



October 3, 2016

***Ex Parte Notice***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**RE: WC Docket No. 11-42, Federal-State Joint Board on Universal Service Lifeline and Link Up Reform and Modernization**

**WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support**

**WC Docket No. 10-90, Connect America Fund**

Dear Ms. Dortch:

On Thursday, September 29, 2016, the undersigned and Brian Ford on behalf of NTCA–The Rural Broadband Association (“NTCA”),<sup>1</sup> along with Patricia Cave and Derrick Owens on behalf of WTA – Advocates for Rural Broadband,<sup>2</sup> (the “Rural Associations”) met with Trent Harkrader, Wireline Competition Bureau Associate Bureau Chief, Garnet Hanly, Telecommunications Access Policy Division Special Counsel and Nathan Eagan and Christian Hoefly with the Wireline Competition Bureau. The parties discussed the Petition for Reconsideration (“Petition”) filed by the Rural Associations on June 23, 2016<sup>3</sup> in response to the

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<sup>1</sup> NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

<sup>2</sup> WTA – Advocates for Rural Broadband is a national trade association representing more than 300 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

<sup>3</sup> NTCA & WTA Petition for Reconsideration and/or Clarification , WC Docket Nos. 11-42, 09-197, and 10-90 (fil. Jun. 23, 2016) (“ Rural Associations’ Petition”).

Lifeline Universal Service Fund (“USF”) Modernization Order<sup>4</sup> adopted in this proceeding in March 2016 as well as issues raised by various other similar petitions.<sup>5</sup>

### **Minimum Service Standards**

The Rural Associations first addressed the fixed broadband Internet access service (“BIAS”) minimum speed standard adopted in the Lifeline Modernization Order.<sup>6</sup> Specifically, the Rural Associations in their petition seek reconsideration of the exception to the 10/1 minimum speed standard for fixed BIAS that, under certain circumstances, provides the Lifeline discount to qualifying low-income consumers for service at speeds of no less than 4/1 Mbps. In adopting the exception, the Commission stated that providing Lifeline support to low-income consumers for speeds of less than 4/1 would “ensure that providers who offer ‘second-tier’ service are not rewarded for failure to upgrade their networks.”<sup>7</sup>

The Rural Associations stated that while it is critical to ensure that limited USF resources are used to provide low-income consumers with broadband services comparable to other consumers, the Commission’s universal service policies must also be cognizant of the “facts on the ground.” These facts show that despite the significant progress that RLECs have made in making high-quality broadband available to their rural areas, there remain areas in rural America where a lack of 4/1 service persists today. Indeed, the Commission itself recognized as much in its recent High Cost USF Reform Order where it accounted for the fact that a number of rural census blocks lack 4/1 today and that funding provided pursuant to reforms to that mechanism will be insufficient to remedy that reality for some locations.<sup>8</sup> Moreover, the fact remains that a RLEC may be able to meet the 4 Mbps (or 10 Mbps) download requirement but unable to deliver upload speeds of 1 Mbps or greater without further network upgrades – even as, in some cases, the rules governing High Cost support distribution may effectively deter or even preclude such

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<sup>4</sup> Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197, Connect America Fund, WC Docket No. 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (“Lifeline Modernization Order”).

<sup>5</sup> United States Telecom Association Petition for Reconsideration and Clarification, WC Docket Nos. 11-42, 09-197, and 10-90 (fil. Jun. 23, 2016) (“USTelecom Petition”).

<sup>6</sup> Lifeline Modernization Order, ¶ 86.

<sup>7</sup> *Id.*, ¶ 111.

<sup>8</sup> *See*, Connect America Fund, *et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016) (“Rate-of-Return Reform Order”), ¶ 26 (stating that for RLECs electing model-based support, locations that are not fully funded – those with a calculated average cost above the funding cap – the requirement to offer broadband meeting the requisite performance standards including speed will be subject to the “reasonable request” standard); *See also*, *Id.*, ¶ 178 (stating that for carriers electing Connect America Fund Broadband Loop Support funding, “[i]n addition to defined obligations to extend service to a subset of locations within a five-year period, rate-of-return carriers remain subject to the reasonable request standard for their remaining locations.”).

upgrades. Thus, the exception to the minimum service speed standard must account for these facts and enable rural low-income consumers to apply the Lifeline discount to any standalone broadband or bundled voice and broadband service package they so choose and that is otherwise generally available from that provider to any other consumer in that geographic area. Indeed, the Commission should be able to look to data already in its possession to determine what is depicted as generally being available in a given census block, for example, and should not deny a consumer Lifeline support for broadband if 4/1 is not generally available to *any* consumer there.

In discussing this issue the Rural Associations reiterated that their position on the terms of the exception should not be taken as support for substandard service for *any* rural consumer. To the contrary, the principle of “reasonable comparability” is not only the backbone of the Rural Associations’ advocacy in the USF space, it is a statutory mandate. Thus even 10/1 speeds – which is all that the current High-Cost USF budget will allow – will prove insufficient over time to ensure “reasonable comparability” between rural and urban America. Pending a more comprehensive assessment of whether current High Cost program rules and budgets can ensure the “reasonable comparability” of services for all consumers – low income or otherwise – in rural areas, the Commission’s Lifeline rules must be calibrated for the facts as they exist today and enable low-income consumers to apply the Lifeline discount to the same BIAS service as is available to their more affluent neighbors.

### **Program Eligibility**

The Rural Associations then expressed support for the USTelecom Petition asking the Commission to delay the effective date of the streamlined eligibility criteria until December 31, 2017.<sup>9</sup> Due to recent reforms to the Federal Program, a number of states have state Lifeline eligibility criteria that do not align with the Federal Lifeline Program as a direct result of eliminating Low-Income Home Energy Assistance Program (“LIHEAP”), National School Lunch Program’s free lunch program (“NSLP”), and Temporary Assistance for Needy Families (“TANF”) from the default federal assistance eligibility for Lifeline and adding the Veterans Pension benefit or Survivors Pension benefit programs as Lifeline qualifying programs. Moreover, a number of the Rural Associations’ members provide service in states that administer their own state Lifeline program (*i.e.*, states in which low-income consumers may obtain a discount in addition to the Federal \$9.25 discount). These states too have disparate state and Federal criteria to determine whether a subscriber is eligible for support. The result of these disparities will be significant customer confusion and administrative burden for RLECs. For one, RLECs will be required to explain changes to the program to consumers recertifying their continued eligibility for the program and in fact will be required to act in the capacity of social welfare agents in working with Lifeline subscribers to ensure that they are enrolled in a qualifying program prior to completing their recertification. In addition, even now the Rural Associations’ members are expressing confusion as to the specific programs under which their subscribers may nor may not be eligible for state Lifeline programs as the states themselves work through the program changes. RLECs will also be required to review billing and customer records to ensure that the proper Lifeline billing code(s) (and discount) are being applied to individual consumers.

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<sup>9</sup> USTelecom Petition, pp. 7-9.

In short, the attempt to “streamline” and simplify eligibility criteria has resulted in the opposite effect as carriers (of all sizes as the USTelecom petition demonstrates) and consumers are already confused regarding which criteria should be included in advertisements for the Lifeline program and used to enroll new customers and recertify existing Lifeline subscribers. States too need additional time to conform their state Lifeline eligibility criteria with the Federal Lifeline criteria, either through amending regulatory rules or statutes and the fact that some do not have legislative sessions this year only exacerbate the matter. The Commission should therefore grant USTelecom’s request for reconsideration of the effective date until December 31, 2017 to enable states to conform their rules to the Federal requirements and/or give carriers additional time to develop processes to identify and properly document which criteria their customers meet.

### **Rolling Recertification**

The Rural Associations also discussed their request for reconsideration of the “rolling recertification” requirement adopted in Lifeline Modernization Order that will require Lifeline providers to recertify their Lifeline customers’ continued eligibility annually as measured from each individual subscriber’s service initiation date.<sup>10</sup> While ostensibly adopted to limit the burden on the National Verifier in terms of conducting recertifications at the end of the year, this provision will be quite burdensome for the Rural Associations’ members and was adopted without proper notice and an opportunity to comment as required by the Administrative Procedure Act. RLECs in many cases have not tracked subscribers’ service initiation dates within their internal systems and therefore will need to access the National Lifeline Accountability Database for every customer or conduct investigation of customer records to determine the date governing independent customer rolling recertification deadlines. For RLECs with a staff of approximately 25 or fewer employees such a task will be extremely time consuming. Moreover, RLECs have long found it simpler to conduct the recertification all at once at the end of the year and typically already have internal administrative processes in place to conduct recertification once by the end of the year and amending that process will prove burdensome. This increased burden of course not unique to small carriers.<sup>11</sup> In the end, the fact that this provision was adopted in order to limited the burden of recertification on the National Verifier runs counter to one of the very reasons it was created in the first place – to limit the burden on Lifeline providers with respect to determining and managing consumers’ eligibility for the program. Even worse, carriers forced to modify their administrative processes now will be required to do so again once the National Verifier begins operating in their state. The Commission should instead delay implementation of rolling recertification until the National Verifier has been launched in that provider’s state to avoid placing unnecessary burdens on providers and causing confusion for consumers.<sup>12</sup>

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<sup>10</sup> Lifeline Modernization Order, ¶ 416.

<sup>11</sup> Rural Associations’ Petition, pp. 13-14; USTelecom Petition, p. 3.

<sup>12</sup> The Commission should in particular dismiss the assertion by certain consumer groups that rejection of rolling recertification and a return to the status quo of year end recertification would somehow confuse consumers. Consumer Groups Consolidated Opposition, WC Docket No. 11-42 (filed July 29, 2016) (“Consolidated Opposition”). This argument seems to rest on the assertion that abandonment of rolling recertification could force Lifeline subscribers to recertify eligibility for the

## **Port Freeze**

The Rural Associations also reiterated their request for reconsideration of the “port-freeze” provisions contained in the Lifeline Modernization Order. Specifically, the adoption of a benefit “port freeze” for Lifeline-supported voice and BIAS service (60 days and 12-months, respectively) will create a significant administrative burden for RLECs. RLECs today typically utilize one “Lifeline” billing code in their billing systems to denote subscribers to whom the Lifeline discount applies. Administration of the port-freeze provisions with separate durations will require RLECs to modify their billing systems to incorporate therein at least two new billing codes to account for standalone BIAS subscribers and bundled voice and BIAS subscribers enrolled in the Lifeline program to accurately account for and report to USAC the applicable port freeze rule for each category of Lifeline enrolled subscribers.<sup>13</sup> Additional codes will be necessary to the extent the provider also offers a wireless voice and/or broadband service. Incorporation of these additional billing codes will in some cases require software updates and/or modifications to billing systems by outside billing vendors at not inconsequential cost. Alternatively, carriers will be required to manually comb through customer accounts to determine the appropriate port freeze for NLAD reporting purposes. The Rural Associations urged the Commission to either harmonize the port freeze durations (*i.e.* 60 days for each), clarify that until the voice support phase down begins subscribers may be reported as obtaining a voice service, or delay the implementation of the port freeze for one year.

## **Support for Standalone Voice Service**

Finally, the Rural Associations discussed their pending request that the Commission reconsider the phasing out of support for voice-only fixed and mobile service beginning December 1, 2019. The Commission should instead continue to provide consumers the option of subscribing to a voice-only service. Despite the fact that broadband is the dominant form of communications technology in use today, the fact remains that the Lifeline program was first conceived and remains today a literal Lifeline to low-income Americans in a time of emergency. It is particularly perplexing that the Commission would phase-out support for standalone voice in the wake of numerous other Commission rulemakings that have stressed and adopted new requirements for backup power, network resiliency and reliability and access to 911 services.<sup>14</sup>

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program multiple times a year. Yet, it is the adoption of the rolling recertification process that produces that result. For example, a customer enrolled on July 1, 2015 must recertify by December 31, 2016 and then again by July 1, 2017.

<sup>13</sup> Carriers will be required to report to NLAD whether a customer subscribes to voice-only service, a voice and broadband bundle where only the voice component meets the minimum service standard, a voice and broadband bundle where only the broadband component meets the minimum service standard, a voice and broadband bundle where both services meet the minimum service standards, or a broadband only service meeting the minimum service standards. Current billing systems are not structured to provide such detail.

<sup>14</sup> See, Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, PS Docket No. 14-174, FCC 15-98, Report and Order (rel. Aug. 7, 2015) (“Report and Order”). See also, Improving 911 Reliability, PS Docket 13-75, Report and Order, FCC 13-158 (rel. Dec. 12, 2013) (adopting “rules to improve the reliability and resiliency of 911 communications networks nationwide by

In that regard, the phase down of support for standalone voice service in the Lifeline program represents a step backward in terms of public safety and one that threatens to effect most acutely low-income Americans.

Moreover, the phase-out of support for voice-only service beginning on December 1, 2019 is also particularly problematic for consumers living in areas served by RLECs. For one, the larger than average senior citizen population in rural areas may be particularly affected by the voice support phase out, as RLECs report that many of their Lifeline voice subscribers currently skew toward older retired populations. In addition, for all low-income rural Americans, as their local voice rates are by rule continuing to increase, the phase out of support for voice service will be particularly difficult to absorb. Commission rules adopting a “local rate floor” currently produce end-user voice rates in RLEC service areas of \$18 per month plus state regulated fees,<sup>15</sup> an increase of \$2 over 2015 levels.<sup>16</sup> The Commission has given no indication that future rate floor increases are not forthcoming and thus a total loss of Lifeline support for stand-alone voice service will therefore be particularly harmful for low-income rural consumers in areas where their local provider is subject to the rate floor.

Finally, the Rural Associations noted that while support for voice service is available as part of a bundled voice and BIAS package, for many rural low-income consumers served by the Rural Associations’ members, 10/1 Mbps or 4/1 Mbps broadband, even when bundled with voice service, will in many cases continue to be unaffordable despite the availability of the Lifeline discount. In those circumstances, a number of low-income consumers will be forced to decide between subscribing to a more expensive broadband and voice bundle or forgoing Lifeline support altogether.

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requiring that 911 service providers take reasonable measures to provide reliable 911 service”); New Release: FCC Fines CenturyLink and Intrado \$17.4 million for Multi-State 911 Outage (Apr. 6, 2015) (“Delivering 911 calls is one of the most important public safety responsibilities a phone company has.”), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-332853A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-332853A1.pdf).

<sup>15</sup> Wireline Competition Bureau Announces Results of 2016 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowances for ETCs Subject to Broadband and Public Interest Obligations, Public Notice, DA 16-362 (rel. Apr. 5, 2016), p. 1 (“To the extent that an ILEC’s local rates (plus state regulated fees) in 2016 are less than \$18, that carrier’s high-cost support will be reduced on a dollar-for-dollar basis”). *See also*, Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service – Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (“*Transformation Order*”), ¶¶ 234-247.

<sup>16</sup> Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, Public Notice, DA 15-470 (rel. Apr. 16, 2015) (“To the extent that an ILEC’s local rates (plus state regulated fees) in 2015 are less than \$16, that carrier’s high-cost support will be reduced on a dollar-for-dollar basis.”).

The Rural Associations therefore urged the Commission to reconsider the phase out of support for standalone voice to ensure that access to public safety services is within reach of very American. Indeed, the Commission could adopt more targeted reforms to the extent that it seeks to address a windfall to carriers for whom costs to provide the most basic voice service are low.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,  
/s/ Michael Romano  
Michael Romano  
Senior Vice President –  
Industry Affairs & Business Development

cc: Trent Harkrader  
Garnet Hanley  
Nathan Eagan  
Christian Hoefly