N A R U C
National Association of Regulatory Utility Commissioners

September 5, 2019

VIA ELECTRONIC FILING

Marlene H. Dortch
FCC Secretary
Federal Communications Commission
445 12th Street, SW Washington, D.C. 20554

RE: Notice of Oral Ex Parte:

***In the Matters of Bridging the Digital Divide for Low Income Consumers,* WC Docket No. 17-287, *Lifeline and Link Up Reform Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support,* WC Docket No. 09-197, and *Connect American Fund*, WC. Docket No. 10-90.**

Ms. Dortch:

On August 3, 2019, I met separately with ***Nirali Patel,*** *Wireline Advisor, Office of the Chairman Ajit Pai,* ***Travis Litman,*** *Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, Office of Commissioner Rosenworcel,* ***Arielle Roth,*** *Wireline Legal Advisor, Office of Commissioner O'Reilly,* ***Randy Clarke,*** *Acting Legal Advisor for Wireline and Public Safety*, *Office of Commissioner Starks*, and ***Joseph Calascione,*** *Legal Advisor, Office of Commissioner Carr*.

In all of these meetings, I noted the following Lifeline issues:

I. The FCC Should Grant the petition to pause the scheduled update to the minimum service standard for Lifeline-supported mobile broadband service and the scheduled reduction in the support amount for Lifeline-supported mobile voice service filed by CTIA, the National Hispanic Media Coalition, the National Consumer Law Center, the OCA-Asian Pacific American Advocates, and the United Church of Christ, Office of Communications, Inc.[1]

[1] Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, WC Docket No. 11-42 et al. (filed June 27, 2019), at 1. (Joint Petition). Wireline Competition Bureau Seeks Comment on Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, FCC Public Notice DA19-617 issued in WC Docket No. 11-42 (July 1, 2019).

Comments were filed by consumer groups, industry and NARUC. All sixteen initial commenters on the *Joint Petition*, like NARUC, encouraged the *FCC* to grant the petition.[2] No opposing comments were filed.

NARUC agrees with the arguments presented in the sixteen other filed initial comments. The commenters represent an array of perspectives ranging from self- described "supporters of free market-oriented communications policies,"[3] to think tank economists,[4] to experts that work closely with State and Federal Lifeline programs,[5] public interest and veteran's groups,[6] and the mobile wireless industry.[7]

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2 Comments of Consumer Action and Consumer Federation of America (July 30, 2019), at p. 1; Comments of National Grange (July 30, 2019), at p. 1; Comments of the National Association of American Veterans (July 30, 2019), at p. 1; Comments of Access Humboldt, Advocates for Basic Legal Equality, Asian Americans Advancing Justice/AAJC, Center for Rural Strategies, Common Sense Media, Communications Workers of America, The Greenlining Institute, NAACP, New Americas Open Technology Institute, Next Century Cities, Public Knowledge, US Conference of Catholic Bishops Joint Comments (July 30, 2019) at p. 1; Comments of the Public Utility Commission of Oregon (July 31, 2019) at p. 1; Comments of the National Association of State Utility Consumer Advocates in Support of the Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards (July 31, 2019) at p. 1; National Lifeline Association Comments on Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study (July 31, 2019) at p. 1; Comments of Sprint Corporation (July 31, 2019), at p. 1; Comments of NTCA-The Rural Broadband Association (July 31, 2019), at p. 2; Q LINK Wireless LLC Comments on Joint Petition To Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study (July 31, 2019), at p. 2; Comments of TracFone Wireless, Inc In Support of Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study (July 31, 2019), at p. 1; Comments of Free Press on Joint Petition to Pause Minimum Standards Changes (July 31, 2019), at p. 1; Comments of Sage Telecom Communications, LLC D/B/A Trueconnect In Support of Joint Petition to Pause Implementation of December 2019 Lifeline Minimum service Standards (July 31, 2019), at p. 11; Comments Missouri Public Service Commission (August 1, 2019), at p. 2; and Letter from James R. Fisher, National Executive Director, Korean War Veteran's Association (August 8, 2019), at p.1.

3 Comments of Randolph J. May, President, The Free State Foundation, filed July 31, 2019 in WC Docket No. 11-42.

4 George S. Ford, PhD., *Phoenix Center Policy Paper No. 55, A Fresh Look at the Lifeline Program*, Phoenix Center for Advanced Legal & Economic Public Policy Studies (July 2019) (*Phoenix Center Policy Paper*), available at http://www.phoenix-center.org/pcpp/PCPP55Final.pdf. *Compare infra* at n. 17.

5 Both NARUC, whose members either run their own State lifeline programs in tandem with the federal program, and/or certify the activities of federal eligible telecommunications carriers, and the National Association of State Consumer Advocates (NASUCA), which represents State government entities that also work closely with consumers on lifeline issues, passed resolutions again urging the FCC to stop phasing down support for voice services and filed comments supporting the *Joint Petition*. See, e.g., Comments of the National Association of State Utility Consumer Advocates in Support of the Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards, filed July 31, 2019 in WC Docket No. 11-42. WC Docket 09-197, and WC Docket No. 10-90.

6 The *Joint Petition* was filed on behalf of consumers by the National Hispanic Media Coalition, the National Consumer Law Center, the OCA-Asian Pacific American Advocates, and the United Church of Christ. Other NGO's filed supporting the petition, including Consumer Action and Consumer Federation of America, Comments of Consumer Action and Consumer Federation of America, National Grange, Comments of National Grange, American Veterans; Comments of the National Association of American Veterans, Public Interest Groups Comments of Access Humboldt, Advocates for Basic Legal Equality, Asian Americans Advancing Justice/AAJC, Center for Rural Strategies, Common Sense Media, Communications Workers of America, The Greenlining Institute, NAACP, New Americas Open Technology Institute, Next Century Cities, Public Knowledge, US Conference of Catholic Bishops Joint Comments, National Lifeline Association, National Lifeline Association Comments on Joint Petition to Pause

The record in this proceeding is consistent on several points, presenting a compelling case for the *FCC* to grant the *Joint Petition*.

There is certainly no question that increasing the minimum data provision requirements by a factor of more than four will increase costs for service providers. The potential for a negative impact on the goals of the federal Lifeline program is obvious. The questions raised are: how much of those costs would likely be passed through to consumers? What will the impact be on Lifeline consumers? And, will the increased costs cause some providers to exit the market?

The *FCC's* pending *State of the Lifeline Marketplace Report,* due by June 30, 2021, provides the perfect vehicle to answer those questions.

As the National Lifeline Association states in its comments at p. 2,

> Freezing the current mobile broadband minimum service standard until the State of the Lifeline Marketplace Report is completed will allow the Commission to rationally consider the impact of an unexpected and apparently massive price increase that would be triggered by the mandated formula-derived service levels for December 2019 and later on access to and the affordability of essential communications services for low-income consumers.

The likely impact on the program and the consumers it serves is not speculative. As NARUC points out in its resolution, the current market in non-Lifeline wireless services sets retail 10 GB data plans for $40 per month or higher. This information is in the record. *Sprint's Comments*, at p. 6, note that "[g]iven the fierce level of competition in the retail wireless market, there should be no debate over the reasonableness of the charges assessed by the service providers for their non-Lifeline plans." *Sprint's Comments* go on to provide, at p. 5 – 6, record evidence of the level of today's charges pointing out that non-Lifeline wireless plans providing 5-10 GB data per month retail for $40 - $50, considerably higher than the current $9.25 federal lifeline subsidy. Indeed, the $9.25 monthly support amounts to 18.50%-23,13% of the price for such plans. Even plans that approximate the current Lifeline offer (1-3 GB of data per month) are offered at a rate considerably higher than the $9.25 federal Lifeline subsidy.[8] The prospect for

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Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, Free Press, Comments of Free Press on Joint Petition to Pause Minimum Standards Changes, and Korean War Veterans, Letter from James R. Fisher, National Executive Director, Korean War Veteran's Association.

7 The *Joint Petition* was also filed on behalf of mobile wireless Lifeline service providers by CTIA. Several lifeline providers filed separate July 31, 2019 comments in in WC Docket No. 11-42, including Sprint, Comments of Sprint Corporation, NTCA, Comments of NTCA-The Rural Broadband Association, Q Link, Q LINK Wireless LLC Comments on Joint Petition To Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, TracFone, Comments of TracFone Wireless, Inc In Support of Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, and Sage, Comments of Sage Telecom Communications, LLC D/B/A Trueconnect In Support of Joint Petition to Pause Implementation of December 2019 Lifeline Minimum service Standards.

8 *Id., Compare, Q Link's comments* at p. ii ("Moreover, wireless ETCs are in no position to successfully impose monthly price increases of $2 for voice to $30 or more for broadband on Lifeline subscribers. This is because Lifeline subscribers live near or below the poverty level and cannot afford basic necessities without assistance – and most are unbanked."), and at p. 6 ("The December 2019 mobile broadband MSS increase would result in decreased access and higher prices for low-income consumers. This untenable (and unanticipated) outcome is in part due to the fact that the network cost alone of meeting the mobile broadband data requirement easily exceeds the subsidy amount. Retail wireless plans that include a minimum of 8.75 GB of high speed broadband data typically retail for $40 and higher and simply cannot be made available to Lifeline subscribers for free based on a $9.25 subsidy amount. If the Bureau

an unspecified increase in costs to both companies and Lifeline consumers is obvious. Indeed, the only expert economist evidence in the record, from Phoenix Center's Chief Economist, Dr. George S. Ford, acknowledges "that raising minimum service standards is likely to raise the price for Lifeline services, thereby making service unaffordable to precisely those households the *Commission* seeks to target with its subsidies."[9] Dr. Ford also found that "many of the *Commission's* reforms, including proposals to exclude resellers from the program and the scheduled increases in minimum service standards, are counterproductive in that both reforms will increase the alleged displacement of Lifeline for regular accounts and reduce the adoption of advanced telecommunications services by low-income Americans."[10]

Free State Foundation President Randy May, at p. 2 of *FSF's comments*, agrees that the *Joint Petition* "credibly" states that the flash jump increasing the required data use allotment would also "significantly narrow consumer choice, limiting the variety of service plans available for eligible low-income consumers to choose and requiring eligible low-income consumers to purchase plans that might often include much larger increments of data usage than they need or want."

The record also demonstrates the proposed decrease in support for voice services is a problem.

Universal Service Administrative Company data shows that, as of February 2019, nearly 42% of Lifeline customers still subscribe to plans that qualify for Lifeline by virtue of meeting the minimum service standards for voice service.[11]

If the *FCC* moves forward without a pause, over 3.8 million Lifeline subscribers could be negatively impacted in both rural and urban areas.[12]

Again the Comments of Mr. May, at p. 3 of the *FSF's comments*, seem prescient:

> The impending diminishment in support for voice services likely will adversely impact Lifeline customers by constraining the flexibility of service providers to tailor affordable offerings to meet Lifeline customers' demands. . . Many consumers, including seniors and families with children, rely on voice services to contact first responders in time of emergency, reach social service agencies, access healthcare, and keep connected to other essential services. (Internal citations omitted)

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does not grant the waiver requested in the Joint Petition, existing Lifeline subscribers will have their free plans replaced with costly ones for which they will not have the means or ability to pay.")

9 *Phoenix Center Policy Paper* at p. 36.

10 *Proposed Reforms to FCC's Lifeline Program Require A Bit More Thought*, July 22, 2019, online at: https://fedsoc.org/commentary/blog-posts/proposed-reforms-to-fcc-s-lifeline-program-require-a-bit-more-thought.

11 *See USAC, High-Cost and Low Income Committee Briefing Book*, at 41 (April 29, 2019) (Lifeline Business Update, App. A: Lifeline Program Trends) (showing 27.81% of Lifeline customers taking bundled plans meeting the voice minimum standards and 13.8% of customers taking voice-only plans), available at https://www.usac.org/_res/documents/about/pdf/bod/materials/2019/High-Cost&Low-Income-Briefing-Book-April.pdf.

12 *Id.* (Shows 9 million total Lifeline subscribers in fourth quarter 2018. Twenty – Seven percent of 9 million is just over 2.5 million and 13.8% of 9 million is just over another 1.24 million subscribers.).

NASUCA amplifies Mr. May's statements, noting, at p. 3 of its comments, that:

> Decreasing the amount of monthly support for Lifeline voice service will make the service less affordable for Lifeline consumers who prefer voice service or who have no Lifeline broadband alternative. [T]he expansion of fixed and mobile broadband networks and service availability has proceeded at a slower pace than anticipated. Additionally, some ETCs have chosen to relinquish their ETC designation, while other ETCs are not obligated to offer broadband internet access service as an alternative to voice service throughout their service area.

The fact is, if the *FCC* allows the December 2019 broadband minimum standards to go into effect, the new standards might well effectively impose a $30 per month price increase on Lifeline subscribers – an increase that low-income subscribers cannot afford. The continuing shift of resources away from the most basic Lifeline service – voice – must be re-examined.

As Free Press accurately states in its comments at page 2:

> The Commission's predictions used to justify the *2016 Lifeline Modernization Order*'s voice support phase-down bear little resemblance to the realities of 2019. What has not changed, however, is that voice-only service remains extremely important for low-income individuals. …Reducing support now for voice-only service would leave people without access to emergency services or means of communications with loved ones. While there may be a point in the future when these individuals will turn to other options, it is not here now and will not be for some time. Voice-only services remain essential. Over the objections of [many including NARUC], the *2016 Lifeline Modernization Order* phased down support for these services starting in December 2019. The impact of this decline in support is potentially severe. When the Commission sought comment on reinstating full financial support for voice-only service in rural areas only, the record showed widespread support for restoring full subsidies for voice services in all areas of the U.S. Without the pause the joint petition seeks, over 3.8 million Lifeline subscribers could be negatively impacted. The Commission should maintain the $9.25 subsidy and support for 1,000 voice minutes per month packages while it studies the changing Lifeline marketplace. As the country faces continued and worsening public safety crises such as wildfires and the new hurricane season, the importance of voice-only service becomes glaringly apparent: voice-only service still provides a critical access point for 911 and other emergency services. . . .Subscribers still choose voice-only service for ensuring their personal safety, and even absent a choice they still can and do rely on more traditional legacy telephony service.
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> [*Internal citations omitted and emphasis added*]

NARUC continues to oppose any further reductions in support for voice-only lifeline services. Lifeline should provide options for low-income consumers, not shoehorn them into whatever plan the federal policy makers thinks is best for them.

Our most recent *Resolution on the Lifeline National Verifier Launch and Minimum Service Standards*,[13] specifically urges the *FCC* to maintain the full $9.25 in Lifeline support for voice services at the December 1, 2018 service levels, instead of phasing-down or eliminating support for voice services between 2019 and 2021. Lifeline households have diverse needs. If support for stand-alone voice service is phased out for both wireline and wireless based services, Lifeline customers will have to buy broadband bundles, which even with a $9.25 discount, might well be unaffordable. Plus, maintaining voice-only Lifeline service promotes consumer choice. Certainly, some consumers simply want a phone – not broadband service. Moreover, phasing out support for voice services is, at a minimum, facially inconsistent with a Congressional scheme which, in Title II, (i) focuses explicitly on opening competition in local phone "telecommunications services," and (ii) requires carriers to offer a "telecommunications service" to qualify for federal universal service support subsidies.

The FCC should not position itself to make choices on technology or specific services that impact the cost to a lifeline consumer. The agency's choices should, instead, maximize the ability for Lifeline consumers to make their own choices based on the allowable subsidy.

II. The FCC should only continue to "soft launch" the National Verifier in States and temporarily suspend "hard launch" of the National Verifier in states until either December 31, 2019 or until service provider APIs are established, and electronic access to state databases, such as SNAP or SSI, and federal/state Medicaid databases are available to confirm subscriber eligibility, whichever is later.

The 2016 *Third Report and Order, Further Report and Order, and Order on Reconsideration*, 31 FCC Rcd 3962 (2016) ("*Lifeline Modernization Order*") specified as one of three goals, facilitating consumer choice and improving the enrollment process to help subscribers obtain service. In describing the National Verifier, the *Lifeline Modernization Order* established the expectation that "the National Verifier will be able to accommodate and utilize many of the varying state databases available" and that the resulting "electronic certification process will produce at least near real-time results." The National Verifier implementation commenced with a systematic two-phase, soft-to-hard launch rollout of states continuing throughout 2019 with full nationwide rollout scheduled for completion in December 2019.

Unfortunately, the goals and expectations for the National Verifier remain out-of-reach as the two-phase soft-to-hard launch rollout of the National Verifier has been completed in several States but without resolving identified deficiencies ranging from structural to minor technical issues.

Those deficiencies include the National Verifier's often limited or non-existent access to state databases such as the Supplemental Nutrition Assistance Program ("SNAP") and Supplemental Security Income ("SSI") and federal/state Medicaid databases needed to electronically confirm subscriber eligibility, and the failure to include an application program interface ("API") between providers and the National Verifier program which would enable providers in real-time to efficiently communicate with the National Verifier program and assist a prospective or existing subscriber in verifying eligibility and maintaining enrollment or getting newly enrolled.

In States where the USAC has hard launched without having gained access to major federal or state benefits program databases the efficiency and effectiveness of the National Verifier is undermined. Without access to the databases, the National Verifier cannot perform automated, near-real time eligibility verification. Instead, USAC has to rely on the manual verification process that is less efficient and carries

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13 The *Resolution on the Lifeline National Verifier Launch and Minimum Service Standards,* available at https://www.naruc.org/meetings-and-events/naruc-meetings-and-events/2019-summer-policy-summit/final-resolutions/.

a higher potential for errors.

To avoid an over-reliance of the manual enrollment process in States where the National Verifier has been, or will be, launched without the databases needed for the automated verification process, the FCC should direct USAC to accept proof of eligibility generated through third-party access to state databases, including proof of eligibility generated through Managed Care Organizations' access to state Medicaid databases. Clearly, such access can only mitigate efficiency losses and reduce the risk of fraud and abuse created by the manual verification process.

NARUC passed a resolution in July of 2018[14] and filed comments[15] targeting the absence of carrier APIs and the inefficiencies in the current National Verifier implementation that results. APIs are not only user friendly, they permit carrier assistance and online verification, allowing the consumers to have a smooth and streamlined enrollment experience. NARUC's resolution specifically notes that, without APIs:

- Customers seeking online enrollment must navigate the complicated National Verifier process alone, only to repeat the same process with the carrier, exponentially increasing the odds of input mistakes that could affect the processing of the application;
- Lifeline service providers will be unable to provide remote assistance to rural and low-income customers and customers with disabilities, many of whom rely on online enrollment because they do not live or work near a retail location; and
- Service providers will no longer be able to screen ineligible applicants and incorrect documents prior to National Verifier review, increasing the costs for the National Verifier.

The absence of carrier APIs could deny access to mobile wireless broadband and voice services to millions of low-income Americans in rural areas, and to other Americans that are uniquely dependent on online enrollment, like veterans with disabilities or homebound seniors. The FCC should order key agency and USAC staff to work quickly with the States to implement a properly functioning, and consumer-friendly National Verifier that incorporates carrier APIs. Fortunately, the incorporation of an API into the National Verifier is not difficult and can be completed quickly. After all, the National Lifeline Accountability Database has operated since 2014 with a service provider API allowing providers to screen applications, obtain proper documentation and assist consumers to efficiently submit Lifeline enrollments.

Neither the FCC nor the Universal Service Administrative Company ("USAC") has made available complete data showing the rollout of the National Verifier's impact on the ability of existing and prospective subscribers to retain or obtain Lifeline service. However, available data indicates that many potentially and apparently eligible Lifeline subscribers have not been re-verified and some have been de-enrolled from the program, and new enrollments have dropped substantially in states where the National Verifier has been hard launched.

Problems will continue in each hard launch State until needed improvements are implemented.

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[14] *Resolution to Implement Expeditiously a Properly Functioning and Consumer-Friendly Federal Lifeline National Eligibility Verifier* (July 18, 2018), available online at: https://pubs.naruc.org/pub/0A748224-CA10-661A-FF7B-D435D091C56F.

[15] August 10, 2018 filed *Initial Comments of the National Association of Regulatory Utility Commissioners* in WC Docket Nos. 17-287, 11-42, & 09-197, available online at: https://ecfsapi.fcc.gov/file/1081010358674/18%200810%20Initial%20NARUC%20Wireline%20Comments%20on%20National%20Verifier%20final.pdf.

IV. The FCC should streamline the Lifeline paper application.

Paper applications are important to many Lifeline applicants because many have no easy access to either a computer or network access. Those with access to a connected computer, may be disabled and/or otherwise require assistance to fill out the forms. Still others may not be comfortable filling out forms online for security reasons. At least one Lifeline provider estimates that 10% of its Lifeline subscribers sign up via paper applications every year.

In July 2018, the FCC and USAC revised the paper application from a service provider specific one-page application to a standardized eight-page application. This revision appears to significantly increase the likelihood that an eligible applicant will fail to successfully complete the application. The application's detailed legal disclosures, blank spaces, and fine print combine to undermine comprehension by many that qualify for the program. For example, applicants are required to acknowledge and/or agree to nine different statements by initialing nine separate boxes to signify their assent. However, it appears that many applicants are confused and check-mark each statement rather than initial it. Under the FCC's rules, 47 C.F.R. § 54.410(d)(3), those applications can be rejected. Some have argued that many applicants are so intimidated by the length and complexity of the application that they decline to complete the application. Other's point out poor design elements. Whatever the reason, there is no question that the number of successful paper applications post July 2018, has declined precipitously. At least one Lifeline provider estimates that since July, after the National Verifier launched in six States, the number of paper applications submitted declined by approximately 51%.

V. The FCC should expeditiously approve its November 2017[16] tentative decision to eliminate the stand-alone Lifeline Broadband Provider designation and reverse its pre-emption of State regulatory authority to designate ETCs.

NARUC commends the FCC for the proposed order on circulation announced to the press on August 19, 2019. Press accounts suggest the FCC will "restore the States' traditional and lawful role in designating carriers to participate in the Lifeline program" and "increase transparency with states to improve oversight of the Lifeline program, including by directing USAC to share information regarding suspicious activity with state officials."

NARUC passed a resolution in February of 2018[17] and filed initial and reply comments[18] directly responding to this aspect of the FCC November 2017 Notice of Proposed rulemaking.

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16 *See*, *In the Matter(s) 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,FOURTH REPORT AND ORDER, ORDER ON RECONSIDERATION, MEMORANDUM OPINION AND ORDER, NOTICE OF PROPOSED RULEMAKING, AND NOTICE OF INQUIRY (FCC 17-155) (rel. December 1, 2017), available online at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-155A1.pdf.

17 *Resolution to Ensure that the Federal Lifeline Program Continues to Provide Service to Low-Income Households* (February 2018), available online at: https://pubs.naruc.org/pub/E0D49A02-AAAA-6EDE-79A1-9D97B1C6E393.

18 *See,* February 21, 2018 *Initial Comments of the National Association of Regulatory Utility Commissioners* in WC Docket Nos. 17-287, 11-42, and 09-197, available online at: *https://ecfsapi.fcc.gov/file/1022185377406/18%200221%20NARUC%20Initial%20Lifeline%20NPRM%20cmts.pdf;* March 26, 2018 *Reply Comments of the National Association of Regulatory Utility Commissioners* in WC Docket Nos. 17-287, 11-42, and 09-197, available online at: *https://ecfsapi.fcc.gov/file/1032459169809/18%200324%20NARUC%20Reply%20Lifeline%20NPRM%20cmts.pdf*

The tentative decision to reverse its pre-emption of State authority to designate ETCs is correct. The FCC cannot create a designation process under 47 U.S.C. § 214 that bypasses *ab initio* State commissions. The FCC simply has no role in the ETC designation process unless the State cannot act as a result of State law. NARUC agrees with the NPRM's ¶ 55 acknowledgements that the 2016 Lifeline order[19] "preempted state authority in a manner wholly inconsistent with section 214," and that it "erred in preempting state commissions from their primary responsibility to designate ETCs." The proposed broadband provider designations specified in the 2016 Lifeline Order bypass clear Congressional directives. The statute, by its express terms, requires the action proposed in ¶¶ 54-55 of the NPRM. The FCC must "eliminate the Lifeline Broadband Provider category of ETCs and the State preemption upon which it is based." *Id.* Not only is elimination required by the plain text of the 1996 Act, that elimination is, on its face, the best option for maximizing oversight of program integrity and efficiency. Legal considerations aside, it is difficult to understand why any advocate for Lifeline services would support the approach outlined in the *2016 Lifeline Order* as it allows a carrier's choice to eliminate crucial State safeguards to the integrity of the program. That bypass of State oversight can do nothing but reduce scrutiny imposed on any carrier's application and its subsequent operations. Conversely, the NPRM's proposal to comply with the law and reestablish the State's ETC designation role can only result in less fraud and abuse. Fraud and abuse divert funds from the consumers Congress expects to benefit from the Lifeline program.

NARUC appreciates the FCC's recognition that State "cops" remain a significant barrier to such diversions through the conduct of ETC designations and thereafter by monitoring designated carrier activities.

VI. The FCC should continue to allow non-facilities based carriers to receive Lifeline funds because they have been crucial in ensuring that low-income households are connected to vital telecom services.

There are 11,339,293 Lifeline customers.[20] More than 75% of low-income families in the Lifeline program use non-facilities-based services. In ¶ 65, the NPRM proposes to limit Lifeline Support "to facilities-based broadband service provided over the ETC's voice-and-broadband capable last mile network." At this point in the evolution of the Lifeline program, shifting to only facilities-based carriers will severely undermine the *raison d'etre* for the program[21] and will certainly significantly reduce subscriptions by qualified consumers.

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[19] Third Report and Order, Further Report and Order, and Order on Reconsideration, *In the Matter(s) of Lifeline and Link Up Reform and Modernization*, 31 F.C.C. Rcd. 3962 (rel. April 27, 2016)(2016 Lifeline Order).

[20] *Wireless and Wireline Data: USAC report LI03- Eligible Telecommunications Carriers*, at: http://www.usac.org/about/tools/fcc/filings/2017/q4.aspx; *USAC Funding Disbursement Search tool,* at: http://www.usac.org/li/tools/disbursements/default.aspx.

[21] The federal lifeline program is based on a 1985 *Federal-State Joint Board Recommended Decision and Order*, which resulted in a January 13, 1986 FCC decision. The FCC's decision was clearly focused on "promoting telephone subscribership among low income groups." *MTS and WATS Market Structure*, 51 FR 1371-01 (January 13, 1986). There was no discussion of supporting infrastructure. In passing the 1996 Act, Congress reaffirmed this program by including in 47 U.S.C. § 254(b)(3) a requirement to assure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services."

I am providing a copy of this ***ex parte*** to each of the cited FCC representatives.[22] I have attempted to fairly cover the arguments I presented. If any of those FCC representatives points out a deficit in this overview, I will immediately refile an amended letter to cover that deficit. If you have questions about this ex parte, please do not hesitate to contact NARUC's General Counsel – Brad Ramsay at 202.898.2207 (w), 202.257.0568(c) or at jramsay@naruc.org.

Respectfully Submitted,

James Bradford Ramsay
NARUC General Counsel

cc *Nirali Patel, Wireline Advisor, Office of the Chairman Ajit Pai*
Travis Litman, Chief of Staff and Senior Legal Advisor, Office of Commissioner Rosenworcel
Arielle Roth, Wireline Legal Advisor, Office of Commissioner O'Reilly
Randy Clarke, Legal Advisor for Wireline and Public Safety, Office of Commissioner Starks
Joseph Calascione, Legal Advisor, Office of Commissioner Carr.

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22 NARUC respectfully requests any waivers needed to file this ex parte one day out-of-time. NARUC's counsel had an unexpected dental emergency that delayed finalization of this notice.