



Agenda Date: 4/23/14

Agenda Item: 4A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF LIFELINE AND LINKUP)
REFORM)
)
)
)
)
ORDER
DOCKET NO. TO12050367

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Gregory M. Romano, Esq., for Verizon New Jersey, Inc.

BY THE BOARD:

BACKGROUND

On February 6, 2012, the Federal Communications Commission ("FCC") issued a Report and Order and Further Notice of Proposed Rulemaking ("FCC Order"), setting forth significant changes to the Federal Lifeline program which are applicable to all states, including New Jersey.¹

At paragraphs 170-178 of the FCC Order, the FCC announced that it is limiting automatic enrollment by states and encouraging the use of "coordinated enrollment." Additionally, the FCC directed that "states with automatic enrollment programs must modify those programs, as necessary, to comply with our rules, so that consumers are not automatically enrolled without consumers' express consent."² (FCC Order at ¶ 173). The FCC limited automatic enrollment in order "to protect the Fund against duplicative Lifeline support, increase adherence to consumer certification rules, and ensure that all [Eligible Telecommunication Carriers ("ETCs")] have an opportunity to compete for subscribers." Ibid.

¹ The FCC Order is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-11A1.pdf

² Automatic enrollment entails a state or agent automatically placing an eligible consumer in the Lifeline program without the consumer submitting an application or affirmatively consenting to enrollment. Coordinated enrollment differs in that it permits consumers to enroll in Lifeline at the same time that they are enrolling in a qualifying public assistance program. See, Lifeline Reform Order paragraphs 170-173.

The FCC Order also concluded that it is important to accelerate the adoption of a widespread, automated means of verifying eligibility for the Lifeline program. The FCC indicated that, no later than the end of 2013, there be an automated means to determine eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline [(i.e., Medicaid, Food Stamps and Supplemental Security Income (SSI)]. Additionally, the FCC has required the coordination of Lifeline enrollment to ensure that persons are not receiving Lifeline benefits from multiple ETCs.

As part of Plans for Alternative Regulation ("PARs"), the Board of Public Utilities ("Board" or "BPU") previously required Verizon New Jersey Inc. ("Verizon") (Docket No. TO01020095, August 19, 2003 Decision and Order) and United Telephone Company of New Jersey Inc., d/b/a CenturyLink ("CenturyLink"), f/d/b/a Embarq (Docket No. TO08060451, August 20, 2008 Decision and Order) to develop an automatic enrollment process. This process was intended to rely on data provided by State public assistance agencies. These Board Orders further required the carriers to match data received to current customers of Verizon and CenturyLink to facilitate automatic enrollment in Lifeline.

By separate petitions dated on or about May 11, 2012, Verizon and CenturyLink requested that the Board modify automatic enrollment requirements in their respective PARs. Verizon and CenturyLink served copies of their petitions on all parties to their respective PAR proceedings. Additionally, Board Staff notified these parties that the Board would be considering the petitions at its May 23, 2012 agenda meeting.

In their petitions, Verizon and CenturyLink stated that the automatic enrollment requirements as structured do not comply with new FCC requirements that customers not be enrolled in Lifeline without opt-in consent by certification. The opt-in consent requirement became effective on June 1, 2012. No person may be newly enrolled in Lifeline after June 1, 2012 without complying with applicable certification requirements. Additionally, the Petitioners indicated that privacy concerns have prevented full implementation of the automatic enrollment process originally contemplated by the Board. Accordingly, they requested that the Board eliminate all requirements associated with Lifeline automatic enrollment.

To avoid any conflicts with the FCC Order, the Board, by Order dated May 23, 2012, temporarily suspended Verizon and CenturyLink's automatic enrollment requirements prior to June 1, 2012 to avoid conflicts. Additionally, the Board determined that it should accord an opportunity for comments from interested parties before rendering a final determination as to the automatic enrollment process.

Comments were received from six parties: Rate Counsel, American Association of Retired Persons (AARP), Citizen Action, TracFone, Verizon and CenturyLink. Rate Counsel, with the support of AARP and Citizen Action requested that a new process be implemented so that consumers can continue to avail themselves of this important benefit.

TracFone, Verizon and CenturyLink all encouraged the Board to permanently eliminate the Verizon and CenturyLink automatic enrollment plans and/or obligations. TracFone endorsed a database solution for future enrollments, while Verizon and CenturyLink suggested that the "full-certification" process set forth by the FCC is sufficient. Both carriers expressed their willingness to discuss alternative measures with interested parties following the elimination of automatic enrollment.

The Board reviewed the comments and by Order dated December 19, 2012, agreed that the automatic enrollment programs that were established in 2003 for Verizon and 2008 for CenturyLink were inconsistent with the FCC Order and ordered that the automatic enrollment program requirements for Verizon and CenturyLink be eliminated.

The Board went on to state that it agreed with parties who commented that with the elimination of automatic enrollment, the Board should take steps to implement an alternative automated means of verifying eligibility and otherwise promote enrollment in New Jersey. The Board indicated that the use of a State Lifeline eligibility database or other electronic means of verifying Lifeline eligibility, with information populated by State agencies where program eligibility data resides, would promote these goals.

The Order further stated that implementation of a State Lifeline eligibility database, where ETCs can check program eligibility of applicants, would be consistent with the FCC Order and would serve to enhance Lifeline enrollment in New Jersey, which is the desire of the commenters in this matter as well as the Board. Such a database would be available to all ETCs – with appropriate protections to address any privacy and Health Insurance Portability and Accountability Act (HIPAA) concerns – and would be a reliable and accurate way to verify Lifeline eligibility while promoting the goals set forth by the FCC Order.

The Board asked Staff to convene a meeting to discuss the establishment of a state Lifeline eligibility database or similar mechanism. Board Staff was directed to invite current and potential future ETCs, the commenters in this matter, and the relevant State Agencies involved in the development of such a database to discuss the technical, policy and funding requirements of a database as well as any additional or modified state or ETC obligations if a state eligibility database is established.

A meeting was held on January 29, 2013 with interested parties, including Lifeline service providers, the New Jersey Office of Information Technology (“OIT”), the New Jersey Department of Human Services (“DHS”), BPU staff, Rate Counsel and AARP. The meeting was productive and several parties filed written comments. The comments fall into 3 categories: (1) wireless Lifeline providers who offer no charge service and free phones generally support the database as long as it is simple and not too expensive to use. They indicate they are willing to pay for development and use as long as the fees are reasonable; (2) wireline Lifeline service providers and T-Mobile who charge their customers for lifeline service (and T-Mobile charges for wireless handsets) are opposed to a state database and the mandatory use of the database; and (3) AARP who advocates a coordinated enrollment process where a client could sign up for telephone Lifeline service at the same time they apply for other social service programs.

Board Staff has been working toward a statewide eligibility database that would be consistent with similar database solutions in other states and would be supported by the wireless carriers in category 1 above. While one of the largest wireless ETCs in New Jersey, TracFone participated in the meeting, they did not file written comments, but did indicate at the meeting that they support the Staff’s efforts.

Board Staff, DHS and OIT have met on numerous occasions and Staff has concluded that a number of technical issues related to coordinated enrollment need to be addressed. Based on Staff’s understanding of the current state of IT infrastructure that support the various social service programs administered by DHS, coordinated enrollment is a more comprehensive undertaking than the previously adopted automatic enrollment project. There are numerous (as many as 8) separate systems that are utilized to provide social programs today. Coordination,

to some extent, may be part of the process going forward. During the initial development discussions among the agencies it was noted that currently a project is underway, called the Consolidated Assistance Support System or CASS, that will replace and consolidate most, but not all, systems under DHS. The planning for CASS began more than 3 years ago and there has been significant work to configure and test the system whose preliminary launch date was set for the fall, of 2013. Due to the extensive effort entailed, implementation has been pushed back and has not yet occurred. CASS is a DHS project and to include telephone Lifeline in that project now after more than 3 years of planning and configuring the system to meet the needs of DHS, would further delay its implementation and such a modification must come from DHS.

It is Staff's recommendation that the Board move forward with the web-based eligibility database solution, which would require carriers to use the system and pay for it, and the Board should consider a coordinated enrollment enhancement to the CASS system after consultation with DHS and after it has been implemented and found to be operating properly. Staff indicates that at this point, it appears that the inclusion of telephone Lifeline as an amendment to the CASS system would create a setback to implementation and would be inappropriate at this time.

DESCRIPTION OF THE WEB SERVICE

For the purposes of Lifeline eligibility verification, OIT will build a service that can be accessed by authorized telecommunications carriers to determine eligibility for the Lifeline program. The web service will be developed by the creation of extract files and contain the list of clients currently enrolled in the various low income social programs administered by DHS through its Division of Family Development ("DFD"), the Division of Medicaid and Health Services, and Pharmaceutical Assistance to the Aged and Disabled.

OIT will create a Web Service for the telecommunications carriers to check for client eligibility based on matching criteria. The information from each request for a check on eligibility will be recorded in the database in order to account for the tally of requests.

Matching criteria would include:

- Date of birth
- Last four digits of the Social Security number
- Last name (first twelve letters)
- First name (first seven letters)

The telecommunications provider will be required to supply all four of the above fields. The date of birth and the Social Security number must match, and a total of three out of the four fields must match to generate a positive ("Y") response; otherwise a negative ("N") response will be generated and transmitted back to the provider. OIT will also create a client update process which will maintain current client eligibility information and client history information. Frequency of updating the data base will be once a week, Sunday night.

A process will be developed by OIT to ensure that the database has, at a minimum, the security safeguards so that access to the database shall only be through a secured database connection via a web service. Access to the database will only be via an individually identifiable login or password.

Recertification will be conducted by the ETC at least once a year and the schedule will be different from the normal daily process. The system will provide for retention of data so audits may be performed. The system will also create report(s) (Monthly and Annually) to summarize usage per telecommunication carrier for billing and other purposes.

DISCUSSION

On February 6, 2012, the FCC released its Order on the Modernization of Lifeline and Link-Up revising its rules in an effort to combat waste, fraud and abuse that had been systemic to the program. The Board is cognizant of the fact that while the FCC's new rules go a long way to correct the discrepancies with the existing system, some key provisions in the Order have not yet been fully implemented, most notably both the duplicate and eligibility databases that the FCC anticipated would be functional by the end of 2013.

As stated in the FCC Order, the Commission established the National Lifeline Accountability Database ("NLAD") to detect, prevent and eliminate duplicative support in the Lifeline program.³ The FCC Order directed the Wireline Competition Bureau to provide ETCs 30-day notice of their obligation to begin querying the NLAD.⁴ In its recent public notice released on January 14, 2014, the Wireline Competition Bureau informed ETCs of their obligation to begin querying the NLAD to determine if a prospective subscriber is currently receiving Lifeline supported service. The notice went on to state that the duty of authorized entities to query the NLAD commences in accordance with the schedule released by Universal Service Administrative Company (USAC), but no sooner than 30 days after release of the notice.⁵

The notice reminded ETCs that they are required to collect and provide to the NLAD, specific information for each new and existing Lifeline subscriber. The USAC has announced that the first state in which ETCs must query the NLAD prior to enrolling new subscribers is Maryland in mid-February 2014, with additional states to follow on a rolling basis through the first quarter of 2014. The NLAD implementation has been delineated into six groups and each group will move through the process on its own schedule. New Jersey is in Group 4 and the current schedule required New Jersey ETCs to utilize the NLAD on March 13, 2014.

A second, separate eligibility database was discussed by the FCC in its Order. As stated above, the FCC Order concluded that it is important to accelerate the adoption of a widespread, automated means of verifying eligibility for the Lifeline program. The FCC indicated that, no later than the end of 2013, there be an automated means to determine eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline (i.e., Medicaid, Food Stamps and SSI).

The Board is unaware of any activity or planned activity to develop and implement a national eligibility database in the near term. Numerous states have developed and implemented state eligibility databases that are currently operational. Based upon the efforts of Board Staff, DHS and OIT, the Board is convinced that New Jersey should move forward as have other states to

³ See Lifeline and Link Up Reform and Modernization et al., WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (Lifeline Reform Order).

⁴ See Lifeline Reform Order, 27 FCC Rcd at 6736, para. 185.

⁵ Released: January 14, 2014 Wireline Competition Bureau Announces Duty to Query the National Lifeline Account Ability Database WC Docket No. 11-42.

deploy a state eligibility database to address the problems surrounding enrollment and certification identified with the program.

The need for an automated process with valid data to verify that only eligible consumers receive this important benefit is crucial to the goal of both the FCC and this Board to detect, prevent and eliminate waste, fraud and abuse in the Federal universal service fund, which all users support. The FCC has found continued abuses and has taken significant enforcement actions (proposed fines have reached \$90 million in the last three months of 2013) against carriers and consumers suspected of apparent violations of Lifeline rules. The FCC has indicated that over 2 million duplicate subscriptions have been eliminated and that numerous other on-going investigations were underway at the end of 2013.

The Board continues to believe, as stated in our December 19, 2012 Order that the Board should take steps to implement an alternative automated means of verifying eligibility and otherwise promote enrollment in New Jersey. The use of a State Lifeline eligibility database or other electronic means of verifying lifeline eligibility, with information populated by State agencies where program eligibility data resides, would promote these goals. Therefore, based upon the comments received and the Staff recommendations discussed above, the Board **HEREBY ORDERS** the implementation of a web based State Lifeline eligibility database, as described on page 4 herein, where ETCs can verify program eligibility of applicants via the web service. This web based database would also serve to enhance Lifeline enrollment in New Jersey, which is the desire of the commenters in this matter as well as the Board.

Due to the technical issues articulated by Board Staff and the current state of the IT upgrade to the DHS systems, the Board is convinced that it is not appropriate at this time, to order a coordinated enrollment process as described in a comment submitted in response to the January 29, 2013 meeting.

In light of the fact that a national eligibility database is unlikely to be implemented in the near term and that the state web based eligibility database ordered herein would be a substitute for a national database, the Board is convinced that it is imperative for all ETCs operating in New Jersey to utilize the database. Therefore, its use is mandatory for all ETCs before a new subscriber is enrolled. As described above, the FCC has mandated the use of the NLAD in order to prevent waste, fraud and abuse through duplicate benefits. Like the FCC, the Board is implementing an automated process that will contain the most accurate data regarding eligibility information and it is therefore the best solution at this time to eliminate waste, fraud and abuse with respect to validating eligibility of an applicant. The Board further believes that the intent of the FCC's Order is that ETCs utilize state databases in states where available, to verify consumer eligibility. The Board will therefore require that every ETC must utilize the database otherwise our goal to eliminate waste, fraud and abuse will be thwarted.

In addition, the Board will order that the development costs and additional on-going maintenance costs of the web based eligibility database be borne by the ETCs. The availability of the eligibility database ordered herein will benefit every ETC as will the NLAD by reducing churn among clients who cannot verify their eligibility to receive Lifeline benefits. The database solution will assist the ETC in reducing the cost of establishing service, mailing a phone and disconnecting a subscriber when they become aware after the establishment of service that the subscriber was ineligible to receive Lifeline support. In addition, the Board envisions the ETCs will save significant time and money by utilizing the database as part of its FCC mandated annual re-certification process.

Mandatory use of the state eligibility database and its funding apply to all existing ETCs and future ETCs. The program provides a benefit to ETCs and consumers and the database ensures that those benefits are provided to qualified recipients only and serves to preserve the integrity of the program. This safeguard requires the support of the ETCs through funding and utilization of the eligibility database.

Therefore, the Board **HEREBY ORDERS** that all carriers designated as an ETC to provide Lifeline service in New Jersey by this Board shall utilize the web based eligibility database ordered herein prior to enrolling any subscriber and shall contribute to the funding of the development of the database and the annual on-going maintenance costs as follows: An annual "licensing fee" in addition to a fee based upon each carriers disbursements from USAC for New Jersey for the first year. The funding mechanism may be revisited after the first year following a review of actual data base usage and to account for the contributions of additional Lifeline ETCs that may be approved by the Board. The web based eligibility database is not yet functional and it is anticipated that it will not be available for use several months. In the interim, the Board **DIRECTS** Staff to: (1) calculate each ETCs funding obligation and provide said calculation to each ETC within 45 days of the effective date of this Order; (2) within 30 days of the availability of the state eligibility database ordered herein, provide authorized ETCs with any technical specifications that the ETC will need to access the web based database; and (3) provide ETCs at least 30 day notice of the obligation to begin querying the state web based eligibility database ordered herein.

Finally, Board Staff, DHS, and OIT have drafted a Memorandum of Understanding ("MOU") (attached) between and among the three agencies that describes the roles and respective responsibilities of each to ensure that the web based eligibility database sufficiently addresses privacy issues and is developed and implemented in a timely manner and remains viable into the future. Having reviewed the MOU, the Board **HEREBY FINDS** that execution of the MOU is appropriate and **HEREBY AUTHORIZES** President Solomon to execute the MOU on behalf of the Board.

Based upon the record in this matter, including all comments submitted, the Board **HEREBY ORDERS** the following:

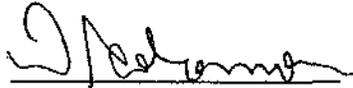
- The implementation of the Web based eligibility database as described in this Order;
- The Board declines, at this time, to order coordinated enrollment due to technical limitations;
- All carriers designated as an ETC to provide Lifeline service in New Jersey by this Board must utilize the database to verify eligibility in New Jersey prior to enrolling any applicant for Lifeline service;
- All carriers designated as an ETC to provide Lifeline service in New Jersey by this Board must contribute to the funding of the development costs and additional on-going maintenance costs of the web based eligibility database;
- Authorizes President Solomon to execute the MOU on behalf of the Board; and

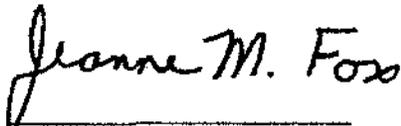
- Failure to comply with the terms of this Order may result in action by the Board including but not limited to the suspension or termination of ETC designation.

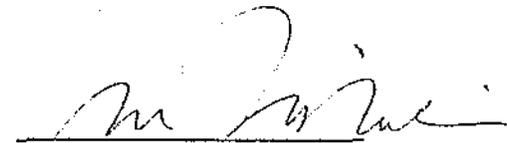
This Order shall be effective on May 5, 2014.

DATED: 4/24/14

BOARD OF PUBLIC UTILITIES
BY:

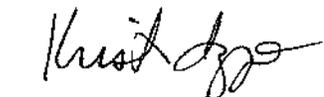

DIANNE SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

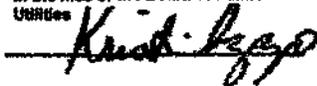

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



**IN THE MATTER OF LIFELINE AND LINKUP REFORM
DOCKET NO. TO12050367**

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**DATA SHARING MEMORANDUM OF UNDERSTANDING BETWEEN THE BOARD
OF PUBLIC UTILITIES, THE NEW JERSEY DEPARTMENT OF HUMAN SERVICES,
AND THE NEW JERSEY OFFICE OF INFORMATION TECHNOLOGY**

I. PARTIES

This Memorandum of Understanding (hereinafter referred to as “MOU”) is made and entered into by and between the New Jersey Board of Public Utilities (“BPU”) whose address is 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350 the New Jersey Department of Human Services, (“DHS”) whose address is 222 Warren Street, Trenton, NJ, 08625 and the New Jersey Office of Information Technology (“OIT”) whose address is 300 Riverview Plaza, P.O. Box 212, Trenton, NJ, 08625-0212. (BPU, DHS and OIT being collectively referred to as the “Signatory Parties”). When executed by the Signatory Parties, this MOU shall become effective as of the date last below written.

II. BACKGROUND

This MOU is being executed by the Signatory Parties in response to BPU orders issued “In The Matter of Lifeline and Link-Up Reform”, at Docket No. TO12050367.

III. DEFINITIONS

“*Breach*” shall mean the unauthorized acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the Privacy Rule or the Security Rule, which compromises the security of such Protected Health Information. Breach shall exclude such acquisition, access, use or disclosure described in 45 CFR Section 164.402.

“*HIPAA*” shall mean the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

“*HITECH*” shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A of the American Recovery and Reinvestment Act of 2009, P.L. 111-005.

“*Privacy Rule*” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, Subparts A and E.

“*Protected Health Information (PHI)*” shall be defined by the HIPAA regulations, including , but not limited to, 45 CFR §§160.13 and 164.501, limited to the information created or received by OIT from or on behalf of DHS, which shall include individually identifiable health information that is transmitted by electronic media or transmitted or maintained in any other form or medium.

“*Security Rule*” shall mean the Standards for Security for the Protection of Electronic Protected Health Information, codified at 45 CFR parts, 160, 162 and 164. The application of Security

provisions §§164.308, 164.310, 164.312 and 164.316 of Title 45, Code of Federal Regulations shall apply to OIT in the same manner that such sections apply to DHS.

IV. DUTIES OF THE PARTIES

A. DUTIES OF BPU

The BPU shall include the following language in any Order granting Eligible Telecommunication Carrier (ETC) designation to a telecommunications provider who petitions the Board to participate in the Federal Telephone Lifeline program:

a. The ETC shall comply with all privacy provisions of HIPAA/HITECH, and applicable State privacy and identity theft provisions, as amended from time to time.

b. The ETC will be subject to audit at the discretion of the appropriate state agencies, including, but not limited to, the BPU, the Department of Human Services, the Department of Community Affairs, and the Department of Health.

c. The ETC shall provide any data or information deemed necessary by BPU Staff, the Department of Human Services, the Department of Community Affairs, and the Department of Health.

d. In the event of a finding by DHS of a violation of HIPAA/HITECH by an ETC, DHS shall inform the BPU of such violation and the BPU shall take action that the BPU deems appropriate.

e. The ETC designation may, at any time, be suspended or revoked by Order of the BPU.

B. DUTIES OF OIT

1. Develop and maintain a system by which data verification is made available to the telecommunications providers to verify that applicants for Lifeline services are recipients of DHS services that make them eligible for Lifeline services.

2. Ensure that the database has, at a minimum, the following security safeguards:

a. Access to the database shall only be through a secured database connection via a web service.

b. Access to the database will only be via an individually identifiable login or password.

3. Comply with, and take all necessary steps to ensure that all parties with whom information is shared for purposes of the MOU comply with, the requirements noted at Section C.2, below.

4. OIT shall implement administrative, physical and technical safeguards that protect the confidentiality, integrity, and availability of PHI in compliance with the Security Rule.

5. Build a database that can be accessed by authorized telecommunications carriers to determine eligibility for the Lifeline program. The database will be developed by the creation of extract files and contain the list of clients currently enrolled in the various low income social programs administered by DHS, DFD, the Division of Medicaid and Health Services (DMAHS), and Pharmaceutical Assistance to the Aged and Disabled (PAAD).

6. Create a Web Service through the State's portal for the telecommunications carriers to check for client eligibility based on matching criteria. The information from each request for a check on eligibility will be recorded in the database in order to account for the tally of requests.

a. Matching criteria will include:

- Date of birth
- Last four digits of the Social Security number
- Last name (first twelve letters)
- First name (first seven letters)

b. The telecommunications provider will be required to supply all four of the above fields. The date of birth and the Social Security number must match, and a total of three out of the four fields must match to generate a positive ("Y") response; otherwise a negative ("N") response will be generated and transmitted back to the provider.

7. Create a client update process which will maintain current client eligibility information and client history information. Frequency of updating the data base will be once a week, Sunday night.

8. Create a recertification process that can be done on a schedule to be determined by the DHS and BPU. It is likely that the frequency will be at least once a year and the process is likely to be different from the normal daily process. Schedule to be determined.

9. The system will provide for retention of data so audits may be performed. The system will also create report(s) (Monthly and Annually) to summarize usage per telecommunications carrier for billing and other purposes.

10. OIT agrees to notify DHS of any use or disclosure of PHI not provided for by this Agreement, or the HIPAA Regulations, or of any suspected or actual breach of security or intrusion whenever it becomes aware, or of any complaint that OIT receives regarding the use or disclosure of PHI, within twenty-four hours of OIT becoming aware of such use, disclosure or suspected or actual breach of security or intrusion. OIT further agrees to take prompt corrective action to cure or mitigate any harmful effects of any such use, disclosure, or actual or suspected breach of security of intrusion.

11. In the event of an actual or suspected breach, OIT shall provide DHS with a written report, as soon as possible but not later than five days after the breach/suspected breach became known. The report shall include, to the extent available: a) the identification of each individual whose unsecured Protected Health Information (PHI) has been, or is reasonably believed by OIT to have been, accessed, acquired, used or disclosed during the breach; b) a brief description of what happened, including the date of the breach and the date of the discovery, if known; c) a description of the types of unsecured PHI involved in the breach; d) any steps individuals affected by the breach should take to protect themselves from potential harm resulting from the breach; and e) a description of what OIT is doing to investigate the breach, mitigate harm to the individual(s), and protect against future breaches.

C. DUTIES OF DHS

1. Provide data, as outlined in Section IV, B.5 regarding recipients of its services that make households eligible for Lifeline services.

2. DHS is a covered entity within the meaning of and under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §1301, *et seq.* Therefore, all data transmitted and shared under the operation of this MOU is subject to the provisions of HIPAA, and the implementing regulations at 45 C.F.R. Parts 160 and 164.

3. DHS shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to OIT pursuant to this Agreement, in accordance with the requirements and standards in the Privacy Rule, until such PHI is received by OIT.

4. DHS shall continue to be solely responsible for the enforcement of HIPAA/HITECH.

5. In the event of a finding by DHS of a violation of HIPAA/HITECH by an ETC, DHS shall inform the BPU of such violation and the BPU shall take action that the BPU deems appropriate.

V. MISCELLANEOUS

A. TERM

This MOU is for a term of three (3) years, said term to run from the date set forth in the introductory paragraph. The MOU shall be automatically renewed for additional twelve (12) month periods thereafter absent Termination as described in V. B. below.

B. TERMINATION

This agreement may be terminated as follows:

1. Upon mutual written agreement of the BPU, DHS and OIT at any time after the initial three (3) year term;
2. By DHS, provided that it provides a written notice executed by the appropriate representative advising that governing State or Federal laws or regulations render performance hereunder illegal; or
3. Termination for Cause. Upon DHS' knowledge of a material breach or violation(s) of any of the HIPAA/HITECH obligations under this MOU by OIT, DHS shall, at its discretion, either:
 - a. Opportunity to Cure. Provide an opportunity for OIT to cure the breach or end the violation upon such terms and conditions as DHS shall specify;
 - b. Termination. Immediately terminate this MOU if OIT has breached a material term of this MOU and DHS has determined, in its sole discretion, that cure is not possible; or
 - c. Report to the Secretary of the United States Department of Health and Human Services or his/her designee. If neither termination nor cure is feasible, as determined by DHS in its sole discretion, DHS shall report the violation to the Secretary.

C. AMENDMENT/WAIVER

This MOU cannot be amended, modified or revised unless done in writing and signed by a duly authorized representative of the Signatory Parties. No provision may be waived except in a writing signed by a duly authorized representative of the Signatory Parties. The failure by a Signatory Party to enforce any provision of this MOU or to require performance by any other Signatory Party will not be construed to be a waiver, or in any way affect the right of any Signatory Party to enforce such provision thereafter.

D. ASSIGNMENT

This MOU may not be assigned, in whole or in part, by any Signatory Party without the prior written consent of the other Signatory Parties, except to any of its affiliates. No permitted assignment shall relieve a Signatory Party of any of its responsibilities under this MOU. Any assignment in violation of this Section shall be void. This MOU shall be binding upon the Signatory Parties and their respective successors and assigns.

E. CONSTRUCTION OF MOU

Ambiguities or uncertainties in the wording of this MOU shall not be construed for or against any Signatory Party, but shall be construed in the manner that most accurately reflects the Signatory Parties' intent as of the effective date of this MOU.

F. COUNTERPARTS

This MOU is being executed as three duplicate original counterparts, with one original counterpart being retained by each Signatory Party and all such counterparts shall together constitute but one and the same instrument. Each counterpart shall be considered one and the same MOU and shall become effective when one or more counterparts have been signed by each of the Signatory Parties. All Signatory Parties need not sign the same counterpart.

G. DISPUTE RESOLUTION

If there are disagreements or disputes between the Signatory Parties concerning this MOU, the Signatory Parties' agency heads or their duly authorized representatives agree to confer to resolve the disagreement or dispute. A "duly authorized representative" for the purpose of this MOU is defined as a person who has been designated in writing by a Signatory Party as having actual authority to sign documents on behalf of the Signatory Party.

H. ENTIRETY OF MOU

This MOU and any exhibits attached hereto, all being a part hereof, consisting of nine (9) pages represent and constitute the entire integrated agreement of the Signatory Parties hereto and supersedes all prior negotiations, representations, offers and agreements, whether written or oral between the Signatory Parties with respect to the subject matter of this MOU.

I. GOVERNING LAW

This MOU shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey.

J. INTERPRETATION

Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of

the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a Signatory Party's consent is required under this MOU, except as otherwise stated in the MOU or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this MOU and are incorporated by reference into this MOU; (v) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this MOU, the ambiguity shall not be resolved on the basis of who drafted the MOU; and (viii) the singular use of words includes the plural where appropriate.

K. NO ELECTRONIC SIGNATURES/NO OPTION

The submission of this MOU to any Signatory Party for examination or consideration does not constitute an offer, reservation of or an option based on the terms set forth herein. This MOU will become effective as a binding MOU only upon the handwritten legal execution, acknowledgment and delivery hereof by the Signatory Parties.

L. NO THIRD PARTY BENEFICIARIES

No Signatory Party intends to create in any other individual or entity the status of third party beneficiary and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the Signatory Parties to this MOU, and shall insure solely to the benefit of the Signatory Parties to this MOU. The provisions of this MOU are intended only to assist the Signatory Parties in determining and performing their obligations under this MOU. The Signatory Parties to this MOU intend and expressly agree that only Signatory Parties to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a Signatory Party's performance or failure to perform any term or condition of this MOU, or to bring any action for breach of this MOU.

M. NOTICES

Any notices required or permitted hereunder will be given to the appropriate Party at the address specified above or at such other address as the Party specifies in writing. Such notice will be deemed given upon the personal delivery; five days after the date of mailing if sent by certified mail, postage prepaid; or one day after having been sent by either confirmed facsimile or by commercial overnight courier with verification of receipt.

A. Any notices to be given hereunder shall be made via Regular and Certified US Mail, Return Receipt Requested, and if possible, by facsimile to the addresses and facsimile members listed below:

OIT: _____

Facsimile # _____

DHS:

Privacy Office _____

Facsimile # _____

Board of Public Utilities _____

Facsimile # _____

N. SEVERABILITY

If any provision of this MOU is held invalid, illegal or unenforceable by a court or agency of competent jurisdiction, (a) the validity, legality and enforceability of the remaining provisions of this MOU are not affected or impaired in any way if the overall purpose of the MOU is not rendered impossible and the original purpose, intent or consideration is not materially impaired; and (b) the Signatory Parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal or unenforceable) that is valid, legal and enforceable and carries out the Signatory Parties' intentions to the greatest lawful extent. If any such action or determination renders the overall performance of this MOU impossible or materially impairs the original purpose, intent or consideration of this MOU, and the Signatory Parties are, despite the good faith efforts of each, unable to amend this MOU to retain the original purpose, intent and consideration in compliance with that court or agency determination, any Signatory Party may terminate this MOU upon ninety (90) days' prior written notice to the other Signatory Parties.

O. SIGNATORY AUTHORITY

Each person signing below warrants that he or she has been duly authorized by the Party for whom he or she signs to execute this MOU on behalf of that Party.

P. SUBJECT TO FUND AVAILABILITY

All obligations of the Signatory Parties pursuant to this MOU are subject to appropriations and the availability of funds. A failure by a Signatory Party to make any payment under this MOU or to observe and perform any condition on its part to be performed under this MOU as a result of the failure of the Legislature to appropriate shall not in any manner constitute a breach or default by that Signatory Party and that Signatory Party shall not be held liable in any manner whatsoever because of the absence of available funding.

Q. HEADINGS

The headings of the section of this MOU are for convenience only and shall not in any way affect its interpretation.

IN WITNESS THEREOF, the Signatory Parties have executed this Memorandum of Understanding.

Effective Date: _____

New Jersey Department of Human Services

Jennifer Velez

Commissioner

New Jersey Board of Public Utilities

Name:

Title:

New Jersey Office of Information Technology

Sharon Pagano

Chief of Staff