

rulemaking do not, therefore, apply to this action.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 22, 2010.

Richard P. Keigwin, Jr.,

*Director, Pesticide Re-evaluation Division,
Office of Pesticide Programs.*

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109; FCC 11-97]

Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes immediate action to address potential waste in the universal service Lifeline and Link Up program (Lifeline/Link Up or the program) by preventing duplicative program payments for multiple Lifeline-supported services to the same individual. On March 4, 2011, the Commission released a Notice of Proposed Rulemaking to reform and modernize Lifeline/Link Up. In the Notice of Proposed Rulemaking, the Commission underscored its commitment to eliminating waste, fraud, and abuse in Lifeline/Link Up and presented a comprehensive set of proposals to better target support to needy consumers and maximize the number of Americans with access to modern communications services. To ensure that Lifeline support is limited to the amount necessary to provide access to telecommunications service to qualifying low-income consumers, we adopt measures to prevent, detect and resolve duplicative Lifeline claims for the same consumer. The near-term reforms we adopt here will reduce waste in the Fund and give the Commission flexibility to modernize the Low-Income Program in order to align it with changes in technology and market dynamics, such as the proposal we

currently are reviewing to support broadband pilot projects for low-income consumers.

DATES: Effective July 29, 2011.

FOR FURTHER INFORMATION CONTACT: Kimberly Scardino, Attorney Advisor, at 202-418-1442, Telecommunications Access Policy Division, Wireline Competition Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109, FCC 11-97, released on June 21, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this order we take immediate action to address potential waste in the universal service Lifeline and Link Up program (Lifeline/Link Up or the program) by preventing duplicative program payments for multiple Lifeline-supported services to the same individual. On March 4, 2011, the Commission released a Notice of Proposed Rulemaking to reform and modernize Lifeline/Link Up. In the *2011 Lifeline and Link Up NPRM*, 76 FR 16482, March 23, 2011, the Commission underscored its commitment to eliminating waste, fraud, and abuse in Lifeline/Link Up and presented a comprehensive set of proposals to better target support to needy consumers and maximize the number of Americans with access to modern communications services. We explained that, while we are considering broader reforms to the program, which we remain committed to complete as soon as possible, it may be necessary for the Commission to take action to address immediately the harm done to the Universal Service Fund (Fund) by duplicative claims for Lifeline support. To ensure that Lifeline support is limited to the amount necessary to provide access to telecommunications service to qualifying low-income consumers, we adopt measures to prevent, detect and resolve duplicative Lifeline claims for the same consumer. The near-term reforms we adopt here will reduce waste in the Fund and give the Commission flexibility to modernize the Low-Income Program in order to align it with changes in technology and market dynamics, such as the proposal we currently are reviewing to support broadband pilot projects for low-income consumers.

2. In May 2010, the Commission asked the Federal-State Joint Board on

Universal Service to review the low income program to ensure that it is effectively reaching eligible consumers and that oversight continues to be appropriately structured to minimize waste, fraud, and abuse. Meanwhile, under the Commission's oversight and pursuant to the Commission's rules, the Universal Service Administrative Company (USAC) has conducted a series of audits to test compliance with our low income program rules, including audits to determine if there was a problem with duplicative claims for Lifeline. The audits revealed that some low-income subscribers are receiving multiple Lifeline benefits contrary to our program restrictions. The agency already has taken steps to address the situation; in particular, the Office of the Managing Director (OMD) directed USAC to perform a significant number of in-depth data validations (IDVs), which are streamlined inquiries of Lifeline recipients targeted at uncovering duplicative claims for Lifeline support in select states. To ensure prompt action to eliminate duplicative Lifeline support, we not only make clear that qualifying low-income consumers may receive no more than a single Lifeline benefit; we also require an ETC, upon notification from USAC, to de-enroll any subscriber that is receiving multiple benefits in violation of that rule. Further, we direct the Wireline Competition Bureau (Bureau) to send a letter to USAC to implement an administrative process to detect and resolve duplicative claims.

II. Discussion

3. In this order, we amend §§ 54.401 and 54.405 of the Commission's rules to codify the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time. We also amend § 54.405 of the Commission's rules to provide that, upon a finding by USAC that a low-income consumer is the recipient of multiple Lifeline subsidies, any ETC notified that it has not been selected to continue providing Lifeline-discounted service to the consumer shall de-enroll that subscriber from participation in that ETC's Lifeline program pursuant to the procedures described below. As noted below, we do not require a total termination of Lifeline discounts to the consumer in this situation, as the consumer will be permitted to maintain a single Lifeline service with one of the ETCs. We expect USAC to continue to perform in-depth data validations targeted at uncovering duplicative claims for Lifeline support, and we direct the Bureau to send a letter to USAC to implement a process to

detect and resolve duplicative claims that is consistent with the ETCs' proposed Industry Duplicate Resolution Process, as described below. The process we direct USAC to implement is an interim measure that is aimed at resolving duplicative claims in the near term while the Commission considers more comprehensive resolution of this and other issues raised in the *2011 Lifeline and Link Up NPRM*.

A. One Discount per Eligible Consumer

4. With limited exceptions, the Commission has not previously explicitly required ETCs to inquire whether a subscriber is receiving a Lifeline discount from another carrier. In light of the importance of ensuring that eligible low-income consumers continue to receive sufficient but not excessive Lifeline support, we now codify the limitation that an eligible consumer may receive only one Lifeline-supported service. As noted above, recent audit results indicate that some consumers may be receiving Lifeline discounts for more than one service, resulting in potentially millions of dollars in wasteful, excessive support from the Fund. We therefore amend § 54.401(a)(1) of the Commission's rules to adopt a definition of "Lifeline" that will ensure that consumers do not, whether inadvertently or knowingly, subscribe to multiple Lifeline-supported services:

*As used in this subpart, Lifeline means a retail local service offering * * * [t]hat is available only to qualifying low-income consumers, and no qualifying consumer is permitted to receive more than one Lifeline subsidy concurrently.*

Similarly, multiple carriers may be seeking reimbursement for Lifeline-supported services provided to a single subscriber, potentially unaware that the subscriber is already receiving Lifeline-supported services from another carrier. To prevent this, we also amend § 54.405(a) of the Commission's rules to require ETCs to offer Lifeline service only to those qualifying low-income consumers who are not currently receiving another Lifeline service from that ETC or from another ETC:

*All eligible telecommunications carriers shall * * * [m]ake available one Lifeline service, as defined in § 54.401, per qualifying low-income consumer that is not currently receiving Lifeline service from that or any other eligible telecommunications carrier.*

5. When the program rules were initially adopted, most consumers had only one option for telephone service: Their incumbent telephone company's wireline service. In light of the advent of multiple Lifeline options for

consumers, we now find it necessary to establish this restriction in our rules to ensure that low-income support is being used for its intended purposes—to provide basic telephone service to low-income consumers, rather than to provide multiple supported services to such consumers. We emphasize the importance of ETCs communicating program rules with their subscribers pursuant to 47 CFR 54.405(b). In particular, when enrolling new eligible low income consumers in Lifeline, we expect ETCs will explain in plain, easily comprehensible language that no consumer is permitted to receive more than one Lifeline subsidy. Some consumers may not adequately understand eligibility qualifications for Lifeline services, and may not understand that if they already subscribe to a Lifeline-supported offering they may not subscribe to another such service. It may be important that potential subscribers be made aware of the fact that not all Lifeline services are currently marketed under the name "Lifeline."

6. Further, Commission rules and orders specifically limit the amount of support available to qualifying subscribers. Section 54.403(a) of the Commission's rules, for example, establishes the discount amount that ETCs receive for providing Lifeline service to an eligible low-income consumer. When the Commission adopted the first three tiers of Lifeline support in the *Universal Service First Report and Order*, 62 FR 32862, June 17, 1997, it noted that the selected discount amount would serve as a cap on the amount of support available to qualifying low-income consumers. To the extent that a low-income consumer receives discounts for multiple Lifeline-supported services, this would be inconsistent with the per-consumer support amount that ETCs are authorized to receive pursuant to § 54.403(a).

7. While some argue that the FCC should allow for multiple subsidies per residence, that particular issue is not addressed in this Order. This order instead focuses on a narrower problem—reducing duplicative Lifeline subsidies received by the *same individual*—and codifies that restriction in FCC rules. Therefore, this order should not be construed to address the one-per-residential address proposal in the *NPRM*.

8. Most commenters responding to the *2011 Lifeline and Link Up NPRM* stress the importance of resolving duplicative claims for Lifeline service. Several commenters note that a process to detect and resolve duplicative claims will

provide an appropriate balance between providing services to eligible participants while guarding against waste, fraud, and abuse. Commenters are split, however, on the methods that should be implemented to detect and address duplicative claims. Many commenters, for example, recommend a national database as the best tool to detect duplicative claims for Lifeline support, while others support requiring ETCs to collect unique household-identifying or personal-identifying information from consumers. At the same time, many ETCs recognize the value in adopting a rule to immediately address potential duplicative claims, while we consider broader reforms.

9. Commenters also have differing opinions on the appropriate remedy for resolving a duplicative claim that has been discovered. A number of commenters support the procedures for remedying duplicative claims set forth in the Bureau's January 21st guidance letter or the alternative procedures proposed in the *2011 Lifeline and Link Up NPRM*. Other commenters urge the Commission to adopt the Industry Duplicate Resolution Process submitted by a group of ETCs subsequent to release of the *2011 Lifeline and Link Up NPRM*. For example, the U.S. Telecom Association recommends that the Commission adopt the Industry Duplicate Resolution Process proposal, noting that the proposal would "provide a mechanism for starting to address duplicate Lifeline accounts prior to the Commission adopting final rules pursuant to the Low-Income NPRM." Other commenters concur. We agree that it is important for the Commission to take immediate action to adopt a process for resolving duplicative claims identified by USAC. We, therefore, direct the Bureau to work with USAC to implement a process to resolve duplicative claims that is consistent with the ETCs' Industry Duplicate Resolution Process and also includes effective outreach to the subscribers identified by USAC as receiving duplicative support. As discussed further below, we require that consumers found to be receiving Lifeline supported services from two or more ETCs receive written notification of this fact and be given 3535 days from the date listed on the written notification to select one Lifeline service provider. In that notice, consumers also must be given information on how they can continue receiving service under the Lifeline program from the ETC of their choosing. Finally, the ETC(s) not chosen by the consumer or otherwise not chosen through the resolution process,

should the consumer not make a choice within the minimum 30-day timeframe, will have five business days to de-enroll the consumer upon receiving notification to do so from USAC.

10. At this time, we decline to adopt certification requirements akin to those contained in certain ETC designation orders. We will continue to evaluate certification options in the context of broader reform contemplated in the *2011 Lifeline and Link Up NPRM*.

B. De-Enrollment

11. We also amend § 54.405 of our rules and adopt a process for de-enrollment of a Lifeline subscriber for the limited near-term purpose of resolving currently known duplicative claims. The de-enrollment process we adopt requires an ETC to de-enroll a subscriber from its Lifeline program within five business days of receiving de-enrollment notification from USAC. An ETC may continue to serve the subscriber as a non-Lifeline subscriber. We note the importance of ETCs communicating clearly with the consumer that he or she will no longer receive a discounted service, but instead must pay the full price for the service and when such payments will be required. The ETC that de-enrolls a subscriber shall not be entitled to receive federal or state Lifeline reimbursement pursuant to our rules following the date of de-enrollment. We find that the adoption of an immediate de-enrollment rule is necessary to reduce the number of individual subscribers who are receiving Lifeline benefits from more than one service provider at the same time, pending fuller consideration of the issues raised in the *2011 Lifeline and Link Up NPRM*.

12. Commenters expressing support for the Industry Duplicate Resolution Process proposal also support the de-enrollment procedure recommended therein. Other commenters recommend that we adopt a notice period—such as the 60 days provided for de-enrollment based on consumer ineligibility—during which consumers may be notified of their impending de-enrollment and, potentially, given an opportunity to cure the problem. In this instance, however, the Administrator (USAC) will send a letter to each subscriber found to be receiving duplicative service, giving them 355 days from the date listed on the letter, which should result in at least 30-days notice after mail-processing time, to choose between their current Lifeline providers or continue receiving service only from the ETC identified by USAC as the default ETC. Under the de-enrollment rule we adopt in this order, a subscriber will maintain a single

Lifeline service because, following the minimum 30-day notification period, he or she will only be de-enrolled from the Lifeline program by one of the ETCs from which the subscriber was receiving duplicative Lifeline service. Therefore, unlike the process of de-enrollment for reasons of ineligibility that is currently in place under § 54.405(c), the rule we adopt today is not an ultimate termination of all Lifeline support. As such, we conclude that a notice period of at least 30 days is sufficient and will relieve the unnecessary burden on the Fund of providing duplicative support for individual Lifeline consumers.

13. A few commenters note that states may have their own procedures governing de-enrollment of Lifeline consumers, and recommend that the Commission take these state laws into account. The record is unclear, however, on the scope of any potential conflict between the de-enrollment procedures we adopt herein and state de-enrollment procedures. In situations where a consumer is found to be in receipt of two or more federal subsidies, we believe that a uniform rule applicable to federal Lifeline support will better provide clarity to both ETCs and consumers and will be consistent with our prior rules and orders. Accordingly, we adopt this de-enrollment process as an appropriate and necessary to step towards reducing waste, fraud, and abuse of the federal Lifeline program. Further, because duplicative claims are wasteful and burden the fund, we find that it is in the public interest to swiftly de-enroll consumers who are found to be receiving duplicative federal Lifeline discounts. To the extent that existing state de-enrollment procedures applicable to the federal Lifeline program are in conflict with or serve as an obstacle to implementation of the de-enrollment procedures we adopt herein, they would be preempted.

14. Finally, we note that in the *2011 Lifeline and Link Up NPRM* we asked for input regarding the de-enrollment process for several issues, including other administrative reasons. Specifically, we proposed that ETCs be required to de-enroll their Lifeline subscribers when the subscriber does not use his or her Lifeline-supported service for 60 days and fails to confirm continued desire to maintain the service or the subscriber does not respond to the eligibility verification survey. The rule adopted today is not intended to address the issues of administrative disqualification based on non-usage or failure to respond during the verification process. We take this action today to protect the Fund while we

continue to evaluate other appropriate proposals and until we adopt a more comprehensive package of reforms in response to the *2011 Lifeline and Link Up NPRM*.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

15. This report and order adopts new or revised information collection requirements, subject to the Paperwork Reduction Act of 1995 (“PRA”). These information collection requirements will be submitted to the Office of Management and Budget (“OMB”) for review under Section 3507(d) of the PRA. The Commission published a separate notice document elsewhere in this issue of the **Federal Register** inviting comment on the new or revised information collection requirement(s) adopted in this document. The requirement(s) will not go into effect until OMB has approved it, and the Commission has published a notice announcing the effective date of the information collection requirement(s). In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” In this present document, we have reviewed the comments and assessed the effects of these information requirements, and find that the collection of information requirements will not have a significant impact on small business concerns with fewer than 25 employees.

B. Congressional Review Act

16. The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (NPRM) to this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

D. Need for, and Objectives of, the Order

18. The Commission is required by section 254 of the Telecommunications

Act of 1996, as amended, to promulgate rules to implement the universal service provisions of the Act. Consistent with the requirements of the Act, the Commission adopted rules that reformed the universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Among other programs, the Commission adopted a program to provide discounts that make basic, local telephone service affordable for low-income consumers. The Commission has not systematically re-examined the universal service Lifeline and Link Up program (Lifeline/Link Up or the program) since the passage of the 1996 Act. During this period, consumers have increasingly turned to wireless service, and Lifeline/Link Up now provides many participants discounts on wireless phone service.

19. In this order we take immediate action to address potential waste in the program by preventing low-income consumers from receiving duplicative Lifeline-supported services. Specifically, we amend §§ 54.401 and 54.405 of the Commission's rules to codify the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time. We also amend section 54.405 of the Commission's rules to provide that, upon a finding by USAC that a low-income consumer is the recipient of multiple Lifeline subsidies, any eligible telecommunications carrier ("ETC") that is not selected to continue providing Lifeline-discounted service to the consumer shall de-enroll that subscriber from participation in that ETC's Lifeline program.

E. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

20. In public comments filed in response to the IRFA, issues were raised regarding the Commission's proposal to remedy duplicative claims for Lifeline support and the proposal's effects on small businesses. The National Telecommunications Cooperative Association (NTCA) stated that the Commission's initial proposal to detect and remedy duplicative claims, as set forth in a January 21 guidance letter, would put the burden of eliminating duplicative claims primarily upon ETCs and would constitute an untenable position for small businesses. Specifically, NTCA stated that "the ETCs must chase down the consumer and the consumer will receive at least two confusing notifications. Once the subscriber chooses a provider, that provider must notify USAC and the other ETC that it is the chosen one." In

its Reply Comments, Montana Independent Telecommunications Systems (MITS), an association of rural telecommunications providers, asserted that the proposed rules would require small carriers to assume multiple roles as "fact finders, decision makers, and enforcers," which would be "costly and unduly burdensome to small telecommunications carriers." We have taken measures to address these concerns expressed by commenters.

F. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

1. Wireline Providers

22. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or

fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.

23. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Seventy of which have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the

Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

24. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

25. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

26. *Toll Resellers.* The SBA has developed a small business size

standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

27. *Pre-paid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for pre-paid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these pre-paid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of pre-paid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of pre-paid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

28. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size

standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, at of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers. We do not believe 800 and 800-Like Service Subscribers will be affected by our proposed rules, however we choose to include this category and seek comment on whether there will be an effect on small entities within this category.

2. Wireless Carriers and Service Providers

29. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

30. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002

Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

31. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

32. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules. The second has a size standard of \$25 million or less in annual receipts.

33. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of

\$10 million to \$24,999,999.

Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

34. The second category, i.e., All Other Telecommunications, comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.” For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

35. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the 2008 *Trends Report*, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

3. Internet Service Providers

36. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications

Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of \$25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

G. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

37. This order has two components: clarification of the definition of Lifeline service and establishment of de-enrollment procedures for consumers receiving duplicative Lifeline supported services. These modifications of our rules are necessary to ensure that the statutory goals of section 254 of the Telecommunications Act of 1996 are met and to eliminate waste, fraud, or abuse in the Lifeline program.

38. *Clarification of the Definition of Lifeline & Carrier Obligation.* In this order, we modify the definition of Lifeline service to clarify that no qualifying low-income consumer is permitted to receive more than one Lifeline subsidy concurrently. This clarification places no additional burdens upon ETCs.

39. *De-Enrollment Procedures for Duplicate Service.* As part of the effort to reduce waste in the program, by this order, we adopt a rule requiring ETCs to de-enroll any Lifeline subscriber upon notification from the Universal Service Administrative Company (USAC) that the Lifeline subscriber should be de-enrolled from participation in that ETC's Lifeline program because the subscriber is receiving Lifeline service from another ETC. An ETC will be required to de-enroll a subscriber from its Lifeline program within five business days of receiving de-enrollment notification from USAC. Compliance with this requirement will place a burden on ETCs to de-enroll customers upon receiving notice from USAC. However, this burden will be minimal.

H. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

40. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

41. We sought to minimize the burdens imposed on small entities where doing so would not compromise the goals of the universal service low-income mechanism. In order to minimize the impact on ETCs, and under the advisement of a number of industry representatives, we have placed the burden of checking for duplicate claims upon USAC, rather than ETCs. Furthermore, the duplicate resolution process set forth in the order requires USAC to notify an ETC which customers should be de-enrolled from the ETC's Lifeline program.

I. Report to Congress

42. The Commission will send a copy of the order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.401 by revising paragraph (a)(1) to read as follows:

§ 54.401 Lifeline defined.

(a) * * *

(1) That is available only to qualifying low-income consumers, and no qualifying consumer is permitted to receive more than one Lifeline subsidy concurrently.

* * * * *

■ 3. Amend § 54.405 by revising paragraph (a), and adding paragraph (e), to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

* * * * *

(a) Make available one Lifeline service, as defined in § 54.401, per qualifying low-income consumer that is not currently receiving Lifeline service from that or any other eligible telecommunications carrier, and

* * * * *

(e) *De-enrollment.* Notwithstanding § 54.405(c) and (d) of this section, upon notification by the Administrator to any ETC in any state that a subscriber is receiving Lifeline service from another eligible telecommunications carrier and should be de-enrolled from participation in that ETC's Lifeline program, the ETC shall de-enroll the subscriber from participation in that ETC's Lifeline program within 5 business days. An ETC shall not be eligible for Lifeline reimbursement as described in §§ 54.403 and 54.407 for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 204

RIN 0750-AH25

Defense Federal Acquisition Regulation Supplement (DFARS); Assignment of Order Codes (DFARS Case 2011-D004)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to specify Defense

Procurement and Acquisition Policy, Program Development and Implementation, as the office responsible for maintaining order code assignments. The order code procedures are moved from the DFARS to its companion resource, DFARS Procedures, Guidance, and Information.

DATES: *Effective Date:* June 29, 2011

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, 703-602-0310.

SUPPLEMENTARY INFORMATION:

I. Background

Director, Defense Procurement and Acquisition Policy letter dated September 21, 2010, replaced the Defense Logistics Agency with Defense Procurement and Acquisition Policy, Program Development and Implementation, as the responsible office for the maintenance of all order code assignments for use in the first two positions of an order number when an activity places an order against another activity's contract or agreement. In addition, the procedures and addresses for order code monitors are moved to the DFARS companion resource, DFARS Procedures, Guidance, and Information.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because an initial regulatory flexibility analysis is only required for proposed or interim rules that require publication for public comment (5 U.S.C. 603) and a final regulatory flexibility analysis is only required for final rules that were previously published for public comment, and for which an initial regulatory flexibility analysis was prepared (5 U.S.C. 604).

This final rule does not constitute a significant DFARS revision as defined at FAR 1.501-1 because this rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Government. Therefore, publication for public comment under 41 U.S.C. 1707 is not required.

III. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).