

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

To: The Commission

COMMENTS OF ATN INTERNATIONAL, INC.

ATN International, Inc., on behalf of itself and its subsidiaries (“ATN”),¹ submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking and Notice of Inquiry (“*NPRM and NOI*”) regarding proposed modifications to the Lifeline program.² ATN applauds the FCC for its continued efforts to reform the Lifeline program. To that end, ATN supports the FCC’s efforts to “bring digital opportunity to those who are currently on the wrong side of the digital divide.”³

ATN provides both wireline and wireless Lifeline services via a number of its subsidiaries in numerous rural, insular/Territorial (collectively “Rural”) and Tribal areas over

¹ ATN through its operating subsidiaries Vitelcom Cellular, Inc. (d/b/a Viya Wireless), Virgin Islands Telephone Corporation (d/b/a Viya), NTUA Wireless, LLC (a joint venture with the Navajo Nation), Choice Communications, LLC, and Commnet Wireless, LLC, provides retail and wholesale services to Rural and Tribal areas of the United States, particularly in underserved and unserved areas.

² *Bridging the Digital Divide for Low Income Consumers, et al.*, WC Docket Nos. 17-287, 11-42 and 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) (when referring to the Notice of Proposed Rulemaking and Notice of Inquiry, “*NPRM and NOI*” and when referring to the Fourth Report and Order, Order on Reconsideration, and Memorandum Opinion and Order, “*Order*”).

³ *NPRM and NOI* ¶ 53.

facilities-based networks: (1) Commnet Wireless in Nevada, New Mexico, Colorado and Montana in extremely rural and Tribal areas; (2) Choice Communications, Viya, and Viya Wireless, in the U.S. Virgin Islands (“USVI”) – which are still recovering from last year’s hurricanes; and (3) NTUA Wireless (a joint venture between the Navajo Tribal Utility Authority and Commnet Wireless) on the Navajo Nation. ATN and its subsidiaries serve approximately 20,000 Lifeline subscribers (nearly 14,000 of which are on Tribal lands) and almost all over facilities based in extremely Rural and Tribal lands that are underserved or were previously unserved. It is critically important to direct Lifeline funding to assist consumers in these areas, and to provide incentives for the construction of networks in these notoriously hard to reach areas. Accordingly, ATN provides the following targeted comments in support of the FCC’s efforts to modernize the Lifeline program, to direct funding in areas where it is needed the most and to create incentives for providers to construct networks in Rural and Tribal areas.

I. THE FCC SHOULD PROCEED WITH STEPS TO IMPROVE LIFELINE’S EFFECTIVENESS FOR CONSUMERS

The FCC offers a number of proposals in which it seeks to “ensure the Commission’s administration of Lifeline support is faithful to Congress’s stated universal service goals and is focused on helping low-income households obtain the benefits that come from access to modern communications networks.”⁴ ATN supports several of these proposals, including the direction of Lifeline support to facilities-based carriers to further promote broadband deployment and the promotion of rules that would enhance consumer choice.

As an initial matter, the FCC notes that “Lifeline support will best promote access to advanced communications services if it is focused to encourage investment in broadband-capable

⁴ *Id.* ¶ 62.

networks.”⁵ It further concludes that “broadband service is not as ubiquitous or as affordable as voice service,” which “is particularly true in rural and rural Tribal areas, where broadband deployment lags behind other areas of the county.”⁶ ATN’s experience supports both conclusions, and ATN urges the FCC to proceed to direct Lifeline support to facilities-based carriers that will continue to construct and expand networks in Rural and Tribal areas.

Lifeline support increases the ability of many Americans to receive needed services, and these funds, when directed to facilities-based providers such as ATN, encourage and promote the deployment of additional and/or more advanced facilities to serve low-income households. These additional funds will allow facilities-based carriers to reinvest in their networks, supporting customers and helping further bridge the digital divide in unserved and underserved areas. Otherwise, there may be little incentive for broadband deployment in these areas.

In contrast, the distribution of Lifeline funds to support providers of resale service fails to achieve the goal of promoting additional broadband deployment – as resellers are confined to the existing networks upon which they resell. Directing funding in this fashion actually has the perverse affect of negatively impacting the deployment of broadband service, as customers of resellers diminish the business case of those providers actually willing to invest in the building of networks. Lifeline funds that are directed to resellers are more likely to be removed from areas that need it most, while funds directed to facilities-based providers are more likely to stay in these needy communities in the form of maintenance and new investments. Of note, the FCC currently does not include resellers in its consideration of the competitive effects of transactions

⁵ *Id.* ¶ 65.

⁶ *Id.* ¶ 63.

further demonstrating the limited competitive impact of such providers in the marketplace.⁷

Thus, the FCC should move forward with its efforts to “limit Lifeline support to facilities-based broadband capable service provided to a low-income consumer over the ETC’s voice- and broadband-capable last-mile network.”⁸

With regard to the current schedule for phasing out Lifeline support for voice services, ATN believes that the exception for permitting Lifeline support after December 1, 2021 for voice services in areas where there is only one Lifeline provider should continue.⁹ ATN asserts that retaining this exception would not impede the adoption of Lifeline broadband service or investment in broadband-enabled networks – and that removing the exception may potentially endanger the ability of certain low-income and elderly consumers to obtain quality, affordable voice service in certain rural areas without Lifeline voice support.

Moreover, ATN supports the adoption of other proposals that will further enable consumer choice and promote competitive offerings. For instance, ATN supports the proposal to allow providers to meet the minimum service requirements through plans that provide subscribers with a particular number of “units” that can be used for either voice minutes or broadband services.¹⁰ Such a rule would empower the consumer to make the decision as to what services they find most useful – rather than a command-and-control policy that would distort market forces and result in consumers potentially paying for and receiving services that they may not necessarily want or need. This same reasoning applies to the FCC’s proposal to eliminate the

⁷ *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc.*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2334-35, ¶ 37 (WTB, IB 2013).

⁸ *NPRM and NOI* ¶ 65.

⁹ *Id.* ¶ 74.

¹⁰ *Id.* ¶ 80.

Lifeline program’s “equipment requirement.”¹¹ The current rule includes an unnecessary mandate that all devices be Wi-Fi-enabled and hot spot-capable, and precludes consumers from choosing lower-cost options that may better meet their needs and budget. Mandating expansive service and equipment requirements hampers the ability of providers to offer services tailored to what consumers want. Consequently, ATN agrees that this rule – which was adopted without prior public comment – should be eliminated by the FCC.

II. THE FCC SHOULD TAKE ACTION TO REDUCE WASTE, FRAUD AND ABUSE – BUT WITHOUT DISTURBING MARKET FORCES OR LIMITING CONSUMER CHOICE

ATN supports the FCC’s efforts to continue to further reduce the waste, fraud and abuse that plague the Lifeline program. However, in curbing such abuses, the FCC must not adopt rules that result in inflexible mandates that limit the ability of providers to offer needed services to consumers. For instance, the FCC proposes to prohibit agent commissions related to enrolling subscribers in the Lifeline program, and to codify a requirement that ETC representatives who participate in customer enrollment must register with USAC.¹² ATN submits that these proposals are unnecessary and may restrict the ability of providers in Rural and Tribal areas to offer Lifeline-based services to customers.

The National Lifeline Eligibility Verifier (“National Verifier”) should be the main mechanism for weeding out waste, fraud and abuse – which was the primary reason for its creation. A requirement for ETC representatives who participate in customer enrollment to register with USAC is already being implemented via the National Verifier.¹³ Adding an

¹¹ *Id.* ¶ 81.

¹² *Id.* ¶ 91.

¹³ *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket Nos. 11-42, 09-197 and 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶ 139 (rel. Apr. 27, 2016) (“2016 Lifeline Order”).

additional database and process – even on an interim basis – would only complicate this process, and would be an unnecessary waste of valuable resources.¹⁴

The FCC should also not prohibit agent commissions for enrolling Lifeline customers. The provision of service to Tribal and Rural areas does not generally fit standard business cases or practices, and often requires innovative, creative and entrepreneurial solutions. For example, in many of these areas, establishing a retail presence via traditional means, such as retail stores, is not a realistic option due both to the geographic size and the low population density in such areas. Many of Commnet’s agents are the local grocer, laundromat operator and mobile sales representatives. Commissions allow these sales mechanisms to continue to function. The adoption of this rule would limit the ability of ATN and others to develop sales channels that are designed to meet the challenging market conditions of rural areas – and would have the likely consequence of decreasing the ability of consumers to receive services in such areas.

The FCC should also not adopt overly restrictive and unnecessary mandates regarding a provider’s service offerings, nor should it implement a maximum discount level.¹⁵ The FCC has already adopted minimum service standards, which are sufficient to make sure that Lifeline customers receive quality Lifeline-supported services, yet still allow carriers the discretion to design unique service offerings for consumers.¹⁶ As the FCC notes, 85% of all Lifeline program participants subscribed to plans providing free-to-the-end-user Lifeline service, and many service

¹⁴ In addition, ATN does not support the FCC’s proposal to develop alternatives to the National Verifier or NLAD dispute resolution process. Any temporary process adopted would only further drain valuable resources and result in overly duplicative services. However, the FCC must incorporate into the NLAD process the ability to take into account the unique circumstances that often arise on Tribal lands and other areas, such as the fact that Tribes (and Rural, insular areas such as the islands of the US Virgin Islands) often lack street addresses, and the fact that Tribal benefit programs often are not modernized.

¹⁵ *NPRM and NOI* ¶ 112.

¹⁶ *2016 Lifeline Order* ¶¶ 69-103.

providers use the monthly Lifeline support amount to offer this type of service to the consumer.¹⁷

Eliminating the ability of carriers to offer essentially free end-user service would have the probable effect of depriving people of essential telecommunications services. This is particularly true in Tribal areas and hurricane affected Rural areas, where innovative free end-user service plans are necessary to allow for the provision of affordable services to underserved areas and low-income populations – and especially true in USVI. Such a rule would also unnecessarily restrict the ability of the provider to offer service and rate plans designed to meet customer needs. Carriers must have the ability to determine what services and plans will represent the most competitive and affordable options when incorporating Lifeline funding. As the FCC has noted in other contexts, it should not be in the business of mandating business models or services by providers.¹⁸ In sum, adopting a maximum discount would detrimentally impact the ability of consumers that rely on Lifeline funding to obtain services.

III. ANY CAP ON LIFELINE FUNDING MUST ALLOW FOR PRIORITY SUPPORT TO AREAS THAT CRITICALLY NEED IT

The FCC proposes to adopt a self-enforcing mechanism to ensure that Lifeline disbursements are kept at a reasonable level and to prevent undue burdens on the ratepayers that contribute to the program.¹⁹ ATN urges the FCC, if it adopts a cap, to ensure that the budget is sufficient to allow consumers who critically need services to receive them. Moreover, in the instance that the FCC adopts a cap, it must also adopt safeguards such that Lifeline support is prioritized to the areas that need it the most, such as Tribal areas and extremely Rural areas.

¹⁷ *NPRM and NOI* ¶ 112.

¹⁸ See, e.g., *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411 (2011) (adopting a general requirement of “commercial reasonableness” for roaming terms and conditions, rather than a more specific prescriptive regulation of rates).

¹⁹ *NPRM and NOI* ¶ 105.

ATN supports a slightly modified version of the FCC’s proposal that in the event disbursements are projected to exceed any cap in a funding year, Lifeline funding be prioritized in the following order: (1) rural Tribal lands, (2) insular and territorial Rural areas with above average poverty, (3) other Rural areas, and (4) all other areas.²⁰ This prioritization would ensure that the most needy areas receive this critical funding. ATN further submits that “categories with less prioritization should receive no support before the support of the category with the next-highest prioritization is adjusted.”²¹

As the FCC notes in the *Order*, enhanced Tribal support is premised on the idea that support would incentivize providers to “deploy telecommunications facilities in areas that previously may have been regarded as high risk and unprofitable.”²² In fact, the *Order* is dedicated to targeting enhanced support to Tribal areas.²³ And, as the FCC acknowledges, “Rural and rural Tribal areas have higher percentages of broadband non-adopters when compared to other areas.”²⁴ To that end, the FCC should not adopt any budgetary measures that may have the unfortunate consequence of removing funds allocated to serve these areas. These areas need to be prioritized in order to maintain the FCC’s commitment to “increase the availability and affordability of high-quality communications services on Tribal lands.”²⁵

²⁰ See *id.* ¶ 108.

²¹ *Id.*

²² *Order* ¶ 4.

²³ See generally *Order* ¶¶ 3-31. The Fourth Report and Order seeks to “increase the availability and affordability of high-quality communications services on Tribal lands.” *Id.* ¶ 2.

²⁴ *NPRM and NOI* ¶ 124; see also Andrew Perrin, *Digital Gap Between Rural and Non-rural America Persists*, Pew Research Center (May 19, 2017), <http://www.pewresearch.org/fact-tank/2017/05/19/digital-gap-between-rural-and-nonrural-america-persists/>; Letter from M. Theresa Hopkins, Executive Director, Navajo Nation Telecommunications Regulatory Commission, to Thomas Wheeler, Chairman, FCC, WC Docket No. 11-42, at 1 (Feb. 24, 2016).

²⁵ *Order* ¶ 2.

IV. THE FCC SHOULD TAKE FURTHER LIFELINE-RELATED ACTIONS TO HELP CLOSE THE DIGITAL DIVIDE

In the *NOI*, the FCC initiates an evaluation of the ultimate purposes of the Lifeline program and the policies that would best accomplish those objectives.²⁶ The FCC requests comment on how it may be able to “leverage the Lifeline program to encourage broadband deployment in areas that have found themselves on the wrong side of the digital divide.”²⁷ ATN applauds this evaluation, and offers the following thoughts with respect to needed measures.

The FCC should move forward with the following to help bridge the digital divide: (1) allow for an enhanced subsidy for areas that experience extreme difficulty in deploying and/or sustaining advanced communications due to cost, terrain and population density constraints, such as Rural²⁸ and Tribal areas²⁹ and (2) level the playing field by making Link Up subsidies available to all facilities-based providers on Tribal lands and Rural areas (and any other areas where the FCC determines that enhanced support is needed). Such subsidies could be allocated in the event that there is any unused Lifeline support under the FCC’s proposed cap mechanism.

²⁶ *NPRM and NOI* ¶ 120.

²⁷ *Id.* ¶ 108.

²⁸ *Id.* ¶ 123. The FCC should target additional Lifeline support available for particularly insular Rural areas, such as the USVI, that were affected by Hurricanes Irma and Maria. The economies of these areas were challenged before the recent hurricanes (e.g., 30% of the USVI was below the poverty line), and are even more threatened now due to the destroyed tourist economy, limited carrier revenue potential and the slow restoration efforts. Additional Lifeline support can help ensure that customers impacted by the storms that are not already Lifeline customers can retain access to telecommunications services. *See* Emergency Petition of Viya Telephone, *et al.*, WC Docket No. 11-42 *et al.* (filed Oct. 5, 2017) (“Viya Emergency Petition”).

²⁹ The FCC notes that “broadband deployment in both rural and Tribal rural areas is lagging compared to other areas,” so any additional available funds would be well served to be allocated for these areas in dire need of additional broadband deployment. *NPRM and NOI* ¶ 125. The record highlights that the enhanced Tribal subsidy “has not been raised since it was established in 2000” and that the current enhanced Lifeline value may be insufficient to incentivize broadband deployment in certain tribal areas. *See* Couer D’Alene Tribe Reply Comments, WC Docket No. 11-42 *et al.*, at 3 (filed Sept. 30, 2015); Nez Perce Tribe Comments, WC Docket No. 11-42 *et al.*, at 2 (filed Aug. 31, 2015).

There is no justification for limiting Link Up funding only to certain high-cost support recipients – as the current rule only serves to inhibit additional broadband deployment in these areas.³⁰ By opening up Link Up support to *all* facilities-based providers, the FCC will better ensure that the full benefits of this program are realized by the customers that need them the most. As discussed above, there has been extensive damage to all facilities serving the USVI and, as a result, some or all of these networks may be unavailable indefinitely. Link Up benefits should be provided to help offset the burden on on-boarding additional Lifeline customers to new, functional networks to ensure that these customers do not lose their connectivity. These customers should be have access to Lifeline service, even if they have to switch carriers.³¹

V. CONCLUSION

ATN is encouraged by the FCC's continuing action with respect to the allocation and modernization of Lifeline funding. The FCC should move forward with rules that incentivize broadband deployment in Rural and Tribal areas, and allow for the more effective provision of Lifeline-supported services to consumers.

³⁰ The FCC should also address the discrepancy in the rules regarding the meaning of “high-cost support”. The FCC rules state that for a carrier to receive Link Up support, it must be “receiving high-cost support on rural Tribal lands, *pursuant to subpart D of this part.*” (47 C.F.R. § 54.413(a) (emphasis added); *see also* 47 C.F.R. § 54.414(a)). However, while Subpart D refers to CAF, frozen and Alaska Plan support, it fails to specifically reference Mobility Fund support, which is discussed in Subpart L of the rules. If the intent of the Link Up program is to ensure that support is directed towards carriers that seek to build facilities (which it should be), then high-cost Mobility Fund support must be included as an option for Link Up eligibility as well. Without such clarification from the FCC, wireless providers receiving Mobility Fund support could potentially not be eligible for the Link Up program once the FCC's transition to the Mobility Fund for high-cost support is complete, if such carriers are not considered to be receiving “high cost support” pursuant to the programs listed in Subpart D.

³¹ *See* Viya Emergency Petition at 12-13.

Respectfully submitted,

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