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November 9, 2018

By ECFS

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

Re: **National Lifeline Association Notice of Oral *Ex Parte* Presentation,
WC Docket Nos. 17-287, 11-42 and 09-197**

Dear Ms. Dortch:

On November 7, 2018, John Heitmann and Joshua Guyan of Kelley Drye & Warren LLP met on behalf of the National Lifeline Association (NaLA) with Ryan Palmer, Jodie Griffin, Allison Baker, Jessica Campbell (by phone), Rashann Duvall, Nathan Eagan, Allison Jones (by phone) and Michelle Schaefer from the Wireline Competition Bureau (Bureau) to discuss a number of pending Lifeline program issues raised in the above-referenced proceedings.¹ The discussion was consistent with the attached exhibit and the comments and reply comments filed by NaLA on February 21, 2018 and March 23, 2018, as well as more recent NaLA filings.²

¹ See *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, WC 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 (rel. Dec. 1, 2017).

² See Comments of the National Lifeline Association, WC Docket No. 17-287 et al. (filed Feb. 21, 2018) (NaLA Lifeline Comments); Reply Comments of the National Lifeline Association, WC Docket No. 17-287 et al. (filed Mar. 23, 2018); Comments of NaLA on the Emergency Petition of TracFone Wireless, Inc. for an Order Directing USAC to Alter the Implementation of the National Verifier to Optimize the Automated and Manual Eligibility Verification Processes, WC Docket Nos. 11-42, 09-197 (Sept. 12, 2018); Comments of NaLA on Petitions of TracFone and NTCA Regarding the Lifeline Minimum Service Standards, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 30, 2018); Comments of NaLA on Emergency Petition of Q Link Wireless for

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In the meeting, we conveyed that NaLA and its member companies share Chairman Pai's view that Lifeline has a very important role to play in closing the digital divide. Further, we also explained that NaLA shares and enthusiastically supports the Chairman's recently stated goal to "make sure that every American who needs help through the Lifeline program is able to get it."³ However, we expressed NaLA's opposition to, and the nearly complete lack of support in the record for, the proposal to ban resellers from the Lifeline program.

The Commission Should Ensure That It Implements a Robust and Effective National Verifier

We also highlighted that the record is nearly unanimous in support of the Commission's implementation of an efficient and effective National Verifier. To be successful in meeting the stated goals for the National Verifier,⁴ the Commission must promptly take three important actions at this stage of development and implementation of the National Verifier.

First, the Commission must order the Universal Service Administrative Company (USAC) to develop and implement service provider application programming interface (API) connectivity to the National Verifier. USAC's decision to reverse course and not develop and implement a service provider API for the National Verifier is wasteful and unnecessarily burdensome for consumers, the National Verifier and ETCs. Without an API: (1) consumers will be forced to enter personal information twice creating a substantial burden and barrier to participation as well as potential data integrity issues that will further increase costs by forcing

an Order Directing the Universal Service Administrative Company to Implement Machine-to-Machine Interfaces for the National Verifier, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 10, 2018); National Lifeline Association Notice of *Ex Parte* Presentation, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 6, 2018); National Lifeline Association Notice of *Ex Parte* Presentation, WC Docket Nos. 11-42, 09-197, 10-90 (filed May 24, 2018); National Lifeline Association Notice of *Ex Parte* Presentation, WC Docket Nos. 11-42, 09-197, 10-90 (filed May 4, 2018); National Lifeline Association Notice of Oral *Ex Parte* Presentation, Meeting with Chairman Ajit Pai and Jay Schwarz, WC Docket Nos. 17-287, 10-90, 09-197 (filed Sep. 19, 2018); National Lifeline Association Notice of Oral *Ex Parte* Presentation, Meeting with Arielle Roth from the Office of Commissioner O'Rielly, WC Docket Nos. 17-287, 10-90, 09-197 (filed Sep. 19, 2018); National Lifeline Association Notice of Oral *Ex Parte* Presentation, WC Docket Nos. 17-287, 10-90, 09-197 (filed Oct. 1, 2018).

³ See *Oversight of the Federal Communications Commission: Hearing Before the S. Committee on Commerce, Science and Transportation*, 115th Cong. (2018).

⁴ 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, ¶¶ 128-131 (2016) (2016 Lifeline Modernization Order).

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manual National Verifier review of exceptions and higher call center volumes; (2) the National Verifier will need to screen 100 percent of all applicants, rather than avoiding a substantial portion of these costs by taking advantage of ETC screening tools; and (3) ETCs will be unable to offer online enrollment, making it more difficult and costly to enroll eligible subscribers, especially in rural areas.

Second, the Commission must act to require USAC to secure access to the appropriate eligibility databases before hard launch of the National Verifier in any state. Because the vast majority of Lifeline applicants demonstrate eligibility through participation in Medicaid and Supplemental Nutrition Assistance Program (SNAP),⁵ the Commission should order USAC not to move to hard launch of the National Verifier in a state until access to Medicaid and SNAP databases has been secured.⁶ Moving to hard launch of the National Verifier in any state without access to these databases will force far too many eligible subscribers to be disconnected from their Lifeline service and will likely result in too many new eligible subscribers being denied access to Lifeline.

Third, the Commission should swiftly reconsider the reverification process being implemented by USAC to coincide with launch of the National Verifier, which as currently being conducted will result in the de-enrollment of millions of eligible subscribers from an already shrinking Lifeline program. Upon launch of the National Verifier in a state, USAC checks the eligibility databases to which it has established access, which are currently inadequate in many states. ETCs are then required to contact all of the subscribers not found in the databases and that enrolled before this year to ask for a new completed standard Lifeline application form (which is six pages long and ten pages with the household worksheet) and a copy of the subscriber's proof of eligibility, which is contrary to the requirements of the Commission's Lifeline recertification rules.⁷ The ETCs must then de-enroll any subscribers that

⁵ The July 2018 National Verifier Plan notes that 62 percent of enrollments used Medicaid or SNAP, but that data was skewed by inclusion of eligibility programs that were removed in 2016. *See* National Verifier Plan (July 2018) at 7. More recent data from a NaLA member shows that 90 percent of its subscriber base enrolled through participation in Medicaid or SNAP.

⁶ *See* Comments of NaLA on the Emergency Petition of TracFone Wireless, Inc. for an Order Directing USAC to Alter the Implementation of the National Verifier to Optimize the Automated and Manual Eligibility Verification Processes, WC Docket Nos. 11-42, 09-197 (Sept. 12, 2018). For example, in the following hard launch and soft launch states (which represents a majority of them), USAC has secured access only to the HUD database: Guam, Hawaii, Idaho, Montana, North Dakota, New Hampshire, South Dakota, and Wyoming. This database accounts for less than 1 percent of all Lifeline enrollees nationwide.

⁷ *See* Lifeline Industry Written *Ex Parte* Presentation, WC Docket Nos. 09-197, 10-90, 11-42 (filed June 16, 2017) (explaining that the Lifeline rules require proof of eligibility at enrollment,

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fail to respond with all the required documentation. This process will result in the de-enrollment of the vast majority of contacted subscribers and will result in the de-enrollment of millions of Lifeline subscribers if it is not changed to more appropriately balance program integrity with consumer accessibility. The Commission can and should act promptly to protect Lifeline-eligible consumers from these harms.

The Commission Should Reverse the Phase-Out of Support for Essential Voice Service and Restore Consumers' Ability to Choose the Most Affordable Service Packages That Best Meet Their Needs

We explained that putting consumers first involves reversing the phase-out of support for essential voice service, which will begin as of December 1, 2019 and has no support in the record. Similarly, nearer term action is necessary to prevent price increases and further disenfranchisement of Lifeline-eligible low-income consumers. The so-called “minimum service standards” hurt low-income consumers because they limit participation in the program and will result in price hikes on those who do participate. Along with regulatory uncertainty, the Lifeline minimum service standards imposed by the Wheeler Commission in 2016 have been a major cause of the reduced Lifeline participation rate to about 25 percent of those eligible (approximately 9.5 million subscribers) because carriers cannot see the necessary return on investment from the cost of acquiring new Lifeline subscribers and of providing prescribed levels of service to them. Rather than perpetuating the paternalistically prescribed family-sized service plans and phase-out and elimination of support for critical voice services, the Commission should allow consumers to choose for themselves among options of voice and data, including bundles, that strike the best balance between affordability and access for the consumer.⁸

As NTCA notes in its pending petition seeking relief from the minimum service standards, “the increase in speed (in this instance to 18 Mbps download/2 Mbps upload) will likely come with an increase in monthly rates that may be unaffordable for some low-income

not at recertification and nothing in the 2016 Lifeline Modernization Order changed the determination not to require proof at recertification or gave the Bureau or USAC the authority to require Lifeline subscribers to re-verify their eligibility to be migrated into the National Verifier); TracFone Wireless Written *Ex Parte* Presentation, WC Docket Nos. 09-197, 10-90, 11-42 (filed June 12, 2017).

⁸ See Comments of NaLA on Petitions of TracFone and NTCA Regarding the Lifeline Minimum Service Standards, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 30, 2018).

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consumers.”⁹ Similarly, mandatory minute and megabyte increases will make wireless services unaffordable for low-income consumers. For example, 1 GB of data typically retails for \$10 or more. On December 1, 2018, the minimum service standards will require an additional 1 GB of data, effectively raising prices on low-income consumers. Simply put, the government should not be telling consumers which speeds and how many minutes or how much data they are required to purchase regardless of whether they can afford it. The minimum service standards were a classic example of regulatory overreach when they were adopted and this Commission should act now to avert further consumer harms that will result from the next tier of implementation. Moreover, we emphasized that reversal of the Wheeler-era FCC practice of ignoring requests for compliance plan approvals and ETC designations will spur additional competition that will deliver more choices and affordable options for consumers.

The Commission Must Appropriately Balance Program Integrity and Consumer Access to Communications Services Through Lifeline

We discussed NaLA’s support in the record for many program integrity initiatives, including conduct-based standards, USAC registration of those that assist applicants with Lifeline enrollment, sending documentation to USAC for dispute resolutions and risk-based auditing.¹⁰ NaLA would also support Commission or USAC-established minimum training requirements for all agents and employees that assist applicants with Lifeline enrollment, which ETCs could supplement with additional training at their discretion. Further, NaLA supports smarter and more targeted auditing, especially since the current level of auditing is unsustainable. For example, conducting a forensic audit, BCAP audit and biennial audit of the same service time period is duplicative and wasteful of both USAC and ETC resources.

⁹ Petition for Temporary Waiver of NTCA – The Rural Broadband Association, WC Docket Nos. 11-42, 09-197, 10-90 at 2 (filed July 23, 2018) (NTCA Petition).

¹⁰ See NaLA Lifeline Comments at 26-30, 84-99.

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Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,



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Enclosure

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EXHIBIT



Lifeline Reform 3.0: Getting It Right by Putting Low-Income Consumers First

NaLA Champions Regulatory Reform While Promoting Industry Self-Regulation and Best Practices.

Since 2012, NaLA and its member companies have been strong proponents of industry self-regulation, best practices and regulatory reforms designed to preserve the integrity of the Lifeline program by protecting it from waste, fraud and abuse while promoting affordable access to essential communications services.

- NaLA's agent certification program, real-time review, photo ID and proof capture, and pre-NLAD intra- and inter-ETC duplicate screening are examples of how NaLA and its member companies develop and implement self-regulatory best practices to guard against potential waste, fraud and abuse

The Proposed Ban on Wireless Resellers Must Be Rejected.

Wireless resellers play a central role in the Lifeline program by driving adoption, competition and service-level innovation. The record contains nearly unanimous opposition to the proposed wireless reseller ban, including comments from CTIA, US Telecom, Verizon, Sprint, NARUC and several states individually, NASUCA, Citizens Against Government Waste, Veterans and Seniors organizations. **Eliminating wireless resellers would:**

- **Harm consumers** by forcing about 7 million or roughly 70% of all Lifeline subscribers to find new Lifeline service providers and plans, leaving too many without affordable options and some with no options at all
- **Fail to bolster program integrity or guard against waste, fraud and abuse** (adopting conduct-based standards and agent registration would properly focus on bad actors rather than on business models)
- **NOT bridge the digital divide** (eliminating resellers would end the primary means through which Lifeline spurs facilities deployment)
- **Upend the states' role in designating ETCs**, as well as the reliance interests of wireless resellers and landline providers (who have been relieved of the obligation to provide Lifeline based on the presence of and consumers' preference for the mobile voice and broadband services offered by wireless resellers)

The FCC Should Maintain Facilities Forbearance.

The FCC should not depart from a decade worth of precedents in which it has concluded that **Section 10 requires forbearance** from the facilities requirement for Lifeline ETCs.

- Adopting the facilities definition proposed in the NPRM would be arbitrary and capricious

The Subsidy Pass-Through Proposal Is Functionally a Reseller Ban that Must Be Rejected.

The proposal to require resellers to pass-through to their underlying carrier the full amount of the \$9.25 subsidy would **eliminate wireless resellers** from the program, as there would be no revenue left to support the product and services.

- Once the full amount of the discount is applied to the services and reimbursed, the FCC should not regulate

The FCC Should Prioritize Affordability and Consumer Choice by Correcting Past Missteps.

The FCC should roll-back the Wheeler era **minimum service standards** and **voice support phase-out** that threaten to deny consumers access to affordable choices that best meet their needs.

- Full support for voice services should be available everywhere – not just in rural America
- The FCC should act now to prevent unintended minimum service standards-driven price increases on Lifeline subscribers
- Freezing or eliminating automatically escalating Lifeline minimum service standards will allow consumers to choose among options of voice and data, including bundles, that strike the best balance between affordability and access for each consumer
- Any minimum service standards retained should incorporate a **1,000 unit standard** that empowers consumers to use bundled voice and data services in a manner that best meets each consumer's needs

The National Verifier Must Incorporate a Service Provider API and More Robust Access to Eligibility Databases to Reduce Barriers for Eligible Consumers, Minimize Program Costs and Eliminate Waste, Fraud and Abuse.

The FCC should fully implement the National Verifier prior to considering additional requirements to provide proof of eligibility upon recertification, other than in cases where the consumer identifies a change in his or her qualifying eligibility program.

- The decision not to develop and implement a service provider API for the National Verifier is wasteful and unnecessarily burdensome for consumers, USAC and ETCs. **Without an API:**
 - USAC will need to screen 100% of all applicants instead of taking advantage of ETC screening tools thereby needlessly **increasing costs** to the program
 - Consumers will be forced to enter personal information twice creating a **barrier to participation** as well as posing **data integrity issues**, which will further increase costs by forcing manual USAC review of exceptions and higher call center volumes
 - ETCs will be unable to efficiently offer online enrollment, making it **more difficult and costly to enroll eligible subscribers, especially in rural areas**
- The National Verifier should not proceed to hard launch in any state in which it lacks access to enrollment databases that allow **automatic re-verification of a substantial majority of Lifeline subscribers** and verification of new applicants' eligibility
- The National Verifier should **leverage private party access to state eligibility databases** by accepting proof of eligibility generated by MCOs and other trusted third parties with such access

A Maximum Discount Requirement Would Be Administratively Unworkable.

The maximum discount or a minimum charge proposal should be rejected because many Lifeline subscribers cannot consistently afford to pay set amounts and otherwise lack credit or other reliable means to pay.

- The benefits of developing a process to properly assess ability to pay and a system to impose and collect monthly payment requirements would fail to outweigh the costs of providing \$111 in annual benefits

NaLA Supports a Budget for the Lifeline Program.

The Lifeline program could benefit from a self-enforcing budget mechanism that operates on an annual basis with prospective impact only. NaLA supports the **\$2.3B bipartisan budget** proposal endorsed by NARUC.

What the Right, Consumers First Outcome Looks Like.

Lifeline is essential to bridging the affordability gap of the Digital Divide. Every low-income consumer who is eligible for Lifeline should have smooth and efficient access to a variety of service options and providers. **Upcoming Commission action on Lifeline should put consumers first by:**

- preserving the important market-based role **wireless resellers** play in the Lifeline program and restoring the ability of wireless resellers to participate in Tribal Lifeline
- solidifying the **National Verifier** as an essential safeguard against waste, fraud and abuse by requiring implementation of a service provider API, developing more robust access to eligibility databases, and leveraging trusted third party access to state databases
- adopt **conduct based standards** to target bad actors and operators needing improvement rather than entire business models; require **agent registration**
- **prioritizing affordability and consumer choice by rolling-back of Wheeler era rules** which sunset support for voice services (in all areas, not just in rural areas) and mandate unduly large service minimums that will force price increases on Lifeline subscribers
- preserving the **state role** in designating ETCs (where states accept that role), with **state and FCC decisions subject to reasonable shot-clocks** designed to ensure that consumers get the benefits of competition
- adopting the NARUC **bipartisan budget** proposal to cap the program at approximately \$2.3B