

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

)  
)  
)  
)  
)  
)  
)

Assurance Wireless USA, L.P.  
Request for Review of Decision  
of Universal Service Administrator

WC Docket No. 11-42

**REQUEST FOR REVIEW OF DECISION OF  
THE UNIVERSAL SERVICE ADMINISTRATOR  
AND PETITION FOR WAIVER**

Patrick O'Donnell  
Matthew G. Miller  
HARRIS, WILTSHIRE & GRANNIS LLP  
1919 M Street, NW  
Eighth Floor  
Washington, DC 20036  
(202) 730-1300

December 27, 2021

*Counsel for Assurance Wireless USA, L.P.*

**TABLE OF CONTENTS**

<b>INTRODUCTION AND SUMMARY</b>	<b>1</b>
<b>STATEMENT OF INTEREST</b>	<b>3</b>
<b>STATEMENT OF FACTS</b>	<b>4</b>
<b>ARGUMENT</b>	<b>7</b>
<b>I. USAC’S RECOVERY NOTICE IGNORES ELIGIBLE SUBSCRIBERS ASSURANCE SERVED DURING THE RELEVANT TIME PERIOD.</b>	<b>7</b>
A. USAC IGNORES SYSTEMIC PROBLEMS IN THE PUCT’S “END OF MONTH” DISCOUNT FILES. ....	7
B. USAC IGNORES SUBSIDY CLAIMS THAT LIDA ITSELF APPROVED IN A SPECIAL PROCESS. ....	10
C. USAC IGNORES THAT LIDA FAILED TO INCLUDE SOME ELIGIBLE CUSTOMERS FOR UNKNOWN REASONS. ....	11
D. USAC HAS NO LEGAL BASIS FOR ITS POSITION.....	12
<b>II. THE RECOVERY NOTICE ALSO MAKES TWO OTHER FUNDAMENTAL MISTAKES.</b>	<b>13</b>
A. Inactivity Repayment.....	13
B. Voluntary 2% Holdback .....	14

**TABLE OF ATTACHMENTS**

- Attachment A:** Attachment A, Letter from Patrick O’Donnell, Counsel to Assurance Wireless, L.P., to James Lee, Vice President, Lifeline Program, USAC (Oct. 13, 2020)
- Attachment B:** Email from Dan Marion, Customer Relations Manager, Solix, to Texas Lifeline Providers (Nov. 15, 2017)
- Attachment C:** Email from Lifeline Program Integrity to [REDACTED], Manager, Regulatory Reporting, Sprint (April 24, 2020)
- Attachment D:** USAC, *Administrator’s Decision on Lifeline Program Appeal*, (Oct. 25, 2021)
- Attachment E:** Solix, Inc., *LIDA 16585: Texas Lifeline Operational Guideline* (Nov. 27, 2017)
- Attachment F:** Solix, Inc., *Near-Real-Time Web Service API User Guide* (April 20, 2018)
- Attachment G:** Email from [REDACTED], Product Manager, Assurance Wireless, to Dan Marion, Customer Relations Manager, Solix (Nov. 30, 2017)
- Attachment H:** Email from Dan Marion, Customer Relations Manager, Solix, to [REDACTED], Product Manager, Assurance Wireless (Jan. 18, 2018)
- Attachment I:** Email from Dan Marion, Customer Relations Manager, Solix, to [REDACTED], Product Manager, Assurance Wireless (Aug. 8, 2018)
- Attachment J:** Email from Dan Marion, Customer Relations Manager, Solix, to [REDACTED], Product Manager, Assurance Wireless (May 14, 2018)
- Attachment K:** Letter from [REDACTED], Vice President, Government Affairs, Sprint Corporation, to Mark Stephens, Managing Director, Federal Communications Commission (Dec. 30, 2019)
- Attachment L:** Letter from Lifeline Program Integrity to Patrick O’Donnell, Harris, Wiltshire & Grannis LLP, Counsel for Assurance Wireless (March 18, 2021)
- Attachments 1–43:** Monthly subscriber lists identifying subscribers in each category under dispute

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
	)	
Assurance Wireless USA, L.P.	)	
Request for Review of Decision	)	WC Docket No. 11-42
of Universal Service Administrator	)	

**REQUEST FOR REVIEW AND PETITION FOR WAIVER**

Assurance Wireless USA, L.P. (“Assurance” or the “Company”) respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) review and reverse the decision of the Universal Service Administrative Company (“USAC” or “Administrator”) to issue a Notice of Determination of Amounts Owed to the Universal Service Fund (“Recovery Notice”). If the Commission declines to reverse USAC’s decision, the Company respectfully requests that the Commission grant a waiver of its rules and/or direct USAC to hold the Recovery Notice in abeyance until the Commission resolves a petition requesting that it revoke its approval of Texas’s opting out of the National Lifeline Accountability Database (“NLAD”).

**INTRODUCTION AND SUMMARY**

In its Recovery Notice, USAC takes a formulaic approach that looks only at the “end-of-month” discount files used by the Public Utilities Commission of Texas (“PUCT”). Despite reams of evidence that this simplistic approach omits large numbers of eligible subscribers and double counts subscribers for which Assurance has previously made reimbursement, USAC refused to consider any other evidence or argument.

USAC’s repayment demand is fundamentally unsound in multiple respects. First, the “end-of-month” discount files on which USAC places dispositive weight omit a large number of clearly eligible subscribers. Some of these subscribers were omitted due to design flaws that affect every Lifeline provider in the state and that the PUCT itself has admitted cause undercounting of subscribers. For example, the “end-of-month” files include only those subscribers deemed eligible for Lifeline as of the middle of the month, ignoring those that become eligible later in the same month, despite the fact that the PUCT provides a verification tool that confirms the eligibility of subscribers who are enrolled after the arbitrary mid-month cut-off. The “end-of-month” discount files also routinely exclude some eligible subscribers in their first month of service for reasons that are wholly unclear. Other subscribers were omitted from the “end-of-month” discount files for a reason unique to Assurance: the manager of the PUCT’s Lifeline program approved large numbers of subsidy claims, in a separate special process, that have never been recorded in the “end-of-month” discount files. Hundreds of thousands of other subscribers were inexplicably ignored and not included in either the “end-of-month” discount files or the separate special process. And USAC relies, erroneously, for its decision to ignore all evidence of eligibility other than the “end-of-month” discount files upon a rule that simply does not say that and was not in effect until the end of 2019.

Second, USAC seeks to recover payments for a number of subscribers that Assurance has *already reimbursed* to USAC. Assurance voluntarily made these reimbursements for reasons wholly unrelated to the present matter—they were part of an effort to correct for an error in Assurance’s process for detecting subscriber inactivity. Having already reimbursed payments for these specific subscribers, Assurance cannot properly be asked to reimburse them again. Such

double counting ignores that there can be no “overpayment” for subscribers for which Assurance has not been paid.

Finally, USAC’s demand disregards the fact that some of Assurance’s support claims during the relevant time period requested only 98% of the qualified subscribers it served each month, not the 100% erroneously assumed by USAC. If the purpose of USAC’s exercise is to determine how much Assurance should have properly been paid, it must take into account all of the subsidies to which Assurance was rightfully entitled.

Each of these reasons independently shows that USAC’s basic approach is flawed, and each provides an independent basis to reject USAC’s recovery demand. Accordingly, for all of these reasons, Assurance asks the Commission to instruct USAC to recalculate any recovery claim after correcting the foregoing flaws or, at the very least, hold the matter in abeyance until the related matters described below are resolved.

### **STATEMENT OF INTEREST**

Section 54.719(b) of the Commission’s rules provides that any person aggrieved by an action taken by a division of USAC, after first seeking review at USAC, may seek review from the Commission.<sup>1</sup> Assurance submits this Request for Review and Petition for Waiver pursuant to 47 C.F.R. §§ 54.719(b)-(c) and 1.3. Requests for review of USAC actions that do not involve “novel questions of fact, law or policy” shall be considered by the Wireline Competition Bureau.<sup>2</sup> Requests for review of USAC actions that raise “novel questions of fact, law or policy shall be

---

<sup>1</sup> 47 C.F.R. § 54.719(b).

<sup>2</sup> 47 C.F.R. § 54.722(a).

considered by the full Commission.”<sup>3</sup> Both the Wireline Competition Bureau and the Commission conduct *de novo* reviews of USAC decisions.<sup>4</sup>

## STATEMENT OF FACTS

### I. THE PUCT’S LIFELINE PROCESS

In 2012, the PUCT sought permission from the Commission to opt-out of NLAD and detailed the ways the Texas Low-Income Discount Administrator (“LIDA”) system was as “comprehensive and at least as robust” as NLAD.<sup>5</sup> After 90 days without Commission action, the petition was automatically granted and the PUCT was permitted to opt-out of NLAD.

Under LIDA’s system, eligible telecommunications carriers (“ETCs”) operating in Texas are required to submit monthly files containing their subscribers receiving Lifeline service.<sup>6</sup> LIDA provides a “monthly update” to each Lifeline provider of its list of eligible subscribers (which the PUCT refers to as the “End of Month report”) and a list of subscribers to de-enroll.<sup>7</sup>

Additionally, in October 2017, LIDA implemented a “Near Real-Time” review process for new customers.<sup>8</sup> Under this process, in order to give ETCs “current, real-time customer eligibility

---

<sup>3</sup> *Id.*

<sup>4</sup> 47 C.F.R. § 54.723(a).

<sup>5</sup> *See Lifeline and Link Up Reform and Modernization*, Petition to Opt-Out of the Nat’l Database Pursuant to C.F.R. 47 § 54.404(a) by the Pub. Util. Comm’n of Tex., WC Docket No. 11-42, at 12-26 (Sept. 13, 2012); *Lifeline and Link Up Reform and Modernization*, Amendment to the Petition to Opt-Out of the Nat’l Database Pursuant to C.F.R. 47 § 54.404(a) by the Pub. Util. Comm’n of Tex., WC Docket No. 11-42, 12-26 at 2 (Nov. 16, 2012) (“*Opt-Out Certification*”).

<sup>6</sup> *See* 16 Tex. Admin. Code § 26.412(g)(2)(A)(iii).

<sup>7</sup> *See* 16 Tex. Admin. Code § 26.412(g)(2)(A)(iv); *Lifeline and Link Up Reform and Modernization*, The Pub. Util. Comm’n of Tex. Comments in Response to the Nat’l Lifeline Ass’n. Emergency Petition for Declaratory Ruling, WC Docket No. 11-42 at 7 (filed July 9, 2020) (“*PUTC Comments*”).

<sup>8</sup> *See* Attachment A, Email from Dan Marion, Customer Relations Manager, Solix, to

data,” ETCs can use an “application programming interface” (“API”) to submit applicants to “be approved” by LIDA.<sup>9</sup>

Despite the introduction of the API for “Near Real-Time” review of applicant eligibility, the PUCT now takes the position that the “end-of-month” discount file is the “sole source for Lifeline customer reimbursement.”<sup>10</sup> In response to this change in position and other issues, the National Lifeline Association filed a petition requesting that the Commission revoke its approval of the PUCT’s NLAD opt-out certification.<sup>11</sup> That petition remains pending.

## II. USAC’S REPAYMENT DEMAND

On April 24, 2020, USAC sent Assurance a notice requesting that the Company refile its support requests covering Texas for the period of August 2016 through February 2020.<sup>12</sup> For the data months prior to January 2018, USAC calculated the alleged overpayment amount by comparing the number of individuals listed in LIDA’s “end-of-month” discount files to the total number of subscribers for whom the Company claimed support in its monthly FCC Form 497s. For the January 2018 and later data months, USAC calculated the alleged overpayment by

---

Texas Lifeline Providers (Nov. 15, 2017). In that email, LIDA also determined that legacy subscribers who “were approved by [an ETC or its contractor] before the [Near Real Time] production system was online (10/19) will continue to receive the Texas Lifeline discount as long as they recertify during their annual 60-day window.” *Id.* Such subscribers are denoted as “legacy” customers in the detailed monthly spreadsheets in Attachments 1–43.

<sup>9</sup> See Attachment A; *PUTC Comments* at 7.

<sup>10</sup> *PUTC Comments* at 8.

<sup>11</sup> See National Lifeline Association Emergency Petition for Declaratory Ruling Revoking Texas’ National Lifeline Accountability Database Opt-Out Certification Approval and Other Relief, WC Docket No. 11-42, et al. (filed June 3, 2020) (“*NaLA Petition*”)

<sup>12</sup> See Attachment B, Email from Lifeline Program Integrity to Andy Lancaster, Manager, Regulatory Reporting, Sprint (April 24, 2020).

comparing the individuals listed in LIDA’s “end-of-month” discount files to the subscribers for whom the Company claimed support each month via the Lifeline Claims System.

On August 7, 2020, Assurance submitted revised filings and a letter detailing problems with USAC’s analysis. In response to this submission, USAC requested subscriber-level data justifying each individual exclusion from the revised filings. On October 13, 2020, Assurance submitted the requested data and a letter further explaining its legal analysis, including descriptions of the different categories of subscribers who were excluded from the revised filings.<sup>13</sup> Later that month, on October 30, representatives from USAC, Assurance, and Assurance’s outside counsel participated in a call to discuss the legal analysis in the Company’s October 13 letter. During that call, USAC and Assurance agreed to proceed on a category-by-category basis. After the call, USAC emailed a list of follow-up questions, to which the Company responded on November 6, 2020.

As agreed on the call, USAC proceeded to examine the first category of disputed subscribers: ones who appeared on USAC’s initial list of supposedly ineligible subscribers yet also appeared on LIDA’s “end-of-month” discount files. Analyzing the Company’s subscriber-level information, the Company pointed out to USAC that almost all of these – **\*\*\* BEGIN CONFIDENTIAL \*\*\*** [REDACTED] **\*\*\* END CONFIDENTIAL \*\*\*** of these were actually in the LIDA files that USAC itself relied on to establish eligibility for subsidy.<sup>14</sup> USAC apparently could not find them.

---

<sup>13</sup> See Attachment C, Letter from Patrick O’Donnell, Counsel to Assurance Wireless, L.P., to James Lee, Vice President, Lifeline Program, USAC (Oct. 13, 2020), and Attachments 1–43 (monthly lists identifying subscribers in each category subject to dispute).

<sup>14</sup> Inexplicably, USAC still claims to be unable to locate **\*\*\* BEGIN CONFIDENTIAL \*\*\*** [REDACTED] **\*\*\* END CONFIDENTIAL \*\*\*** of the subscriber entries which the Company has identified to it and has only reduced this category by **\*\*\* BEGIN**

USAC requested no further information about the remaining categories of subscribers before issuing its response to the Company’s legal analysis on March 18, 2021, and the Recovery Notice on March 19, 2021. The Company sought administrative review of the Recovery Notice with USAC, in accordance with 47 C.F.R. § 54.719(a), on May 18, 2021. USAC issued its decision denying the Company’s request on October 25, 2021.<sup>15</sup>

## ARGUMENT

### I. USAC’S RECOVERY NOTICE IGNORES ELIGIBLE SUBSCRIBERS ASSURANCE SERVED DURING THE RELEVANT TIME PERIOD.

USAC’s Recovery Notice exclusively relies on LIDA’s “end-of-month” discount files to calculate the amount Assurance should have been paid. It is widely known—and Assurance has repeatedly explained to USAC—that these files are not accurate. USAC nevertheless refused to consider additional materials to correct its calculations. On that basis alone, the Commission should order USAC to withdraw the Recovery Notice. Alternatively, at the very least, the Commission should order USAC to hold the Recovery Notice in abeyance while the Commission considers a petition requesting that it revoke the PUCT’s NLAD opt-out certification.

#### A. USAC IGNORES SYSTEMIC PROBLEMS IN THE PUCT’S “END-OF-MONTH” DISCOUNT FILES.

USAC’s only explanation for relying solely on the PUCT’s “end of month” discount files is its assertion that current “FCC rules dictate that ETCs operating [in states that have opted out of NLAD] must comply with that state administrator’s process for determining the number of

---

**CONFIDENTIAL**\*\*\* [REDACTED] \*\*\* **END CONFIDENTIAL** \*\*\*, still apparently seeking to recover the subsidy payment for \*\*\* **BEGIN CONFIDENTIAL**\*\*\* [REDACTED] \*\*\* **END CONFIDENTIAL** \*\*\* subscribers that are identified in the LIDA month-end file of approved subscribers.

<sup>15</sup> See Attachment D, USAC, *Administrator’s Decision on Lifeline Program Appeal* (Oct. 25, 2021) (“*Administrator Decision*”).

subscribers to be claimed for each month.”<sup>16</sup> That explanation utterly ignores the actual process that the PUCT has used to determine eligible customers.

In late 2017, LIDA established an API to implement a real-time applicant eligibility check.<sup>17</sup> This API is the current method by which the PUCT fulfills its statements, in the amendment to its opt-out petition submitted to the FCC, that Lifeline service providers “are able to query the LIDA database *to identify eligible customers*”<sup>18</sup> and that the LIDA system would give a “real-time response detailing whether the identified customer is *eligible for Lifeline*.”<sup>19</sup> After the introduction of the API, Assurance checked its Texas applicants’ Lifeline eligibility by querying LIDA via the API, serving and submitting claims only for those consumers LIDA had determined to be eligible.

When it implemented the API, LIDA maintained that the API results were eligibility determinations. LIDA told ETCs that the eligibility “decisions” received via the API “are considered final” and “final approval will be granted” when the ETC submits the necessary information via the API and the applicant “passes” the duplicate check.<sup>20</sup> LIDA also repeatedly stated that the API is designed so that all Lifeline providers “have the opportunity to submit

---

<sup>16</sup> *Administrator Decision* at 4 (citing 47 C.F.R. § 54.407(a): “Eligible telecommunications carriers operating in a state that has provided the Commission with an approved valid certification pursuant to § 54.404(a) must comply with that state administrator's process for determining the number of subscribers to be claimed for each month, and in those states Universal Service support for providing Lifeline shall be provided directly to the eligible telecommunications carrier based on that number of actual qualifying low-income customers, according to the state administrator or other state agency's process.”).

<sup>17</sup> *See PUTC Comments* at 7.

<sup>18</sup> *See Opt-Out Certification* at 12-26 (emphasis added).

<sup>19</sup> *Id.* at 12, 24 (emphasis added).

<sup>20</sup> Attachment E, Solix, Inc., *LIDA 16585: Texas Lifeline Operational Guideline* at 4, 6 (Nov. 27, 2017) (“*API Operational Guide*”).

customer supporting documentation and *expect a decision response* within the 10-minute target guideline.”<sup>21</sup>

To be sure, the PUCT now claims that all real-time eligibility verifications are actually “pre-approval” responses that are “informational in nature” (which is one of the reasons that the National Lifeline Association has filed a petition requesting that the Commission revoke the PUCT’s NLAD opt-out certification).<sup>22</sup> That claim directly contradicts the PUCT’s representations to the FCC in its opt-out petition that LIDA permits “real time transactions...to verify customer Lifeline eligibility” and LIDA’s repeated statements to ETCs that API responses are “final” eligibility “decisions,”<sup>23</sup> and it cannot be squared with the PUCT’s other statements about pre-approvals.<sup>24</sup>

USAC also ignores additional flaws in the PUCT’s system. Even before the API system was introduced, LIDA’s “end-of-month” discount files routinely excluded some eligible subscribers in their first month of service. Specifically, prior to December 2017, Solix would make eligibility determinations by checking the database of eligible individuals to which LIDA provided

---

<sup>21</sup> See, e.g., Attachment F, Solix, Inc., *Near-Real-Time Web Service API: User Guide* at 12 (April 20, 2018) (“*API User Guide*”) (emphasis added).

<sup>22</sup> See *PUCT Comments* at 8–10.

<sup>23</sup> See *Opt-Out Certification* at 24; *API Operational Guide* at 4; *API User Guide* at 12.

<sup>24</sup> Both the *API User Guide* and the *PUCT Comments* state that pre-approvals are only valid for a limited time. Specifically, the PUCT told the Commission that pre-approvals expire after “20 days” and “the customer application process must start over.” *PUCT Comments* at 8. However, if all positive API eligibility determinations are merely pre-approvals, a significant number of API approvals would necessarily expire every month because more than twenty days had elapsed between the API approval and the next mid-month cutoff date when the ETC must submit its input file. It cannot be the case that there is a dead zone each month where ETCs cannot accept applications from potential customers because the API “pre-approvals” will necessarily expire. It is clear that the *API User Guide*’s discussion of “pre-approvals” does not refer to all applicants but only those who are not assigned a phone number by the ETC prior to the API submission.

access, or by reviewing the applicant’s supporting documentation, as required by then-applicable Texas regulations. A significant number of the Company’s subscribers approved in this manner were not included on the discount files for the same month in which they received a positive eligibility determination.

**B. USAC IGNORES SUBSIDY CLAIMS THAT LIDA ITSELF APPROVED IN A SPECIAL PROCESS.**

Wholly apart from the problems noted above, USAC also failed to recognize subsidy claims LIDA approved as part of a separate, special process. More than \*\*\* **BEGIN CONFIDENTIAL** \*\*\* [REDACTED] \*\*\* **END CONFIDENTIAL** \*\*\* of the alleged overpayment can be attributed to a well-documented special process LIDA established to address a processing glitch internal to Assurance.

In late 2017, Assurance became aware that it had not received subsidy payments for thousands of Lifeline subscribers over multiple months due to an inadvertent systems error. A lag in updating the Company’s systems meant that subscribers enrolled in new Lifeline plans were not on the lists the Company used to populate its monthly input files to LIDA. After discovering this problem, Assurance explained the problem to LIDA and asked if there was a way to re-file for reimbursement for serving these qualifying subscribers.<sup>25</sup>

In response, LIDA developed a special process whereby Assurance would receive retroactive support for the mistakenly excluded subscribers.<sup>26</sup> Because this process was separate

---

<sup>25</sup> See Attachment G, Email from [REDACTED], Product Manager, Assurance Wireless, to Dan Marion, Customer Relations Manager, Solix (Nov. 30, 2017).

<sup>26</sup> See Attachment H, Email from Dan Marion, Customer Relations Manager, Solix, to [REDACTED], Product Manager, Assurance Wireless (Jan. 18, 2018) (describing the process through which LIDA would “provid[e] discounts” to Assurance for “all the customers that were missed in the prior months” end-of-month discount files).

from the normal monthly reimbursement filing, LIDA produced “Delta Discount” files that listed the eligible subscribers for whom the Company could claim reimbursement for serving in prior months. Ultimately, the Delta Discount process covered over \*\*\* **BEGIN CONFIDENTIAL** \*\*\* **END CONFIDENTIAL** \*\*\* subsidy claims for the June 2017 through March 2018 data months.<sup>27</sup> LIDA even charged Assurance for its extra work in processing and approving subscribers through this special process.<sup>28</sup>

**C. USAC IGNORES THAT LIDA FAILED TO INCLUDE SOME ELIGIBLE CUSTOMERS IN THE “END-OF-MONTH” DISCOUNT FILES FOR UNKNOWN REASONS.**

USAC also wrongly seeks repayment of support for another set of eligible subscribers: ones that were properly submitted but ignored by LIDA. Following the process described above, Assurance submitted eligible subscribers to LIDA on its mid-month input file. In response, LIDA did nothing regarding this set of subscribers. LIDA omitted these eligible subscribers from both its discount file (confirming eligibility) and its de-enroll/recertification failure files (signaling ineligibility).<sup>29</sup>

The Company does not know why LIDA did not respond to the submission of these subscribers, but it appears to be a widespread problem. In comments supporting the *NaLA Petition*, another Lifeline provider explained that “subscribers appearing on a mid-month report often

---

<sup>27</sup> See Attachment I, Email from Dan Marion, Customer Relations Manager, Solix, to [REDACTED], Product Manager, Assurance Wireless (Aug. 8, 2018) (confirming monthly Delta Discount files were processed for June 2017 through March 2018).

<sup>28</sup> See Attachment J, Email from Dan Marion, Customer Relations Manager, Solix, to [REDACTED], Product Manager, Assurance Wireless (May 14, 2018) (showing Solix invoicing Assurance \$33,350 for processing the Delta Discount files).

<sup>29</sup> See Attachment 1–43, “Reason Not Refiled” column (indicating subscribers omitted from both sets of files returned by LIDA each month).

vanish, appearing on neither the [“end-of-month” discount file] nor the corresponding de-enroll report.”<sup>30</sup>

**D. USAC HAS NO LEGAL BASIS FOR ITS POSITION**

The only reason USAC has provided for ignoring these multiple problems with the “end-of-month” discount files is its claim that section 54.407(a) of the Commission’s rules require it to defer to the state’s process for determining eligibility.<sup>31</sup> But that regulation was not even in effect until December 27, 2019, and thus does not apply to most of the repayment sought by USAC, which goes as far back as August 2016.<sup>32</sup> Equally important, that regulation, even where applicable, does not support USAC’s decision. As discussed in detail above, Assurance’s evidence of eligible subscribers is fully consistent with the PUCT’s process for determining eligibility, which includes a real-time API and the use of a special process outside of the “end-of-month” discount files. The fact that the PUCT now states that only “end-of-month” discount files are determinative of eligibility is irrelevant. Section 54.407(a) nowhere states that USAC must defer to the state agency’s post-hoc mischaracterization of its process—one that is plainly at odds with the facts and that is a basis for the National Lifeline Association’s petition to strip the PUCT of its authority in this area.

Indeed, the regulations also require that the state administrator have an “approved valid certification” to opt-out of NLAD. The myriad, fundamental flaws in the PUCT’s process render

---

<sup>30</sup> Comments of Q Link Wireless LLC in Support of the National Lifeline Association Emergency Petition for Declaratory Ruling, WC Docket No. 11-42, et al., 5 (filed July 10, 2020).

<sup>31</sup> 47 C.F.R. § 54.407(a) (emphasis added).

<sup>32</sup> *See Bridging the Digital Divide for Low-Income Consumers*, 34 FCC Rcd. 10886, ¶ 176 (2019).

its opt-out certification invalid, as the National Lifeline Association has argued to the Commission. In response to that petition, the PUCT itself has admitted that the LIDA process is not functionally equivalent to NLAD, as is required to opt out.<sup>33</sup>

Accordingly, the Commission should reverse USAC’s decision. Barring this, at the very least, the Commission should direct USAC to hold in abeyance the Recovery Notice until the Commission issues a decision on the petition filed by the National Lifeline Association to revoke Texas’s certification to opt out of NLAD.<sup>34</sup>

## **II. THE RECOVERY NOTICE ALSO MAKES TWO OTHER FUNDAMENTAL MISTAKES.**

In addition to ignoring the multiple problems with relying solely on the PUCT’s “end-of-month” discount files to determine the number of eligible subscribers for which Assurance was entitled to reimbursement, USAC’s formulaic approach also wrongly uses the number of subscribers for whom the Company claimed support on its Form 497s and in the Lifeline Claims System without modification to determine the delta. There are two fatal flaws with this approach: (1) USAC seeks to recover payments for a number of subscribers that Assurance has *already reimbursed* to USAC as part of wholly unrelated matter; and (2) Assurance’s support claims during the relevant time period requested only 98% of the qualified subscribers it served each month, not the 100% erroneously assumed by USAC.

### **A. Inactivity Repayment**

In 2019, Assurance discovered and self-reported a (since-cured) error that caused it to measure subscriber activity inconsistently with the Company’s own policies. In response to a

---

<sup>33</sup> See *PUCT Comments* at 15 (“When fully implemented, the process changes outlined above will be functionally equivalent to the NLAD Snapshot Report requested...”).

<sup>34</sup> See *NaLA Petition*.

demand from the Commission’s Office of Managing Director (“OMD”), the Company made a voluntary payment of \*\*\* BEGIN CONFIDENTIAL \*\*\* [REDACTED] \*\*\* END CONFIDENTIAL \*\*\* to USAC on December 31, 2019,<sup>35</sup> subject to a reservation of rights, and filed a Petition for Reconsideration of the OMD’s determination on January 21, 2020.<sup>36</sup> That appeal remains pending.

Texas subscribers that were affected by this error were fully addressed in this voluntary payment. To require another repayment for these same subscribers, as the Recovery Demand seeks to do, would cause an improper double repayment by the Company: USAC only issued a single subsidy of \$9.25 for each subscriber month, and it thus cannot recover a total of \$18.50 for each subscriber month.

**B. Voluntary 2% Holdback**

Additionally, prior to January 2018, out of an abundance of caution, the Company’s practice was to complete line 8 of Form 497 with a number that was 2% less than the total number of qualifying subscribers it actually served each month. In other words, if Assurance’s records indicated that it had served 10,000 eligible subscribers in a month, which would have justified a subsidy claim of \$92,500, it entered 9800 on Line 8(a) and claimed only \$90,650 on line 8(c) of the relevant Form 497. Assurance took these prophylactic reductions because it understood the complexity of the Lifeline program and the potential for ETCs operating in good faith to make inadvertent mistakes when calculating the Lifeline support to which it was entitled. The reductions

---

<sup>35</sup> See Attachment K, Letter from [REDACTED], Vice President, Government Affairs, Sprint Corporation, to Mark Stephens, Managing Director, Federal Communications Commission (Dec. 30, 2019).

<sup>36</sup> See Sprint Corporation, Petition for Reconsideration of Demand for Payment of Lifeline Funds and Notice of Intent to Withhold, Recoup and/or Offset Funds (filed Jan. 21, 2020).

were instituted to protect the integrity of the Universal Service Fund and the Company from these types of errors.

USAC responded to the Company’s explanation of the voluntary 2% holdback by stating that “[t]he Company had one year to file claims for those subscribers, and USAC cannot allow the Company to claim support for those subscribers after that one-year period has elapsed.”<sup>37</sup> But the Company is not filing new claims for eligible subscribers, as USAC is well aware, and it is not seeking support for a larger number of subscribers than it ever submitted on any Form 497. Assurance is simply asking USAC to consider the number of qualifying subscribers it actually served in each relevant month, not only 98% of that number, when it is seeking to claw back support for service that has already been provided. No statute, regulation, or FCC order allows, let alone requires, USAC to ignore the number of qualifying subscribers actually served each month just because the number of subsidies originally requested was lower.

If the Commission disagrees that the Company’s practice of taking a voluntary 2% reduction in Lifeline support was valid under its rules, Assurance respectfully requests a waiver. The Commission may grant a request for waiver where “particular facts would make strict compliance inconsistent with the public interest” and waiving the rule “better serves the public interest.”<sup>38</sup> A similar waiver standard allows the Commission to waive its rules where “[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest,” or “[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be

---

<sup>37</sup> Attachment L, Letter from Lifeline Program Integrity to Patrick O’Donnell, Harris, Wiltshire & Grannis LLP, Counsel for Assurance Wireless (March 18, 2021).

<sup>38</sup> *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”<sup>39</sup>

Here, Assurance took a prophylactic reduction in revenue in a good-faith attempt to minimize any potential harm to the Universal Service Fund. Assurance is an experienced service provider and it understood that the Lifeline program is complex and mistakes were possible. While the Commission’s rules may not explicitly provide for voluntarily reducing subsidy claims, the Company clearly instituted this practice to minimize the impact of any potential future error on its part. Penalizing Assurance years after the fact for conservatively seeking less Lifeline support than it thought it had earned would be inconsistent with the public interest.

**CONCLUSION**

For the reasons stated herein, the FCC should grant Assurance’s request for review and provide the relief sought herein.

Respectfully submitted,



Patrick O’Donnell  
Matthew G. Miller  
HARRIS, WILTSHIRE & GRANNIS LLP  
1919 M Street, NW  
Eighth Floor  
Washington, DC 20036  
(202) 730-1300

December 27, 2021

*Counsel for Assurance Wireless USA, L.P.*

---

<sup>39</sup> 47 C.F.R. § 1.925 (b)(3)(i)-(ii).

**CERTIFICATE OF SERVICE**

I certify that in accordance with 47 C.F.R. § 54.721(c), I caused a copy of this Request for Review to be served on USAC consistent with the requirement for service of documents set forth in 47 C.F.R. § 1.47 on December 27, 2021.



Matthew G. Miller