

Testimony on behalf of the  
**National Association of Regulatory Utility Commissioners (NARUC)**

by

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*NARUC PRESIDENT*

*before the*

**United States House of Representatives**  
**Energy and Commerce Committee**  
**Subcommittee on Communications and Technology**

*hearing on*

**The Lifeline Fund: Money Well Spent?**

**April 25, 2013**



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**Summary:** The Universal Service Fund (USF) low-income Lifeline program is a shared responsibility of federal and State policymakers. It is a responsibility my State colleagues and I take seriously. Lifeline is an important social program which allows low-income customers to be connected to voice networks. NARUC has a long history of supporting it. Still, given the rapid expansion in the Lifeline program in the past several years, we have raised many of the same concerns you have. Indeed, four years ago, in 2009, NARUC passed a resolution that pointed out that “some States are developing real-time access to information necessary to verify household eligibility and ensure that a household receives only one Lifeline Subsidy” and called upon both States and the FCC to “review existing procedures to verify eligibility . . . including consideration of real-time verification.”<sup>1</sup>

Our federalist system allows States to act as laboratories for programs providing useful and tested templates to guide federal (and other State) policy makers’ decisions. The FCC is to be commended for recent reforms addressing waste, fraud and abuse and their collaboration with NARUC and States. Some States have enacted prophylactic measures as well including databases on duplicates and eligibility, periodic compliance audits of carriers and even, in some cases, revoking carrier ETC designations. Unfortunately, the ability of our members to audit and investigate waste, fraud, and abuse by wireless Eligible Telecommunications Carriers (ETCs) is hampered in some States because of limited statutory authority over non-wireline carriers. The FCC’s decision broadening the Lifeline program in 2005 to include non-facilities based wireless service plans had a dramatic impact. As a result, certain non-facilities based, prepaid wireless providers created business plans not only providing low-income consumers with free cell phones and minutes each month, but also generating a profit. Such business plans were not possible in

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<sup>1</sup> See, *Resolution on Lifeline Service Verification (November 2009)*, available online at: <http://www.naruc.org/Resolutions/Resolution%20on%20Lifeline%20Service%20Verification.pdf>.

1985 or even in 1996. The explosive growth in the fund is testament to their popularity. However, it fundamentally changed the incentives of both customers and companies – encouraging both to abuse the program. Though the potential for abuse was obvious, until relatively recently, no effective safeguards were imposed to address the new vulnerabilities. The recent reforms are a significant step forward. But a thorough analysis of the recent recertification process is needed to identify needed modifications before the next recertification.

**Testimony:**

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you for the opportunity to testify today on the Federal Lifeline Program. NARUC submitted information to the committee last week on State actions to combat waste, fraud and abuse. I will not repeat all that information but welcome any questions on that data at the appropriate time.

I am a Commissioner with the Washington Utilities and Transportation Commission and currently serve as President of the National Association of Regulatory Utility Commissioners (NARUC). It is – like Congress – a bipartisan organization. NARUC’s members include public utility commissions (PUCs) in all your States, the District of Columbia and U.S. territories with jurisdiction over telecommunications, electricity, natural gas, water and other utilities. NARUC member commissioners are the in-State experts on the impact of FCC programs in your State and on your constituents. The Universal Service Fund (USF) and the low-income Lifeline program we are discussing today are shared responsibilities of federal and State regulators. I personally take this responsibility seriously, as do my colleagues across the country.

Lifeline provides low-income consumers with discounts on monthly telephone service enabling them to connect to the vital telecommunications network. Approximately 2,000

telecommunications companies are eligible to provide these discounts. Established in 1985, the federal program provides discounts for voice communications on monthly wireless or wired phone bills (\$9.25 a month) to low-income households. Eligible residents of Indian reservations or Tribal lands can receive up to an additional \$25 in discounts. About 40 States provide matching Lifeline funds ranging from \$.75 to \$8.50 a month. My State of Washington provides \$2 in monthly matching funds, but most States offer \$3.50. The support is given directly to service providers on behalf of the low-income consumer households.

NARUC has a long history of supporting this vital social program. We have also supported transitioning the program to include broadband service adopting multiple resolutions in recent years.<sup>2</sup> But given the incredible growth in the program, my State colleagues and I have come to share many of the concerns you are focusing on today. As Chairman Walden noted recently, the Lifeline fund grew from about \$800 million in 2008 to about \$2.2 billion in 2012. At the same time, the USF contribution factor has grown, in part, to accommodate this increase in program costs and currently stands at 15.5% of interstate revenues.

NARUC recognizes that managing the total size of the USF is important so we can protect the consumers who pay for its expansions through a surcharge on their bills. These costs burden consumers and may negatively affect economic activity, progress and recovery if the appropriate accountability mechanisms are not in place.

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<sup>2</sup> NARUC's [1] February 2008 *Resolution to Support Equal Access to Communication Technologies by People with Disabilities*, at <http://www.naruc.org/Resolutions/People%20with%20Disabilities%20Resolution1.pdf>; [2] February 2009 *Resolution on Lifeline and Link-Up Program Support for Broadband Internet Access Services and Devices*, at: <http://www.naruc.org/Resolutions/TC%20Resolution%20on%20Lifeline%20and%20Link-Up%20Program%20Support%20for%20Broadband%20Internet%20Access%20Services%20and%20Devices.pdf>; [3] November 2009 *Resolution on Legislation to Establish a Broadband Lifeline Assistance Program* (Supporting a permanent program); <http://www.naruc.org/Resolutions/Resolution%20on%20Legislation%20to%20Establish%20a%20Broadband%20Lifeline%20Assistance%20Program.pdf>.

Our federalist system of government allows States to act as laboratories for programs providing useful and tested templates to guide federal (and other State) policy makers' decisions. Lifeline is no exception. As the FCC continues work on databases to eliminate duplicate support and verify eligibility, some States moved ahead and created their own. According to an informal survey of our members, five States established programs to eliminate duplicative support and have been allowed to opt out of the FCC's National Lifeline Accountability Database.<sup>3</sup> At least 11 States in our informal survey use State social service databases to confirm consumer eligibility for participation in the Lifeline program.<sup>4</sup> But as more States consider establishing such database verification systems, the costs of doing so can be prohibitive, as States, like the federal government, are not immune to current economic conditions. As often happens, the expectation that the FCC will create federal databases may cause some States to wait to leverage the federal databases and avoid the costs of creating standalone databases.

Eleven States responding to our survey have programs to periodically conduct compliance audits on ETCs and/or of Lifeline recipients.<sup>5</sup> For example, California, in addition to financial and compliance audit provisions, has had annual renewal/recertification requirements since 2006. Unfortunately, the ability of some States to audit and/or investigate waste, fraud, and abuse may be hampered by rules or laws restricting, or removing outright, their authority over wireless companies.

One key capability States have to ensure carriers follow rules is the ability to revoke or not grant ETC designation pursuant to Section 214(e) of the 1996 Act. Six States responding to

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<sup>3</sup> States establishing their own program to eliminate duplicates: California, Texas, Vermont, Oregon, and Puerto Rico.

<sup>4</sup> States responding they have a system or program in place to confirm the eligibility of Lifeline subscribers by using social service agency databases: AK, CA, FL, IL, IN, KS, NE, NY, OR, WA, WI.

<sup>5</sup> States responding that have requirements for requiring periodic compliance audits on lifeline carriers or recipients: CA, CO, FL, KS, ME, MA, NE, NJ, OR, WI, WY.

our survey have refused an application for ETC designation filed by a carrier. Seven others have revoked the designation for questionable practices and/or violating program rules.<sup>6</sup> But these numbers do not tell the whole story. In many cases, a carrier whose ETC application for or existing ETC designation is being challenged will often withdraw its application or relinquish its ETC status once it becomes clear it will not be granted or may be revoked. Such actions are not reflected in any State statistics. Moreover, many States require ETCs to certify--when they are seeking designation or submitting annual filings--that it is in compliance with all federal and State rules and whether the provider's ETC designation has been suspended or revoked in any jurisdiction.

In 2005, the FCC broadened the Lifeline program making discounts available to qualifying low-income consumers on pre-paid wireless service plans in addition to traditional landline service. At that time States expressed concern with the potential for fraud and abuse.

In the "old days" of the late 80's and the early 90's the opportunity to abuse Lifeline was limited. Most consumers had access to only one provider of wired phone service, the incumbent local exchange carrier. Lifeline consumers got their allotted discount but had to pay the remainder of their bill each month to keep their service. In such cases, duplicate Lifeline subsidies to single household were less common. Where they did occur, they were easier to investigate because service was provided to a specific geographic location. With a limited number of carriers and the focus on incumbent LECs, it was easier for the FCC, USAC and State PUCs to regulate and oversee Lifeline subscribers. Moreover, no companies provided completely free service. There was no industry segment with a business plan focused on making money off of the Lifeline program. In fact, the program was more likely a money loser for most carriers.

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<sup>6</sup> States responding they had revoked a carriers ETC designation: FL, KS, KY, MI, MN, WA, WI.

While the Lifeline discount was rebated by USAC, the carriers bore the unreimbursed costs and administrative burdens associated with marketing and enrolling customers in the program.

Everything changed when the FCC allowed non-facilities based, wireless providers to enter the Lifeline market. They developed business plans not only providing low-income consumers with free cell phones and an allotment of free minutes each month, but also generated healthy profits. Such plans were not possible in 1985 or even in 1996. Did consumers benefit from this change? I'm sure the addition of plans providing a free cell phone plan of 250 or so minutes a month was no doubt beneficial to some low-income consumers. Indeed, the explosive growth in the fund is testament to its popularity. But it fundamentally changed the incentives for both customers and companies – opening up new avenues for waste, fraud and abuse.

Specifically, the move to wireless meant the physical connection to the carrier and the customer to a specific geographic location was severed. This undermined the first line of defense against duplicative services and ineligible recipients. The creation of “free” plans also eliminated any financial incentive for customers not to seek duplicate services and further weakened the connection the consumer has with providers associated with paying a monthly bill. Before the most recent recertification requirement was enacted, a Lifeline recipient could enroll and obtain a free wireless device from a third party agent on the street, receive their allotted minutes each month and never interact directly with the service provider. The elimination of these service characteristics opened up opportunities for fraud and abuse that didn't exist before.

NARUC and our members several years ago started raising concerns with the proper oversight of these new wireless Lifeline providers. State Commissions generally designate carrier participation in the Lifeline program for wireline carriers. That is not always the case for wireless providers. Ten states and the District of Columbia do NOT grant eligible

telecommunications carrier (ETC) status for wireless carriers because they lack the jurisdiction under State statute.<sup>7</sup> Another line of defense against abuse – State oversight - is non-existent or at least more limited in such jurisdictions. Wireless carriers wanting to provide Lifeline service in those States must submit their application for ETC designation with the FCC. As a result, the enforcement burden in many cases shifts back to the FCC. Moreover, the legislatures in several States have passed laws effectively deregulating Internet Protocol- (IP) based services. As the PSTN migrates to IP technologies and the federal Lifeline program properly transitions to support broadband, more of the responsibility for combating waste, fraud and abuse from those States is also likely to fall on the FCC. The question remains, does the FCC have the ability and resources to properly oversee the program in such States? Does a different division of responsibilities make sense? These are appropriate and timely questions for Congress and this committee to consider.

As far back as November 2009, NARUC adopted a resolution expressing our concern with growth in the Lifeline program and calling for improved verification practices to overhaul a system grounded in self-certification. Specifically, the resolution, called “upon the FCC and the States to review existing processes to verify eligibility and, if necessary, develop and implement best practices and suggestions, including consideration of real-time verification, for all Lifeline applicants to ensure eligibility for support.”<sup>8</sup> Eliminating waste, fraud and abuse ensures only eligible consumers receive support from the program and minimizes the cost to all consumers who pay through their monthly bills.

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<sup>7</sup> State that do NOT designate eligible telecommunications status to wireless carriers: Alabama, Connecticut, Delaware, New Hampshire, North Carolina, New York, Tennessee, Texas, the Commonwealth of Virginia, Florida and the District of Columbia.

<sup>8</sup> NARUC *Resolution on Lifeline Service Verification* (November 2009). Available online at: <http://www.naruc.org/Resolutions/Resolution%20on%20Lifeline%20Service%20Verification.pdf>.



Lifeline will once again be a major topic of discussion at the NARUC Summer Meeting this July in Denver. We will consider a resolution commending the “FCC on its efforts to eliminate waste, fraud, and abuse in the Lifeline program” and “encourag[ing] the FCC to ensure that the National Lifeline Accountability Database and the National Eligibility Database are available before the end of 2013, prior to the time that ETCs must recertify their Lifeline customers on or before December 31, 2013.”<sup>9</sup> Commissioners and staff will each hold panel discussions on the recertification process, how it went, what we learned, what other information would be useful, and how the process can be improved. I suspect we will have more to report after those discussions.

I was pleased to see the FCC did take action on Lifeline in 2010. In May of that year the FCC asked the Federal-State Joint Board on Universal Service to review the existing eligibility, verification, and outreach rules for the Lifeline and Link-Up universal service programs.<sup>10</sup> The FCC also maintained a robust and open dialogue with NARUC and the States. Their outreach and collaboration efforts are ongoing to this day. I give the FCC, especially the Wireline Competition Bureau, FCC Commissioner Clyburn – the former Chair of the Federal State Joint Board on Universal Service, her staff and, of course, the Chairman, much credit for tackling this issue and seeking vital State input throughout the process. This is a textbook example of how the Congressionally-established Joint Board process can be properly utilized to address issues quickly and provide an excellent basic template for FCC action.

The Universal Service Joint Board came back with a recommended decision in record time – around six months – in November of 2010. It addressed the lifeline questions asked by

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<sup>9</sup> DRAFT *Resolution to Improve Lifeline Annual Recertification Process*, for consideration at NARUC Summer Committee Meetings in July 2013 (Full text is currently embargoed).

<sup>10</sup> *Federal-State Joint Board On Universal Service; Lifeline and Link-Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order, 25 FCC Rcd 5079 (2010) (2010 Referral Order)

the FCC and more - recommending that the FCC take into consideration the additional issues of broadband, overall fund size, and prepaid wireless Lifeline service as it moved forward with universal service reform.<sup>11</sup> In the January 31, 2012 *Report and Order and Further Notice of Proposed Rulemaking*, the FCC either enacted or sought additional comments on all of the Joint Board recommendations. Again, this is exactly how the congressionally mandated Federal-State Joint Board process should be used. We hope the FCC will use the process more often.

In my State of Washington, we designate wireless ETCs and have established a process to confirm eligibility and identify duplicate service. Specifically, as a condition for ETC designation, we require carriers to provide their customer records to the Washington Department of Social and Health Services (DSHS) on an annual basis to check customers' eligibility and any duplication with any landline Lifeline benefit. The Commission also encourages ETCs to work with DSHS to access their customer eligibility query database. To date, all ETCs in Washington have gained access to DSHS database and use it to check Lifeline applicants' initial eligibility to the extent such verification is possible. For those customers who apply for Lifeline based on their income eligibility or whose eligibility cannot be verified by the DSHS, ETCs are required to review documentation verifying applicant eligibility. Yet, this is not a perfect system and the FCC's order has fundamentally altered the landscape. Even though we have verification procedures in place, I still strongly support the expeditious creation of the national accountability and eligibility verification databases.

WUTC staff looked at the results of the recertification process in our State. Overall, 37% of Lifeline subscribers did not respond to carrier attempts to recertify their eligibility and 29% were de-enrolled. We found a difference existed between the response rate and de-

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<sup>11</sup> Federal-State Joint Board on Universal Service Recommended Decision, November 4, 2010. Available at <http://www.universalservice.org/res/documents/about/pdf/fcc-orders/2010-fcc-orders/FCC-10J-3.pdf>.

enrollment rate for facilities-based carriers versus the non-facilities-based prepaid wireless ETCs in Washington. For facilities-based carriers, both wireline and wireless, the non-response rate was 46% and de-enrollment rate was 24%. For the non-facilities-based prepaid wireless the non-response rate 35.4% and de-enrollment rate was 33%. Interestingly, there was a higher non-response rate for facilities-based carriers but a higher de-enrollment rate for the non-facilities based prepaid wireless ETCs. What does this tell us? Anecdotally, we have heard that many of the traditional wireline carriers may not have gone to the same effort or used as effective means of contact as some of the prepaid carriers to recertify their Lifeline customers. Information on number of attempts and methods used to contact Lifeline recipients would be useful in evaluating the recertification process and how it might be improved in the future.

In conclusion, the FCC is to be commended for its substantial efforts to address waste, fraud and abuse in the Lifeline program. One could argue that such efforts should have begun earlier but I and my NARUC colleagues prefer to look forward. I urge Congress to support the FCC and USAC efforts to complete the national accountability and eligibility databases. USAC announced last week that construction of the National Lifeline Accountability Database, or NLAD, has begun and it is expected to be operational later this year. While it cannot eliminate all abuses, this database will certainly very significantly reduce duplicative support nationally, a big step forward.

Throughout the process the FCC has worked closely with NARUC and our member PUCs. The congressionally mandated federal-State joint board process was utilized as designed and provided the commission with several recommendations that were subsequently acted upon. Data on the first recertification is now becoming available but an in depth analysis is needed to identify areas that can be improved going forward.

Let me close by reiterating my support for the Lifeline program with proper verification and accountability measures in place. This vital program is supported by the FCC and State commissions for voice services, and now needs to migrate over time to cover broadband networks. I believe expansion to broadband is crucial to assure those with the most need have access to employment opportunities, education, communications, health and social services, and numerous other applications that only broadband provides. We, as the State PUCs, stand ready and willing to work with the FCC, industry, the low-income community, and you in Congress to maintain this important program and combat waste, fraud and abuse.



N A R U C  
National Association of Regulatory Utility Commissioners

April 19, 2013

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce

The Honorable Joe Barton  
Chairman Emeritus  
Committee on Energy and Commerce

The Honorable Marsha Blackburn  
Vice Chairman  
Committee on Energy and Commerce

The Honorable Greg Walden  
Chairman, Subcommittee on  
Communications and Technology

The Honorable Tim Murphy  
Chairman, Subcommittee on Oversight and  
Investigations

The Honorable Robert Latta  
Vice Chairman, Subcommittee on  
Communications and Technology

**Re: Response to March 26 letter for information on State actions to combat waste, fraud and abuse in the Lifeline Low-income USF Program**

Dear Chairman Upton, Chairman Walden, Chairman Emeritus Barton, Chairman Murphy, Vice Chairman Blackburn and Vice Chairman Latta:

Thank you for allowing NARUC to provide the Committee with information on what States are doing to combat waste, fraud, and abuse in the Lifeline Program. We answer your four questions below using information from a recent informal survey of our member public utility commissions, other sources and anecdotal information. To date, thirty-one NARUC member commissions responded to that preliminary survey.

**1. What innovative steps and best practices are States taking to combat waste, fraud and abuse in the Lifeline program that might be a model for other States or the Federal Communications Commission (FCC)?**

*States often act as laboratories for experiments that can provide both useful and tested templates to guide federal (and other State) policy makers' decisions. Lifeline programs are no exception. The FCC's addition of wireless carriers to the federal lifeline programs, which began in 2005, presents new challenges for State oversight.*

**Screening Databases:** *As the FCC continues work on databases to eliminate duplicate support and verify eligibility, some States moved ahead and created their own. For example, California, Texas, Vermont, Oregon, and Puerto Rico each have established programs to eliminate duplicative support and have been allowed to opt out of the FCC's National Lifeline Accountability Database. States can opt out of the national database if they demonstrate to the FCC showing there is a state-wide system in place to detect, eliminate, and prevent duplicate Lifeline claims at least as robust as what the FCC plans for the national database.*

Several States have also established programs to verify subscriber eligibility in qualifying low-income/assistance programs, including the home States of Chairman Walden (Oregon) and Ranking Members Eshoo (California). At least eleven States in our informal survey use State social service databases to confirm consumer eligibility for participation in the Lifeline program.<sup>1</sup> But more States are considering establishing such database verification systems. The cost of establishing such databases can be prohibitive and States, like the federal government, have not been immune from the financial and fiscal troubles in recent years. As often happens, the expectation that the FCC will create federal databases may cause some States to wait to leverage the federal databases and avoid the costs of creating standalone State databases.

States that do not mandate Lifeline support, i.e., “federal default States”, do not have their own Lifeline programs. Carriers in these States follow the federal Lifeline rules and eligibility criteria. The FCC lists the following as federal default States and/or territories: American Samoa, Delaware, Hawaii, Indiana, Iowa, Louisiana, New Hampshire, North Dakota, Northern Mariana Islands, and South Dakota. For these States and territories, federal databases on accountability and eligibility would be particularly useful.

**Recertification/Compliance Audits:** Eleven responding States have programs to periodically conduct compliance audits on ETCs and/or of Lifeline recipients.<sup>2</sup> In some cases, the ability of States to audit and/or investigate waste, fraud, and abuse may be hampered by State rules or statute. This is the case for several States with respect to wireless.

On the other end of the spectrum is California. In addition to financial and compliance audit provisions, the State has had annual renewal/recertification requirements since 2006. As a result the FCC’s recent annual recertification requirement has had a negligible impact on California’s program.<sup>3</sup> Their experience has also shown that some consumers do indeed reapply after being de-enrolled from the program during recertification.

In Kansas, the KUSF third party administrator conducts compliance audits on sixteen carriers per year. The carriers are randomly selected and may or may not be ETCs. The results of these random audits are made publicly available online.<sup>4</sup>

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<sup>1</sup> States responding they have a system or program in place to confirm the eligibility of Lifeline subscribers by using social service agency databases: AK, CA, FL, IL, IN, KS, NE, NY, OR, WA, WI.

<sup>2</sup> States responding that have requirements for requiring periodic compliance audits on lifeline carriers or recipients: CA, CO, FL, KS, ME, MA, NE, NJ, OR, WI, WY.

<sup>3</sup> Data on Lifeline participation in California is publicly available. Data for years 2012 and 2011 are available at the following links – 2012: [http://www.cpuc.ca.gov/NR/rdonlyres/E4B485AD-B084-41D0-944D-4D3620C72104/0/Solix\\_XeroxLifeLineSubscriberCounts2012.xls](http://www.cpuc.ca.gov/NR/rdonlyres/E4B485AD-B084-41D0-944D-4D3620C72104/0/Solix_XeroxLifeLineSubscriberCounts2012.xls). 2011: <http://www.cpuc.ca.gov/NR/rdonlyres/67F037FB-43FB-4F27-9A11-8F90BD2CBB9E/0/SolixLifeLineSubscriberCounts2011.xls>

<sup>4</sup> Kansas’ USF third party administrator conducts random audits of carriers each year. See, e.g., 2011 audit of Virgin Mobile: <http://estar.kcc.ks.gov/estar/ViewFile.aspx/20110609112330.pdf?Id=454bc32c-c31e-4292-a934-038b354bc1c6>. Other orders/audit information is available at: <http://estar.kcc.ks.gov/estar/portal/kcc/portal.aspx>.

*Massachusetts, which wasn't able to complete our survey because it has recently opened an investigation into its Lifeline programs, requires ETCs to regularly report data as a condition of ETC designation. Specifically, the Department of Telecommunications and Cable requires ETCs to file each of the following 1) quarterly reports on the number of Lifeline subscriber accounts terminated for non-usage each month; 2) quarterly reports on the number of consumer complaints from Massachusetts subscribers regarding its Lifeline service; 3) quarterly reports on the amount of Universal Service Fund support received for Massachusetts Lifeline subscribers each month; and 4) participation in dispute resolution by the Department's Consumer Division to resolve Lifeline subscriber disputes (including eligibility disputes, program offering issues, and limited equipment related issues, but not matters related to rates or entry).*

*Florida has been very active in combating waste, fraud and abuse in the program. The Florida Public Service Commission (FPSC) staff review USAC disbursements to ETCs data on a monthly basis to watch for abnormalities. Staff also checks the number of Lifeline customers claimed by each Florida ETC by taking the total USAC amount reimbursed for Lifeline and dividing it by \$9.25, the Federal amount reimbursable for each Lifeline customer. If a disbursement or series of disbursements appear questionable, the FPSC has the ability to issue subpoenas to landline carriers to determine the number of lines purchased by ETCs to provide Lifeline service. The FPSC also has the authority to review books and records of wireline ETC, but NOT wireless ETCs. However, Florida also established by statute the Florida Lifeline Work Group which includes the Public Service Commission, the Department of Children and Families, the Office of Public Counsel, and each eligible telecommunications carrier offering Lifeline services. Its purpose is to determine how the eligible Lifeline subscriber information will be shared, the obligations of each party with respect to the use of that information, and the procedures to be implemented to increase enrollment and verify eligibility in these programs. The FPSC generates an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of customers subscribing to Lifeline service and the effectiveness of procedures to promote participation in the program.<sup>5</sup>*

**Prohibit Free Service:** *The federal Lifeline program did not contemplate consumers getting free service when it was created in 1985. Until 2005, the federal program only allowed consumers to receive a discount on their monthly bill. When Lifeline expanded to include prepaid wireless carriers, several companies developed specific business models based primarily on free phones and service. At least one State has adopted rules prohibiting free Lifeline service, instead requiring subscribers to pay a*

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<sup>5</sup> Florida Public Service Commission Report on Lifeline 2012. Link to 2012 Lifeline Report: <http://www.floridapsc.com/publications/pdf/telecomm/tele-lifelinereport2012.pdf>.

*minimum amount each month. Currently, Oklahoma requires a Lifeline subscriber to pay \$1 a month minimum. Georgia is considering a requirement that Lifeline subscribers pay \$5 a month minimum fee. The minimum amount, which is similar to the federal tribal lands Lifeline \$1 a month program, ensures the consumer has “skin in the game” and should provide some deterrence to duplicative subsidies as customers would pay monthly fees for each phone they acquired.*

***State Recourse on Bad Actors:*** *One key capability States have to ensure carriers follow rules is ability to pull/not grant ETC designation. Six States responding to our survey have in the past refused an application for ETC designation filed by a carrier. Seven others have pulled the ETC designation of a carrier for questionable practices and/or violating program rules.<sup>6</sup> But these numbers do not tell the whole story. In many cases, a carrier whose application for or existing ETC designation is being challenged will often withdraw its application or relinquish its ETC status once it becomes clear it will not be granted/may be pulled. Such actions are not reflected in any statistics on State actions. Many States require ETCs to certify - when they are seeking designation or submitting annual filings - that it is in compliance with all federal and State rules and whether the provider’s ETC designation has been suspended or revoked in any jurisdiction.*

*Many States can and, when necessary, do initiate investigations into the program generally or on a specific carrier. The previously referenced Massachusetts Department of Telecommunications and Cable April 1, 2013 investigation into the federal Lifeline program is one example. They are examining the implementation of the FCC’s 2012 Lifeline Order, as well as ways the Department can protect against waste, fraud, and abuse. The investigation will include: (1) compliance with existing Department Lifeline ETC requirements; (2) annual ETC certifications and other reporting obligations; (3) expansion of Lifeline eligibility criteria; (4) outreach, consumer safeguards, and service quality; and (5) related matters.*

*Florida’s monthly review of data, referenced earlier, resulted in, among other things, investigations of two ETCs whose designations were eventually revoked for questionable monetary claims at USAC. Another company claiming to be a Florida ETC was also caught before it was given any USAC money.*

## **2. What States designate and recertify wireless prepaid eligible telecommunications carriers (ETCs) and which ones leave that to the FCC?**

*So far, 31 States have responded to NARUC’s survey. Of those, 26 public utility commissions do designate wireless ETCs, while five do not. Based on the survey and literature search, we believe States that do NOT designate wireless ETCs include:*

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<sup>6</sup> States responding they had pulled a carriers ETC designation: FL, KS, KY, MI, MN, WA, WI.



Alabama, Connecticut, Delaware, New Hampshire, North Carolina, New York, Tennessee, Texas, Virginia, Florida, and the District of Columbia (10 States plus D.C.). Wireless/prepaid carriers seeking ETC designation in these States must file their application with the FCC. While these States do not handle the ETC designation, in some cases, they may have a role in certifying Lifeline subscribers signed up by the wireless ETCs since consumers may qualify under State-based criteria. Obviously, in some of these jurisdictions, a State's ability to effectively oversee program compliance may be hampered when the ETC is a wireless provider.

### **3. Are the recent reforms adequate to address waste fraud and abuse in the fund?**

*The recent reforms are a significant and positive step forward to clean up crucial abuses in the Lifeline program. The FCC reform, among other things, required annual recertification of recipients' eligibility; detailed audits every two years for carriers that receive over \$5 million in Lifeline monies, and new Lifeline recipient eligibility certifications. These are all important and needed steps that have already improved accountability and eliminated some of the more egregious abuses to the program.*

*Meanwhile, the FCC continues to move forward with proposals to create databases to address problems of duplicate support (accountability database) and eligibility verification (eligibility database). These databases, once up in running, will improve program accountability. The first database, on duplicates, we hope will be up in the next year. The eligibility database is more complicated and the FCC continues to seek input from stakeholders. The difficulty in creating one database that combines the many federal and State eligibility standards is not to be understated.*

*Whether these reforms solve all the problems or require additional refinement is an open issue. The inaugural 2012 recipient recertification requirement process led to de-enrollment of a large number of Lifeline subscribers. It seems likely that this procedure has resulted in some non-insignificant percentage of qualified and deserving Lifeline subscribers being de-enrolled. The majority of those de-enrolled were subscribers who failed to respond to the recertification notice. For example, in Florida 99.42% of de-enrolled subscribers were de-enrolled for not responding to the recertification letter. What we don't know is why all these people didn't respond. Did they simply overlook the notice? Did they disregard it since they had not been asked to recertify before? Did they not understand, or was the process too difficult for many of the low-income recipients? Were some of the non-responses from subscribers who had duplicate Lifeline service and choose the one they preferred to recertify? Additional investigation seems warranted.*

*The next logical question is: Will some percentage of subscribers that were de-enrolled for not responding to the notifications – but do qualify for the program – migrate back into the program in the coming months? Getting the answer could take months. A couple of States are reporting a slight uptick in Lifeline subscription. This might be because at least some of those de-enrolled are re-entering the program. This was the experience in California, which has had a recertification program since 2006. Further analysis is needed to answer these and many more questions.*

#### **4. Do States have any recommendations on how the FCC can further improve the program?**

*Below is a list of ideas offered by individual NARUC members and staff that work on Lifeline issues on a regular basis. These suggestions were collected to respond to your request. The suggestions have not been studied or endorsed by NARUC. The association has taken no position on the relative merits of any. Similarly, they are not necessarily the policy of any particular State. We specified in asking this question that we would not be attributing particular response to any state or individual. This anonymity encouraged a broader range of recommendations for the consideration of the Committee.*

- *The FCC should get the national duplicates and eligibility databases online as soon as possible as it will help eliminate much waste, fraud and abuse. (4 States)*
- *The FCC should examine the provision of Lifeline Service at NO cost to the subscriber. If a consumer has to pay some amount each month for the service it may deter duplicative support. (2 States)*
- *The FCC should simplify the recertification process to assure eligible customers remain on the program. (2 States)*
- *The FCC should rescind the blanket forbearance on the facilities requirement given to prepaid wireless carriers. (2 States)*
- *The FCC/Congress should prohibit the practice of advertising “free government cellphones” and handing out free cellphones from tents and temporary kiosks. Providing information on the program and how to apply could be allowed at such temporary locations but the customer should be directed to a permanent facility before obtaining a phone after eligibility is verified.*
- *The FCC should prohibit the use of third-party agents hired by carriers to sign up Lifeline subscribers (2 States)*
- *The FCC should prohibit activation of handsets before eligibility is verified.*
- *The FCC should prohibit someone that falsifies an application from participating in the program for some period of time and/or require reimbursements to the fund of any losses caused by the fraud prior to re-qualifying for the program. (3 States)*
- *The FCC should impose significant fines and, when appropriate because of the magnitude of the abuse (and the threshold should be small) suspend companies AND their officers from any participation in the Lifeline programs when ETCs or their officers/principals/owners/third party vendors violate rules. Repeat offenders should be permanently banned program participation. (2 States)*
- *The FCC should prohibit any ETCs with a validation/recertification rate of less than a reasonable benchmark, such as 75%, from enrolling new customers and subject them to an FCC/USAC/State audit.*
- *The FCC should grant the USTelecom petition filed April 2, 2012 for reconsideration of 47 C.F.R. §§ 54.410(b)(2)(ii) and 54.410(c)(2)(ii) to allow States that administer the Lifeline program and determine eligibility to provide lists to carriers of subscribers that qualify for Lifeline instead of requiring that copies of application forms be provided to carriers.*

- *The FCC should require more than one month of reimbursement of lifeline funds whenever duplicate Lifeline recipients are discovered.*
- *The FCC should consider requiring all ETCs located in a particular State to use the same Lifeline application form that lists all Lifeline providers in that State so applicants will be more likely to ask questions if they already have service.*
- *The FCC should require ETCs to obtain and retain proof of eligibility.*
- *The FCC should require all ETCs to call their service “Lifeline” and prohibit the misleading practices used by some carriers of “doing business as”, e.g., Assurance Wireless and SafeLink to avoid customer confusion.*

If you have questions about NARUC’s positions or would like to discuss it further, please contact NARUC Legislative Director Brian O’Hara at (202)898-2205, [bohara@naruc.org](mailto:bohara@naruc.org) or NARUC General Counsel Brad Ramsay at (202)898-2207, [jramsay@naruc.org](mailto:jramsay@naruc.org).

Sincerely,

/s/Chuck Gray  
NARUC Executive Director