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August 14, 2017

By ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Lifeline Connects Coalition Notice of Oral *Ex Parte* Presentation; WC
Docket Nos. 11-42, 09-197, 10-90**

Dear Ms. Dortch:

On August 10, 2017, John Heitmann and Joshua Guyan of Kelley Drye & Warren LLP met on behalf of the Lifeline Connects Coalition (Coalition) with Rashann Duvall, Jodie Griffin, Christian Hoefly, Allison Jones and Ryan Palmer from the Wireline Competition Bureau (Bureau) to discuss the Commission's Lifeline program.

In the meeting, we discussed the Lifeline National Eligibility Verifier (National Verifier) being developed by the Commission and the Universal Service Administrative Company (USAC), including improvements to the timing of subscriber proof of eligibility for migration to the National Verifier, the recent alarming decision to reverse course and not to provide a service provider application programming interface (API) to the National Verifier and the proper interpretation of the June 29, 2017 Public Notice¹ regarding service provider liabilities under the National Verifier. We also discussed the Coalition's Petition for Reconsideration regarding the upcoming minimum service standard increases, California's failure to implement a twelve month port freeze for broadband Lifeline services, and the call by the Government Accountability Office (GAO) in its 2017 Lifeline Report for the Commission to shift to an enforcement regime

¹ See *Wireline Competition Bureau Reminds Eligible Telecommunications Carriers of Their Ongoing Responsibility to Claim Lifeline Support Only for Eligible Low-Income Consumers*, WC Docket No. 11-42, Public Notice, DA 17-636 (rel. June 29, 2017) (National Verifier Responsibility Public Notice).

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that is not arbitrary and unfair to service providers and act on a backlog of compliance plans and federal ETC petitions.

I. The National Verifier Should Be Effective and Efficient and Should Not Create Waste, Facilitate Abuse or Overburden Low-Income Consumers

USAC is to be commended for its commitment to seeking stakeholder input regarding the development of the National Verifier, which is a substantial improvement over the process that was used to develop the National Lifeline Accountability Database (NLAD) in 2014. The Coalition and its members and representatives have participated in nearly every stakeholder engagement webinar, conference call, meeting or process. However, in a few instances, USAC has surprised the industry with new policies or drastic changes in policy that have not been vetted with stakeholders and that need substantial improvement.

A. The National Verifier Subscriber Migration Eligibility Verification Process Should Not Overburden and Needlessly De-Enroll Potentially Millions of Eligible Lifeline Subscribers

While the Coalition agrees that the National Verifier should verify Lifeline subscribers' eligibility as they are migrated into the Lifeline Eligibility Database (LED), this process must be done in a manner that does not overburden Lifeline subscribers and result in the wasteful and abusive de-enrollment of potentially millions of low-income Americans who have demonstrated eligibility as required by Commission rules. On a July 26, 2017 USAC webinar, USAC again announced its intention to require collection of proof in July 2017 or after to verify eligibility of Lifeline subscribers not found in the databases to which the National Verifier has access for the first phase of migration to the National Verifier in at least five states, which will occur from January to March 2018. This policy was first announced on a May 17, 2017 webinar to the surprise of Lifeline stakeholders and without having sought our input. On June 16, 2017, the Coalition, Boomerang Wireless, TruConnect Communications, Sprint, True Wireless, TerraCom and YourTel America filed an *ex parte* letter describing the problems with this proposed proof timeframe and providing a proposal for improvement,² which was echoed by TracFone in a

² See Written *Ex Parte* Presentation of the Lifeline Connects Coalition, Boomerang Wireless, TruConnect Communications, Sprint, True Wireless, TerraCom and YourTel America, WC Docket Nos. 09-197, 10-90, 11-42 (June 16, 2017) (June *Ex Parte*) (proposing that ETCs be permitted to confirm the income or program based eligibility of subscribers not found in databases either by providing previously submitted documentation (for end users enrolled after February 17, 2016) or evidence of a successful annual recertification (for end users enrolled prior to February 17, 2016)).

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separate letter.³

In the experience of Lifeline service providers that have been accessing state eligibility databases for years, the best databases can confirm eligibility for only 50-60 percent of applicants that can then demonstrate eligibility with documentation.⁴ Therefore, it is reasonably expected that approximately 40-50 percent of subscribers migrated will have to demonstrate their eligibility with documentation because they will not be found in whatever databases USAC can access.

The announced USAC policy essentially means that proof of eligibility will be valid back only approximately six to nine months. Any subscriber that provided his or her proof of eligibility for enrollment prior to July 2017 would have to respond to USAC or ETC outreach and find a way to re-send proof of eligibility (by mail, fax, mixed media message or email), even though the subscriber's ETC has retained a picture of the subscriber's proof of eligibility, pursuant to the requirements of the Commission's rules, that is still unexpired and valid. In many cases, low-income consumers will be required to re-send a copy of the exact same proof of eligibility that his or her service provider already has on file.

In a previous *ex parte* letter, the Coalition noted that in the experience of one of its members, less than one quarter of subscribers can or will respond with proof of eligibility when requested. In nearly all cases, this is not because the subscriber is ineligible, but rather because it is too burdensome to re-submit copies of eligibility documentation. If all subscribers not found in databases had to re-prove eligibility, the Commission could expect for every 1 million subscribers migrated, 375,000 would be de-enrolled.⁵ This disastrous and wasteful outcome can

³ See Written *Ex Parte* Presentation of TracFone Wireless, Inc., WC Docket Nos. 09-197, 10-90, 11-42 (June 12, 2017).

⁴ It should also be noted that we do not currently know the databases to which the National Verifier will have access. The Commission and USAC were supposed to have developed a national eligibility database back in 2013 and failed to do so. Further, the FCC and USAC recently identified to the GAO challenges for developing the National Verifier, including "unavailability of data sources that can be used for automated eligibility...establishment of connections with state or federal data source" and the fact that "some states have privacy laws that prohibit sharing eligibility data with the federal government and data quality may vary from state to state." Additional Action Needed to Address Significant Risks in FCC's Lifeline Program, GAO Report to Congressional Requesters at 51 (May 2017) (2017 Lifeline GAO Report).

⁵ 1,000,000 subscribers x 50% not found in databases = 500,000 x 75% non-responsive = 375,000 de-enrolled. While the headlines will read "Millions of Lifeline Subscribers Ineligible,"

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be avoided by accepting the proof of eligibility that Lifeline subscribers have already provided to ETCs. The Commission should implement the migration plan proposed by the industry in the June *Ex Parte* and accept proof retained pursuant to Commission rules (back to February 2016). At the very least, it would be reasonable for the Commission to accept proof of eligibility retained by ETCs and collected since January 2017.

B. The Commission and USAC Should Not Deviate From the Decision in the Final National Verifier Plan to Make Available a Service Provider API

From the start, the Commission and USAC have intended and planned to make available a service provider API for communications between service providers and the National Verifier so that applicants can seamlessly enroll in Lifeline and access the National Verifier for an eligibility determination. USAC's recently announced decision to reverse course was ill-advised and should be reconsidered.⁶ Providing a service provider API is required by the Lifeline Modernization Order, was decided early in the process and included in the Final National Verifier Plan, will reduce opportunities for waste, fraud and abuse and will make the National Verifier more efficient and cost-effective.

In the Lifeline Modernization Order, an API for service providers to connect to the National Verifier was clearly contemplated. The Commission stated, "We agree with commenters and anticipate that eligible subscribers, *Lifeline providers*, states, and Tribal Nations will require access to establish or verify eligibility. We also expect the National Verifier to have *varying interface methods* to accommodate these different groups of users" and in a footnote explained "For example, the National Verifier may have an interface that is consumer-friendly and geared toward subscribers. It may have another interface that is geared toward providers that may allow *application programming interfaces* (machine-to-machine interaction)."⁷ The NLAD already accommodates such API access for service providers. Further, it has always been USAC's intention to include a service provider API access to the National Verifier, which was reflected in the Final National Verifier Plan filed with the Commission on January 23, 2017.⁸

the reality is that the non-responsive subscribers are likely all eligible, but were confused or unable to respond in the time provided.

⁶ See USAC Webinar, National Verifier Update at 15 (July 26, 2017).

⁷ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶ 138, n. 390 (2016) (Lifeline Modernization Order) (emphasis added).

⁸ See Lifeline National Verifier Plan at 31, 33, 51, 52, 67 and 110 (January 2017).

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Without an API, Lifeline providers will not have access to the National Verifier to establish eligibility as required by the Lifeline Modernization Order.

Practical considerations also command a course correction here, as the lack of a service provider API is more likely to facilitate waste, fraud and abuse than it is to prevent it. Notably, lack of a service provider API to the National Verifier will create opportunities for waste, fraud and abuse by taking away from service providers the ability to monitor and control fraudulent enrollment attempts. In the current enrollment process through a service provider, the ETC can “see” the entire process, including if an applicant or field agent is attempting to force an order through by making multiple attempts using changed social security numbers, addresses or other information. ETCs can see those attempts happening and require additional documentation or shut down that enrollment attempt and discipline the field agent. If a service provider API is not made available, the applicant will have to leave the ETC’s enrollment environment and go to the National Verifier portal to verify eligibility. An applicant or field agent could attempt to force through an approval by changing data without the ETC’s knowledge.

No compelling reason exists to thwart ETC controls in this manner. If USAC wants to layer on additional USAC field agent controls on top of the ETC controls, the Coalition supports such efforts. All field agents can receive a USAC registration identification number and ETCs could pass that agent number through to the NLAD with each API call (currently the “Verify Call,” the “Enroll Call” and the “Resolution Call”) so that USAC can also check for irregularities.⁹ The Coalition members already track agents by a unique identifier that must be entered into the enrollment application to begin taking orders. That information can easily be passed to USAC without taking the applicant out of the ETC enrollment environment by failing to provide API access and opening the Lifeline application process up to potential waste, fraud and abuse in the National Verifier eligibility verification process.

Providing a service provider API access to the National Verifier also will better serve consumers while being more cost-effective and efficient. USAC currently envisions a process where the applicant starts with the National Verifier portal to confirm his or her eligibility for Lifeline service and then returns to the service provider’s enrollment process (whether in person or online). Then the applicant, who has received an approval from the National Verifier, will have to complete the ETC’s enrollment process,¹⁰ including all of the ETC’s controls and checks

⁹ See Letter from FCC Chairman Ajit Pai to Vickie Robinson, Acting Chief Executive Officer and General Counsel, USAC, at 4 (July 11, 2017).

¹⁰ For online enrollments, while the ETC can provide a link to the National Verifier portal and push the applicant to that process, there will be nothing at the end of the National Verifier portal process that will push the applicant back to the service provider to complete the enrollment.

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such as service territory, network coverage, address validation, identity validation and duplicate detection. That process may result in a denial, which will be frustrating and confusing for applicants who have already been told by the National Verifier that they are eligible. This likely will drive thousands or millions of complaints to USAC, the Commission and Congress. In the CGM Lifeline enrollment application, approximately 60 percent of all enrollment attempts are denied for some reason. It would be more cost effective for the National Verifier not to undertake an eligibility verification determination for those 60 percent of enrollments that will be denied anyway. Therefore, the National Verifier eligibility determination should take place in the ETC enrollment environment through API “calls” after the applicant has completed the ETC checks and screens.

The Coalition looks forward to working with USAC on its technical proposal for service provider API access to the National Verifier. In short, we envision a National Verifier eligibility verification built into the existing NLAD enrollment framework. First, during the initial NLAD “Verify Call,” an ETC should be informed whether the applicant has already been determined to be eligible by the National Verifier, and if not, whether the applicant can be found in any eligibility databases to which the National Verifier has an API access (e.g., the New York eligibility database).¹¹ If not, the application can continue, but the ETC will know to collect eligibility documentation to pass to the National Verifier. The ETC would then collect all of the required information and certifications (which can be done on an FCC-approved standardized application/certification form¹²) and send an application in pdf to the NLAD/National Verifier in the NLAD “Enroll Call.” If the applicant is not found in one of the other non-API-based databases to which the National Verifier has access (e.g., Wisconsin, which requires a manual website check), then the application would be denied. At that point, the ETC can send eligibility documentation to the NLAD/National Verifier in the “Resolution Call” for a final determination. This way applicants receive a single eligibility determination and can walk away with activated phone service. This can all be done in a relatively simple manner using APIs.

Therefore, by not providing a service provider API, the National Verifier will inadvertently disadvantage online Lifeline enrollments at a time when many service providers are looking to move more toward online enrollments to expand distribution and reduce costs associated with in-person distribution.

¹¹ During this call, the ETC is already informed in real-time whether an Independent Economic Household worksheet must be collected, if the applicant passes the Third Party Identity Verification, etc. so that documentation can be collected.

¹² ETCs have been asking the Commission for such a form for years and would happily use it to avoid nit-picking in USAC audits and potential enforcement liability.

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The National Verifier should be designed with a service provider API because it is required by the Lifeline Modernization Order, was already decided early in the process and included in the Final National Verifier Plan, will reduce opportunities for waste, fraud and abuse and will make the National Verifier more consumer-friendly, efficient and cost-effective.

C. The National Verifier Responsibility Public Notice Should be Interpreted to Assign Responsibility to ETCs Only for Actions Taken by ETCs and Not for Decisions Made by the National Verifier or Consumer Fraud

On June 29, 2017, the Bureau released a Public Notice reminding Lifeline service providers of their ongoing obligations under the National Verifier. The Public Notice included language such as “ETCs are, and will remain, responsible for any fraud that forms the basis of their claims for Lifeline reimbursement” and “Providers must continue to take steps to detect and prevent fraud and improper claims.”¹³ Many service providers have feared that such language is intended to attempt to place responsibility for consumer fraud and eligibility determinations made by the National Verifier on ETCs.

The appropriate reading of the Public Notice is that ETCs remain responsible for not committing fraud and for following Lifeline rules, but are not responsible for actions of Lifeline applicants or subscribers, or for eligibility determinations made by the National Verifier. Despite this appropriate interpretation, ETCs believe it is essential that they be allowed to continue to apply existing safeguards against waste, fraud and abuse in the enrollment process, which requires ETCs to oversee the entire enrollment process when applicants apply through service providers, including API access to the National Verifier.

II. The Commission Should Reconsider the Upcoming Increases in Lifeline Minimum Service Standards

We also discussed the need for the Commission to act on the pending petition for reconsideration filed by the Coalition with respect to the minimum service standards set for Lifeline services.¹⁴ We explained that the upcoming December 2017 increases in Commission prescribed family-sized portions of voice and broadband services threaten the ability of ETCs to

¹³ National Verifier Responsibility Public Notice at 1.

¹⁴ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Joint Lifeline ETC Petitioners’ Petition For Partial Reconsideration and Clarification, 3-7 (filed June 23, 2016) (Coalition Petition for Reconsideration). The Coalition did not seek reconsideration of the first tier of minimum service standards because it was anticipated that those would not render Lifeline unaffordable.

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make critical Lifeline services affordable for consumers, regardless of the size of their household, particularly in states with no additional Lifeline support. As this undermines the purpose of the Lifeline program, we suggested that consumers would be best served by leaving the December 2016 quantitative minimum service standards in place and increasing the qualitative broadband speed standard, which is consistent with Chairman Pai's priorities reflected in his dissent to the Lifeline Modernization Order.¹⁵

Specifically, the Commission could adopt a transition plan that would require wireless Lifeline providers to make available broadband services on 4G LTE networks and others offering broadband speeds to all Lifeline subscribers. The speeds that each consumer experiences will depend upon his or her choice of plan and wireless device. Wireless Lifeline providers will make available to consumers devices that include those that are 4G LTE and/or Wi-Fi capable (consumers can also bring their own). The speeds consumers experience will depend on the device they choose (whether free, purchased or bring your own device (BYOD)).

This proposal maintains the current technology neutral approach and ensures that consumers have access to advanced wireless service offerings including those that leverage unlicensed spectrum. This technology neutral approach also will ensure that consumers can choose among – and ETCs can choose to offer and compete with – service plans that include traditional cellular data and/or premium Wi-Fi and other networks leveraging unlicensed spectrum. The Commission should let consumers choose from competing ETCs for the devices and service plans that best suit their needs.

III. California's Waiver from Complying with the 12-Month Port Freeze Rule Has Expired and the Commission Should Enforce its Rules

On December 1, 2016, the Bureau granted both Oregon and California waivers of the deadline to comply with the Commission's port freeze rules until June 1, 2017.¹⁶ Oregon has met the deadline. By June 1, 2017, the California Public Utilities Commission (CPUC) implemented a 60-day port freeze for Lifeline voice services. However, the CPUC has made no

¹⁵ In his dissent, Chairman Pai criticized the minimum speed standard of 3G and called on the FCC to "make sure that Lifeline subscribers have the option to purchase the...4G LTE mobile broadband that many other Americans take for granted." He argued that the FCC should "at least give low-income consumers the option of directing their Lifeline subsidy to the higher-speed services." See Lifeline Modernization Order, Dissenting Statement of Commissioner Ajit Pai at 210.

¹⁶ See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 16-1324, ¶¶ 42, 44 (rel. Dec. 1, 2016).

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progress in implementing the 12-month port freeze for Lifeline broadband services despite the fact that the mechanics of a 12-month port freeze are no different than those of a 60-day port freeze. Both require that the Lifeline Administrator track service enrollment dates, inform ETCs when subscribers are subject to a port freeze and address applicable exceptions. California has refused to comply with the Commission's 12-month port freeze rule and failed to seek a further waiver of the rules. Therefore, it is time for the Commission to impose its 12-month port freeze rule in California. If the CPUC fails to comply, then the Commission should revoke the CPUC's opt out of the NLAD.¹⁷

IV. Although the 2017 Lifeline GAO Report Is a Deeply Flawed and Outdated Analysis, the Commission Should Follow Its Recommendations to Engage in Rational Enforcement and Process Compliance Plans and Federal ETC Petitions

During the meeting, we discussed the recently released 2017 Lifeline GAO Report, which is based on data from November 2014 and does not accurately reflect the Lifeline program of 2017. In addition, the report claims that eligibility could not be verified for 36 percent of the Lifeline customers reviewed. It does not say that 36 percent of the Lifeline subscribers reviewed were found to be ineligible. The report states that the results of the data analysis are illustrative and not generalizable, and "it is not possible to determine from data matching alone whether these matches definitively identify recipients who were not eligible for Lifeline benefits without reviewing the facts and circumstances of each case."¹⁸ GAO appears to have accessed databases, such as state SNAP databases, to which Lifeline providers do not have access and it is entirely possible that GAO was trying to verify Lifeline eligibility pursuant to one low-income program

¹⁷ As required by the FCC's 2012 Lifeline Reform Order, the NLAD was implemented as a duplicate detection database nationwide in early 2014. *See Lifeline and Link Up Reform and Modernization Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, ¶¶ 179-181, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012). However, a handful of states, including California, petitioned the FCC to opt-out of the NLAD pursuant to the requirements of and process in the FCC's NLAD Opt Out Public Notice. *See Wireline Competition Bureau Clarifies Minimum Requirements for States Seeking to Opt Out of National Lifeline Accountability Database*, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, Public Notice, DA 12-1624 at 2-3 (Oct. 11, 2012) (NLAD Opt-Out Public Notice). That Public Notice states that "[t]o opt out of the Database, the state's systems must be comprehensive and at least as robust as the processes adopted by the Commission in the Lifeline Reform Order." NLAD Opt Out Public Notice at 1. Therefore, the California duplicates database must have the same essential functions as the NLAD. If it does not, the opt-out can be revoked.

¹⁸ 2017 Lifeline GAO Report at 3, 37-38.

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when the customer actually qualified pursuant to another.¹⁹

However, the GAO Report did make several important recommendations. First, the GAO concluded that the Commission has inconsistently penalized Lifeline providers and has not developed an enforcement strategy.²⁰ This is based primarily on the arbitrary and unfair IDV Notices of Apparent Liability (IDV NALs). The report found that after identifying 41 Lifeline providers with alleged duplicate subscribers, the Commission arbitrarily attempted to penalize only 12 of the providers. In many cases, the Lifeline providers that the Commission penalized had fewer alleged duplicates than others that were not penalized. One provider that allegedly received approximately \$81,000 in overpayments did not receive a proposed forfeiture (while another that received half as much in alleged overpayments received a proposed forfeiture of \$22 million). The report also notes that USAC revised its duplicate-checking algorithm in March 2015 and identified an additional 374,000 duplicate subscribers. Under the penalty structure arbitrarily proposed for some (but not all) Lifeline providers in the IDV NALs, USAC would be subject to an NAL with a proposed fine of more than \$1.87 billion. USAC has discovered what Lifeline providers already knew – designing the algorithms to screen for duplicate enrollments is not easy and requires periodic adjustment. Absent service provider fraud, duplicates should not be cause for Commission enforcement.

The 2017 Lifeline GAO Report also highlights the fact that the Lifeline compliance plan process is supposed to include further safeguards against waste, fraud and abuse, but the Commission has no policy for reviewing and evaluating them and the process has not been consistent or effective.²¹ GAO reported a backlog of 34 compliance plans and 35 pending ETC petitions.²² Most of those have been pending for years at the Commission with no action. To ensure greater competition and innovation in the Lifeline marketplace, we reiterated our

¹⁹ For example, some applicants could have applied for Lifeline indicating that they qualify pursuant to SNAP and that would have been reflected on the application and in the NLAD. However, if there was an eligibility database in the applicant's state, the ETC would have checked the applicant against that database for eligibility. The database likely included several programs and the ETC would have been told only whether or not the applicant passed, not pursuant to which program. So if the applicant was not on SNAP (or not in the SNAP database) but was on Medicaid, he or she would have passed the eligibility verification. The applicant would have actually qualified pursuant to his or her Medicaid status, but shown as qualified under SNAP in the NLAD. If GAO later checked a database that includes SNAP only, it would not find the applicant, even though the applicant is still eligible for Lifeline.

²⁰ See 2017 Lifeline GAO Report at 60-62.

²¹ See *id.* at 53-54.

²² *Id.*

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longstanding request that the Commission place all Lifeline related matters on streamlined review, as the perpetual logjam of undecided applications for review and ETC designations, compliance plans and other transaction-related approvals, have created a climate of regulatory uncertainty so morose that it threatens the health of the few Lifeline service providers actively engaged in distributing Lifeline services to eligible consumers.²³ Attracting investment to enroll Lifeline subscribers is exceedingly difficult in this regulatory environment and that reality is being reflected in the downward trajectory of the number of low-income Americans being served by the program, particularly in the states where no additional funding is available.

We look forward to continuing to work with the Bureau staff and USAC to further improve the Lifeline program. Pursuant to Section 1.1206(b) of the FCC's rules, this letter is being filed electronically.

Respectfully submitted,



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²³ See Coalition Petition for Reconsideration at 17-19.