

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	

ORDER

Adopted: September 2, 2015

Released: September 2, 2015

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, we grant in part four appeals by AT&T and Qwest and address a 2010 guidance request from the Universal Service Administrative Company (USAC).¹ These appeals and guidance request raise the question of whether ETCs were *required* to seek pro-rata support for every subscriber who enrolled in the Lifeline program for less than an entire month (as opposed to a full month’s support for such subscribers) or whether instead ETCs are merely *permitted* to seek pro-rata support for such subscribers.² On balance, we find that ETCs were not required to request pro-rata support for partial month subscribers on the relevant FCC Form 497, but were permitted to do so.³ We therefore grant in part four pending appeals and address a guidance request filed by USAC.

2. *Background.* During the relevant period, section 54.407 of the Commission’s Lifeline rules permitted Lifeline reimbursement to ETCs “based on the number of qualifying low-income consumers it serve[d].”⁴ The FCC Form 497 used by ETCs to file reimbursement requests included an entry with which ETCs could claim pro-rata support by checking a box and entering the total amount of pro-rata support sought that month (without breaking the request down further by number of subscribers, number

¹ See Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, WC Docket No. 03-109, at 1 (filed Jan. 7, 2008) (AT&T January 2008 Request for Review); Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, WC Docket No. 03-109, at 1 (filed Aug. 18, 2008) (AT&T August 2008 Request for Review); Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, WC Docket No. 03-10, at 1 (filed Apr. 14, 2009) (AT&T 2009 Request for Review); Request for Review by Qwest Communications International Inc. of Decision of the Universal Service Administrator, WC Docket No. 03-109, at 1 (filed Apr. 25, 2008) (Qwest 2008 Request for Review); Letter from Richard A. Belden, Chief Operating Officer, Universal Service Administrative Company, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, WC Docket No. 03-109 (filed Feb. 24, 2010) (Letter Seeking Guidance on FCC Form 497) (seeking guidance on Commission rules regarding Box 9 on the FCC Form 497).

² See FCC Form 497 (Apr. 2012). We note that the current version of the FCC Form 497 was revised to remove Box 9 discussed in this section. Therefore, currently filed FCC Forms 497 will not be impacted by the decision here.

³ See FCC Form 497 (effective Oct. 2000).

⁴ See 47 C.F.R. § 54.407(a) (2000). *Compare Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42 et al., Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7897-99, paras. 238-43, 7926-27, Appx. B (2015) (revising section 54.407).

of days, etc.).⁵ In December 2003, the Commission proposed revisions to the FCC Form 497 that would have required ETCs to seek pro-rata support for partial month subscribers and would have required detailed information regarding the number of subscribers and number of days associated with the requested partial month support.⁶ In August 2004, the Commission announced that the new form would take effect on October 15, 2004.⁷ In response to substantial opposition,⁸ the Commission first delayed and then indefinitely suspended the effective date of the revised form.⁹ The Commission directed ETCs to continue to use the FCC Form 497 in effect prior to 2004.¹⁰

3. In 2008 and 2009, the Commission received appeals of USAC decisions from AT&T and Qwest Communications, Inc. regarding USAC audits finding the ETCs to be out of compliance because they did not seek pro-rata reimbursement on the FCC Form 497 for months in which the ETCs had partial month subscribers.¹¹ USAC contended that the carriers were required to request pro-rata support because full support was not permitted for subscribers who initiated service mid-month.¹² USAC also interpreted the FCC Form 497 instructions, which directed ETCs to report the total pro-rata reimbursement amount sought “if” the ETC claimed support for partial month subscribers, to allow carriers to leave the box empty only if, in a given month, there were no subscribers who started or terminated service mid-month.¹³ Finally, USAC stated that the Commission has not allowed ETCs to assume that pro-rata amounts for initiating and terminating subscribers have an offsetting effect on the Fund.¹⁴ Therefore, according to USAC, ETCs were required to report partial month subscribers and seek pro-rata support.¹⁵ Subsequent to making these audit findings, USAC sought guidance from the Commission on the issue of whether an ETC is obligated to report partial month subscribers separately from full month subscribers and seek only pro-rata reimbursement on the FCC Form 497 in effect at that time.¹⁶

⁵ See FCC Form 497, Lifeline and Link Up Worksheet at 1 (effective Oct. 2000).

⁶ See FCC Form 497, Lifeline and Link Up Worksheet at 1 (effective Dec. 2003).

⁷ See *Wireline Bureau Announces Effective Date of Revised Form 497 Used to File Low Income Claims with USAC*, WC Docket No. 03-109, Public Notice, 19 FCC Rcd 18574 (Wireline Comp. Bur. 2004).

⁸ See, e.g., Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, WC Docket No. 03-109, at 3 (filed Jan. 7, 2008) (stating that after the Commission released a public notice announcing the effective date of the December 2003 FCC Form 497 many carriers, including AT&T, met with Bureau staff to express opposition to the new requirement because of their inability to track and calculate pro-rata support).

⁹ See *Wireline Competition Bureau Announces Delayed Effective Date for Revised Form 497 Used for Low-Income Universal Service Support*, WC Docket No. 03-109, Public Notice, 20 FCC Rcd 973 (Wireline Comp. Bur. 2004) (delaying effective date of the revised FCC Form 497); *Wireline Competition Bureau Announces Delayed Effective Date for Revised Form 497 Used for Low-Income Universal Service Support*, WC Docket No. 03-109, Public Notice, 20 FCC Rcd 4395 (Wireline Comp. Bur. 2005) (suspending the revised FCC Form 497 indefinitely).

¹⁰ See *Wireline Competition Bureau Announces Delayed Effective Date for Revised Form 497 Used for Low-Income Universal Service Support*, WC Docket No. 03-109, Public Notice, 20 FCC Rcd 4395 (Wireline Comp. Bur. 2005) (requiring ETCs to use the FCC Form 497 effective October 2000).

¹¹ See AT&T January 2008 Request for Review; AT&T August 2008 Request for Review; AT&T 2009 Request for Review; Qwest 2008 Request for Review.

¹² See e.g., AT&T January 2008 Request for Review at Appx. A.

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See Letter Seeking Guidance on FCC Form 497.

4. In the appeals, the ETCs argue that USAC auditors incorrectly found that the 2000 version of the form required ETCs to report and seek pro-rata reimbursement for partial month subscribers.¹⁷ The ETCs point to the FCC Form 497 language to support their argument that reporting partial month subscribers was permissive and not mandatory.¹⁸ The ETCs also argue that the Commission's decision not to put into effect the 2003 FCC Form 497 supports the argument that the Commission never mandated pro-rata reporting.¹⁹ Finally, the ETCs argue that there is no harm to the program because they used an end of the month "snapshot-date" to calculate support²⁰ and thus did not claim support for subscribers who terminated service before the end of the month but did claim support for subscribers who started service during the month.²¹

5. The Wireline Competition Bureau solicited comments on these appeals and the USAC guidance request and the majority of commenters supported the arguments of AT&T and Qwest.²² Commenters agreed that the "if" language contained in the form and the Commission's suspension of the revised 2003 FCC Form 497 suggested that requests for pro-rata support were not mandatory.²³ Commenters further argued that a rule requiring pro-rata support amounts would be extremely burdensome for ETCs because they would have to develop systems to calculate Lifeline churn on a daily

¹⁷ See AT&T January 2008 Request for Review at 1; AT&T August 2008 Request for Review at 2; AT&T 2009 Request for Review at 5; Qwest 2009 Request for Review at 4.

¹⁸ See, e.g., AT&T January 2008 Request for Review at 4; Qwest 2009 Request for Review at 4-5.

¹⁹ See, e.g., AT&T January 2008 Request for Review at 3; Qwest 2009 Request for Review at 5.

²⁰ See, e.g., AT&T January 2008 Request for Review at 5; Qwest 2009 Request for Review at 3.

²¹ See, e.g., Qwest 2009 Request for Review at 3-4; AT&T January 2008 Request for Review at 5; AT&T August 2008 Request for Review at 17.

²² See *Lifeline and Link Up*, WC Docket No. 03-109, Public Notice, 25 FCC Rcd 2299, 2299-2301 (Wireline Comp. Bur. 2010); *Lifeline and Link Up*, WC Docket No. 03-109, Public Notice, 24 FCC Rcd 7679, 7679-81 (Wireline Comp. Bur. 2009); *Lifeline and Link Up*, WC Docket No. 03-109, Public Notice, 23 FCC Rcd 13497, 13497-99 (Wireline Comp. Bur. 2008); *Lifeline and Link Up*, WC Docket No. 03-109, Public Notice, 23 FCC Rcd 7845, 7845-47 (Wireline Comp. Bur. 2008); *Lifeline and Link Up*, WC Docket No. 03-109, Public Notice, 23 FCC Rcd 6407, 6407-09 (Wireline Comp. Bur. 2008). See also Comments of Embarq, WC Docket No. 03-109, at 1 (filed May 14, 2008); Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 03-109, at 1-2 (filed May 14, 2008); Comments of Sprint Nextel Corporation, WC Docket No. 03-109, at 1 (filed May 14, 2008); Reply Comments of Verizon, WC Docket No. 03-109, at 3 (filed May 29, 2008); Comments of The United States Telecom Association, WC Docket No. 03-109, at 1 (May 14, 2008); Comments of United States Telecom Association, WC Docket No. 03-109 (filed June 16, 2008); Comments of Verizon, WC Docket No. 03-109, at 4 (filed June 16, 2008); Comments of Sprint Nextel Corporation, WC Docket No. 03-109, at 1 (filed June 16, 2008); Reply Comments of ALLTEL Communications, LLC, WC Docket No. 03-109, at 1 (filed July 1, 2008); Reply Comments of Smith Bagley, Inc., WC Docket No. 03-109, at 1 (filed July 1, 2008); Reply Comments of Rural Cellular Corporation, WC Docket No. 03-109, at 1 (filed July 1, 2008); Comments of United States Telecom Association, WC Docket No. 03-109, at 1 (filed Oct. 17, 2008); Comments of Verizon and Verizon Wireless, WC Docket No. 03-109, at 3 (filed Apr. 9, 2010); Comments of United States Telecom Association, WC Docket No. 03-109, at 2 (filed Apr. 9, 2010). *But see* Comments of Commonwealth of Massachusetts, WC Docket No. 03-109 (filed Apr. 9, 2010) (arguing, *inter alia*, that pro-rata reporting should be required because ETCs may be receiving larger reimbursements than they are eligible to receive).

²³ See Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 03-109, at 2 (filed May 14, 2008); Comments of Verizon, WC Docket No. 03-109, at 1 (filed June 16, 2008); Comments of United States Telecom Association, WC Docket No. 03-109, at 2 (filed May 14, 2008); Comments of Sprint Nextel Corporation, WC Docket No. 03-109, at 1 (filed June 16, 2008); Reply Comments of Rural Cellular Corporation, WC Docket No. 03-109, at 2 (filed July 1, 2008); Reply Comments of Smith Bagley, Inc., WC Docket No. 03-109, at 2 (filed July 1, 2008); Comments of United States Telecom Association, WC Docket No. 03-109, at 5 (filed Oct. 17, 2008); Comments of Verizon and Verizon Wireless, WC Docket No. 03-109, at 3 (filed Apr. 9, 2010).

basis.²⁴ Furthermore, they argued, other universal service programs, such as the high-cost program, do not mandate pro-rata support requests.²⁵

6. *Discussion.* We grant in part the pending appeals from AT&T and Qwest and resolve the USAC guidance request by finding that pro-rata reporting was not required by the Commission rules or the FCC Form 497.²⁶ The Commission's rules on reimbursement for Lifeline support during the times relevant to the appeals state that universal service support will be provided to an ETC "based on the number of qualifying low-income consumers it serves."²⁷ By basing reimbursement on the number of subscribers served, as opposed to how many days each customer has been a subscriber, section 54.407(a) of the Commission's rules in effect at the time of the period audited does not clearly require pro-rata reporting.²⁸ Additionally, by instructing ETCs to check a box "if partials or pro-rata amounts are used," and to "[i]ndicate dollar amount, if applicable," the relevant version of FCC Form 497 did not require ETCs to use pro-rata amounts.²⁹ Therefore, we find that neither the rule nor the FCC Form 497 and instructions required ETCs to request pro-rata support from USAC.³⁰ We are persuaded by the facts present here that the Commission decided *not* to implement the revised FCC Form 497 that would have required ETCs to provide more detailed information regarding their pro-rata support requests.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-5 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155 and 254, and sections 0.91, 0.291, and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722, the petitions filed by AT&T, Inc. and Qwest Communications International, Inc., ARE GRANTED IN PART, as set forth herein.

8. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

²⁴ See Comments of Sprint Nextel Corporation, WC Docket No. 03-109, at 1 (filed May 14, 2008); Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 03-109, at 4 (filed May 14, 2008); Reply Comments of Verizon, WC Docket No. 03-109, at 2 (filed May 29, 2008); Comments of Verizon, WC Docket No. 03-109, at 3 (filed June 16, 2008); Reply Comments of Smith Bagley, Inc., WC Docket No. 03-109, at 2 (filed July 1, 2008); Reply Comments of Rural Cellular Corporation, WC Docket No. 03-109, at 2 (filed July 1, 2008).

²⁵ See, e.g., Comments of Sprint Nextel Corporation, WC Docket No. 03-109, at 2 (filed June 16, 2008) (noting that the high cost program requires ETCs to submit quarterly line counts as of the last day of each quarter and does not issue partial support).

²⁶ We do not at this time address the remaining issues in the AT&T and Qwest appeals regarding record retention for reseller information and certification forms, advertising of toll blocking and other supported services, reseller certification, and toll limitation service reimbursement recovery. See AT&T August 2008 Request for Review at 8-13; AT&T 2009 Request for Review at 6-8; Qwest 2009 Request for Review at 10. Given that the current FCC Form 497 does not contain a Box 9, we also decline to address USAC's questions regarding additional purposes for Box 9. See Letter Seeking Guidance on FCC Form 497 at 2. Given that there were no monetary amounts to recover in any of the pending appeals, USAC does not need guidance with respect to that issue. See AT&T January 2008 Request for Review at 2, n.4; AT&T August 2008 Request for Review at 3, n.4; AT&T 2009 Request for Review at 2, n.5; Qwest 2009 Request for Review at 4.

²⁷ See 47 C.F.R. § 54.407(a) (2000).

²⁸ See *id.* This does not mean, however, that the rules permit an ETC to be reimbursed twice for serving a customer during a particular time period.

²⁹ See FCC Form 497, Lifeline and Link-up Worksheet at 1 (effective Oct. 2000) (emphasis added).

³⁰ Additionally, we find that the FCC Form 497 that was effective July 2008 contained the same language as the FCC Form 497 effective October 2000; therefore, the July 2008 version also permitted but did not require pro-rata requests. See FCC Form 497, Lifeline and Link Up Worksheet at 1 (July 2008).

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau