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**By Electronic Mail**

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Office of Management and Budget  
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Re: Lifeline and Link-Up Reform and Modernization, Telecommunications Carriers  
Eligible for Universal Service Support, Connect America Fund  
OMB Control Number: 3060-0819; WC Docket Nos. 11-42, 09-197, 10-90

Dear Mr. Fraser:

Smith Bagley, Inc. ("SBI") hereby submits the following comments on the 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 the document retention and data security regulations pending under the above control number.<sup>1</sup>

**I. BACKGROUND AND INTRODUCTION**

The Low Income program of the Universal Service Fund ("USF") has been in place in one form or another for decades and is intended to ensure that all households have telecommunications service. The program was codified by statute as part the Telecommunications Act of 1996 and re-implemented by the FCC with revised rules thereafter. While the Commission has updated program rules from time-to-time since then, telecommunications technologies have continued to rapidly evolve.

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<sup>1</sup> See *Information Collection Being Submitted for Review and Approval to the Office of Management and Budget*, Notice and Request for Comments, 80 Fed. Reg. 67,738 (Nov. 3, 2015) ("FCC Request" or "Request").

With the increasing demand for wireless telephone service driving increased Lifeline funding, the FCC has proposed sweeping changes to the Low Income program rules, and adopted a number of new requirements aimed at reducing program waste and improving program administration.<sup>2</sup>

SBI is a commercial mobile wireless service provider whose network spans portions of Arizona, New Mexico, Utah and Colorado. The company is an eligible telecommunications carrier (“ETC”) in Arizona, New Mexico and Utah and provides Lifeline service to approximately 61,000 customers, most of whom reside on Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo lands. Most of SBI’s service area is sparsely populated (some areas have fewer than five people per square mile). On the Navajo Reservation, the 21.9% rate of unemployment contrasts with the national average unemployment rate of 5.3%.<sup>3</sup> Fourteen percent of the households on the Reservation lack electricity, and 21.4 percent lack plumbing.<sup>4</sup>

As a provider of Lifeline service to vulnerable populations, SBI will be directly affected by the newly adopted regulations. Below, we discuss new rules requiring all Lifeline providers to, (1) retain copies of documentation submitted by Lifeline applications to prove eligibility or to resolve Third Party Identity Verification (“TPIV”) disputes; and (2) implement specific data security measures to protect sensitive customer information.

## II. COMMENTS

On March 20, 2012, OMB issued a Memorandum directing agencies “to simplify requirements on the public and private sectors; to ensure against unjustified, redundant, or

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<sup>2</sup> See Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197, Connect America Fund, WC Docket No. 10-90, *Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order*, FCC 15-71 (rel. Jun. 22, 2015) (“Order”).

<sup>3</sup> U.S. Dept. of Labor, Bur. of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, accessed at <http://data.bls.gov/timeseries/LNS14000000> (showing an unemployment rate of 5.3% for July 2015).

<sup>4</sup> U.S. Census Bur., *American Fact Finder, Selected Housing Characteristics, 2009-2013 American Community Survey 5-Year Estimates* (Mar. 13, 2015) at 2-3 (source for the kitchen facilities and plumbing statistics); Alysa Landry, “Many Navajo Still Living Without Electricity: Solar and Wind Power a Solution for Some,” *FARMINGTON DAILY TIMES* (Jan. 14, 2007) (“Landry Article”), accessed at <http://senaawest.bravehost.com/Dineh/noelectricity.htm> (reporting that, according to Jonathan Cogan, an energy information specialist at the U.S. Department of Energy, more than 14 percent of Navajo Reservation households have no access to electricity). See NCAI, *Securing Our Futures* (2013) (“NCAI Report”), at 4, accessed at [http://www.ncai.org/attachments/PolicyPaper\\_CUFUHjKqlcEhGLtpcwrDyiUgrDggOFUWmxMiRzAFFaxJWsCZDSK\\_Securing%20Our%20Futures%20Final.pdf](http://www.ncai.org/attachments/PolicyPaper_CUFUHjKqlcEhGLtpcwrDyiUgrDggOFUWmxMiRzAFFaxJWsCZDSK_Securing%20Our%20Futures%20Final.pdf) (indicating that “the percentage of reservation homes lacking complete plumbing is 17 times the national average”).

excessive requirements; and ultimately to increase the net benefits of regulations.”<sup>5</sup> The specific requirements noted above fail to meet this standard. They are unjustified and excessive, and the FCC has failed to establish a net benefit by inadequately estimating expected costs.

The document retention and data security requirements represent a major new information collection burden. In contrast to the current rules, which prohibit carriers from retaining copies of documents proving eligibility or identity, the new rules will require carriers to perform an about-face and begin copying, retaining, and storing all such documents. Moreover, carriers will be required to implement rigorous data security measures to protect those documents and all other sensitive customer information that is stored. To comply, companies will need to make significant expenditures on scanning technology, as well as document management and information security systems, that have not previously been necessary to participate in the Lifeline program.

Despite these obvious burdens, the FCC failed to estimate any added burdens at all, or even to name these requirements among those submitted for OMB approval. Based on SBI’s estimates, the added burdens will outweigh the claimed benefits of the new rules. Accordingly, the FCC Request does not comply with the PRA, and SBI urges the OMB to withhold approval of these requirements.

**A. The Request failed to include a summary of the new document retention and data security rules.**

Before an agency can conduct or sponsor the collection of information, it must submit to OMB “the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify.”<sup>6</sup> This submission must include, inter alia, “a summary of the collection of information.”<sup>7</sup> As stated in the Request, among the stated purposes of the FCC’s submission was to “[r]evise the information collection to comply with the Commission’s new rules, adopted in the 2015 *Lifeline Second Reform Order*, regarding the retention of subscriber eligibility documentation, eligible telecommunications carrier (ETC) designation, and ETC reimbursement under the Lifeline program.”<sup>8</sup> However, the Request failed to include a summary of the document retention and data security requirements among those submitted for OMB review and approval.

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<sup>5</sup> See MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, Office of Management and Budget, at 1 (March 20, 2012).

<sup>6</sup> 44 U.S.C. § 3507(a)(1)(C).

<sup>7</sup> 44 U.S.C. § 3507(a)(1)(D)(ii)(II).

<sup>8</sup> Request at p. 2.

First, the Request does not contain a summary of the data security requirements. In the Order, the FCC had set forth the required data security measures as follows:

[W]e expect that, at a minimum, ETCs must employ the following practices to secure any subscriber information that is stored on a computer connected to a network: firewalls and boundary protections; protective naming conventions; user authentication requirements; and usage restrictions, to protect the confidentiality of consumers' proprietary personal information retained for this or other allowable purposes. However, if the facts warrant further investigation, we still will evaluate the security measures employed by ETCs on a case by case basis.

Nowhere are these minimum data security measures described or summarized in the Request submitted to OMB. Indeed, the Request only made passing mention to "data security rules", in a section discussing "efforts to consult with persons outside the Commission".<sup>9</sup> The data security requirements are not discussed in the section that actually summarizes the new information collections.<sup>10</sup> Because the FCC never described what the "data security rules" actually consist of, the Request did not properly place them before OMB for consideration as required by the PRA.

With respect to the new document retention requirement, there is some discussion in the summary section, but the discussion is inadequate for PRA purposes. In that section, the FCC included the following language in its description of changes to Sections 54.410(b)-(c) of the FCC's rules<sup>11</sup>, which specify how eligibility is determined under program-based and income-based criteria, respectively:

The entity enrolling the subscriber must now retain this documentation (previously, ETCs were required to only review and were barred from retaining this documentation) to verify subscriber eligibility. ETCs must also retain documentation related to the National Lifeline Accountability Database (NLAD) dispute resolution processes which require verification of identity, address, or age of subscribers.<sup>12</sup>

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<sup>9</sup> See Request at p. 10 ("The joint comments argued that the Commission should alter the "snapshot date" reporting rule for FCC Form 497 and alter the retention and data security rules for eligibility documentation to prevent burdening small carriers.")

<sup>10</sup> See *id.* at pp. 3-8.

<sup>11</sup> 47 C.F.R. §§ 54.410(b)-(c)

<sup>12</sup> Request at p. 4 (footnote omitted).

However, any notion that eligibility and identity documentation now must be retained is omitted from the sections describing revisions to Section 54.417 of FCC's rules, which governs document retention. In describing revisions to that section, the Request states the following:

47 C.F.R. § 54.417 requires ETCs and non-ETC resellers to maintain records to document compliance with all Commission and state requirements governing the Lifeline and Tribal Link Up program for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. Notwithstanding the preceding sentence, eligible telecommunications carriers ***must maintain the documentation required in § 54.410(d) and (f)*** for as long as the subscriber receives Lifeline service from that eligible telecommunications carrier (emphasis added).<sup>13</sup>

Notably, the FCC only mentions subsections (d) and (f), which require the collection of Lifeline certification forms and, in some cases, a one-per-household worksheet. Subsections 54.410(b) and (c), which now require ETCs to retain eligibility and identity documentation, are not named. As a result, the Request implies that documentation collected under subsections (b) and (c) only need to be retained for the three full preceding calendar years. That is not the case. The Commission's Order stated:

Documentation required by sections 54.404(b)(11), 54.410(b), 54.410(c), 54.410(d) and (f) must be retained for as long as the subscriber receives Lifeline service from the ETC, but no less than three calendar years.<sup>14</sup>

Because of this contradiction, it appears that the FCC simply omitted the eligibility and identity document retention requirement from its Request. Alternatively, the FCC included them, but subjected them to a different document retention period than that set forth in the Order.

SBI submits that the FCC should be instructed to withdraw and resubmit its Request with a description of the data security rules, as well as an accurate summary of the document retention rule that explicitly applies to eligibility and identity documentation and not just certification forms. At a minimum, the FCC should be asked to clarify whether eligibility and identity documentation must be retained for three calendar years, or for the longer period required by the second sentence of the rule.

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<sup>13</sup> *Id.* at p. 5.

<sup>14</sup> Order at ¶ 236.

**B. The Request failed to estimate any work or cost burdens for the eligibility document retention and data security rules.**

A central purpose of the PRA is to “minimize the paperwork burden for individuals, small businesses ... and other persons resulting from the collection of information by or for the Federal Government.”<sup>15</sup> Thus, in seeking OMB approval for new or modified information collections, an agency must include with its request “an estimate of the burden that shall result from the collection of information.”<sup>16</sup>

In its Order, the FCC recognized that requiring the copying and retention of eligibility and identity documents, as well as the accompanying, data security requirements, would impose “an additional burden” on ETCs.<sup>17</sup> In the Final Regulatory Flexibility Analysis accompanying the Order, the FCC conceded that the new document retention rules represented an “additional expense” for ETCs.<sup>18</sup>

Notwithstanding the FCC’s repeated references to additional cost burdens represented by the new rules, no such burdens are described in the FCC Request. In fact, the only adjustment to the existing burden estimates associated with these rules related to the estimated increase in the number of respondents.<sup>19</sup> Therefore, the Request assigned zero dollars to the cost of complying with the new document retention and data security rules. This should be fatal to the Request insofar as these requirements are concerned.

While the Order stated that “the majority of ETCs” supported requiring retention of eligibility documentation, the cited comments were predominantly filed on behalf of large prepaid wireless providers with operations in numerous states. The FCC also noted that some carriers, including SBI, had opposed requiring the retention of such documents.

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<sup>15</sup> 44 U.S.C. § 3501(1).

<sup>16</sup> 44 U.S.C. § 3507(a)(1)(D)(ii)(V).

<sup>17</sup> See Order at ¶ 232 (“Furthermore, while there still will be an additional burden on ETCs to retain eligibility documentation, the majority of ETCs contend that the burden is worth the benefits to the program and we agree. We find that the burdens of retention can be mitigated with electronic storage capabilities and we conclude that the burden is outweighed by the benefits to the integrity of the program.”)

<sup>18</sup> See Order at Appendix D, ¶ 9 (“[W]e have encouraged ETCs to take advantage of electronic storage of documents to mitigate the additional expense of now having to retain documentation demonstrating subscriber income-based or program-based eligibility, including the dispute resolution processes.”)

<sup>19</sup> Request at p. 4 (“As part of this information collection, the Commission proposes revised calculations for the burden hours associated with this requirement based on updated estimates of the number of respondents.”) The estimated number of respondents – *i.e.*, ETCs subject to the rules – was updated to 997 from the previous estimate of 940.

In the comments cited in the Order, SBI supported a rule modification that would allow ETCs to retain copies of eligibility documents, as a means of adding confidence to a company's internal and external audit performance. However, SBI strongly opposed a mandatory requirement because of the large administrative burdens involved:

SBI does not support a rule that would require ETCs to retain copies of such documentation. Such a rule would be unduly burdensome for small businesses, and in SBI's case it would be extraordinarily burdensome, coming on the heels of prior reforms. In the wake of the FCC's 2012 reforms, SBI completely overhauled its Lifeline enrollment, tracking, and verification systems and procedures to ensure full compliance with the revamped rules. The company worked with a vendor to fully automate its intake and verification processes so that enrollments in all field locations would use uniform data formats and information would be immediately retrievable, searchable, and verifiable. This automated process is specifically designed to comply with the FCC's new rules, including the requirement that customers present documentation of eligibility and that an ETC maintain accurate records of the data sources that were relied upon in making the eligibility determination.

Changing the rules again to require that the customer's documentation actually be copied and stored by the company would require another complete overhaul of SBI's document collection and retention systems and procedures. The company would have to upgrade or replace its automated intake system to add a capability to scan eligibility documents, store them in a document management database, and archive them so they can be identified with customer accounts and accessed during internal and external audits. Further system upgrades would be necessary to add a capability to encrypt the scanned documents to ensure the security of confidential customer information.<sup>20</sup>

In comments submitted several months earlier, SBI had estimated that a mandatory eligibility document retention rule would require it to make an initial equipment expenditure of approximately \$15,000, and ongoing costs of more than \$115,000 annually.<sup>21</sup> Based on its current business and based on its review of equipment and document management vendors, SBI now updates its estimate of the financial burdens involved in complying with the new rule. SBI estimates that it will make a one-time equipment expenditure of approximately \$75,000. SBI will also need to purchase and install a document management and storage solution, to ensure the

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<sup>20</sup> Comments of Smith Bagley, Inc., WC Docket No. 11-42 (filed March 18, 2014) at pp. 4-5.

<sup>21</sup> Comments of Smith Bagley, Inc., WC Docket No. 11-42 (filed August 14, 2013) at p. 8.

documents are scanned, uploaded, transmitted, indexed and stored securely in accordance with the rules.

There are a number of products and services in the market, and SBI is considering options that would involve initial expenditures ranging from approximately \$15,000 to approximately \$300,000, and ongoing costs ranging from approximately \$10,000 to approximately \$160,000 per year. In addition, it will cost the company roughly \$17,500 annually to train employees and agents in the use of scanning equipment, document management systems, and other aspects of compliance with the new rules. Lastly, integrating the document management solution with SBI's billing system via an application program interface (API) would cost approximately \$20,000 per year. All of these costs together add up to an initial cost between \$90,000 and \$375,000, and ongoing costs of between \$47,500 and \$197,500 per year.

Based on the FCC's updated number of respondents, 997 ETCs will be subject to the new document retention and data security requirements. Taking the lowest estimates above, this would mean up-front costs of approximately \$90 million and ongoing costs of approximately \$47 million per year. If all ETCs adopt solutions at the upper end of the cost range, the cost burden could be as high as approximately \$374 million in initial costs and \$197 million in ongoing annual costs. Even if half of all ETCs already have sufficient equipment and systems in place – which is unlikely, given that the Lifeline rules have not previously required the copying and retention of these sensitive consumer documents – the estimated financial burden could range from approximately \$45 million in initial costs and \$23.5 million in annual costs, to \$187 million in initial costs and \$98.5 million in annual costs. When a federal agency fails to meet its PRA obligations regarding an estimated burden in the tens or hundreds of millions of dollars, that is far more than a technical error.

The FCC's Order made no reference to SBI's financial burden estimates, nor did it make any independent attempt to quantify them.<sup>22</sup> Indeed, the only attempt the FCC made to address concerns about administrative burdens was to state that “the burdens of retention can be mitigated with electronic storage capabilities.”<sup>23</sup> This is inadequate for purposes of PRA review. While technology can indeed reduce some of the man-hours involved in document copying and storage, this technology represents an additional cost for companies. This is reflected in the PRA, which includes in its definition of “burden” not only time and effort, but also “the resources expended for ... acquiring, installing and utilizing technology and systems”.<sup>24</sup> As the OMB explained in a request for comment:

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<sup>22</sup> The Gila River Indian Community and Gila River Telecommunications, Inc. (“GRTI”) also expressed concerns about the heavy administrative burdens associated with a mandatory eligibility document retention requirement, but did not quantify those burdens. See Comments of GRTI, WC Docket No. 11-42 (filed July 24, 2012).

<sup>23</sup> See Order at ¶ 232.

<sup>24</sup> 44 U.S.C. § 3501(2).



[A]s computers and other automated systems have assumed an ever-increasing role in society, paperwork burden has increasingly come to be represented by the financial costs associated with information technology. The financial costs imposed by a Federal collection have been included as "burden" in the Paperwork Reduction Act and in OMB's implementing regulations.<sup>25</sup>

Consistent with the PRA's definition, agencies have included not only hourly work burdens but also capital costs in their burden estimates.<sup>26</sup> The FCC Request, by contrast, omitted reference to any additional burdens, whether in the form of hours of work or financial expenditures on technology and systems.

By referring to "electronic storage" as a mitigating factor and not a cost, the FCC failed to properly estimate the burdens involved in complying with the new document retention and data security rules as required under the PRA.

**C. The FCC significantly overstated the benefits of the new document retention and information security rules.**

Before approving 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."<sup>27</sup> The FCC has not shown that the new eligibility document retention and information security requirements are necessary, because, (1) the FCC is considering programmatic changes that would render those requirements obsolete, and (2) there is no support for the FCC's claim that the requirement would significantly reduce falsified records.

In the July 2015 Order, the FCC justified the new document retention requirements as follows: "Based upon the record before us and for the reasons set forth below, we find that the overall benefits of requiring the retention of eligibility documentation outweigh the costs."<sup>28</sup> However, the FCC did not actually conduct an analysis to weigh the costs and benefits of the new rules.

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<sup>25</sup> Office of Information and Regulatory Affairs, Office of Management and Budget Notice of reevaluation of OMB guidance on estimating paperwork burden (Oct. 4, 1999), available at [https://www.whitehouse.gov/omb/fedreg\\_5cfr1320/](https://www.whitehouse.gov/omb/fedreg_5cfr1320/).

<sup>26</sup> See, e.g., Dept. of Transportation Supporting Statement, OMB Control Number 2126-0025, accompanying 30-day Comment Request Federal Register Notice (77 FR 74269), December 13, 2012 (estimating capital costs associated with new file cabinets made necessary by document retention rule).

<sup>27</sup> 44 U.S.C. § 3508.

<sup>28</sup> Order at ¶ 231.

Such a weighing test, fairly conducted, would have shown that the new requirements are not warranted. In the Second Further Notice of Proposed Rulemaking that accompanied the Order, the FCC proposed broad changes to the way the Low Income program is administered. This included a proposal to take the determination of an applicant's eligibility for Lifeline out of the ETC's hands and into the hands of a third-party national eligibility verifier. Among other facets of such a system, the FCC asked commenters to opine on "how and when" Lifeline providers should "cease retaining Lifeline consumer eligibility documentation".<sup>29</sup> SBI submits that it is not reasonable to impose the significant cost burdens described in the previous section to perform a document retention function that the FCC is planning to phase out.

Moreover, the Order overstated the benefits to the Lifeline program by stating that a requirement to retain eligibility documentation would "significantly reduce falsified records". This claim is unsupported, and the Order does not cite any evidence that ETCs have falsely certified to having confirmed applicants' eligibility through document review.

SBI is not suggesting that there is no benefit to a carrier retaining documentation in the interim period before a national verifier is introduced, only that the costs outweigh the benefits for SBI, and likely for many other carriers as well. As the Order correctly notes, document retention will improve the "enforcement and auditability of [its] rules" as well as provide certainty in the industry regarding the documents that need to be retained in the event of an audit or investigation."<sup>30</sup> The point is that very specific evidence already on record with the FCC shows the costs will be significant, yet the FCC Request estimates them to be nonexistent. While the FCC has argued that imposing unspecified burdens is reasonable given the benefits, such a claim is hard to support with the costs so obviously understated. Imposing significant new costs on small companies such as SBI will deliver very little benefit, given that the document review and retention functions are likely to be taken over by a third-party administrator. It would be better to weigh the benefits and burdens if and when the FCC decides to **not** assign review and retention functions to a third-party administrator.

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<sup>29</sup> Further Notice at ¶ 91.

<sup>30</sup> Order at ¶ 231.

### III. CONCLUSION

SBI respectfully urges OMB to carefully review the specific FCC Lifeline requirements discussed above. OMB should recognize that the FCC has not met its burden of demonstrating that these requirements are necessary for the proper performance of its Lifeline oversight functions. Rather, the FCC has failed to adequately and accurately calculate the expected burdens of these requirements, and has failed to show how these requirements are necessary given the likelihood of an imminent change to a third-party eligibility verifier and the lack of evidence that the requirements will reduce fraud.

Respectfully submitted,



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