. LYON, JR.
LEONARD S. KOLSKY*
JOHN CIMKO*
J. K. HAGE III*
JOHN J. MCAVOY*
HON. GERALD S. MCGOWAN*
TAMARA DAVIS BROWN*
JEFFREY A. MITCHELL*
ROBERT S. KOPPEL*
MARC A. PAUL*
—

*NOT ADMITTED IN VA

703-584-8685

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By Electronic Mail

Nicholas A. Fraser
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th St., NW
Washington, DC 20503
Nicholas_A.Fraser@omb.eop.gov

Re: OMB Control Number: 3060-00819; WC Docket Nos. 12-23, 11-42, 03-109,
CC Docket No. 96-45

Dear Mr. Fraser:

Smith Bagley, Inc. (“SBI”), United States Cellular Corporation (“U.S. Cellular”), and PR Wireless Inc. d/b/a Open Mobile (“PR Wireless”) (collectively “Joint Commenters”) hereby submit the following comments on the revised request submitted by the Federal Communications Commission (“FCC” or “Commission”) to the Office of Management and Budget (“OMB”) for approval, under the Paperwork Reduction Act (“PRA”), of certain Commission regulations involving the “Lifeline” program that remain pending under the above control number.¹ Each party will be directly affected by two particular items: (1) requiring comprehensive biennial audits for only certain carriers offering Lifeline service and requiring those carriers to pay to conduct those audits; and (2) requiring all marketing materials – including audio and video spots – to contain lengthy disclosure statements.² As explained below, the Commission has failed to

¹ See *Information Collection Being Submitted to the Office of Management and Budget (OMB) for Emergency Review and Approval*, Notice and Request for Comments, 77 Fed. Reg. 52,718 (Aug. 30, 2012) (“Revised Request”); see also *FCC Supporting Statement* (Sep. 2012) (“Revised Supporting Statement”). SBI previously submitted comments to OMB in response to the Commission’s initial request. See Letter from SBI to Nicholas Fraser, Office of Information and Regulatory Affairs, OMB (Mar. 29, 2012) (“SBI Comments”); *Information Collection Being Submitted to the Office of Management and Budget (OMB) for Emergency Review and Approval*, Notice and Request for Comments, 77 Fed. Reg. 13,319 (Mar. 6, 2012) (“Emergency Request”); see also *FCC Supporting Statement* (Mar. 2012) (“Initial Supporting Statement”).

² SBI operates a commercial mobile wireless network in Arizona, New Mexico, Utah and Colorado. SBI has extensive wireless coverage throughout Native American lands, providing service to approximately 123,000

justify imposition of these requirements in light of the burdens they impose and given alternative methods available to achieve the expected benefits.

We also take this opportunity to express overall concerns regarding the actual costs of the previously approved requirement that companies annually recertify the eligibility of 100% of their Lifeline customer base. We offer concrete information demonstrating how the Commission both grossly underestimated the expected costs and overstated the expected benefits of this requirement. We submit that this information is material and warrants serious consideration before OMB determines whether to extend its approval of this requirement.

I. INTRODUCTION

Earlier this year, the Commission enacted a number of significant changes to the low-income or “Lifeline” program rules of the Universal Service Fund (“USF”) which were needed and overdue.³ Unfortunately, the manner in which these changes were implemented has imposed a staggering compliance burden on the industry. Indeed, the Commission reports the overall annual burden exceeds 24 million hours which, assuming a wage of \$40 per hour, imposes annual costs exceeding \$960 million. This is more than one dollar of compliance costs for every two dollars of support disbursed each year.⁴

In April 2012, in apparent response to PRA comments submitted by concerned parties including SBI, the Commission withdrew its request for OMB approval of several Lifeline requirements.⁵

customers, of which approximately 70,000 are Lifeline customers, many residing on Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo lands.

U.S. Cellular U.S. Cellular provides cellular services and Personal Communications Service in 44 Metropolitan Statistical Areas, 100 Rural Service Areas, one Major Trading Area, and numerous Basic Trading Areas throughout the Nation. U.S. Cellular’s subsidiaries and affiliates have received eligible telecommunications carrier (“ETC”) status and are currently receiving federal high-cost support in Illinois, Iowa, Kansas, Maine, Missouri, Nebraska, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Tennessee, Virginia, Washington, West Virginia, and Wisconsin.

PR Wireless PR Wireless is an ETC in Puerto Rico doing business under the Open Mobile brand. The company has been eligible for support from the High Cost and Low Income Programs of the federal USF since 2007. The company is a leader in utilizing federal USF support to make wireless telephone service accessible in rural, high-cost areas, and affordable to low-income citizen.

³ See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23 (rel. Feb. 6, 2012) (“Lifeline Order”).

⁴ For 2011, the administrator of the Lifeline program reported \$1.75 billion in program disbursements for 2011. See Universal Service Administrative Company (“USAC”), 2011 Annual Report, at 11 (Mar. 2012), available at http://www.usac.org/_res/documents/about/pdf/annual-reports/usac-annual-report-2011.pdf. Moreover, the Commission has apparently excluded substantial increased administrative costs for USAC in calculating the impact of these new rules. See *Revised Supporting Statement*, at 16 (noting “there will be minimal cost to the Federal government since [sic] an outside party [i.e., USAC] administers the program.”); see also 47 C.F.R. § 54.701(a) (designating USAC as administrator).

⁵ See *Notice of Office of Management and Budget Action*, OMB Control Number 3060-0819 (Apr. 13, 2012).

On August 30, 2012, the Commission submitted a revised request for PRA approval with respect to certain of those requirements.⁶ Joint Commenters contend that in two instances, the Commission still has not met its PRA burden:

- 1) Biennial audits that are to be self-funded; and
- 2) Inclusion of fine print regulatory disclosures in marketing materials.⁷

Regarding the biennial audit requirement, SBI and other commenters previously noted, among other things, that the Commission-estimated costs did not square with publicly available information concerning the historical cost of universal service program audits conducted by outside auditors and concerning the prevailing hourly cost for auditors with expertise to perform such audits.⁸

In revising its biennial audit cost estimates, the Commission made a twenty-five-fold increase in the expected cost of an audit, from \$2,000 to \$50,000.⁹ Unfortunately, there remains reason to doubt the reliability of this new cost estimate. In addition, the Commission has failed to offer any justification for why eligible telecommunications carriers (“ETCs”) should bear these costs rather than the Lifeline administrator, USAC.

Regarding the required advertising disclosures, commenters including SBI previously noted that the Commission failed to estimate the burden of the marketing disclosures and that, in any event, the disclosure requirements were redundant in light of identical disclosures the rules already required carriers to make at the time of enrollment.¹⁰ In the *Revised Supporting Statement*, the Commission now estimates it will cost about 30 hours per year for an ETC to meet this requirement, for a total annual cost of about \$1.1 million for all affected ETCs. The Commission offers little support for its estimate of costs which, for reasons discussed below, are likely much higher.

⁶ As of this writing, the Commission has not sent a revised request with respect to the rule requiring ETCs to verify temporary addresses every 90 days.

⁷ This requirement was apparently not included in the Commission’s original request for OMB approval, but it was the subject of comments by multiple affected parties.

⁸ See *SBI Comments*, at 3-5 (noting publicly reported historical per-audit costs for USF audits exceeding \$59,000 rather than the \$2000 estimate offered by the Commission); *Comments of General Communication Inc. (“GCI”)*, In re OMB Control Number: 3060-0819; WC Docket Nos. 12-23, 11-42, 03-109, CC Docket No. 96-45, at 12-15 (Mar 23, 2012) (“GCI Comments”) (noting hourly fees averaging about \$200 rather than \$40 suggested by the Commission).

⁹ See *Initial Supporting Statement*, at 12-13; *Revised Supporting Statement*, at 13.

¹⁰ See *GCI Comments*, at 15-18; *SBI Comments* at 5.

A. The Commission Continues to Understate the Expected Cost of the Biennial Audit Requirement and Fails to Justify Imposing those Costs on ETCs rather than on USAC

In addition to the standard programmatic audits of all participating ETCs, the Commission adopted a biennial audit requirement requiring ETCs receiving \$5 million or more annually in Lifeline support (in the aggregate and on a holding company basis) to also pay for a third-party audit to “assess . . . overall compliance with the program's requirements.”¹¹ At the outset, we note that this new biennial audit requirement is being layered onto an already comprehensive compliance oversight scheme that annually includes dozens of compliance audits, targeted risk based audits, 600 Payment Quality Assurance (“PQA”) reviews, and an undisclosed number of “in-depth validations” (“IDVs”) of the Lifeline program – all presently being conducted by USAC.¹² Without having assessed the costs and benefits of this 2010 oversight program, the Commission is now layering a substantial biennial audit requirement on certain carriers. As we explain further below, the new audit requirement remains essentially of unknown cost and scope. We respectfully submit that, under the totality of these circumstances, imposition of biennial audits at this time will be overkill.

In recognition of the biennial audit cost concerns raised previously by SBI and GCI, the Commission has raised its estimated cost for each biennial audit from \$2000 to \$50,000 (for an annual cost of \$25,000 per affected ETC). While the new estimate is closer to the historical cost for USF audits performed by outside auditors as reported by USAC,¹³ the new estimate fails to recognize that the biennial Lifeline audit is unprecedented in scope and thus will be much more costly than any prior Lifeline or general USF audit. As the Commission explained in the Lifeline Order, the new audits will be corporate-wide, potentially encompassing Lifeline operations across the country and multiple corporate holding companies:

Rather than performing an audit at the individual study area level, we expect [the new biennial] audits to focus on the company's overall compliance program and internal controls regarding Commission requirements as implemented on a nationwide basis.¹⁴

¹¹ *Lifeline Order*, at ¶ 291, Appendix A, Rule 54.420(a).

¹² See Letter from Steven Van Roekel, Managing Director, FCC, to Scott Barash, Acting Chief Executive Officer, USAC (Feb. 12, 2010), available at <http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf> (directing USAC to perform comprehensive annual program of audits and PQAs for the Low Income (*i.e.*, Lifeline) USF program); *Lifeline Order*, at ¶¶ 182, 211 (explaining scope and expansion of USAC IDV process to additional states beginning in 2012).

¹³ See *SBI Comments*, at n.8 (noting USAC's reporting of an average cost of \$58,000 for previous rounds of USF audits performed by independent auditors).

¹⁴ See *Lifeline Order*, at ¶ 292.

The new biennial audit requirement that we adopt today is focused on the corporate-wide compliance program, rather than carrier activity in a particular study area.¹⁵

As the Commission acknowledges, USF audits have historically been performed at the “study area” level – which is a discrete geographic area within a single state in which a carrier has been designated as an ETC. Thus, USAC’s historical audit costs are based on the limited geographic scope of these audits – not the nationwide holding company audits now being proposed. U.S. Cellular, for example, has 18 different study areas across the country. An audit comprising this many separate areas would be vastly greater in scope than any Lifeline audit USAC has undertaken previously. The Commission’s current cost estimate is based on 250 hours of work – or a team of three auditors working for two weeks. Given the nationwide scope of a large carrier’s operations, this is not a credible time estimate.¹⁶

In addition, the Commission cost estimate continues to reflect only the cost of the auditors themselves, and thus excludes the time company staff will spend working with the auditors, complying with information requests, and responding to potential audit findings. As was shown with previous rounds of USAC audits, these company staff costs are substantial, often exceeding \$20,000.¹⁷

Just as problematic as the underestimation of costs, however, is the decision to impose these costs on companies receiving \$5 million or more in annual Lifeline program support rather than on USAC. Under long-standing Commission rules, USAC has the authority and obligation to conduct audits of USF beneficiaries including carriers receiving Lifeline support.¹⁸ USAC has always borne the costs of doing so. If OMB permits the Commission to move forward with the biennial audit requirement, having USAC conduct the audits will obviously be less burdensome for ETCs subject to the requirement. As the Commission itself asserts, costs incurred by USAC

¹⁵ See *id.* at ¶ 295; see also *id.* at ¶ 296 (implementing new corporate holding company and doing-business-as reporting requirements).

¹⁶ In addition, as SBI noted previously, Lifeline rules are now substantially more complex than when previous audits were conducted. See *SBI Comments* at 4 (noting Lifeline Order is 299 pages long and includes 31 pages of new program rules). Even for carriers without nationwide operations, an audit of this scope is likely to take much more than two weeks to complete.

¹⁷ See Letter from Jonathan Banks, Senior Vice President, Law and Policy, United States Telecom Association and Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA – The Wireless Association, to Acting FCC Chairman Michael J. Copps and FCC Commissioners Robert J. McDowell and Jonathan L. Adelstein in FCC WC Docket No. 05-195 (April 24, 2009) at 4 (noting average cost of \$20,000 to USF beneficiaries in complying with USAC High Cost program audits) (citing USAC Analysis of the FCC Office of Inspector General 2008 Reports on the USF at n.9).

¹⁸ See 47 C.F.R. § 54.707; see also Memorandum of Understanding between the Federal Communications Commission and the Universal Service Administrative Company, at 11-12 (“MOU”) (requiring USAC to “implement a comprehensive audit program to ensure that USF monies are used for their intended purpose”), available at <http://transition.fcc.gov/omd/usac-mou.pdf>.

should not be considered in the PRA analysis because they are not borne by the Federal government.¹⁹

Indeed, the Commission should not be allowed to have it both ways: if USAC administrative costs count for purposes of the PRA analysis, then the Commission has failed to quantify them;²⁰ if USAC administrative costs don't count, then having USAC conduct these audits – as it always has – will clearly be less burdensome for affected ETCs. Moreover, as SBI pointed out previously, it is more efficient on a cost-per-disbursed-dollar basis for USAC to audit large ETCs than small ones. For example, USAC spending \$100,000 to audit \$5 million in annual Lifeline support is less costly per dollar of support than USAC spending \$10,000 to audit \$50,000 in annual Lifeline support (\$1 cost to audit \$50 program dollars vs. \$1 cost to audit \$5 program dollars). Thus, it cannot be said that large ETCs impose disproportionate compliance costs on USAC – in fact, the opposite is true.

In sum, the Commission's biennial audit requirement is redundant given the comprehensive audit and oversight program implemented in 2010. In addition, the Commission's revised biennial audit cost estimates remain inaccurate, and the Commission has affirmatively chosen to impose this burden on affected ETCs when a clearly less burdensome alternative – having USAC perform the audits – is available. Accordingly, OMB should not approve the Commission's request to approve the biennial audit requirement.

B. The Commission Dramatically Understates the Expected Costs of Requiring Disclosures on Advertising

The Commission's new advertising disclosure rule requires every type of advertisement – print, radio, video, billboards, Internet (including social media)²¹ – to “explain 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; and that the program is limited to one benefit per household, consisting of either wireline or wireless service.”²² All advertisements must also warn 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.”²³

¹⁹ See *Revised Supporting Statement*, at 16 (“There will be few, if any costs to the Commission because notice and enforcement requirements are already part of Commission duties. Moreover, there will be minimal cost to the Federal government since [sic] [USAC] administers the program.”).

²⁰ These costs are likely substantial. According to USAC's public filings with the FCC, after remaining relatively stable for many years, annual costs to administer the Low Income program have doubled since 2010. See USAC Quarterly FCC Filings, Appendix M01, at <http://www.usac.org/about/tools/fcc/filings/default.aspx> (showing Lifeline program budgeted costs, excluding audit costs, increasing from about \$4 million annually in 2010 to over \$8 million in 2012).

²¹ See *Lifeline Order*, at ¶ 275.

²² *Id.*

²³ *Id.*

The Commission's *Revised Supporting Statement* includes for the first time a cost estimate to comply with the marketing disclosure rule: 30.25 hours per ETC per year. Joint Commenters object to the requirement based on utility, practicality, and cost. Regarding overall utility, as GCI previously observed, because of the extensive subscriber certifications that are now required at the time of Lifeline enrollment and annually thereafter, the additional benefit of these advertising disclosures will be very limited.²⁴

As to practicality, while the exact wording is not specified, the required disclosures are lengthy and thus will be problematic for some mediums of advertising. Considering the impact of the new requirement on broadcast advertising illustrates both the impracticality and the inaccuracy of the cost estimate. For example, a substantial part of a 30-second television or radio spot will be taken up by the required disclosures. If the disclosures took 15 seconds to recite (an optimistic estimate), each time a spot runs represents cost that is not captured in the above time estimate. The required disclosures would be similarly impractical for other types of marketing materials. For example, small print is effectively useless on billboards, and the volume of disclosures would essentially prohibit ETCs from sending information about Lifeline via text message or Twitter.

Setting aside the problems noted above, the volume and variety of potential advertisements that will have to be revised and reworked to include the required disclosures calls into question the estimate of 30.25 hours of effort per year. Joint Commenters understand that accurately educating the public about the Lifeline program is an important facet of program integrity and would be open to a modified version of this requirement – for example, requiring reference to the “federal Lifeline program” in all advertisements.²⁵ But requiring fine print disclosures in all manner of marketing materials, as proposed by the Commission, represents micromanagement which will impose great cost with little resulting benefit.

C. The Commission Dramatically Understated the Estimated Costs of Annual Subscriber Recertification

The Commission's new recertification rules adopted in its *Lifeline Order*, 47 C.F.R. section 54.410, require carriers to “recertify the eligibility of their Lifeline subscriber base as of June 1, 2012 by the end of 2012 and report the results to USAC by January 31, 2013.”²⁶ Where an eligibility database is not available, a carrier “must re-certify the continued eligibility of all of its subscribers by contacting them . . . specifically, all such ETCs must obtain from each Lifeline subscriber by the end of 2012 a re-certification form that contains each of the required certifications”²⁷ In order to implement the recertification requirement, the Commission

²⁴ See *GCI Comments*, at 17.

²⁵ Note these advertising disclosures would have no impact on the purveyors of third-party internet websites such as www.freegovernmentcellphones.net (last checked Sep. 28, 2012) that apparently use links to Lifeline providers to drive web traffic.

²⁶ *Lifeline Order*, at ¶ 130.

²⁷ *Id.*; see also 47 C.F.R. §54.410(d). The nine required certifications are as follows:

estimated costs to affected ETCs to be \$413 million (excludes the \$6.3 million in estimated costs to subscribers themselves). Dividing by the 16.1 million Lifeline subscribers, this comes out to an expected annual compliance cost of almost \$26 per subscriber.

SBI's experience shows the extent to which the Commission appears to have underestimated these costs and dramatically overestimated the benefits. With about 72,000 Lifeline customers, using the Commission's estimates, SBI should expect compliance costs of almost \$1.847 million for the recertification process alone – itself a staggering sum. In reality, in order to reach out to all of its 72,000 Lifeline customers by December 31, 2012, SBI has determined that its costs will be significantly greater. Specifically, SBI has determined it will need the following additional resources over and above current levels:

- 80 in-house customer service representatives and store agents to manage customer re-certifications via telephone and in stores, plus 56 additional field representatives to go door-to-door. Estimated salaries for these workers over a 21-week period needed to complete the task total \$1.5 million.
- Estimated costs of travel, fuel, lodging, food and incidental expenses for field team total \$648,000.

(i) The subscriber meets the income-based or program-based eligibility criteria for receiving Lifeline, provided in § 54.409;

(ii) The subscriber will notify the carrier within 30 days if for any reason he or she no longer satisfies the criteria for receiving Lifeline including, as relevant, if the subscriber no longer meets the income-based or program-based criteria for receiving Lifeline support, the subscriber is receiving more than one Lifeline benefit, or another member of the subscriber's household is receiving a Lifeline benefit;

(iii) If the subscriber is seeking to qualify for Lifeline as an eligible resident of Tribal lands, he or she lives on Tribal lands, as defined in 54.400(e);

(iv) If the subscriber moves to a new address, he or she will provide that new address to the eligible telecommunications carrier within 30 days;

(v) If the subscriber provided a temporary residential address to the eligible telecommunications carrier, he or she will be required to verify his or her temporary residential address every 90 days;

(vi) The subscriber's household will receive only one Lifeline service and, to the best of his or her knowledge, the subscriber's household is not already receiving a Lifeline service;

(vii) The information contained in the subscriber's certification form is true and correct to the best of his or her knowledge;

(viii) The subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law; and

(ix) The subscriber acknowledges that the subscriber may be required to re-certify his or her continued eligibility for Lifeline at any time, and the subscriber's failure to re-certify as to his or her continued eligibility will result in de-enrollment and the termination of the subscriber's Lifeline benefits pursuant to § 54.405(e)(4).

Carriers must certify to the FCC/USAC that each of the above certifications has been obtained, either in writing or through a recording. See 47 C.F.R. §§ 54.407(d), 54.416(a)(3); 54.419.

- Estimated costs for work stations, software licenses, and broadband connectivity needed to perform tasks total \$106,000.
- Estimated costs of mailers, and other media needed to notify customers of recertification total \$254,000.
- Estimated costs of leasing new office space to house new employees dedicated to recertification total 24,000.

To put this into perspective, SBI currently employs less than 200 people. Hiring 136 new workers for this task is a huge increase in its employee count. Real estate space to house the new workers will nearly double SBI's office footprint. In all, SBI estimates the cost of recertifying its entire Lifeline customer base to be \$2.532 million dollars, and it believes each subsequent annual recertification of its customer base to cost a similar amount. This does not take into account the overwhelming "soft-cost" in the form of existing employees being removed from their regular duties to ensure that this project is carried out properly.

Regarding the benefit to the program of these efforts, the company's efforts have so far cost over \$340,000 and have resulted in only 49 ineligible customers being denied Lifeline benefits. To date, the program savings as a result of these efforts will be approximately \$21,000 per year. SBI does not expect further efforts to realize a higher proportion of program savings.

SBI's experience strongly suggests that as other ETC's implement these new Lifeline requirements, their costs will likely be significantly higher than estimated by the Commission. Accordingly, we urge OMB to proceed cautiously and carefully as it considers whether to impose even more costly requirements on these businesses. Indeed, we urge OMB to take this as an opportunity "to simplify requirements on the public and private sectors; to ensure against unjustified, redundant, or excessive requirements; and ultimately to increase the net benefits of regulations."²⁸

II. CONCLUSION

Joint Commenters respectfully urge OMB to carefully review the specific Lifeline requirements discussed above. OMB should recognize that the Commission has not met its burden of demonstrating that these requirements are necessary for the proper performance of its Lifeline oversight functions. As we have shown, the Commission has not adequately or accurately calculated the expected burdens of these requirements, nor has the Commission shown how these requirements are not redundant, impractical, or excessive in light of other program protections in place.

Respectfully submitted,

²⁸ See MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, Office of Management and Budget, at 1 (March 20, 2012).



David A. LaFuria
Jeffrey A. Mitchell
Steven Chernoff
LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8695

Counsel for
Smith Bagley, Inc.
United States Cellular Corporation
PR Wireless, Inc. d/b/a Open Mobile

cc Judith B. Herman, Esq., FCC
FCC (pra@fcc.gov)