Comprehensive Overhaul of Low Income Program: FCC Order Released

02.08.12 **By Danielle Frappier, James M. Smith, James W. (Jim) Tomlinson, and Adam Shoemaker**

On Jan. 31, 2012, the Federal Communications Commission (FCC) adopted the most sweeping reforms of the federal Low Income program since 1996. At the time of our Feb. 1, 2012 advisory, the text of the FCC's Order and Further Notice of Proposed Rulemaking (Rulemaking) was not yet available. The FCC released the text late Monday evening. Below we provide a brief summary of new details revealed in the 299-page document, with an emphasis on key implementation dates.

Link Up Eliminated

Link Up currently provides qualifying low income consumers with discounts of up to $30 off the initial cost of activating a single telecommunications connection. Effective Mar. 31, 2012, Link Up support will be eliminated on non-Tribal lands for all eligible telecommunications carriers (ETCs). An ETC, therefore, may not claim Link Up support for any subscriber enrolled on or after April 1, 2012. After that date, only ETCs that receive high-cost universal service support on Tribal lands may receive Link Up funds.

Blanket Forbearance from "Own Facilities" Requirement; Compliance Plans

An ETC generally is required to provide Lifeline service using either its own facilities or a combination of its own facilities and resold facilities. In late December, the FCC ruled that an ETC can no longer meet this requirement by providing only operator services or directory assistance through its own facilities. In the Order, the FCC granted blanket forbearance from the "own facilities" requirement. ETCs relying on this forbearance, however, must submit compliance plans to the FCC demonstrating compliance with the Order and 911 requirements. They must also provide a detailed description of the carrier's service offerings. Carriers relying on forbearance must submit compliance plans to the FCC by July 1, 2012 in order to continue to receive Lifeline funds in any states in which they currently hold ETC designations. Any ETC designated after Dec. 29, 2011 that required forbearance must have its compliance plan approved by the FCC before it can receive Lifeline support.

Changes to Eligibility and the Certification Process

Consumers may qualify for Low Income subsidies by participating in a qualifying program (such as SNAP a/k/a food stamps or Medicaid), or demonstrating that they meet the requisite income threshold. The specific programs and income threshold currently vary from state to state. Moreover, the documentation required of consumers also varies among the states.

The Order establishes national eligibility and documentation requirements to provide more uniformity in the administration of the Low Income program. All states are now required to permit consumers to qualify based on the list of qualifying programs and income level currently utilized in so-called "federal default" states. States may include *additional* programs, but they must be programs whose eligibility criteria are based on consumers' income levels.

With respect to the documentation process, prior to the establishment of a national eligibility database in 2013, the Order requires ETCs to review proof of the consumer's program participation except in states where an eligibility database already exists. ETCs will be required to review this documentation beginning on June 1, 2012. The ETCs may not retain copies of the consumer's proof, but must keep records that indicate the type of documentation reviewed or that the ETC confirmed eligibility through a database. The

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Order also introduces a list of information that ETCs must obtain from subscribers upon sign up, including the last four digits of the subscriber's social security number and confirmation of whether the subscriber's address is permanent or temporary.

Changes to Annual Verification

The Order also changes the annual process by which ETCs verify their subscribers' continuing eligibility for Low Income subsidies. Under the new rules, ETCs will be required to annually verify 100% of their subscribers receiving service as of June 1, 2012 by obtaining self-certifications that they continue to qualify for the subsidies or querying the state database where currently in use. The ETCs will not, however, be required to obtain any further documentary proof. Self-certifications during the annual verification process may be obtained in writing, or via text or interactive voice response. Once a national database is established, ETCs will no longer need to obtain annual self-certifications. Results of the ETC's verification efforts must be reported to the FCC by Jan. 31, 2013. Subscribers that are no longer eligible or fail to respond must be de-enrolled from the Low Income program within 30 days.

Changes to Disbursement Rules

With respect to the calculation of monthly Lifeline subsidies, the Order eliminates the arcane "tier" system with a single, flat interim rate of $9.25 per month, but retains the existing additional $25 in subsidies for Tribal areas. The new rate becomes effective as of April 2012 disbursements.

The timeframe for submitting reimbursement requests and disbursements to ETCs has been shortened. Beginning with the July 2012 submissions, ETCs that electronically submit their requests by the 8th of each month will be paid by the end of that same month. By October 2012, disbursements for electronic requests will be paid by the last business day of the month.

Moreover, disbursements will be based on actual support claims made rather than the current system of payments based on projections. The transition to the new disbursement system will be completed by October 2012. For ETCs operating in multiple "study areas," the transition will be phased in for groups of study areas over a three-month period to lessen the impact of any necessary true-ups. ETCs must inform USAC no later than June 1, 2012 of its preferred phase-in process for its study areas.

Creation of a National Database

The Order establishes a national database that will be used to eliminate and prevent duplicate Lifeline support. As the FCC acknowledges, until now it has been impossible for ETCs to verify, on their own, whether a prospective subscriber is already receiving Lifeline benefits from another carrier. The new database, to be administered by USAC, will initially have the capability to (i) receive, process, and compare subscriber information from ETCs; (ii) permit ETCs to query whether a potential subscriber is already receiving benefits from another carrier; and (iii) protect sensitive customer data from theft, loss, or disclosure. ETCs will be required to provide customer information to USAC for these purposes and will also be obligated to query the database before signing up a new subscriber. The Order sets a target date of Feb. 6, 2013 for USAC to have the database operational, with the duty to query beginning an estimated 30 days later.

The Order further directs the Wireline Competition Bureau and USAC to work with other government agencies, ETCs and other stakeholders to establish a database or other automated process capable of verifying initial customer eligibility under at least the three most commonly used federal benefit programs (food stamps, Medicaid, and Supplemental Security Income (SSI)) by the end of 2013. To this end, the Bureau will soon host a series of workshops with non-governmental stakeholders, and the Further Notice seeks comment on several matters, including whether the best solution is a national database, coordination of state databases, or a hybrid approach. Once this solution is operational, Lifeline ETCs will be able to rely on it rather than continuing to require new subscribers to show documentation of eligibility under one of the applicable programs.

Other Matters

The Order includes numerous other changes to the Lifeline program.

- **Supported services:** As explained in our Dec. 27, 2011 advisory, the FCC, in its USF/ICC Transformation Proceeding, redefined the supported services that a carrier is required to provide in order to be designated as an ETC. The Order reiterates that ETCs are now required to provide "voice telephony service" which does not include operator services or directory assistance.

- **No minimum service requirements or minimum fee:** The Order declines to impose minimum service requirements or require a minimum monthly consumer charge for Lifeline service, as some commenters had suggested.

- **One-per-household rule:** The Order adopts a requirement limiting Lifeline support to a single subscription per household, which it defines as "any individual or group of individuals who are living together at the same address as one economic unit." The Order introduces several new procedures to allow low income households that share a common address, and those who live at a temporary address, to qualify for support.

- **Toll limitation service:** Toll limitation service (TLS) provides support to ETCs for their incremental costs of toll blocking and toll control, which limits to a preset amount the long-distance charges a subscriber can incur during a billing period. TLS will be phased out in less than two years. Effective April 1, 2012, TLS support will be capped at $3.00 per month per subscriber. The TLS cap will be reduced to $2.00 per month on Jan. 1, 2013, and TLS support will be completely eliminated on Jan. 1, 2014.

- **Broadband pilot program:** The Order establishes an 18-month broadband pilot program that will provide up to $25 million to support a variety of ETC-run projects designed to test new approaches to expand broadband access.

Further Rulemaking

The FCC adopted a Further Notice of Proposed Rulemaking seeking comment on a wide variety of Lifeline reform issues. In addition to several matters described above, some of the key issues include the following:

- Whether to make permanent the interim rate of $9.25 for monthly Lifeline support;

- Whether the USDA's Women, Infants, and Children Program should be added to the list of qualifying federal assistance programs for Lifeline;

- Whether the Commission should adopt special measures for homeless veterans (who are not otherwise enrolled in a qualifying program) to demonstrate eligibility for Lifeline;

- Whether the Commission should extend the duration of its record retention requirements from three years to ten years;

- Whether incumbent LECs should be permitted to opt out of the Lifeline program;
- Whether the Link Up program for Tribal lands should be maintained; and
- How savings from other USF programs might be applied to increase digital literacy training at schools and libraries.

Comments in response to the Further Notice will be due 30 days after publication of the Order in the Federal Register; reply comments will be due 60 days after Federal Register publication.

There are additional operational, reporting and audit requirements in the Order. DWT has been working closely with clients that provide Lifeline services to consumers in this proceeding, as well as in matters before the FCC, USAC and state public utility commissions. If you have any questions regarding the impact of the Order or wish to file comments in response to the Further Notice of Proposed Rulemaking, please do not hesitate to contact us.