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**Lifeline Automatic Enrollment and
Federal Privacy Concerns**

NOTE TO READERS

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**Programs that Provide Automatic Enrollment
for Telephone Lifeline Assistance do not
Implicate Federal Privacy Concerns**

This issue of *Insights* provides information with respect to the propriety of an automatic enrollment mechanism for telephone Lifeline service in light of privacy concerns over the use of information on participation in certain public benefits programs. For purposes of this issue, an "automatic enrollment mechanism" is considered to be any mechanism through which an electronic exchange of information between a local exchange telephone company and a state social services agency confirms the eligibility of public benefits recipients in the Lifeline program whether or not the information exchange is expressly authorized by the household.

Examples of public benefits programs with whom there may be such an electronic exchange include the Low-Income Home Energy Assistance Program (LIHEAP), Food Stamps, Temporary Assistance to Needy Families (TANF), free and/or reduced school lunch programs, Pharmaceutical Assistance to the Aged and Disabled (PAAD), Supplemental Security Income (SSI) and Medicaid.

When states first consider the possibility of an automatic enrollment mechanism, concern is often expressed about whether federal privacy law prohibits the exchange of information confirming any particular household's participation in one of the designated programs. This concern is not well-founded.

Telephone Lifeline has two components, "Lifeline" and "Link-Up", both of which are authorized pursuant to federal law. State implementation of automatic enrollment for the program would be undertaken pursuant to state regulatory commission approval, if not explicit state commission mandate. In either instance (automatic

enrollment authorized; automatic enrollment mandated), the Lifeline program would involve a public benefits program created by federal law and implemented at the state level pursuant to state law.

An application process which relies exclusively on a potentially eligible customer contacting the telephone company to enroll in the program inherently limits participation in the program. Substantial research exists that documents how and why low-income customers either will not or cannot complete an application process. Indeed, when an application process exists, a variety of personal and institutional barriers prevent enrollment. Those barriers include:

- **Lack of effective knowledge:** The lack of "effective knowledge" is the primary barrier to participation in Pennsylvania's Low-Income Home Energy Assistance Program (LIHEAP).¹ In a study of LIHEAP participation in Pennsylvania, Penn State University's Drew Hyman found that the lack of information substantially impeded participation. The Penn State study found that "while most consumers indicate awareness of energy assistance, in general, their knowledge is not sufficient to allow them to act. Almost half of those who say they 'know about' energy assistance cannot name a single program."
- **Confusing application forms:** The application forms for the Food Stamp program in Vermont were a major barrier to participation.² In particular, the report found that "there were several participants

¹ Drew Hyman, *Consumer Budget Priorities and Utility Payment Problems in Pennsylvania*, prepared by Consumer Services Information System Project (Penn State University) for the Pennsylvania Public Utility Commission (1988).

² Sandage Advertising & Marketing, *Food Stamp Program: Focus Group Research Report*, at 6, prepared for Vermont Department of Social Welfare (1989).

who mentioned that *the first time* the monthly reporting form arrived in the mail, they had been confused about what was expected." (emphasis in original)

- **Misperceptions as to eligibility:** A 1988 study of why low-income households do not participate in the Food Stamp program nationwide found that about half of the eligible nonparticipants had misperceptions regarding their eligibility for the program.³ Of those households who thought they were ineligible, more than half mistakenly believed that their income or assets were too high to entitle them to receive Food Stamps or that some other program requirement precluded their participation.
- **Burdensome and complex processes:** So, too, did GAO find in an April 1999 study of low enrollment in state Medicare programs⁴ that many potential recipients do not enroll because, amongst other things, the application process is burdensome and complex.

Other research, as well, has documented the barriers presented by application processes and the need to seek simpler, more automatic, enrollment processes.⁵

As can be seen, there is an abundance of information about how nonparticipation in benefit programs can result from barriers to participation rather than from a lack of need, or a lack of desire to participate. A state can help address the

³ General Accounting Office, *Food Stamps: Reasons for Nonparticipation* (December 1988).

⁴ General Accounting Office, *Low-Income Medicare Beneficiaries: Further Outreach and Administrative Simplification Could Increase Enrollment* (April 1999).

⁵ General Accounting Office, *Medicaid and SCHIP: Comparisons of Outreach, Enrollment Practices and Benefits* (April 2000); U.S. Health Research Services Administration, *Reaching Our Children: A Compendium of Outreach Models* (May 2000).

nonparticipation caused by these barriers. As the General Accounting Office said about Food Stamp enrollment:

From a policy viewpoint, an informed decision on the part of an eligible household not to participate in the program is not an issue. Lack of information about the program, however, and at least some program and access problems can and should be remedied.⁶

Exactly the same thing could be said about Lifeline participation. Given this introduction, it becomes evident that a data exchange between a state's public assistance agencies⁷ and local exchange companies administering the telephone Lifeline program would be permissible under federal law.

STATE REGULATORY APPROVAL

Regulators in both New York and Ohio have adopted processes for their telephone lifeline programs, through which customers participating in designated programs are automatically enrolled in the telephone lifeline program. In directing expansion of this automatic approach to all telephone companies in 1996, the New York Public Service Commission (PSC) stated that:

We support the automatic enrollment [or] removal programs for Lifeline service being implemented by New York Telephone Company and Rochester Telephone, and we will direct staff to pursue their expansion to other companies. This program provides assistance to eligible consumers in an efficient manner and ensures that only those who are eligible continue to receive assistance.⁸

⁶ General Accounting Office, *Food Stamp Program: A Demographic Analysis of Participation and Nonparticipation*, at 22 (January 1990).

⁷ This would also include the federal Social Security Administration for SSI recipients.

⁸ New York PSC, Opinion and Order 96-13, Docket 96-13, I/M/O Issues Related to Continuing Provision of

Moreover, in extending a pilot program to become a permanent program for Ameritech's "USA" Lifeline, the Ohio Commission explained:

The current pilot automatic enrollment program enrolls customers in qualifying programs (Medicaid, Food Stamps, Ohio Works First, Disability Assistance) based on data provided by the [Ohio Department of Human Services]. The current pilot program is based on a file of eligible persons supplied by ODHS using social security numbers as the validation field. Ameritech performs the automatic enrollment process no less than once per quarter or within 30 days of receiving updated information from ODHS. . In addition to the statewide extension of the USA Plan 1 automatic enrollment program described above, Ameritech has also agreed to conduct a USA Plan 1 automatic enrollment pilot in an NPA, to be identified by Staff with input from the consumer groups supporting this Stipulation, that includes additional qualifying USA programs (HEAP, E-HEAP, or an equivalent successor program, Ohio Energy Credits, SSI, and Federal Public Housing Assistance and Section 8) subject to the availability of the necessary data. The pilot will be conducted in the same manner as the current 614 NPA automatic enrollment pilot program.⁹

The Pennsylvania PUC has endorsed the use of automatic enrollment as well. The Pennsylvania PUC has specifically said within the context of Customer Assistance Programs (CAPs) for natural gas and electric utilities that "we have found that automatic referrals to CAP when a customer calls to make a payment arrangement

Universal Service and to Develop a Framework for the Transition to Competition in the Local Exchange Market, at 11 (May 22, 1996).

⁹ (Ohio PUC, Opinion and Order, at 7 - 8, In the Matter of the Application of Ameritech Ohio (Formerly known as the Ohio Bell Telephone Company) for Approval of an Alternative Form of Regulation, Case No. 93-487-TP-ALT (April 27, 2000).

and intake certification by government agencies are simple to administer and cost-effective.”¹⁰

DISCLOSURE AS A “ROUTINE USE.”

An electronic exchange of data between a state’s social services agency and a local exchange carrier, which exchange establishes the eligibility of public assistance recipients for the telephone “Lifeline” program, would be permissible as a “routine use” under federal privacy restrictions. Federal regulations provide that:

The Privacy Act allows [the Social Security Administration] to disclose information, without the consent of the individual, to any other party for routine uses. . . We disclose information for routine uses where necessary to carry out SSA’s programs. It is also our policy to disclose information for use in other programs which have the same purposes as SSA programs if the information concerns eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program.¹¹

The Social Security Administration goes on to state in its federal regulations: “For example, we disclose information. . .to other income maintenance programs at all levels of government. . .”¹²

The SSA periodically publishes Federal Register notices that contain a list of all routine use disclosures. The Social Security Administration (SSA) included in its most recent list of “routine uses” information released:

- “To state agencies to assist them in determining initial and continuing eligi-

bility in their income maintenance programs. . .”; and

- “To Federal, State or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance. . .programs. . .Such disclosures include, but are not limited to, release of information to: . . .(d) state agencies to locate potentially eligible individuals and to make determinations of eligibility for the food stamp program; and (e) State agencies to administer energy assistance to low income groups under programs for which the States are responsible.”¹³

The electronic exchange of information between the state and local exchange carriers for purposes of establishing the eligibility of public assistance recipients for telephone Lifeline clearly falls within this discussion of “routine uses.” The telephone Lifeline program is a program that would be deemed to “have the same purposes as SSA programs. . .” pursuant to Section 150(a). Lifeline assistance not only provides non-cash benefits to low-income households, but also helps those households to maintain the “lifeline” of full telephone access to the job market, community, family, and emergency services.

The type of disclosure also is disclosure of “information [that] concerns eligibility. . .or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program.” The need for information to be conveyed through the electronic disclosure is the *fact* of participation in one of the designated programs (i.e., “benefit status”). No need exists, for example, of further disclosure by the state to the local exchange company of precisely *which* program (or programs) a household receives benefits through, the precise level of benefits, or the household characteristics that establish eligibility for that program.

¹⁰ 1999 CAP Policy Statement at 6, codified at 52 Pa. Code section 69.261, et seq.; *Order*, Re. Revisions to the Customer Assistance Program Made Pursuant to 52 Pa. Code, Chapter 69, Docket No. M-00991232 (April 1999).

¹¹ 20 CFR § 401.150(a), (c) (2005).

¹² *Id.*

¹³ 70 *Federal Register* 10456, 10460 (March 3, 2005).

LIMITATIONS ON THE EXCHANGE OF DATA

The electronic exchange of data, such as that discussed above, has long been approved by the federal government. In a 1994 letter to the Public Utility Law Program (PULP) of New York, the Social Security Administration (U.S. Department of Health and Human Services) (SSA) stated “we are authorizing approval for a confidential, computerized data exchange of SSI recipient data between the New York State Department of Social Services and New York Telephone (NYNEX), a regulated public utility. This exchange of information which you described is considered “routine use” under the Privacy Act regulations.”

Note the three specific limitations on the data exchange, which should be adopted (as a matter of good public policy, whether or not required by federal law):

- The data exchanged through this process may not be *redisclosed* to other parties;
- The data exchanged through this process is for the *exclusive* purpose of “verifying and recertifying” the telephone Lifeline eligibility of SSI recipients; and
- The data exchanged through this process will convey only the fact of eligibility, and not disclose the particular category of eligibility.

SUMMARY AND CONCLUSIONS

The electronic exchange of data between state social service agencies and public utilities for purposes of enrolling low-income households in public utility rate assistance programs is an authorized use of information held by state agencies. Indeed, such data has been explicitly approved for purposes of enrolling low-income households in telephone Lifeline assistance programs.

The federal Privacy Act presents no barriers that might prohibit such an exchange of data. Federal regulations provide that the Privacy Act allows the disclosure of information without the consent of the individual for “routine uses.” The Social Security Administration (SSA) explicitly recognizes the use of such information for purposes of determining eligibility for energy assistance programs as a “routine use.” Moreover, the SSA has explicitly approved the use of such information for purposes of determining enrollment in state telephone Lifeline assistance programs.

For more information, or for a copy of the 1994 SSA letter approving the New York automatic enrollment for Lifeline, readers may contact FSC directly at:

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