Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Bridging the Digital Divide for Low-Income Consumers	)	WC Docket No. 17-287
	)	
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 COMMENTS ON PETITIONS OF TRACFONE AND NTCA REGARDING THE LIFELINE MINIMUM SERVICE STANDARDS

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SUMMARY

The National Lifeline Association (NaLA) respectfully submits these comments in response to petitions filed by TracFone Wireless, Inc. (TracFone) and NTCA – The Rural Broadband Association (NTCA) regarding the minimum service standards for the Lifeline program. As explained herein, NaLA respectfully submits that a necessary step towards achieving Chairman Pai's stated goal of empowering consumers who participate in the Lifeline program is to eliminate the paternalistic Wheeler-era minimum service standards, which imposed the judgment of Washington regulators over that of consumers nationwide when it comes to making decisions about the types of communications services that are desired and affordable. These standards hinder rather than benefit consumers and the Lifeline program by restricting consumer choice and therefore should be reversed. The Commission also should reverse the planned phase-down of support for voice-only Lifeline plans that is set to begin in December 2019.

Alternatively, if the Commission is not prepared to set aside the minimum service standards at this time, it should, at a minimum, suspend future increases to them pending the results of the State of the Lifeline Marketplace report, which should study their impact on the Lifeline program. In the interim, the Commission should reverse the Wireline Competition Bureau's erroneous guidance from 2016 regarding bundled service offerings and allow eligible telecommunications carriers (ETCs) to meet the minimum service standards by offering one or more "1,000 unit" packages through which consumers can choose the mix of services they want. Additionally, if the Commission is inclined to allow a time-limited "market test" of a "units" offering, such test should not be restricted to a single ETC but should be open to all Lifeline providers and all Lifeline-eligible consumers.

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The National Lifeline Association[1] (NaLA) respectfully submits these comments in response to petitions filed by TracFone Wireless, Inc. (TracFone) and NTCA – The Rural Broadband Association (NTCA) regarding the minimum service standards for the Lifeline program.[2] As explained herein, the Commission has an opportunity before it to restore consumer choice in the Lifeline program by rolling back the heavy-handed and paternalistic minimum service standard rules adopted by the previous Commission, which imposed Washington

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1 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/.

2 *See* Renewed Motion for Declaratory Ruling or for Waiver for the Purpose of Conducting a Market Test of Consumer Demand for Lifeline Service Offerings, WC Docket Nos. 11-42, 09-197, 17-287 (filed July 25, 2018) (TracFone Petition) (seeking "a declaratory ruling that the rule as promulgated would enable TracFone to comply with the minimum service standards for Lifeline service by providing its Lifeline customers with a specified quantity of 'units' per month" and for authority to conduct a "market test of TracFone's units Plan"); Petition for Temporary Waiver of NTCA – The Rural Broadband Association, WC Docket Nos. 11-42, 09-197, 10-90 (filed July 23, 2018) (NTCA Petition) (requesting a temporary waiver from the minimum service standards "applicable to fixed, wireline broadband Internet access service").

regulators' service choices on low-income consumers rather than letting them decide which service plans they can afford and would best suit their individual and household needs. These standards hinder rather than benefit consumers and the Lifeline program and therefore should be reversed. Alternatively, if the Commission is not prepared to set aside the minimum service standards at this time, it should, at a minimum, suspend future increases to them pending the results of the State of the Lifeline Marketplace report, which should study their impact on the Lifeline program and, in the interim, allow eligible telecommunications carriers (ETCs) to meet them by offering one or more "1,000 unit" packages in which consumers can choose the mix of services they want on a month-to-month basis. Additionally, if the Commission is inclined to allow a time-limited "market test" of a "units" offering, such test should not be restricted to a single ETC but should be open to all Lifeline providers and consumers.

I. The Commission Should Restore Consumer Choice in the Lifeline Program by Eliminating the Minimum Service Standards

Chairman Pai has made clear that the Commission's "lodestar" with respect to the Lifeline program should be empowering consumers.[3] Indeed, the Chairman expressly stated in an oversight hearing before the Senate Commerce Committee earlier this month that the Commission's central goal for the program is to "make sure that every American who needs help through the Lifeline program is able to get it."[4] A necessary step toward achieving this goal and "responsibly empower[ing] Lifeline subscribers to obtain the highest value for the Lifeline benefit through consumer choice in a competitive market"[5] is to eliminate the paternalistic

[3] *See, e.g.*, Letter from Hon. Ajit Pai, Chairman, FCC, to Hon. Gregory W. Meeks, Member, U.S. House of Representatives (July 31, 2018).

[4] *See Oversight of the Federal Communications Commission: Hearing Before the S. Committee on Commerce, Science and Transportation*, 115th Cong. (2018).

[5] *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, WC

Wheeler-era minimum service standards, as advocated in the Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification of the 2016 Lifeline Modernization Order, which remains pending.[6]

The minimum service standards are a prime example of heavy-handed, bureaucratic overreach in which regulators in Washington, D.C. substituted their own judgment for that of consumers nationwide when it comes to making decisions about the types of communications services that are desired and affordable. The Commission adopted the minimum service standards on the assumption that they were "necessary to guarantee access to services that a 'substantial majority' of residential consumers have already subscribed to."[7] Unfortunately, the Commission's view of the marketplace ignored the vigorous efforts of ETCs up to that point to meet evolving consumer demand for mobile services, and substituted its choice of service plans for those of consumers. Indeed, prior to adoption of the minimum service standards, most ETCs including the largest such companies serving the most subscribers had already increased their no-

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Docket Nos. 17-287, 11-42, 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, ¶ 80 (rel. Dec. 1, 2017) (2017 Lifeline Digital Divide Order).

[6] *See* Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 23, 2016) (Joint ETC Petition). The Commission originally received comments on the petition in 2016, but the petition remains pending and this cycle is an opportunity to refresh the record on this request. *See also* Petition for Reconsideration of CTIA, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 23, 2016) (noting that the 2016 Lifeline Modernization Order "failed to perform the necessary analysis to determine whether the [minimum service] standard would be consistent with affordable service to the lowest-income Americans"); TracFone Petition for Reconsideration, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 23, 2016) (TracFone 2016 Petition for Reconsideration).

[7] *See 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, ¶ 77 (2016) (2016 Lifeline Modernization Order).

cost-to-consumer voice offerings in response to consumer demand and competition.[8] Further, the Commission designed the standards to meet the assumed needs of multi-member households as opposed to accounting for different sized households.[9]

In its petition for a temporary waiver of the minimum service standards, NTCA observed that a better course would be to allow consumers to choose a service level that "better meets their needs and fits their budget."[10] While NTCA is correct that relief from the minimum service standards is needed, NaLA respectfully submits that rather than temporarily waiving them, a better solution is to eliminate them altogether. AT&T's observation in 2015 remains true today and will continue to be true – "[r]egulators should not make [the choice of rate plan] for consumers by establishing overly prescriptive service standards but should instead encourage participating providers to offer Lifeline customers the choices available to non-Lifeline consumers to the greatest extent possible by allowing the marketplace to independently operate."[11] Indeed, there is simply no compelling reason for the Commission to tell a consumer that he or she has to pay more for a faster or more robust service offering when the consumer would prefer or can only afford a lower tier plan that works for that consumer.

Moreover, the minimum service standards have had and will continue to have an adverse impact on consumers and will impede the Lifeline program's central goal of making communications services affordable for all low-income households. For example, the minimum

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[8] *See* Comments of the Lifeline Joint Commenters on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program, WC Docket No. 11-42 et al, at 6 (filed Aug. 31, 2015) (2015 Lifeline Joint Commenters Comments).

[9] *See* 47 C.F.R. § 54.408(c)(2); *see also* 2016 Lifeline Modernization Order ¶ 94.

[10] NTCA Petition at 5.

[11] Comments of AT&T, WC Docket No. 11-42, et al., 8 (Aug. 31, 2015) (AT&T 2015 Lifeline Comments).

service standards have forced providers to scale back investment in Lifeline enrollments, which in turn has depressed the program participation rate in all states. As the minimum service standards have risen, the reimbursement amount has remained static. The data shows that service providers in turn have pulled back on robust marketing and enrollment efforts, and participation rates have fallen because Lifeline services are more difficult to obtain. Therefore, nationwide participation rates have dropped from 32 percent in 2016[12] to 25 percent currently.[13] This effect is even more pronounced in states where only the $9.25 federal Lifeline support is available, as participation has dipped to 22 percent.[14]

As the applicable minimum service standards continue to rise without any corresponding increase in the monthly benefit, the rule will have the unintended consequence of raising prices for Lifeline subscribers (which is exactly the opposite effect that this program is intended to have). Unless the Commission seizes this opportunity to correct course, subscribers for wireline and wireless Lifeline services will be forced to purchase voice and broadband plans that may be more than they can afford or need.[15] To avoid further harming consumers and competition in the Lifeline program, the Commission should eliminate the minimum service standard requirements and instead facilitate competition in the program to create an organic incentive for ETCs to continually improve their service offerings.[16]

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[12] *See* 2016 Lifeline Modernization Order, n. 145.

[13] Current participation rate estimates are based on an analysis performed by CGM, LLC based on July 2018 USAC data.

[14] *See id*.

[15] *See* Joint ETC Petition at 3-9 (noting that the Commission's formula for calculating the minimum service standard disproportionately burdens households with fewer than the average number of members or mobile subscriptions).

[16] For example, the Commission should issue decisions on the 35 compliance plans and 35 federal ETC petitions pending before the Commission, which have not been acted on for years, including one for the better part of a decade. These requests represent additional Lifeline

The Commission also should reverse the planned phase-down for support of voice-only Lifeline plans. As TracFone observed in its 2016 petition for reconsideration, "[t]here are and will always be a portion of the populace for whom the most essential telecommunications service is the ability to make a phone call or receive a phone call, without regard to whether those persons can afford a bundled Lifeline service which includes both voice and broadband service."[17] Indeed, voice service remains an essential component of the Lifeline program, particularly for public safety reasons, because it allows consumers to access emergency services and stay connected with loved ones during natural and manmade disasters such as wildfires, hurricanes, and mass shootings.[18] For this and other reasons, there is no support in the record for reducing and eventually eliminating support for voice-only Lifeline plans.[19] Accordingly, this Commission should correct this overreach and empower consumers to choose the services that work best for them by retaining Lifeline support at its current level for voice services,[20] including standalone voice as well as voice provided as part of a bundled service offering, and by eliminating the phase-down in support that is set to begin in December 2019.

provider competitors that seek to enter the marketplace to provide additional service offering options for consumers.

[17] TracFone 2016 Petition for Reconsideration at 3.

[18] *See, e.g.*, Letter from John J. Heitmann et al., Counsel to Assist Wireless, LLC, Boomerang Wireless, LLC and Easy Telephone Services Company d/b/a Easy Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 17-287, 11-42, 09-197 (Nov. 9, 2017) (noting that in a survey of one ETC's subscribers, "more than 80 percent [of respondents] said they depend on the service to contact 911 or other emergency services").

[19] *See* Joint ETC Petition at 9-11 (explaining that the phase-down of voice-only support should not occur until the Commission has completed and reviewed its State of the Lifeline Marketplace Report, scheduled to be completed in 2021).

[20] In this regard, it is important for the Commission to consider that residential wireless consumers do not typically purchase broadband only service plans (in part because few service providers offer such plans), but instead typically choose bundles that include voice, text and data.

II. If the Commission Is Not Prepared to Eliminate the Minimum Service Standards at This Time, It Should At Least Suspend Future Increases to Them and Allow ETCs to Offer Consumers "Units" Packages

As noted above, if the minimum service standards continue to rise without any corresponding increase in the monthly benefit, many low-income consumers will find themselves forced to purchase voice and broadband plans that they simply cannot afford or continue to forego Lifeline service. To make matters worse, the prospect of having to offer uneconomic or unaffordable service plans is likely to result in more service providers severely limiting distribution or exiting the market altogether.[21] While NaLA respectfully submits that these harms to low-income consumers and the Lifeline program provide ample evidence to support eliminating the minimum service standards altogether, if the Commission is not prepared to do so at this time, it should at least suspend any future increases to them until it completes the State of the Lifeline Marketplace report, which the Commission is required to do by June 30, 2021.[22] This report will allow the Commission to meaningfully assess the impact of the minimum service standards on the Lifeline program and low-income consumers. Indeed, the 2016 Lifeline Modernization Order explained that "the full Commission [expects to] take appropriate action if necessary to make changes to the program within six months of receiving the report, for example, adjusting support levels or minimum service standards, so that the Lifeline program continues to achieve its objectives."[23] The primary objective of the Lifeline program is to make

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[21] For instance, AT&T has filed to relinquish its ETC designations (except for CAF purposes) in more than a dozen states. To date, at least thirteen state commissions have approved AT&T's relinquishment – Alabama, Florida, Georgia, Indiana, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Wisconsin. AT&T has petitions pending in several other states, including Michigan and Ohio.

[22] *See* 2016 Lifeline Modernization Order ¶ 66.

[23] *Id*.

voice and broadband services affordable and, as NTCA explains, the minimum service standards are working against that goal.[24] Therefore, it is prudent to freeze the minimum service standards until the report is completed and the Commission can be confident that such service requirements are serving the program's goals.

In the interim, the Commission should allow ETCs to satisfy the minimum service standards at current levels by offering one or more "units" packages that offer consumers the opportunity to choose the types of services they want on a month-to-month basis. As TracFone observed in its petition, "[a] units plan would empower Lifeline consumers to determine how to use their Lifeline service to best meet their telecommunications needs."[25] This approach is consistent with the language of section 54.408 of the Commission's rules and the 2016 Lifeline Modernization Order, which had clarified that the term "providing" means "making available."[26] Further, the bundles interpretation was consistent with common industry practice, which was recognized and supposedly left unchanged in the 2016 Lifeline Modernization Order. Indeed, the Commission had stated in that order that its rule on bundles "*does not represent a change in policy* as many Lifeline providers have voluntarily offered non-supported services to consumers bundled with Lifeline-supported services," and that the Commission "agree[s] with commenters and view[s] such offerings as enhancing consumer benefits."[27]

Despite the language in section 54.408 and the clarification in the 2016 Lifeline Modernization Order that "providing" means "making available," the Wireline Competition Bureau later issued a Public Notice that incorrectly "clarifie[d] that 'substitution' or

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[24] *See* NTCA Petition at 7.

[25] TracFone Petition at 5.

[26] *See* 2016 Lifeline Modernization Order ¶ 263 n. 710.

[27] *Id*. ¶ 67 (emphasis added).

'decremented' bundled offerings do not fulfill the requirements of the Lifeline minimum service standards if they restrict a customer's access to the supported service for which the provider is claiming Lifeline reimbursement below the minimum service standard applicable to that supported service as a result of the customer's usage of some other service included in the bundled offering."[28] As a result of the Bureau's misguided interpretation, Lifeline subscribers are currently forced to choose between a 750 minute plan that may or may not include any data and a 1 GB plan that may or may not include any wireless minutes. Notably, the LBP/MSS Public Notice failed to recognize that the full allotment of minutes or data is "provided" or "made available" to the customers and it is only through the customer's choice to use various amounts of minutes or data according to their particular communications needs that the amounts available are decremented.[29] This guidance should be reversed. The Bureau offered no justification for refusing to allow consumers to decide for themselves whether their communications needs involve more voice or more data. Moreover, this erroneous interpretation only serves to restrict consumers' options by potentially forcing them to choose between a voice-only or a broadband-only offering, rather than selecting a plan that would allow them access to both services based on their individual or household needs.

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[28] *Wireline Competition Bureau Provides Guidance Regarding Designation as a Lifeline Broadband Provider and Lifeline Broadband Minimum Service Standards*, WC Docket Nos. 11-42, 09-197, Public Notice, DA 16-1118, ¶ 15 (WCB rel. Sept. 30, 2016) (LBP/MSS Public Notice).

[29] For example, a Lifeline subscriber may decide that she wants to use all of the allotted units for data because she is searching for a job or her child needs to tether the smartphone to a laptop or tablet to complete a homework assignment. That same subscriber may decide the next month that she wants to use some of the allotted units for voice service one month when she is participating in job interviews over the phone or needs to discuss treatment options with her child's doctor or nurse.

NaLA respectfully submits that the appropriate "unit" measurement is 1,000 "units" where 1 unit equals at least 1 minute of voice service or 1 megabyte of broadband data. Any such service offering should be eligible for Lifeline reimbursement and ETCs should be free to allow consumers to use minutes and megabytes interchangeably in a month if their systems allow for that, or offer different preset packages with "buckets" of minutes and megabytes.[30] A 1,000 unit offering is superior to the current lowest minimum service standard of 750 minutes, and would resolve the illogical disconnect between the voice and broadband minimum service standard requirement (750 minutes v. 1 GB), which – surely another unintended consequence of the Wheeler-era Commission's paternalistic minimum service standard rules – disincentivizes providers from offering and promoting broadband plans in the Lifeline program. It also preserves voice service options for those consumers that need or prefer to allocate at least part of their Lifeline benefit for voice service. By contrast, TracFone's mistaken 2,000 unit proposal would have the unintended consequence of increasing prices for consumers, thereby making the service unaffordable for many.[31]

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[30] Not all ETC platforms or underlying carriers necessarily permit service providers to allow consumers to use minutes and megabytes in real-time within a month. Some will need to provide different offerings of set buckets of minutes and megabytes from which consumers can choose. For example, an ETC could offer Plan A (250 minutes and 750 MB), Plan B (500 minutes and 500 MB) and Plan C (750 minutes and 250 MB), which consumers could choose from on a month-to-month basis, and all plans would qualify since the offering adds up to 1,000 units.

[31] *See also* NTCA Petition at 9 (noting that "budget constraints, as well as other structural issues, render 18/2 or 15/2 or even 10/1 BIAS unaffordable for many rural consumers, low-income or not").

III. Any "Market Test" of a Units-Based Minimum Service Standard Must Be Available to All Lifeline ETCs and Consumers

In its petition, TracFone seeks authority to conduct a market test of its units proposal commencing on December 1, 2018.[32] While NaLA agrees that a "market test will yield invaluable information regarding consumers' preferences and needs,"[33] restricting such a test to a single ETC would do nothing more than provide an unfair competitive advantage to that ETC in the marketplace and allow only that ETC's consumers the freedom of choice while continuing to constrain the choices of all other Lifeline subscribers. Therefore, if the Commission chooses to commence a time-limited market test, it should allow all ETCs to participate so that all low-income consumers in the Lifeline program can benefit from it. Indeed, a "market test" is best served by sampling the entire market, not just one company, and granting the waiver sought in the TracFone Petition to all ETCs would be consistent with the Commission's past practice in other contexts.[34]

CONCLUSION

For the reasons explained herein, NaLA respectfully urges the Commission to empower consumers and maximize choice in the Lifeline program by eliminating the paternalistic and bureaucratic command and control style minimum service standard requirements from the program. However, if the Commission is not prepared to set aside the minimum service

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32 TracFone Petition at 5-7.

33 *Id*. at 6.

34 *See, e.g.*, *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Order, DA 17-860 (WCB rel. Sept. 7, 2017) (granting Telrite Corporation's request for a temporary waiver of the Lifeline non-usage and recertification rules in Puerto Rico and the U.S. Virgin Islands in the wake of Hurricane Irma, but extending such relief to all ETCs and consumers participating in the Lifeline program in those territories).

standards at this time, it should, at a minimum, suspend future increases to them pending the results of the State of the Lifeline Marketplace report in 2021 and, in the interim, allow ETCs to meet them by offering one or more "1,000 unit" packages in which consumers can choose the types of services they want on a month-to-month basis. Additionally, if the Commission is inclined to allow a "market test" of a "units" offering, such test should not be restricted to a single ETC but should be open to all Lifeline providers and consumers.

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