Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Bridging the Digital Divide for Low-Income Consumers	)	WC Docket No. 17-287
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197

COMMENTS OF THE NATIONAL LIFELINE ASSOCIATION

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INTRODUCTION

About ten and a half million Americans including between one and two million veterans rely on the Lifeline program to connect to public safety, jobs, education, healthcare and family. Over seven million of these Lifeline subscribers rely on wireless resellers for their essential communications service made affordable through the Lifeline program.

This is a program that has made good public policy sense since the Reagan administration and through Republican and Democratic controlled Commissions for decades. It still makes sense today when affordability is a problem that accounts for a substantial part of our country's digital divide problem. A Lifeline program that includes wireless resellers, prioritizes a National Verifier and other reforms designed to ensure program integrity, favors consumer choice and competition over regulators' choice, and respects the roles of the states and other stakeholders can serve as a bridge across the digital divide for many Americans who struggle to stay connected in today's digital economy.

The National Lifeline Association (NaLA) members conducted a survey of subscribers that showed that a majority of its members' subscribers make less than $10,000 a year. Without Lifeline, many had phone service and Internet access one month but not the next. Many are veterans looking for a way to find their economic and social footing after returning from service. Many are single mothers with children who struggle to put food on the table in a daily battle to pull themselves and their children up out of poverty. Many are disabled and they fight and persevere against long odds in hope of a better life. Many live in homeless shelters and many live in streets and alleys around them. All deserve better. These are the "truly needy."

The average Lifeline subscriber is white and female. She lives in a non-urban area. She chooses wireless over wireline because it provides mobility, voice, text and Internet access at a price she can afford.

Today's Lifeline subscribers live in red states and blue ones. They live in rural, suburban and urban areas, and in "affluent" zip codes and in zip codes mired in economic malaise. They live in cities and remote villages ravaged by hurricanes and in towns and on farms destroyed by wildfires. They work in the homes of millionaires and on the farms of multi-nationals. They go to school and to training classes. They are engaged in a struggle to keep out of harm's way and to pull themselves out of poverty. And they cannot do it without affordable voice and broadband services. We as a country cannot afford for them not to be connected to public safety, employers, teachers, doctors and family.

We have a moral obligation and the Commission has a statutory obligation to help. We must be careful and compassionate in the way we go about it. We (i.e., all stakeholders with a vested interest in Lifeline) have limited resources and we must work together to ensure that the Lifeline program is well designed to provide consumers with meaningful help to make essential communications services affordable, and well managed to control waste, fraud and abuse. We need to act to ensure that Lifeline remains available to the truly needy who qualify for it in good times and in bad.

Fortunately, we have made good progress toward this end and we are committed to do more. We already have seen a decade of significant reforms enacted, with perhaps the most significant of these reforms – the National Verifier – about ready to begin implementation. Over a decade ago, the Commission forbore from the facilities requirement so that consumers could have more choices, including the benefits of mobility provided by wireless service. In 2011, the

Commission adopted the one-per household restriction. In 2012, the Commission replaced the "honor system" with proof of eligibility and recertification requirements, and granted "blanket forbearance" from the facilities requirement. In 2014, the National Lifeline Accountability Database (NLAD) was rolled out to provide duplicate screening and identity verification. In 2015, retention of proof was adopted, Tribal lands in Oklahoma were redefined and mapping tools for address verification were developed. In 2016, the Lifeline program was brought on-par with all other Universal Service programs, as broadband became a supported service. All along the way, audits were conducted by USAC and by independent auditors and enforcement effectively corrected provider missteps and rooted out bad actors from the program. With reforms taking hold and an improving economy, the Lifeline program has seen annual expenditures reduced by hundreds of millions of dollars.

Yet, in 2017, a GAO Report highlighted concerns with program integrity spawning new headlines over alleged waste, fraud and abuse in the program. While the GAO relied on three-year old data and reached no conclusions as to whether subscribers it reviewed were "ineligible," politicians on both sides of the aisle during multiple oversight hearings asked what more could and should be done. And the answer they heard nearly uniformly from proponents and critics of the Lifeline program alike was "implement the National Verifier," so that eligibility determinations would be done by a neutral third party.

And so, in the months since, the Commission has swung into action – in both helpful and harmful ways. For the better, it has directed USAC to conduct targeted audits and to assess the GAO Report. In response, USAC has ferreted out dead people from the program and incorporated into the NLAD identity verification process a dip into the Social Security Master Death Index. And just yesterday, the Commission announced that it had adopted standardized

forms for Lifeline enrollments, solving a perceived problem that contributed to a recent spike in the agency's reported level of improper payments. Chairman Pai also has committed to try to roll-out the National Verifier more quickly.

For the worse, the agency adopted a Tribal Lifeline order without proper notice and comment or proper Tribal consultation. That order, if allowed to become effective, would ban wireless resellers from Tribal Lifeline (impacting about half of all recipients of Tribal Lifeline benefits) and would limit Tribal Lifeline benefits to those residing in rural Tribal areas, the extent of which remains unclear. These actions have drawn an appeal and a reconsideration petition.

In other parts of the November 2017 Lifeline "item," the Commission rolled back "port freezes" designed to curb waste and to promote broadband and broadband bundles (which now constitute three-quarters of all Lifeline enrollments) and abandoned technology neutrality by declaring Wi-Fi network enabled broadband ineligible for support. These actions also have drawn a petition for reconsideration.

The Commission also opened a new rulemaking with proposals that it characterized as being helpful in addressing the digital divide while potentially whacking down the Lifeline program by more than two-thirds. With the supporting rationales of spurring facilities deployment in rural America and curbing waste, fraud and abuse, and over the objections of everyone but a sole small facilities-based provider seeking to shield itself from competition, the Commission adopted an item seeking comment on its proposals to require facilities that are not available to wireless resellers, and to prohibit profits in providing Lifeline services. The Commission also sought comment on a funding cap for the program, a "maximum discount level," and a host of other proposals – some of which were good but most of which either

eliminate the ability and/or dampen the incentives for reputable companies that want to participate in Lifeline to serve those who really need it.

SUMMARY

Over the next 100 plus pages, NaLA explains and advocates for a better path forward. The path forward relies heavily on successful and smart implementation of the National Verifier. From across the political spectrum and from nearly all stakeholders, the message is clear: let the reforms work – and above all, let this reform take hold before adopting other major changes.

Wireless resellers also are an essential part of the future of Lifeline. Nine out of ten Lifeline subscribers choose wireless. Most of these subscribers are served by wireless resellers. This is what an effectively competitive wireless marketplace has decided is best. Facilities-based wireless providers have made the economically rational decision to partner with resellers so that they can attain revenues they otherwise would not get and avoid costs and risks they prefer not to incur.

Because Lifeline support must be passed through to consumers, it does not directly support the build out of facilities – even when received by a facilities-based provider. Lifeline is primarily a program designed to make services provided over existing networks affordable. To the extent that the program results in additional revenues which help to recover network costs in poor urban neighborhoods or poor rural ones, the program can have an indirect and positive impact on the extension and improvement of facilities in those areas. Though many have chosen not to, facilities-based providers can participate in Lifeline today – no wireless reseller is eating their lunch, and no consumer will benefit from protecting them from the limited competition they might face.

While the National Verifier will be essential to bolstering program integrity, the Commission's suggestion that it should ban wireless resellers from the program because they have been at the receiving end of most Commission enforcement actions also is without merit. In its recent report, the GAO criticized the Commission for arbitrary enforcement – much of it directed at wireless resellers. Many of these enforcement actions settled without an admission of liability and for pennies on the dollar. Final enforcement actions have produced results roughly proportional to the share of the Lifeline market served by facilities-based providers and resellers. Yet, the Commission's proposal would eliminate wireless resellers – even those that have passed dozens of audits and have no enforcement history whatsoever – while allowing a facilities-based provider with past Lifeline enforcement action to stay in the program (which it should be able to do if it wants to). Conduct-based standards present a far more rational and sustainable way to encourage high levels of compliance and to protect the program from bad actors.

The Commission's proposal to require facilities available to no wireless reseller is also at odds with the statute. First, under section 10 of the Communications Act, the Commission – through Republican and Democratic administrations – has accumulated more than a decade of precedents in which it has found that it must forbear from the facilities requirement. The proposed reversal cannot be squared with the statutory standard – nor can it be avoided with a false distinction between those eligible to be designated as ETCs and those eligible for Lifeline disbursements. Moreover, the proposal cannot be squared with statutory language that expressly permits ETCs to rely on resale.

Second, the proposed requirement of facilities runs roughshod over the states and their statutorily designated role to designate ETCs. Based on more than a decade of statutorily mandated facilities-forbearance, state commissions have carried out their ETC designation

responsibilities by designating wireless resellers as Lifeline ETCs. State commissions also have allowed incumbent wireline service providers to relinquish their obligations to provide Lifeline services based on the presence of wireless reseller ETCs and consumers' overwhelming preference for their services. The Commission's proposal to ban wireless resellers from the Lifeline program is a singular affront to the decisions made by the state commissions and the authority vested in them by Congress.

Beyond the facilities issue, there are more ways in which the Commission's proposals veer off course. The Commission is right to call for the restoration of full support for voice services in rural America, but wrong not to call for that same relief in suburban and urban America. Ask people in Houston and in San Juan and they will tell you that voice service is important for calling 911. Ask a parent or a worker and she or he will tell you that voice service is important to have when an educator, doctor or employer is trying to call you. Wireless rates are comparable in rural and urban areas – and so are the affordability challenges faced by Lifeline eligible populations. This Commission has an opportunity to correct regulatory overreach by the prior one. It should restore the ability of all Lifeline eligible consumers – regardless of where they live – to choose for themselves the Lifeline service offering that best meets their needs.

This Commission also should correct the prior one's paternalistic overreach in setting minimum service standards that escalate into family-sized and higher than entry-level services that may not be affordable for Lifeline subscribers. Both wireline and wireless service providers have told the Commission that these escalating standards restrict consumer choice and undermine the affordability goals of the statute.

There is still more that the Commission can do to improve the Lifeline program so that it better serves the truly needy consumers who are eligible for the modest level of assistance it provides. The National Verifier should include an API, so that it is better protected from waste and so that consumers in rural and other less densely populated areas can be reached by more service providers willing to offer them Lifeline service. The National Verifier also should include a process for tracking agents and other enrollment personnel, so that consumers can continue to realize the benefits of in-person enrollment and handset distribution. The Commission also should adopt a streamlined ETC designation process so that consumers across the country can realize the benefits of competition and choice.

The Lifeline program also can benefit from a self-enforcing budget mechanism. This budget mechanism should operate on an annual basis and work so that it has a prospective impact only. As Chairman Pai has recognized, Universal Service programs require funding certainty. Existing subscribers cannot be cut-off nor can any business plan around the potential for reduced disbursements. Because Lifeline serves only about a third of those eligible for assistance, the budget mechanism must include room for rational growth. For these reasons, NaLA supports the budget proposed by NARUC in its bi-partisan resolution adopted earlier this month.

Finally, NaLA appreciates the Commission's asking questions regarding a "maximum discount level" and "term limits" for Lifeline recipients. While these topics are worthy of discussion, the proposals are not among those that should be adopted at this time. As Commissioner O'Rielly has recognized, no matter who is making the determination, there will be some consumers who can truly afford to pay nothing. But how are we supposed to make that determination and how often should we do it? How could it be implemented fairly and in a

manner that does not invite waste, fraud and abuse? How could the benefits of such implementation exceed the costs of providing $111 in annual benefits? While Lifeline is a tool that can help many climb up out of poverty, some may face challenges and circumstances that will prevent them from succeeding. How do we fairly set a timeline and decide which exceptions or extensions should apply and in which cases? At bottom, we are left with this question: how can the cost savings of leaving some members of our society disconnected not be overwhelmed by the costs of having those people disconnected? The answer is obvious. Whether viewed in terms of public safety, health, education or economic competitiveness, we simply cannot afford to leave tens of millions of Americans on the wrong side of the digital divide.

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COMMENTS OF THE NATIONAL LIFELINE ASSOCIATION

The National Lifeline Association[1] (NaLA), by and through the undersigned counsel, hereby submits comments to the Federal Communications Commission (FCC or Commission) in response to the proposals set forth in the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) adopted by the Commission on November 16, 2017 in the above-referenced proceedings.[2]

I. THE COMMISSION MUST NOT RADICALLY CUT THE LIFELINE PROGRAM AND WIDEN THE DIGITAL DIVIDE BY BARRING THE PARTICIPATION OF WIRELESS RESELLERS

Representing a drastic overreaction to any remaining concerns with the administration of the Lifeline program, the NPRM seeks comment on repurposing the Lifeline program in an effort

[1] NaLA is the only industry trade group specifically focused on the Lifeline segment of the communications marketplace. It supports eligible telecommunications carriers (ETCs), distributors, Lifeline supporters and participants and partners with regulators to improve the program through education, cooperation and advocacy. *See* https://www.nalalifeline.org/.

[2] *See Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, WC Docket Nos. 17-287, 11-42, 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017) (referenced herein as the Fourth Report and Order, NPRM, or NOI in accordance with the paragraph cited).

to support facilities deployment and, as part of that misguided effort, discontinuing support for non-facilities-based service.[3] There are many reasons that the Commission should not take this radical step, or many others proposed in the NPRM, as they would widen rather than bridge the digital divide.[4]

Most notably, the proposal to eliminate resellers from the Lifeline program ignores the historical and statutory purpose of the Lifeline program, which is universal affordability of communications services. Less draconian, better targeted means can and should be used to address any remaining waste, fraud, and abuse in the program without eliminating participation by the wireless resellers or mobile virtual network operators (MVNOs) that currently serve nearly 70 percent of Lifeline subscribers. These include successful implementation of the National Verifier and, in the interim or as needed thereafter, reasonable risk-based audits and conduct-based requirements and consequences for ETCs.

Moreover, the Commission cannot eliminate wireless and other resellers without reversing the longstanding statutory forbearance that it has granted from the facilities requirement pursuant to the requirements of the Communications Act of 1934, as amended (the Act), which the facts and public interest continue to require. In addition, the Commission cannot entirely remove resale from the program without violating the Act, which specifically envisions a

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[3] *See* NPRM ¶¶ 63-79.

[4] As the National Association of State Utility Consumer Advocates (NASUCA) recently observed, the proposals in the NPRM would "change the federal Lifeline program in ways that will diminish the ability of low income households to obtain and keep voice and broadband internet access services over today's modern communications network with Lifeline support from the federal Universal Service Fund." National Association of State Utility Consumer Advocates, Resolution 2018-01, "Urging the FCC and States to Assure that All Lifeline Eligible Households in All Regions of the Nation Have Access to Voice and Broadband Internet Access Services From a Choice of Providers and Networks, Made More Affordable With Lifeline Support" (2018) *available at* http://nasuca.org/nwp/wp-content/uploads/2013/11/2018-01-NASUCA-Affordable-Lifeline-Support-Resolution_-003.pdf (NASUCA Resolution).

role for resale in the Universal Service program. Further, there is no reasonable justification for the Commission to halt the phase-down of support for Lifeline-supported voice service in rural areas without doing the same for urban areas. Although not dispositive, retaining support for voice service would bolster the Commission's legal authority to support broadband service—both fixed and mobile, facilities-based and resale—under Title II (section 254) and Title I of the Act. Finally, resellers use universal service funding to provide supported services and pass through the benefit to consumers just like facilities-based providers.

A. Although Wholesale Services Sold to Resellers Do Contribute to Facilities Deployment Decisions, the Primary Purpose of the Lifeline Program Is Affordability for Rural and Urban Low-Income Consumers

The Commission's proposal to shift the focus of the Lifeline program to rural facilities deployment is at odds with the statutory purpose of the Lifeline program to make affordable voice and broadband services available to all low-income Americans. Rather than advance the goals of the Lifeline program, eliminating wireless and other resellers would drastically reduce the number of Lifeline providers in the program; considerably undermine consumer choice and preference for wireless service; force many consumers into more expensive plans, if they can afford those plans at all (likely forcing the purchase of a new device); and weaken the business case for facilities deployment by lowering line count and revenues for resellers' underlying carriers, including the mobile network operators (MNOs). If the Commission takes the misguided step to impose some form of facilities requirement, it should retain its existing definition of facilities so that small and innovative service providers can continue to serve low-income Americans.

1. Two Decades of Commission Precedent Make Clear That the Lifeline Program Is Primarily an Affordability Program, Not an Infrastructure Program

The NPRM ignores the long-standing, bi-partisan view of the Lifeline program as primarily an affordability program, not an infrastructure program. In the 1996 Telecommunications Act, the Republican-controlled Congress "for the first time . . . expresse[d] the principle that rates should be 'affordable,' and that access should be provided to 'low-income consumers' in all regions of the nation."[5] In the 1997 USF First Report and Order, which implemented the universal service components of the 1996 Act, the Commission noted that the Lifeline program was "designed to make residential service more affordable for low-income consumers."[6] The Commission also expressed concern about low subscribership levels among low-income consumers in areas where infrastructure was available, but Lifeline support was unavailable, because "not all carriers in those areas" were obligated to provide discounted

[5] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶ 335 (1997) (1997 USF First Report and Order). In establishing the universal service principles on which the Commission must base its policies, section 254(b) of the Communications Act provides that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3). By listing both "low-income consumers" and "those in rural, insular, and high cost areas," Congress sought to require the Commission to give low-income consumers—rural or urban—special treatment. And yet, when describing this principle in paragraph 64 of the NPRM, the Commission selectively and misguidedly excludes the words "low-income consumers" from its reading of the statute in order to argue that the Lifeline program is not about low-income Americans, but rather about "help[ing] encourage" facilities-based providers to deploy networks "by making deployment of the networks more economically viable." *See* NPRM ¶ 64.

[6] *See* 1997 USF First Report and Order ¶ 406.

services.[7] The Commission found that the unavailability of affordable service, even where facilities were available, "r[an] counter to" the Commission's duties under 47 U.S.C. § 151.[8]

Commissions led by both Republicans and Democrats since the 1996 Act have been uniform in their view that Lifeline is an affordability program designed to increase subscribership to essential communications services among low-income Americans, not to promote infrastructure deployment in unserved and underserved areas. In 2004, the Powell Commission proposed to add income-based eligibility to the Lifeline program on the grounds that it "should . . . promote universal service by increasing subscribership and making rates more affordable for existing low-income subscribers."[9] In a separate statement supporting the item, Chairman Powell focused on improving telecommunications subscribership of low-income Americans—which wireless resellers have done more effectively than facilities-based Lifeline providers—without any reference to infrastructure deployment.[10] The Martin Commission in 2005 took the important step to permit wireless resellers to become ETCs, noting that Lifeline is "designed to make telecommunication service affordable to eligible consumers" and that "the facilities requirement is unnecessary to preserve the integrity of the universal service program or the fund."[11]

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[7] *See id*. ¶ 346.

[8] *See id.*

[9] *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87, ¶ 10 (2004).

[10] *See id.*, Statement of Chairman Michael K. Powell.

[11] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-165 ¶ 14 (2005) (TracFone Forbearance Order).

The 2012 Lifeline Reform Order reaffirmed that service affordability is the primary goal of the Lifeline program.[12] Specifically, the Commission explained that "the purpose of the Lifeline program" is "to offset *the cost of services* purchased by low-income consumers, *rather than the network provider's cost* to construct a network."[13] While the expansion of Lifeline to non-facilities-based providers spurred a dramatic improvement in adoption of voice services for low-income Americans, an affordability gap persists today, particularly for broadband service. Pew has found that while over 98 percent of U.S. adults who earn more than $75,000 per year use the Internet, only 81 percent of those who earn less than $30,000 per year use it.[14]

In the NPRM, however, the Commission proposes to abruptly abandon the long-term, bipartisan consensus regarding the purpose of the Lifeline program. Indeed, in setting forth the statutory text of section 254, the NPRM literally excises the term "low-income consumers" in a misguided effort to present the Lifeline program as a facilities deployment program.[15] It is clear from the full text of section 254 that such a reading was not Congress's intent, nor the intent of any Commission for the past twenty years. As such, the Commission's proposed plan would run afoul of its statutory mandate and serve as an arbitrary and capricious departure from twenty years of rules and public policy surrounding universal service support for low-income Americans grappling with poverty.

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[12] *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, FCC 12-11, ¶¶ 28-35 (2012) (2012 Lifeline Reform Order) (finding that "service is only available to low-income consumers to the extent that it is affordable.").

[13] *See id*. ¶ 36 (emphasis added).

[14] *See* Pew Research Center, *Internet/Broadband Fact Sheet* (Jan. 12, 2017), *available at* http://www.pewinternet.org/fact-sheet/internet-broadband/ (Pew Internet/Broadband Fact Sheet) (last visited Feb. 21, 2018).

[15] *See* NPRM ¶ 64.

2. The Commission's Proposal to Eliminate Resellers from the Lifeline Program Would Radically Reduce the Availability of Affordable Voice and Broadband Service for Americans Struggling with Poverty

In the NPRM, the Commission asks how its proposal to eliminate resellers from the Lifeline program would "impact the availability and affordability of Lifeline broadband services" and "the number of Lifeline providers participating in the program."[16] As explained below, the proposal would drastically reduce the number of Lifeline providers participating in the program and make Lifeline broadband service less available and less affordable, further exacerbating the affordability aspect of the digital divide and undermining the Commission's statutory duty to make affordable voice and broadband service available to low-income Americans.

First, eliminating resellers would force more than 7.1 million existing Lifeline subscribers to give up their phone number and switch from their chosen Lifeline provider to another service provider offering comparable services (if they can).[17] Non-facilities-based ETCs currently serve nearly 70 percent of all Lifeline subscribers,[18] with many of these non-facilities-based providers offering free or near-free services by calibrating the service offering to the amount of the monthly Lifeline subsidy.[19] These 7.1 million Americans are diverse

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[16] *See id*. ¶¶ 66, 68.

[17] According to the USAC Lifeline Disbursement Tool, *available at* http://www.usac.org/li/tools/disbursements/default.aspx (last visited Jan. 15, 2018).

[18] In some states the number is higher. The Pennsylvania Utility Law Project notes that "approximately 85% (over 450,000) of Pennsylvania's economically vulnerable Lifeline subscribers receive service from a non-facilities based provider." Joint Comments of Pennsylvania's Low Income Consumers, Service Providers, Organizations, and Consumer Rights Groups, WC Docket No. 17-287 et al., 1 (filed Jan. 24, 2018) (Pennsylvania Joint Comments).

[19] The Citizens Against Government Waste (CAGW) cite to some older numbers, but with a similarly alarming warning. According to CAGW, "according to the FCC's 2016 Universal Service Monitoring Report, there are more than 12.5 million subscribers to the Lifeline program, 68.5 percent of whom obtain their service through non-facilities based providers." Comments of Citizens Against Government Waste, WC Docket No. 17-287 et. al., 8 (filed Jan. 24, 2018). For this reason, CAGW takes the position that "a total ban on non-facilities based resellers of

geographically, racially and by gender and physical ability, but they are all struggling with poverty and need a connection to job opportunities, employers, healthcare providers, and their children's schools and childcare providers. In short, these people are the "truly needy." Based on an analysis of over 3.2 million Lifeline subscribers to services provided by NaLA members, 40 percent of subscribers reside in urban zip codes and 60 percent reside in suburban (33 percent) or rural (27 percent) zip codes.[20] In a survey of nearly 40,000 NaLA member subscribers, NaLA found that over 55 percent of respondents are female, over 34 percent are over the age of 55 (and nearly half are over 50), over 40 percent identify as Caucasian (the largest demographic by nearly a factor of 2), nearly 18 percent indicate that they or a member of their household served in the military, over 36 percent identify as disabled and unable to work and more than half live in a household that earned less than $10,000 last year. Included as an Exhibit are examples of subscriber testimonials detailing the value that Lifeline services provide in enabling voice and Internet connections to emergency services, healthcare providers, employers and family. If the Commission were to eliminate resellers from the Lifeline program, millions of these subscribers would be disconnected from their chosen provider with few, if any, affordable alternatives available as discussed in more detail below.[21] Those consumers that do have another wireless provider option would be required to obtain a new device and phone

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wireless services could have a negative impact on eligible subscribers" and would leave "many Lifeline subscribers in search of a new provider." *Id*.

[20] These breakdowns are based on analyses from GreatData.com, which uses population data from the United States Census, United States Department of Agriculture rural area designations and analyses of distances from metropolitan areas. *See* https://greatdata.com/product/10/rural-urban (last visited Feb. 12, 2018).

[21] While some Lifeline recipients could theoretically remain with their chosen resale provider, it's unlikely that many would do so. Many could not afford the $111 per year price tag, and even if they did, the economic impact on Lifeline resellers would force most of these providers out of business.

number and may only get service on a different network than they previously had that may not serve them as well.

Second, eliminating resellers from the Lifeline program would significantly reduce the availability and affordability of wireless service, which has been the primary driver of voice and broadband adoption among Americans living in poverty. Today's predominantly wireless Lifeline program is vibrant and competitive, with about two dozen wireless providers competing to provide service in various states with affordable and innovative service plans that today serve 90 percent of the Lifeline market. However, because the low-income market is difficult to serve—exhibiting high rates of churn and high touch subscribers with inconsistent incomes and differing abilities—and the Lifeline program is highly regulated, few facilities-based wireless providers actively participate in the retail market. Indeed, of existing "national" facilities-based wireless providers, only Sprint (under its Assurance Wireless brand) actively markets and provides service to low-income Americans, and Sprint does not provide service in eight states, Puerto Rico, the U.S. Virgin Islands, or on Tribal lands.[22] T-Mobile's CFO has flatly stated, "[w]e don't think Lifeline is a valuable or sustainable product for our base."[23] USAC subscriber data shows that Sprint's Assurance Wireless brand serves 94 percent of the Lifeline subscribers served by a facilities-based wireless service providers and all of the rest serve only 6 percent, or 151,691 subscribers (out of a program serving over 10 million Lifeline subscribers).[24] As a

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[22] T-Mobile and Verizon Wireless have indicated that they have no intention of offering retail Lifeline service. *See* Joan Engebretson, "CFO: 'Non-sustainable' T-Mobile Lifeline Business to be Phased Out," Telecompetitor (June 8, 2017), *available at* http://www.telecompetitor.com/cfo-non-sustainable-t-mobile-lifeline-business-to-be-phased-out/ (Engebretson Lifeline Article) (last visited Jan. 22, 2018).

[23] *See id.*

[24] *See* USAC Lifeline Disbursement Tool, *available at* http://www.usac.org/li/tools/disbursements/default.aspx (last visited Jan. 15, 2018). Assurance serves 2,320,191 subscribers, or 94 percent of the total of 2,472,123. Smith Bagley serves

result, if the Commission were to eliminate resellers from the Lifeline program, it would effectively grant Sprint a wireless Lifeline monopoly in 42 states (which Sprint does not want), leaving consumers with only one option to meet their needs.[25] In these wireless Lifeline monopoly areas, the lack of competitive pressure could drive prices up and innovation down, making Lifeline service less affordable and less helpful for the very low-income Americans served by the program.

In addition, the Sprint network coverage is not the same as the network coverage of Verizon Wireless, T-Mobile or AT&T and therefore not all subscribers that are currently served by resellers in these states could successfully switch to Assurance. For example, the Verizon Wireless network does not always overlap with Sprint's, and Verizon serves a number of rural areas, including some Tribal areas, outside the Sprint network.[26] That is largely why resellers like Boomerang Wireless and others with a distribution model that includes less densely populated areas resell the both the Sprint and Verizon Wireless networks. Since Verizon Wireless does not actively market retail Lifeline service (and provides it in limited parts of only

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71,825 subscribers and PR Wireless serves 62,026 subscribers, but after that the remaining facilities-based wireless carriers serve only a few thousand, a few hundred or even double or single digit numbers of Lifeline subscribers.

[25] Importantly, Sprint has noted its strong support for resellers in the record. *See* Letter from Norina T. Moy, Director, Government Relations, Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 17-287 et al., 1 (Nov. 9, 2017) ("Sprint stated its belief that non-facilities-based service providers do have a role to play in the Lifeline program, and expressed concern over the disruption that would occur for all program participants if nonfacilities based carriers are no longer eligible to receive Lifeline support.") (Sprint Nov. 9, 2017 Ex Parte).

[26] *See* Sascha Segan, "Fastest Mobile Networks 2017," PC Magazine (June 19, 2017) *available at* https://www.pcmag.com/article/354110/fastest-mobile-networks-2017/3 (last visited Jan. 18, 2018) ("Verizon has been building [Gigabit LTE] speed on top of the nation's most reliable network, with the broadest existing LTE coverage. This doesn't make a huge difference in highly populated cities any longer, especially where T-Mobile has installed building-penetrating 700 MHz LTE. But out in Wyoming, it's clear that Verizon still has a rural advantage.").

four states), if the Commission eliminates resellers, those customers in rural Verizon Wireless service territories may not be able to receive comparable, if any, service from Assurance Wireless (reselling the Sprint network). Further, in the ten states and U.S. territories where Assurance Wireless does not provide Lifeline service—Hawaii, Montana, Nebraska, North Dakota, Oklahoma, Puerto Rico, South Dakota, the U.S. Virgin Islands, Vermont and Wyoming—Lifeline-eligible subscribers likely will have no affordable wireless Lifeline option. Outside of Puerto Rico and Navajo lands served by PR Wireless and Smith Bagley, respectively, there do not appear to be efforts made by smaller facilities-based wireless service providers to fill the gaps and as such a significant number of consumers will be left with few, if any options for Lifeline service.

Third, to be sure, in some states consumers may have an option of Lifeline-supported wireline service. However, the availability of a wireline Lifeline provider is no substitute for wireless service, which has "taken on particular importance to low-income consumers, who are more likely to reside in wireless-only households than consumers at higher income levels."[27] The nationwide trend is toward more wireless services and that trend is more prevalent in low-income households. In fact, the percentage of low-income Americans who have chosen to subscribe solely to wireless service (i.e., they are "smartphone-only") nearly doubled between

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[27] *See* 2012 Lifeline Reform Order ¶ 21. Indeed, low-income and minority communities are four times as likely to use their mobile phone as their only connection to essential government services. The Republican-controlled Congress and the President himself have recognized the continuing value of mobile service for low-income consumers. The House unanimously passed a bill on November 15, 2017—which the president signed into law on January 11, 2018—mandating that government websites be mobile friendly. Press Release, "Pallone's Connected Government Act Signed Into Law" (Jan. 11, 2018), *available at* https://pallone.house.gov/press-release/pallone%E2%80%99s-connected-government-act-signed-law.

2013 and 2016.[28] A phone bolted to the kitchen wall is no substitute for the mobility that wireless technology enables consumers to enjoy today.

Further, in some cases, consumers may have no wireline choice at all. As Commissioner Clyburn noted in her dissent to this item, we are living in a time when ETCs—such as AT&T and Frontier—are actively relinquishing their designations[29] and over 80 carriers have filed to opt-out of offering wireline Lifeline service in areas where they do not receive high cost funding.[30] As of today the largest wireline providers in the country, AT&T, CenturyLink, Charter, Comcast, FairPoint, Frontier, and Verizon, and Windstream have either decided not to participate in Lifeline or have decided to participate only on a limited basis by seeking forbearance or opting out.[31]

Where Lifeline-supported wireline service is nominally available, it is often provided by a monopoly fixed services provider and it typically comes at a price point and with other terms and conditions that render it effectively unavailable and/or unaffordable for those of very limited

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[28] *See* Pew Research Center, "Digital divide persists even as lower-income Americans make gains in tech adoption" (Mar. 22, 2017), *available at* http://www.pewresearch.org/fact-tank/2017/03/22/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/ (last visited Jan. 22, 2018).

[29] To date, at least thirteen state commissions have approved AT&T's relinquishment: Alabama, Florida, Georgia, Indiana, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Wisconsin. AT&T has petitions pending in Kansas, Kentucky and Ohio.

[30] *See* Fourth Report and Order, Dissenting Statement of Commissioner Mignon L. Clyburn, 3; *see also* Aaron Pressman, "Why Telecom Carriers Are Resisting a Program for Low-Income Internet Subsidies," Fortune (Dec. 1, 2016), *available at* http://fortune.com/2016/12/01/fcc-att-verizon-lifeline-broadband/ (last visited Jan. 22, 2018). For example, on November 23, 2016, AT&T filed a notice of forbearance with the Commission identifying the entities and census blocks where it would not provide Lifeline broadband discounted service and the Connect America Fund (CAF) II funded census blocks where is would continue to provide service. *See* Letter from Anisa Latif, Director, Federal Regulatory, AT&T to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42 (Nov. 23, 2016).

[31] *See* Engebretson Lifeline Article.

means such as the typical Lifeline-eligible household. In rural areas where certain ETCs receive CAF funding to deploy networks, the rules prevent overbuilding,[32] ensuring that consumers will only have access to one fixed services provider. Further, in December 2016, approximately 80 wireline ETCs filed requests for forbearance from the obligation to provide Lifeline broadband in areas other than where they receive high cost funding, such that the only place where they will offer Lifeline-supported broadband is in areas where they have a monopoly (since overbuilding is prohibited).[33] If it required CAF funding to get the incumbents to deploy wireline broadband facilities in those areas, the business case likely does not exist for a second unsubsidized network deployment to compete with them.

Moreover, wireline broadband in rural areas is often unaffordable. For example, in rate of return areas, "smaller rural carriers have been reluctant to offer Lifeline broadband because the rate they would have to charge for the service would be in the range of $100, which the $9.25 discount wouldn't go far to cover."[34] The Pennsylvania Utility Law Project notes that "Windstream, a Pennsylvania facilities-based ILEC, offers Lifeline broadband service at a rate of $67.99/month – or $58.74/month after the $9.25 Lifeline discount – not including security deposits or other installation and equipment costs."[35] The unaffordability of these wireline plans

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[32] *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 170 (2011) (USF/ICC Transformation Order).

[33] *See, e.g.*, Forbearance Petitions from AT&T Services, Inc., STRATA Networks, Central Louisiana Cellular, LLC, Shentel Communications, Tele Circuit Network Corporation, FairPoint Communications, Inc., Birch Communications of Kentucky, LLC, and CenturyLink.

[34] *See* Joan Engebretson, "Lifeline Broadband Problems: Big Carriers Opt Out, Rural Carriers Struggle with Pricing," Telecompetitor (Dec. 19, 2016), *available at* http://www.telecompetitor.com/lifeline-broadband-problems-big-carriers-opt-out-rural-carriers-struggle-with-pricing/ (last visited Jan. 22, 2018).

[35] Pennsylvania Joint Comments at 2 (citing to Windstream, Lifeline Assistance Program, https://www.windstream.com/about/windstream-information/lifeline-assistance-program).

for low-income consumers stands in stark contrast to the free or near-free plans that Lifeline resellers have historically offered to very low-income consumers across their service footprints, including in rural areas. As a result, the overall effect of removing Lifeline resellers from the market would be to force Lifeline subscribers into a choice between plans they don't want at prices they can't afford or no consistent service which is a very real element of the digital divide facing low-income Americans.[36] Of course, this is a false choice which flies in the face of the Commission's statutory duty under section 254 and the longstanding goals of the Lifeline program to make available affordable essential communications services which today includes both voice and broadband service.

On February 14, 2018, the National Association of Regulatory Utility Commissioners (NARUC) adopted a Resolution to Ensure that the Federal Lifeline Program Continues to Provide Service to Low-Income Households urging "the FCC to continue to allow non-facilities based carriers to receive Lifeline funds because they have been crucial in ensuring that low-income households are connected to vital telecommunications services."[37] In addition, several state commissions have raised important examples regarding how the Commission's proposal would impact low-income subscribers in their states. The Missouri Public Service Commission (PSC) states, "Lifeline program participation by facility-based carriers in Missouri is limited."[38]

[36] *See* Aaron Smith, *U.S. Smartphone Use in 2015*, Pew Research Center (Apr. 1, 2015), *available at* http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/ (Pew 2015 Smartphone Research) ("Nearly half (48%) of smartphone-dependent Americans have had to cancel or shut off their cell phone service for a period of time because the cost of maintaining that service was a financial hardship.").

[37] NARUC "Resolution to Ensure that the Federal Lifeline Program Continues to Provide Service to Low-Income Households" (adopted Feb. 14, 2018), *available at* https://www.naruc.org/resolutions-index/2018-winter-policy-summit-resolutions/ (NARUC 2018 Lifeline Resolution).

[38] Comments of the Missouri Public Service Commission, WC Docket No. 17-287 et al, 3 (filed Jan. 23, 2018) (Missouri PSC Comments).

Further, "in the last five years, Missouri had seven companies relinquish ETC status," including AT&T and T-Mobile, and the "ETCs remaining in AT&T's area are primarily wireless resellers offering Lifeline service with no monthly fee."[39] The Missouri PSC's prediction for the implications if the Commission follows through on its proposal to eliminate resellers is simple – "Large portions of Missouri may not have Lifeline service…large geographic areas in Missouri, including large metropolitan areas (St. Louis, Kansas City, Springfield), will have limited, **if any**, Lifeline service" and "consumers will be frustrated and confused."[40]

The Indiana Utility Regulatory Commission (URC) also urges the Commission to "use caution" in its proposal.[41] Indiana has 41 ILEC ETCs, four CLEC ETCs that "wish to receive high-cost support" and 10 wireless Lifeline providers, only one of which is classified as facilities-based.[42] In the last two and a half years, the Indiana URC approved relinquishments of Lifeline ETC designations for two facilities-based wireless carriers and recently approved the relinquishment by an ILEC ETC for portions of its service area.[43] In that case "in each wire center of the relinquishment area, the only ETCs remaining to offer service were Lifeline-only wireless ETCs, most of which are non-facilities-based ETCs."[44] Further, "one of Indiana's dominant ILECs recently relinquished its ETC designation in portions of its service

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[39] *Id*. at 3-4.

[40] *Id*. at 6.

[41] Comments of the Indiana Utility Regulatory Commission, WC Docket No. et al, 2 (filed Jan. 24, 2018) (Indiana URC Comments).

[42] *See id*. at 2-3.

[43] *See id*. at 3

[44] *Id*.

territory…leaving only ETCs that have received forbearance from 214(e)(1)(A) to provide Lifeline service in some areas of the state."[45]

The Minnesota Public Utilities Commission (PUC) and Department of Commerce (Minnesota Agencies) state bluntly that they "are concerned that the Commission proposal may jeopardize the ability of many customers to receive Lifeline service."[46] And for good reason. Only three of the 19 wireless ETCs in Minnesota "appear to qualify under the proposed enhanced definition of 'facilities based,'" and the Minnesota Agencies are concerned that "many Lifeline subscribers would not have a viable alternative" especially since for "many poor, some of whom have no permanent address, a wireless telephone is the only option to meet their communication needs and be able to manage in society."[47]

In sum, if the Commission were to eliminate wireless resellers, it would force more than 7.1 million Americans, including up to 1.3 million veterans[48] and a large percentage of rural subscribers, from their preferred providers, create a wireless Lifeline monopoly in most states and wireless Lifeline deserts in others, and leave consumers with either no affordable service options or service options that are less affordable than the panoply of low or no-cost options that wireless resellers offer today. The Commission's proposal to eliminate Lifeline resellers would result in less competition, less consumer choice, and less affordability for consumers and it must be rejected.

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[45] *Id*. at 3-4.

[46] Joint Comments of the Minnesota Public Utilities Commission and the Minnesota Department of Commerce, WC Docket No. 17-287 et al, 5 (filed Jan. 24, 2018) (Minnesota Agencies Comments).

[47] *Id*.

[48] *See* Rob Coons, "Veterans and military families need internet to connect to our economy," The Hill (Nov. 28, 2017), *available at* http://thehill.com/opinion/technology/361888-veterans-and-military-families-need-internet-to-connect-to-our-economy.

3. Resellers Contribute to Facilities-Based Providers' Deployment Incentives

Not only would the Commission's proposal to eliminate Lifeline resellers undermine the core goals of the Lifeline program, it also would undermine the Commission's stated goal of promoting infrastructure deployment.[49] In the NPRM, the Commission suggests that eliminating resellers would "do more than the current reimbursement structure to encourage access to quality, affordable broadband service for low-income Americans."[50] The Commission reasons that "Lifeline support can serve to increase the ability to pay for service of low-income households," "thereby improv[ing] the business case for deploying facilities to serve low-income households," and "making deployment of the networks more economically viable."[51] It also suggests that having multiple facilities-based providers in the market can help lower prices for service.[52] The Commission could achieve its goals more effectively by retaining resellers in the program rather than barring them.

Lifeline resellers play an important role in the wireless ecosystem, particularly for their underlying providers. As GSMA found in a recent report discussing "the role [resellers] play in driving operator growth," wireless resellers are "an attractive strategy" for their underlying facilities-based carriers because they help facilities-based carriers to "to gain more customers

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[49] *See* NPRM ¶¶ 63, 65. NaLA agrees with NASUCA's recent statement that the Commission should "take steps to encourage public and private investment in future development of broadband-capable networks as a public policy goal for the benefit of all consumers, but without compromising the needs and interest of Lifeline eligible low income households for affordable services over today's communications networks." NASUCA Resolution at 5.

[50] *See* NPRM ¶ 65.

[51] *See id.*

[52] *See id.* (citing a report finding that the presence of 1 Gbps wireline service can help to lower prices, which is irrelevant for wireless services and rarely the case for consumers in areas served by the Lifeline program).

through different brands, increase their market share in mature markets, expand into niche segments, and also generate additional revenue from leasing out their networks."[53] By offering services that are tailored to the unique needs and budget of the low-income community, Lifeline resellers help underlying providers add line count and revenues through a niche market segment that the underlying carriers themselves cannot effectively reach or do not want to serve. The lines and revenues, including from resellers, help recover costs of deployment and justify the next deployment or network upgrade whether in low-income communities in urban or rural America. For this reason and others, CTIA and Sprint strongly oppose the elimination of resellers from the Lifeline program.[54] And yet, the Commission appears to ignore the important role of resellers in network deployment decisions in the NPRM.

Eliminating resellers very likely would reduce rural infrastructure deployment. Wireless Lifeline resellers purchase wholesale minutes, text, and data from their underlying providers, including the largest four wireless providers. These wholesale costs often comprise the largest part of these wireless resellers' expenses, and make up a nontrivial part of the underlying carriers' revenues. Further, underlying providers may include the line count and revenues from resellers in their financial statements and reports to investors. If the Commission were to

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[53] *See* GSMA Intelligence Report (2014), *see* https://www.gsmaintelligence.com/research/2015/02/the-global-mvno-footprint-a-changing-environment/490/ (last visited Jan. 22, 2018).

[54] *See* Letter from Meredith Attwell Baker, President & CEO, CTIA, to Chairman Ajit Pai, Commissioner Mignon Clyburn, Commissioner Michael O'Rielly, Commissioner Brendan Carr, and Commissioner Jessica Rosenworcel, WC Docket Nos. 17-287 et al., 3-4 (Nov. 8, 2017) ("CTIA does not believe the Commission should eliminate the ability of Lifeline subscribers, including the approximately eight million low-income consumers who rely on non-facilities based mobile wireless service to access critical occupational, educational, health and public safety resources, to choose wireless Lifeline offerings."); Sprint Nov. 9, 2017 Ex Parte at 1 ("Sprint stated its belief that non-facilities-based service providers do have a role to play in the Lifeline program, and expressed concern over the disruption that would occur for all program participants if nonfacilities based carriers are no longer eligible to receive Lifeline support.").

eliminate resellers from the Lifeline program, it would remove an aggregate 7.1 million lines and millions of dollars of associated revenue each month from underlying providers. With lower wholesale line count and revenues, facilities-based providers will have less revenue and incentive to invest in broadband deployment in general. Even if some of those subscribers did switch to facilities-based carriers, there is no guarantee that revenues from such subscribers would be reinvested in facilities deployment in the areas where those subscribers reside, and there is no Commission rule that would require it (nor should there be).[55]

Because the Commission's proposal would undermine both the core goals of the Lifeline program and the NPRM's stated goals of promoting infrastructure deployment, the Commission must abandon it and permit resellers to continue participating in the program.

B. There Are More Targeted, Efficient and Less Draconian Means to Combat Waste, Fraud and Abuse than Eliminating Wireless Resellers, Which Serve 70 Percent of Lifeline Subscribers

The NPRM justifies the proposal to remove wireless resellers on the misguided premise that the "vast majority of Commission actions revealing waste, fraud and abuse in the Lifeline program over the past five years have been against resellers, not facilities-based providers."[56] NaLA respectfully submits that a closer review of the facts demonstrates that final actions against wireless and wireline facilities-based and reseller ETCs have been roughly proportional to their market share and do not warrant a prohibition of resellers from the program. Further, the 2017 GAO Report raises some important issues for the Commission to review in detail and potentially address with USAC or ETCs generally, but raises no specific concerns regarding wireless resellers. A far better measure of existing waste, fraud and abuse is USAC audit results

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[55] *See* Pennsylvania Joint Comments at 2 ("there is no guarantee that Lifeline subsidies directed to facilities based providers would be reinvested into rural broadband deployment").

[56] *See* NPRM ¶ 68.

and a recent NaLA survey shows less than one tenth of one percent (0.087 percent) of audited payments recovered in 276 audits since 2013. To address any remaining waste, fraud and abuse in the Lifeline program in a targeted and efficient manner, the Commission should give the National Verifier—which was widely supported in the 2016 Lifeline Modernization Order—a chance to work as intended. In the interim and to the extent reasonably necessary, the Commission should transition to fair and reasonable risk-based audits and adopt a "three strikes" or similar conduct-based policy to suspend or disbar ETCs.

1. The Facts Do Not Support Eliminating Wireless Resellers as a Means of Addressing Any Remaining Waste, Fraud and Abuse in the Lifeline Program

The Commission's proposed justification for removing wireless resellers from the program – disproportionate responsibility for waste, fraud and abuse—is not supported by the facts. The Commission's focus on "Commission actions" against ETCs warps the data about enforcement in the Lifeline program to reach its preferred result.[57] A closer comparison of final actions (i.e., actions resulting in a consent decree or forfeiture order) reveals that using "Commission actions" is the wrong metric. Specifically, a review of *completed* enforcement actions—not mere accusations—shows that monetary sanctions and settlement payments have been roughly proportional to the relative Lifeline subscriber base of wireless resellers and facilities-based providers, and that there is no justification to single out wireless resellers and ban them from the program.

In 2015, the Commission reached consent decrees with AT&T and SNET—two facilities-based providers—in the amount of $10.9 million for overbilling the Lifeline program.[58]

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[57] *See id*.

[58] *See* FCC Press Release, "AT&T and SNET to Pay $10.9 Million for Overbilling Federal Lifeline Program" (Apr. 29, 2015).

Resellers, on the other hand, agreed to make payments of $35.5 million total in recent years. This includes approximately $30 million for Total Call Mobile,[59] $2 million for Blue Jay Wireless (with no admission of liability),[60] and $1 million for TerraCom and YourTel,[61] as well as $2.5 million in settlement payments for five ETCs who had been accused of collecting duplicate payments but never admitted to wrongdoing[62] as part of the In-Depth Validation enforcement process that the 2017 GAO Report called "inconsistent" (which is another word for arbitrary).[63] Of the total $46.4 million in completed enforcement actions, approximately 25 percent of the total was for facilities-based providers, nearly matching the 30 percent of the Lifeline market that facilities-based providers hold.[64]

The other recent alleged indicator of remaining waste, fraud and abuse in the Lifeline

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[59] *See* Total Call Mobile, Inc., File No.: EB-IHD-14-00017650, Order, DA 16-1399 (rel. Dec. 22, 2016).

[60] *See* Blue Jay Wireless, LLC, File No.: EB-IHD-14-00017212, Order, DA 16-790, ¶ 4 (rel. July 15, 2016).

[61] *See* YourTel America, Inc., File No.: EB-11-IH-1589, Consent Decree, DC 13-286, ¶ 20 (rel. Feb. 26, 2016); TerraCom, Inc., File No.: EB-12-IH-1351, Consent Decree, DC 13-285, ¶ 20 (rel. Feb. 26, 2016).

[62] *See* Cintex Wireless, LLC, EB-IHD-13-00010671, Order, FCC 17-173, ¶ 1 (rel. Dec. 29, 2017); Easy Telephone Services Company d/b/a Easy Wireless, EB-IHD-13-00010590, Order, FCC 17-174, ¶ 1 (rel. Dec. 29, 2017); Global Connection Inc. of America, EB-IHD-13-00010970, Order, FCC 17-175 ¶ 1 (rel. Dec. 29, 2017); i-wireless, LLC, EB-IHD-13-00010656, Order, FCC 17-176 ¶ 1 (rel. Dec. 29, 2017); Telrite Corporation d/b/a Life Wireless, EB-IHD-13-00010674, Order, FCC 17-177 ¶ 1 (rel. Dec. 29, 2017).

[63] *See* Government Accountability Office, Additional Action Needed to Address Significant Risks in FCC's Lifeline Program, GAO Report to Congressional Requesters, 60 (May 2017) (2017 GAO Report).

[64] *See* Letter from Mitchell F. Brecher, Counsel to TracFone Wireless, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 17, 287, 11-42, 09-197 1 (Dec. 19, 2017) ("[T]he Commission should examine the results of the In-Depth Validations conducted by the Universal Service Administrative Company in the 2011-2012 time period to ascertain the performance of all Lifeline providers, not just wireless resellers, during that period.").

program is the 2017 GAO Report.[65] That report's evaluation of the Lifeline program was based on 2014 data[66] and did not account for the most recent program reforms, including ETC-requested retention of proof of eligibility, and planned reforms like the National Verifier. Moreover, in its report, the GAO found that it could not verify the eligibility of some reviewed subscribers, but also that it was "not possible to determine from data matching alone whether these matches definitively identify recipients who were not eligible for Lifeline benefits without reviewing the facts and circumstances of each case."[67] GAO may have tried to verify Lifeline eligibility with one program and the subscriber qualified with another. Further, GAO appeared to be using databases, such as state SNAP databases, to which Lifeline providers do not have access.[68] Moreover, many of the alleged issues identified in the 2017 GAO Report should be addressed by USAC, not ETCs. The small number of potential duplicates found[69] should be addressed by the National Lifeline Accountability Database (NLAD), which has made regular changes and upgrades to its duplicate-checking algorithms, resulting in subscriber de-enrollments.[70] In fact, USAC has reported that 98 percent of these duplicates were resolved in

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[65] *See generally* 2017 GAO Report.

[66] *See id*. at 35.

[67] *Id*. at 37-38.

[68] Such databases are available in 25 states and territories, covering 62 percent of the U.S. population.

[69] *See* 2017 GAO Report at 43.

[70] The report also notes that USAC revised its duplicate-checking algorithm in March 2015 and identified an additional 374,000 duplicate subscribers. *See id*. at 44. Under the penalty structure arbitrarily applied to some (but not all) Lifeline providers in the Duplicate Notices of Apparent Liability (NALs), USAC would have been subject to an NAL with a proposed fine of more than $1.87 billion.

NLAD by 2015 and the reminder by early 2017.[71] If GAO had been reviewing current data, there would have been no issue. Likewise, the small number of allegedly deceased subscribers should be addressed by USAC which has been responsible for identity verification of potential Lifeline subscribers since the implementation of the NLAD in 2014.[72] NaLA understands that USAC incorporated the Social Security Administration's Master Death Index into the verification process for Lifeline-eligible households as of November 2017.[73] The 2017 GAO Report raises some important issues for the Commission to review and potentially address, but in no way justifies eliminating all wireless resellers and 7.1 million Lifeline subscribers from the program.

Actual USAC audit results are a far better measure of the existence of material waste, fraud and abuse in the Lifeline program resulting from operations of wireless resellers because USAC reviews the actual documentation collected from subscribers to do what the GAO could not do – make actual determinations regarding whether subscribers were eligible for Lifeline service. In a recent survey, NaLA reviewed 276 audits of ETCs since January 1, 2013. These audits concerned disbursements totaling $73,752,953 across 29 states. At the conclusion of the audits, no repayment to the fund was required in 200 of the 267 audits. In those audits that did require a repayment to the fund, a total of $63,508 in alleged improper payments – or less than one tenth of one percent (0.087 percent) of the disbursements reviewed – was recovered. These audit results reviewed by NaLA reflect nothing short of a stellar commitment to and high level of compliance by wireless resellers.

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[71] *See* Universal Service Administrative Company High Cost and Low Income Committee Briefing Book, 163 (Jan. 29, 2018) (USAC Briefing Book), *available at* http://www.usac.org/about/about/leadership/materials/.

[72] *See* 2017 GAO Report at 43.

[73] *See* USAC Briefing Book at 163.

The existence of, and measures taken to address, any remaining waste, fraud, and abuse in the Lifeline program have nothing to do with whether or not providers have facilities. Eliminating wireless resellers is a drastic and arbitrary solution, especially when there are more targeted and efficient means to combat any remaining waste, fraud, and abuse. The best options are to expeditiously implement the National Verifier and to impose reasonable risk-based auditing and conduct-based consequences for ETCs.

2. The Commission Should Allow the National Verifier to Work As Intended

Rather than eliminate wireless resellers from the Lifeline program, the Commission should complete the implementation of the National Verifier and allow it to work as intended. In the 2016 Lifeline Modernization Order and in 2017 congressional oversight hearings, nearly everyone agreed that the National Lifeline Eligibility Verifier was the best way to reduce waste, fraud, and abuse, by "tak[ing] the eligibility determination away" from the ETCs and putting it in the hands of a neutral third party, even if some had misgivings about certain aspects.[74]

However, like the NLAD before it and the initial eligibility database,[75] the Commission has now twice delayed the National Verifier. The 2016 Lifeline Modernization Order "set as an

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[74] *See* 2016 Lifeline Modernization Order ¶ 127 ("Our proposal was overwhelmingly supported by the majority of commenters" which included AT&T, many other ETCs and states). Then Commissioner Pai's biggest concern appeared to be the length of time it would take to implement. NaLA agrees that its implementation should be expedited to the extent possible. In a subsequent Senate hearing following the 2017 GAO Report, there was widespread consensus that the National Verifier was the right solution to address any remaining waste, fraud, and abuse issues like those alleged in the report. *See* "FCC's Lifeline Program: A Case Study of Government Waste and Mismanagement," U.S. Senate Committee on Homeland Security & Governmental Affairs (Sept. 14, 2017); "Addressing the Risk of Waste, Fraud and Abuse in the Federal Communications Commission's Lifeline Program, U.S. Senate Committee on Commerce, Science & Transportation (Sept. 6, 2017).

[75] In the 2012 Lifeline Reform Order, the Commission initially directed the Wireline Competition Bureau and USAC to "take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for,

expectation that USAC [would] deploy the National Verifier in at least five states by December 31, 2017."[76] In the first delay, USAC subsequently scheduled a "soft launch" to start in December 2017, which was designed to allow "service providers to transition their operations to the National Verifier in advance of the hard launch" in March 2018.[77] In the second delay, on December 1, 2017, the Commission directly delayed the "soft launch" until "early 2018" so USAC could address potential information security vulnerabilities.[78] At a 2017 House hearing discussing the 2017 GAO Report, Representative Doris Matsui and Chairman Pai agreed that the development of the National Verifier should be expedited, and Chairman Pai agreed to submit quarterly progress reports on the development of the National Verifier.[79] NaLA agrees and hopes the Commission will expedite the launch of the National Verifier so that it may work as intended. In the meantime, NaLA understands that USAC has recently created a Lifeline Program Integrity Team, which has coincided with increased audit activity. These processes should be given time to work in a reasonable and fair manner to see if there are in fact remaining material waste, fraud and abuse issues to be addressed.

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at a minimum, the three most common programs through which consumers qualify for Lifeline." 2012 Lifeline Reform Order ¶ 97. The eligibility database was never completed.

[76] *See* 2016 Lifeline Modernization Order ¶ 164.

[77] Universal Service Administrative Company, "USAC Announces National Verifier Launch and Key Dates," Lifeline National Verifier Blog (May 17, 2017), *available at* http://www.lifelinenationalverifier.org/2017/05/launch-announcement/.

[78] *See Wireline Competition Bureau Announces Postponement of Initial Launch Date of The National Lifeline Eligibility Verifier*, WC Docket No. 11-42, Public Notice, FCC DA 17-1167 (Dec. 1, 2017).

[79] *See* Preliminary Transcript, "Oversight and Reauthorization of the Federal Communications Commission," U.S. House of Representatives Subcommittee on Communications and Technology, 82 (July 25, 2017); Letter from Rep. Doris Matsui to Chairman Ajit Pai, 1 (Aug. 22, 2017), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-347574A2.pdf.

Many have recognized the Commission's successful efforts to root out waste, fraud and abuse and that the National Verifier is designed to largely address any that remains, but as a result, at least one observer has challenged the costs of the program to serve the more than 10.5 million households currently served.[80] If cost efficiencies are a concern now, then that concern would be exponentially greater if the Commission were eliminate the vast majority of providers from the program and disconnect millions of low-income Americans at the same time that it is spending millions of dollars to design and implement the National Verifier.

3. The Commission Should Transition to Risk-Based Audits and Adopt a "Three-Strikes" or Similar Conduct-Based Standard to Separate Good Stewards from Bad Actors

In the NPRM, the Commission proposes to transition USAC's audit process to one "based on established risk factors and taking into consideration the potential amount of harm to the Fund"[81] and seeks comment on TracFone's proposal for conduct-based requirements[82] and the proper measuring stick and triggers.[83] NaLA supports the transition away from automatic biennial audits for all providers of a certain size and toward a risk-based approach. Such an approach should be applied to all audits to maximize the efficiency of USAC's auditing resources, as well as avoid unnecessary costs for ETCs. As discussed above, a recent NaLA

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[80] *See* Olga Ukhaneva, *Piecemeal Lifeline Reform Efforts Unlikely to Fix Its High Costs*, Technology Policy Institute (Apr. 5, 2017) (noting that "[t]he FCC's [2012] efforts to root out waste and abuse were largely successful" but raising concerns about the cost effectiveness of the program).

[81] NPRM ¶¶ 84-89.

[82] In a November *ex parte* letter, TracFone suggested that the Commission could address any remaining waste, fraud, and abuse through conduct-based requirements. *See* Letter from Mitchell F. Brecher, Counsel for TracFone Wireless Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-287 et al., at 1 and Attach B. (filed Nov. 9, 2017).

[83] NPRM ¶ 73.

ETC member USAC audit survey showed only $63,508 in monetary findings out of $73,752,953 in disbursements reviewed in 267 completed audits since 2013 – an improper payment rate of less than one tenth of one percent. Those same ETCs report spending more than $100,000 each year for mid-sized ETCs to more than $400,000 each year for large ETCs managing and responding to audits. These stellar audit results and high costs demonstrate that, rather than subjecting ETCs to a constant onslaught of seemingly random audits, the Commission should direct USAC to take a less costly and burdensome but more targeted, risk-based approach.

Further, NaLA supports addressing any waste, fraud and abuse with ETC suspension or disbarment for repeated and material failures to meet conduct-based requirements. NaLA suggests a "three-strikes" or similar policy based on final findings of material violations of program rules, not simply alleged improper payments without a final finding of actual wrongdoing by an ETC. However, any risk-based auditing and conduct-based consequences should take into account the following in order to ensure fair application.

First, due process must be provided. A material violation should be considered only after it is final. If an ETC accepts an allegation or finding and fails to contest, seek review of or otherwise lodge its disagreement with it, the determination should be considered final. However, if the ETC disputes the allegation or finding, then the Commission must provide for meaningful due process which requires swift and impartial decision making.[84]

[84] Due process often goes missing from the Commission's oversight of Universal Service Fund matters. In the Lifeline program, petitions for review of audit findings often languish for years with no decision. The process of USAC review of USAC audit findings, followed by Wireline Competition Bureau review of the USAC findings it oversees, followed by Commission review of the bureau-level decisions it oversees is a horrendously flawed and wasteful process that seems designed more to deny due process than to ensure it. Similarly, the process by which Enforcement Bureau and Commission allegations of misconduct are transformed into forfeiture orders or consent decrees, involves the prosecutor also serving the role of judge and jury and too often results in fact-free decision making with results that can reasonably be perceived as coerced. Significant rethinking is required to ensure due process in this context.

Second, a material violation must be viewed in the light of company size and level and history of compliance. The Commission must take into account company size (e.g., based on Lifeline revenues), not a flat number of violations or the amount of allegedly improper reimbursements. Otherwise, larger ETCs would be unfairly disadvantaged. Moreover, a first time violation may not be material, but the same conduct consistently repeated could rise to a level of materiality.

Third, any risk-based audits and conduct-based consequences should be based on objective criteria and should leave no room for selective application or enforcement. Transparency and objectivity is essential to due process. In the 2017 GAO Report on the Lifeline program, the GAO strongly criticized the Commission for engaging in selective enforcement in the Lifeline program with respect to alleged duplicate enrollments.[85] For example, the report found that after identifying 41 Lifeline providers with alleged duplicate subscribers, the Commission arbitrarily attempted to penalize only 12 of the providers.[86] In many cases, the Lifeline providers that the Commission penalized had fewer alleged duplicates than others that were not penalized. One provider that allegedly received approximately $81,000 in overpayments did not receive a proposed forfeiture (while another that received $8,300 in alleged overpayments received a proposed forfeiture of $3.7 million).[87]

Fourth, any risk-based audit findings and conduct-based consequences under a three-strikes or similar policy should exclude situations where the improper payment derives from determinations made by USAC or other Lifeline administrators, or applicant—not ETC—

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[85] *See* 2017 GAO Report at 60-62.

[86] *See id*. at 60.

[87] *See id.* at 61.

misconduct. For example, if an ineligible applicant obtains forged documentation and defrauds the program or falsely certifies a form without the ETC's knowledge or involvement, such conduct should not count against the ETC. This is particularly important because the term "improper payments," as defined by the Improper Payments Elimination and Recovery Act (IPERA), does not distinguish between situations involving ETC conduct and those where the subscriber was as fault.[88] Similarly, if the improper payment derives from an after-the-fact change by USAC—e.g., when it revised its duplicate-checking algorithm in March 2015 and identified an additional 374,000 duplicate subscribers—the ETC should not be held responsible under the conduct-based standard.

Finally, ETCs should be given an opportunity to promptly correct any errors before the Commission or USAC counts a strike against it. For example, ETCs are constantly checking subscriber lists, updating information and often revising submissions for reimbursement. Occasionally, issues can be found in an audit when an ETC was already in the process of addressing the issue and submitting any necessary revisions. ETCs should be able to continue to make such corrections and standard revisions without risk of suspension or disbarment pursuant to the conduct-based consequences.

In sum, the Commission's view of wireless resellers confuses wild allegations and no-fault settlements for violations of the program, ignoring the overall compliance of Lifeline wireless resellers and the fact that wireless resellers are no more likely to run afoul of the Commission's rules than facilities-based ETCs. Further, the 2017 GAO Report raises some important issues for the Commission to review and potentially address with USAC or ETCs generally, but raises no specific concerns regarding wireless resellers. For these reasons, rather

[88] *See* 31 U.S.C. § 3321 note.

than take the drastic, arbitrary and unnecessary step of eliminating resellers from the Lifeline program, the Commission should implement more targeted and efficient means to address any remaining waste, fraud and abuse in the Lifeline program. This includes allowing the National Verifier to work as intended and transitioning to risk-based audits and conduct-based consequences for ETCs, subject to reasonable controls.

C. The Commission Has No Grounds to Overturn a Decade of Precedent Granting Forbearance from the Facilities Requirement

The NPRM seeks comment on how it can reinstate heavy-handed regulations that the last Republican-led Commission—and all subsequent Commissions—found were not only "unnecessary," but *harmful* to competition, innovation, and consumer choice. Specifically, the Commission first incorrectly argues that it does not need to reverse forbearance from section 214(e)(1)(A)'s partial facilities requirement in order to prohibit resellers from receiving Lifeline reimbursements because the forbearance for non-facilities-based ETCs was limited to ETC designation, not reimbursement.[89] Then, the Commission seeks comment on whether it should reverse the facilities forbearance first implemented in 2005, conceding that "not reversing this forbearance relief may create a tension that could be relieved by making the requirements for obtaining a Lifeline-only ETC designation under section 214(e)(1)(A) match the facilities requirement for receiving Lifeline reimbursement."[90]

As explained below, the Commission cannot bar resellers from receiving reimbursements without first reversing facilities forbearance because ETC designation under section 214(e)(1)(A)—and the Commission's grant of forbearance from the facilities requirement—assumes full participation in the program, including offering discounted services and receiving

[89] *See* NPRM ¶ 69.

[90] *See id*. ¶¶ 69-70.

reimbursements. Further, even if the Commission wanted to reverse forbearance, the statutory factors do not warrant it. Finally, the Commission's proposal to invalidate the ETC designations of wireless resellers would trample on state ETC designation decisions, as well state decisions to grant ETC relinquishment based on a competitive Lifeline marketplace which includes wireless resellers.

1. Section 214(e)(1)(A) and the Commission's Forbearance Orders Assume Full Participation in the Program, not Merely ETC Designation

In the NPRM, the Commission states that it "does not expect" that discontinuing Lifeline support for resellers would "impact the forbearance relief from section 214(e)(1)(A)'s facilities requirement," but that not reversing forbearance could "create tension" between the prohibition on reimbursement and the forbearance from the facilities-based requirement for ETC designation.[91] First, The Commission improperly assumes a distinction between ETC designation and Lifeline reimbursement that is not there. ETC designation requires full participation in the program, and a failure to reverse forbearance in effect would nullify the forbearance that the Commission has granted to non-facilities-based ETCs.

The Commission granted forbearance so that ETCs could *participate* in the Lifeline program, which includes both designation and eligibility to receive funds for discounted services.[92] Section 214(e)(1) of the Act states, "A common carrier designated as an eligible

[91] *See id*. ¶ 69.

[92] *See* 2012 Lifeline Reform Order ¶¶ 71 ("Beginning in 2005, the Commission has on a case-by-case basis permitted non-facilities based providers, including prepaid wireless carriers, *to obtain low-income support from the Universal Service Fund*"), 362 ("In 2005, the Commission agreed to conditionally forbear from the own-facilities requirement for the limited purpose of allowing TracFone to participate in the federal Lifeline program *and receive Lifeline-only support*."), 497 (describing the compliance plan requirement as a "continued requirement for non-facilities-based Lifeline-only ETCs to obtain approval of a compliance plan *before receiving Lifeline reimbursements*") (emphasis added).

telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title…."[93] When a provider is designated as an ETC, it undertakes commitments to offer discounted service to eligible subscribers in exchange for reimbursements from USAC, including to "[m]ake available Lifeline service to qualifying low-income consumers" and to "publicize the availability of Lifeline service."[94] "Lifeline service," under the rules, is service "[f]or which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline amount."[95] As a result, if the Commission were to prohibit resellers from receiving reimbursements, they could not offer "Lifeline service" as defined in the rules or publicize the availability of discounted service, and therefore could not meet the commitments of ETC status. Further, because the compliance plan process set forth in the 2012 Lifeline Reform Order requires a reseller to commit to complying with the Lifeline rules,[96] the proposed reseller prohibition would make it impossible for ETCs to submit a compliant compliance plan, rendering the forbearance granted meaningless. Therefore, the Commission cannot reasonably separate ETC designation and Lifeline participation, and cannot eliminate support for wireless resellers without reversing forbearance.

2. The Statutory Factors Do Not Warrant Reversal of Forbearance

While prohibiting resellers requires reversal of the facilities forbearance that the Commission has consistently granted, on a bipartisan basis, for over a decade, the facts don't warrant reversal of forbearance under the statute and relevant precedent. Under section 10 of the

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[93] 47 U.S.C. § 214(e)(1).

[94] *See* 47 C.F.R. § 54.405.

[95] 47 C.F.R. § 54.401

[96] *See* 2012 Lifeline Reform Order ¶ 368.

Communications Act, 47 U.S.C. § 160, the Commission **"shall"** forbear where three factors are met:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.[97]

The Commission first determined that the statutory facilities requirement was an unnecessary requirement pursuant to this three-part test during the Bush Administration, and subsequently extended facilities forbearance to all resellers, provided they went through a compliance plan application process at the Commission.

In the 2005 TracFone Forbearance Order, the Commission found not only that the facilities requirement was unnecessary to achieve the purposes of the Lifeline program, but also that "the facilities requirement impedes greater utilization of Lifeline-supported services provided by a pure wireless reseller."[98] In the Order, the Commission explained that the facilities requirement was unnecessary[99] because the justification in the 1997 USF First Report and Order for prohibiting pure resellers—preventing double recovery from the USF[100]—did not

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[97] *See* 47 U.S.C. § 160

[98] *See* TracFone Forbearance Order ¶ 9.

[99] *See id*. ¶¶ 11-12 (finding there was no "strong connection between the requirement and the regulatory goal.").

[100] At the time of the 1997 USF First Report and Order, while resellers were not eligible to receive universal support directly, they could offer Lifeline services by purchasing services from the incumbent local exchange carrier at wholesale rates reflecting the customer-specific Lifeline support amount. The Commission found that forbearing from the facilities requirement to allow pure resellers to receive universal service support was not in the public interest because it would allow the resellers to recover twice from the fund, once based on the discounted wholesale price

apply to wireless resellers. Instead, the Commission found that allowing TracFone to provide Lifeline service on a resale basis would spur competition, innovation, and consumer choice for low-income Americans.[101] Further, the Commission found that the facilities requirement was unnecessary to protect consumers, and that "forbearance . . . will actually benefit consumers" by increasing consumer choice.[102] Moreover, the Commission found that granting forbearance was in the public interest because the Lifeline program remained under-utilized (at the time, only one-third of eligible households subscribed and that number – for other reasons – holds true today), and that granting forbearance would advance "the goal of expanding eligible participation in the program."[103]

Recognizing that Lifeline is primarily about affordability, Republican Commissioner Kathleen Abernathy issued a statement supporting the TracFone Forbearance Order, stating "it is essential that [the Commission] take all possible steps to ensure that low-income users are not barred from utilizing available support on the basis of the specific technologies they wish to use or the specific business plans pursued by their service providers."[104]

In subsequent orders, the Commission adopted the same underlying rationale to extend facilities forbearance to other ETCs, including i-wireless and Virgin Mobile. The i-wireless Forbearance Order explained the benefit of new wireless resellers as follows:

> The additional choice and service options of another wireless reseller offering a service for low-income consumers represents a significant benefit for consumers and is in the public interest. A new entrant should incent existing wireless reseller

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from USF-supported underlying carriers and again from the fund directly. *See* TracFone Forbearance Order ¶ 5; 1997 USF First Report and Order ¶ 180.

[101] *See* TracFone Forbearance Order ¶ 13.

[102] *See id*. ¶ 15.

[103] *See id*. ¶ 24.

[104] *See id*., Statement of Commissioner Kathleen Q. Abernathy.

> ETCs to offer better service and terms to their customers, which provides additional evidence that forbearance in the context of the Lifeline program outweighs the potential costs.[105]

Then, in the 2012 Lifeline Reform Order, the Commission adopted blanket forbearance from the facilities requirement, reaffirming a string of earlier decisions finding that the "own facilities" requirement is unnecessary to meet the statutory goals of the Lifeline program, to protect consumers, or to protect the public interest. With respect to the first prong of the section 10 analysis, the Commission explained that Lifeline resellers would necessarily face competition from their underlying carriers as well as other facilities-based carriers in the market, finding that "the additional competition that [resellers] provide would do more to ensure just and reasonable rates and terms than a requirement to use their own facilities."[106] With respect to the second prong of the analysis, consumer protection, the Commission found that the "own facilities" requirement was not necessary to protect consumers so long as resellers complied with 911 and E911 requirements.[107] As for the third factor, the public interest, the Commission found that enforcement of the "own facilities" requirement was not in the public interest because forbearance would "enhance competition among retail providers that service low-income consumers" and would "offer eligible consumers an additional choice of providers."[108] Reaffirming the view of the earlier facilities forbearance orders, the Commission also noted "that

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[105] *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Order, DA 11-1763 ¶ 19 (WCB 2011) (i-wireless Forbearance Order).

[106] *See* 2012 Lifeline Reform Order ¶ 371.

[107] *See id*. ¶ 372.

[108] *See id*. ¶ 378.

the Commission's traditional concern with a carrier doubling its recovery by reselling facilities that are already supported by the high cost fund does not apply in the low-income context."[109]

To NaLA's knowledge, the Commission has never fully reversed a blanket forbearance decision, either granted by the Commission or by operation of law, in order to impose more regulations on some or all market participants. This makes sense, as the Commission itself has recognized that "modifying or reversing forbearance once granted . . . should be taken with great care."[110] Even if this Commission wanted to break with bi-partisan consensus and undermine the pro-competitive goals of the 1996 Act to take up the mantle of heavy-handed telecommunications regulation and monopoly markets, the law and facts don't support it. The strong, bipartisan section 10(a) arguments supporting the 2005 TracFone Forbearance Order and subsequent orders extending facilities forbearance to the entire industry remain as true today as they were when they were granted.

With respect to the first factor—whether the regulation is necessary to ensure telecommunications services are just and reasonable and not unjustly or unreasonably discriminatory—a facilities requirement still does not achieve the statutory goal because double

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[109] *See id*. ¶ 377 n. 95.

[110] *See Business Data Services in an Internet Protocol Environment, et al.*, WC Docket No. 16-143 et al., Report and Order, FCC 17-43, ¶ 174 (rel. Apr. 28, 2017). In the one unique instance where the Commission reassessed a forbearance decision—in the context of a deemed-granted forbearance petition from Verizon related to its enterprise broadband services—it only partially reversed forbearance for the narrowly tailored purpose of ensuring a level playing field among market participants. *See id.* ¶¶ 174, 177. NaLA is not aware of a situation in which the Commission has reversed forbearance in order to create an uneven playing field, tipping the market against some providers (e.g., non-facilities-based providers) in favor of others (e.g., facilities-based providers), at the expense of broadband access, consumer choice, competition, innovation, and similar public interests. In fact, the Commission has recognized that doing so would be contrary to the public interest. *See id.* ¶ 177 (finding that "disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.").

USF recovery from resellers does not apply in the Lifeline context. The benefit is customer-specific and can only be claimed once. Moreover, a return to the "own facilities" requirement would decrease and in some cases eliminate competition, thereby making voice and broadband service less available and affordable for low-income Americans. Today, just as in 2012, "the additional competition that [resellers] provide" does more to ensure just and reasonable rates and terms than a facilities requirement.

As for the second factor regarding consumer protection, requiring facilities is not necessary to protect consumers, who have voted overwhelmingly for resellers in the marketplace—choosing resellers seven out of ten times. In fact, reinstating the facilities requirement would harm consumers by reducing competition in the marketplace, eliminating innovative service offerings, and taking away their own preferred provider through regulatory fiat.

The third factor—the public interest—continues to support facilities forbearance. Since the grant of blanket facilities forbearance in 2012, wireless resellers have driven vigorous competition among Lifeline providers, leading to improved and varied service offerings for consumers. And yet, for other reasons including the poorly conceived and hyper-regulatory minimum service standards, the Lifeline program remains under-utilized. Wireless resellers remain best positioned to close the gap, especially with respect to the provision of broadband services. Wireless resellers have developed expertise in serving the low-income market segment, a segment that underlying providers typically are uninterested in serving or cannot effectively serve. By contrast, Lifeline resellers have been tremendously effective leveraging niche marketing, enrollment events within the community itself, online enrollments, and partnerships

with local social service agencies and community institutions to reach low-income consumers.[111] These strategies distinguish wireless resellers from larger facilities-based wireless providers and increase the chance that low-income consumers will adopt voice and broadband service. In addition, wireless resellers provide convenience and mobility that low-income consumers demand and that wireline providers—facilities-based or otherwise—cannot provide.

In summary, the Commission is wrong in proposing that it can brush aside its obligation to reverse forbearance before taking the drastic step of removing resellers from the Lifeline program. The facilities forbearance routinely granted since 2005 for Lifeline-only wireless resellers contemplates full participation in the program, and cannot be separated into designation and reimbursement in order to skirt the Commission's previous longstanding precedent and the will of Congress. The Commission cannot reverse forbearance because the same pro-competitive and pro-consumer rationale that has persuaded the Commission to embrace facilities forbearance for over a decade remains just as true today as it was when the Commission first granted facilities forbearance in 2005. Specifically, facilities are not required to ensure services are just, reasonable, and nondiscriminatory, to protect consumers, or to serve the public interest. The opposite is true. Granting facilities forbearance is a far superior way to promote the goals of the Lifeline program, to promote consumer choice, and to advance the public interest in a vibrant and competitive Lifeline market. For these reasons, under the section 10 statutory analysis, the

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[111] In fact, GSMA has recognized the ability to reach niche markets and gain hard-to-reach customers as important reasons why wireless resellers are "an attractive strategy" for their underlying carriers. *See* GSMA Intelligence Report (2015) (explaining that underlying wireless providers use wireless resellers "to gain more customers through different brands, increase their market share in mature markets, expand into niche segments, and also generate additional revenue from leasing out their networks").

Commission must adhere to Congress' mandate that it "shall" continue to forbear from the facilities requirement.

3. The Proposal to Eliminate Wireless Resellers Tramples on State Decisions to Designate Wireless Reseller ETCs and Grant ETC Relinquishment to Other ETCs Based on a Competitive Lifeline Marketplace

The Commission's proposal to remove wireless resellers from the Lifeline program disrespects the states' statutory role in designating wireless reseller ETCs and the efforts states have expended to do so. Further, removing wireless reseller competitors would jeopardize Lifeline service for low-income subscribers in many states that have granted ETC relinquishment to ETCs based on the existence of wireless reseller competitors.

Section 214(e)(2) of the Act states, "A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier…." The requirements of paragraph (1) are that the carrier

> "(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such services and the charges therefor using media of general distribution."

As discussed in detail in this section, the Commission has over a decade of precedent granting forbearance pursuant to the Act from section 214(e)(1)(A)'s facilities requirement. Based on that precedent, the states have expended significant resources to review ETC petitions, vet applications, conduct public interest analyses, in some cases hold hearings and take testimony and designate wireless resellers as ETCs. In its comments, the Indiana URC affirms that it "takes seriously its responsibility to designate ETCs and fulfill its duties under 214(e) of the Telecommunications Act of 1996" and notes that it has designated 10 wireless Lifeline-only

ETCs, only one of which is classified by the FCC as a facilities-based provider.[112] If the Commission were to reverse course and require that ETCs provide service using their own last mile facilities, the Commission would trample on Indiana's and other state ETC designation decisions and commitments.

Moreover, many states have granted relinquishment petitions filed by major carriers seeking to exit the Lifeline business.[113] Those decisions are often based largely on the existence of other Lifeline service providers to serve the low-income consumers. For example, when AT&T petitioned the Public Utilities Commission of Texas (PUCT) in October 2017 to relinquish its ETC designation, including any obligation to provide Lifeline discounted service in Texas, it argued that it was entitled to relinquishment because there were at least 10 other designated ETCs in each wire center in the relinquishment area "and consumers clearly prefer to receive – and are actually receiving – their Lifeline discount from these other ETCs."[114] In its comments, the Indiana URC described two ETC relinquishments that it granted to ILECs, including a dominant ILEC.[115] In both cases, the relinquishment was granted based on the

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[112] Indiana URC Comments at 2-3.

[113] For example, AT&T has filed to relinquish its ETC designations (except for CAF purposes) in more than a dozen states. To date, at least thirteen state commissions have approved AT&T's relinquishment – Alabama, Florida, Georgia, Indiana, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Wisconsin. AT&T has petitions pending in Kansas, Kentucky and Ohio.

[114] *Petition of AT&T Texas for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation in Specified Areas and Notice of Termination of Eligible Telecommunications Provider Designation*, Docket No. 47687, AT&T Texas' Petition for ETC Relinquishment and ETP Relinquishment at 17 (Oct. 11, 2017). The PUCT granted AT&T's petition on January 12, 2018. *See Petition of AT&T Texas for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation in Specified Areas and Notice of Termination of Eligible Telecommunications Provider Designation*, Docket No. 47687, Notice of Approval (Jan. 12, 2018).

[115] *See* Indiana URC Comments at 3-4.

existence of Lifeline-only wireless ETCs to provide Lifeline service in the area.[116] In the case of the relinquishment by the dominant ILEC, only wireless reseller Lifeline ETCs remain to provide service in some areas of the state.[117] The Missouri PSC noted in its comments that "in the last five years, Missouri had seven companies relinquish ETC status" including T-Mobile, Cricket and AT&T.[118] In Missouri, AT&T exited the Lifeline program as of July 2017.[119] The Missouri PSC stated, "AT&T was found to meet federal criteria for relinquishing ETC in that other ETCs offered Lifeline service in AT&T's Missouri service area. ETCs remaining in AT&T's area are primarily wireless resellers offering Lifeline service with no monthly fee."[120] By eliminating the wireless reseller competitors, the Commission would irresponsibly jeopardize the existence of adequate Lifeline services, and preferred Lifeline service offerings, in the states.

D. The Communications Act Specifically Contemplates Resale as an Option for ETCs

The Commission asks in the NRPM "how to balance Congress's expectation that ETCs would invest universal service support in the areas they serve and its recognition that some amount of resale should be permissible."[121] NaLA submits that no balancing is necessary. First, Lifeline ETCs do invest in the areas in which they serve through resale of their underlying carriers' networks in those areas. The additional line count and revenue that Lifeline resellers provide to their underlying carriers—who often do not serve or actively seek to serve low-income consumers—help to justify infrastructure builds that the facilities-based providers have

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[116] *See id*.

[117] *See id*.

[118] Missouri PSC Comments at 3.

[119] *See id*. at 4.

[120] *Id*.

[121] NPRM ¶ 70.

made, help make the case for the next build, and provide revenues to underlying carriers that can be used to make such builds possible[122] In addition, wireless resellers provide discounted communications services to low-income consumers in the areas that the providers serve, which creates social and economic activity that benefits those communities.

Second, the proposed requirement of last mile facilities does not respect the statutory requirement to permit some resale. The Act offers ETCs two options for providing Lifeline service: (1) using all its own facilities; or (2) using a combination of an ETC's own facilities and resale of another carrier's services.[123] Since 1997, and before the Commission granted individual and then blanket forbearance from the "own facilities requirement," Commission precedent has provided flexibility in the amount of "own facilities" required. In the 1997 USF First Report and Order, the Commission held that "a carrier need not offer universal service wholly over its own facilities in order to be designated as eligible because the statute allows an eligible carrier to offer the supported services through a combination of its own facilities and resale." Further, "the statute **does not dictate that a carrier use a specific level of its 'own facilities' in providing the services designated for universal service support** given that the statute provides only that a carrier may use a 'combination of its own facilities and resale' and does not qualify the term 'own facilities.'"[124]

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[122] *See* 1997 USF First Report and Order ¶ 370. In the context of Lifeline, a requirement to invest in the areas ETCs serve makes no sense, because ETCs are required to pass through the entire benefit to the subscriber. In fact, the Commission recognized this possibility in the 1997 USF First Report and Order, when it expressed hope that "states will take the steps required to ensure that low-income consumers can receive Lifeline service from resellers." *Id*.

[123] *See* 47 U.S.C. § 214(e)(1).

[124] 1997 USF First Report and Order ¶ 169 (emphasis added).

If the Commission requires a carrier to own last mile spectrum to meet the facilities requirement, it essentially would eliminate the combination option, the flexible precedent established by the Commission and relied upon by the states regarding the level of "own facilities" required,[125] and Commission precedent granting forbearance from the facilities requirement altogether, ignoring Congressional direction and repeated Commission findings that facilities are not necessary to accomplish the goal of the Communications Act or the purposes of the Lifeline program. As discussed below in section I.H., rather than prohibit resale altogether, which would contravene the statute, if the Commission were to proceed with its misguided proposal to re-impose a facilities requirement, it must adhere to the statute and precedents by adopting a definition of facilities that is not designed to effectively eliminate today's wireless resellers but rather permits the use of facilities in combination with resale. Otherwise it would be nearly impossible for any major wireless provider other than the big four wireless carriers to meet the facilities standard, and three of those four carriers are not interested in offering retail Lifeline service. If the Commission attempts to proceed down this path, it will not find as it must a reasonable explanation for its about-face from over a decade of precedent and practice.

E. The Commission Should Retain Support for Lifeline Voice Service in Both Rural and Urban Areas

In the context of the proposal to eliminate wireless resellers in the NPRM, the Commission seeks comment on whether to retain the current step-down in voice support in urban areas by 2021, while eliminating the phase-down for voice support in rural areas, where it claims voice services are more expensive.[126] NaLA members remain committed to offering robust mobile broadband to consumers. In fact, wireless resellers are largely the reason that 70 percent

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[125] *See* n. 171, *infra*.

[126] *See* NPRM ¶¶ 74-76.

of Lifeline subscribers currently have mobile broadband bundles.[127] However, as explained in more detail below, voice service remains a valuable "Lifeline" for low-income Americans, there is no difference between the rural and urban rates for the wireless services that most Lifeline subscribers sign up for and the experience of our members demonstrates that voice service continues to be a critical service for low-income consumers in both rural and urban areas, particularly during emergencies and in the wake of natural disasters. Therefore, NaLA respectfully submits that the Commission should not phase down voice support in rural or urban areas.

First, voice service remains a critical service for all Americans, particularly during emergencies. In the 2016 Lifeline Modernization Order, Commissioner O'Rielly criticized the decision to phase out support for voice service, stating:

> I find it remarkable that the Commission claims to be looking out for low-income consumers, but is perfectly content to take away the true Lifeline service that has served so many when emergencies have arisen . . . Here again, the agency takes a paternalistic approach, telling recipients what they need rather than letting consumers decide whether a more affordable option would be sufficient. Some recipients might want a broadband connection to fill out a job application. But others might just want a simple voice service to use in case of an emergency—the original purpose of the program. The Commission calls such basic offerings "second class" service, but I imagine that those who will end up with no service at all might call them a Lifeline.[128]

In the 2012 Lifeline Reform Order, the Commission declined to make the sorts of paternalistic, kitchen-table decisions for low-income Americans that the Commission considers here, finding that:

> [V]oice service remains a prerequisite for full participation in our economy and society. Those consumers without affordable, quality voice services are at a disadvantage in accessing social and economic resources and opportunities.

[127] According to the USAC Lifeline Disbursement Tool, *available at* http://www.usac.org/li/tools/disbursements/default.aspx (last visited Jan. 15, 2018).

[128] 2016 Lifeline Modernization Order, Dissent of Commissioner Michael O'Rielly, 7.

> Voice service allows consumers to connect with public safety and health care resources. As many commenters note, voice service is particularly important for low-income consumers, who often must juggle multiple jobs and interviews for new employment as well as keep in contact with social service agencies. As noted by several members of Congress, "a cell phone can literally be a Lifeline for families and provide low-income families, in particular, the means to empower themselves." If quality voice service is not affordable, low-income consumers may subscribe to voice service at the expense of other critical necessities, such as food and medicine, or may be unable to purchase sufficient voice service to obtain adequate access to critical employment, health care, or educational opportunities. And if low-income consumers initially subscribe to phone service, but intermittently lose access because they cannot consistently pay for the service, many of the benefits for individuals and the positive externalities for the economy and society will be lost.[129]

Wireless voice service is particularly important for low-income Americans. According to a study conducted by the Centers for Disease Control, adults living in poverty (66.3 percent) and near poverty (59 percent) are more likely than those with higher incomes (48.5 percent) to live in households with only wireless services.[130] Indeed, in today's Lifeline program, 90 percent of households have chosen to subscribe to (often free-to-end-user) Lifeline-supported wireless service,[131] which provides flexibility, mobility, and affordability that wireline service cannot provide. Therefore, any policy decision regarding the continuation of Lifeline support for voice service must take into account consumers' overwhelming preference for wireless Lifeline service and the costs associated with wireless service in rural and urban areas.

Second, the Commission's decision to phase down Lifeline-supported voice service in urban areas ignores data on wireless service—which encompasses 90 percent of the program—to

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[129] *See* 2012 Lifeline Reform Order ¶ 17.

[130] *See* Stephen J. Blumberg, Ph.D., and Julian V. Luke, Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2016, 3 (2016), *available at* https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf (last visited Jan. 22, 2018).

[131] According to the USAC Lifeline Disbursement Tool, *available at* http://www.usac.org/li/tools/disbursements/default.aspx (last visited Jan. 15, 2018).

reach a result that the facts do not support. In the NPRM, the Commission justifies its proposal to preserve voice support in rural areas while stepping down support in urban areas solely on the basis of a flawed analysis of differences in rural and urban *wireline* rates.[132] Worse still, the Commission ignores the fact that rates for wireless services—which an overwhelming majority of Lifeline subscribers choose—are generally provided on a nationwide or at least statewide basis and do not distinguish between rural and urban locations. For example, the big four wireless providers offer prepaid plans for wireless service that provide nationwide talk and text and some data for flat monthly rates, with discounts for autopaid and multi-line plans, but no difference for rural and urban subscribers.[133] NaLA members similarly offer statewide and

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[132] *See* NPRM ¶¶ 74-76. Even if it were proper to focus solely on wireline rates in urban and rural areas, which it is not, the Commission's analysis is flawed because it relies on the "rate floor" for urban wireline services ($25.50) rather than the average cost of services, which is over $30 per month, includes the subscriber line charge, and reflects the true cost of services for low-income consumers. *See* 2018 Urban Rate Survey – Rates for Fixed Voice Service Methodology, 6, *available at* https://www.fcc.gov/general/urban-rate-survey-data-resources. Consequently, the average rural rate is not, as the Commission puts it, "almost double" the urban rate, and the true average cost does not justify a phase-out of urban voice support. *See* NPRM ¶ 76. Moreover, the Commission's conclusion that "even without Lifeline support for voice-only service, the monthly cost of such service in urban areas would represent a small percentage of low-income households' after-tax income," *see id*., is flawed because it relies on the household telephone expenses of low-income consumers writ large, without factoring in either (1) the after-tax income percentage for the lowest income Americans (i.e., those well below the 135 percent threshold) or (2) the effect of its proposal to eliminate resellers, who offer free or near-free services to their consumers, on the percentage of household expenses going to voice service. The Commission's failure to take into consideration these factors artificially depresses the true cost of Lifeline voice service to urban low-income Americans to reach an unwarranted policy decision.

[133] *See* AT&T Prepaid Plans, *available at* https://www.att.com/prepaid/plans.html (last visited Jan. 13, 2018) (wireless plans run from $35-$65 per month before discounts); *See* Sprint Forward single line plan, *available at* https://prepaid.sprint.com/#!/plans/singlelineplan/ (last visited Jan. 13, 2018) (wireless plans run from $40-$60 per month); T-Mobile Simply Prepaid, *available at* https://prepaid-phones.t-mobile.com/simply-prepaid?icid=WMD_PD_Q217PREPAI_IOD3NA014FD8818 (last visited Jan. 13, 2018) (wireless plans run from $45 per month); Verizon Prepaid Plans, *available at* https://www.verizonwireless.com/prepaid/ (last visited Jan. 13, 2018) (wireless plans start at $40 per month for the first line).

nationwide pricing that does not differ on the basis of rural or urban areas; rather, NaLA members' Lifeline rates are typically calibrated to the Lifeline discount level in order to ensure the most affordable service possible for Lifeline-eligible low-income Americans.

Third, had the Commission analyzed the cost data that several ETCs submitted into the record, it would see that wholesale wireless voice service costs are not expected to decline significantly in the near term in a manner that would offset the proposed annual increases to the minimum service standards or the decreases in support amounts.[134] As such, the Commission's approach would effectively and discriminatorily raise rates for urban Lifeline subscribers while lowering rates for rural Lifeline subscribers. There is no justification for discriminating against low-income consumers in urban areas, particularly when the facts show that wholesale costs and end-user prices are the same for urban and rural areas.

Fourth, the Commission fails to consider the role of Lifeline voice service for urban low-income Americans, particularly during emergencies. The rationale reflected in Commissioner O'Rielly's Separate Statement on the 2016 Lifeline Modernization Order and the language in the 2012 Lifeline Reform Order for retaining voice service—service as a Lifeline during emergencies—is as true for subscribers in urban areas subscribers as it is for those in rural areas. For example, in the last quarter of 2017, one NaLA member's subscribers made nearly 100,000 minutes of calls to 911, with tens of thousands of subscribers making such calls.[135] Over the last year, six NaLA member ETCs reported that their subscribers made nearly one million calls to

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[134] *See* Written *Ex Parte* Presentation, Declaration of Jeffrey Ansted, American Broadband and Telecommunications Company, WC Docket Nos. 11-42, 09-197, 10-90 (Mar. 22, 2016) and Written *Ex Parte* Presentation, Declaration of Brian Lisle, Telrite Corporation, WC Docket Nos. 11-42, 09-197, 10-90 (Mar. 22, 2016).

[135] This only accounted for one of the ETC's two underlying carriers.

911.[136] Importantly, those figures don't include other emergency calls to family, doctors, and loved ones. In addition, Lifeline-supported wireless service has been critical in the tragic wake of recent hurricanes that struck urban centers such as Houston, and San Juan. In those situations, where American families lose everything, wireless voice service truly is a Lifeline.

Finally, the Commission should not step down full support for standalone-voice until it completes and reviews its State of the Lifeline Marketplace Report. More specifically, the Commission should either push out the step-down in support for voice service until December 31, 2021 (giving the Commission six months to review the Report), or advance the due date of the Report to June 30, 2019, before the planned first stepdown in subsidy amounts.[137] In either case, if the Commission determines that prices or demand for standalone voice services have not decreased sufficiently to warrant decreasing support for voice, support amounts should remain at the current level or the minimum standard should be reduced to reflect the support amount and affordability for low-income consumers.

In sum, while NaLA members remain committed to providing robust broadband service to eligible Lifeline recipients, our experience demonstrates that consumers still view voice service as an important—perhaps the most important—means of connectivity in cases of emergency. For that reason, the Commission is correct to propose reversing the phase down of Lifeline support for voice telephone service in rural America. For all the same reasons, it should also preserve voice support in urban areas. Its proposal to continue phasing down support for voice service in urban areas ignores consumers' overwhelming preference for wireless Lifeline

[136] This data for the last year was compiled between January 10, 2018 and February 15, 2018 through a Wireless Reseller 911 Call Volume NaLA member survey.

[137] *See* Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification, WC Docket Nos. 11-42 et al., 9-11 (filed June 23, 2016) (Joint Petitioners' Petition).

service, which comprise 90 percent of the Lifeline program; erroneously relies on wireline price differences in urban and rural areas without considering the lack of similar differences with respect to wireless services; and fails to consider the continuing important role of Lifeline for urban low-income Americans, particularly in the wake of recent disasters. The Commission should retain voice support for rural and urban Americans and halt the ill-conceived and paternalistic voice service phase down altogether.

F. The Commission Has the Legal Authority to Support Lifeline Broadband, Including Service Provided by Wireless Resellers

In the NPRM, the Commission argues that it "has authority under section 254(e) of the Act to provide Lifeline support to ETCs that provide broadband service over facilities-based broadband-capable networks that support voice service," which "does not depend on the regulatory classification of broadband Internet access service and, thus, ensures the Lifeline program has a role in closing the digital divide regardless of the regulatory classification of broadband service."[138] The NPRM seeks comment on its legal authority and asks about other sources of authority that allow the Commission to make its proposed changes. The Commission has full legal authority to support broadband service—both fixed and mobile, facilities-based and resale—under Title II (section 254) and Title I of the Communications Act, as amended.

As the Commission recognizes,[139] it not only has the authority to support Lifeline broadband, it has a statutory obligation to do so under section 254 of the Act. Section 254(b) states that "the Commission *shall* base policies for the preservation and advancement of universal service on the following principles."[140] One of those principles states, "Consumers in

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[138] *See* NPRM ¶ 77.

[139] *See id*. ¶ 78.

[140] 47 U.S.C. § 254(b) (emphasis added).

all regions of the Nation, including low-income consumers…should have access to telecommunications and information services, including…advanced telecommunications and information services….”[141] As recently as last year, the Commission has referred to this principle as a "statutory mandate of ensuring that all consumers 'have access to…advanced telecommunications and information services.'"[142] In addition, in the USF/ICC Transformation Order, the Commission adopted a new universal service principle pursuant to section 254(b)(7),[143] which is "Support for Advanced Services – Universal service support should be directed where possible to networks that provide advanced services, as well as voice services."[144] Moreover, section 254(c) defines universal service as "an evolving level of telecommunications services" and directs the Commission in section 254(c)(1) to establish supported services "taking into account advances in telecommunications and information technologies and services."[145] Finally, section 254(e) provides that only ETCs may receive specific federal universal service support, and that "[a] carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities *and* services *for which the support is intended*."[146] As discussed in detail below, the Court of Appeals for the Tenth Circuit has held

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[141] *Id*. § 254(b)(3).

[142] *Connect America Fund, et al.*, WC Docket No. 10-90*,* Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. Mar. 30, 2016) (2016 CAF Order).

[143] Section 254(b)(7) allows the Commission to establish "[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this chapter."

[144] *See* USF/ICC Transformation Order ¶ 45.

[145] 47 U.S.C. § 254(c).

[146] *Id*. § 254(e) (emphasis added).

that these provisions provide broad authority to the Commission to determine what a recipient may or must do with the universal service funds.

The Commission correctly notes that its authority is independent of the regulatory classification of broadband Internet access service.[147] In the USF/ICC Transformation Order, the Commission determined that it had clear legal authority in section 254 to use universal service funds to support broadband services provided by ETCs, even though at the time broadband service was classified as a Title I information service and not a Title II telecommunications service.[148] The Commission determined that it had "a 'mandatory duty' to adopt universal service policies that advance the principles outlined in section 254(b)" and "authority to 'create some inducement' to ensure that those principles are achieved."[149] Further, the Commission explained "Congress made clear in section 254 that the deployment of, and access to, information services – including 'advanced' information services – are important components of a robust and successful federal universal service program."[150] Rather than add broadband to the list of supported services pursuant to section 254(c)(1), the Commission found that "Section 254 grants the Commission clear authority to support telecommunications services and to condition the receipt of universal service support on the deployment of broadband networks, both fixed and mobile, to consumers."[151]

The same authority and obligations of section 254 apply to making broadband service affordable through the Lifeline program. The Commission has a mandatory duty to advance the

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[147] *See* NPRM ¶ 77.

[148] *See* USF/ICC Transformation Order ¶ 64.

[149] *Id*. ¶ 65.

[150] *Id*.

[151] *Id*. ¶ 60.

principles outlined in section 254(b), including that low-income consumers have access to advanced telecommunications and information services (broadband). Further, the Commission can create an inducement for ETCs to achieve those principles by conditioning Lifeline support on the provision of broadband service.

When the CAF broadband requirement was challenged, the Court of Appeals for the Tenth Circuit upheld the Commission's interpretation of section 254.[152] The Court recognized the clear principles in section 254(b), but also responded to the criticism that section 254(c) restricts universal service support to telecommunications services only. The court disagreed and found that,

> nothing in the language of subsection (c)(1) serves as an express or implicit limitation on the FCC's authority to determine what a USF recipient may or must do with those funds. More specifically, nothing in subsection (c)(1) expressly or implicitly deprives the FCC of authority to direct that a USF recipient, which necessarily provides some form of 'universal service' and has been deemed by a state commission or the FCC to be an eligible telecommunications carrier under section 47 USC §214(e), use some of its USF funds to provide services or build facilities related to services that fall outside of the FCC's current definition of "universal service." In other words, nothing in the statute limits the FCC's authority to place conditions, such as the broadband requirement, on the use of USF funds.[153]

Moreover, the Court determined that the language in section 254(e) requiring carriers to use universal service support only for the provision, maintenance and upgrading of facilities *and services* "for which the support is intended" is not narrowly limited, but rather "was intended as an implicit grant of authority to the FCC to flesh out precisely what 'facilities' and 'services'

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[152] *See Direct Commc'ns. Cedar Valley, LLC v. FCC* (*In re FCC 11-161*), 753 F.3d 1015, 1046-54 (10th Cir. 2014).

[153] *Id.* at 1046 (emphasis added).

USF funds should be used for."[154] Tying all of the statutory provisions together, the Court found that,

> By interpreting the second sentence of §254(e) as an implicit grant of authority that allows it to decide how USF funds shall be used by recipients, the FCC also acts in a manner consistent with the directive in §254(b) and allows itself to make funding directives that are consistent with the principles outlined in §254(b)(1) through (7).[155]

These same statutory mandates apply to both CAF and Lifeline. The Commission's authority to support Lifeline broadband extends to non-facilities-based broadband. Specifically, the Restoring Internet Freedom Order, section 254, and *In re FCC 11-161* clearly recognize the Commission's authority to support broadband *services* and facilities. While the Commission found in the USF/ICC Transformation Order that it could support broadband facilities, there is ample statutory flexibility to support non-facilities-based Lifeline broadband services and the Commission has a more than decade-old policy of not requiring Lifeline ETCs to provide service using their own facilities.

Pursuant to recent Commission precedent, the agency can continue to support standalone broadband Lifeline service even without voice support. The Commission's current Lifeline rules provide support for either voice or broadband service provided to eligible low-income consumers as long as they meet certain applicable minimum service standards (MSS).[156] Lifeline ETCs can

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[154] *Id*. at 1047.

[155] *Id*. Again, one of those principles is section 254(b)(3), which states "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services…."

[156] *See* 47 C.F.R. §§ 54.403, 54.408. Several parties have petitioned the Commission to reconsider the MSS. *See* Joint Petitioners' Petition at 3-10; Petition for Reconsideration of CTIA, WC Docket No. 11-42, et al., at 2-8 (filed June 23, 2016); TracFone Petition for Reconsideration, WC Docket No. 11-42, et al., at 6-18 (filed June 23, 2016) (TracFone Petition); Petition for Reconsideration/Clarification of NTCA-The Rural Broadband Association and WTA – Advocates for Rural Broadband, WC Docket No. 11-42, et al., at 6-12 (filed June 23, 2016)

provide standalone voice, standalone broadband or a bundle of voice and broadband and receive support, as long as at least one of the services meets the applicable MSS. As discussed above, the Commission can condition ETC's receipt of Lifeline universal service funds on providing broadband service. However, the Lifeline rules do not require consumers to purchase both voice and broadband services. As of December 1, 2021, the rules provide that the Commission will no longer support standalone voice service or bundles that do not include broadband service that meets the applicable MSS.[157] Several parties have petitioned the Commission to reconsider that decision and NaLA supports those petitions as discussed in section III herein.[158] Further, in the NPRM, the Commission has proposed to retain Lifeline support for voice telephony service in rural areas (and should retain it for urban areas as well, as NaLA has argued).[159] Retaining Lifeline support for voice telephony service would retain equal footing for Lifeline and the CAF for purposes of the legal authority to support broadband as a condition of receipt of support for other services.

Still, even if the Commission does retain the phase-out of support for Lifeline voice telephony service (which it should not do), the Commission can continue to provide support for standalone broadband service pursuant to its recent precedent supporting standalone broadband services for rate of return ETCs in the CAF program. In a 2016 order, the Commission modified its CAF rules for rate of return carriers to permit them to receive CAF funds for standalone

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(NTCA & WTA Petition); United States Telecom Association Petition for Reconsideration and Clarification, WC Docket No. 11-42, et al., at 15-16 (filed June 23, 2016).

[157] *See* 47 C.F.R. § 54.403(a)(2)(iv).

[158] *See* Joint Petitioners' Petition at 9-11; NASUCA Petition for Reconsideration, WC Docket No. 11-42, et al., at 3-4 (filed June 23, 2016); NTCA & WTA Petition at 6-10; TracFone Petition at 4-5; *see also* Joint Lifeline ETC Respondents' Opposition to Petitions for Reconsideration, WC Docket No. 11-42, et al., 13-15 (filed July 29, 2016).

[159] *See* NPRM ¶¶ 74-76.

broadband service.[160] The Republican Commissioners, then-Commissioner Pai and Commissioner O'Rielly, supported the change. Concurring with the ruling, then-Commissioner Pai noted the fact that he had supported a stand-alone broadband solution for years, and highlighted the dilemma that rate of return carriers had faced:

> Th[e existing] regulatory system . . . put some carriers to a Hobson's choice. On one hand, they can offer stand-alone broadband—which urban consumers have and rural consumers want—and lose universal service support. On the other, they can deny consumers the option of an Internet-only service, and risk them dropping service altogether (which they increasingly are). The net result is that rural carriers hold back investment because they are unsure if they can deploy the next-generation services that consumers are demanding.[161]

In addition to the express authority in section 254 to support Lifeline broadband, the Commission has Title I ancillary authority to support Lifeline broadband. Section 154(i) of the Act provides that "The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions."[162] The two-part test for the Commission to exercise its ancillary authority is: "(1) the Commission's general jurisdictional grant under Title I covers the subject of the regulations and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities."[163]

Commission support for Lifeline broadband meets both prongs of the test to regulate pursuant to Title I ancillary authority. First, broadband is "interstate and foreign communication

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[160] *See generally* 2016 CAF Order.

[161] *See id.*, Statement of Commissioner Ajit Pai Concurring in Part and Dissenting in Part at 1.

[162] 47 U.S.C. § 154(i).

[163] *American Library Ass'n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005).

by wire or radio,"[164] over which the Commission holds general jurisdiction under Title I. Second, supporting broadband using universal service funds is reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibility in section 254(b)(3) of the Act to ensure that "consumers in all regions of the Nation, including low-income consumers…have access to advanced telecommunications and information services."[165] Therefore, in addition to the authority to support Lifeline broadband found in section 254 of the Act, the Commission has Title I ancillary jurisdiction to continue to support Lifeline broadband.

G. Wireless Resellers Spend Universal Service Funding for the Provision of Service for Which the Support Is Intended Just Like Facilities-Based Providers Do

The Commission seeks comment in the NPRM on whether resellers spend universal service funding "only for the provision, maintenance and upgrading of facilities and service for which the support is intended" and whether Lifeline resellers pass through all Lifeline funding to their underlying carriers rather than spending universal service funds on non-eligible expenses like free phones and equipment.[166] This skewed question of practical statutory interpretation has nothing to do with whether an ETC owns its own facilities.

Wireless resellers, just like facilities-based wireless providers, pass through the Lifeline reimbursements received to Lifeline subscribers in the form of a discount off retail wireless services "for which the support is intended."[167] For many years the service offering minimums

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[164] 47 U.S.C. § 152(a) ("The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio….").

[165] 47 U.S.C. § 254(b).

[166] NPRM ¶ 72 (citing 47 U.S.C. § 254(e)).

[167] *See* 47 C.F.R. § 54.403(b) ("Other eligible telecommunications carriers must apply the federal Lifeline support amount, plus any additional support amount, to reduce the cost of any generally available residential service plan or package offered by such carriers that provides voice telephony service as described in §54.101, and charge Lifeline subscribers the resulting amount.").

were set by Commission forbearance compliance plans and state ETC designations and now minimums are set by the Commission's minimum service standards.[168] Once the discounts are applied, the revenues that ETCs receive are not universal service funds but rather revenues that can be reinvested in the business through the deployment of facilities, the enhancement of service offerings or providing devices or equipment to subscribers so that they can use the Lifeline-supported services.

Moreover, the Commission does not ask whether any facilities-based provider has used universal service funds on non-eligible expenses like free phones and equipment when a facilities-based provider offers free handsets to Lifeline subscribers just like many wireless resellers. Like much of the rest of the NPRM, the Commission has made this issue about whether ETCs own their facilities even though when the question of passing through the discount to subscribers (as required by the Commission's rules) has nothing to do with facilities.

H. If the Commission Does Require Ownership of Facilities to Provide Lifeline Service, the Existing Definition of Facilities Should Be Retained So That Smaller and Innovative Carriers Can Still Participate

In the NPRM, the Commission seeks comment on how it should define "facilities" for purposes of its proposal to limit Lifeline support to broadband service provided over facilities-based broadband networks that also support voice service, for example, using the same definition as it set forth for Tribal services in its Fourth Report and Order.[169] As stated above, the Commission has recognized that having facilities is not necessary to achieve the goals of the Lifeline program,[170] and therefore NaLA submits that it should not limit the Lifeline program to

[168] *See* 47 C.F.R. § 54.408.

[169] *See* NPRM ¶ 67

[170] *See* TracFone Forbearance Order ¶ 14.

facilities-only providers. However, should the Commission require ETCs to provide Lifeline service over their own facilities to receive support, it should not use the same definition as it does for Tribal lands in the Fourth Report and Order, but instead should keep the existing definition of facilities which would enable marketplace solutions and support competitive options for consumers. It should not eliminate participation by small service providers and innovative competitors by imposing a requirement to acquire spectrum at auctions or to overbuild fiber to provide service to low-income subscribers.

The Commission's current definition of facilities, which is not referenced or recognized in the NPRM, is "any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support."[171] The term was defined in the 1997 USF First Report and Order wherein the Commission declined to adopt a more restrictive definition (such as both loop and switching facilities) "based on [the Commission's] concern that such a restrictive definition would erect substantial entry barriers for potential competitors seeking to enter local markets, and therefore, unduly restrict the class of carriers that may be designated as eligible telecommunications carriers."[172] For the same reasons, the Commission should retain this definition of facilities and not require last mile facilities that would erect barriers to small businesses, innovators and competitors.

In the Fourth Report and Order, the Commission ignores its existing definition of facilities and without reason or justification defines wireless facilities to require "usage rights

[171] 47 C.F.R. § 54.201(e). States have routinely granted ETC designations based on this definition. In the 2012 Lifeline Reform Order, the Commission summarized as follows "the Commission has also held that if an ETC leases facilities from another carrier and uses such facilities to provision the USF supported services, the ETC has exclusive rights to those facilities and therefore 'owns' the facilities as required under section 214(e)(1)(A)." 2012 Lifeline Reform Order ¶ 501.

[172] 1997 USF First Report and Order ¶¶ 151, 153.

under a spectrum license or a long-term spectrum leasing arrangement along with wireless network facilities that that [sic] can be used to provide wireless voice and broadband services."[173] The Fourth Report and Order concludes that "[i]f an ETC offers service using its own and as well as others' facilities in its service area on rural Tribal lands, it may only receive enhanced support for the customers it serves using its own last-mile facilities."[174]

If the Commission were to continue to ignore the current definition of facilities and adopt the "last mile" definition of facilities for the entire Lifeline program, it would ensure that essentially only the big four wireless providers would be able to participate broadly in the Lifeline program. First, only those providers have the millions (and usually billions) of dollars to purchase spectrum at auction.[175] Even if smaller ETCs could afford to participate in a spectrum auction for relevant mobile spectrum, Commissioner O'Rielly has indicated that no new auction will occur without Congressional approval, which does not appear to be forthcoming in the near term.[176] Further, smaller ETCs—like NaLA members—could not afford

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[173] *See* Fourth Report and Order ¶ 24.

[174] *See id*. ¶ 26.

[175] *See, e.g.*, Federal Communications Commission, Auction of Advanced Wireless Services (AWS-3) Licenses Closes; Winning Bidders Announced for Auction 97, Public Notice, DA 15-131, *available at* https://www.fcc.gov/document/auction-97-aws-3-winning-bidders (raising a total of $41,329,673,325, with 31 winning bidders winning a total of 1,611 licenses, or an average of $25.6 million per license with each winner spending $1.33 billion).

[176] *See* Statement of FCC Commissioner Michael O'Rielly, Before the Subcommittee on Communications and Technology Committee on Energy and Commerce, U.S. House of Representatives, Hearing on "Oversight of the Federal Communications Commission," 5 (Oct. 25, 2017) ("As Chairman Pai previously testified, the Commission faces difficulty in securing a financial institution to meet the statutory requirements to hold our upfront auction payments. Without a willing partner or a change in law, the Commission believes that it is unable to announce a schedule for future spectrum auctions, much less actually hold an auction. . . . Thankfully, the Subcommittee has included a technical fix within its larger 'FCC Reauthorization Act of 2017.' While this would address the situation, it is possible that this larger legislation may take some additional time before being enacted into law. Accordingly, I respectfully request that the Subcommittee consider splitting off this one fix and moving it as a

spectrum with a broad enough footprint to serve their entire customer bases, ensuring that at least some customers would be kicked off their preferred provider, and one fewer competitor would exist in those markets. Moreover, long-term spectrum leasing does not appear to be a viable option for serving the broad customer bases in dozens of states, which are currently served by resellers. Spectrum leasing is not particularly common for CMRS services[177] and the leases tend not to be geographically broad enough to serve the millions of customers currently served by resellers. Finally, the Commission's proposed definition could have negative consequences for rural and smaller facilities-based providers who rely on roaming agreements to provide their customers with more extensive coverage outside of their own networks. Must these providers limit Lifeline service to service provided over their own networks and spectrum? Such a result would be untenable for exactly the providers and subscribers that the Commission purports to support through its proposals. In sum, the Commission's proposed definition is unworkable and would only exacerbate the digital divide by eliminating competition and standard business practices that have driven broadband adoption among low-income Americans for more than a decade.

Rather than use a restrictive definition that only reasonably enables the four largest wireless providers to offer wireless Lifeline-supported service (three of which have indicated that

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rifle shot through the legislative process. Fortunately, such action could match up nicely with Senate Commerce Chairman Thune's stand-alone bill for this purpose."); Spectrum Auction Deposits Act of 2017, H.R. 4109 (2017).

[177] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34, ¶ 110 (2013) ("Spectrum leasing has been used frequently in a number of the Commission's spectrum bands, such as paging or narrowband PCS, where there are licensees and third parties making business out of leasing spectrum. Spectrum leasing arrangements in the spectrum bands that are the focus of this Report, however, have been employed more sparingly.").

they have no intention of actively marketing retail Lifeline service), if it persists with its misguided proposal to require facilities ownership as a precondition for offering Lifeline service, the Commission should retain its existing definition of facilities which is designed to eliminate rather than to erect barriers to program participation.

Similarly, the Commission should refrain from regulating marketplace decisions and arrangements such as joint ventures.[178] While joint ventures can and should continue to be a means of obtaining facilities-based status (whether exclusively or in combination with resale), the Commission should refrain from regulating marketplace business arrangements. No justification exists for the Commission to wade into the market and micromanage joint venture arrangements with network operators, particularly when they are mutually advantageous for network operators and service providers and yield the benefits of consumer choice and competition for Lifeline subscribers.

II. THE COMMISSION SHOULD NOT IMPOSE A MAXIMUM DISCOUNT (OR MINIMUM CHARGE) REQUIREMENT

In the NPRM, the Commission seeks comment on whether to establish a maximum discount level for Lifeline services "above which the costs of the service must be borne by the qualifying household."[179] This proposal is the latest incarnation of a minimum charge or "skin in the game" requirement, which correctly has been rejected by the Commission in the past. The Commission raises it again to determine whether a maximum discount requirement would reduce waste, fraud and abuse or make subscribers value the service more.[180] The Commission should

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[178] *See* NPRM ¶ 68 ("How should the facilities-based requirement apply in a situation where a reseller and a facilities-based provider form a joint venture to provide Lifeline services?").

[179] *See* NPRM ¶ 112.

[180] *See id*.

not establish a maximum discount level because it would make valued Lifeline services less affordable for consumers, forcing some, perhaps many, of the neediest off service altogether. Other USF programs and social safety net programs that require recipients to pay a portion of the costs of such services have important differences from the Lifeline program. However, if the Commission does decide to impose a maximum discount requirement, service providers should be given flexibility to determine the manner and timing of payments, and the Commission should eliminate the heavy-handed minimum service standards and unnecessary usage requirements.

A. The Commission Should Not Impose a Maximum Discount Requirement Because it Would Make Valued Lifeline Services Less Affordable and There Are Better Alternatives to Combat Any Remaining Waste, Fraud and Abuse

As the Commission previously has determined, a maximum discount level would make Lifeline less affordable and therefore does not serve the purpose of the Lifeline program, which is to make communications services affordable for low-income Americans. As a threshold matter, Lifeline subscribers greatly value their Lifeline services, especially when they are offered at no cost so that the services are the most affordable.[181] Forcing subscribers to pay for service would not make them value the service more, but rather make the services unreachable for many.

A maximum discount level, as described in the NPRM, would operate like a minimum charge, which the Commission rejected in the 2012 Lifeline Reform Order.[182] In that order, the Commission found that a minimum charge "could be burdensome for those low-income consumers who lack the ability to make such payments electronically or in person, potentially undermining the program's goal of serving low-income consumers in need."[183] Further, the Commission determined that a minimum charge "could potentially discourage consumers from

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[181] *See* subscriber testimonials in the attached Exhibit.

[182] *See* 2012 Lifeline Reform Order ¶¶ 266-268.

[183] *See id.* ¶ 266.

enrolling in the program and could result in current Lifeline subscribers leaving the program," and could be "an excessive financial burden" to "the truly neediest of the population in the most dire economic circumstances."[184] Indeed, the Commission found that a the purported goals of a minimum charge to reduce waste, fraud and abuse—like the maximum discount level discussed in the NPRM—would be better addressed by other controls, such as the NLAD. The same remains true today and the appropriate tools to address any remaining waste, fraud and abuse in the Lifeline program are the implementation of the National Verifier and imposing conduct-based requirements tied to service provider suspension or debarment.[185]

The reasons that drove the Commission to avoid imposing a minimum charge in 2012 are as valid today as they were then. First, price remains one of the principal barriers to broadband adoption.[186] Internet adoption continues to be significantly lower for low-income Americans than for those of greater means.[187] Indeed, participants in the Lifeline Broadband Pilot Program explained that the absence of no-cost/zero entry service options had a significantly negative impact on the ability of the program to increase broadband adoption.[188] Second, even among

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[184] *See id.* ¶ 267.

[185] *See* section I.B., *supra*.

[186] *See* Connecting America: The National Broadband Plan at 168; Julie Veach, "Driving Lifeline Updates With Data," FCC: Blog (May 22, 2015), *available at* https://www.fcc.gov/blog/driving-lifeline-updates-data (last visited Jan. 22, 2018) (Driving Lifeline Updates) ("[W]hile price is not the only barrier to broadband adoption, price matters").

[187] *See* Pew Internet/Broadband Fact Sheet. The Pew Internet/Broadband Fact Sheet shows that while 98 percent of adults who earn more than $75,000 per year use the Internet, and 90 percent of those adults earning between $30,000 and $49,00 per year use the Internet, only 79 percent of adults who earn less than $30,000 per year use the Internet.

[188] *See* Letter from Elaine M. Divelbliss, Senior Counsel, Sprint Nextel Corporation, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42, 2 (Mar. 24, 2015) ("A required contribution, either upfront or in the form of a monthly recurring charge, even if it is relatively small, is a significant barrier to participation for Lifeline-eligible households.").

those who have adopted wireless broadband, the cost of the service prevents almost half of low-income broadband customers from maintaining their service once they have it. In a survey of smartphone owners, the Pew Research Center found that 44 percent of smartphone owners with annual income less than $30,000 have had to let their wireless service lapse because they were not able to afford the ongoing cost of service.[189] No-cost Lifeline services allow low-income Americans to maintain a consistent communications method and phone number even when they do not have the disposable income to pay for it.

Lifeline subscribers value their affordable Lifeline broadband and voice services. Imposing a maximum discount requirement would make Lifeline services less affordable and put reliable, consistent communications services out of reach for many.

B. There Are Important Differences Between Lifeline and Other Social Safety Net Programs That Require Recipients to Pay a Portion of the Cost of Service

The Commission notes that its "other universal service support programs all require beneficiaries or support recipients to pay a portion of the costs of the supported service" [190] and many participants in programs like LIHEAP and HUD's Public Housing and Housing Choice Voucher programs require beneficiaries to pay a portion of the costs of those services.[191] There are important differentiators between the Lifeline program and other programs, which make a payment for Lifeline services administratively burdensome and inefficient or unnecessary.

First, the Lifeline program is different than the other universal service programs because the beneficiary is a means tested low-income consumer rather than a service provider or an institution like a school, library or hospital. The CAF program is fundamentally different from

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[189] *See* Pew 2015 Smartphone Research.

[190] *See* NPRM ¶ 112.

[191] *See id*.

the Lifeline program. The CAF program provides funding to service providers to deploy facilities. Consumers pay for services and there is no discount from the CAF because it is not means-tested – the facilities are deployed to the homes of the wealthy as well as the poor, who may need Lifeline discounts to afford the service.

In the E-rate program, as the Commission notes in the NPRM, discounts range from 20 to 90 percent of the costs of eligible goods and services. However, the remaining 10 to 80 percent is paid for by a school, school district or library, which is an at least somewhat sophisticated entity with a budget and the ability to make regular payments. In contrast, low-income Americans are often unbanked or underbanked and frequently lack consistent discretionary income to pay for communications services regularly.

Similarly, recipients of the Rural Health Care (RHC) Program are hospitals and other healthcare providers, which like schools and libraries, are generally sophisticated entities with a budget and the ability to make regular payments. Nearly one-third of the RHC program funding goes to healthcare providers in Alaska, with an average discount rate of 98 percent and many above 99 percent.[192] Generally, recipients received an average discount of 91 percent.[193] A 98 percent discount for Lifeline would require the subscriber to pay $0.18 per month or just over $2.00 per year. A 91 percent discount for Lifeline would require the subscriber to pay $0.84 per month or just over $10.00 per year. Mandating a minimum charge at these levels for Lifeline would impose a logistical, security and administrative burden for consumers, providers, and the program, costing significantly more to manage than the contributions would bring in, which would increase waste in the program.

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[192] *See Promoting Telehealth in Rural America,* WC Docket No. 17-310, Notice of Proposed Rulemaking, FCC 17-164, ¶ 12 (rel. Dec. 18, 2017) (Rural Health Care Program NPRM).

[193] *Id*.

In short, the fact that other USF programs require recipients to pay something for the services received has no bearing on whether such charges make sense for the Lifeline program.

Second, the Lifeline program is different from other social safety net programs identified in the NPRM because the Lifeline service can be easily calibrated to the available reimbursement, but it does not have the emergency assistance available in other programs. For example, the Commission correctly states that the HUD Public Housing and Housing Choice Voucher programs and the LIHEAP program are not designed to pay a household's entire monthly rent or utilities.[194] The funds are not available to pay all of the rent or utilities and people cannot calibrate the costs of housing or utilities easily to the amount of funding available. However, the amount of minutes or megabytes on a prepaid smartphone can be calibrated to the $9.25 per month available through the Lifeline program to provide a benefit at no cost to the low-income consumer if the consumer chooses that more affordable option over a more robust and expensive service offering. Further, many states have emergency assistance available for consumers who are at risk of having their heat turned off—a crucial backstop that has no corollary in the Lifeline program.[195] Similarly, while the HUD Section 8 program does not provide full housing assistance, the federal government, states, and municipalities have programs

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[194] *See* NPRM ¶ 112.

[195] *See, e.g.*, Ohio Winter Crisis Program, *available at* https://www.development.ohio.gov/is/is_heapwinter.htm ("The Winter Crisis Program helps income eligible Ohioans that are threatened with disconnection, have been disconnected or have less than a 25 percent supply of bulk fuel in their tank maintain their utility service."); New York Office of Temporary and Disability Assistance, Home Energy Assistance Program (HEAP), *available at* https://otda.ny.gov/programs/heap/ ("[T]he Emergency HEAP Benefit can help you heat your home if you are in a heat or heat related emergency"); Pennsylvania LIHEAP Program, *available at* http://www.dhs.pa.gov/citizens/heatingassistanceliheap/ ("In addition to the LIHEAP cash program, households experiencing a heating crisis may be eligible for additional benefits through the LIHEAP crisis program.").

in place to assist those who are homeless or at risk of homelessness.[196] The Lifeline program does not have similar emergency provisions for those who are at risk of disconnection. The best way that the Lifeline program can help low-income households with sporadic access to disposable income to maintain a consistent means of essential communications is by allowing service providers to make available a service at no cost to the consumers.

C. If the Commission Does Decide to Impose a Maximum Discount Requirement, Service Providers Should Be Given Flexibility to Determine The Manner And Timing of Payments, And the Commission Should Eliminate Unnecessary Minimum Service Standards and Usage Requirements

NaLA strongly opposes imposing a maximum discount requirement for the reasons discussed above. Still, the Commission seeks comment in the NPRM on the necessary rule changes and implications if it does impose a maximum discount requirement and it is NaLA's intent that these comments be as comprehensive as possible.[197] First, the Commission asks whether service providers should have flexibility to determine the timing of the customer's payment (e.g., upfront payments, monthly, post-paid).[198] Lifeline providers should have the flexibility to determine when they require or accept payments from Lifeline service customers. Upfront payments or payments in kind (e.g., through ad-supported service) may be the only means that many low-income consumers have to make a payment, since monthly payments are difficult for those who are unbanked or underbanked. There is no justification for requiring minimum payments in the Lifeline program, which is the only means-tested universal service

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[196] *See, e.g.*, Department of Housing and Urban Development, Emergency Solutions Grants Program, *available at* https://www.hudexchange.info/programs/esg/; National Low Income Housing Coalition, State & City Funded Rental Housing Programs, *available at* http://nlihc.org/rental-programs/search/rental-assistance (including a searchable database of federal, state, and city programs for those at risk of homelessness).

[197] *See* NPRM ¶ 115.

[198] *See id*.

program, higher on a percentage basis than the other USF programs. Therefore, the required payment should be no more than nine percent (the average RHC payment) of the reimbursement, or $0.84 per month. Attempting to collect 84 cents each month would be absurd and wasteful, but collecting $10.00 up front for a year's service may be possible for some Lifeline applicants. It is worth noting that a maximum discount level would hit hardest those who need Lifeline the most: those who cannot pay for any service, including the homeless and those in extreme poverty. Commissioner O'Rielly recognizes that "some portion" of Lifeline applicants are "truly destitute" and cannot afford a minimum contribution, but suggests that the individuals at the "top end of the eligibility spectrum" should be able to contribute something.[199] However, he does not explain how to differentiate these two groups and make this determination.

Moreover, if the Commission were to establish a maximum discount level, it should eliminate the heavy-handed minimum service standards. Under a maximum discount regime—which is functionally equivalent to a minimum charge—consumers should be able to determine which services they would like to purchase based on their budget and preference. As AT&T has stated, "[r]egulators should not make [the choice of rate plan] for consumers by establishing overly prescriptive service standards but should instead encourage participating providers to offer Lifeline customers the choices available to non-Lifeline consumers to the greatest extent possible by allowing the marketplace to independently operate."[200] NaLA agrees – let the market work.

Finally, if the Commission imposes a maximum discount level, it should also eliminate the usage requirement in section 54.407(c)(2) of the rules and the 54.405(e)(3) de-enrollment

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[199] NPRM, Separate Statement of Michael O'Rielly at 86.

[200] *See* Comments of AT&T, WC Docket No. 11-42, et al. (Aug. 31, 2015) (AT&T 2015 Lifeline Comments).

requirement. The usage requirement was designed to only apply to services that are free to the consumer. By purchasing the Lifeline services, either on a monthly basis or up front for the year, the consumer would be actively demonstrating that they want the service and to remain in the Lifeline program. Further, if the consumer has purchased service for the year up front, he or she should not lose that service before the year is up because he or she chose not to use the service for a month.

In conclusion, the Commission should not establish a maximum discount level because it would make valued Lifeline services less affordable for consumers. Other USF programs and social safety net programs that require recipients to pay a portion of the costs of such services have important differences from the Lifeline program. If the Commission does decide to impose a maximum discount requirement, service providers should be given flexibility to determine the manner and timing of payments, and the Commission should eliminate the heavy-handed minimum service standards and unnecessary usage requirements.

III. TO MAXIMIZE CONSUMER CHOICE, THE COMMISSION SHOULD ELIMINATE THE MINIMUM SERVICE STANDARDS, OR AT LEAST ALLOW CONSUMERS TO CHOOSE TO USE VOICE OR BROADBAND UNITS

The NPRM seeks comment "on ways the Lifeline program can responsibly empower Lifeline subscribers to obtain the highest value for the Lifeline benefit through consumer choice in a competitive market" and specifically requests feedback on a proposal by TracFone "to allow providers to meet the minimum service standards through plans that provide subscribers with a particular number of 'units' that can be used for either voice minutes or broadband service."[201] For the reasons explained herein, a better solution would be to eliminate the minimum service

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[201] NPRM ¶ 80. *See also* Letter from Mitchell F. Brecher, Counsel for TracFone Wireless, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42 (filed Sept. 7, 2017) (TracFone Ex Parte).

standards altogether or to suspend future increases to them pending a study of the costs and benefits of substituting regulator choice for consumer choice in this instance. However, if the Commission is not prepared to acknowledge at this time that the minimum service standards are heavy-handed, paternalistic and counterproductive, it should allow ETCs flexibility to meet them by offering "units" packages.[202]

A. The Minimum Service Standards Restrict Consumer Choice and Lifeline Service Affordability

The Commission first established voice and broadband minimum service standards for ETCs to receive Lifeline reimbursements for providing discounted services to eligible low-income consumers in the 2016 Lifeline Modernization Order.[203] The initial minimum service standards required ETCs to provide a minimum of 500 minutes or 500 MB of data each month to receive the Lifeline reimbursement.[204] The minimums increased as of December 1, 2017 to 750 minutes or 1 GB (1,000 MB) of data.[205]

The Commission adopted the minimum service standards on the assumption that they were "necessary to guarantee access to services that a 'substantial majority' of residential consumers have already subscribed to."[206] Unfortunately, the Commission's view of the marketplace ignored the vigorous efforts of ETCs to meet evolving consumer demand for mobile services, and substituted its choice of service plans for those of consumers. Indeed, prior to adoption of the minimum service standards, a number of the largest ETCs had already increased

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[202] *See* discussion in section III.B., *infra* (citing the Joint Petitioners' Petition seeking reconsideration of the minimum service standards).

[203] *See* 2016 Lifeline Modernization Order ¶¶ 69-125.

[204] *See* 47 C.F.R. §§ 54.408(b)(2)(ii)(A), (b)(3)(i).

[205] *See id*. §§ 54.408(2)(ii)(B), (b)(3)(ii).

[206] 2016 Lifeline Modernization Order ¶ 77.

their no-cost-to-consumer voice offerings in response to consumer demand, including offers of 500 minutes or 500 "units" that could be used for either voice or text communication.[207] As AT&T observed at the time, "[r]egulators should not make [the choice of rate plan] for consumers by establishing overly prescriptive service standards but should instead encourage participating providers to offer Lifeline customers the choices available to non-Lifeline consumers to the greatest extent possible by allowing the marketplace to independently operate."[208] NaLA agrees – the minimum service standards were unnecessary from the start.

Moreover, the minimum service standards have had and will continue to have an adverse impact on the Lifeline program and its goal of making communications services affordable for low-income households. For instance, as NTCA noted in its recent Petition for Waiver regarding the fixed minimum service standards, "the increase in speed (to 15 Mbps download/2 Mbps upload) will almost certainly come with an increase in monthly rates that may be unaffordable for some low-income consumers, [which] could have the unintended consequence of forcing some low-income rural consumers to discontinue their service."[209] NTCA correctly suggested

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[207] *See* Comments of the Lifeline Joint Commenters on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program, WC Docket No. 11-42 et al, at 6 (filed Aug. 31, 2015) (2015 Lifeline Joint Commenters Comments).

[208] AT&T 2015 Lifeline Comments at 8.

[209] *See* Petition for Temporary Waiver of NTCA–The Rural Broadband Association, WC Docket No. 11-42 et al. (filed Oct. 20, 2017) (NTCA Waiver Petition); *see also* Alaska Telephone Association Petition for Clarification and Waiver of Lifeline Minimum Service Standards, WC Docket No. 11-42 et al. (filed Dec. 4, 2017). The Lifeline Connects Coalition alternatively urged the Commission to implement a qualitative, rather than quantitative minimum service standard in the wireless context that will allow greater flexibility in service options for consumers. *See* Ex Parte Letter from John H. Heitmann, Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42 et al., 8 (Aug. 14, 2017). Indeed, data and experience show that where there are not affordable options, consumers are unwilling or unable to participate in the Lifeline program. *See, e.g.*, Letter from John J. Heitmann et al., Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC. Docket No. 11-42 et

that not enforcing the minimum service standards "would ensure that low-income consumers now 'on the network' and enjoying the benefits of [broadband] as a result of the Lifeline program will have the choice of continuing to subscribe to 10/1 [broadband] *should they determine that such a service still better meets their needs and fits their budget*."[210] As the applicable minimum service standards continue to rise without any corresponding increase in the monthly benefit, subscribers for wireless Lifeline services similarly will be forced to purchase voice and broadband plans that may be more than they can afford or need.[211] Further, the prospect of having to offer uneconomic or unaffordable service plans is likely to result in more service providers severely limiting distribution or exiting the market altogether.[212] To avoid further harming consumers and competition in the Lifeline program, the Commission should eliminate the minimum service standard requirements and instead facilitate competition in the program[213] to create an organic incentive for ETCs to continually improve their service offerings. At a minimum, the Commission should act to suspend future increases pending a study of the costs and benefits of substituting regulator choice for consumer choice in this instance.

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al. at 2 (Feb. 3, 2016) (observing that millions of low-income consumers simply could not afford Lifeline service under a co-pay or other minimum charge model).

[210] NTCA Waiver Petition at 3-4.

[211] *See* Joint Petitioners' Petition at 3-9 (noting that the Commission's formula for calculating the minimum service standard disproportionately burdens households with fewer than the average number of members or mobile subscriptions).

[212] For example, AT&T has filed to relinquish its ETC designations (except for CAF purposes) in more than a dozen states. To date, at least thirteen state commissions have approved AT&T's relinquishment – Alabama, Florida, Georgia, Indiana, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Wisconsin. AT&T has petitions pending in Kansas, Kentucky and Ohio.

[213] Specifically, the Commission should issue decisions on the 35 compliance plans and 35 federal ETC petitions pending with the Commission, which have not been acted on for years. These requests represent additional Lifeline provider competitors that seek to enter the marketplace to provide additional service provider and service offering options for consumers.

B. The Commission Should Maximize Consumer Choice and Flexibility in Lifeline Service Offerings By Permitting Bundled Unit Offerings to Meet the Minimum Service Standards

To the extent that the Commission is not prepared at this time to eliminate the minimum service standards, it should adopt the "units" proposals advanced by the Joint Petitioners[214] and TracFone. This would allow ETCs to meet the applicable minimum service standards by making available the applicable minutes or data, but allowing a consumer to decrement the offering using data or voice minutes at the consumer's choice.[215] That interpretation is consistent with the language of section 54.408 of the Commission's rules and the 2016 Lifeline Modernization Order, which had clarified that the term "provide" means "making available."[216] Further, the bundles interpretation was consistent with common industry practice, which was recognized and supposedly left unchanged in the 2016 Lifeline Modernization Order. Indeed, the Commission had stated in that order that its rule on bundles "*does not represent a change in policy* as many Lifeline providers have voluntarily offered non-supported services to consumers bundled with Lifeline-supported services," and that the Commission "agree[s] with commenters and view[s] such offerings as enhancing consumer benefits."[217]

Despite the language in section 54.408 and the clarification in the 2016 Lifeline Modernization Order that "provide" means "make available," the Wireline Competition Bureau later issued a Public Notice that "clarifie[d] that 'substitution' or 'decremented' bundled offerings do not fulfill the requirements of the Lifeline minimum service standards if they restrict a customer's access to the supported service for which the provider is claiming Lifeline

[214] *See* Joint Petitioners' Petition.

[215] TracFone Ex Parte at 1.

[216] *See* 2016 Lifeline Modernization Order ¶ 263 n. 710.

[217] *Id*. ¶ 67 (emphasis added).

reimbursement below the minimum service standard applicable to that supported service as a result of the customer's usage of some other service included in the bundled offering."[218] As a result of the Bureau's interpretation, Lifeline subscribers may be forced to choose between a 750 minute plan that may or may not include any data and a 1 GB plan that may or may not include any wireless minutes.

Notably, the LBP/MSS Public Notice failed to recognize that the full allotment of minutes or data is "provided" or "made available" to the customers and it is only through the customer's choice to use various amounts of minutes or data according to their particular communications needs that the amounts available are decremented. This guidance should be reversed. For example, a Lifeline subscriber may decide that she wants to use all of the allotted units for data because she is searching for a job or her child needs to tether the smartphone to a laptop or tablet to complete a homework assignment. That same subscriber may decide the next month that she wants to use 300 of the allotted units for voice service one month when she is participating in job interviews over the phone or needs to discuss treatment options with her child's doctor or nurse. The LBP/MSS Public Notice offered no justification for the Bureau deciding against allowing consumers to decide for themselves on a month-to-month basis whether their communications needs involve more voice or more data.

For these reasons, to the extent that the Commission chooses to retain the Lifeline minimum service standards, it should allow ETCs to meet the applicable standard by making available the applicable minutes or data, but allowing a consumer to decrement the offering

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[218] *Wireline Competition Bureau Provides Guidance Regarding Designation as a Lifeline Broadband Provider and Lifeline Broadband Minimum Service Standards*, WC Docket Nos. 11-42, 09-197, Public Notice, DA 16-1118, ¶ 15 (WCB rel. Sept. 30, 2016) (LBP/MSS Public Notice).

using data, voice minutes or text messages at the consumer's choice. For example, using the current minimum service standards, ETCs should be permitted to provide a 750 units Lifeline service offering where one unit equals one minute or one megabyte of data. Due to the manner in which minutes and megabytes are purchased from underlying carriers and tracked, not all ETCs can track minutes and megabyte use in real time to cap total units. Therefore, customers may be required to allocate their units by minutes or megabytes when they enroll and have the option of reallocating the units each month if they so choose.[219]

For all of the above-stated reasons, the Commission should eliminate the minimum service standards and facilitate enhanced service offerings through policies that promote competition and consumer choice in the Lifeline program. However, if the Commission is not prepared to take such action at this time, it should at least allow ETCs flexibility to meet the minimum service standards by offering "units" packages as proposed by the Joint Petitioners and TracFone.

IV. THE COMMISSION SHOULD STUDY BROADBAND NON-ADOPTERS AND DESIGN AN ENROLLMENT PROCESS TO ACCOMMODATE THEM

The NPRM and NOI seek comment on what the Commission should do to target Lifeline support to "low-income consumers who have not yet adopted broadband."[220] NaLA respectfully submits that the idea of only providing Lifeline service to "nonadopters" is neither practical nor advisable. It would be impossible to effectively administer a Lifeline program that attempts to make support available only to those consumers that have not yet adopted broadband (however that would be defined). The National Verifier and ETCs would have no way of independently

[219] For example, a subscriber may enroll in a 750 unit plan and allocate 500 units to broadband (500 MB) and 250 units to voice minutes. The subscriber will receive that same allocation each month until she or he contacts the ETC to change the allocation for the following month.

[220] *See* NPRM ¶ 117 and NOI ¶ 124.

verifying that a Lifeline applicant does not already subscribe to a non-Lifeline broadband service, and a self-certification from a Lifeline applicant that he or she is a "nonadopter" of broadband is unlikely to prove reliable for enforcing such a limitation.[221] Additionally, many "nonadopters" of broadband are elderly and disinclined to use broadband at all. Therefore, the Commission should not and could not adopt any proposal that would limit Lifeline support only to low-income consumers who have not yet adopted broadband.

However, should the Commission seek to find ways to get more "nonadopters" to use the Lifeline program to join the digital community, it could, as suggested by Professor Lyons, "study the profile of low-income non-broadband households in particular and design an application system tailored to that segment of the population."[222] The results of such a study could shed light on the why certain low-income households have not adopted broadband, including through the Lifeline program, and allow the Commission to make more informed policy decisions about the program going forward.

Based on the extensive experience of its ETC members, NaLA anticipates that a study of low-income "nonadopters" of broadband would yield at least two common themes: (1) a significant portion of "nonadopters" are simply unaware of the affordable broadband service options available through the Lifeline program; and (2) to the extent low-income "nonadopters" are aware of the program, they need assistance to sign up for Lifeline-supported broadband

[221] The Commission has previously observed that "self-certification does little to guard against those persons who wish to intentionally defraud the Lifeline program by enrolling in the program despite their ineligibility. Similarly, self-certification does not exclude consumers who are ineligible to participate in the program but mistakenly enroll due to misunderstanding the eligibility requirements." 2012 Lifeline Reform Order ¶ 104.

[222] NPRM n. 233, citing Daniel Lyons, "To Narrow the Digital Divide, the FCC Should Not Simply Extend Lifeline to Broadband," American Enterprise Institute, at 6 (2016). To be clear, however, the study should not be used as a tool for identifying otherwise eligible low-income households that may have adopted broadband, and exclude them from the Lifeline program.

service. NaLA respectfully submits that ETCs, and wireless resellers in particular, have been and will continue to be essential partners for the Commission to address these issues.

For example, the GAO concluded in 2015 that community outreach and marketing by ETCs have played an important role in driving adoption of Lifeline services.[223] Through enrollment at in-person events, in retail stores, and to some extent, online, ETCs are able to educate consumers about the Lifeline program and the benefits it provides to eligible low-income households. These educational initiatives are crucial for boosting Lifeline participation and broadband adoption rates in low-income communities, including for "nonadopters."

ETCs also provide applicants with personalized and immediate assistance during the lengthy Lifeline application process by helping them to understand what information and documents are required for successful enrollment in the program. To ensure that consumers will continue to benefit from such assistance going forward, NaLA urges the Commission to take seriously the concerns of ETCs about USAC's decision not to build a service provider API for communications between service providers and the National Verifier that would allow Lifeline applicants to seamlessly enroll in Lifeline and access the National Verifier for an eligibility determination.[224] Providing a service provider API access to the National Verifier will better

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[223] *See* United States Government Accountability Office, GAO 15-335, Report to the Chairman, Committee on Commerce, Science and Transportation, U.S. Senate: FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program, 30 (Mar. 2015) (2015 GAO Lifeline Report) ("Prepaid wireless ETCs conduct outreach, including in-person outreach and enrollment, to overcome challenges such as lack of customer knowledge about the program, inability to submit applications, and recertification. FCC and USAC officials report that states with more ETCs offering prepaid wireless service tend to have higher Lifeline participation rates due to greater outreach.").

[224] *See Ex Parte* Letter from John J. Heitmann, Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42 et al., 4-7 (filed Sept. 11, 2017) (Lifeline Connects Coalition Sept. 11, 2017 Ex Parte).

serve consumers while being more cost-effective and efficient.[225] USAC currently envisions a process where the applicant starts with the National Verifier portal to confirm his or her eligibility for Lifeline service and then returns to the service provider's enrollment process (whether in person or online). Then the applicant, who has received an approval from the National Verifier, will have to complete the ETC's enrollment process,[226] including all of the ETC's controls and checks such as service territory, network coverage, address validation, identity validation and duplicate detection. That process may result in a denial, which will be frustrating and confusing for applicants who have already been told by the National Verifier that they are eligible. This likely will discourage low-income consumers from participating in the Lifeline program and drive thousands or even millions of complaints to USAC, the Commission

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[225] Under the framework proposed by the Lifeline Connects Coalition, during the initial NLAD "Verify Call," an ETC should be informed whether the applicant has already been determined to be eligible by the National Verifier, and if not, whether the applicant can be found in any eligibility databases to which the National Verifier has an API access (e.g., the New York eligibility database). During this call, the ETC is already informed in real-time whether an Independent Economic Household worksheet must be collected, if the applicant passes the Third Party Identity Verification, etc. so that documentation can be collected. If not, the application can continue, but the ETC will know to collect eligibility documentation to pass to the National Verifier. The ETC would then collect all of the required information and certifications (which can be done on a Commission-approved standardized application/certification form) and send an application in pdf to the NLAD/National Verifier in the NLAD "Enroll Call" thus meeting the second primary objective identified by the Commission. If the applicant is not found in one of the other non-API-based databases to which the National Verifier has access (e.g., Wisconsin, which requires a manual website check), then the application would be denied. At that point, the ETC can send eligibility documentation to the NLAD/National Verifier in the "Resolution Call" for a final determination. This way applicants receive a single eligibility determination and can walk away with activated phone service. This can all be done in a relatively simple manner using APIs. *See* Lifeline Connects Coalition Sept. 11, 2017 Ex Parte at 4-7.

[226] For online enrollments, while the ETC can provide a link to the National Verifier portal and push the applicant to that process, there will be nothing at the end of the National Verifier portal process that will push the applicant back to the service provider to complete the enrollment. Therefore, by not providing a service provider API, the National Verifier will inadvertently disadvantage online Lifeline enrollments at a time when many service providers are looking to move more toward online enrollments to expand distribution and reduce costs associated with in-person distribution.

and Congress. Therefore, the National Verifier eligibility determination should take place during the ETC enrollment environment through API "calls" after the applicant has completed the ETC checks and screens.

V. A SELF-ENFORCING BUDGET MECHANISM SHOULD OPERATE ON AN ANNUAL BASIS AND HAVE PROSPECTIVE IMPACT ONLY

The NPRM proposes to replace the budget process adopted in the 2016 Lifeline Modernization Order with a self-enforcing budget that would require an annual cap for Lifeline disbursements, and seeks comment on the operation of this new approach.[227] As an initial matter, it is worth noting that Lifeline disbursements have decreased substantially in recent years, from a peak of $2.2 billion in 2012[228] to approximately $1.5 billion in 2016,[229] and available data for 2017 suggests that the downward trend will continue (with anticipated disbursements to total approximately $1.25 billion). Nevertheless, NaLA understands and appreciates the Commission's interest in controlling and properly budgeting for the costs of the Lifeline program. Moreover, NaLA understands the Commission's concerns with the current structure, which does not have an affirmative means of controlling costs, but provides that "[i]f spending in the Lifeline program meets or exceeds 90 percent of the Lifeline budget in a calendar year, the Wireline Competition Bureau shall prepare a report evaluating program disbursements and describing the reasons for the program's growth along with any other information relevant to the operation of the Lifeline program."[230] However, when implementing changes to the budget

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[227] *See* NPRM ¶¶ 105-110.

[228] *See* USAC, 2012 Annual Report, at 9, *available at* http://www.usac.org/_res/documents/about/pdf/annual-reports/usac-annual-report-2012.pdf.

[229] *See* USAC, 2016 Annual Report, at 22, *available at* http://www.usac.org/_res/documents/about/pdf/annual-reports/usac-annual-report-interactive-2016.pdf.

[230] 47 C.F.R. § 54.423(b).

structure, the Commission must allow for program growth because with an estimated participation rate of approximately one-third,[231] the program is far from maximizing its potential to address the affordability gap that perpetuates the digital divide and leaves many low-income Americans without consistent monthly access to affordable voice and broadband.[232] Moreover, in recent years the Lifeline program has been artificially restricted as a result of ETC authorizations being withheld and minimum service standards making enrollments/service in most states and for many ETCs uneconomical. Therefore, NaLA agrees with NARUC's support for the current budget amount of $2,279,250,000.[233] Through this lens, NaLA herein offers feedback on the proposals in the NPRM.

One central issue in the Commission's budget proposal is the "appropriate period over which [the Commission] should measure and enforce the cap."[234] NaLA respectfully submits that if the Commission is going to adopt a new budget mechanism, it should implement a budget cycle of at least 12 months. An annual budget is the minimum period necessary for ETCs to make sound business and investment decisions, including service plan design and innovation,

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[231] *See* Letter from Michelle Garber, Vice President, Lifeline Division, USAC to Ryan Palmer, Chief, Telecommunications Access Policy Division, FCC, WC Docket No. 11-42 (Feb. 24, 2016) (submitting Lifeline program data showing a 32 percent participation rate); USAC Webinar "Lifeline 101: Introduction to the Lifeline Program," (Feb. 14, 2018) ("USAC estimates 27% of eligible households participate."). *See also* Pew 2015 Smartphone Research ("Nearly half (48%) of smartphone-dependent Americans have had to cancel or shut off their cell phone service for a period of time because the cost of maintaining that service was a financial hardship.").

[232] *See* NARUC 2018 Lifeline Resolution ("Resolved that NARUC urges the FCC, in any budget it sets for the Lifeline program that it carefully balance…that there is reasonable and rational growth in the Lifeline fund…").

[233] *See id*.

[234] NPRM ¶ 106.

device procurement, staffing, and distribution.[235] Neither ETCs nor Lifeline subscribers could adequately plan for or effectively administer a potential mid-year reduction in support funding that could result if the Commission adopts the six-month alternative set forth in the NPRM. Indeed, without the stability of a reasonable budget for the Lifeline program, service providers are likely to scale back their operations, which will only further inhibit the ability of low-income consumers to access essential communications services through the program.

Additionally, the Commission should not adopt a budget enforcement mechanism whereby USAC is directed to forecast expected disbursements and expenses and "[i]f projected disbursements and expenses are expected to exceed … the annual cap, USAC would proportionately reduce support amounts during the upcoming … period to bring total disbursements under … the annual cap."[236] Notably, the budget mechanism should not, as proposed, include administrative expenses, as such expenses are not currently included in the budget for Lifeline or other universal service programs. Moreover, the proposed approach would create significant uncertainty in the Lifeline program because the forecast for disbursements and expenses could be incorrect and would detrimentally impact low-income consumers without even knowing if the program will exceed the cap. Indeed, the NPRM itself acknowledges that forecasts can be unreliable due to "inevitable under- or over-shooting of the actual demand."[237]

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[235] Indeed, Chairman Pai recently acknowledged that universal service support should help create stability for program participants rather than uncertainty. *See* Letter from Ajit V. Pai, Chairman, Federal Communications Commission, to Hon. John Ratcliffe, U.S. House of Representatives, 2 (Dec. 19, 2017) (acknowledging that in the High Cost program, the current budget had created uncertainty for providers, and that he would ask his colleagues at the Commission to address the problem by "guaranteeing at least some minimum level of support to ease the unpredictability and allow reasonable capital planning").

[236] NPRM ¶ 106.

[237] *Id*. ¶ 107.

The Commission instead should implement an approach "that would allow Lifeline spending in a given period to exceed the cap."[238] If this occurs, rather than automatically reducing Lifeline disbursements during the next period,[239] the Commission should evaluate by a date certain what may have caused the higher-than-expected disbursements and administrative costs. For example, program spending may spike in a given year because of an economic downturn that results in more consumers being eligible for the program or in response to natural or man-made disasters or emergency situations.[240] Understanding whether spending in a given period was an anomaly or part of a general upward trend will allow the Commission to make better informed decisions about the Lifeline program budget on a prospective basis. Importantly, if after considering economic conditions, the Commission determines that steps must be taken to reduce Lifeline program expenditures, the Commission should give priority to cost-cutting measures that will have the least impact on low-income consumers. Any changes to the budget that would impact the per subscriber reimbursement amount would need to be applied only for new enrollments to avoid causing widespread uncertainty for consumers about their benefits. Moreover, if reimbursements are reduced for new enrollments, the Commission should allow for a corresponding decrease in the minimum service standard to avoid creating an adverse impact on the affordability of Lifeline supported services.[241]

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[238] *Id.*

[239] *See id.*

[240] *See, e.g.*, *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Order, DA 17-984, ¶¶ 10-16 (WCB rel. Oct. 6, 2017) (granting temporary waivers of the non-usage and recertification rules for consumers in Florida, Georgia, Puerto Rico, and the U.S. Virgin Islands who were impacted by Hurricanes Harvey, Irma and Maria).

[241] For example, if the Commission reduces support to $7.25 for new enrollments, the subscriber should not be forced to pay the $2 difference to a service provider. Rather, a service provider should be permitted to offer that consumer a reduced service plan with no mandatory increase in cost.

Finally, if Lifeline expenditures come in under budget in a particular funding year – a very real possibility given the downward trend in Lifeline expenditures since 2012 – those savings should be rolled over, and be available for reinvestment in the Lifeline program to benefit low-income Americans. Rolling over unused funds is not a novel concept. Indeed, the E-rate Program currently uses a mechanism for unused funds that ensures funds committed to an E-rate participant and collected from contributors is used in future years to reduce E-rate program demand.[242] The Commission is considering adopting a similar rollover approach for the Rural Health Care program.[243] And in the High Cost program, the Commission reallocated unused price cap carrier support for the Phase II Auction.[244] These precedents demonstrate the Commission's acknowledgement that, consistent with the Commission's duty to promote universal service as set forth in the Communications Act, unused Universal Service Fund support should be rolled over for future use that best serves the particular program's needs. In the Lifeline context, rolled over funds could be used, for example, for temporary adjustments to reimbursements (either by increasing the reimbursement amount or allowing consumers to qualify for the program using alternative eligibility programs). In addition, and perhaps most

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[242] 47 CFR § 54.507(a)(5) ("All funds collected that are unused shall be carried forward into subsequent funding years for use in the schools and libraries support mechanism in accordance with the public interest and notwithstanding the annual cap.").

[243] *See* Rural Health Care Program NPRM ¶ 19.

[244] *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order On Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54, ¶ 4 (2014) (establishing rules "for the award of support in price cap areas where the price cap carrier declines the offer of model-based support"). Additionally, as NTCA recently suggested, the Commission could "use high-cost USF reserves to fill the budget shortfall" in the High Cost program. *See Ex Parte* Letter from Michael R. Romano Senior Vice President, Industry Affairs & Business Development, NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, 3 (filed Aug. 15, 2017).

importantly, the rolled over funds could be used to cover future budget overruns so that low-income consumers need not be impacted if, for example, the Lifeline program exceeds the budget cap in a year after it had been under budget.

VI. THE COMMISSION SHOULD MAKE IMPROVEMENTS TO THE ELIGIBILITY VERIFICATION PROCESS

The NPRM seeks comment on a number of changes to the eligibility and verification processes that are intended to reduce the opportunity for waste, fraud and abuse in the Lifeline program. Some of these proposals would build on existing administrative requirements or best practices already adopted by many providers in the Lifeline marketplace, and as such would be beneficial for the Lifeline program. Indeed, ETCs have long acknowledged the importance of protecting the integrity of the program by, for example, not allowing commission-based enrollment representatives to make determinations of consumer eligibility for Lifeline. Other proposals, however, such as limiting ETCs' ability to collect Independent Economic Household (IEH) worksheets and banning in-person handset distribution, could have a material adverse impact on Lifeline program participants, and therefore should be carefully tailored or rejected. NaLA urges the Commission, before it adopts any of the reforms proposed in the NPRM, to work collaboratively with ETCs to better understand the practical effects of the proposed reforms on the eligibility verification process so that it may make informed decisions about these proposals and ensure that, if adopted, they are implemented in a manner that will minimize the potential adverse impact on low-income consumers in the Lifeline program.

A. Enrollment Representatives Should Be Registered with USAC and Commission-Based Representatives Should Not Verify Applicant Eligibility

In the NPRM, the Commission seeks comment on several potential methods to increase oversight of Lifeline enrollment representatives. First, the Commission asks whether it should codify USAC's current "administrative requirement that ETCs' customer enrollment

representatives register with USAC in order to be able to submit information to the NLAD or National Verifier systems."[245] Even prior to the USAC administrative registration requirement, many ETCs required enrollment representatives to use unique login credentials before commencing every Lifeline application. Thus, codifying an industry-wide best practice registration requirement should not be overly burdensome. However, the agent registration proposal further underscores the need for USAC to include a service provider API in the National Verifier.[246] Lack of a service provider API will create opportunities for waste, fraud and abuse by taking away from service providers the ability to monitor and control fraudulent enrollment attempts. In the current enrollment process through a service provider, the ETC can "see" the entire process, including if an applicant or field agent, who is tracked based on his or her unique identifier, is attempting to force an order through by making multiple attempts using changed social security numbers, addresses or other information. ETCs can see those attempts happening and require additional documentation or shut down that enrollment attempt and discipline the field agent. If a service provider API is not made available, the applicant will have to leave the ETC's enrollment environment and go to the National Verifier consumer portal to verify eligibility. An applicant or field agent could then attempt to force through an approval by changing data without the ETC's knowledge. To minimize these occurrences, the Commission should direct USAC to implement expeditiously and by a date certain a service provider API in the National Verifier.

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[245] NPRM ¶ 92.

[246] *See also* section IV, *supra* (explaining that in the absence of an API, the enrollment process, particularly online enrollments, could prove to be frustrating and confusing for Lifeline applicants, which would discourage low-income consumers from participating in the Lifeline program and drive thousands or even millions of complaints to USAC, the Commission, and Congress).

The NPRM also seeks comment on the following proposals related to "commission-based ETC personnel": (1) precluding such personnel from determining consumer eligibility for the Lifeline program, (2) separating representatives involved in soliciting customers and representatives who are involved in the verification process, and (3) prohibiting the use of commission-based personnel altogether.[247] Once the National Verifier is implemented in a particular state, these measures are unnecessary because no one in the ETC chain will be determining eligibility. But, as explained herein, in any state where the National Verifier has not yet been implemented, the Commission should adopt the first two proposals but reject the third. Like agent registration/tracking, it is commonplace in the industry for ETCs to limit the role of commission-based personnel solely to consumer outreach and assistance in completing and submitting applications for Lifeline service. Eligibility determinations are made by entirely different personnel, who are not compensated based on the number of applications processed and typically are making such determinations in a corporate office environment that is removed from enrollment events. This division of labor and physical separation helps promote integrity in the Lifeline enrollment process. Thus, prior to implementation of the National Verifier, the Commission's proposals to preclude commission-based personnel from determining consumer eligibility for Lifeline and separate consumer solicitation and eligibility verification personnel strikes the right balance between the need for program oversight and allowing flexibility for ETCs to employ their chosen enrollment models, and should be adopted.

The Commission should not prohibit ETCs from using commission-based personnel altogether. Incentive-based compensation has played an important role in driving outreach and adoption of Lifeline services. Many ETCs use agents to provide applicants with personalized

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[247] *See* NPRM ¶ 94.

and immediate assistance during in-person enrollments at events and in retail stores. Compensating these individuals in the form of commissions or other performance rewards creates an incentive for them to find, educate and enroll *eligible* subscribers. With proper controls and oversight, agents – particularly commission-based agents – have played a critical role in helping millions of low-income Americans obtain access to essential communications services through the Lifeline program. Furthermore, most ETCs already have adopted effective controls to prevent improper activity among commission-based agents, and have procedures in place to address bad acts in the event that they arise. When coupled with reforms in the NPRM such as codifying USAC's agent registration obligation, these practices are sufficient to minimize opportunities for improper activity by commission-based personnel. Accordingly, the Commission should not prohibit ETCs that provide Lifeline service from using commission-based personnel.

B. ETCs Should Send Copies of Documentation for NLAD Dispute Resolutions to USAC for Auditing

To address concerns that the NLAD dispute resolution process makes the Lifeline program "vulnerable to waste, fraud and abuse," the NPRM proposes to revise the process by "requiring USAC to directly review supporting documentation for manual NLAD dispute resolutions."[248] There has been no tangible evidence of misuse of the NLAD dispute resolution process, and as such, there is no need to require USAC to manually review any and all documentation that is submitted to an ETC by a consumer as part of a dispute resolution during the enrollment process. In fact, USAC recently reported a 100 percent satisfactory review of the identity documentation for a review of 90 enrollments.[249] Nevertheless, ETCs already collect

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[248] *Id*. ¶ 95.

[249] *See* USAC Briefing Book at 163.

and retain this documentation, and to the extent that providing USAC copies of such documentation – either for real-time review or for auditing at a later date – might improve public perception of the dispute resolution process, this proposal may be beneficial.

When introducing the concept of the NLAD, the Commission acknowledged that "[a]ny duplicates elimination process must balance the need to reduce waste in the Fund against mistakenly denying consumers Lifeline benefits."[250] Accordingly, the Commission directed USAC to implement an exceptions process in the NLAD "so that consumers are not improperly denied access to Lifeline benefits."[251] This was and remains a sound policy decision. ETCs frequently encounter situations in which the consumer's identity, address, or eligibility cannot be automatically confirmed in a database such as Lexis Nexis or USPS Address Matching Service (AMS).[252] Indeed, as the NPRM acknowledges, "the databases that are available to automatically verify identity are not comprehensive."[253] The findings in the 2017 GAO Report further underscore this reality. For example, when summarizing its analysis of subscribers who were deemed eligible based on participation in SNAP or Medicaid, the GAO did not definitively state that consumers who were not found in the relevant state databases were *ineligible*, but rather that the GAO was unable to confirm their eligibility based on the databases to which it had

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[250] 2012 Lifeline Reform Order ¶ 212.

[251] *Id.* ¶ 213.

[252] The Lexis Nexis TPIV check is based at least in part on credit history, which many low-income Americans do not have. Further, NaLA understands that the Melissa address database is more comprehensive than the AMS database. *See* Email from Lori Whittemore, Melissa Data, to Alex Rodriguez, CGM (Jan. 17, 2018 1:08 PM) (noting that the Melissa system "includes about 3 million non USPS addresses which are more rural addresses or ones delivered to by UPS, Federal Express, etc…").

[253] NPRM ¶ 95.

access.[254] The NLAD dispute resolution process was designed to address exactly these types of scenarios and allow consumers to present documentary evidence of their eligibility, thereby avoiding a denial of Lifeline benefits to an eligible consumer simply because he or she was not located in one of these databases.

Despite certain anecdotal claims about the dispute resolution process being "vulnerable" to waste, fraud and abuse, the record contains no meaningful evidence that USAC's carefully crafted approach has resulted in improper enrollments to any material extent. Therefore, it is unnecessary to increase program administrative costs by requiring USAC to directly review supporting documentation for manual NLAD dispute resolutions. Still, if USAC can implement a process whereby the National Verifier would review such documentation in real-time and allow ETCs to continue processing such enrollments normally, NaLA would not oppose the proposal.[255] If, on the other hand, USAC's review of the documentation would delay the enrollment process such that it is no longer real-time, the Commission should instead adopt an obligation for USAC to collect, but not review the documentation before the enrollment is completed. USAC could review the documentation as part of a post-enrollment audit. If it finds that the documentation is not appropriate, the applicant can be de-enrolled and the program made whole.[256] Such audits could also be used to detect and address any issues with a particular registered ETC representative's use of the dispute resolution process.

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[254] *See* 2017 GAO Report at 37-40.

[255] Non-Lifeline consumers can walk into a retail store, a kiosk at the mall or mobile enrollment events and walk away with an activated wireless handset and service. The Commission should take care to ensure that the verification requirements and solutions it selects allow ETCs to provide a comparable experience to low-income consumers eligible for Lifeline, particularly because this is what is available today.

[256] When assessing whether the dispute resolution process is being abused, the Commission must recognize that the mere act of submitting a dispute resolution request is not indicative of waste, fraud or abuse, nor is it "fraud-related conduct" that could be the basis for suspending or

C. Requiring Proof of Eligibility for All Recertifications Would Be Unduly Burdensome on Lifeline Subscribers

In the NPRM, the Commission seeks comment on "prohibiting subscribers from self-certifying their continued eligibility during the Lifeline program's annual recertification process if the consumer is no longer participating in the program they used to demonstrate their initial eligibility for the program."[257] When considering a requirement such as this, the Commission must, as it has in the past, balance the burden to consumers with the risk of harm to the Fund. The NPRM cites no evidence to suggest that consumers who change their eligibility program are responsible for any more improper recertifications than subscribers who continue based on the same eligibility program. Nevertheless, adopting the requirement set forth in the NPRM could help diminish a perception of waste, fraud and abuse in the Lifeline program during the recertification process, and if construed narrowly (only for subscribers whose qualifying program has changed), would not be unduly burdensome to subscribers. However, as currently written, the proposed revisions to section 54.410 of the Commission's rules would require proof of eligibility for all recertifications.[258] Should the Commission move forward with the proposal in the NPRM, it must revise the language of the rule to match the proposal in order to ensure that the limited proof of eligibility requirement is clear to ETCs, USAC, and state program administrators.

The Commission previously confronted the proof of eligibility question when it overhauled the Lifeline program in 2012. In the 2012 Lifeline Reform Order, the Commission

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debarring an ETC from the Lifeline program under a conduct-based standard. *See* Section I.B.3., *supra*.

[257] NPRM ¶ 97.

[258] *See id*., App'x B.

correctly noted that the requirement for subscribers to provide proof of eligibility at enrollment obviated the need to provide such documentation on an annual basis at recertification. In particular, the Commission observed:

> Because consumers in states without eligibility databases will be required to provide documentation at enrollment to establish program eligibility, we find a requirement that ETCs or program administrators, where applicable, verify all Lifeline subscribers' documentation on an annual basis to be unnecessary. The upfront documentation requirement will serve as a sufficient initial check of consumer eligibility and alleviate the need for ETCs or third-party administrators to obtain documentation from subscribers on a recurring basis as part of the back-end re-certification process.[259]

The Commission concluded that the self-certification approach would "enable consumers to more easily respond to verification surveys, thereby reducing the number of Lifeline subscribers de-enrolled for failure to respond to carrier verification efforts."[260] Indeed, a consumer's provision of documentation that he or she is eligible for Lifeline one year is a very good indicator that he or she is still eligible the following year. Moreover, imposing a proof of eligibility obligation for every Lifeline recertification would only further increase the costs of recertification, which already stand at a staggering "73 percent of total costs, despite the Lifeline program having less than a 30 percent take-up rate among eligible consumers," according to one recent study.[261] Therefore, if the Commission chooses to implement a proof of eligibility requirement for recertification, the revised language in section 54.410 must make clear that such requirement applies only if a consumer is no longer participating in the program they used to demonstrate their initial eligibility for Lifeline.

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[259] 2012 Lifeline Reform Order ¶ 134.

[260] *Id*. ¶ 139.

[261] *See* Nicol E. Turner Lee, Coleman Bazelon, Olga Ukhaneva, and DeVan Hankerson, "A Lifeline to High-Speed Internet Access: An Economic Analysis of Administrative Costs and the Impact on Consumers," Multicultural Media, Telecom and Internet Council, at 6 (2016).

D. Any Changes to the IEH Worksheet Process Must Be Carefully Tailored to Avoid Adverse Effects on Consumers

The Commission seeks comment on a number of proposals to address a perceived potential for misuse of the IEH worksheet.[262] In particular, the Commission suggests that "[p]rophylactic use of the household worksheet can … subvert the duplicate address protections" by making it "more difficult for USAC to monitor aggregate trends and particular ETCs' use of the IEH worksheet to detect improper activity.[263] To address this concern, the NPRM proposes to amend the Commission's rules such that an ETC would only be permitted to collect an IEH worksheet during a Lifeline enrollment "after the ETC has been notified by the NLAD, or state administrator in the case of NLAD opt-out states, that the prospective subscriber resides at the same address as another Lifeline subscriber."[264] The basis for the Commission's unease with the IEH worksheet process is unclear, particularly in light of the fact that, at least for enrollments completed using paper forms, NaLA understands that USAC will collect an IEH worksheet for all enrollments in the National Verifier. While NaLA disagrees that the proposal in the NPRM is necessary, to the extent the Commission moves forward with this rule revision, it must be written in a way that will protect consumers from unintended disruptions to their Lifeline service. Specifically, the rule should make clear that the "notification" from the NLAD or state administrator of a duplicate address that would trigger an IEH worksheet obligation must be delivered in real-time, or the Commission must provide an exception to the rule for those states that do not provide real-time notifications.

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[262] *See* NPRM ¶¶ 98-99.

[263] *Id*. ¶ 98.

[264] *Id*.

Lack of real-time notice of a duplicate address in certain NLAD opt-out states has led to disruptions in Lifeline service for consumers in these states. For example, in Texas, although a real-time address check is performed for wireless Lifeline enrollments, the state administrator utilizes a non-real-time enrollment process for wireline enrollments. The Texas Administrator then cross-checks all of the addresses for the enrollments for the month at the end of the month and provides a notice if duplicate addresses are found, asking for an IEH worksheet.[265] This non-real-time end of the month process resulted in ETCs, including wireless ETCs, not collecting an IEH worksheet at enrollment, even though it may ultimately be required. Until recently, if the scrub detected a duplicate address, the administrator contacted the subscriber directly to request an IEH worksheet, and if the consumer did not respond to this request, the ETC was forced to de-enroll the consumer from the Lifeline program. This process resulted in many eligible consumers being de-enrolled. To resolve this issue, the Texas Administrator agreed to allow ETCs to collect IEH worksheets from all subscribers at enrollment, recognizing that it is much more efficient to obtain paperwork from subscribers up front than to ask them to complete it at a later date. Because of this "prophylactic" IEH worksheet collection, ETCs can now provide worksheets as needed to the Administrator each month, with no unnecessary inconvenience to consumers or disruption of essential Lifeline services.

The IEH worksheet process in Texas illustrates that, to the extent that the Commission seeks to limit ETCs' ability to collect such documentation during the enrollment process, the approach must be more nuanced than the proposal in the NPRM. For instance, the Commission could amend its rule to limit IEH worksheet collection only to cases in which the NLAD or state administrator notifies the ETC that a consumer's address is a duplicate, provided that such notice

[265] Oregon similarly only checks for duplicate addresses once a month.

is provided in real-time. To effectuate this change, the Commission would need to make clear that it will actually begin to enforce the requirement that NLAD opt-out states employ systems that are "at least as robust as the processes adopted by the Commission in the Lifeline Reform Order."[266] Alternatively, the Commission should include an exception in the revised rule that will allow ETCs to collect IEH worksheets for all enrollments in NLAD opt-out states, such as Texas and Oregon, where the state administrator does not provide real-time duplicate address notifications.

NaLA also urges the Commission to exercise caution with respect to a number of other proposals related to the IEH worksheet process. Specifically, if the Commission "direct[s] USAC to develop a list of addresses known to contain multiple households,"[267] the mere fact that an applicant's address is not on USAC's list should not preclude an ETC from collecting an IEH worksheet and enrolling the applicant at that address. Indeed, it would simply be impossible for USAC to develop a comprehensive list of all addresses across the country that could contain multiple households. An ETC's internal records may reveal that a Lifeline applicant's address is a duplicate even if it has not been flagged by USAC, in which case it would be appropriate to collect the IEH worksheet. Additionally, the proposal to "require Lifeline applicants residing in multi-person residences (e.g., homeless shelters, nursing homes, assisted living facilities) to submit a certification from the facility manager confirming that the applicant resides at the address and is not part of the same economic household as any other resident already receiving

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[266] *See Wireline Competition Bureau Clarifies Minimum Requirements for States Seeking to Opt Out of the National Lifeline Accountability Database*, WC Docket No. 11-42 et al., Public Notice, DA 12-1624 (2012).

[267] NPRM ¶ 99.

Lifeline support"[268] would be unduly burdensome on both Lifeline applicants and facility managers. Indeed, individuals who reside in or rely on homeless shelters and other similar facilities are among those most in need of the Lifeline program. It would be wholly inconsistent with the program's objectives to deny benefits to individuals who list as their address a shelter for which the facility manager does not provide a certification of residency because of a limited number of beds, lack of beds altogether or some other factor outside the applicant's control.[269] Moreover, facility managers may be unable or unwilling to certify – particularly if the certification must be made under penalty of perjury – that the Lifeline applicant satisfies the criteria set forth in the Commission's definition of an independent "household," which requires a factual determination as to whether all persons at a particular address are "one economic unit."[270] NaLA therefore respectfully urges the Commission not to adopt this proposal and instead to study further more thoughtful and careful ways to ensure that the most vulnerable Lifeline eligible populations are served while balancing and providing reasonable protections against waste, fraud and abuse.

E. The NLAD Should Dip the Social Security Master Death Index During the Enrollment and Recertification Processes

The NPRM seeks comment on whether the Commission should "codify a requirement that subscribers be compared to the Social Security Master Death Index during the enrollment

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[268] *Id.*

[269] The Commission must recognize that the nation's vast homeless population includes many who are Lifeline eligible. Imposing a bed requirement or otherwise limiting eligibility based on the availability of shelter at a particular address that is not deemed by some measure to be oversubscribed would undermine the goals the Lifeline program is intended to serve.

[270] *See* 47 C.F.R. § 54.400(h). This involves factual determinations regarding whether people share income or expenses that a facility manager may have no means of verifying to make this certification.

and recertification process."[271] USAC has indicated that it built this check into the NLAD as of November 2017[272] and NaLA does not oppose codifying the requirement that the NLAD check the Social Security Master Death Index as part of the identity verification process. This proposal is a logical step to address a finding in the 2017 GAO report that, based on 2014 data, a small number of individuals who enrolled in the Lifeline program and/or recertified their eligibility had been reported deceased on the Social Security Master Death Index.[273] While it appears that the issue identified in the 2017 GAO Report was very limited in nature, the decision to integrate a check of the Social Security Master Death Index during the enrollment and recertification process is beneficial to address waste, fraud and abuse in the Lifeline program. However, the requirement should be built into the existing NLAD identity verification process, including the existing dispute resolution process to guard against false positives.

Currently, the NLAD verifies subscriber addresses through the USPS AMS, and conducts TPIV through Lexis Nexis to confirm subscriber names, dates of birth, and Social Security numbers. The check of the Social Security Master Death Index likely is not an unduly burdensome addition to the NLAD's processes and is being done in real-time. However, requiring ETCs to conduct this check likely would be more expensive and less efficient, particularly because the version of the Social Security Master Death Index that is available to the public (i.e. entities other than federal and state government agencies) does not include death data

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[271] NPRM ¶ 101.

[272] *See* USAC Briefing Book at 163.

[273] *See* 2017 GAO Report at 43; *see also* Letter from Ajit V. Pai, Chairman, Federal Communications Commission, to Vickie Robinson, Acting Chief Executive Officer and General Counsel, Universal Service Administrative Company, at 3 (July 11, 2017) (directing USAC to explore automating the process of comparing subscriber records against the Social Security Master Death Index at the time of subscriber enrollment or recertification).

received from the states.[274] Thus, should the Commission codify the requirement that subscribers be compared to the Social Security Master Death Index at enrollment and during recertification, the rule should require that the comparison be built into the existing NLAD identity verification process, and not imposed directly on ETCs.

F. The Commission Should Not Ban In-Person Handset Distribution

In the NPRM, the Commission seeks comment on banning in-person distribution of handsets to eligible Lifeline subscribers, a self-serving proposal that has long been advocated by TracFone and already properly rejected by the Commission.[275] The Commission should again decline TracFone's thinly-veiled effort to enhance its position in the marketplace at the expense of its competition and consumers. Not only does in-person enrollment and handset distribution have distinct advantages for eligible consumers (e.g., comparability of service experience and an opportunity for consumer education), it also enables Lifeline service providers to proactively curb waste, fraud and abuse (e.g., through chain-of-custody controls and training regarding program rules) in a manner that can be significantly more effective than mail-only distribution.

TracFone's position opposing in-person handset distribution is an anticompetitive attempt to impose, by rule, its preferred business practice to the detriment of its competitors. TracFone has made the business decision not to utilize in-person handset distribution in most (but not all) states. Rather than invest in the controls and process changes needed to fairly compete with other ETCs, TracFone continually has asked the Commission to ban its competitors' successful distribution practices based on the unfounded premise that doing so is essential to controlling

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[274] *See* https://www.ssa.gov/dataexchange/request_dmf.html.

[275] *See* NPRM ¶ 101 and n. 211.

waste, fraud and abuse. In the interest of preserving a healthy Lifeline market that maximizes competition and consumer benefits, the Commission should reject TracFone's proposal.

Not only is TracFone's proposal patently anticompetitive, it also would limit proven and effective efforts that benefit low-income consumers. In-person enrollment and handset distribution has been an essential driver of Lifeline service adoption among low-income consumers, enabling ETCs to forge meaningful and beneficial relationships with low-income communities, community anchor institutions and other organizations focused on serving those in need.[276] Indeed, in-person enrollment and handset distribution enables ETCs to effectively serve some of the most vulnerable low-income communities in America, including the homeless and those who have been displaced by natural disasters and other emergencies. People in these circumstances often lack a permanent address to which an ETC could ship a handset. Moreover, in-person enrollment and handset distribution promotes dignity in the enrollment process, allowing low-income Americans to access wireless devices and service in real-time at the point of enrollment in the same manner that most non-low-income consumers expect and deserve. Indeed, it would hardly align with consumer expectations in the non-Lifeline market if a service provider such as T-Mobile or Sprint told a new subscriber that she would have to wait several days after signing up for service to receive a device to use that service. There is no compelling reason to ask low-income participants in the Lifeline program to accept a different customer service experience at enrollment.

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[276] *See* 2015 GAO Lifeline Report at 30 ("Prepaid wireless ETCs conduct outreach, including in-person outreach and enrollment, to overcome challenges such as lack of customer knowledge about the program, inability to submit applications, and recertification. FCC and USAC officials report that states with more ETCs offering prepaid wireless service tend to have higher Lifeline participation rates due to greater outreach.").

In addition, in-person enrollment and handset distribution provides a vital consumer education touchpoint, giving eligible Lifeline subscribers the opportunity to ask questions about how to use the device and the service, understand eligibility criteria and program rules, and make informed choices and enrollment certifications. As the Lifeline program has transitioned to broadband services, in-person enrollment and handset distribution has served as an important vehicle for promoting broadband adoption and digital literacy as field representatives have been able to help applicants learn how to use smartphones, set up email addresses, and otherwise facilitate their use of digital tools through their Lifeline-supported broadband service.

In-person enrollment and handset distribution also enable ETCs to proactively curb waste, fraud and abuse at the point of enrollment in a manner that can be significantly more effective than is possible with a mail-only distribution method. For example, distributing handsets in-person at the point of enrollment allows ETCs to verify that the Lifeline-eligible consumer is the person who receives and activates the wireless handset, ensuring an unbroken chain of custody between the ETC and the eligible subscriber.

For these reasons, the Commission should once again reject TracFone's self-serving proposal to ban in-person handset distribution, which would harm competition, consumers, and the Lifeline program without providing any redeeming, evidence-based benefit.

VII. THE COMMISSION SHOULD CONSIDER REFORMS THAT ACHIEVE BALANCE BETWEEN FEDERAL AND STATE OVERSIGHT OF THE LIFELINE PROGRAM

One objective in the NPRM is to "better accommodate the important and lawful role of the states in the Lifeline program."[277] To achieve this goal, the Commission proposes to eliminate the Lifeline Broadband Provider (LBP) designation set forth in the 2016 Lifeline

[277] NPRM ¶ 54.

Modernization Order, and seeks "comment on ways to encourage cooperative federalism between the states and the Commission to make the National Verifier a success."[278] As a general matter, these proposals demonstrate the Commission's commitment to striking the right balance between state and federal oversight of the Lifeline program, in accordance with the universal service provisions of the Communications Act. However, to ensure that the proposed reforms do not adversely affect consumers or the program, NaLA respectfully urges the Commission to tailor its proposals. Specifically, if the Commission eliminates the LBP category of ETCs, it should implement alternative measures to facilitate competition in the Lifeline program, such as a shot clock for reviewing ETC applications. Additionally, the Commission should never penalize consumers by halting Lifeline enrollments in response to a delay in implementation of the National Verifier in one or more states.

A. If the Commission Eliminates the Lifeline Broadband Provider Designation, It Should Adopt Alternative Streamlined ETC Designation Processes

In an effort to address "serious concerns" about "the Commission's creation of Lifeline Broadband Provider (LBP) ETCs and preemption of state commissions' designation of such LBPs," the NPRM proposes to eliminate the LBP designation and the streamlined approval process established in the 2016 Lifeline Modernization Order.[279] While reversing these actions may appear to be straightforward, NaLA respectfully submits that if the Commission moves forward with these proposals, it should consider alternative solutions to promote competition in the Lifeline program.

The Commission has been presented with myriad evidence that "the current ETC designation process is unnecessarily burdensome and hinders competition in the Lifeline

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[278] *Id.*

[279] *See id.* ¶¶ 55-56.

market."[280] The streamlined LBP designation process was a creative solution to one aspect of this problem, and was intended to bring new and innovative Lifeline service providers into the market that may have otherwise been discouraged from seeking ETC designations because of the ongoing difficulties in obtaining ETC designations from certain states and the Commission itself.[281] The 2016 Lifeline Modernization Order made clear that the primary objective in establishing the LBP designation procedures was to "unleash increased competition in the Lifeline marketplace."[282] Accordingly, if the Commission decides to eliminate the stand-alone LBP designations and the process established in the 2016 Lifeline Modernization Order, it should, consistent with the objective of increasing competition, retain the streamlined designation process for the federal jurisdiction states, *i.e.*, those states that do not designate wireless Lifeline ETCs. In the 12 states where the state commissions no longer have authority to designate wireless Lifeline ETCs, retaining the streamlined process would not infringe on the statutory rights of the states to designate ETCs.[283] To be clear, the streamlined approval process set forth in the 2016 Lifeline Modernization Order is not dependent on the continued existence of the standalone LBP designation. As such, NaLA is not advocating that the Commission must designate broadband-only Lifeline providers, but rather that it apply the streamlined process established for LBPs to applications by entities that seek to become ETCs and offer both voice

[280] 2016 Lifeline Modernization Order ¶ 235 and n. 628.

[281] Evidence suggests that the streamlined LBP process could have achieved this objective, as the Commission received more than three dozen petitions for designation as an LBP in the wake of the 2016 Lifeline Modernization Order, many of which were submitted by entities that do not currently provide Lifeline service. *See* https://www.fcc.gov/lifeline-broadband-provider-petitions-public-comment-periods.

[282] 2016 Lifeline Modernization Order ¶ 220.

[283] The federal jurisdiction states are Alabama, Connecticut, Delaware, the District of Columbia, Florida, Maine, New Hampshire, New York, North Carolina, Texas, Tennessee, and Virginia.

and broadband Lifeline services in the federal jurisdiction states.[284] Indeed, using the 60-day "deemed granted" approach to review ETC applications in the federal jurisdiction states could incentivize new providers to enter the Lifeline market, as well as help alleviate the current backlog of petitions that have been pending before the Commission for as many as seven years.[285] For the same reasons, the Commission should also apply this streamlined review to compliance plans, some of which have been pending at the Commission for as many as five years.[286]

Additionally, even absent the nationwide LBP designation process, the Commission can and should take steps to address ETC designation delays in the states that continue to exercise jurisdiction over such matters. Specifically, the Commission should, as previously suggested by the American Cable Association (ACA), implement a shot clock for state review of ETC applications whereby an entity that has submitted an ETC application in a particular state could seek designation by the Commission if a state commission has failed to act within 90 days after

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[284] Under this process, ETC applications "will be subject to expedited review and will be deemed granted within 60 days of the submission of a completed filing provided that the provider meets certain criteria demonstrating that it is financially stable and experienced in providing … services, unless the Commission notifies the applicant that the grant will not be automatically effective." 2016 Lifeline Modernization Order ¶ 278. *See* LBP/MSS Public Notice ¶¶ 3-9 (detailing the criteria required for streamlined LBP designation). Additionally, a request to expand an ETC's service area within the federal jurisdiction states should "be deemed granted five business days after it is submitted to the Commission, unless the Bureau notifies the applicant that the grant will not be automatically effective." 2016 Lifeline Modernization Order ¶ 280.

[285] *See, e.g.*, Amended Petition of Boomerang Wireless, LLC for Designation as An Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, the District of Columbia, Florida, Maine, New Hampshire, New York, North Carolina, Tennessee, and Virginia, WC Docket No. 09-197 (originally filed Dec. 29, 2010).

[286] *See, e.g.*, Petition for Clarification of the Pennsylvania Public Utility Commission, WC Docket No. 11/42 et al., at 3 (filed June 23, 2016) (suggesting that failure to act by the Commission on the pending compliance plans causes residual delays at the state level in consideration of ETC applications).

the filing of an application.[287] A shot clock is consistent with the Communications Act's mandate that states "shall" designate ETCs,[288] as well as Commission precedent for addressing state and local barriers to service providers' ability to enter a particular area.[289] Moreover, Lifeline stakeholders have previously expressed support for a shot clock approach to approving ETC applications.[290] Indeed, a definitive timeline for ETC approval would alleviate "the existing ETC designation process [that] can vary widely between states."[291]

For the reasons stated herein, if the Commission eliminates the LBP category of ETCs, it should maintain the streamlined ETC application review process for the federal jurisdiction states, as well as adopt measures to address ETC designation delays in the states that continue to exercise jurisdiction over such matters.

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[287] *See* American Cable Association Comments, WC Docket No. 11-42 et al., 11 (filed Aug. 31, 2017). If such an application comes before the Commission, it should be subject to the 60-day streamlined approval process set forth for LBPs in the 2016 Lifeline Modernization Order.

[288] *See* 47 U.S.C. § 214(e)(2).

[289] *See, e.g.*, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, ¶¶ 70, 72 (2006) (adopting limitations of 3-6 months for local franchise authorities to review and negotiate franchise agreements); *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Rcd 13994, ¶ 32 (2009) (concluding that 90 days is a "reasonable period of time" to process personal wireless service facility siting applications requesting collocations).

[290] *See, e.g.*, Comments of WTA – Advocates for Rural Broadband, WC Docket No. 11-42, at 15 (filed Aug. 31, 2015); 2015 Lifeline Joint Commenters Comments at 52-55.

[291] 2016 Lifeline Modernization Order ¶ 236.

B. The Commission Should Never Halt Lifeline Enrollments to Address Database Issues with States

In the NPRM, the Commission states "it is important all states join the National Verifier in a timely manner,"[292] and asks "whether new Lifeline enrollments should be halted in a state at any point if the launch of the National Verifier has been unnecessarily delayed in that state."[293] The answer to this question is a resounding "no." While NaLA understands and respects the Commission's intention to implement the National Verifier as soon as possible and agrees with the use of eligibility databases to the fullest extent possible, halting enrollments in states that the Commission subjectively determines are not moving quickly enough to integrate their eligibility databases is inconsistent with the statutory mandate to provide "low-income consumers … access to telecommunications and information services."[294] Moreover, this approach has one guaranteed result: harming low-income consumers by improperly preventing them from participating in the Lifeline program. Accordingly, this proposal should be rejected.

State databases have long played a significant role in confirming consumer eligibility for Lifeline,[295] and will continue to be an efficient means of verifying an applicant's information and eligibility once the National Verifier is in place.[296] However, as the Commission has previously acknowledged, "[m]any existing state databases do not include information for every qualifying

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[292] NPRM ¶ 60.

[293] *Id*.

[294] 47 U.S.C. § 254(b)(3).

[295] Indeed, 25 states and territories currently have databases that can be used to verify Lifeline applicant eligibility. These databases cover 62 percent of the U.S. population.

[296] *See* 2015 Lifeline Joint Commenters Comments at 28-32 (urging the Commission to leverage existing state eligibility databases when developing the framework for the National Verifier).

program."[297] In such cases, the National Verifier can process enrollments in the NLAD manually by reviewing documentation from a consumer that demonstrates his or her participation in a qualifying program. The Commission has determined that this manual review is not unduly burdensome.[298]

The NPRM already acknowledges that, similar to the manual review process currently employed by ETCs, if a particular state does not satisfy the Commission's expectation for implementing the National Verifier, "USAC is able to conduct a manual review of all eligibility documentation for potential Lifeline subscribers in that state."[299] While the Commission may have concerns about the cost and efficiency of USAC conducting manual reviews, such shortcomings pale in comparison to the proposal to punish consumers for the actions, or lack thereof, by their states by summarily denying Lifeline benefits to thousands of eligible individuals whose states do not move quickly enough to implement the National Verifier. Moreover, attempting to browbeat state participation in the National Verifier by threatening to halt all enrollments in the event of a delay in National Verifier implementation is not likely to yield the "strong cooperative effort between the Commission and its state partners"[300] that will be necessary to achieve the objectives of the National Verifier.[301] A better approach would be to

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[297] *See Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 16-1324, ¶ 37 (WCB rel. Dec. 1, 2016).

[298] *See id*. (finding that there was no "record evidence that accepting documentation of Veterans and Survivors Pension Benefit participation would be unreasonably burdensome when providers are already evaluating other program-based eligibility manually").

[299] NPRM ¶ 61.

[300] *Id*. ¶ 59.

[301] The proposal to eliminate wireless resellers from the Lifeline program is similarly an affront to efforts to foster collaboration between the states and the Commission. Indeed, the Communications Act vests primary authority for ETC designation with the states, and by proposing to eliminate wireless resellers from the Lifeline program, the Commission effectively

reward states that do participate in a timely manner by increasing per subscriber support amount in those states.

In sum, NaLA supports the Commission's goal of achieving balance between state and federal oversight of the Lifeline program, and respectfully submits that the adjustments to the NPRM proposals set forth in these comments will best serve that objective, while also enhancing competition in the program that will benefit consumers.

VIII. THE COMMISSION SHOULD CONTINUE TO USE THE LIFELINE PROGRAM TO CLOSE THE DIGITAL DIVIDE FOR LOW-INCOME AMERICANS IN ALL AREAS UNTIL THEY ARE ABLE TO GRADUATE FROM POVERTY

In the NOI, the Commission seeks comment on the ultimate purposes of the Lifeline program, how best to target the digital divide including creating better economic incentives for providers participating in the program, and whether Lifeline subscribers should be subject to benefit limits.[302] The purpose of the Lifeline program is to support affordable communications services for low-income Americans everywhere until they are able to graduate from poverty because of the enormous individual and societal benefits of connectivity.

A. The Lifeline Program Should Continue to Target Closing the Digital Divide Based on Income, Not Geography

The Commission seeks comment in the NOI regarding the ultimate purposes of the Lifeline program, whether to target closing the digital divide by focusing more support on rural areas and how to incentivize providers to participate in the program.[303] As discussed at length in section I.A.1. above, the long-established purpose of the Lifeline program has been to make

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sends a signal to the states that their careful vetting of ETCs and decisions to allow them to provide Lifeline service are of little to no importance.

[302] *See* NOI ¶¶ 119-131.

[303] *See id*. ¶¶ 119-129.

affordable voice (and, more recently broadband) services available to all low-income Americans. The Lifeline program should continue to fulfill that goal.

The Lifeline program can and should help to close the digital divide based on income, not geography. The high cost and CAF programs are well-funded and meant to address rural communications deployment, but the Lifeline program was designed for a different purpose.[304] According to the Census Bureau, households in urban areas are more likely to live in poverty than those in rural areas.[305] In addition, as discussed in section I.E., 90 percent of Lifeline subscribers choose wireless service and the prices charged by wireless service providers are no higher in rural areas than they are in urban areas because pricing is nationwide or at least statewide. Therefore, there is no rational justification for providing additional Lifeline support to subscribers in rural areas to the detriment of eligible low-income subscribers in urban areas.

With respect to the inquiry into Commission actions that could be taken to "create better economic incentives for providers participating in the program," the answer is straightforward. First, as discussed at length in section I.A. above, the Commission should not eliminate the wireless resellers that provide Lifeline services to nearly 70 percent of all Lifeline subscribers. Such a decision would further restrict provider participation, reduce competition, consumer choice and innovative and improving service offerings. Instead, the Commission should embrace the service providers that seek to enter the market and provide Lifeline services in both urban and rural areas by streamlining compliance plan and federal ETC approval processes, and

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[304] *See* Press Release, "Chairman Pai Proposes over $500 Million in Funding to Promote Rural Broadband Deployment (Jan. 16, 2018), *available at* https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0116/DOC-348723A1.pdf.

[305] Ale Bishaw and Kirby G. Posey, "Incomes and Poverty Higher in Urban Areas," United States Census Bureau (Nov. 2017), *available at* https://www.census.gov/library/stories/2017/11/income-poverty-rural-america.html (last visited Jan. 16, 2018) ("the percentage of people [in rural areas] living below the official poverty threshold was 13.3 percent, almost three points lower than the 16 percent in urban areas").

encouraging states to streamline ETC designations.[306] The Commission also should reduce redundant and arduous regulatory burdens that drive excessive compliance and program administration costs. Most notable among these are the minimum service standards and the usage requirements.[307] With the National Verifier implementation plan firmly in place, the Commission should retire these hyper-regulatory and paternalistic measures and once again let consumers choose for themselves the services they want and how to use their service, including saving it for an anticipated need or unanticipated emergency.[308]

Further, the Commission should recognize that there must be at least some profit to motivate ETCs to enter the market and provide Lifeline services in a successful public-private partnership to serve low-income communities. Profits are what allow ETCs to invest in service plan improvements and innovations, and in smartphones and other devices essential to facilitating connectivity. Without a profit motive, the only providers left will be those that are forced to provide Lifeline as a condition of receiving more lucrative high cost support and that seek to relinquish ETC designations and invoke forbearance from providing Lifeline broadband at every opportunity.

B. The Commission Should Not Deny Lifeline Benefits to Low-Income Americans Who Have Not Yet Managed to Climb Out of Poverty

In the NOI, the Commission asks whether it should impose "a benefit limit that restricts the amount of support a household may receive or the length of time a household may participate

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[306] *See* section VII.A., *supra*.

[307] *See, e.g.*, 2015 Lifeline Joint Commenters Comments at 87-90; Letter from John J. Heitmann, Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90, at 9 (Oct. 15, 2016).

[308] If the Commission declines to eliminate the non-usage rule, it should extend the non-usage period to allow consumers to save usage allocations for a particular purpose or an emergency.

in the program."[309] The Commission should not impose benefit limits or time limits on Lifeline benefits to Americans who have not yet been able to climb out of poverty because of the critically important individual and societal benefits of connectivity.

While the goal of Lifeline subscriber and service providers is to have subscribers climb out of poverty and become full-fledged participants in our modern digital economy (and full-paying customers), there is no uniform timeframe for how long that process takes – nor is there a guaranty of success. Indeed, it is those subscribers that have not yet been able to climb out of poverty who are most in need the connectivity that Lifeline service provides – for calls to 911 and communications (both voice, text and via the Internet) with healthcare providers, employers and family. The last thing a working mother struggling to cobble together enough shifts at various jobs to get out of poverty needs is to lose her phone and Internet service so that employers can't reach her because of an arbitrary Lifeline cutoff. Also, many Lifeline subscribers are elderly and the chance that such subscribers' financial circumstances will improve dramatically is fairly low.[310] Additionally, the Lifeline benefit is quite modest at $9.25 each month. Compared to nearly any other benefit for those that qualify, Lifeline delivers a large benefit to those that need it for a remarkably small cost.

Moreover, there are important societal benefits to connecting low-income America to wireless voice and Internet communications. For example, in an emergency, we are all better off when we all have mobile phones and can call (or increasingly text) for assistance. Further, enabling households with children to have access to affordable broadband will provide them with better educational opportunities, exposing them to tools and skills that will enable them to break

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[309] *See* NOI ¶¶ 130-31.

[310] NaLA's survey of nearly 40,000 subscribers indicates that over 19 percent of respondents are over the age of 60.

free of the constraints of poverty. Finally, for those dealing with long-term unemployment or underemployment, continued access to the Lifeline program will ensure that when the coal mine reopens, or the next harvest season comes, they will have the ability to answer the call for the job. Ultimately, imposing benefit limits would be bad for Lifeline recipients and bad for society.

The Commission should continue to focus the Lifeline program on closing the economic digital divide for Americans across the country until they are able to climb out of poverty and afford critical communications services without assistance.

CONCLUSION

The Commission should further reform the Lifeline program consistent with the positions herein, but avoid implementing proposals, like the elimination of wireless resellers, that would drastically cut the Lifeline program and widen the digital divide.

Respectfully submitted,

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EXHIBIT

Subscriber Comments on the Importance of Wireless Lifeline Service

I am a disabled person. Without my phone I would not be able to get in touch with my doctors nor they me. I truly need my service and without it I could not afford to have a phone. I was without one for a long time and I struggled to get in contact with ANYONE. So, thank you for my lifeline service it truly is a life saver. *Nancy C. (KY)*

I only use my phone for medical reasons. It really helps me keep in touch with my doctors. I love the minutes I have. *Gene B. (AZ)*

I live alone and I am under the doctor's care, my phone is my only means of help. If I need to go the ER for help I can use my phone. *Sylvia V. (CA)*

Without Assist Service I wouldn't have a phone to stay in contact with my children, their schools, Dr. appts. Today I lost my phone and I have already missed a job interview. I've been looking for a job for months. This is a major set back. I can't afford any other phone service right now. If there wasn't lifeline service then I would be stuck homeless and jobless. *Crystal R. (OK)*

My Life Wireless phone helps me with work and my doctors and much more it is my primary source of communication thank you very much. *Rooster L. (WV)*

I am homeless and this is my lifeline. I can keep in touch with family and friends. *Rudy K. (NV)*

I am wheel chair bound, also my room mate has signifigant brain damage. We have accidents all the time and rely on the lifeline for emergencies and to keep in contact with family and Doctors. It is crucial that I have this as it is nesecary for my safety. *Leon M. (OK)*

This phone is very useful in applying for jobs online. It's a very valuable tool. I've used it in emergency situations, as well as daily life needs. *Todd R. (KY)*

My phone is very convenient because I live in the country. I talk a lot with my kids. I'm able to talk with my children's teachers and also make dr. appointments. *Robyn P. (LA)*

I have no job and could not afford a phone, when the phone was mailed to my house it felt like Christmas. I was able to contact the VA hospital to get help. I feel safe with the phone in my presence. I love the minutes because I could not text the hospital but I was able to call. My family is far away and every now and then I am able to text my granddaughter. *Russell P. (PA)*

My Lifeline phone has made me very happy. I'm able to call my doctor, call 911 and pay my bills. I use the text to check on my girls and they can do the same. I really like the texting. *Ruby K. (KY)*

I'm able to talk to people I could not afford another phone. I can stay in touch with my family. *Jason J. (KY)*

Us vet's need this resource, we are on a fixed income and without this device for support I wouldn't make it in society. *Antoine R. (OK)*

I am now part of the working world because of my phone. It keeps me on time for work. I love the mins to keep in touch with my family. *Clifford B. (CA)*

My Life Wireless phone has helped me call emergency personnel to me when I was having chest pain. I have used my Life Wireless phone to call police when I was assaulted. I've used my Life Wireless phone for road service when my vehicle broke down my Life Wireless service has help me very much and I thank you for your service. *Kenneth F. (GA)*

My Lifeline phone is convenient and it saves me a lot of time. I use my phone for dr. appointments. I had to call 911 for an emergency. I can keep in touch with my son. *Jerry D. (SC)*

This is my only phone i have if i didn't have it i wouldn't have a phone. Assist wireless has been great to me for years i wont go anywhere else. Us veterans need this program. Thank you *David W. (OK)*

Source: Responses to Life Wireless and Assist Wireless Consumer Survey (collected Dec. 2017 – Feb. 2018)