

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

In the Matter of
Requests for Review of Decisions
of the Universal Service Administrator by
Assist Wireless, Inc., et al.
Lifeline Universal Service Support Mechanism
WC Docket No. 11-42
WC Docket No. 03-109

ORDER

Adopted: May 7, 2018

Released: May 7, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order, we deny 14 requests¹ seeking review of decisions made by the Universal Service Administrative Company (USAC) concerning duplicative support from the Lifeline program.² We take this action to uphold USAC's decision to combat program waste by recouping funds from eligible telecommunications carriers who impermissibly enrolled and then sought funding for the same customer more than once.

1 Request for Review by Assist Wireless, LLC, WC Docket Nos. 11-42, 03-109 (filed Dec. 31, 2013) (Assist Dec. 2013 Request for Review); Request for Review by Assist Wireless, LLC, WC Docket Nos. 11-42, 03-109 (filed Feb. 28, 2014) (Assist Feb. 2014 Request for Review); Request for Review by Boomerang Wireless, LLC, WC Docket Nos. 11-42, 03-109 (filed Jan. 7, 2014) (Boomerang Request for Review), Supplement to Request for Review by Boomerang Wireless, LLC, WC Docket Nos. 11-42, 03-109 (filed Jan. 10, 2014) (Boomerang Jan. 2014 Supplement); Request for Review by Easy Telephone Services Company d/b/a Easy Wireless, WC Docket Nos. 11-42, 03-109 (filed Dec. 30, 2013) (Easy Wireless Dec. 2013 Request for Review); Request for Review by Easy Telephone Services Company d/b/a Easy Wireless, WC Docket Nos. 11-42, 03-109 (filed Feb. 28, 2014) (Easy Wireless Feb. 2014 Request for Review); Request for Review by Global Connection, Inc. of America, LLC, WC Docket Nos. 11-42, 03-109 (filed Dec. 30, 2013) (Global Connection Request for Review); Request for Review by Head Start Telecom, Inc., WC Docket Nos. 11-42, 03-109 (filed Dec. 30, 2013) (Head Start Dec. 2013 Request for Review); Request for Review by Head Start Telecom, Inc., WC Docket Nos. 11-42, 03-109 (filed Feb. 28, 2014) (Head Start Feb. 2014 Request for Review); Request for Review by i-wireless LLC, WC Docket Nos. 11-42, 03-109 (filed Dec. 30, 2013) (i-wireless Dec. 2013 Request for Review); Request for Review by i-wireless LLC, WC Docket Nos. 11-42, 03-109 (filed Feb. 27, 2014) (i-wireless Feb. 2014 Request for Review); Request for Review by Nexus Communications, Inc., WC Docket Nos. 11-42, 03-109 (filed Feb. 28, 2014) (Nexus Request for Review); Request for Review by Telrite Corporation, WC Docket Nos. 11-42, 03-109 (filed Dec. 30, 2013) (Telrite Dec. 2013 Request for Review); Request for Review by Telrite Corporation, WC Docket Nos. 11-42, 03-109 (filed Jan. 17, 2014) (Telrite Jan. 2014 Request for Review); Request for Review by True Wireless, LLC, WC Docket Nos. 11-42, 03-109, (filed Mar. 4, 2014) (True Wireless Request for Review) (collectively, Requests for Review filed by Petitioners).

2 At the time the Petitioners submitted the Requests for Review, Commission rules provided that any person aggrieved by an action taken by a division of USAC may seek review from the Commission, and did not require the party to first seek review from USAC. See 47 CFR § 54.719(c) (2013). The Wireline Competition Bureau has the authority to act on the Requests for Review pursuant to delegated authority. 47 CFR § 1.106(a)(1).

2. *Background.* The Lifeline program provides support for communications services provided by eligible telecommunications carriers (ETCs) to qualifying low-income consumers.³ Under rules in effect at the time USAC took the actions at issue here, an ETC may only receive support for “the number of actual qualifying low-income consumers it serves.”⁴ To constitute a qualifying low-income consumer, a consumer “must not already be receiving a Lifeline service, and there must not be anyone else in the subscriber’s household subscribed to a Lifeline service,” among other requirements.⁵ ETCs “must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services.”⁶

3. In 2011, the Commission issued the *Duplicative Payments Order*, taking action to prevent duplicative payments for multiple Lifeline-supported services provided to the same individual.⁷ In that order, the Commission clarified that each eligible Lifeline consumer is entitled to only one Lifeline benefit.⁸ The Commission also amended section 54.405(a) of its 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 any other ETC.⁹ In addition, the Commission directed the Bureau to work with USAC to implement a process to resolve duplicative claims.¹⁰ Concurrent with the release of the *Duplicative Payments Order*, the Bureau released the *June 2011 Guidance Letter*, which outlined the process USAC should use to identify and resolve duplicative Lifeline subscribers, and directed USAC to “recover support for any subscriber for which subscriber data cannot be substantiated by the ETC and intra-company duplicative subscribers (same name, same address within one ETC’s records).”¹¹

4. In the *2012 Lifeline Reform Order*, the Commission directed USAC to conduct duplicate checks to identify and eliminate requests for duplicative support by using a process outlined in the *June*

³ See 47 U.S.C. § 254(b)(1), (3); 47 CFR § 54.401.

⁴ 47 CFR § 54.407(a) (2013).

⁵ 47 CFR § 54.409(a)-(c) (2013).

⁶ 47 CFR § 54.410(a) (2013).

⁷ See *Lifeline and Link Up Reform and Modernization et al.*, Report and Order, 26 FCC Rcd 9022, 9022, para. 1 (2011) (*Duplicative Payments Order*).

⁸ Specifically, the Commission amended section 54.401(a)(1) of its rules to provide “no qualifying consumer is permitted to receive more than one Lifeline subsidy concurrently.” See *Duplicative Payments Order*, 26 FCC Rcd at 9027, para. 8; see also 47 CFR § 54.401(a)(1) (2011).

⁹ See *Duplicative Payments Order*, 26 FCC Rcd at 9027, para. 8; see also 47 CFR § 54.405(a) (2011).

¹⁰ See *Duplicative Payments Order*, 26 FCC Rcd at 9029, para. 13. In the *Duplicative Payments Order*, the Commission directed the Bureau to work with USAC to implement a process to resolve duplicative claims consistent with the Industry Duplicate Resolution Process – a proposal submitted in April 2011 by a group of Lifeline stakeholders, aimed at resolving duplicative claims while the Commission considered more comprehensive reform. See *Duplicative Payments Order*, 26 FCC Rcd at 9025, 9029, paras. 6, 13; Letter from United States Telecom Association, et al. to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed Apr. 15, 2011) (*Industry Duplicate Resolution Process*); see also Letter from John T. Nakahata, Counsel, General Communications, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed Apr. 26, 2011) (correcting initial filing).

¹¹ Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to D. Scott Barash, Acting Chief Executive Officer, USAC, 26 FCC Rcd 8588, 8590, 8592 (WCB 2011) (*June 2011 Guidance Letter*).

2011 Guidance Letter.¹² This process required USAC to request subscriber lists (consisting of name, address, and telephone number) from ETCs for specific states, and analyze those lists for potential duplicates (including the same individual at the same address receiving multiple Lifeline-supported services).¹³ The Commission instructed USAC to adopt these measures to reduce program waste, fraud, and abuse until the National Lifeline Accountability Database (NLAD), which is the Lifeline program database designed to detect and prevent duplicative Lifeline support, became operational in March 2014.¹⁴ The *2012 Lifeline Reform Order* also directed USAC to identify subscribers receiving more than one Lifeline discount at the same address and notify them about the one-per-household restriction.¹⁵ In that order, the Commission took further action to reduce duplicative claims by codifying a rule limiting Lifeline support to a single discount per household, defining the terms “household” and “duplicative support” for purposes of the Lifeline program, adopting revised subscriber certification requirements, and adopting rules to implement the NLAD.¹⁶ The Commission also prescribed certain duties that USAC and ETCs should take to eliminate the submission to USAC of duplicative claims for support, emphasizing that each ETC must, prior to initiating Lifeline service to a consumer, search its own records to ensure that it is not already providing Lifeline-supported service to that consumer or another member of the consumer’s household residing at the same address.¹⁷ The changes adopted in the *2012 Lifeline Reform Order* were in effect during the time periods at issue in the Requests for Review filed by Petitioners.

5. *Requests for Review.* Throughout 2013, USAC conducted duplicate checks of Petitioners’ subscriber lists in a total of 20 states and found a large number of intra-company duplicate subscribers.¹⁸ Based on the subscriber lists each petitioner provided, USAC found that each petitioner had claimed Lifeline support for the same subscriber more than once in a given month, with each petitioner often claiming duplicative support for many subscribers each month.¹⁹ USAC identified duplicates in the following situations: (1) records with an exact match in name and address; (2) records with same name and slight address variation; (3) records with slight name and address variation; and (4)

¹² See *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6747, para. 211 (2012) (*2012 Lifeline Reform Order*). See also *June 2011 Guidance Letter*, 26 FCC Rcd at 8588.

¹³ *June 2011 Guidance Letter*, 26 FCC Rcd at 8590.

¹⁴ See *2012 Lifeline Reform Order*, 27 FCC Rcd at 6747, para. 211. See also Press Release, FCC, National Lifeline Accountability Database Up and Running (Apr. 3, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0403/DOC-326432A1.pdf.

¹⁵ *2012 Lifeline Reform Order*, 27 FCC Rcd at 6747, para. 211.

¹⁶ See *id.* at 6683, 6687, 6689, 6712, 6734, paras. 60, 69, 74, 120, 184; 47 CFR §§ 54.400(h), 54.404, 54.405(c), 54.409(c), 54.410(d)(1)(ii) (2013).

¹⁷ See *2012 Lifeline Reform Order*, 27 FCC Rcd at 6691, 6747-49, paras. 78, 210-16; see also *Wireline Competition Bureau Announces that the National Lifeline Accountability Database Will Begin Accepting Subscriber Data in December*, Public Notice, 28 FCC Rcd 14639 (WCB 2013) (reminding ETCs of their ongoing duty to use all the information available to them to identify and eliminate intra-company duplicative support).

¹⁸ More details about USAC’s duplicate check process are contained in the Appendix to this Order.

¹⁹ See, e.g., Letter from USAC to Chris Melton, True Wireless, LLC (Dec. 31, 2013); Letters from USAC to Caitlyn Lumpkin, Telrite Corporation (Nov. 1, 2013, Dec. 30, 2013); Letters from USAC to Caitlyn Lumpkin and Nicki Wollenhaupt, i-wireless, LLC (Nov. 1, 2013, Dec. 31, 2013); Letters from USAC to Caitlyn Lumpkin and Ashley Gobble, Head Start Telecom Inc., (Nov. 1, 2013, Dec. 30, 2013); Letter from USAC to Caitlyn Lumpkin, Global Connection, Inc., (Nov. 1, 2013); Letters from USAC to Tina Allen and Caitlyn Lumpkin, Easy Telephone Services Company (Nov. 1, 2013, Dec. 30, 2013); Letters from USAC to Kelly King, Assist Wireless, LLC (Nov. 1, 2013, Dec. 30, 2013); Letter from USAC to Lori Aller, Boomerang Wireless, LLC (Dec. 30, 2013); Letters from USAC to Steven Fenker, Nexus Communications Inc. (Nov. 1, 2013, Dec. 30, 2013).

records with slight variation in name and same address.²⁰ In November and December 2013, USAC issued letters informing each petitioner that USAC would recover the duplicative payments of Lifeline benefits, and instructed the Petitioners to de-enroll any duplicative Lifeline account for subscribers for which Petitioners were providing more than one Lifeline discount.²¹

6. In the Requests for Review, Petitioners seek to invalidate USAC's findings of duplicate support²² by arguing that USAC's methodology did not find *enough* identical identifying information to support its duplicate determinations. Petitioners claim that when USAC compared Petitioners' subscriber records to identify same company duplicates, it incorrectly found duplicates where subscriber accounts did not match perfectly. They claim many USAC duplicates have non-identical identifying information, such as differences in name, address, date of birth, or partial social security number, and that subscriber information that is similar, but not identical, cannot be deemed a "duplicate" under program rules.²³ Absent an identical match, Petitioners contend, USAC's duplicate finding was tantamount to a policy decision made in contravention of Commission rules.²⁴ Certain Petitioners also assert that the duplicate check process was flawed because the duplicate identifications were based *only* on subscriber names and addresses and Commission orders did not provide guidance on how to consider differences in subscriber dates of birth or the last four digits of subscriber social security numbers.²⁵ Petitioners also argue there are no Commission orders or rules providing an exact definition of "duplicate"²⁶ and that USAC acted beyond Commission guidance.²⁷ In addition, Petitioners assert that the duplicate findings should be invalidated because they represented less than one percent of each Petitioner's Lifeline subscribers.²⁸

²⁰ See, e.g., Duplicate subscriber list attached to Letter from USAC to Lori Aller, Boomerang Wireless, LLC (Dec. 30, 2013); Duplicate subscriber list attached to Letter from USAC to Caitlyn Lumpkin, Head Start Telecom (Nov. 1, 2013); Duplicate subscriber list attached to Letter from USAC to Caitlyn Lumpkin, Easy Telephone Services Company (Nov. 1, 2013). Illustrative examples of the slight name variations include: (1) spelling differences (e.g., John Smith vs. Jon Smith); (2) capitalization differences (e.g., John Smith vs. john smith); (3) use of generational suffixes (junior, senior, etc.) (e.g., John Smith, Jr. vs. John Smith); (4) use of multiple names in first or last name (e.g., Maria Jones Smith vs. Maria Jones or Maria Smith); (5) use of abbreviations or nicknames (e.g., Joe Smith vs. Joey Smith or Joseph Smith); and (6) names with strong phonetic and/or lexical similarities (e.g., Sheila Smith vs. Shella Smith; John Smith vs. Joan Smith). Illustrative examples of the slight address variations include: (1) use of abbreviations (e.g., 123 Main St. vs. 123 Main Street, 123 E. Main Street vs. 123 East Main Street); (2) use of directional identifiers (e.g., 123 East Main Street vs. 123 Main Street); (3) use of apartment number (e.g., 123 Main Street Apt. 2, vs. 123 Main Street); (4) same street and number with differences in apartment number (e.g., 123 Main Street Apt. 2 vs. 123 Main Street Apt. 2E).

²¹ See, e.g., Letter from USAC to Caitlyn Lumpkin, Easy Telephone Services Company (Nov. 1, 2013).

²² Boomerang Wireless, LLC does not appeal USAC's duplicate finding for one subscriber that was an exact name and address match. See Boomerang Request for Review at 14-15.

²³ See, e.g., Assist Wireless Dec. 2013 Request for Review at 5; Easy Wireless Dec. 2013 Request for Review at 9; Head Start Feb. 2014 Request for Review at 9; i-wireless Feb. 2014 Request for Review at 12; Telrite Dec. 2013 Request for Review at 9; True Wireless Request for Review at 13-14.

²⁴ See, e.g., Boomerang Request for Review at 8-9; Global Connection Request for Review at 8; Nexus Request for Review at 12; Telrite Dec. 2013 Request for Review at 6-8.

²⁵ See, e.g., Telrite Dec. 2013 Request for Review at 10; Boomerang Request for Review at 9-10; Easy Wireless Feb. 2014 Request for Review at 9-10.

²⁶ See, e.g., Boomerang Request for Review at 3, 6-7; Easy Wireless Feb. 2014 Request for Review at 3, 7-8; Global Connection Request for Review at 3, 6-7; i-wireless Dec. 2013 Request for Review at 3, 7-8.

²⁷ See, e.g., Assist Wireless Feb. 2014 Request for Review at 1; Telrite Dec. 2013 Request for Review at 1; True Wireless Request for Review at 2, 11-13

²⁸ See, e.g., Easy Wireless Dec. 2013 Request for Review at 5; Assist Wireless Feb. 2014 Request for Review at 5; Global Connection Request for Review at 5.

Finally, Nexus Communications Inc. (Nexus) requests a waiver of the 60-day deadline for appealing USAC's November 1, 2013 intra-company duplicate notifications.²⁹

II. DISCUSSION

7. We find that USAC took reasonable action, consistent with Bureau guidance, in implementing the Commission's rules and policies concerning the detection of duplicative Lifeline support in its duplicates check process. Based on the record in this proceeding, Petitioners have not presented sufficient evidence indicating that the subscribers at issue were separate eligible Lifeline subscribers and not duplicates. Nor have Petitioners presented any evidence that they investigated any of the nearly identical or substantially similar records flagged by USAC prior to seeking compensation or that they had in place internal procedures designed to flag such records for investigation to assess whether they were in fact unlawful intra-company duplicates. In the absence of such evidence, we affirm USAC's decision to treat the relevant customer records as unlawful intra-company duplicates, and we find that Petitioners violated our rules by seeking duplicative compensation. We also find that because Petitioners failed to implement reasonable internal procedures to investigate nearly identical and substantially similar records of the type flagged by USAC, they are not entitled to payment for those intra-company duplicates. We therefore deny the Requests for Review filed by Petitioners. We also deny Nexus's request for waiver of the 60-day appeal deadline with respect to USAC's November 1, 2013 intra-company duplicates letters.³⁰

8. We first reject Petitioners' argument that there are no Commission rules or orders addressing what constitutes a duplicate and that, in the absence of a precise definition, a duplicate can only mean two records with "identical" or "exact" information (i.e., same name and address).³¹ The Commission has never indicated that duplicate Lifeline support is limited to the narrow definition suggested by Petitioners and has consistently explained that each qualifying subscriber or household is eligible for only one Lifeline-supported service.³² As explained above, USAC identified as duplicates the following types of records: (1) records with an exact match in name and address; (2) records with same name and slight address variation; (3) records with slight name and address variation; and (4) records with slight variation in name and same address, and reasonably concluded that the records identified the same individual who was "already ... receiving a Lifeline service" and thus constituted an impermissible duplicate.³³ Slight variations between identifying information is to be expected and requiring an exact match before making a duplicates finding, as Petitioners argue, is impractical, unreasonable, and would likely result in wasteful program spending in support of duplicative accounts. Stated differently, in the types of specific scenarios described above, it is reasonable to conclude—in the absence of a reasonable system for preventing duplicates or any factual evidence that these were not duplicates—that the subscribers in question were the same person or household. The Commission's clear purpose was to avoid overcompensating providers for service to the same customer or to more than one customer in the

²⁹ See Nexus Request for Review at 6; *see also* 47 CFR § 54.720(a) (2013).

³⁰ See Nexus Request for Review at 6-7.

³¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8957, para. 341 (1997) (subsequent history omitted) (*1997 Universal Service First Report and Order*); *Duplicative Payments Order*, 26 FCC Rcd at 9022, para. 1 (2011); *June 2011 Guidance Letter*, 26 FCC Rcd at 8590; *2012 Lifeline Reform Order*, 27 FCC Rcd at 6747, para. 211; 47 CFR §§ 54.400(g), 54.409(c) (2013).

³² In the *1997 Universal Service First Report and Order* and the *2004 Lifeline and Link Up Order and FNPRM*, the Commission stated that eligible low-income consumers may receive Lifeline support for "a single telephone line in their principal residence." *Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341; *Lifeline and Link Up et al.*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8306, para. 4 (2004); *2012 Lifeline Reform Order*, 27 FCC Rcd at 6687, 6690, paras. 70, 76 & n.183.

³³ 47 CFR § 54.409(c).

same household,³⁴ and Petitioners were obligated to act reasonably in not seeking duplicative compensation for nearly identical or substantially similar customer records that likely were the same customer or a member of the same household. Against this backdrop, and (as explained below) with one exception,³⁵ none of the Petitioners submitted any evidence that even a single record identified by USAC was not an intra-company duplicate. Accordingly, we affirm USAC's finding that these records represent duplicative accounts for which Petitioners unlawfully requested and received compensation.

9. We next address Petitioners' claims that USAC's duplicate determinations exceed the Commission's guidance and amount to impermissible policy-making.³⁶ USAC administers the Lifeline program pursuant to Commission orders, rules, and directives, and subject to ongoing Commission oversight and may not make policy or interpret unclear provisions of the Act or rules.³⁷ In this instance, we find USAC has acted reasonably and within the scope of the guidance provided when it made the duplicate determinations. In the *Duplicative Payments Order*, the Commission stated its intent to prevent duplicative Lifeline payments and directed the Bureau to work with USAC to implement a process to resolve duplicative claims.³⁸ The *June 2011 Guidance Letter*, released concurrently, directed USAC to identify and seek recovery for "intra-company duplicative subscribers (same name, same address within one ETC's records)."³⁹ USAC, pursuant to this guidance, built a duplicate detection system to standardize addresses through the U.S. Postal Service's address matching system and conduct name comparison using lexical and phonetic approaches to determine name variance.⁴⁰ This system was designed so USAC could analyze the ETC's own records and identify as duplicates subscribers with substantially similar addresses and names, even if those names and addresses did not match perfectly as they appeared in the ETC's records. USAC's use of subscriber names and addresses to identify duplicates is therefore consistent with our guidance.

10. Petitioners' contention that the duplication must be exact is unreasonably limited given the large number of potential variations between similar, but not identical, names and addresses of these subscribers. Where subscribers with the same or substantially similar names provided the same address or substantially similar addresses, there is a very strong probability that those subscribers are the same person and it was reasonable for USAC to identify these subscribers as duplicates in order to eliminate waste in the program. Indeed, accepting Petitioners' premise would lead to absurd results, such as USAC being forced to treat "John H. Exemplery," "John Exemplery," "Joh H. Exemplery," and "Jon H. Exemplery" all living at the exact same address as separate, independent subscribers rather than as intra-company duplicates.

11. Our decision to affirm USAC's findings is also based on Petitioners' failure to provide convincing evidence in support of their claims that these duplicates were legitimate, separate subscribers.⁴¹ Providers have had over four years to provide robust evidence countering USAC's

³⁴ See *Duplicative Payments Order*, 26 FCC Rcd at 9022, 9027, paras. 1, 8-9; *2012 Lifeline Modernization Order*, 27 FCC Rcd at 6687, para. 69.

³⁵ See discussion below at para. 12 regarding the showings submitted by Petitioner Boomerang.

³⁶ See, e.g., Assist Wireless Feb. 2014 Request for Review at 1, 9-10; Telrite Dec. 2013 Request for Review at 1, 9-10; True Wireless Request for Review at 2, 11-13.

³⁷ 47 CFR § 54.702.

³⁸ *Duplicative Payments Order*, 26 FCC Rcd at 9029, para. 13.

³⁹ *June 2011 Guidance Letter*, 26 FCC Rcd at 8590, 8592.

⁴⁰ See, e.g., Assist Feb. 2014 Request for Review at 8 (citing USAC's in-depth data validations (IDV) training materials); Nexus Request for Review at 13 (citing same).

⁴¹ As discussed below at para. 12, one Petitioner (Boomerang) presented cursory and unpersuasive evidence with respect to eight subscribers.

findings, yet providers have failed to do so. Petitioners opted instead to rely on descriptions of their processes or general claims about the subscribers at issue to support their requests for reversal of USAC's duplicate findings. For example, True Wireless and Nexus describe how they typically screen for potential intra-company duplicates, state the subscribers at issue have non-identical names and/or addresses, and highlight as examples a few subscriber names that USAC flagged as duplicates that the providers state are different individuals residing in the same apartment building.⁴² Other petitioners assert that the subscriber records at issue are not duplicates because they have differences including last names, dates of birth, and/or last four digits of their social security numbers. But in these instances, there was a high likelihood that the subscribers were, at a minimum, members of the same household and hence were duplicates. None of the Petitioners provided actual evidence showing the duplicates identified by USAC were not actually so. Consistent with our obligation to review these requests *de novo*, we find on this record no basis to conclude that the subscribers at issue were not the same individual at the same address or members of the same household within the meaning of the Commission's rules.

12. USAC's duplicate findings under review were based on a conservative methodology, and identified approximately 1,700 duplicates. Had Petitioners presented persuasive evidence that any of these nearly identical or substantially similar records in fact were not prohibited duplicates (e.g., that records with (1) an exact match in name and address; (2) same name and slight address variation; (3) slight name and address variation; or (4) slight variation in name and same address were two different persons living at different addresses or were members of separate economic households residing at the same address), it would not be proper to recover payments associated with these individuals. However, only one Petitioner (Boomerang) submitted subscriber-specific evidence to support its claims that the subscribers at issue were not beneficiaries of duplicative support in violation of Lifeline program rules—and Boomerang only provided this cursory evidence for eight subscribers.⁴³ Absent further information about each subscriber, USAC reasonably determined that these categories of subscribers with the same or substantially similar identifying information represented illegal duplicates.

13. We also are not persuaded by Petitioners' assertions that USAC's intra-company duplicate findings should be invalidated because they represented less than one percent of each Petitioner's Lifeline subscribers.⁴⁴ The Commission's rules provide no exception to the prohibition on duplicative support claims based on the significance of the duplicative support as a portion of the ETC's overall claims. Furthermore, regardless of whether USAC's findings represent only a small percentage of each company's subscribers, the total amount of improper payments to each ETC was non-trivial in absolute dollar terms, ranging from approximately two hundred dollars to approximately fourteen

⁴² True Wireless Request for Review, at 6-9, 13-14, Affidavit of Christopher Melton (Mar. 3, 2014) and Confidential Exhibit 2; Nexus Request for Review at 7-9, 14-15, Affidavit of Steven Fenker and Confidential Exhibit 2.

⁴³ See Boomerang Jan. 2014 Supplement at 2-3 and Exhibits A & B. The cursory evidence Boomerang provided (independent economic household worksheets for two subscribers and dates of birth and the last four digits of the social security numbers for six subscribers) did not demonstrate these eight subscribers were not duplicates. The independent economic household worksheets alone are not persuasive evidence that these individuals were not prohibited intra-company duplicates because these worksheets only indicate that the person completing the form is not a member of the same economic household as another unnamed individual at the same address who receives Lifeline service. In other words, the same individual at the same address could have filled out the worksheet in order to receive multiple Lifeline services. Raising the converse problem, the spreadsheet Boomerang provided with the dates of birth and last four digits of the social security number for six other subscribers suggests they are separate individuals but does not speak to whether those individuals were not household duplicates. In other words, if the evidence suggests two subscribers are one individual in one household, countervailing evidence is needed to show that they are both two individuals and in separate households, not just one or the other.

⁴⁴ See, e.g., Easy Wireless Dec. 2013 Request for Review at 5; Assist Wireless Feb. 2014 Request for Review at 5; Global Connection Request for Review at 5.

thousand dollars.⁴⁵ As noted below, it is well established that federal agencies have an obligation to recoup improper payments.⁴⁶

14. Petitioners' failure to provide any identifying information about the specific duplicate subscribers to support their claims also calls into question compliance with program rules intended to protect the program against waste, fraud, and abuse. Section 54.410(a) of the Commission's rules requires ETCs to adopt "policies and procedures" for ensuring that subscribers are eligible, including "confirm[ing] that the consumer is a qualifying low-income consumer pursuant to section 54.409."⁴⁷ As a separate and independent basis for our decision today, we also find that under section 54.410(a) a reasonable duplicate detection policy or procedure implemented by the Petitioners would have (i) identified identical, nearly identical and substantially similar records of the type identified by USAC, and (ii) required the Petitioners to investigate those records to determine whether they in fact were duplicates.⁴⁸ The record contains no evidence that Petitioners conducted any such investigations, however, and only one of the Petitioners submitted subscriber-specific evidence to support its claims that certain duplicate records flagged by USAC were in fact false positives.⁴⁹ None of the ETCs explain why it was impossible or impractical to conduct such investigations or why it was impossible or impractical to provide subscriber-specific information to demonstrate that its process had a reasonable basis for not flagging the subscribers at issue as duplicates. Furthermore, the fact that USAC was able to use information that was already in the providers' possession to design a system to identify substantially similar records shows that the ETCs also could have reasonably implemented such a system to identify such records for further investigation. In these circumstances, we find that all the records identified by USAC should be treated as intra-company duplicates that violate the rules against duplicate support and for which any duplicative payment was improper and must be recovered.

15. The only remaining legal issue before us is whether the payments at issue were not permitted under Commission rules precluding ETCs from receiving support for providing more than one Lifeline-supported service to the same individual.⁵⁰ Based on the evidence before us, we conclude these payments were not permitted under those rules because they were disbursed for service to non-qualifying

⁴⁵ Furthermore, the one percent amount is simply a result of the screens USAC used, which may in fact be under-inclusive.

⁴⁶ Under the Appropriations and Property Clauses of the Constitution, agencies must establish their debts and affirmatively seek to collect them. See U.S. CONST. art. I, section 8, cl. 18 and art. IV, section 3, cl. 2. *Royal Indemnity co. v. United States*, 313 U.S. 289, 294-95 (1941) ("[s]ubordinate officers of the United States are without power [to dispose of the rights or property of the United States], save only as it has been conferred upon them by Act of Congress . . ."). See also *U.S. v. Wurts*, 303 U.S. 414 (1938) ("The Government by appropriate action can recover funds which its agents have wrongfully, erroneously, or illegally paid."). The agency retains the *discretion* to terminate collection activities where collection costs are anticipated to exceed the amount recoverable, and that discretionary determination is case specific. See 31 CFR § 903.3.

⁴⁷ 47 CFR § 54.410(a) (2013).

⁴⁸ Certain Petitioners state that all or nearly all of the alleged intra-company duplicate accounts contain non-identical name and/or address data, that all or nearly all also have differences in the last name, date of birth, and/or partial social security number information. See, e.g., Assist Wireless Dec. 2013 Request for Review at 5; Easy Wireless Dec. 2013 Request for Review at 9; Head Start Feb. 2014 Request for Review at 9; i-wireless Feb. 2014 Request for Review at 12; Telrite Dec. 2013 Request for Review at 9; True Wireless Request for Review at 13. However, with the exception of six Boomerang subscribers, Petitioners did not provide the dates of birth or partial social security number information for the subscribers at issue. Therefore, we are unable to validate these assertions.

⁴⁹ See Boomerang Jan. 2014 Supplement at 2-3 and Exhibits A & B. While Boomerang provided the dates of birth and the last four digits of the social security numbers for six of the subscribers that USAC flagged as duplicates Boomerang did not provide this information for the other subscribers for which Boomerang appealed USAC's duplicate determinations.

⁵⁰ 47 CFR §§ 54.407(a), (b), 54.409(c) (2013).

customers (i.e., an individual receiving multiple Lifeline services). The *2012 Lifeline Reform Order* adopted rules that (i) defined a “qualifying” Lifeline subscriber to include subscribers that were not receiving duplicative support,⁵¹ and (ii) stated that Lifeline support “shall be provided” to an ETC based on “the number of *actual qualifying* low-income consumers it serves.”⁵² To the extent that support was provided to an ETC for a consumer that was not “actually qualifying,” such support was unlawful and must be treated as an improper payment.⁵³ Indeed, as a federal agency the Commission has no choice but to attempt to recover federal funds that have been improperly disbursed.⁵⁴

16. We reject Petitioners’ arguments that the Commission should establish safe harbor duplicate screening practices so that Lifeline providers employing these practices would “not face retroactive liability or forfeiture penalties for any duplicates that might nevertheless evade detection.”⁵⁵ This argument is irrelevant to our determination of whether USAC’s findings of improper duplicative Lifeline support were consistent with the Commission’s rules. Further, a request for review of an action taken by USAC is not the appropriate vehicle for petitioning for a change in Commission rules or policies.⁵⁶ Under the Commission’s rules and absent an amendment to those rules, Lifeline providers are primarily responsible for ensuring submissions for Lifeline support are accurate and that those for whom support is requested are eligible.⁵⁷ While the Commission prescribed certain duties that ETCs should take to eliminate the submission of duplicative claims for support,⁵⁸ the Commission did not state or suggest

⁵¹ See 47 CFR § 54.409(c) (2013).

⁵² 47 CFR § 54.410(a) (2013) (emphasis added). Some Petitioners argue that the FCC has defined an intra-company duplicate as being a record with “same name, same address.” See Nexus Mar. 2014 Request for Review at 10-12; True Wireless Request for Review at 9-10. We do not reach this issue today because the issue before us is not whether a particular record should be considered a “duplicate” for which an ETC should not have sought support from USAC. Rather, the issue now before us is whether certain ETCs actually received improper support for Lifeline service provided to the same customer. In other words, the relevant legal issue is not the nature of Petitioners’ customer *records* but rather the actual identity of the *customers themselves* for whom support was actually obtained.

⁵³ This conclusion is consistent with Commission statements that predate the conduct here at issue. For example, in the *Duplicative Payments Order* in 2011, the Commission codified the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time. See *Duplicative Payments Order*, 26 FCC Rcd at 9027, para. 8; see also 47 CFR § 54.401(a)(1) (2011). In so doing, the Commission stated that it was taking action to prevent waste “by preventing duplicative program payments for multiple Lifeline-supported services to the same individual.” *Duplicative Payments Order*, 26 FCC Rcd at 9022, para. 1 (emphasis added).

⁵⁴ See n.46, *supra*.

⁵⁵ See, e.g., i-wireless Feb. 2014 Request for Review at 18; Boomerang Request for Review at 15-21; Global Connection Request for Review at 14-19; Easy Wireless Feb. 2014 Request for Review at 15-21; Telrite Dec. 2013 Request for Review at 14-20.

⁵⁶ See 47 CFR §§ 1.401, 1.411 (establishing procedures for the issuance, amendment, or repeal of Commission rules or regulations).

⁵⁷ See *Wireline Competition Bureau Reminds Eligible Telecommunications Carriers of Their Ongoing Responsibility to Claim Lifeline Support Only for Eligible Low-Income Consumers*, Public Notice, 32 FCC Rcd 5129, 5129 (WCB 2017) (reminding Lifeline providers of their “primary responsibility to ensure the eligibility of Americans seeking Lifeline support”). See also 47 CFR § 54.407(a) (Lifeline reimbursement “shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers it serves ...”); 47 CFR § 54.407(d) (“In order to receive universal service support reimbursement, an officer of each [ETC] must certify ... that [t]he [ETC] is in compliance with all of the rules in this subpart”); 47 CFR § 54.409 (establishing consumer qualifications for the Lifeline benefit); 47 CFR § 54.410(a) (requiring all ETCs to “implement policies and procedures” to ensure that all of their Lifeline subscribers are eligible to receive Lifeline service).

⁵⁸ See *2012 Lifeline Reform Order*, 27 FCC Rcd at 6691, para. 78; see also *Wireline Competition Bureau Announces that the National Lifeline Accountability Database Will Begin Accepting Subscriber Data in December*, Public

(continued....)

that any of these steps, if taken, would serve as a safe harbor under which an ETC would be able to retain support where it was later determined that the support had been unlawfully disbursed for the provision of service to the same individual in violation of the rules. Further, the Bureau has consistently confirmed that Lifeline providers do not receive a safe harbor from liability for duplicate claims when they use the NLAD.⁵⁹ A safe harbor is likewise not warranted when Lifeline providers use specific procedures to identify duplicates.

17. Finally, we deny Nexus' request for waiver of the 60-day deadline for appealing USAC's November 1, 2013 notices of intra-company duplicates.⁶⁰ Generally, the Commission's rules may be waived if good cause is shown.⁶¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest, and may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁶² We find that, based on the record in this proceeding, good cause does not exist for granting Nexus' waiver request. Nexus states that initially, it believed USAC's November 1, 2013 intra-company duplicate notifications "*standing alone* did not warrant a request for review" and that the "need to appeal became apparent only after the 60-day timeframe to appeal the initial decisions had expired."⁶³ Nexus further explains that after receiving USAC's December 30, 2013 duplicate notification letters, "it became clear that USAC was systematically issuing unlawful IDV decisions and that Nexus must request review by the Commission."⁶⁴ The fact that Nexus reconsidered its choice not to appeal USAC's November duplicate notifications after receiving an additional duplicate notification for additional months on December 30, 2013, does not constitute the type of special circumstances necessary for the Commission to waive the 60-day appeal deadline.⁶⁵ In particular, Nexus has identified no hardship or other extraordinary circumstance that justified letting the 60-day period lapse without filing an appeal. Instead, Nexus simply asks to be excused because it made what it now considers to be a mistake. Rectifying such mistakes does not fall within the proper purview of a waiver, and we therefore deny Nexus' request.

18. For the foregoing reasons, we deny the 14 Requests for Review listed in the Appendix to this Order and also deny Nexus' request for waiver of the 60-day appeal deadline with respect to USAC's November 2013 intra-company duplicates letter.

III. ORDERING CLAUSES

19. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4

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Notice, 28 FCC Rcd 14639 (WCB 2013) (reminding ETCs of their ongoing duty to use all the information available to them to identify and eliminate intra-company duplicative support).

⁵⁹ *Wireline Competition Bureau Reminds Eligible Telecommunications Carriers of Their Ongoing Responsibility to Claim Lifeline Support Only for Eligible Low-Income Consumers*, Public Notice, 32 FCC Rcd 5130 (WCB 2017) (stating that notwithstanding the development of NLAD and the eventual implementation of the National Verifier, "ETCs enjoy no 'safe harbor' from auditing and enforcement, which may include, but is not limited to, repayments to the Fund, monetary penalties, and revocation of Commission authorizations.").

⁶⁰ See Nexus Request for Review at 6-7.

⁶¹ 47 CFR § 1.3.

⁶² See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁶³ Nexus Request for Review at 7 (emphasis in original).

⁶⁴ Nexus Request for Review at 7.

⁶⁵ See, e.g., *Requests for Waiver and/or Review of Decisions of the Universal Service Administrator by Churchill County Sch. Dist.*, Order, 27 FCC Rcd 7103, 7103, para. 1 (2012) (denying eight untimely appeals and waiver requests because the petitioners failed to show special circumstances necessary for the Commission to waive the deadline).

and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 54.722(a), that the requests for review filed by the petitioners listed in the Appendix to this Order ARE DENIED.

20. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.722(a), that the request for waiver of section 54.720(a) of the Commission's rules, 47 CFR § 54.720(a), by Nexus Communications, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

APPENDIX

Petitioner	Month of IDV Review	Relevant State(s)	USAC Finding Issued	Request for Review date
Assist Wireless, LLC	Mar. 2013	Oklahoma	Nov. 1, 2013	Dec. 31, 2013
Assist Wireless, LLC	Apr. 2013	Oklahoma	Dec. 30, 2013	Feb. 28, 2014
Boomerang Wireless, LLC	Mar. 2013	Iowa	Dec. 30, 2013	Jan. 7, 2014
	Apr. 2013	Oklahoma	Dec. 30, 2013	Jan. 7, 2014
Easy Wireless	Mar. 2013	Oklahoma	Nov. 1, 2013	Dec. 30, 2013
Easy Wireless	Mar. 2013	Kentucky	Dec. 30, 2013	Feb. 28, 2014
	Apr. 2013	Oklahoma	Dec. 30, 2013	Feb. 28, 2014
Global Connection, Inc.	Mar. 2013	Maryland, Louisiana	Nov. 1, 2013	Dec. 30, 2013
Head Start Telecom, Inc.	Mar. 2013	Oklahoma	Nov. 1, 2013	Dec. 30, 2013
Head Start Telecom, Inc.	Apr. 2013	Oklahoma	Dec. 30, 2013	Feb. 28, 2014
i-wireless, LLC	Feb. 2013	Nevada	Nov. 1, 2013	Dec. 30, 2013
	Mar. 2013	Georgia	Nov. 1, 2013	Dec. 30, 2013
i-wireless, LLC	Mar. 2013	N. Carolina, Kentucky, Ohio	Dec. 31, 2013	Feb. 27, 2014
	Apr. 2013	Alabama, Kansas	Dec. 31, 2013	Feb. 27, 2014
	Apr. 2013	New York, Michigan	Dec. 31, 2013	Feb. 27, 2014
Nexus Communications, Inc.	Feb. 2013	New Jersey	Nov. 1, 2013	Feb. 28, 2014
	Mar. 2013	Georgia, Louisiana	Nov. 1, 2013	Feb. 28, 2014
	Mar. 2013	Ohio	Dec. 30, 2013	Feb. 28, 2014
	Apr. 2013	Illinois, Mississippi, Kansas	Dec. 30, 2013	Feb. 28, 2014
	Apr. 2013	Michigan	Dec. 30, 2013	Feb. 28, 2014
Telrite Corporation	Feb. 2013	Minnesota	Nov. 1, 2013	Dec. 30, 2013
	Mar. 2013	Georgia, Louisiana, Maryland, Rhode Island	Nov. 1, 2013	Dec. 30, 2013
Telrite Corporation	Apr. 2013	Arkansas, Illinois, W. Virginia	Dec. 30, 2013	Jan. 17, 2014
	Apr. 2013	Louisiana, Maryland	Dec. 30, 2013	Jan. 17, 2014
True Wireless, LLC	June-Nov. 2013	Arkansas, Maryland, Oklahoma	Dec. 31, 2013	Mar. 4, 2014