

**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

**NATIONAL LIFELINE ASSOCIATION PETITION FOR WAIVER OF  
LIFELINE MOBILE BROADBAND MINIMUM SERVICE STANDARD AND  
VOICE SUPPORT PHASE-DOWN**

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## SUMMARY

The National Lifeline Association (NaLA), by and through the undersigned counsel, and pursuant to Section 1.3 of the Federal Communications Commission's (FCC's or Commission's) rules, 47 C.F.R. § 1.3, hereby submits this petition respectfully requesting that the Commission waive the Lifeline mobile broadband minimum service standard (MSS) increase and voice support phase-down scheduled to take effect on December 1, 2020. NaLA requests that the Commission retain the mobile broadband MSS at 3 GB rather than increasing it to 11.75 GB as planned, and retain Lifeline voice support at \$7.25 rather than decreasing it to \$5.25 as planned. These actions will ensure that Lifeline mobile broadband and voice services do not become less affordable and accessible for the growing number of low-income Americans that need access to affordable communications services more now than ever because of the ongoing COVID-19 health and economic crisis.

The same good cause exists in 2020 to justify waiving the mobile broadband MSS increase from 3 GB to 11.75 GB as existed in 2019 to waive the increase from 2 GB to 8.75 GB. While the Commission asserted an obligation last year to ensure that Lifeline supports an evolving level of service and provides access to reasonable comparable services at reasonably comparable rates, the primary tenets of the Lifeline program are affordability and access, which were recently affirmed by the Court of Appeals for the District of Columbia Circuit (DC Circuit). Therefore, the Commission should adhere firmly to the tenets of affordability and access when setting the mobile broadband MSS pursuant to waiver to more effectively implement Lifeline policy. While the record contains no evidence to demonstrate that any increase above 3 GB would be affordable, there is ample evidence in the record that any increase above 3 GB would mandate service offerings that are not affordable and would result in less access to Lifeline by those the program is intended to serve. Last year, the Commission improperly dismissed the

retail rate information introduced into the record. This year, we respectfully call on the Commission to do better and to heed that record evidence because the Lifeline program is designed as a discount off of retail rates and not as a cost reimbursement program. If the Commission is unsure about retail rates, then it should take a close look at the state of competition in the Lifeline marketplace and consider carefully the impact of its failure since 2012 to approve any new wireless resellers' ETC applications or compliance plans. It should also consider unanswered requests to adopt shot-clocks for state commissions that make the ETC designation process too costly and burdensome. It can and should do these things in the context of the upcoming 2021 State of the Lifeline Marketplace Report.

Unlike last year, all Lifeline stakeholders, including the service providers, public interest, civil rights and consumer advocates and policymakers of both parties are in agreement that the Commission should pause the mobile broadband MSS at 3 GB. Rarely, is there such widespread agreement on an issue related to the Lifeline program. And with the COVID health and economic crisis having a disproportionate impact on low-income Americans eligible for Lifeline support, it has never been more important for the Commission not to further erode the affordability of and access to Lifeline service plans. Accordingly, the Commission should grant this waiver request pending final resolution of the State of the Lifeline Marketplace Report in 2021 and pending petitions for reconsideration of the mobile broadband MSS, which likely will require additional notice and opportunity for comment. We agree with the Chairman that the cycle of annual mobile broadband MSS crises must come to an end – not with another flawed outcome-driven formula, but with a transparent resolution that prioritizes access and affordability and looks at the issue holistically, including consideration of the appropriate subsidy levels needed to support any increases in the amount of broadband provided to subscribers.

In addition, the Commission should pause the planned phase-down in support for Lifeline voice service from \$7.25 to \$5.25 scheduled for December 1, 2020 because mobile broadband has not overtaken voice service in the way that Commission perhaps expected in 2016. A recent NaLA survey, and nationwide voice usage increases during the COVID-19 crisis data from CTIA, confirm that Americans, including low-income Americans, clearly still value and need affordable wireless voice service. Further, affordable voice service is critical for public safety, which the Commission did not adequately consider in imposing the phase-down in support. The Commission should pause the phase-down now and then it can more comprehensively reconsider its decision to phase-out support for voice service in the context of deciding the pending petitions for reconsideration following the 2021 State of the Lifeline Marketplace Report next year. Finally, similar to the widespread opposition to any increase in the mobile broadband MSS, there is widespread support in favor of pausing the phase-down in support for Lifeline voice services.

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**NATIONAL LIFELINE ASSOCIATION PETITION FOR WAIVER OF  
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VOICE SUPPORT PHASE-DOWN**

The National Lifeline Association<sup>1</sup> (NaLA), by and through the undersigned counsel, and pursuant to Section 1.3 of the Federal Communications Commission’s (FCC’s or Commission’s) rules, 47 C.F.R. § 1.3, hereby submits this petition respectfully requesting that the Commission waive the Lifeline mobile broadband minimum service standard (MSS) increase and voice support phase-down scheduled to take effect on December 1, 2020. NaLA requests that the Commission retain the mobile broadband MSS at 3 GB rather than increasing it to 11.75 GB as planned,<sup>2</sup> and retain Lifeline voice support at \$7.25 rather than decreasing it to \$5.25 as planned.<sup>3</sup> These actions will ensure that Lifeline mobile broadband and voice services do not become less affordable and accessible for the growing number of low-income Americans that

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<sup>1</sup> NaLA is the only industry trade group specifically focused on the Lifeline segment of the communications marketplace. It supports eligible telecommunications carriers (ETCs), distributors, Lifeline supporters and participants, and partners with regulators to improve the program through education, cooperation and advocacy. See <https://www.nalalifeline.org/>.

<sup>2</sup> NaLA requests waiver of the application of the mobile broadband MSS formula in Section 54.408(c)(2)(ii). See 47 C.F.R. § 54.408(c)(2)(ii).

<sup>3</sup> NaLA requests waiver of the phase-down in support for voice to \$5.25 in Section 54.403(a)(2)(ii). See 47 C.F.R. § 54.403(a)(2)(ii).

need access to affordable communications services more now than ever because of the ongoing COVID-19 health and economic crisis.

## I. INTRODUCTION AND BACKGROUND

Once again, it falls upon the Commission to address the “flawed” mobile broadband MSS established in the 2016 Lifeline Modernization Order, which “results in drastic year-over-year increases” that threaten low-income consumers’ access to affordable Lifeline plans and continue to undermine the entire Lifeline program.<sup>4</sup> In the 2016 Lifeline Modernization Order, the Commission established fixed and mobile broadband and voice MSS with the laudable goal of “providing consumers with services that allow them to experience **many** of the Internet’s offerings, but **not mandating the purchase of prohibitively expensive offerings.**”<sup>5</sup> The Commission established a formula for mobile broadband MSS that is based on average mobile data usage per household.<sup>6</sup> If applied at the time, it would have resulted in a mobile broadband MSS of 2 GB, but the Commission decided instead to adopt a “more gradual phase-in of this standard.”<sup>7</sup> The mobile broadband MSS started at 500 MB on December 1, 2016 and increased to 1 GB on December 1, 2017 and then to 2 GB on December 1, 2018.<sup>8</sup> The Commission increased the voice MSS from 500 minutes on December 1, 2016 to 750 minutes on December 1, 2017 to 1,000 minutes on December 1, 2018,<sup>9</sup> but then started decreasing the voice support

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<sup>4</sup> *See infra* n. 17.

<sup>5</sup> *See Lifeline and Link Up Reform and Modernization, et al.*, WC Docket 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶ 71 (2016) (2016 Lifeline Modernization Order) (emphasis added).

<sup>6</sup> *Id.*, ¶ 94.

<sup>7</sup> *Id.*, ¶ 95.

<sup>8</sup> *Id.*, ¶ 93.

<sup>9</sup> *Id.*, ¶ 102.

amount on December 1, 2019 to \$7.25 per month and is scheduled to decrease it again on December 1, 2020 to \$5.25 per month.<sup>10</sup>

On December 1, 2019, the mobile broadband formula would have applied for the first time and would have increased the mobile broadband MSS from 2 GB to 8.75 GB.<sup>11</sup> On June 27, 2019, CTIA and several public interest, consumer and civil rights organizations filed a petition to pause implementation of the December 2019 MSS.<sup>12</sup> The petitioners asked the FCC to hold the Lifeline mobile broadband MSS steady at 2 GB and pause the phase-down in support for Lifeline voice service.<sup>13</sup> On November 19, 2019, just 12 days before the scheduled changes, the Commission adopted an order waiving the mobile broadband MSS to the extent it would exceed 3 GB per month between December 1, 2019 and November 30, 2020.<sup>14</sup> The Commission did not grant any waiver of the voice support phase down.<sup>15</sup>

On July 31, 2020, the Wireline Competition Bureau (Bureau) released a Public Notice setting the December 1, 2020 Lifeline mobile broadband minimum service standard at 11.75 GB per month.<sup>16</sup> On July 30, 2020, Chairman Pai issued a press release announcing a draft order

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<sup>10</sup> *Id.*, ¶ 117.

<sup>11</sup> *See Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, WC Docket No. 11-42, Public Notice, DA 19-704 (2019).

<sup>12</sup> *See Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study*, WC Docket Nos. 11-42, 09-197, 10-90 (June 27, 2019) (2019 Joint Petition).

<sup>13</sup> *See id.* at 2.

<sup>14</sup> *See Lifeline and Link Up Reform and Modernization et. al.*, WC Docket No. 11-42 et al., Order, FCC 19-116, ¶ 13 (2019) (2019 MSS Waiver Order).

<sup>15</sup> *Id.*, ¶ 21.

<sup>16</sup> *See Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, WC Docket No. 11-42, Public Notice, DA 20-820 (rel. July 31, 2020).

circulated regarding the Lifeline mobile broadband MSS that would set the standard at 4.5 GB.<sup>17</sup> The MSS Press Release correctly recognizes that the formula adopted in 2016 is “flawed” and “results in drastic year-over-year increases that could impact the ability of Lifeline carriers to continue providing affordable service.”<sup>18</sup>

However, the proposal to reset the mobile broadband MSS at a level 50 percent higher than the current minimum was met by widespread opposition and criticism from industry, public interest and civil rights organizations, and by members of Congress from both the Republican and Democratic parties. In short, no stakeholder supports an increase in the mobile broadband MSS at this time and no consumer has complained that “free” but limited access to the same world-class wireless networks is “second class” service. Rather, what the record overwhelmingly shows is that requiring 4.5 GB of data cannot be provided profitably unless consumers do not use most of it or a co-pay is imposed on the seven million Lifeline subscribers who currently subscribe to the most affordable and equitable plans which are “free” and require no recurring monthly payment to serve as a barrier to program participation at a time when the COVID-19 health, extended remote learning and unemployment crisis has made Lifeline more important.<sup>19</sup>

The Commission has not adopted the order circulated. While that order could be revised to effectuate the “pause and study” approach endorsed by all stakeholders filing on the issue, NaLA provides this petition as an alternative means of averting the 11.75 GB mobile broadband

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<sup>17</sup> News Release, “FCC Chairman Pai Circulates Order to Ensure Predictable Increases in Minimum Standard for Lifeline Mobile Broadband Service” (July 30, 2020) (MSS Press Release).

<sup>18</sup> *Id.* at 1.

<sup>19</sup> See National Lifeline Association Notice of Oral *Ex Parte* Presentation, WC Docket Nos. 17-287, 11-42, 09-197, 10-90 (Aug. 24, 2020) (NaLA August 24 *Ex Parte*).

MSS that the Chairman and at least three other commissioners apparently view as an untenable threat to the affordable Lifeline services relied upon by approximately seven million Lifeline subscribers today and that could be relied on by tens of millions more, absent the threat of having to deliver annual increases in service levels with no increase in subsidy level and no way to ensure that such offers will be less affordable or less available.

Regardless of whether through an order on reconsideration or an order on this waiver petition, the Commission must act quickly to address the mobile broadband MSS to avoid an increase that will make Lifeline-supported communications services unaffordable for millions of low-income Americans during the COVID-19 health and economic crisis. At the same time, the Commission should hold the Lifeline voice reimbursement at \$7.25 to retain valued affordable voice services that are essential for public safety and staying in touch with government services, healthcare providers, educational institutions and family, especially during this difficult time.

## **II. THE COMMISSION CAN WAIVE ITS RULES FOR GOOD CAUSE SHOWN**

Section 1.3 of the Commission’s rules states that “[t]he provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission....”<sup>20</sup> As explained in the 2019 MSS Waiver Order, “[i]n evaluating good cause for waiver, the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance **inconsistent with the public interest**. In addition, the Commission may take into account considerations of **hardship, equity, or more effective implementation of policy on an overall basis.**”<sup>21</sup>

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<sup>20</sup> 47 C.F.R. § 1.3.

<sup>21</sup> 2019 MSS Waiver Order, ¶ 7 (emphasis added).

### **III. THE COMMISSION SHOULD PAUSE THE MOBILE BROADBAND MSS AT 3 GB AND STUDY THE APPROPRIATE MSS NECESSARY TO PRESERVE ACCESS AND AFFORDABILITY**

The same good cause exists in 2020 to justify waiving the mobile broadband MSS increase from 3 GB to 11.75 GB as existed in 2019 to waive the increase from 2 GB to 8.75 GB. While the Commission asserted an obligation last year to ensure that Lifeline supports an evolving level of service and provides access to reasonable comparable services at reasonably comparable rates, the primary tenets of the Lifeline program are affordability and access, which were recently affirmed by the Court of Appeals for the District of Columbia Circuit (DC Circuit). Therefore, the Commission should adhere firmly to the tenets of affordability and access when setting the mobile broadband MSS pursuant to waiver to more effectively implement Lifeline policy. While the record contains no evidence to demonstrate that any increase above 3 GB would be affordable, there is ample evidence in the record that any increase above 3 GB would mandate service offerings that are not affordable and would result in less access to Lifeline by those the program is intended to serve. Last year, the Commission improperly ignored the retail rate information introduced into the record. This year, we respectfully call on the Commission to do better and to heed that record evidence because the Lifeline program is designed as a discount off of retail rates and not as a cost reimbursement program. If the Commission is unsure about retail rates, then it should take a close look at the state of competition in the Lifeline marketplace and consider carefully the impact of its failure since 2012 to approve any new wireless resellers' ETC applications or compliance plans.<sup>22</sup> It should also consider unanswered requests to adopt shot-clocks for state commissions that make the ETC designation process too costly and

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<sup>22</sup> See list of pending compliance plans and ETC petitions at <https://www.fcc.gov/general/lifeline-compliance-plans-etc-petitions>.

burdensome.<sup>23</sup> It can and should do these things in the context of the upcoming 2021 State of the Lifeline Marketplace Report.

Unlike last year, all Lifeline stakeholders, including the service providers, public interest, civil rights and consumer advocates and policymakers of both parties are in agreement that the Commission should pause the mobile broadband MSS at 3 GB. Rarely is there such widespread agreement on an issue related to the Lifeline program. And with the COVID-19 health and economic crisis having a disproportionate impact on low-income Americans eligible for Lifeline support, it has never been more important for the Commission not to further erode the affordability of and access to Lifeline service plans. Accordingly, the Commission should grant this waiver request pending final resolution of the State of the Lifeline Marketplace Report in 2021 and pending petitions for reconsideration of the mobile broadband MSS, which likely will require additional notice and opportunity for comment. We agree with the Chairman that the cycle of annual mobile broadband MSS crises must come to an end – not with another flawed outcome-driven formula, but with a transparent resolution that prioritizes access and affordability and looks at the issue holistically, including consideration of the appropriate subsidy levels needed to support.

Last year, the mobile broadband MSS formula would have resulted in an increase from 2 GB to 8.75 GB. In the 2019 MSS Waiver Order, the Commission concluded that the formula “yields a far larger year-over-year change than we believe the Commission anticipated.”<sup>24</sup> The Commission further found that “a more than four-fold increase in the minimum usage allowance would require substantially greater network resources, and, in turn, the associated costs would be

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<sup>23</sup> See National Lifeline Association Comments, WC Docket Nos. 17-187, 11-42, 09-197 at 102 (Feb. 21, 2018).

<sup>24</sup> 2019 MSS Waiver Order, ¶ 9.

passed along to resellers and/or end-users.”<sup>25</sup> The Commission went on to conclude that “the potential benefits of a significantly increased mobile broadband usage standard are outweighed by the possible hardship that could be imposed on Lifeline subscribers.”<sup>26</sup> The same is true this year. This year, the formula would result in an increase from 3 GB to 11.75 GB, which is also a far larger increase than the Commission would have anticipated, and is a nearly four-fold increase that would involve costs that would have to be passed along to consumers and whose benefits would be heavily outweighed by the hardship such co-pays would impose on Lifeline subscribers.

In the 2019 MSS Waiver Order, the Commission went on to assert its obligation to ensure that “Lifeline supports an evolving level of service” and that “all consumers ‘including low-income consumers,’ have access to reasonably comparable services at reasonably comparable rates.”<sup>27</sup> Because of these “obligations,” and based on support from TracFone and CTIA, the Commission raised the mobile broadband MSS from 2 GB to 3 GB.<sup>28</sup> The Commission failed to provide any evidence or analysis that the increase to 3 GB would be affordable for low-income consumers or that it would not serve as a barrier to access to Lifeline.

The statutory obligation to ensure that “Lifeline supports an evolving level of service” addresses what services should be defined as supportable by federal universal service, not minimum service standards. Section 254(c)(1) states, “[u]niversal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and

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<sup>25</sup> *Id.*, ¶ 10.

<sup>26</sup> *Id.*

<sup>27</sup> 2019 MSS Waiver Order, ¶ 12

<sup>28</sup> *Id.*, ¶ 13.

service.”<sup>29</sup> It goes on to set forth considerations for establishing a supported service. It does not mandate minimum service standards for any universal service program or any annual increases in MSS for such services. The statutory “obligation” to ensure that all consumers, including low-income consumers have access to reasonably comparable services at reasonably comparable rates is designed to make sure that services and rates between rural and urban areas are reasonably comparable.<sup>30</sup> Section 254(b)(3) states,

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high costs areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>31</sup>

This section also does not mandate minimum service standards or any annual increases, but rather addresses comparable services and rates between urban and rural areas. The service plans offered by wireless Lifeline service providers do not typically differ between urban and rural areas.

However, in the 2016 Lifeline Modernization Order, the Commission stated the minimum service standards goal as “providing consumers with services that allow them to experience **many** of the Internet’s offerings, but **not mandating the purchase of prohibitively expensive offerings.**”<sup>32</sup> The DC Circuit has recently affirmed that affordability and access are

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<sup>29</sup> 47 U.S.C. § 254(c)(1).

<sup>30</sup> Discussions of weighing reasonable comparability and affordability for low-income consumers necessarily include a discussion of the reimbursement amount. But since the reimbursement amount has not been changed since 2012 and cannot be changed in considering the instant waiver, the Commission should focus on preserving affordability and access for this waiver decision.

<sup>31</sup> 47 U.S.C. § 254(b)(3).

<sup>32</sup> 2016 Lifeline Modernization Order, ¶ 71.

the Commission’s “long-stated primary tenets for the program.”<sup>33</sup> Therefore, when weighing whether to require an increased quantity of mobile broadband service to be included in Lifeline service offerings, the Communications Act demands adherence to Lifeline’s primary tenets of affordability and access. Unless the record evidence clearly supports the conclusion that an increase in mobile broadband MSS will not reduce the affordability of Lifeline service (e.g., by forcing the substitution of plans that require co-pays in place of plans that require no out-of-pocket expense from the consumer) or access to it by making service offerings less available through the reduction of active distribution of services or relinquishment of designations by ETCs, the Commission, at a minimum, is compelled to reject such increases. Yet, as long pending reconsideration petitions have argued, the formula fails to consider affordability at all.<sup>34</sup> Last year’s waiver order contained no analysis of affordability and instead summarily relied on the tacit agreement of one ETC and CTIA.

This year, there is nothing in the record to justify increasing the MSS beyond 3 GB. Both TracFone and CTIA have firmly stated that the mobile broadband MSS should remain at 3 GB.<sup>35</sup> No other party has taken a different position. Indeed, the record clearly demonstrates that setting the mobile broadband MSS any higher than 3 GB would not be affordable (assuming the monthly reimbursement remains at \$9.25) and it would result in low-income Americans having less access to Lifeline (because co-pays will serve as a barrier to program participation and

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<sup>33</sup> See *Natn’l Lifeline Ass’n, et. al. v. FCC*, 915 F.3d 19, 28 (D.C. Cir. 2019).

<sup>34</sup> See Joint Lifeline ETC Petitioners’ Petition for Partial Reconsideration and Clarification, WC Docket No. 11-42 et al. (filed June 23, 2016); Petition for Reconsideration of TracFone Wireless, Inc., WC Docket No. 11-42 et al. (filed June 23, 2016); Petition for Reconsideration of CTIA, WC Docket No. 11-42 et al. (filed June 23, 2016).

<sup>35</sup> See TracFone *Ex Parte* Letter, WC Docket Nos. 17-287, 11-42 and 09-197 at 3 (July 27, 2020) (TracFone July 27 *Ex Parte*); CTIA Notice of *Ex Parte* Presentation, WC Docket No. 11-42 at 2 (Aug. 14, 2020). As discussed below, the other Lifeline stakeholders have also supported a pause at 3 GB.

failure to pay will result in de-enrollment and further retrenchment by ETCs in states that do not have significant differentiators such as additional subsidies).<sup>36</sup> In reviewing the available retail offerings, 3 GB plans generally retail for \$25-\$30.<sup>37</sup> Even the most recent and aggressive pricing from the mobile network owners does not come close to providing more than 3 GB for \$9.25. AT&T's most aggressive pricing during the initial COVID-19 timeframe (March 27, 2020 to May 13, 2020) was 2 GB for \$15, which has now expired.<sup>38</sup> T-Mobile is now offering that **2 GB for \$15** plan as its “lowest priced plan ever” to “make sure all Americans can stay connected.”<sup>39</sup> These offers, as well as the retail pricing information already introduced into the record by NaLA, make clear that more than 3 GB cannot be provided to Lifeline subscribers for a \$9.25 reimbursement without a substantial and unaffordable co-pay from Lifeline subscribers. Moreover, nothing in the record suggests that T-Mobile's latest retail offer is anything short of aggressively competitive.

The Commission may look at the retail rates for 3 GB, which greatly exceed \$9.25, and mistakenly conclude that Lifeline service providers were able to make 3 GB free to consumers so they must be able to make even more data free as well. As has been explained and record evidence makes clear, the increase from 2 GB to 3 GB has had a devastating impact on the Lifeline program by forcing nearly all carriers, knowing that most Lifeline subscribers cannot afford a co-pay, to suspend in-person distribution and free hand-set offers in “\$9.25 states” and others without significant additional subsidies. To conclude that the industry absorbed the

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<sup>36</sup> See NaLA August 24 *Ex Parte*.

<sup>37</sup> See NaLA Notice of Oral *Ex Parte*, WC Docket Nos. 17-287, 11-42, 09-197, 10-90, 03-109, CC Docket No. 96-45 at Exhibit A (July 7, 2020) (NaLA July 7, 2020 *Ex Parte*). The retail plans for 3 GB are \$25 from Consumer Cellular and Simple Mobile and \$30 from TracFone.

<sup>38</sup> See [https://about.att.com/newsroom/2020/covid\\_19\\_att\\_prepaid.html](https://about.att.com/newsroom/2020/covid_19_att_prepaid.html).

<sup>39</sup> See <https://prepaid.t-mobile.com/prepaid-plans/connect>.

increase from 2 to 3 GB of data would ignore steeply declining Lifeline program participation rates in states other than California and Oklahoma caused by increases in the mobile broadband MSS<sup>40</sup> that are accompanied by no serious consideration of whether such services can be actively marketed or continued without imposing a price increase and co-pay on a population that is largely unbanked/underbanked,<sup>41</sup> and increasingly unemployed or underemployed<sup>42</sup> (i.e., whether the services are affordable for the Lifeline eligible population).<sup>43</sup> It was this reality that caused T-Mobile, which is the primary wholesale provider for wireless Lifeline, to understandably conclude in its 2019 Annual Report that “[w]e believe current and future regulatory changes have made the Lifeline program offered by our wholesale partners **uneconomical.**”<sup>44</sup>

In the 2019 MSS Waiver Order, the FCC improperly dismissed retail pricing data introduced into the record by NaLA, which NaLA has recently updated, and appeared to lament that “the record contains no clear evidence on the extent of additional costs” and that “wireless resellers have not detailed how much they pay to their wholesale partners,”<sup>45</sup> as if the Commission had rate-setting authority in this context (which it does not) and if network costs

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<sup>40</sup> Some of the decline is now masked by the impact of the Commission’s COVID-19 related waivers of involuntary de-enrollment of Lifeline subscribers.

<sup>41</sup> The Summer 2020 NaLA Lifeline Subscriber Survey, conducted between July 31, 2020 and August 5, 2020 showed that nearly two-thirds of Lifeline subscribers are unbanked – over 63 percent do not have a checking or savings account. *See* National Lifeline Association Notice of Oral *Ex Parte*, WC Docket Nos. 17-287, 11-42, 09-197, 10-90 at 4 and Exhibit (Aug. 6, 2020) (NaLA August 6 *Ex Parte*).

<sup>42</sup> In the survey, over 80 percent responded that they are unemployed, disabled or retired.

<sup>43</sup> *See* National Lifeline Association Notice of Oral *Ex Parte* Presentation, WC Docket Nos 17-287, 11-42, 09-197, 10-90 at Exhibit (Aug. 24, 2020) (the Exhibit includes a chart showing wireless Lifeline participation decline from 10.4 million in December 2016 to just over 6 million in March 2020 and a list of subscribership decline by state since December 2016.).

<sup>44</sup> T-Mobile 2019 Annual Report at 29 (available at <https://investor.t-mobile.com/financial-performance/annual-reports-and-proxy-statements/default.aspx>) (emphasis added).

<sup>45</sup> 2019 MSS Waiver Order, ¶ 10, n.24.

were the only costs incurred by wireless resellers in providing retail Lifeline services (which is not the case). However, the Lifeline program was designed as a discount off of retail services, not a cost reimbursement program. Therefore, the Commission’s musings about network costs were not germane to the issue before it.

Section 54.401(a) of the Commission’s rules defines Lifeline as “a non-transferable **retail** service offering provided directly to qualifying low-income consumers...[f]or which qualifying low-income consumers **pay reduced charges as a result of application of the Lifeline support amount described in §54.403.**”<sup>46</sup> Section 54.403(b) addresses application of the Lifeline support amount and states (for carriers, like wireless carriers, that do not charge an End User Common Line charge), “[o]ther eligible telecommunications carriers must apply the federal Lifeline support amount, plus any additional support amount, to **reduce the cost of any generally available residential service plan or package offered** by such carriers that provides at least one supported service as described in §54.101(a), and charge Lifeline subscribers the resulting amount.”<sup>47</sup> Therefore, the Commission clearly designed the Lifeline program as a discount off of retail rates, and did not set up a process for the agency to collect and analyze wholesale costs to set a reimbursement amount, retail rates or minimum service standards. Wireless rates are set by competition in a competitive market. Therefore, the retail rates introduced into the record are the most relevant data for consideration and should not be dismissed by the Commission when determining what amounts of voice or broadband service will be affordable for Lifeline subscribers.

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<sup>46</sup> 47 C.F.R. § 54.401(a).

<sup>47</sup> 47 C.F.R. § 54.403(b).

If the Commission continues to believe that cost data is relevant, Lifeline ETCs have provided the Commission with statements on the record regarding the cost implications of increasing the mobile broadband MSS. Wireless ETCs have stated on the record that that the cost of providing 4.5 GB will vastly exceed \$9.25 and that they cannot profitably provide service with that much data unless subscribers do not use most of it or they charge a co-pay<sup>48</sup> (and record evidence clearly shows will not be paid by a vast majority of subscribers the majority of whom are unbanked).<sup>49</sup> Further these same carriers said they would consider relinquishing ETCs – reducing access to Lifeline – if the increase to 4.5 GB went into effect.<sup>50</sup>

Finally, the Commission should take note that all of the Lifeline stakeholders, including Lifeline service providers, the public interest, consumer and civil rights groups, and policymakers from both parties, are in agreement that the Commission should pause the mobile broadband MSS at 3 GB and study the Lifeline marketplace next year ahead of the State of the Lifeline Marketplace Report. TracFone has argued that “increasing the mobile broadband MSS by any amount undermines the affordability of Lifeline and...will likely drive further declines in participation and connectivity at a time when the goal of keeping Americans connected has taken on an even greater importance due to COVID-19.”<sup>51</sup> CTIA stated, “[b]y pausing the existing minimum service standard for mobile wireless broadband at 3 GB pending the State of the Marketplace Report, the Commission would be acting consistently with its recent efforts to ensure that he millions of eligible low-income consumers affected by COVID-19 remain

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<sup>48</sup> See NaLA August 24 *Ex Parte* at 2.

<sup>49</sup> See NaLA August 6 *Ex Parte* at 4-5 and Exhibit.

<sup>50</sup> See NaLA August 24 *Ex Parte* at 5.

<sup>51</sup> TracFone July 27 *Ex Parte* at 3-4; see also Sage Telecom Communications, LLC d/b/a TruConnect Notice of Oral *Ex Parte* Communications, WC Docket Nos. 17-287, 11-42, 10-90, 09-197 at 3 (Aug. 10, 2020).

connected to healthcare, school, work and emergency services.”<sup>52</sup> The public interest, consumer and civil rights organizations have urged the Commission “to pause the pending increases to the MSS until the Commission issues its 2021 State of the Lifeline Marketplace report and enacts any recommended changes to the program” because,

The risk of harm from even a small copay or forcing providers out of the marketplace is far too great. These products are particularly important under normal circumstances, but especially so during the current pandemic and its cascading economic impact. Even before the pandemic, the no-cost products were particularly important to the most vulnerable (like unhoused veterans and unbanked families), who would otherwise struggle to afford copays, and are likely to be struggling financially more so now. Pausing the increases in the MSS until the marketplace report is released will allow the Commission to make a data-informed decision and be certain that it does no harm to current and would-be Lifeline subscribers who must be certain that the Lifeline program is available during these uncertain times.<sup>53</sup>

Policymakers on Capitol Hill from both parties have also called upon the Commission to pause the mobile broadband MSS. Republican Congressman Mark Green has urged the Commission to “immediately waive implementation of any increase in the Lifeline minimum service standard until after the Commission publishes its scheduled Lifeline Marketplace Report in 2021.”<sup>54</sup> The Commission should do so because, the Congressman argues, “[a]t this time and without funding, an increase in the data mandate by 50 percent **or any other amount** will not help subscribers but will likely have the unintended consequence of making access to this important service less affordable, which is contrary to Congress’ prior stated intent.”<sup>55</sup> The House Energy and Commerce Committee and Financial Services and Government Affairs Committee have also called on the Commission to pause the mobile broadband MSS increases

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<sup>52</sup> CTIA Notice of *Ex Parte* Presentation, WC Docket No. 11-42 at 2 (Aug. 14, 2020).

<sup>53</sup> Public Interest, Consumer and Civil Rights Organizations Notice of Oral *Ex Parte* Communications, WC Docket Nos. 17-287, 11-42, 10-90, 96-45, 09-197 at 4 (Aug. 17, 2020).

<sup>54</sup> Letter from Congressman Mark Green to The Honorable Ajit Pai at 2 (Aug. 13, 2020).

<sup>55</sup> *Id.* (emphasis added).

until after the State of the Lifeline Marketplace Report in 2021.<sup>56</sup> NaLA is not aware of any stakeholders or policymakers that are urging the Commission to increase the mobile broadband MSS on December 1, 2020.

#### **IV. THE COMMISSION SHOULD HOLD THE LIFELINE VOICE REIMBURSEMENT AT \$7.25 PER MONTH AT LEAST UNTIL AFTER THE STATE OF THE LIFELINE MARKETPLACE REPORT AND RESOLUTION OF RECONSIDERATION PETITIONS NEXT YEAR**

In the 2016 Lifeline Modernization Order, the Commission concluded that “Lifeline should transition to focus more on broadband Internet access service given the increasingly important role that broadband service plays in the marketplace.”<sup>57</sup> However, the Commission remained “mindful of the importance historically placed on voice service” and that “consumer migration to new technologies is not always uniform, and certain measures to continue addressing the affordability of voice service may be appropriate....”<sup>58</sup> Mobile broadband has not overtaken voice service in the way that Commission perhaps expected in 2016. In the Summer 2020 NaLA Lifeline Subscriber Survey, over 67 percent of Lifeline subscribers responded that

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<sup>56</sup> House of Representatives, Committee on Energy and Commerce Letter to The Honorable Ajit V. Pai (Aug. 13, 2020) (“Recently, you circulated a draft order to change the minimum service standards required for mobile data service under the program. Disappointingly, you have chosen only to ask your fellow Commissioners to support changes that could actually result in qualifying low-income Americans paying more for mobile service. This simply defies logic during a severe economic downturn in which more than 30 million Americans have lost their jobs.”); U.S. House of Representatives, Appropriations Committee, Financial Services and General Government Appropriations Bill, 2021, at 59-60 (<https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FSGG%20Report%20Full%20Print.PDF>) (“The Committee is concerned that changes to the Lifeline minimum service standards and support levels will adversely impact low-income Americans, including many suffering from economic hardships due to the coronavirus. The Committee directs the FCC to pause implementation of any changes to the currently applicable minimum service standards for Lifeline-supported mobile broadband service and any changes in the current levels of Lifeline support for voice services until the FCC has completed the State of the Lifeline Marketplace Report required by the 2016 Lifeline Order”).

<sup>57</sup> 2016 Lifeline Modernization Order, ¶ 119.

<sup>58</sup> *Id.*

they value voice, text and data services equally, but voice is the single service they value the most (nearly 23 percent) followed by data (slightly more than 4 percent).<sup>59</sup> Further, the major wireless carriers have reported greater increases in voice traffic during the COVID-19 health and economic crisis than increases in mobile data usage. The Chairman’s office itself reached out to the three largest wireless ETCs asking them to extend “unlimited voice calling” to Lifeline subscribers during the crisis as part of the Chairman’s Keep Americans Connected Pledge, and each time they obliged.<sup>60</sup> CTIA’s report “How Wireless Kept Americans Connected During COVID-19” showed reports of a 20-40 percent increase in voice traffic, and a 19.6 percent increase in data traffic.<sup>61</sup> Americans, including low-income Americans, clearly still value and need affordable wireless voice service.<sup>62</sup>

Moreover, the availability of affordable voice services is critical for public safety. At its 2019 Summer Policy Summit NARUC passed a resolution that

urges the FCC to...not phase-down or eliminate support for voice services as it has proposed for 2019 to 2021. Many consumers, including seniors and families with children, rely on voice services to contact first responders in time of

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<sup>59</sup> NaLA August 6 *Ex Parte* at 5.

<sup>60</sup> See FCC, “Companies Have Gone Above and Beyond the Call to Keep Americans Connected During Pandemic,” available at <https://www.fcc.gov/companies-have-gone-above-and-beyond-call-keep-americans-connected-during-pandemic>. The list of companies includes Q Link, TracFone and T-Mobile, citing unlimited voice offers for Lifeline among other expanded Lifeline benefits.

<sup>61</sup> See CTIA, How Wireless Kept Americans Connected During COVID-19” at 2, available at <https://api.ctia.org/wp-content/uploads/2020/06/How-Wireless-Kept-Americans-Connected-During-COVID-19-2.pdf>.

<sup>62</sup> See National Lifeline Association Notice of Oral *Ex Parte* Presentation, WC Docket Nos. 17-287, 11-42, 09-197, 10-90 at 3-4 (Mar. 17, 2020) (discussing options for additional Lifeline reimbursements and increased voice and/or broadband offerings for eligible Lifeline subscribers during the COVID-19 crisis modeled after the Commission’s response to Hurricane Katrina where is authorized \$130 per month in additional support).

emergency, reach social service agencies, access healthcare, and keep connected to other essential services.<sup>63</sup>

These public safety concerns were not addressed by the Commission in the 2016 Lifeline Modernization Order when it decided to phase out monthly support for voice service. However, the D.C. Circuit's decision in *Mozilla, v. FCC* makes clear that "the Commission is 'required to consider public safety by...its enabling act.'"<sup>64</sup> Therefore, the Commission should halt the phase-down and phase-out of monthly Lifeline support for voice service in part because it has failed to adequately consider the implications of the phase-out on public safety. The Commission can then more comprehensively reconsider its decision to phase-out support for voice service in the context of deciding the pending petitions for reconsideration or in a rulemaking following the 2021 State of the Lifeline Marketplace Report.

Similar to the widespread opposition to any increase in the mobile broadband MSS, there is widespread support in favor of pausing the phase-down in support for Lifeline voice services. In proceedings since 2016, the support for retaining Lifeline support for voice service has been nearly unanimous. The backers include AARP, NAACP, several major cities, the Oklahoma, Pennsylvania, Michigan, Minnesota, Missouri, Nebraska, Florida and California public service commissions, GVNW Consulting, NASUCA, NARUC, Sacred Wind, General Communication, Inc., NTCA and WTA, the Leadership Conference on Human Rights, Q Link and TracFone,<sup>65</sup> in

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<sup>63</sup> NARUC Resolutions Passed by the Board of Directors at the 2019 Summer Policy Summit, National Verifier Launch and Minimum Service Standards Resolution at 3, available at <https://pubs.naruc.org/pub/673FDE8A-A3A4-9353-E4B5-DB7D61961B0B>.

<sup>64</sup> *Mozilla Corp. v. FCC*, 940 F.3d 1, 59 (D.C. Cir. 2019).

<sup>65</sup> See AARP Comments at 15-17; California PUC Comments at 13-14; City of Boston et al. Comments at 9; City of New York Comments at 4; Florida PSC Comments at 4; GCI Comments at 2-3; Leadership Conference on Civil and Human Rights Comments at 2; Low-Income Consumer Advocates Comments at 8; Medicaid Health Plans of America Comments at 3; Michigan PSC Comments at 7; Missouri PSC Comments at 6; Minnesota Agencies Comments at 6; NAACP Comments at 2; NASUCA Comments at 20; Nebraska PSC Comments at 7; OCA – Asian Pacific American Advocates et al. Comments at 4; Oklahoma PUD Comments at 9; PA

addition to the Free State Foundation<sup>66</sup> and last year’s petitioners to pause the minimum service standards – CTIA, the National Consumer Law Center, National Hispanic Media Coalition, OCA –The Asian Pacific American Advocates, and United Church of Christ, OC, Inc.<sup>67</sup> In light of the demonstrated continued need for affordable voice communications, especially during the COVID-19 crisis, and widespread support among Lifeline stakeholders, the Commission should pause the phase-down in support for Lifeline voice service at \$7.25 at least until after the 2021 State of the Lifeline Marketplace Report and resolution of reconsideration petitions next year.

## V. CONCLUSION

For the foregoing reasons, the Commission should find good cause to waive the Lifeline mobile broadband minimum service standard (MSS) increase and voice support phase-down scheduled to take effect on December 1, 2020. NaLA requests that the Commission retain the mobile broadband MSS at 3 GB rather than increasing it to 11.75 GB as planned, and retain Lifeline voice support at \$7.25 rather than decreasing it to \$5.25 as planned.

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Low Income Consumer Coalition Comments at 3; TracFone Comments at 56. Q Link has supported a voice and/or broadband bundles approach that would allow a Lifeline customer to choose a voice-only option with full support. *See* Comments of Q link Wireless, LLC at 43-44. All references to “Comments” here refer to the initial comments filed in response to the 2017 Lifeline NPRM in WC Docket No. 17-287 on or around February 21, 2018.

<sup>66</sup> *See* Free State Blog Post (“The impending diminishment in support for voice services likely will adversely impact Lifeline customers by constraining the flexibility of service providers to tailor offerings affordability to meet Lifeline customers’ demands.”).

<sup>67</sup> *See* 2019 Joint Petition; Written *Ex Parte* Notice of the National Consumer Law Center, National Hispanic Media Coalition, OCA –The Asian Pacific American Advocates, and United Church of Christ, OC, Inc., WC Docket Nos. 17-287, 11-42, 09-197 and 10-90 at 1 (Nov. 13, 2019).

Respectfully submitted,



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