Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Federal-State Joint Board on Universal Service	)	WC Docket No. 09-197
Petition for Forbearance of LINE UP, LLC Pursuant to 47 U.S.C. § 160(c)	))	

COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON PETITION FOR FORBEARANCE

On May 27, 2010, LINE UP, LLC ("LINE UP"), a wireless reseller, filed a petition for forbearance in this docket pursuant to 47 U.S.C. § 160, seeking forbearance from the provision of 47 U.S.C. § 214(e)1)(A) that requires eligible telecommunications carriers ("ETCs") to provide service at least partly over their own facilities.[1] The Federal Communications Commission ("FCC" or "Commission") put the petition out for public comment.[2] The National Association of State Utility Consumer Advocates ("NASUCA")[3] files these comments on the Petition.

[1] See LINE UP Petition ("Petition") at 1.

[2] Public Notice DA 10-1040 (rel. June 7, 2010).

[3] NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

As stated before,[4] NASUCA fully supports increasing the options available to Lifeline-eligible consumers. But it does not appear that the Commission can find that forbearance is in the public interest here without more specificity as to how LINE UP, like many of its predecessor applicants for forbearance from the facilities-based requirement, plans to apply the federal support it will receive upon designation as a Lifeline ETC.

It appears that LINE UP provides prepaid wireless service,[5] but the plans are not described in the Petition. There are no descriptions of "LINE UP" plans on the Prepaid Experts, Inc. website.[6] Clearly, however, LINE UP focuses on low-income inner-city consumers.[7] Although that is admirable, it is not enough to determine that granting forbearance to LINE UP is in the public interest.[8]

[4] See *In the Matter of Federal-State Board on Universal Service*, CC Docket No. 96-45 ("96-45"), NASUCA Comments on Petition by Conexions, LLC (filed September 9, 2009); id., NASUCA Comments on Petition by Consumer Cellular, Inc. (filed August 20, 2009); id., NASUCA combined comments on Petitions by i-Wireless, LLC ("i-Wireless") and Head Start Telecom, Inc. ("Head Start") (filed July 6, 2009).

[5] Petition at 8.

[6] See id. at 6; http://prepaidxperts.com/Winter%20Catalog%202009.pdf.

[7] Id. at 4, 8

[8] In an Order released June 25, 2010 in CC Docket 96-45 and this docket, the Commission granted a similar forbearance petition filed by i-wireless, LLC. FCC 10-177 (rel. June 25, 2010) ("*i-wireless Order*"). In that order, the Commission stated that it "disagree[d] with parties that argue that we should condition our forbearance on i-wireless complying with additional obligations, such as offering a particular usage package or complying with state-level 911 and E911 obligations." Id. at ¶ 18. The Commission cited NASUCA's comments on the i-wireless petition, characterizing them as "arguing that forbearance is inappropriate unless i-wireless explains how it will apply the Lifeline discount to its plans…." Id., n.38. NASUCA had stated, in its comments, that "NASUCA agrees with i-Wireless that '[p]repaid wireless services that are affordable and easy-to-use are attractive to lower-income customers … providing them with access to emergency services, and a reliable means of communication while traveling and for contacting prospective employers.' Unfortunately, based on its petition (and other available information), it is impossible to know whether i-Wireless will provide such a service and should receive federal low-income funding." NASUCA Comments at 5. NASUCA stands by those comments, and fundamentally disagrees that the Commission can meet its public interest obligations under 47 U.S.C. § 160 by pushing the determination whether a service is in the public interest off onto state commissions. *i-wireless Order*, ¶ 18.

[9] We believe it is appropriate to leave those assessments to whichever commissions will rule on i-wireless's petitions for designation as an ETC. A state commission is generally in a better position than we to assess whether a particular offering will benefit that state's low-income consumers and to determine whether it is necessary to condition ETC designation on compliance with state-level 911 and E911 obligations.[10]

The forbearance statute – 47 U.S.C. § 160 – requires the Commission to forbear from any statute or regulation if (1) the provision is not necessary to ensure that charges and practices for a service are just and reasonable and not unreasonably discriminatory; (2) the provision is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest. The LINE UP petition relies on the grants of forbearance from the facilities-based services requirement of 47 U.S.C. § 214(e)1)(A) to TracFone in 2005 and to Virgin Mobile in 2009.[11]

NASUCA filed comments on the TracFone petition that, inter alia, focused on how TracFone was going to apply the Lifeline discount.[12] TracFone then clarified that it would "apply" the discount by offering two services specifically to Lifeline customers, indicating that "customers who qualify for Lifeline will receive up to $10.00 worth of wireless service at no charge each month."[13] But the two plans have since become only one, and although there appear

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[9] *See, e.g.*, NASUCA Comments at 4–5 (); NENA Comments at 1–2 (arguing that carriers seeking forbearance should commit to complying with state-level 911 and E911 obligations as a condition of forbearance).

[10] Of course, if a state commission does not have jurisdiction to designate i-wireless as a limited-purpose ETC, we will consider i-wireless's application as well as whether any additional obligations are necessary for that particular designation to be in the public interest. *See* 47 U.S.C. § 214(e)(6).

[11] *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15095 (2005) ("*TracFone Order*") and *Petition of Virgin Mobile USA, L.P. for Forbearance*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) ("*Virgin Mobile Order*").

[12] *TracFone Wireless, Inc. Petitions for Designation as an ETC*, CC Docket No. 96-45, NASUCA/PULP Comments (January 14, 2008) at 6-7.

[13] Id., TracFone Reply Comments (January 29, 2008) at 4.

to be substantial variations in the number of free minutes TracFone is offering in various states, the typical number of minutes is only 68 a month.[14]

On the other hand, Virgin Mobile said it would offer a uniform 120 free minutes and a free (refurbished) handset.[15] This appears substantially superior to TracFone's plan, although still including less usage than the Commission has determined would be a reasonable amount to meet consumers' needs.[16]

As a prepaid cell phone provider, LINE UP's service is similar to both TracFone and Virgin Mobile. But that does not resolve the public interest issue. One would like to assume that LINE UP would simply apply the Lifeline discount to a Lifeline customer's plan, and would allow the discount to be applied to any of the LINE UP plans – whatever they may be – but such assumptions have no place in a Commission determination of whether forbearance is in the public interest. If LINE UP intends to limit which plan will be available to Lifeline customers, or intends to create a new Lifeline plan, it is important for the Commission to know.[17]

Further, at its mid-year conference held in San Francisco, California earlier this month, NASUCA adopted a resolution that addressed many low-income ETC issues. Most of the resolution (attached here) goes beyond the immediate purpose of this proceeding, but one portion is specifically relevant here: "RESOLVED**,** That the FCC should require any forbearance

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[14] See https://www.safelinkwireless.com/EnrollmentPublic/faq.aspx#.

[15] See Virgin Mobile ex parte (October 24, 2009). Virgin Mobile now offers 200 "free" minutes. *i-wireless Order*, n.41.

[16] It should be recalled that, in the Hurricane Katrina Order, the FCC estimated that consumers receiving 300 wireless minutes a month in exchange for the maximum federal low-income funding was a reasonable benefit. *Federal-State Joint Board on Universal Service*, 20 FCC Rcd. 16883 (2005) at ¶ 12.

[17] If the Commission does grant forbearance to LINE UP, the conditions placed on TracFone and Virgin Mobile must also apply to Line Up, as LINE UP acknowledges. Petition at 12; see *TracFone Order*, ¶ 21; *Virgin Mobile Order*, ¶ 12.

petition or petition for low-income ETC designation filed for a low-income ETC service to include a complete description of the service to be offered…."[18]

LINE UP should be required to explain how its Lifeline discounts will be applied before the Commission can address its petition. The petition cannot be granted as filed.[19]

Respectfully submitted,

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[18] Resolution at 4.

[19] If Line Up supplements its petition, the supplemented version should be sent out for fresh public comment. See *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, FCC 09-56 (rel. June 29, 2009), ¶¶ 29, 40.

THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION 2010-02

CALLING FOR REFORM OF THE LIFELINE PROGRAM, INCLUDING REFORM FOR PREPAID WIRELESS LIFELINE SERVICES

WHEREAS, Low-income support mechanisms such as Lifeline have long been part of the national universal service goal;

WHEREAS, Lifeline has been an important means of achieving the goals of affordable universal service for all;

WHEREAS, wireless service has become an increasingly important part of telecommunications service, including Lifeline;

WHEREAS, unsettled economic times and changes in technology and consumer lifestyles have created the need for new approaches to low-income telecommunications assistance programs;

WHEREAS, this has created the need for the Federal Communications Commission ("FCC") to reexamine its earlier decisions regarding the Lifeline program;

WHEREAS, carriers have sought and the FCC and state commissions have allowed on an ad hoc basis a category of "low-income" eligible telecommunications carriers ("ETCs"), that seek only low-income funding under the federal universal service fund and do not seek high-cost funding

WHEREAS, the purpose of Lifeline programs is to balance the maximum value for low-income customers with the costs imposed on all customers who pay for the Lifeline programs;

WHEREAS, the federal Lifeline discount for incumbent local exchange carriers ("ILECs") not serving tribal lands consists of three tiers, with Tier 1 being a waiver of the subscriber line charge ("SLC"), Tier 2 being an additional $1.75 discount off the retail rate for basic service, and Tier 3 being an additional $1.75 discount off the retail rate for basic telephone service if the state matches the federal Tier 3 discount;

WHEREAS, the federal Lifeline discount for competitive local exchange carriers ("CLECs") and wireless carriers has been the same dollar amount as for ILECs, even where the carrier does not charge a SLC;

WHEREAS, Lifeline service traditionally consisted of the most basic local service offered by the ILEC, which in many areas includes unlimited local calling;

WHEREAS, the FCC has required non-ILEC Eligible Telecommunications Carriers ("ETCs") it designates to offer local calling usage that is comparable to the ILECs' local calling usage;

WHEREAS, technology changes and lifestyle changes have led carriers to market numerous additional services, and to create bundles and packages of services that include basic service along with additional services;

WHEREAS, wireless carriers typically offer only packages that include services beyond basic and usage that goes beyond local usage;

WHEREAS, some state commissions and some carriers have limited Lifeline customers' access to packages that include more than basic service or, in the case of wireless carriers, to the lowest-usage package;

WHEREAS, in the National Broadband Plan, the FCC has recommended that the FCC and states should require ETCs to permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice service;

WHEREAS, the offering of service packages to Lifeline customers gives those customers choices, but there are concerns that carriers will heavily market packages to Lifeline customers that are beyond the customers' means, and that the Lifeline customers will therefore have service disconnected for non-payment at a rate significantly greater than that applicable to Lifeline customers who subscribe only to limited services;

WHEREAS, the FCC has designated and has allowed the states to designate Lifeline-only ETCs that do not receive high-cost funds;

WHEREAS, the FCC has placed conditions on grants of low-income ETC status, including conditions based on the carrier's status as a wireless reseller;

WHEREAS, these ETCs, principally prepaid wireless carriers, have brought telephone service to hundreds of thousands of low-income customers who have never had or have dropped their wireline service and previously could not afford wireless service;

WHEREAS, the existence of these prepaid wireless Lifeline-only ETCs has resulted in substantial growth to the federal USF paid by most customers, without a necessary assurance of adequate value provided to the Lifeline customer, or the most efficient use of Lifeline benefits;

WHEREAS, the appearance of prepaid wireless carriers as Lifeline-only ETCs that do not offer a Lifeline discount off their retail rate but instead offer "free" service (with or without a "free" handset) to Lifeline customers has also complicated the calculation of the value of Lifeline service, especially where the free service includes limited usage minutes and requires customers needing additional minutes to purchase those minutes from the carrier;

WHEREAS, the existence of wireless ETCs with limited usage plans, and especially prepaid wireless ETCs that offer extremely limited usage packages on their "free" plans, raises concerns about the equivalency of this calling to the ILECs' calling packages available to Lifeline customers;

WHEREAS, the existence of wireless ETCs, especially Lifeline-only wireless ETCs, raises concerns about ensuring that each household receives only one Lifeline benefit and ensuring that no carrier receives Lifeline support when customers opt for a different Lifeline service;

WHEREAS, there have been concerns raised about whether prepaid wireless carriers, especially prepaid Lifeline-only ETCs, do or should contribute to state funds, especially state 9-1-1 funds;

WHEREAS, in the National Broadband Plan, the FCC has noted that, in designing a Lifeline broadband program, it should consider the recent experience with expanding Lifeline to non-facilities-based prepaid wireless providers;

WHEREAS, wireline carriers' rates, including rates for basic service and for packages, are increasingly being rate-deregulated at the state level, and wireless carriers' rates, including prepaid wireless carriers' rates have not been rate-regulated, giving rise to additional concerns about the value and efficiency of Lifeline benefits;

WHEREAS, the FCC's rules for designating ETCs (including low-income ETCs) govern only ETC designations that the FCC makes, and are only suggestions for states that designate ETCs;

WHEREAS, a number of applicants for low-income ETC status have filed petitions for forbearance from statute or FCC rules that contain insufficient information to allow a determination of whether forbearance is in the public interest, specifically a description of the service(s) to be offered that will be subject to the Lifeline discount; *now, therefore be it*

RESOLVED, That the National Association of State Utility Consumer Advocates ("NASUCA") continues to support the Lifeline program, particularly for wireline service; *and be it further*

RESOLVED, That, given the use of dollars from around the country to support the federal Universal Service Fund, NASUCA supports the FCC's adoption of minimum standards for state ETC, especially low-income ETC, designation; *and be it further*

RESOLVED, That NASUCA supports a policy that requires carriers to offer discounted basic service while permitting Lifeline customers to purchase packages and bundles, and that requires carriers to apply the full federal Lifeline discount and any applicable state Lifeline discount to basic local service and to the price of any service package containing basic local service that they offer; and be it further

RESOLVED, That such policy should also include a prohibition on disconnection of the basic service portion of telecommunications service if the basic amount is paid, if the carrier offers a basic service, and if the carrier does not offer a stand-alone basic service, a provision that the lowest-price package be maintained if sufficient payment is made for that lowest-price package; *and be it further*

RESOLVED, That regulators should ensure that Lifeline customers with packages are not disconnected at a significantly greater frequency than Lifeline customers without packages; *and be it further*

RESOLVED, That the FCC should require any forbearance petition or petition for low-income ETC designation filed for a low-income ETC service to include a complete description of the service to be offered; *and be it further*

RESOLVED, That the FCC should a consider establishing minimum standards of service for prepaid wireless Lifeline service that would apply to all prepaid wireless Lifeline services, facilities-based or not, and satisfy the public interest by providing adequate value for Lifeline recipients and comply with the universal service mandates of the Act; *and be it further*

RESOLVED, That the FCC should specifically adopt a minimum standard to ensure adequate value to prepaid Lifeline wireless customers from the service (i.e., minimum number of monthly minutes, maximum price for additional minutes and maximum price for text messages, etc.); *and be it further*

RESOLVED, That there should be continued evaluation of appropriate federal default rules for ongoing support when there is no monthly billing, carrier contributions to state funds, quality of service obligations, double billing, protection from fraud, recertification, and audits; *and be it further*

RESOLVED, that the FCC should investigate whether the Lifeline discount should no longer be taken off the retail rate, but off some measure of wholesale or forward-looking cost, especially where the carrier's services are not price-regulated; *and be it further*

RESOLVED, That the NASUCA Telecommunications Committee, with the approval of the Executive Committee of NASUCA, is authorized to take any and all actions consistent with this Resolution in order to secure its implementation.

Approved by NASUCA:
Place: San Francisco, CA
Date: June15, 2010

Submitted by:
NASUCA Telecommunications Committee