

**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
)	

**UNITED STATES TELECOM ASSOCIATION
REPLY TO OPPOSITIONS**

The United States Telecom Association (USTelecom) submits this reply to various oppositions to its Petition for Reconsideration and Clarification of the Federal Communications Commission’s (Commission’s) recent Order in the above-referenced proceedings.¹ In its petition,² USTelecom demonstrated that various aspects of the Commission’s Lifeline Order ignored requirements of the Administrative Procedure Act (APA) and unnecessarily increased administrative burdens. The USTelecom petition also identified areas where the Commission’s Order should have been clearer. As demonstrated by the supportive comments filed in this proceeding, the Commission should expeditiously grant the USTelecom petition.

I. Several Issues Raised by USTelecom in its Petition are Unopposed in the Record and Should Be Expeditiously Addressed by the Commission.

Several requests in the USTelecom petition were unopposed by any commenters and should be granted by the Commission. These requests for relief include rule adjustments that

¹ Third Report and Order, Further Report and Order, and Order on Reconsideration, *Lifeline and Link Up Reform and Modernization*, 31 FCC Rcd 3962, 81 FR 33025, 81 FR 45973, FCC 16-38 (released April 27, 2016) (*Lifeline Order*).

² See, United States Telecom Association Petition for Reconsideration and Clarification, WC Docket Nos., 11-42, 09-197, 10-90 (submitted July 23, 2016) (*USTelecom Petition*).

would conform the Commission’s rules to the updated Lifeline program,³ and clarification regarding the ability of eligible telecommunications carriers (ETCs) that previously sought forbearance to subsequently seek an Lifeline broadband provider (LBP) ETC designation from the Commission.⁴ Also unopposed in the record were requests for clarification regarding the treatment of standalone voice,⁵ and the term “Media of General Distribution.”⁶ Given the absence of any opposition in the record to these issues, and their inherent policy benefits outlined in the USTelecom petition, the Commission should expeditiously grant the relief requested on each of these issues.

II. Commenters Supported USTelecom’s Proposals for the Commission to Minimize Document Retention, and to Reconsider the ‘Highest Performing Generally Available’ Residential Offering.

No commenters opposed USTelecom’s proposal that the Commission amend its rules to specify that a provider is not required to retain any eligibility or recertification information for any subscriber for more than three years after the National Verifier has recertified such subscriber.⁷ GVNW Consulting, Inc. (GVNW) agreed with USTelecom’s assessment that implementation of the National Verifier “should obviate the need for retention of eligibility and recertification documentation by Lifeline providers.”⁸ GVNW properly notes that once the National Verifier has recertified a Lifeline subscriber’s continued eligibility, there is “no reason

³ *Id.*, pp. 10 – 11; pp. 19 – 22.

⁴ *Id.*, pp. 22 – 23.

⁵ *Id.*, p. 24.

⁶ *Id.*, pp. 11 – 12.

⁷ *See, USTelecom Petition*, pp. 10 – 11.

⁸ *See, GVNW Consulting, Inc. Opposition to Petitions for Reconsideration*, p. 6, WC Docket Nos., 11-42, 09-197, 10-90 (July 29, 2016) (*GVNW Opposition*).

for continued retention of sensitive information by providers beyond a reasonable time (for example, three years) to audit the provider’s determination of eligibility or recertification when it had that responsibility.”⁹ Moreover, USTelecom agrees with GVNW’s assessment that after a set period, providers should “be able to protect the privacy of Lifeline subscribers by safely discarding information relating to determining the eligibility and recertification of such subscribers.”¹⁰ Given the support expressed in the record, and the absence of any opposition to USTelecom’s reasonable proposal, the Commission should expeditiously grant USTelecom’s request.

Similarly, no parties opposed USTelecom’s proposal that the Commission permit providers to participate in Lifeline offerings, so long as they provide a 4Mbps/1 Mbps “or better” service to consumers. Noting USTelecom’s concerns over administration of the program absent the change, Sacred Wind Communications, Inc. (Sacred Wind) noted that requiring providers without 10/1 Mbps service to provide service at the “highest performing generally available residential offering” in the area would “be an administrative nightmare with little, if any, benefit to the consumer.”¹¹

Sacred Wind agreed with USTelecom’s analysis that it makes little sense to require Lifeline providers to provide service at speeds that may become available between 4/1 Mbps and 10/1 Mbps, and imposition of such a requirement “may well discourage providers from offering Lifeline service due to the complexities associated with ongoing marketing, accounting, and

⁹ *Id.*

¹⁰ *Id.*

¹¹ Comments of Sacred Wind Communications, Inc., p. 6, WC Docket Nos., 11-42, 09-197, 10-90 (July 29, 2016) (*Sacred Wind Comments*).

regulatory reporting obligations associated with the incremental offerings.”¹² Sacred Wind also agreed with USTelecom on the need for the Commission to clarify what it means by a particular speed of service being available in a given area.¹³

III. The Commission Should Grant the Relief Requested by USTelecom Given the Broad Support and Limited Opposition Reflected in the Record.

The record reflects limited opposition to the remaining issues raised by USTelecom in its petition. Much of the opposition ignores the substantive analysis set forth by USTelecom in its petition. In several instances, parties provided additional commentary and analysis that further support the Commission’s grant of the issues identified in USTelecom’s petition.

A. The Commission Cannot Require Rolling Recertification Prior to Implementation of the National Verifier.

There was broad agreement that the Commission’s adoption of its rolling recertification rules imposes additional requirements upon Lifeline providers, and violates the Administrative Procedures Act (APA).¹⁴ Several commenters agreed with USTelecom’s assessment that the Commission’s new rules impose a needless drain on carrier resources, with no concomitant benefits for the program.¹⁵ GVNW for example, noted that because of the small number of employees of many small RLECs, it “is significantly more burdensome to go through the

¹² *Id.*

¹³ *Sacred Wind Comments*, p. 7.

¹⁴ *GVNW Opposition*, p. 4 (stating that “GVNW agrees with the petitioners that that the Commission did not adhere to the Administrative Procedures Act in its adoption of this policy.”)

¹⁵ Comments of Sprint Corporation, pp. 8 – 9, WC Docket Nos., 11-42, 09-197, 10-90 (July 29, 2016) (*Sprint Comments*); Comments of the National Cable & Telecommunications Association, pp. 4 – 5, WC Docket Nos., 11-42, 09-197, 10-90 (July 29, 2016) (*NCTA Comments*); Joint Lifeline ETC Respondents’ Opposition to Petitions for Reconsideration, pp. 15 – 17, WC Docket Nos., 11-42, 09-197, 10-90 (July 29, 2016) (*Joint Opposition*); *GVNW Opposition*, pp. 3 – 4.

recertification and de-enrollment process twelve times per year instead of just once.”¹⁶

Similarly, in addition to noting that rolling recertification “will be confusing to Lifeline customers and costly to service providers,” Sprint noted that and it was unclear whether “state databases will be able to accommodate rolling recertification.”¹⁷

Several commenters noted the inherent administrative inefficiencies that would result from providers instituting reforms that will soon be implemented by the National Verifier. Sprint stated that it “makes little sense to force Lifeline service providers to incur the costs of changing their systems and procedures to implement a rolling recertification process that will be in effect only pending deployment of the National Verifier.”¹⁸

The Commission should reject the arguments raised in the opposition filed by the Greenlining Institute and others (the “Greenlining Opposition”)¹⁹ which incorrectly asserted that an annual recertification would be “inconvenient and confusing for eligible participants who could end up being forced to recertify multiple times a year.”²⁰ As Sprint correctly notes in its comments, this ignores the fact that existing Lifeline subscribers currently “recertify their eligibility to continue to participate in the Lifeline program by December 31,” and that providers have expended “considerable resources educating Lifeline customers about this process.” Contrary to the concerns raised in the Greenlining Opposition, Sprint notes that the “bulk of

¹⁶ *GWNW Opposition*, p. 4.

¹⁷ *Sprint Comments*, p. 8.

¹⁸ *Id.*, p. 9. *See also*, *NCTA Comments*, p. 4 (noting that “it makes little sense to require such a change for an interim period.”);

¹⁹ Consolidated Opposition of the Greenlining Institute, Center For Media Justice, et. al., WC Docket Nos., 11-42, 09-197, 10-90 (July 29, 2016) (*Greenlining Opposition*).

²⁰ *Greenlining Opposition*, p. 5.

existing Lifeline customers [are] generally familiar with the recertification requirements.”²¹ USTelecom agrees with Sprint’s assessment that a switch to a rolling recertification process will be “confusing to subscribers, and because they have come to expect the recertification request in late fall/early winter, may ignore recertification requests sent to them at other times of the year.”²²

B. The Commission Cannot Impose Port Freeze Requirements.

Commenters also supported USTelecom’s argument that the port freeze requirements imposed in the Commission’s Order were administratively burdensome and suffered from the same lack of APA notice as the rolling recertification requirements.²³ For example, GVNW noted that the Commission’s port freeze requirement “imposes additional administration requirements and complexity by, for example, expecting a carrier to roll out changes based on the service anniversary dates of its existing subscribers.”²⁴

GVNW also agreed with USTelecom’s assessment that if a Lifeline customer “drops service before the year freeze for BIAS and then attempts to sign up with a new Lifeline BIAS provider, neither the initial provider nor the new provider has any knowledge of the customer’s interaction with the other provider.”²⁵ Moreover, GVNW correctly notes that customers “not understanding the seemingly nonsensical year-long BIAS port freeze could find themselves without access to affordable service if they drop service within that year and then find out they

²¹ *Sprint Comments*, p. 8.

²² *Id.*

²³ *See e.g., GVNW Opposition*, p. 7 (stating that “as with ‘rolling recertification,’ the port freeze requirements imposed in the *Order* suffer from a lack of sufficient notice to comply with the Administrative Procedures Act.”).

²⁴ *GVNW Opposition*, p. 8.

²⁵ *Id.*

must wait several months to be eligible again for the Lifeline discount.”²⁶

Opposition to USTelecom’s port freeze arguments are without merit, and generally focus on unsubstantiated concerns that consumers could receive substandard service.²⁷ For example, after admitting that it “has not examined the record on this subject,”²⁸ NASUCA argues that absent a port freeze, Lifeline providers “could arbitrarily reduce the value of the service the Lifeline consumer signed up for.”²⁹

Such arguments were cogently addressed by GVNW, which stated that “it is “a strange economic proposition that the Commission contends that competition will be enhanced by limiting consumer choice.”³⁰ USTelecom agrees that Lifeline customers should “have the same ability to find a better deal, either with a higher level of service or lower price, as customers not eligible to access the Lifeline discount.”

C. The Commission Should Extend the Effective Date for Implementation of the Streamlined Eligibility Criteria and the Offering of BIAS for the Federal Lifeline Program.

Commenters agreed with USTelecom that the Commission should reconsider the effective date of the new streamlined federal eligibility criteria and the obligation to offer Lifeline BIAS, and defer it at least until the later of December 31, 2017, or 12 months after OMB approval of the Order. GVNW noted that many of its stakeholders were “confused about and dismayed” by the difference between eligibility requirements for state and federal Lifeline

²⁶ *Id.*

²⁷ *See e.g.*, Joint Opposition, pp. 2 – 9; *Greenlining Opposition*, p. 6.

²⁸ The National Association of State Utility Consumer Advocates, Opposition to Petitions for Reconsideration, p. 4, WC Docket Nos., 11-42, 09-197, 10-90 (July 29, 2016) (*NASUCA Opposition*).

²⁹ *Id.*

³⁰ *GVNW Opposition*, p. 8.

benefits, and agreed with USTelecom’s “very sensible suggestion” that the effective date be extended.³¹

The limited objections to USTelecom’s proposal are erroneous and/or misplaced. For example, NASUCA asserts that USTelecom’s request that the Commission reconsider the effective date of its rule “is not supported by any data.”³² However, NASUCA completely ignores USTelecom’s detailed March 4, 2016 ex parte notice (USTelecom Ex Parte) that identified the disparate eligibility determinations in the approximately 30 states that have their own state-mandated Lifeline discounts.³³ NASUCA’s proposal for the Commission to “address implementation and compliance concerns on a case-by-case basis, through ETC filed petitions for waiver,”³⁴ completely ignores the significant misalignment between state and federal requirements highlighted in the USTelecom Ex Parte.

The Greenlining Opposition raises no specific objections to USTelecom’s concerns over the implementation of new streamlined federal eligibility criteria, but instead raises a misplaced concern that broadband services would be offered to fewer eligible consumers.³⁵ As noted by USTelecom and others, the presence of misalignment between federal and state programs will complicate the application and intake process, eligibility determinations, re-certifications, customer counts, rate plans and every other aspect of managing the Lifeline program – all to the detriment of consumers.

³¹ *GVNW Opposition*, p. 5.

³² *NASUCA Opposition*, p. 3.

³³ *See*, USTelecom Ex Parte Notice, WC Docket Nos. 11-42, 09-197, 10-90 (submitted March 4, 2016).

³⁴ *NASUCA Opposition*, p. 3.

³⁵ *Greenlining Opposition*, p. 4.

D. The Commission Should Eliminate the Requirement that the Last Lifeline Provider in a Census Block Must Continue to Offer Voice Lifeline Service.

The Commission’s decision to retain support and a Lifeline voice obligation for those ETCs who happen to be the only ETC in a particular census block is arbitrary and capricious, and should therefore be eliminated. In its Petition, USTelecom comprehensively demonstrated the numerous legal and policy considerations warranting elimination of this requirement. The oppositions to this aspect of USTelecom’s Petition are without merit. For example, the Greenlining Opposition conflates USTelecom’s legitimate concerns over the requirement that the last Lifeline provider in a census block continue to offer *voice* Lifeline service, with the Commission’s decision to impose for minimum speed and data usage standards for *broadband*.³⁶

The only other opponent to this aspect of USTelecom’s Petition made no effort whatsoever to challenge *any* of the arguments raised by USTelecom. Instead, the single sentence NASUCA dedicates to addressing USTelecom’s detailed analysis is simply an unsubstantiated claim that Lifeline should “continue to be available to make affordable voice as well as broadband service.”³⁷

Given the absence of any compelling opposition, the Commission should grant this aspect of USTelecom’s Petition. Absent grant of reconsideration, the Commission must address the discrepancy in new rule section 54.401(b)(4) which provides that commencing on December 1, 2021, ETCs must provide the “minimum service levels for broadband Internet access service

³⁶ *Greenlining Opposition*, p. 6 (citing to the *Lifeline Order*, ¶ 104, and stating that USTelecom’s request to eliminate the requirement that the last Lifeline provider in a census block must continue to offer voice Lifeline service as “nothing more than a reframing of carriers’ arguments for a “market-based” Lifeline program, which the Commission wisely rejected in its Order.” The Greenlining Opposition’s citation to the *Lifeline Order*, however, solely addresses the Commission’s conclusion that “for fixed broadband” Lifeline supported services must “meet both the speed and data usage allowance minimum standards.”).

³⁷ *NASUCA Opposition*, p. 4.

*in every Lifeline offering.*³⁸ This requirement conflicts with the Commission’s decision to apply a voice-only Lifeline offering in Census blocks with only one Lifeline provider.³⁹

E. The Commission Cannot Apply Broadband Obligations to a State-Designated ETC.

The Commission must reverse its decision that high-cost carriers with state ETC designations are subject to BIAS Lifeline obligations as a result of that designation. Nothing in the record refutes USTelecom’s argument, which noted that the Commission can accomplish its goal of streamlining the entry process for new BIAS Lifeline providers by allowing existing high-cost ETCs to voluntarily apply for LBP status on an expedited basis, relying on their performance as an existing ETC status. While NASUCA opposes this approach, it once again fails to address any of the arguments raised in the USTelecom Petition. Instead, NASUCA makes a vague reference to separate court opinions, and simply asserts that the Commission is “clearly” within its legal jurisdiction. Such unsubstantiated arguments should be rejected by the Commission.

³⁸ 47 C.F.R. §54.401(b)(4). *See also, Lifeline Order*, Appendix A, p. 167 (emphasis added).

³⁹ *Lifeline Order*, ¶ 52.

IV. Conclusion

For the foregoing reasons, the Commission should grant USTelecom's Petition for Reconsideration and Clarification.

Respectfully submitted,

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