Date: March 23, 2018

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Bridging the Digital Divide for Low-Income Consumers	)	WC Docket No. 17-282
	)	
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 MONTANA PUBLIC SERVICE COMMISSION

I. INTRODUCTION

The Montana Public Service Commission ("MPSC") respectfully submits these reply comments in response to the Federal Communications Commission's ("Commission") recent notice of opportunities to comment, among other things, on Lifeline reforms.[1]

The MPSC welcomes sensible reforms to the Commission's Lifeline programs, and Eligible Telecommunication Carrier ("ETC") designation processes. Generally, the MPSC is supportive of the Commission's proposals in the Notice of Proposed Rulemaking ("NPRM"). Specifically, the MPSC supports the Commission's proposal to eliminate the state preemption of stand-alone Lifeline Broadband Providers ("LBPs"), the implementation of a self-enforcing cap on the Lifeline program, and a maximum allowable discount level for recipients in the program.

A. Restoring the traditional role of states in approving participation of Lifeline-eligible providers better advances the public interest.

The MPSC supports the Commission's proposal to eliminate state preemption designation of stand-alone LBPs. The 1996 Telecommunications Act established state commissions with the primary responsibility for designating telecommunication carriers as ETCs.[2] However in 2016,

[1] *In the Matter of Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475 (Nov. 16, 2017) ("Notice")

[2] The Telecommunications Act of 1996, Pub. L. No. 104-104, § 102, subsequently codified at 47 U.S.C. 214(e)(1).

the Commission created the LBP designation process, which removed state authority to designate LBPs by designating LBPs as not subject to state commission jurisdiction.[3]

The MPSC appreciates the Commission's renewed recognition of its statutory mandate, and supports the Commission's decision to continue entrusting respective state commissions with ETC designation that is in the public interest.

The MPSC takes its public interest obligations seriously.[4] For example, when prepaid wireless service resellers ("resellers") have applied for ETC designation, the MPSC has asked similar public interest questions as the FCC is asking in this proceeding. Rather than granting default ETC designation to an unopposed application, the MPSC proactively appointed staff to investigate whether granting the application was in the public interest. The MPSC investigated whether "an ETC that does not own network facilities in the state meets the public interest requirements for designation as an ETC"; "whether or not [the applicant's] product offering—a handset and monthly calling plan free of charge to consumers—is consistent with the public interest"; and also about whether the firm had sufficient safeguards in place to ensure only eligible customers were, in fact, enrolled.[5] In response, the applicant chose to withdraw its application.[6]

Even with Montana's heightened scrutiny of applicants, the MPSC has certified a significant number of ETCs. In 2017, 17 ETCs provided Lifeline service to 23 different study area codes in the state. All ETCs in Montana are facilities-based carriers, and while all of them, to the MPSC's knowledge, have roaming agreements with larger carriers, none exclusively resell the services of the larger carriers. At the same time, the caution that the MPSC has exercised with regard to its ETC designation decisions is likely a causal factor for Montana's low Lifeline participation rate: 4% of the eligible population in Montana is enrolled in the Lifeline program, compared to a national average enrollment rate of about 30%.[7]

The MPSC recognizes that its approach involves a trade-off between two conflicting components of the public interest. Specifically, the MPSC's regulation is an attempt to balance the needs of low-income Montanans to have access to affordable services, with the public trust the MPSC must exercise in ensuring that the program does not expand beyond reasonable bounds.

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[3] *In the Matter of Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, Third Report and Order, Further Report and Order, And Order on Reconsideration, 31 FCC Rcd 3962, ¶ 229 (Apr. 27, 2016) (establishing LBPs as subject to Commission jurisdiction under 47 U.S.C. § 214(e)(6)).

[4] See Mont. Admin. R. 38.5.3210 (which establishes a variety of public interest factors relevant to Montana ETC designation). Our regulation is modelled substantially after the public interest factors found in *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371 (Mar. 17, 2005).

[5] *In the Matter of Budget Prepay, Inc.'s Application for Designation as a Non-Rural Wireless Eligible Telecommunications Carrier*, Notice of Commission Action – Notice of Additional Issues, Dkt. D2012.10.110 (June 27, 2013) (available here: http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2012-10-110_OUT_20130627_NCA.pdf)

[6] *Id.* Notice of Withdrawal of Application (July 3, 2013) (available here: http://www.psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2012-10-110IN130703480540.PDF)

[7] USAC Lifeline Participation Overview (available here: https://www.usac.org/li/about/process-overview/stats/participation.aspx).

The Lifeline expenditure within Montana has remained relatively small. On average, ETCs in Montana receive only about $50,000 annually from the Lifeline fund.[8] Furthermore, about 56% of the Lifeline funds that Montana does receive are directed towards Tribal lands in rural areas—the same types of Tribal areas that the FCC is proposing first priority for in the NPRM.[9]

The MPSC believes that its oversight is a testament that authority for ETC designation is best kept with individual states. Moreover, as the Commission notes, this is simply what federal law requires. The MPSC therefore supports the Commission's proposal to restore the role of states in approving all ETCs.

B. Implementation of a self-enforcing cap on the Lifeline program ensures accountability, and prevents waste and abuse.

The MPSC also supports the Commission's proposal to implement a self-enforcing budget mechanism on the Lifeline program. While the specific mechanisms of a cap are not proposed, the MPSC nonetheless supports the general idea. The legacy high-cost fund for rural carriers exists under a budget cap; so too does each auction mechanism the FCC has established for broadband deployment. Lifeline should not be exempt from this basic regulatory feature. A budget cap adds an element of scarcity to the dollars available within the program, and therefore provides a programmatic incentive to curb waste, fraud, and abuse. A finite amount of dollars will put a natural pressure on regulators and providers to ensure funds are directed toward those persons that are most in need of support, which may not always exist in the current design.

Although the MPSC supports either of the Commission's proposed mechanisms, we suggest another mechanism to curtail budget overruns.[10] The MPSC suggests that if or when the program is expected to exceed its budget, support could be reduced on a state-by-state or company-by-company basis, such that support is reduced to states or companies in a pro-rated manner that is more proportionate to the scope of their use of the program.

If cuts were effected merely by reducing the Lifeline subsidy uniformly throughout the United States, the much smaller number of eligible people who have enrolled in Montana would suffer. This effect is inappropriate given that the MPSC's sensitivity to the overall Lifeline budget has led fewer ETCs to be certified in the first place and to a relatively low adoption rate compared to other states. In short, those who have caused the Lifeline budget to expand rapidly should experience the consequences of the budget cap. Additionally, targeting program cuts towards the largest beneficiaries of the program could have the salutary effect of providing an incentive to states or companies to ensure the Lifeline program remains within a budget.

[8] Based on Lifeline funds received in 2017.
[9] FCC 2016 Universal Service Monitoring Report, at 25 (available here: https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf).
[10] Notice ¶¶ 106-107.

C. Establishing a maximum discount level for Lifeline recipients ensures the program remains an essential, yet targeted, support mechanism.

The MPSC supports the Commission establishing a maximum discount level for recipients of the Lifeline program.[11] This proposal would create an organic feature to the subsidy to mitigate waste, fraud, and abuse within the program. Additionally, requiring a financial contribution from Lifeline recipients would create space within the program budget to make Lifeline services available to more people than otherwise without a maximum discount level.

Looking to the E-rate program, which has discount levels that range from 20 percent to 90 percent of the costs of eligible goods and services,[12] would be a good starting point for the Commission when it considers how to implement a maximum discount level within the Lifeline program.

Finally, the Lifeline program offers a larger discount to recipients who live on Tribal lands, as most Tribal lands are comparatively dramatically poorer than other locations in the United States. The Commission may want to take a similar approach when it sets a maximum discount level within the Lifeline program. It may be appropriate to set a larger discount level for recipients that live on Tribal lands, or set a tiered discount level based on how the recipients' income compares to the poverty line. Regardless, the MPSC supports the Commission setting a maximum discount level for Lifeline services as a reasonable cost-control measure.

In conclusion, the MPSC appreciates the Commission's proposed reforms of Lifeline, and the opportunity to comment. The MPSC is available if the Commission has any questions or concerns regarding these comments.

Respectfully,

Brad Johnson

Tony O'Donnell

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[11] Notice ¶¶ 112-116.

[12] See generally 47 CFR 54.505(b).