

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90

**JOINT PETITION TO PAUSE IMPLEMENTATION OF
DECEMBER 2019 LIFELINE MINIMUM SERVICE
STANDARDS PENDING FORTHCOMING
MARKETPLACE STUDY**

Public interest, consumer and civil rights organizations¹ and CTIA hereby respectfully request that the Federal Communications Commission’s (“Commission’s”) Wireline Competition Bureau (“Bureau”) exercise its waiver authority under Section 1.3 of the Commission’s Rules² to pause—pending further study—two changes that would otherwise take effect on December 1, 2019: (1) an unanticipated five-fold increase in the minimum required broadband data usage allowance, and (2) the phase-down in support for voice services,³ which are still relied upon by upwards of 40 percent of current Lifeline subscribers. In so doing, the Commission would maintain eligible low-income consumers’ ability to choose from Lifeline service plans that meet the current minimum standards of 2 GB per month of mobile wireless

¹ National Consumer Law Center, on behalf of its low-income clients, National Hispanic Media Coalition, OCA – Asian Pacific American Advocates, United Church of Christ, OC, Inc.

² 47 C.F.R. § 1.3.

³ See generally *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3986-87 ¶¶ 63-65 (2016) (“2016 Lifeline Order”).

broadband data and 1,000 minutes of use per month of mobile voice services, pending the *State of the Lifeline Marketplace Report* that the Commission directed the Bureau to complete by June 30, 2021.⁴

As discussed in more detail below, in the three years since the Commission adopted rules to ensure that eligible low-income consumers have access to a minimum level of Lifeline-supported mobile voice and broadband services, the marketplace for mobile wireless services and Lifeline services has continued to evolve in ways the Commission could not predict in 2016. Although the Commission has already scheduled a holistic review of the changes to the Lifeline program to be completed by June 30, 2021, marketplace change has out-paced the timeline for the Lifeline marketplace study. Given the current mobile wireless market, allowing the two changes to go into effect would restrict eligible low-income consumers' access to, and undermine the affordability of, Lifeline broadband and voice service offerings to the detriment of those the program is designed to help and before the Commission has the benefit of a marketplace analysis.

To prevent this negative outcome, the Bureau should order a pause in implementation of the December 1, 2019 minimum service standards for Lifeline-supported mobile broadband and maintain current levels of Lifeline support for voice services, pending review of these issues in the *State of the Lifeline Marketplace Report*. Pausing implementation of these changes will allow the Commission to make an informed decision regarding all of the relevant issues – including affordability, access and consumer choice – while maintaining eligible low-income consumers' ability to choose the mobile wireless broadband data and voice services that best meet their needs.

⁴ *Id.* at 3987 ¶ 66.

I. THE BUREAU SHOULD MAINTAIN CURRENT MINIMUM SERVICE STANDARDS FOR LIFELINE-SUPPORTED MOBILE WIRELESS BROADBAND SERVICE OFFERINGS, PENDING ITS ASSESSMENT OF THE LIFELINE MARKETPLACE

As laid out here, absent action by the Bureau, application of the current mobile broadband data usage minimum standard rule will result in a nearly five-fold increase in the amount of broadband data required in Lifeline broadband plans on December 1, 2019.⁵ Such a jump would have a significant impact on eligible low-income consumers' ability to access and afford Lifeline broadband plans, upsetting the balance the Commission intended to strike in 2016 between affordability and reasonable comparability.⁶ The Bureau should pause the application of the formula for increasing the mobile broadband data usage standard and maintain the current minimum service standards pending the required *State of the Lifeline Marketplace Report*.⁷

When the Commission adopted the minimum standards for mobile broadband data usage in 2016, it established a phase-in schedule for the first three years of the rule's applicability – 500 MB per month starting December 1, 2016; 1 GB per month starting December 1, 2017; and 2 GB per month starting December 1, 2018. Beginning on December 1, 2019, the Commission determined that the standard would be set based on a formula designed to approximate “70 percent of the calculated average mobile data usage per household.”⁸ Based on usage at the time, the Commission determined that, “[i]f applied today, the minimum service standard for

⁵ See generally *id.* at 3995-96 ¶¶ 93-95; see also 47 C.F.R. § 54.408(b)(2).

⁶ See *2016 Lifeline Order*, 31 FCC Rcd at 3989 ¶ 71.

⁷ *Id.* at 3987 ¶ 66.

⁸ *Id.* at 3995 ¶ 93.

mobile data usage allowance would be set at 2 GB per month”⁹ – in other words, the same level as the last stage of the phase-in applicable in the immediately preceding year. Thus, the Commission did not anticipate that the transition from the initial levels to the formula would result in a flash-jump to a substantially higher requirement. Rather, it presumed a gradual increase as usage grew.

The mobile broadband marketplace changed significantly, however, following the *2016 Lifeline Order*. In its *2017 Mobile Wireless Competition Report*, the Commission noted that “[o]ne significant trend that has developed recently is the return of ‘unlimited’ data plans.”¹⁰ In the 2018 consolidated *Communications Marketplace Report*, the Commission recognized that, “[i]n 2017, service providers continued the trend of offering unlimited data plans,” and observed that unlimited plans were also spreading rapidly into the prepaid marketplace.¹¹ As a result of this and other marketplace changes, the application of the formula that takes effect on December 1, 2019 will increase the minimum data usage allowance required for Lifeline-supported plans from 2 GB per month to approximately 9.5 GB per month,¹² an increase of nearly 500 percent in

⁹ *Id.* at 3996 ¶ 95.

¹⁰ *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*, Twentieth Report, 32 FCC Rcd 8968, 9004 ¶ 51 (2017).

¹¹ *Communications Marketplace Report et al.*, Report, 33 FCC Rcd 12558, 12570 ¶ 15 (2018) (“*Communications Marketplace Report*”).

¹² These figures were computed using CTIA data showing 400 million mobile subscriptions and census data showing 127,586,000 households, which together produce a figure of 3.14 wireless connections per household. That figure was then multiplied by 85%, the proportion of subscribers that own a smartphone, producing 2.67 smartphone connections per household. That figure was then multiplied by the average data used per mobile smartphone subscriber – 5.1 GB. *Communications Marketplace Report*, 33 FCC Rcd at 12568 ¶ 12 (finding that “monthly data usage per smartphone subscriber rose to an average of 5.1 GB per subscriber per month”). This produced household usage of 13.62 GB. Seventy percent of that figure is 9.534 GB. As the Commission is aware, there is a conflict between the rules and the Order regarding which data

a single day. This is a significantly different result than the gradual ascent that the Commission expected when it adopted the formula in 2016. It would be, instead, a flash jump that the Commission did not anticipate or intend.

The Commission may waive its rules for good cause shown.¹³ In this case, the Bureau should exercise that waiver authority to postpone the imposition of the data usage formula to avoid significant negative effects on eligible low-income consumers, while maintaining the current minimum service standards of 2 GB per month. A jump in the data usage allowance from 2 GB to 9.5 GB would skew the balance that the Commission struck in setting the minimum service standard to ensure that Lifeline plans are both affordable and reasonably comparable to non-Lifeline plans given the defined subsidy level. Such a flash jump would also significantly narrow consumer choice, limiting the variety of service plans available for eligible low-income consumers to choose and requiring eligible low-income consumers to purchase plans that might often include much larger increments of data usage than they need or want.¹⁴ In a closely related context, the Commission recently made changes to the Lifeline rules designed to avoid restricting consumer choice and to protect Lifeline consumers' ability to "obtain those services that best meet their needs."¹⁵ The Bureau should take action here, too, to ensure that precipitous

set to use and the application of the formula. *See* Petition for Reconsideration of CTIA, WC Docket No. 11-42 (filed June 23, 2016). Depending on how these issues are resolved, the result is either 9.5 GB or 9.75 GB. This Petition assumes the more conservative 9.5 GB figure.

¹³ 47 C.F.R. § 1.3 ("The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part."). *See* 47 CFR § 0.91(b) (delegating to the Bureau the authority to act on requests for waiver of rules).

¹⁴ *See 2016 Lifeline Order*, 31 FCC Rcd at 4185 (Dissent of Commissioner O'Rielly) ("Here again, the agency takes a paternalistic approach, telling recipients what they need rather than letting consumer[s] decide whether a more affordable option would be sufficient").

¹⁵ *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, Fourth

changes to the Lifeline program’s requirements do not limit access to services, particularly for the consumers who are least able to pay more substantial out-of-pocket costs.

Given the scope of the changes made in the *2016 Lifeline Order*, the Commission wisely recognized the need to evaluate the impact of the changes that it had made to “the newly revitalized Lifeline program.”¹⁶ To that end, the Commission directed the Bureau to prepare and submit to the Commission, by June 30, 2021, a *State of the Lifeline Marketplace Report*. The Commission specifically anticipated that the *Report* would evaluate the appropriateness of the transition in the minimum service standards for broadband data usage.¹⁷ We expect that the Bureau’s *State of the Lifeline Marketplace Report* will reflect the evolution toward larger data allowances and that, based on this review, the Commission will have an opportunity to craft further changes to the Lifeline minimum service standards in a more predictable and scalable way.

Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475, 10488 ¶ 35 (2017) (“*2017 Lifeline Order*”).

¹⁶ *2016 Lifeline Order*, 31 FCC Rcd at 4112-13 ¶ 409. See also Leadership Conference on Civil and Human Rights *Ex Parte* Letter, WC Docket Nos. 11-42 et al. at 2 (filed Oct. 15, 2015) (supporting the use of market and Lifeline data to monitor utilization of the Lifeline program).

¹⁷ *Id.* at 3987 ¶ 66 (“This [*Report*] should review the Lifeline marketplace for the purpose of recommending to the Commission whether the transition set out in this Order should be completed or whether the Commission should act to continue delaying Lifeline’s transition to chiefly supporting broadband services. This [*Report*] should in particular consider the prevalence of subscriptions to various service offerings in the Lifeline program, the affordability of both voice and broadband services, the pace since adoption of this Order at which voice and data usage has changed, and the associated net benefits of continuing to support voice service as a standalone option. We expect the full Commission will take appropriate action if necessary to make changes to the program within six months of receiving the report, for example, adjusting support levels or minimum service standards, so that the Lifeline program continues to achieve its objectives.”) (internal citations omitted).

The Bureau should therefore pause the application of the formula for increases to the data usage standard and maintain the current minimum service standards of 2 GB per month, pending evaluation of the impact of the rule in the *State of the Lifeline Marketplace Report*. This will allow this Commission to make an informed decision regarding all of the relevant issues – including affordability, access, and consumer choice – while maintaining low-income consumers’ ability to choose broadband data services that best meet their needs.

II. THE BUREAU SHOULD PERMIT ELIGIBLE LOW-INCOME CONSUMERS TO CONTINUE TO CHOOSE LIFELINE-SUPPORTED VOICE SERVICES PENDING ASSESSMENT OF THE LIFELINE MARKETPLACE

In the *2016 Lifeline Order*, the Commission also determined that Lifeline voice services would no longer be eligible for full support beginning on December 1, 2019.¹⁸ Subsequently, in 2017 the Commission sought comment on eliminating this phase-down for eligible low-income consumers in rural areas.¹⁹ The record assembled as a result of this 2017 solicitation reflects substantial support for eliminating the phase-down not only for eligible low-income consumers in rural areas, but *all* consumers.²⁰

While the purpose of this phase-down is to focus the Lifeline program on broadband services, a significant number of eligible low-income consumers continue to prefer voice-only services or bundles of services that include more voice usage and less data usage. In fact, the

¹⁸ *Id.* at 3986 ¶ 64 (“Beginning December 1, 2019 the support amount will decline to \$7.25 per month; beginning December 1, 2020, it will decline further to \$5.25 per month. ... Beginning December 1, 2021, there will no longer be support for voice-only service, or voice service bundled with a broadband offering that does not meet the applicable minimum service standard[.]”).

¹⁹ *2017 Lifeline Order*, 32 FCC Rcd 10502 ¶ 76.

²⁰ *See, e.g.*, Reply Comments of AARP, WC Docket No. 17-287, at 27-30 (filed March 23, 2018); Comments of Low-Income Consumer Advocates, WC Docket No. 17-287, at 8 (filed Feb. 21, 2018); Comments of WTA-Advocates for Rural Broadband, at 2 (filed Feb. 21, 2018).

Commission acknowledged at the time it adopted the phase-down in support that, “consumer migration to new technologies is not always uniform.”²¹ The most recent Universal Service Administrative Company data shows that, as of February 2019, nearly 42 percent of Lifeline customers still subscribe to plans that qualify for Lifeline by virtue of meeting the minimum service standards for voice service.²² Without a pause, over 3.8 million Lifeline subscribers will be negatively impacted.²³ In both rural and urban areas, this rule would negatively affect eligible low-income consumer choice and access to Lifeline services, which has motivated the Commission in other recent actions on Lifeline.²⁴

As with the minimum service standard for data usage, the Commission anticipated that the Bureau would review the voice phase-down in the *State of the Lifeline Marketplace Report*. The Commission directed the Bureau to consider whether the transition of support away from voice services should be continued based on “the prevalence of subscriptions to various service offerings in the Lifeline program,” including voice, among other factors.²⁵ Although the Commission should not require Lifeline providers to offer voice-only Lifeline service, pending the Bureau’s evaluation, Lifeline providers should retain the flexibility to respond as consumers’

²¹ *2016 Lifeline Order*, 31 FCC Rcd at 4004, ¶119.

²² See USAC, High-Cost and Low Income Committee Briefing Book, at 41 (April 29, 2019) (Lifeline Business Update, App. A: Lifeline Program Trends) (showing 27.81% of Lifeline customers taking bundled plans meeting the voice minimum standards and 13.8% of customers taking voice-only plans), available at https://www.usac.org/_res/documents/about/pdf/bod/materials/2019/High-Cost&Low-Income-Briefing-Book-April.pdf.

²³ See *id.* (showing about 9 million total Lifeline subscribers in fourth quarter 2018, and applying the percentages from the prior footnote to that number).

²⁴ See *supra* notes 14 and 15.

²⁵ *2016 Lifeline Order*, 31 FCC Rcd at 3987 ¶ 66.

demands for voice and broadband services dictate. The Bureau should therefore use its waiver authority to pause the phase-down of Lifeline voice support pending evaluation of the issue in the *State of the Lifeline Marketplace Report*.

III. CONCLUSION

In accordance with the forgoing, the undersigned public interest, consumer, and civil rights organizations and CTIA respectfully request that the Bureau stay, until the Commission can consider the Bureau's *State of the Lifeline Marketplace Report*, implementation of the December 1, 2019 (1) increase in the minimum required broadband data usage allowance, and (2) phase-down in support for voice services in the Lifeline program.

Respectfully submitted,

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