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By Electronic Mail

Nicholas A. Fraser, Senior Policy Analyst
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, ICR Ref. No. 201704-3060-017
WC Docket Nos. 11-42, 09-197, 10-90

Dear Mr. Fraser:

On behalf of Smith Bagley, Inc. ("SBI"), we write to provide the following comments on the Federal Communications Commission's ("FCC" or "Commission") request to the Office of Management and Budget ("OMB") seeking approval under the Paperwork Reduction Act ("PRA") of the document retention and data security regulations pending under the above-referenced control number.¹

In its Request, the FCC submitted new document collection requirements found nowhere in the Commission's rules, and it failed to provide an accurate estimate of the work burdens that would be imposed by such requirements. Specifically, the FCC's proposal to require Lifeline customers, in some cases, to provide eligibility documents during the annual recertification process would impose extraordinary burdens on SBI and its customers. The requirement appears nowhere in the FCC's rules, affording no opportunity for SBI to pursue the issue on reconsideration, and the Supporting Statement provides no work burden estimate for the requirement.

¹ See *Information Collection Being Submitted for Review and Approval to the Office of Management and Budget*, Notice and Request for Comments, 82 Fed. Reg. 23,566 (May 23, 2017) ("FCC Request" or "Request").

As a provider of Lifeline service to vulnerable populations, SBI would be directly affected by certain information collection requirements described in the FCC's Supporting Statement. SBI requests that the OMB decline to approve the FCC's information collections until the FCC revises its Supporting Statement to reflect the FCC's recertification rules as adopted, which permit customers to self-certify to their income level or participation in a qualifying program.

I. INTRODUCTION

SBI is a facilities-based commercial mobile wireless service provider whose network spans portions of Arizona, New Mexico, Utah and Colorado. SBI has been providing service since approximately 1994 and it began offering Lifeline services on Tribal lands in 2001. The company is an eligible telecommunications carrier ("ETC") in Arizona, New Mexico and Utah and provides Lifeline service to approximately 75,000 customers. A majority of SBI's Lifeline customers reside on Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo Tribal lands.

Most of SBI's service area is sparsely populated (some areas have fewer than five people per square mile) and the Navajo Nation alone is larger than the state of West Virginia. A significant portion of its customers live 50 or more miles from an SBI retail location. On the Navajo Nation, 32% of households do not have electricity,² meaning that customers will often leave their cellphones switched off for long periods to conserve battery life, using them only to place important calls.

II. BACKGROUND

A. The FCC's Lifeline Program.

The federal Lifeline program provides monthly discounts to enable low-income consumers to receive affordable telecommunications and broadband services. Consumers may qualify for Lifeline through participation in one or more specified government assistance programs, or by meeting a household income threshold requirement. To date, the responsibility for confirming a subscriber's eligibility has fallen to Lifeline service providers like

² Alysa Landry, "Not Alone in the Dark: Navajo Nation's Lack of Electricity Problem," INDIAN COUNTRY TODAY (Feb. 11, 2015), accessed at <https://indiancountrymedianetwork.com/news/native-news/not-alone-in-the-dark-navajo-nations-lack-of-electricity-problem/>.

SBI.³ During enrollment, service providers confirm an applicant's eligibility by querying a state or federal database, where available. For those who cannot be confirmed through a database, service providers confirm eligibility by reviewing documentation presented by the applicant to demonstrate program participation or household income ("eligibility documents"). Examples of eligibility documents are a Medicaid card or a SNAP card. None of SBI's approximately 75,000 customers can be automatically confirmed because Arizona, New Mexico, and Utah do not operate databases. Therefore, SBI must review eligibility documents for each new applicant before submitting a claim to the FCC for Lifeline support.

Once a Lifeline applicant becomes a customer, he or she must reconfirm eligibility once per year, in a process known as recertification. For many years, the FCC required carriers such as SBI to sample their customer base to determine program compliance. Under rules adopted in 2012, the FCC required all Lifeline customers to go through the recertification process, but allowed them to do so via self-certification, rather than having consumers resubmit eligibility documents each year.⁴

The FCC considers subscribers to be recertified if their continuing eligibility is confirmed via automated means, for example through a state eligibility database.⁵ If their eligibility cannot be confirmed through a database, they must certify their continuing program- or income-based eligibility on a recertification form.⁶ The required recertification statements may be completed electronically, including by voicing or keying responses on an integrated voice response ("IVR") telephonic system.⁷ In deciding against a requirement to produce eligibility documents, the FCC reasoned that this new approach would avoid undue consumer and carrier burdens and minimize de-enrollment for failure to respond.⁸

³ Except in states that have opted to administer their own low-income assistance programs, in which the state administrator performs automated queries to confirm income or program participation.

⁴ See *Lifeline Reform Order* at ¶ 132; 47 C.F.R. § 54.410(f).

⁵ *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket Nos. 11-42, 09-197, 12-23, CC Docket No. 96-45 (2012) ("*Lifeline Reform Order*") at ¶ 130.

⁶ See *id.*

⁷ See *id.* at ¶ 132.

⁸ See *id.* at ¶ 139 ("We also do not believe that the re-certification process we adopt today will be overly burdensome to consumers. As noted above, the amendments to section 54.410 will permit consumers to annually re-certify to their continued eligibility for Lifeline without requiring associated documentation as is currently mandated by our program rules for consumers in federal default states. While all consumers will be required to provide an annual self-certification of continued eligibility, we expect that elimination of the requirement that consumers annually provide supporting eligibility documentation will enable consumers to more easily respond to

B. The National Verifier.

In the 2016 *Lifeline Modernization Order*,⁹ the FCC established the National Verifier, a system that will incorporate both manual and electronic methods to determine eligibility and perform certain other Lifeline-related functions.¹⁰ Although many specifics are still to be determined by the FCC and the Universal Service Administrative Company (“USAC”), the goal of the National Verifier is to remove the eligibility determination from the service provider and place it into a centralized system.¹¹ The National Verifier will launch in batches of states, with the final batch to be completed by the end of 2019.¹²

Wherever possible, the National Verifier will rely on automated methods, such as querying federal or state databases, to confirm eligibility. When initiating new service, a customer will be required to present eligibility documents if eligibility cannot be confirmed through a database.¹³ For purposes of the annual recertification process, any customers who cannot be verified by automated means will continue to follow existing requirements – that is, complete a recertification form, either on paper or through electronic means, with no requirement to provide eligibility documents:

If the subscriber's eligibility for Lifeline cannot be determined by accessing one or more databases containing information regarding enrollment in qualifying assistance programs, then the National Verifier, state Lifeline administrator, or state agency **may obtain a signed certification from the subscriber on a form that meets the certification requirements in paragraph (d) of this section.** If a Federal eligibility recertification form is available,

verification surveys, thereby reducing the number of Lifeline subscribers de-enrolled for failure to respond to carrier verification efforts.”)(footnotes omitted)

⁹ *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (2016) (“*Lifeline Modernization Order*”).

¹⁰ *See id.* at ¶¶ 126 *et seq.*

¹¹ *See id.* at ¶¶ 128-31.

¹² USAC has said it will announce the first five states in August 2017, with deployment scheduled for March 2018. The remaining states will deploy in later batches, the last of which is projected for the end of 2019.

¹³ 47 C.F.R. § 54.410(f)(3)(i)-(iii).

entities enrolling subscribers must use such form to recertify a qualifying low-income consumer. (Emphasis added).¹⁴

III. COMMENTS

The FCC's Supporting Statement, which sets forth proposed information collection requirements contained in the FCC's new Lifeline rules, includes a new documentation requirement for recertifying customers, a requirement that the FCC has never adopted and appears nowhere in the FCC's rules. Moreover, the FCC's work burden estimate for the recertification requirement does not include any estimate for the burdens service providers and their customers would face in meeting such a requirement each year.

A. The FCC Has Not Taken the Required Steps Before Seeking OMB Approval of the Proposed Document Collection Requirement.

According to the Supporting Statement, during the recertification process, a customer who cannot be verified via automated means may be required to provide eligibility documents:

- "[T]he National Verifier will perform an automated recertification process using available databases. If this automated recertification process fails, the Lifeline subscriber **may need to submit eligibility documentation** as part of a manual review process."¹⁵ (emphasis added)
- "The National Verifier will automatically complete the annual recertification process for most subscribers without the need for additional information from the subscriber by referencing applicable databases for qualifying programs." If the subscriber's eligibility cannot be confirmed through automated means, "the National Verifier will initiate a manual review process, **requiring the subscriber to submit updated eligibility information.** This information will include ... any documents demonstrating eligibility[.]"¹⁶ (emphasis added)

These documentation requirements are found nowhere in the FCC's rules. As noted above, for customers who cannot be verified through automated means, the rules continue to provide that such a customer would recertify by completing a recertification form, not by

¹⁴ 47 C.F.R. § 54.410(f)(3)(iii).

¹⁵ Supporting Statement at p. 5 (<https://www.reginfo.gov/public/do/DownloadDocument?objectID=73216100>).

¹⁶ *Id.* at p. 10

producing eligibility documents. It is possible that the FCC has added these new requirements in its Supporting Statement in an attempt to be a responsible steward of Lifeline program funds; however, it must first conduct a notice-and-comment rulemaking proceeding to adopt new rules, and it must go through specific additional steps before imposing new information collections on the public.

Under the Paperwork Reduction Act (“PRA”), a federal agency cannot enforce an information collection before taking required steps, including, among other things: providing a 60-day notice in the Federal Register and otherwise consulting with members of the public and affected agencies concerning each proposed collection of information;¹⁷ evaluating public comments received in response to its notice;¹⁸ and submitting a certification to the Director of OMB stating, in relevant part, that the information collection “is necessary for the proper performance of the functions of the agency, including that the information has practical utility, ... [and] reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities[.]”¹⁹

The new requirements cannot be validly imposed until the FCC demonstrates that it has taken these steps with respect to each information request, the OMB approves the information collection, and issues an OMB control number.²⁰

The Supporting Statement was the FCC’s first public announcement of a new eligibility documentation requirement associated with the recertification process. The requirement was not included in a notice of proposed rulemaking, not did it appear in the 2016 *Lifeline Modernization Order* or resulting rules. At no point prior to the Supporting Statement was any information made public regarding the necessity for such a requirement, the burdens involved, or possible alternative methods to reduce such burdens.

The public was not consulted or given an opportunity to evaluate the need for collecting these documents, or to weigh in on potential ways to minimize the associated burdens. The Commission stated no justification for including this additional information collection in the Supporting Statement, and its certification with respect to this matter is inaccurate. This requirement was not properly presented for OMB approval, and cannot be approved.

The OMB should approve only those information collection requirements meeting the above-referenced steps and decline to approve these previously unannounced collections.

¹⁷ 44 U.S.C. § 3506(c)(2)(A).

¹⁸ 44 U.S.C. § 3507(a).

¹⁹ 44 U.S.C. § 3506(c)(3).

²⁰ 44 U.S.C. § 3507(a).

B. No Work Burden Estimate Was Included in the Submission to OMB.

In addition to improperly adding an eligibility documentation requirement for recertifying customers, the submission to OMB did not contain an estimate of the resulting burdens as required under the PRA. In its work burden estimate, the Supporting Statement provided the following estimates for recertification:

We estimate that it will take Lifeline subscribers .25 hours (15 minutes) to read and sign a certification (3,3,440,937 subscribers x .25 hours = **860,234 hours**). Similarly, we estimate that the ETC officer will take no longer than 45 minutes (.75 hours) to contact each subscriber and obtain a response (.75 hours x 3,3,440,937 subscribers = **2,580,703 hours**).

Notably, this discussion makes no mention of the new requirement to “submit eligibility documentation as part of a manual review process”, or the burdens associated therewith.

Currently, a majority of SBI’s customers complete the recertification process by calling into an IVR. The rest, many of whom have difficulty communicating due to language or other barrier, speak to a customer service representative via telephone or in person. It would be far more burdensome to require those customers to provide eligibility documents as part of this process. For example, the FCC has never consulted with carriers to assess the consumer and carrier burdens of training customers to take photographs of their eligibility documents and (assuming they possess a capable device and a sufficient level of wireless data connectivity) sending them to the National Verifier. The FCC has not examined the cultural sensitivity that many Native Americans express concerning the sending of identity documents or personal information concerning income to the federal government. The FCC has not consulted with carriers to figure out what kinds of burdens are imposed on people living more than 100 miles from a store, or lacking electricity, a vehicle, or public transportation.

Any resulting burdens on ETCs are also left unstated. Among other details of how the National Verifier will operate, it is unclear to what extent ETCs will be able to assist their customers in transmitting documents to the National Verifier. If SBI is able to assist its customers in meeting an eligibility documentation requirement during recertification, SBI would have to identify the document and confirm that it belongs to the subscriber, correctly identify it with the proper naming convention per National Verifier specifications, and then upload it. SBI estimates that this process would take approximately 15-20 minutes per customer.

Assuming that 55% of its customers will not be able to be verified via database – which is the percentage assumed in the Supporting Statement – 15 minutes per customer would mean SBI would face a work burden of 10,312 hours that is not accounted for in the Supporting

Statement. That burden equates to SBI hiring five new full-time employees for one year. As a company with less than 200 employees, that is a significant burden.

IV. CONCLUSION

For the above-stated reasons, SBI urges the OMB to decline to approve the FCC's information collections until the FCC revises its Supporting Statement so it is consistent with the FCC's recertification rules. The revised Supporting Statement must make it clear that customers whose eligibility cannot be verified via automated means will be required to complete a recertification form, and will not be required to present eligibility documentation.

Should you have any questions, please contact undersigned counsel directly.

Sincerely,



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