Lifeline/Link Up Reform Proposals Extensive But Focused on Near-Term

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On March 4, 2011, the Federal Communications Commission (FCC) released a notice of proposed rulemaking (NPRM) that proposes numerous reforms to the federal Low Income program. This Universal Service program provides subsidies for telephone services to low income Americans by paying a portion (typically, $10) of the monthly recurring charges (Lifeline) and a portion of the service activation fees (Link Up). The NPRM represents the first comprehensive review of the Low Income program since the rulemakings following the passage of the 1996 Telecommunications Act.

The Low Income program was originally formulated to soften the increase in local telephone rates that resulted from the breakup of AT&T into separate local and long distance providers. The program, however, has historically been underutilized. This trend began to change a few years ago for two reasons. First, wireless technology became more affordable and widely available. Second, the economic downturn resulted in more consumers qualifying for funding. Despite the upward trend, program utilization remains at approximately 30% of the estimated total of qualified consumers. Even so, there has been tremendous pressure to reduce the size of the approximately $9 billion federal Universal Service Fund (USF). The FCC recently proposed a series of reforms to the Universal Service High Cost program, which included proposals to both contain costs and expand the funding of broadband. See our Feb. 15, 2011 client advisory regarding proposals to reform the High Cost program here.

Similarly, this NPRM seeks simultaneously to contain the cost of the Low Income program and eventually use it to fund the deployment of broadband services. Some believe that the program is rife with waste, fraud and abuse. One concern has been the possibility of low-income consumers receiving discounts from multiple carriers simultaneously. Carriers are legally prohibited, however, from comparing their subscriber lists to ferret out these duplicates due to privacy law restrictions. Many argue that the only effective way to eliminate this issue would be to establish a national database, independent of any carrier, that could flag the names of those customers who are attempting to receive duplicate services and subsidies. While the FCC has proposed such a database, its discussion of the proposal contains no timeline for its establishment or implementation. Instead, the NPRM proposes to rely on a paper-based process that involves the consumer receiving competing sets of forms from the two carriers involved, unless and until a modern database is established. Such a process is unlikely to succeed given its complexity and the degree to which it relies on low income customers to sort out the paperwork themselves. Another issue involves Link Up funding, which subsidizes service activation fees. The FCC has proposed to only subsidize the fees of carriers that also serve non-Low Income consumers, deeming the charges of those carriers who focus on this market segment to be “selectively applied,” and therefore, not legitimate charges. It also seeks to review the relative value of service packages, which has historically undervalued the advanced services and mobility of wireless offerings and overvalued the limited features of old-fashioned wireline service.

The FCC has also proposed to cap overall annual low-income spending to the 2010 level of $1.3 billion, but failed to make clear how such a cap would be implemented. For example, if funding for a year proved to be insufficient, would the shortfall be borne by all participants proportionately or by the carriers who sought reimbursement only after the funds were depleted? Or would the FCC instead attempt to project need and therefore, project cut-off dates, or reduce the per line subsidies per consumer? (The NPRM does recognize, however, that the program has an inherent “cap” in that only qualifying consumers may participate, although the absolute number of participants varies depending on macroeconomic conditions as well as rule changes to the underlying qualifying social programs (e.g., food stamps, National School Lunch program)).

Admittedly, there is much work to be done to modernize and streamline the program, the ultimate goal of which is to prepare the program for the support of broadband services as well as rationalizing support for voice services. To that end, the FCC has made numerous proposals, such as: reconfiguring the “tiers” of support; considering what program changes are needed to account for prepaid wireless services that have found great success among low income consumers; establishing program goals and performance measures; codifying the one-subsidy per residence rule while making adjustments for group homes, homeless shelters, etc.; providing a national “floor” for consumer eligibility; and requiring more stringent procedures to verify consumers’ continued eligibility and use of the service.

The National Broadband Plan called for a shift of USF support to the funding of broadband services over which voice is simply an application. However, this NPRM takes only very modest steps in that direction. The FCC has proposed to establish small pilot programs to determine the appropriate structure and level of funding needed to expand broadband services to low income consumers, who have cited cost as the primary barrier to broadband adoption. It seeks comment on whether the Low Income program should support broadband offerings with speeds less than what may be ultimately supported by the High Cost funds (once redirected to the Connect America Fund), such as 768 kbps or 1.5 Mbps downstream. It also seeks comment on whether low income participants should be provided support for data-only service packages, as well as support for equipment such as computers. It also seeks comment on how to pay for broadband subsidies, the funding for which could come in part from savings realized through efficiencies of the other reforms proposed in the NPRM, such as elimination of funding for toll limitation services, elimination of duplicate funding, and the payment cap.

Initial comments on this NPRM are due April 21, 2011. Reply comments on select portions are due May 10, and for the remaining sections, replies are due May 25. DWT is working closely with clients providing Low Income services to consumers on this proceeding, as well as in matters before the Universal Service Administrative Company (USAC) and state public utility commissions. If you have any questions regarding the impact of the NPRM on your business or proceedings at USAC or state commissions, please do not hesitate to contact us.