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Comes Joe Barrows, Executive Director of the CMRS Board and State 911 Coordinator for the Commonwealth of Kentucky and submits his comments to the Kentucky Public Service Commission in the matter of Case No. 2016-059 – *An Inquiry into the State Universal Service Fund.*

The Lifeline Program[1] has been in existence since 1985. The 'Low Income Support' portion of the program is the focus of the Public Service Commission's inquiry. The Low Income Program was initially designed to make telephone (wireline) service more affordable to low-income Americans and took the form of reimbursing phone companies for a portion of the regular monthly service charges (phone bill) for those eligible. Companies discounted their service charge to the eligible customer and received a Lifeline payment to make up the difference. The Federal Universal Services Fund was (is) the source of the reimbursement. The USF fee is paid by service providers based on the number of their access lines (or subscribers). Companies may collect the fee from end users.[2]

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[1] The Lifeline Program is comprised of four distinct programs all of which receive disbursements from the USF – 'High Cost Support,' 'Low Income Support,' ' Rural Health Care,' and ' Schools and Libraries.

[2] Similarly, service providers pay into the state version of universal service fund (KUSF) based on their 'customer count' and are allowed to collect the fee from their customers.

The program participants on the provider side were traditional (wireline) phone companies (CLECs and ILECs) and wireless providers. The common thread was that they were "facility based" telecommunication companies – had equipment, owned 'wire', cell towers, networks, offices and were all ETC's (Eligible Telecommunication Carriers) by definition which made them eligible to participate in the Lifeline Program in its full programmatic components.

Nationally, the 'Low Income' portion of Lifeline Program paid out consistently $700 to $800 million a year from 2003 through 2008 from the USF. However, by calendar year 2015, the national program had grown dramatically paying out $1.6 billion, double the 2008 payout. There was a high payout of $2.189 billion in 2012.

What caused this? The answer is that the FCC granted permission for 'non facility' based providers of cell phone service to become ETC's for the limited purpose of participating in the 'Low Income' program. These companies are described as MVNO's (Mobile Virtual Network Operations). These companies are middle men in providing cell phone service; wholesalers who buy 'minutes' from companies like AT&T and Verizon who have national networks [3]and package those minutes under their own brand before marketing to the public in what is typically a 'prepaid' cell phone service. The largest of these companies, TracFone Wireless, Inc. initiated the request to the FCC for permission to participate in the Low Income Program but proposed using a new model. Rather than discounting a bill (since providers of prepaid service do not 'bill' customer directly), they proposed to provide a "free" phone and

[3] These companies may also purchase minutes from regional or state wide networks such as Bluegrass Cellular or East Kentucky Network in our state.

"free" minutes to eligible persons and to receive in return a reimbursement from the federal USF currently in the amount of $9.25 for each participant per month.

The FCC's 'Forbearance Order'[4] which sanctioned the 'new' model of wireless Low Income Lifeline Program required companies who wished to participate to receive 'permission' from state regulatory agencies like the Kentucky Public Service Commission by petitioning to be designed as an ETC for this limited purpose. In this process companies could ask to receive a monthly reimbursement from the state universal service fund for each of their Lifeline subscribers. State reimbursement is $3.50 per Lifeline subscriber per month from the KUSF. The shrinking of the state KUSF is directly attributable to the 'new' style wireless lower income Lifeline Program. The impact on the KUSF would mirror the impact that the program had on the federal USF.

The first petition for such designation in Kentucky was filed by TracFone in 2009. By 2014, TracFone was receiving nationwide over $430 million in Lifeline reimbursements annually. That success spawned a cottage industry of copy cat companies seeking ETC status and the opportunity to market their brand through the Lifeline Program. The PSC began receiving an increasing number of ETC requests beginning in 2010. By the end of 2015, the Kentucky PSC had approved requests from 21 companies for ETC status for the 'new style' wireless Low Income Lifeline Program. Federal reimbursement to companies for their Kentucky Lifeline customers grew from $7.9 million in 2009 to $26.3 million in 2015 with a high of $28.1

[4] Petition of Tracfone Wireless, Inc. for forbearance from 47 U.S.C. §214 (e) (1)(A) and 47 C.F.R. § 54.201 (i), CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order")

million in 2012. The number of Lifeline subscribers in Kentucky grew from 67,774 in 2009 to 258,032 in December of 2015.

In January 2016, 42 companies received low income Lifeline reimbursements from the federal USF totaling $2,385,240 for Kentucky Lifeline subscribers. Seventeen of these companies received reimbursements totaling $2.192 million under the 'new style' program for their Kentucky customers, approximately 92% of all the federal reimbursements for Kentucky Lifeline clients for the month. The balance of $ 193,717 was received by traditional ILECs and CLECs for their 'discounted' monthly bills – old style Lifeline. Of the 17 companies receiving federal reimbursement under the 'new style' Lifeline Program, the top seven recipients[5] accounted for 92.5% of the total 'new style' reimbursements which was 85% of all federal Low Income Lifeline reimbursements for that month.

By way of comparison, payments from the KUSF for June 2015, for the Low Income program totaling $531,000 were made to 40 providers, 28 were ILECs or CLECS or wireless companies receiving reimbursement in the amount of $ 72,931 for discounted bills – old style Lifeline. Twelve prepaid service provider ETCs received reimbursement for the 'new style' program which totaled $485,125 or 86.2% of the total reimbursement. (The percentage would be higher expect for the facts to follow).

The payments from the KUSF are made based on the same 'subscriber count' that generates federal reimbursements so that the relative ranking of which companies receive the

[5] Those companies and their Federal USF receipts for Kentucky Lifeline subscribers are TracFone Wireless ($582,000); Telrite Corp. ($569,000); Blue Jay Wireless ($232,000); Budget Prepay ($212,000); Virgin Mobile USA ($176,000); I-Wireless ($150,000) and Q Link Wireless ($105,000).

most or have the most customers would mirror federal ranking; *with this notable point* at least two of the companies (TracFone and Virgin Mobile) which rank high in federal reimbursement did not request and do not receive reimbursement from the KUSF.

All that background aside, the CMRS Board's interest in the PSC inquiry is directly related to the Board's duty to collect the state's 911 surcharge of 70¢ per CMRS connection (cell phone) each month.

The Board believes that the surcharge applies to all CMRS connections (all active cell phones) regardless of whether the phone is loaded with prepaid, postpaid, or free minutes. Providers of billed (postpaid) cell phone services collect the surcharge on behalf of the Board by adding it to the monthly bill. Providers of prepaid cell phone service remit the surcharge to the Board on behalf of their subscribers using a statutory formula, to wit: divide monthly earned prepaid revenues by $50, then multiply by the 70¢ surcharge, and remit this amount to the CMRS Board.[6] Funds received by a company for their Lifeline customers from both the federal and state Universal Services Funds are 'revenues' to be included in calculating the amount of the surcharge to be remitted to the Board.

The Kentucky PSC in granting ETC status to providers of prepaid services, allowing them to participate in the 'new model,' has required as a condition of the ETC status, that companies 'pay the 9-1-1 fee'. This is an appropriate requirement since there are over 200,000

[6] KRS 65.7635(1) allows providers of prepaid service to select one of two methods to collect/remit the 9-1-1 surcharge. The calculation described above is "Option B," the method of choice for almost all providers of prepaid service. That formula does not generate the equivalent of 70¢ per phone per month and results in an under collection of 9-1-1 fees of between $ 3-4 million annually.

Lifeline cell phones in Kentucky, each with the capability of dialing 9-1-1 and accessing public safety responses to emergencies *even if there is no regular phone service available to the user because minutes in their account expired.*

The Board believes that not all of the 'new model' Lifeline providers are remitting 9-1-1 fees to the Board. So the Board would request that the PSC, in its evaluation of the 'new model' Lifeline Program, consider and ultimately adopt a policy of revoking (after appropriate due process) the ETC designation of any carrier found not to be remitting 9-1-1- fees related to their Lifeline customers and that it proactively work with the CMRS Board to determine those instances in which a carrier is failing to do so. It is important that Lifeline phones contribute to the support of 9-1-1 services.

As to the PSC's request for comment on the immediate issue of how to address the looming insolvency of the KUSF fund, by raising the USF assessment or lowering the reimbursement, the Board is less opinionated.

Generally speaking, it is not the ideal to change the 'rules' (reimbursement rate) in the middle of the game but, 'insolvency' is probably a worse option. Perhaps a little of each (lowering reimbursement, raising the assessment) is an option to consider short term.

The rapid rise in the reimbursement totals from the Low Income Lifeline Program at the Federal level prompted FCC 'reforms' in 2012, (primarily increased oversight to eliminate fraud and abuse). Those reforms have had some positive results. The PSC requires low income

Lifeline ETCs to comply with those reforms. It may be that the state USF fund will be reinvigorated or come back in balance as these reforms and others are thoroughly implemented and audited across the program.

But the review is timely from a policy perspective as well. For example, the FCC still operating under a "Second Notice of Proposed Rulemaking," is considering adding a 'broadband' access component to the Low Income Lifeline Program. Evaluating the potential impact of that proposal on the KUSF should be a part of this inquiry. So I applaud the PSC for undertaking the inquiry and look forward to working with them to address both the short term issues of the KUSF and the longer term issues regarding the Low Income Lifeline Program.

Sincerely Submitted,

Joe Barrows
Executive Director
CMRS Board

The sources for data on the Federal USF fund include public reports and FCC filings from the Universal Service Administrative Company (USAC), and independent not-for-profit corporation designated by the FCC as the administration of the Universal Services Fund.