

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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
)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) opposes the petition for clarification filed by the Pennsylvania Public Utilities Commission (Pennsylvania PUC) to the extent it asks the Commission to allow states to impose operational requirements on federally-designated Lifeline Broadband Providers.¹ As discussed more fully below, the Commission’s creation of a federal designation process for Lifeline Broadband Providers was meant to encourage providers’ participation by eliminating multiple, different state requirements and procedures and streamlining the method and requirements for joining the Lifeline program.² Granting the Pennsylvania PUC’s request would undo the benefits of having a single, federal process on which Lifeline Broadband Providers can rely. NCTA also urges the Commission to reconsider its decision to require eligible telecommunications carriers (ETCs) to recertify

¹ Petition for Clarification of the Pennsylvania Public Utility Commission, WC Docket Nos. 11-42, 09-197, 10-90 (June 23, 2016) (Pennsylvania PUC Petition).

² *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (*Lifeline Order*).

Lifeline customers on a rolling basis, and instead provide them the option to continue to recertify subscribers on an annual basis, if that method is less burdensome and confusing to customers.³

**I. THE COMMISSION SHOULD NOT ALLOW STATE REGULATION OF
FEDERALLY-DESIGNATED LIFELINE BROADBAND PROVIDERS**

In the 2016 *Lifeline Order*, the Commission took steps to “encourage market entry and increase competition among Lifeline providers, which will result in better services for eligible consumers to choose from and more efficient usage of universal service funds.”⁴ One method the Commission employed to achieve these goals was to establish a new category of Lifeline provider, a Lifeline Broadband Provider ETC. Under this regime, broadband providers may choose to forego the traditional state-by-state ETC designation process and apply to the Commission to receive permission to provide broadband Lifeline support to qualifying low-income consumers.⁵

In doing this, the Commission recognized that the burdens of navigating a state-by-state ETC designation process were deterring providers from participating in the Lifeline program, finding that “a provider currently seeking ETC designation from multiple state commissions will likely face designation procedures and time frames that vary widely, lasting anywhere from a few months to several years.” Accordingly, the Commission was “persuaded that even just the burden of seeking designation from multiple states and the Commission is sufficient to discourage broadband service providers from entering the Lifeline program to introduce

³ General Communication, Inc. Petition for Reconsideration and/or Clarification, WC Docket Nos. 11-42, 09-197, 10-90 (June 23, 2016) (GCI Petition); *see also* Petition for Reconsideration/Clarification of NTCA–The Rural Broadband Association and WTA – Advocates for Rural Broadband, WC Docket Nos. 11-42, 09-197, 10-90, at 12-16 (June 23, 2016); United States Telecom Association Petition for Reconsideration and Clarification, WC Docket Nos. 11-42, 09-197, 10-90, at 3-4 (June 23, 2016).

⁴ *Lifeline Order*, 31 FCC Rcd at 4040, ¶ 217.

⁵ *Id.* at 3965, ¶8.

nationwide or similarly large-scale broadband offerings, because such a requirement means that a provider that has calculated that it needs to achieve a nationwide scale to justify introducing a Lifeline offering will be faced with potentially years of uncertainty while it pursues the necessary designations.”⁶

Despite the Commission’s clear indication that a multiple-jurisdiction ETC process “conflicts with [the Commission’s] implementation of the universal service goals of section 254(b) in the Lifeline broadband rules adopted in this Order,”⁷ the Pennsylvania PUC asks the Commission to allow states to impose additional registration and notification requirements on Lifeline Broadband Providers, and seeks clarification on whether such providers are subject to state enforcement actions.⁸ The Commission should deny the petition. Granting states the ability to impose additional requirements and conduct state-by-state enforcement actions on federally-designated Lifeline Broadband Providers would eliminate the benefits cited by the Commission in preempting states from designating such providers.

Furthermore, the Pennsylvania PUC’s request is at odds with the limited role states may play in regulating broadband services. In discussing the interstate nature of the broadband internet access services at issue, the Commission stated, “[A]lthough the Commission has recognized state jurisdiction to collect data regarding BIAS, that is materially different from the imposition of substantive obligations on broadband Internet access service.”⁹ Moreover, the Pennsylvania PUC’s suggestion that a state role is necessary because the Commission is

⁶ *Id.* at 4052-53, ¶251.

⁷ *Id.* at 4053, ¶251.

⁸ Pennsylvania PUC Petition at 7-12.

⁹ *Lifeline Order*, 31 FCC Rcd at 4055, ¶255; *see also Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5803-04, ¶¶ 431-33 (2015) (reaffirming that BIAS is jurisdictionally interstate and that state regulation will be preempted to the extent it conflicts with the federal regime established by the Commission).

somehow unable or unwilling to deal with consumer complaints regarding Lifeline broadband service cannot be reconciled with the significant time and resources the Commission has devoted to updating its Consumer Help Center.¹⁰ For all of these reasons, the Commission should clarify that states are preempted from imposing any additional requirements, or enforcing those requirements imposed by the Commission, on federally-designated Lifeline Broadband Provider ETCs.

II. THE COMMISSION SHOULD RECONSIDER THE ROLLING RECERTIFICATION REQUIREMENT

In the *Lifeline Order*, the Commission changed the requirement that Lifeline customers' eligibility be recertified on an annual basis, by December 31st each year, to a rolling 12-month basis, triggered by the Lifeline customers' enrollment dates.¹¹ Although the Commission asserted that this change "will result in administrative efficiencies and avoid imposing undue burdens on providers, USAC, or the National Verifier,"¹² as demonstrated by GCI in its petition, this is not the case for all providers.¹³

In states where ETCs are responsible for conducting the recertifications, ETCs will be required to employ costly modifications to effect the change from a December 31st to a rolling recertification deadline. This process will only be necessary on an interim basis, until the National Verifier is implemented and takes over the recertification obligation. It makes little sense to require such a change for an interim period.

¹⁰ FCC Blog, *New Consumer Help Center Is Designed To Empower Consumers, Streamline Complaint System* (Jan. 5, 2015), at <https://www.fcc.gov/news-events/blog/2015/01/05/new-consumer-help-center-designed-empower-consumers-streamline-complaint>.

¹¹ *Id.* at 4115-16, ¶¶416-18.

¹² *Id.* at 4115, ¶416.

¹³ GCI Petition at 1-2.

Furthermore, to the extent the move away from a December 31st certification deadline requires ETCs to rely more heavily on mailed recertification notices, this could be burdensome and confusing for subscribers, causing the de-enrollment of otherwise eligible Lifeline customers.¹⁴ Therefore, the Commission should allow ETCs to opt to use the rolling recertification process or continue to use the December 31st recertification annual deadline until the National Verifier takes over the recertification responsibility.

CONCLUSION

For the reasons explained in these comments, the Commission should deny the Pennsylvania PUC's petition and affirm that states may not impose additional requirements on federally-designated Lifeline Broadband Provider ETCs, and should allow ETCs to continue to utilize an annual, rather than a rolling, recertification process.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris
Jennifer K. McKee
National Cable & Telecommunications
Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001-1431

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¹⁴ *Id.* at 3-4.

CERTIFICATE OF SERVICE

I, Gretchen M. Lohmann, certify that on this 29th day of July, 2016, true and correct copies of the foregoing Comments of the National Cable & Telecommunications Association were served by first class mail, postage prepaid, to the following parties to the proceeding:

Colin W. Scott
David E. Screven
Kathryn G. Sophy
Bohdan R. Pankiw
PENNSYLVANIA PUBLIC UTILITY
COMMISSION
P.O. Box 3265
Harrisburg, PA 17105-3265

Tina Pidgeon
Chris Nierman
GENERAL COMMUNICATION, INC.
1900 L Street, N.W., Suite 700
Washington, D.C. 20036

John T. Nakahata
Julie A. Veach
Traci Biswese
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, N.W., 8th Floor
Washington, D.C. 20036
Counsel for General Communication, Inc.

/s/ Gretchen M. Lohmann
Gretchen M. Lohmann