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September 11, 2017

By ECFS

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

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

Dear Ms. Dortch:

On September 7, 2017, John Heitmann, Joshua Guyan, and Jennifer Wainwright of Kelley Drye & Warren LLP met on behalf of the Lifeline Connects Coalition (Coalition) with Dr. Jay Schwarz, Wireline Advisor to Chairman Ajit Pai, to discuss the Commission's Lifeline program.

In the meeting, we discussed the Lifeline National Eligibility Verifier (National Verifier) being developed by the Commission and the Universal Service Administrative Company (USAC), including improvements to the timing of subscriber proof of eligibility for migration to the National Verifier and the recent alarming decision to reverse course and not to provide a service provider application programming interface (API) to the National Verifier. We also discussed the Coalition's concerns about a recent webinar from the Universal Service Administrative Company (USAC) regarding the ability of eligible telecommunications carriers (ETCs) to receive reimbursement for Lifeline subscribers who are in a non-usage cure period on the snapshot date.

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

USAC is to be commended for its commitment to seeking stakeholder input regarding the development of the National Verifier, which is a substantial improvement over the process that was used to develop the National Lifeline Accountability Database (NLAD) in 2014. The

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Coalition and its members and representatives have participated in nearly every stakeholder engagement webinar, conference call, meeting or process. However, in a few instances, USAC has surprised the industry with new policies or drastic changes in policy that have not been vetted with stakeholders and that need substantial improvement.

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

While the Coalition agrees that the National Verifier should verify Lifeline subscribers' eligibility as they are migrated into the Lifeline Eligibility Database (LED), this process must be done in a manner that does not overburden Lifeline subscribers and result in the wasteful and abusive de-enrollment of potentially millions of low-income Americans who have demonstrated eligibility as required by Commission rules. On a July 26, 2017 USAC webinar, USAC again announced its intention to require collection of proof in July 2017 or after to verify eligibility of Lifeline subscribers not found in the databases to which the National Verifier has access for the first phase of migration to the National Verifier in at least five states, which will occur from January to March 2018.¹ This policy was first announced on a May 17, 2017 webinar to the surprise of Lifeline stakeholders and without having sought our input. On June 16, 2017, the Coalition, Boomerang Wireless, TruConnect Communications, Sprint, True Wireless, TerraCom and YourTel America filed an *ex parte* letter describing the problems with this proposed proof timeframe and providing a proposal for improvement,² which was echoed by TracFone in a separate letter.³

¹ On August 31, 2017, the Wireline Competition Bureau announced that six states – Colorado, Mississippi, Montana, New Mexico, Utah, and Wyoming – would be included in the initial National Verifier launch in December 2017. *See Wireline Competition Bureau Announces Initial Launch of the National Lifeline Eligibility Verifier*, WC Docket No. 11-42, Public Notice, DA 17-816 (rel. Aug. 31, 2017).

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

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

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

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

In a previous *ex parte* letter, the Coalition noted that in the experience of one of its members, less than one quarter of subscribers can or will respond with proof of eligibility when requested. In nearly all cases, this is not because the subscriber is ineligible, but rather because it is too burdensome to re-submit copies of eligibility documentation. If all subscribers not found in databases had to re-prove eligibility, the Commission could expect for every 1 million subscribers migrated, 375,000 would be de-enrolled.⁵ This disastrous and wasteful outcome can be avoided by accepting the proof of eligibility that Lifeline subscribers have already provided to ETCs. The Commission should implement the migration plan proposed by the industry in the June *Ex Parte* and accept proof retained pursuant to Commission rules (back to February 2016).

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

⁵ 1,000,000 subscribers x 50% not found in databases = 500,000 x 75% non-responsive = 375,000 de-enrolled. While the headlines will read "Millions of Lifeline Subscribers Ineligible," the reality is that the non-responsive subscribers are likely all eligible, but were confused or unable to respond in the time provided.

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At the very least, it would be reasonable for the Commission to accept proof of eligibility retained by ETCs and collected since January 2017. Accepting proof of eligibility collected within the previous 12 months is consistent with the Commission's decision to require annual recertification of Lifeline subscribers.

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

From the start, the Commission and USAC have intended and planned to make available a service provider API for communications between service providers and the National Verifier so that applicants can seamlessly enroll in Lifeline and access the National Verifier for an eligibility determination. USAC's recently announced decision to reverse course was ill-advised and should be reconsidered.⁶

We understand that the Commission's primary objectives in its consideration of the appropriate National Verifier enrollment process are: (1) allowing the Commission and USAC to monitor the activities of enrollment agents for all ETCs; and (2) ensuring that all Lifeline applicants are presented with uniform language during the enrollment process. The Coalition respectfully submits that a service provider API can and should be designed to achieve both of these objectives. Moreover, providing a service provider API is required by the Lifeline Modernization Order, was decided early in the process and included in the Final National Verifier Plan, will reduce opportunities for waste, fraud and abuse and will make the National Verifier more efficient and cost-effective.

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

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

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

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reflected in the Final National Verifier Plan filed with the Commission on January 23, 2017.⁸ Without an API, Lifeline providers will not have access to the National Verifier to establish eligibility as required by the Lifeline Modernization Order.

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

No compelling reason exists to thwart ETC controls in this manner. If USAC wants to layer on additional USAC field agent controls on top of the ETC controls to meet the first objected identified above, the Coalition supports such efforts. All field agents can receive a USAC registration identification number and ETCs could pass that agent number through to the NLAD with each API call (currently the “Verify Call,” the “Enroll Call” and the “Resolution Call”) so that USAC can also check for irregularities.⁹ The Coalition members already track agents by a unique identifier that must be entered into the enrollment application to begin taking orders.¹⁰ That information can easily be passed to USAC without taking the applicant out of the ETC enrollment environment by failing to provide API access and opening the Lifeline

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

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

¹⁰ While it appears that the National Verifier will allow agent assisted enrollments without an agent identification number because agents can send the applicant to the applicant National Verifier portal and walk them through that process without entering an agent registration number, the Coalition members currently require agents to use unique login credentials before commencing every application (and can pass tor credentials along to the National Verifier) and also utilize GPS systems in the devices used for enrollments so the companies can track agent locations during enrollment events.

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application process up to potential waste, fraud and abuse in the National Verifier eligibility verification process.

Providing a service provider API access to the National Verifier also will better serve consumers while being more cost-effective and efficient. USAC currently envisions a process where the applicant starts with the National Verifier portal to confirm his or her eligibility for Lifeline service and then returns to the service provider's enrollment process (whether in person or online). Then the applicant, who has received an approval from the National Verifier, will have to complete the ETC's enrollment process,¹¹ including all of the ETC's controls and checks such as service territory, network coverage, address validation, identity validation and duplicate detection. That process may result in a denial, which will be frustrating and confusing for applicants who have already been told by the National Verifier that they are eligible. This likely will drive thousands or millions of complaints to USAC, the Commission and Congress. In the CGM Lifeline enrollment application, approximately 60 percent of all enrollment attempts are denied for some reason. It would be more cost effective for the National Verifier not to undertake an eligibility verification determination for those 60 percent of enrollments that will be denied anyway. Therefore, the National Verifier eligibility determination should take place in the ETC enrollment environment through API "calls" after the applicant has completed the ETC checks and screens.

The Coalition looks forward to working with USAC on its technical proposal for service provider API access to the National Verifier. In short, we envision a National Verifier eligibility verification built into the existing NLAD enrollment framework. First, during the initial NLAD "Verify Call," an ETC should be informed whether the applicant has already been determined to be eligible by the National Verifier, and if not, whether the applicant can be found in any eligibility databases to which the National Verifier has an API access (e.g., the New York eligibility database).¹² If not, the application can continue, but the ETC will know to collect eligibility documentation to pass to the National Verifier. The ETC would then collect all of the

¹¹ For online enrollments, while the ETC can provide a link to the National Verifier portal and push the applicant to that process, there will be nothing at the end of the National Verifier portal process that will push the applicant back to the service provider to complete the enrollment. Therefore, by not providing a service provider API, the National Verifier will inadvertently disadvantage online Lifeline enrollments at a time when many service providers are looking to move more toward online enrollments to expand distribution and reduce costs associated with in-person distribution.

¹² During this call, the ETC is already informed in real-time whether an Independent Economic Household worksheet must be collected, if the applicant passes the Third Party Identity Verification, etc. so that documentation can be collected.

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required information and certifications (which can be done on an FCC-approved standardized application/certification form¹³) and send an application in pdf to the NLAD/National Verifier in the NLAD “Enroll Call” thus meeting the second primary objective identified by the Commission. If the applicant is not found in one of the other non-API-based databases to which the National Verifier has access (e.g., Wisconsin, which requires a manual website check), then the application would be denied. At that point, the ETC can send eligibility documentation to the NLAD/National Verifier in the “Resolution Call” for a final determination. This way applicants receive a single eligibility determination and can walk away with activated phone service. This can all be done in a relatively simple manner using APIs. The Coalition supports the technical proposal crafted by CGM, LLC, submitted to the Commission on September 8, 2017.

II. The Commission Should Make Clear to USAC the Policy That ETCs Can Seek Reimbursement for Lifeline Subscribers Who Are in a Non-Usage Cure Period on the Snapshot Date

We also discussed the importance of USAC providing clear guidance that is consistent with Lifeline program rules and accepted implementation and interpretations of those rules. In particular, we took issue with a recent public statement by USAC related to the Lifeline program’s non-usage cure period. During a Lifeline program update webinar on August 9, 2017, USAC staff suggested that ETCs should not include on their reimbursement requests any Lifeline subscribers who are in a non-usage cure period on the snapshot date.¹⁴ We noted that this statement is inconsistent with guidance provided previously by Commission staff which is currently reflected on USAC’s website. On USAC’s website, that guidance expressly states that “Service providers must provide[] eligible subscribers with service during the cure period and may include subscribers in the cure period in their monthly snapshot.”¹⁵ This guidance should not be changed, as service providers actually provide service and incur costs in doing so, even when a subscriber does not use the service in the manner defined by Lifeline program rules.

¹³ ETCs have been asking the Commission for such a form for years and would happily use it to avoid nit-picking in USAC audits and potential enforcement liability.

¹⁴ See *Ex Parte* Letter of the Lifeline Connects Coalition, WC Docket Nos. 11-42, 09-197, 10-90, Attachment A, slide 24 (filed Sept. 5, 2017).

¹⁵ See *id.*, Attachment B.

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

Respectfully submitted,



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cc: Dr. Jay Schwarz