

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Requests for Review by AT&T Inc., T-Mobile) WC Docket No. 03-109
USA Inc., and Tracfone Wireless, Inc. of)
Decisions of the Universal Service)
Administrator Concerning Audit Findings)
Relating to the Low-Income Program)

To: The Commission

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

INTRODUCTION

CTIA – The Wireless Association® supports the requests by AT&T, T-Mobile USA, and TracFone Wireless (“Appellants”) to review and reverse the Universal Service Administrative Company’s (“USAC”) audits finding that the Appellants failed to produce adequate documentation demonstrating the eligibility of its Katrina Lifeline program participants following the devastation of Hurricane Katrina and thus should reimburse universal service funds received for this emergency program. CTIA agrees with the Appellants that USAC ignored Commission precedent and was wrong to conclude that eligible telecommunication carriers (“ETCs”) were required to retain Federal Emergency Management Agency (“FEMA”) documentation provided by Lifeline recipients as a condition for obtaining reimbursement. USAC’s determination that the absence of copies of FEMA documentation evidences an applicant’s lack of eligibility is flawed because there are other sources of information available to USAC to confirm applicants’ eligibility. Moreover, this request is the perfect example of the old adage, “no good deed goes unpunished.” Unless corrected, USAC’s mistaken interpretation of the Katrina

Lifeline program will set a dangerous precedent in future disasters and place superfluous paperwork requirements between those in need and those willing to help. Under these facts and circumstances, public policy weighs strongly against penalizing ETCs who responded to the Commission's voluntary emergency program and provided much needed emergency telecommunication services to more than 100,000 households affected by Hurricane Katrina. For these reasons, and as explained below, USAC's findings of forfeiture should be rejected.

I. BACKGROUND

In the wake of the devastation caused by Hurricane Katrina in the Gulf region, the Federal Communications Commission ("FCC" or "Commission") established an emergency program under the universal service low-income fund's Lifeline mechanism to provide victims of the hurricane with subsidized telecommunications services.¹ Under the program, service providers were invited to participate by providing a free wireless handset and a package of at least 300 minutes of use, not to exceed \$130 per household available from the date of the release of its order to March 1, 2006 to those individuals that qualified for FEMA assistance.² Participation in the program was limited to consumers who resided in FEMA-designated counties/parishes and who were eligible for housing assistance without obligation to reimburse FEMA.³ Support was further limited

¹ See *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up*, 20 FCC Rcd 16883 (2005) (*Katrina Order*).

² *Id.* at ¶¶ 11-12.

³ *Id.* at ¶¶ 17-18.

to a “per household basis” defined by the Commission as “one adult and his/her dependants, living together in the same residence.”⁴

Confirmation of an applicant’s eligibility for the program required that they “provide documentary evidence to the ETC serving them to demonstrate that FEMA determined they were eligible for individual disaster housing assistance. Proof of FEMA’s determination of eligibility for individual housing disaster assistance without repayment obligations is sufficient.”⁵ Additionally, the program indicated that ETCs must “maintain all necessary documentation to verify that the support was used for the intended purpose of assisting victims of Hurricane Katrina.”⁶

Upon establishment of the program, the Appellants applied for temporary designation as ETCs and provided much needed emergency telecommunication services to more than 100,000 households affected by Hurricane Katrina.⁷ ETC employees required an applicant to: (1) provide a copy of a letter from FEMA demonstrating eligibility for disaster housing assistance or other evidence that he or she had no obligation to repay any FEMA housing grant; (2) provide a valid photo identification; and (3) execute a self-certification attesting under penalty of perjury that he or she qualified for the Katrina Lifeline program. Subsequently, auditors for USAC undertook an investigation of the Appellants’ documentation of compliance with program rules and determined that Appellants either lacked certifications or that some of the certifications retained by the Appellants did not meet program standards. As a result, USAC concluded

⁴ *Id.* at ¶ 12.

⁵ *Katrina Order* at ¶ 17.

⁶ *Id.* at ¶ 23.

⁷ CTIA notes that while over 100,000 *households* were provided with emergency telecommunications services, the actual number of *people* provided with such service was much greater.

the Appellants lacked sufficient documentation for those customers that participated in the program. In this proceeding, the Appellants challenge the audit findings.

II. DISCUSSION

A. The USAC Audits Erroneously Conclude that ETCs Were Required to Retain FEMA Documentation Provided by Lifeline Recipients.

Despite the findings of the USAC audits, service providers in the Commission's Katrina Lifeline program were *not* required to retain copies of FEMA letters provided by customers as proof of eligibility. Rather, retention of the customer and carrier employee certifications, made under penalty of perjury, that the documentation was provided at the point of sale and that the customer had demonstrated eligibility, should fully satisfy the requirements in the Katrina Order.

The Commission specifically designed the Katrina Lifeline program to “work within the parameters of the existing [Lifeline] program.”⁸ Under the regular Lifeline program, applicants demonstrate their eligibility by presenting either a self-certification of participation in a qualifying program (*e.g.*, food stamps, Medicaid) or a certification of income (*e.g.*, W-2, pay-stub).⁹ Indeed, the Commission has stated that its regular Lifeline rules “do not require ETCs to *retain* the consumer's corroborating documentation. ETCs need only *retain records* of their self-certifications and those made by the applicant.”¹⁰

The Katrina Order also addresses this point, stating that ETCs should merely retain “any other forms or documentation already required to participate in the

⁸ *Katrina Order* at ¶¶ 12, 18.

⁹ *Lifeline and Link-Up*, 19 FCC Rcd 8302, at ¶¶ 27-31 (2004) (*Lifeline and Link-Up R&O*).

¹⁰ *Id.* at ¶ 31 (emphasis added).

low-income program.”¹¹ Furthermore, CTIA sought clarification from the Commission on the ambiguities of the Katrina Order’s reporting and document retention requirements, including requesting exemplars of documents that would be acceptable, but received no guidance from FCC staff.¹²

In the instant case, the Appellants relied upon the Commission’s *Lifeline and Link-Up R&O* by retaining the self-certifications made under penalty of perjury by Lifeline applicants, corroborated with government-issued identification and FEMA documentation presented to carrier employees. Carrier employee certifications or the applicant’s own certification are analogous to the regular Lifeline requirements and should reasonably satisfy the Katrina Order requirements.¹³

B. USAC’s Determination That the Absence of Copies of FEMA Documentation Warrant Forfeiture of Program Funds is Flawed.

As described above, ETC participants in the Katrina Lifeline program were not required to maintain copies of the FEMA documentation provided by customers. Thus, the absence of copies of such documentation should not be *de facto* evidence of lack of eligibility on behalf of the applicant. Moreover, even if the Commission were to accept that the Appellants were required to maintain the documentation demanded by USAC, such a finding does not support a further determination that participants were not eligible

¹¹ *Katrina Order* at ¶ 16 n.35.

¹² *Request For Review By T-Mobile USA, Inc. of the Decision of the Universal Service Administrator*, WC Docket No. 03-109, at 17-18 (filed Feb. 16, 2010).

¹³ This is especially true in this instance where the FCC has declined to provide any guidance to the contrary.

program support recipients because there are other sources of information available to USAC to confirm applicants' eligibility.¹⁴

In addition to the certifications made by carrier employees and the program support recipients themselves, other sources of information can be used by USAC to confirm eligibility of the customers at issue. The *Katrina Order* directed "ETCs receiving this temporary support to maintain all necessary documentation to *verify* that the support was used for the intended purpose of assisting victims of Hurricane Katrina."¹⁵ In accordance with this directive, the Appellants have retained information on the customers that participated in the program that would allow verification of program eligibility without prejudicing the ETCs that participated in this unprecedented emergency program. The applicant certifications include information that USAC can cross-reference with a database of FEMA assistance recipients in order to verify that applicants were in fact eligible to receive Lifeline assistance.

C. Public Policy Weighs Against Penalizing ETCs Voluntarily Participating in an Emergency Program.

The FCC should interpret the Order in a way that recognizes the extraordinary circumstances presented by Hurricane Katrina. If the Commission finds that the Appellants lack adequate records for some program participants, it should find that such lapses are *de minimus* in light of the extenuating circumstances under which carriers operated. This is especially true in this instance where the FCC declined to provide additional guidance to the participating ETCs.

¹⁴ Moreover, USAC's findings effectively punish the good faith work of participating ETCs by seeking to recover *all* Katrina Lifeline support from the Appellants based on the alleged inadequacy of documentation for *some* of the program participants.

¹⁵ *Katrina Order* at ¶ 23 (emphasis added).

In the wake of the catastrophic damage of Hurricane Katrina, where the Commission itself reached out to carriers asking them to facilitate this program, U.S. wireless providers, including the Appellants, went to great lengths to restore critical wireless communications services to the devastated areas. In addition to their herculean efforts to restore service, Appellants also temporarily suspended billing practices, implemented new data collection systems, and restored retail services in the affected areas in order to provide access to the Katrina Lifeline program. The devastation of Hurricane Katrina required swift action and the Commission's *Katrina Order* provided for such action. The Commission should not penalize the Appellants for their voluntary participation in an emergency program. To do so would set a bad precedent and effectively chill or discourage telecommunications carriers' active participation in future disaster response.

CONCLUSION

The certifications provided by the Appellants satisfy the obligations of the *Katrina Order*, and any lack of copies of FEMA documentation does not detract from established safeguards and audit requirements. Even if specific documentation is unavailable, the Commission should reject the USAC audit findings in light of the alternative sources of verification and the extraordinary circumstances under which this program was administered.

Respectfully submitted,

By: /s/ David J. Redl

David J. Redl
Director, Regulatory Affairs

Michael F. Altschul
Senior Vice President, General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

CTIA – The Wireless Association®
1400 16th Street, NW
Suite 600
Washington, DC 20036
(202) 785-0081

Dated: May 17, 2010