

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

In Re: *Petition to Eliminate State Lifeline Credit*

Docket No. 12-00035

**PETITION TO ELIMINATE STATE LIFELINE CREDIT**

Comes now, the Industry Coalition, which is comprised of BellSouth Telecommunications, LLC dba AT&T Tennessee, the CenturyLink Companies, Frontier Communications Co of Tennessee/Volunteer and Frontier Communications of America, TDS Telecom, Tennessee Telephone Association, Level 3 Communications, LLC and tw telecom of tennessee, llc (jointly, the "Industry Coalition") and petition the Authority to eliminate the state Lifeline credit.

**INTRODUCTION**

As discussed in comments filed in the TRA's recent workshop, in February, 2012, the Federal Communications Commission's (FCC's) issued the *Lifeline and Link Up Reform and Modernization* order,<sup>1</sup> in recognition of the dramatic changes in the telecommunications marketplace which call for the Lifeline program to be reconsidered and updated. In addition to the changes and updates being implemented by the FCC at the federal level, state commissions must also evaluate the need for reform at the state level. In Tennessee, the requirement that wireline providers self-fund a PSC-mandated Lifeline credit is:

- **Outdated**, having been implemented by the PSC to maximize the federal Lifeline discount and prior to the competitive telecommunications market and the end of monopoly providers;

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<sup>1</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 12-11 (rel. Feb. 6, 2012).

- **Inconsistent with State Legislative Reforms** designed to encourage investment and new technology,
- **Anti-Competitive and Discriminatory**, because it imposes costs and administrative burdens on wireline providers that are not required of intermodal competitors (such as cable, over-the-top VoIP providers, and wireless providers); and
- **Irrelevant to Consumers**, who continue to adopt wireless and other technologies (even though no state-mandated credit is provided on those services) and who will now receive a nationally-consistent \$9.25 credit under the revised federal program.

For all these reasons, which are discussed more fully in the Comments filed in the workshop and attached to this Petition, the TRA should eliminate the state Lifeline credit, just as the FCC has determined that the Link-up program on non-Tribal lands should be eliminated.

For the foregoing reasons, the Industry Coalition hereby urges the TRA to issue an order eliminating the provider-funded state Lifeline credit. In order to implement this change efficiently in connection with the FCC-ordered changes, the Industry Coalition respectfully requests that this Petition be expedited and concluded within 90 days.

Respectfully submitted,

The Industry Coalition

BellSouth Telecommunications, LLC dba AT&T Tennessee  
 CenturyLink  
 Frontier Communications Co of Tennessee/Volunteer  
 Frontier Communications of America  
 TDS Telecom  
 Tennessee Telephone Association  
 Level 3 Communications, LLC  
 tw telecom of tennessee, llc

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<p>tw telecom of tennessee llc</p> <p>By: <u></u> Charles B. Welch, Jr., Esquire Farris Mathews Bobango, PLC 618 Church Street, Suite 300 Nashville, TN 37219 615 726 1200 <a href="mailto:cwelch@farrismathews.com">cwelch@farrismathews.com</a></p> <p>By J. Phillips With permission</p>	



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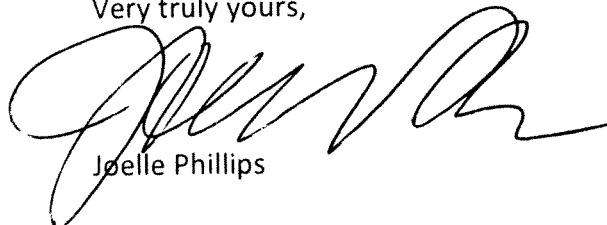
Hon. Kenneth C. Hill, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Workshop to Gather Information on FCC Report and Order and Further Notice  
of Proposed Rulemaking – comprehensive Low-Income Program Reform  
Released February, 2012*

Dear Chairman Hill:

Enclosed are the original and four copies of *AT&T's Comments Regarding State  
Lifeline Program*.

Very truly yours,



Joelle Phillips

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Proud Sponsor of the U.S. Olympic Team

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

In Re: *Workshop to Gather Information on FCC Report and Order and Further Notice of Proposed Rulemaking – Comprehensive Low-Income Program Reform Released February, 2012*

**AT&T COMMENTS REGARDING STATE LIFELINE PROGRAM**

BellSouth Telecommunications, LLC dba AT&T Tennessee (AT&T) thanks the Tennessee Regulatory Authority (TRA or Authority) for the opportunity to submit these written comments in connection with the above-referenced workshop. The TRA's workshop was timely in light of the Federal Communications Commission's (FCC's) recent *Lifeline and Link Up Reform and Modernization* order,<sup>1</sup> and AT&T is pleased to be able to participate.

**INTRODUCTION**

As discussed below, dramatic changes in the telecommunications marketplace call for the Lifeline program to be reconsidered and updated. In addition to the changes and updates being implemented by the FCC at the federal level, state commissions must also evaluate the need for reform at the state level. In Tennessee, the requirement that wireline providers self-fund a PSC-mandated Lifeline credit is:

- **Outdated**, having been implemented by the PSC to maximize the federal Lifeline discount and prior to the competitive telecommunications market and the end of monopoly providers;
- **Inconsistent with State Legislative Reforms** designed to encourage investment and new technology,
- **Anti-Competitive and Discriminatory**, because it imposes costs and administrative burdens on wireline providers that are not required of intermodal competitors (such as cable, over-the-top VoIP providers, and wireless providers); and

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<sup>1</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 12-11 (rel. Feb. 6, 2012).

- Irrelevant to Consumers, who continue to adopt wireless and other technologies (even though no state-mandated credit is provided on those services) and who will now receive a nationally-consistent \$9.25 credit under the revised federal program.

For all these reasons, the TRA should eliminate the state Lifeline credit, just as the FCC has determined that the Link-up program on non-Tribal lands should be eliminated.

## DISCUSSION

- I. The Lifeline programs, at both the state and federal levels, have been in place for decades. These programs need to be re-evaluated in light of the many changes that have occurred since their creation.

As the FCC has noted, the federal Lifeline program rules were established long before the dramatic industry changes resulting from CLEC growth, wide-scale consumer adoption of wireless technology, and the explosion of IP technologies and internet usage. The federal program was created in the 1980s, in the wake of the 1984 divestiture of the old AT&T. At the time, the program was fashioned to advance the goal of universal local exchange service in a world of few, if any choices regarding those services – few technologies, few service models, and few providers. Today's telecommunications market has transformed into a vastly different world full of choices that could not have been imagined in the 1980s. These programs must be re-evaluated in light of the changed, new world in which they now exist.

AT&T believes that the FCC is right to review and reform the Lifeline program to ensure that it has kept pace with the evolved telecommunications market and to determine how best to achieve the program's original policy goals given these changed circumstances. Likewise, the TRA is correct to conduct this workshop and take other actions to ensure that Tennessee's implementation of both the federal program and the Tennessee program created by the Public

Service Commission (PSC) is consistent with today's Tennessee telecommunications market as well as today's Tennessee law.

Like the federal program, the state Lifeline program was developed long before the modern changes in today's Tennessee market. The Tennessee PSC established the program in 1991,<sup>2</sup> four years before Tennessee law was first amended to enable competition in the telecommunications market place and before the PSC was replaced with the Regulatory Authority. Two decades later, telecommunications law and regulation in 2012 is almost unrecognizable by comparison:

- **Competition Exists Throughout the State.** As the Authority found in Docket No. 10-00108 *BellSouth Telecommunications, Inc. dba AT&T Tennessee Petition to Extend Market Regulation to Rate Groups 1 and 2*, consumers in every one of AT&T's wire centers have competitive choices for telecommunications service. This fact was so clear that it was undisputed by the parties in that docket. Tennesseans have numerous options for Lifeline service, including wireless options.
- **Advanced Technologies Are Available Throughout the State.** Tennessee consumers today obtain services from traditional wireline providers, cable and other VoIP providers, and wireless providers. ConnectedTN has found that more than 92% of Tennesseans today have access to broadband services at advertised speeds of 6 Mbps downstream and 1.5 Mbps upstream (well above the FCC's benchmark of 4 Mbps downstream / 1 Mbps upstream). Tennessee consumers obtain broadband service from wired and wireless providers.
- **The General Assembly Has Modernized Telecommunications Regulation.** Tennessee regulatory law regarding telecommunications has also changed dramatically as compared with the regulatory model in place in 1991. In contrast with the PSC's plenary authority to regulate and establish rates for the sole-source providers of that day, the TRA today exercises much more narrowly-tailored regulatory jurisdiction. This modern approach to regulatory law in Tennessee has eliminated regulatory power in favor of competitive market forces. With respect to market-regulated carriers, the General Assembly has narrowed the TRA's role in telecommunications such that there is virtually no

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<sup>2</sup> *Adoption of Lifeline Assistance Program*, Docket No. 91-08797, Order 12/19/91; Order 01/31/92; Amended Order 03/04/92.

regulation of retail pricing. Instead, the TRA today functions primarily as a wholesale dispute forum for carriers.

The December 1991 Order of the PSC establishing the state Lifeline program with respect to South Central Bell reads like the out-dated relic that it is – no reference to competitive providers (there were none); determination of the state credit amount based upon the PSC-established rate for message rate service (rates are no longer established in this fashion, and few consumers even know what “message rate” service is today); and an analysis of the manner in which establishing a state credit will provide a basis to obtain federal matching credits pursuant to FCC rules (the “matching discount” provisions of those rules have been eliminated by the FCC’s order). Today, all of these things on which the PSC’s order is based have completely changed. Moreover, under the state law in effect today, in the absence of the PSC’s Order, the TRA would have no basis to require Market Regulated carriers, like South Central Bell’s successor AT&T, to provide specific credits to consumers without any form of reimbursement. Accordingly, what in 1991 was a mandate that was funded by way of the PSC’s plenary authority over rates the monopoly providers, who were required to operate under rate of return regulation, could charge for their various services is now simply an “unfunded mandate” that has no place in today’s competitive marketplace. As a result of the many changes in state telecommunications law, the TRA’s regulatory jurisdiction and functions are far more limited today.

- II. In light of the many changes that have occurred since adoption of the provider-funded state Lifeline credit, the TRA should issue an order eliminating the state credit.

With the elimination of the multi-tiered federal Lifeline discount rules and the FCC’s adoption of a single, flat \$9.25 federal credit (established by the national average), there is no



longer any need for a separate, provider-funded state credit in order to assure that all Tennessee consumers who choose traditional wireline telecommunications will receive the maximum federal Lifeline credit. Of course, today fewer and fewer consumers are choosing traditional wireline phones, and the existence of the additional state Lifeline credit (which is applicable only to traditional wireline providers) has not stopped Lifeline consumers from cutting the cord and adopting the wireless and VoIP alternatives for which there is no state Lifeline credit. ***In fact, according to USAC, approximately 75 % of the federal Lifeline support paid to Tennessee providers in 2011 was paid to wireless providers.***<sup>3</sup> This fact alone demonstrates that, in today's intermodal market, full of choices and competitive prices, the state Lifeline credit is no longer relevant to consumers – but it continues to impose cost and administrative burdens on the wireline sector, making it harder to compete and harder to justify investment.

The existing Lifeline program in Tennessee, which affects only traditional wireline providers and not their intermodal competitors, is discriminatory and anticompetitive. As such, it is inconsistent with section 254(f) of the Communications Act of 1934, as amended, in which all carriers must contribute on an “equitable and nondiscriminatory basis ... to the preservation and advancement of universal service in that State.”<sup>4</sup> Tennessee consumers choose services from among varied providers, including over-the-top VoIP, cable telephony, wireless carriers, and traditional wireline providers. But under the existing program, only traditional wireline providers are required to provide the state Lifeline credit, which reduces revenue and imposes

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<sup>3</sup> See 3Q2011 reports, found at [www.universalservice.org/about/governance/fcc-filings/2011](http://www.universalservice.org/about/governance/fcc-filings/2011)

<sup>4</sup> 47 U.S.C. § 254(f).

administrative burdens *for one class of providers*, leaving those providers at a competitive disadvantage.

Moreover, this government-mandated, yet unfunded, requirement is at odds with the General Assembly's consistent move away from government regulation and rate-making *for just wireline providers* and toward pricing established by the competitive market, which includes *all types of providers*. The General Assembly has embraced the policy of reduced regulation and a more level playing field in order to make Tennessee's market attractive to private investment. The General Assembly has indicated its confidence that the social benefits flowing to Tennesseans from this approach are superior to the benefits that can be achieved by government-designed social programs, such as the state Lifeline program, especially when such programs have outlived their usefulness and disrupt the competitive market. The FCC's own action in ending the Link Up program for non-Tribal customers provides an excellent example of how regulatory bodies should act to end a program that no longer makes sense.

Because the TRA has already concluded that all wireline providers (ILEC and CLEC alike) must self-fund this credit, elimination of the credit will have no impact on the resale of telecommunications or other wholesale issues in Tennessee. Instead, eliminating the provider-funded state credit will ensure that Tennessee's implementation of the Lifeline program is consistent with the FCC's goals for the program and will at the same time eliminate an unfunded mandate on wireline providers.

**III. Elimination of the requirement that providers fund the additional state Lifeline credit need not require legislative action if the TRA will act.**

The TRA can certainly act on its own to eliminate the state Lifeline credit established by the PSC in 1991. While state law permits the TRA to use its jurisdiction regarding the Lifeline

program to continue to implement the PSC order, there is nothing in state law that precludes the TRA from eliminating that requirement. In fact, such action is entirely consistent with the commendable and forward-thinking steps that the Authority has taken toward improving regulatory efficiency and adapting the agency to changes in technology and the marketplace. Action by the TRA to eliminate this unfunded requirement will be far less time consuming and far more efficient than waiting for legislation mandating the reform of the program. In the absence of TRA action, legislative reform eliminating the program statutorily would be consistent with the General Assembly's continued efforts to streamline regulation and limit government involvement in the provision of telecommunications services. This policy preference for a competitive telecommunications market has served Tennessee consumers well, and the General Assembly appears to be firmly committed to it.

### **CONCLUSION**

As a result of the FCC's reform, all Americans will have the opportunity to receive a consistent, federally-established Lifeline credit. It is time for the TRA to act to eliminate the state requirement for providers to supply an additional Lifeline credit. As discussed above, by choosing alternatives for which no state credit is provided, consumers have demonstrated that the additional state credit on wireline service is no longer relevant. The wireline-only nature of the credit imposes an anticompetitive burden on wireline providers, and it is an out-dated and unfunded government mandate that is inconsistent with the modern Tennessee telecom policy embraced by the General Assembly. Like the non-Tribal Link Up program, the Tennessee Lifeline credit should end, and the TRA should take action to end it.

For the foregoing reasons, the TRA should issue an order eliminating the provider-funded state Lifeline credit.

Respectfully submitted,

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