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

In the Matter of	)	
	)	
Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization	)))	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

NATIONAL LIFELINE ASSOCIATION COMMENTS ON EMERGENCY PETITION OF TRACFONE WIRELESS, INC. FOR AN ORDER DIRECTING USAC TO ALTER THE IMPLEMENTATION OF THE NATIONAL VERIFIER AND A WAIVER OF 47 C.F.R. § 54.410(d)(3) AND PETITION FOR RULEMAKING

The National Lifeline Association[1] (NaLA) respectfully submits these comments in support of the Emergency Petition of TracFone Wireless, Inc. for an Order Directing USAC to Alter the Implementation of the National Verifier and a Waiver of 47 C.F.R. § 54.410(d)(3) (TracFone Emergency Petition) filed on November 30, 2018.[2] NaLA takes this opportunity to raise its serious concerns with respect to the National Verifier rollout and its impact on current Lifeline subscribers that are undergoing reverification, as well as with respect to recent changes to the eligibility

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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* Emergency Petition of TracFone Wireless, Inc. for an Order Directing USAC to Alter the Implementation of the National Verifier and a Waiver of 47 C.F.R. § 54.410(d)(3) and Petition for Rulemaking, WC Docket Nos. 17-287, 11-42, 09-197 (filed Nov. 30, 2018); *Wireline Competition Bureau Seeks Comment on Emergency Petition of TracFone Wireless, Inc. for an Order Directing USAC to Alter the Implementation of the National Verifier and a Waiver of 47 C.F.R. § 54.410(d)(3) and Petition for Rulemaking*, WC Docket Nos. 17-287, 11-42, 09-197, Public Notice, DA 18-1229 (rel. Dec. 4, 2018) (Public Notice).

documentation that the Universal Service Administrative Company (USAC) will accept for new enrollments (and for reverification in post-"wave one" states).

If current policies, including USAC's new eligibility documentation requirements, continue through implementation of the National Verifier in all states, at least 35 percent of all Lifeline subscribers (or <u>more than three million subscribers</u>) will likely be de-enrolled from the Lifeline program[3] and it will be difficult for many who are eligible based on participation in SNAP to re-enroll.[4]

In states where the National Verifier only has access to the FPHA database (no SNAP or Medicaid database access), the percentage of de-enrollments is likely to approach 100 percent.[5]

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[3] *See infra* pp. 4-5 providing results of an analysis of reverification results in four first wave states for Lifeline ETCs that work with CGM, LLC. The three million subscriber figure is reached by applying a 35 percent failure and de-enrollment rate to the current Lifeline program enrollment of 9.2 million people. These first wave results likely skew more positive than the results for subsequent waves because they include two states out of four tracked with access to both the SNAP and Medicaid databases, another state with access to the SNAP database and one state with access to only the Federal Public Housing Authority (FPHA) database. Subsequent waves are also likely to include a mix of states with good access to databases including SNAP and Medicaid and poor access limited only to the FPHA database. However, we know already that all six of the second wave states have access only to the FPHA database.

[4] With only six days' notice, USAC adopted new criteria for acceptable program documentation that will render SNAP cards in most jurisdictions unacceptable as proof of participation in SNAP. *See infra* n. 20.

[5] The estimated rate at which subscribers were not found by the National Verifier in the available state databases for Colorado (a first wave state with access to both the state SNAP and Medicaid databases) is 29 percent. The estimated rate at which subscribers were not found in the available state databases for Mississippi (SNAP and FHPA only) is 56 percent. The estimated rate at which subscribers were not found in the available state database for Wyoming (FPHA only) is 98 percent. "Wave two" includes Guam, Hawaii, Idaho, New Hampshire, North Dakota and South Dakota, for which the National Verifier only has access to the FHPA database (like Wyoming and Montana in wave one).

As subsequent waves of hard launches and reverification unfold, it is likely, if nothing is changed, that the number of consumers who could lose their Lifeline benefits will far exceed the three million mark.

Most of these people will not lose Lifeline because they are ineligible, but instead will lose it because USAC has pushed to hard launch in states for which it lacks adequate database access and it has made the manual reverification process too difficult for this vulnerable class of consumers.

With de-enrollments set to begin on January 2, 2019,[6] it is now time for the Commission to hit the pause button on USAC's reverification process and new enrollment documentation requirements. National Verifier implementation must balance consumer access with program integrity and the Commission should be absolutely certain it has the balance correct before it allows for mass de-enrollments of Lifeline subscribers to commence in just a few weeks' time.

The Reverification Process and New Documentation Requirements Will Result in Massive Harm through the De-Enrollment of Eligible Lifeline Subscribers

As part of the rollout of the National Verifier by state, USAC has conceived and is conducting a reverification process for all current Lifeline subscribers. First, USAC checks all Lifeline subscribers in the state against the eligibility databases to which it has secured access. USAC has secured access to the FPHA database nationwide[7] and to state SNAP and Medicaid databases in only some states. Access to SNAP and Medicaid databases is critical, as over 90

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[6] *See* USAC Reverification, *available at* https://www.usac.org/li/tools/national-verifier/migration.aspx.

[7] According to a CGM analysis of Lifeline subscriber enrollments in 2018, only 0.06 percent of Lifeline enrollments use FPHA for eligibility.

percent of all Lifeline eligibility is triggered through participation in SNAP or Medicaid.[8] Of the 16 states[9] that are in either soft or hard launch of the National Verifier thus far, the National Verifier does not have access to the state Medicaid database in 11 states.[10] In eight states, the National Verifier does not have access to both the state SNAP database and the state Medicaid database.[11]

This lack of adequate state database access means thousands of eligible Lifeline subscribers have not been found in the state database check already and millions more will not be found if this process continues unchanged as more populous states are rolled out. NaLA ETCs have analyzed the rate at which the National Verifier is not finding subscribers for reverification in its state databases for four of the initial group of states (Colorado, Mississippi, Utah and Wyoming).[12] **On average, 35 percent of Lifeline subscribers were not found in these four states' National Verifier database checks**.[13] Unsurprisingly, the best results, though they are not fantastic, are in Colorado where the National Verifier has access to both the SNAP and Medicaid databases (29 percent not found) and the worst results are in Wyoming where the National Verifier only has

[8] According to a CGM analysis of Lifeline subscriber enrollments in 2018, 93 percent used SNAP or Medicaid.

[9] NaLA includes the Guam territory in the term "states."

[10] These states are Mississippi, Montana, Wyoming, Guam, Hawaii, Idaho, New Hampshire, North Dakota, South Dakota, North Carolina and Tennessee. *See* the databases available for the first wave of states, available at https://www.usac.org/li/tools/national-verifier/decisions.aspx; the fact that the second wave states have access only to the FPHA database and the databases available for the third wave states, available at https://www.usac.org/li/tools/national-verifier/first-wave-states-training.aspx?utm_source.

[11] *See id*. We believe that USAC is performing some version of a cost/benefit analysis under which it has determined that securing database access in some states is not worth the expense. Such a process needs to be transparent, so that it can be checked against the Commission's National Verifier mandate and so that its impact – especially on more rural, less populated states – can be ascertained.

[12] In the other first wave states, Montana and New Mexico, NaLA ETCs do not have Lifeline subscribers due to "roadblocks" which largely prevent licensing of competitive ETCs.

[13] CGM Lifeline Client Survey (as of Dec. 14, 2018).

access to the FPHA database (98 percent not found). In Wyoming, nearly all of the Lifeline subscribers included in the analysis are Tribal Lifeline subscribers who reside on the Wind River Reservation and who will be de-enrolled from Lifeline starting in January 2019. As the reverification process proceeds in the second wave states – all with only FPHA database access (like Wyoming) – the de-enrollment rate can be expected to approach 100 percent. USAC also conducts checks for identity and address verification and specifies those subscribers whose identities or addresses cannot be verified and for whom additional reverification requirements are imposed.

The next step in USAC's reverification process for those that are not found in the state databases to which the National Verifier has access, or for whom the National Verifier cannot validate identity or address, is for the Lifeline service providers to conduct outreach to the subscribers to seek eligibility documentation and to force subscribers through a new enrollment process utilizing USAC's new mandatory form.[14] If the ETC does not have eligibility documentation for the subscriber within the short time frames permitted,[15] it must ask the subscriber to complete and send back a new Lifeline application form, which is now a standardized USAC form that is eight pages long,[16] in addition to eligibility documentation, household worksheets, proof of identity and proof of address as necessary.

Because of challenges with getting most Lifeline subscribers to provide documentation outside of a face-to-face setting, such attempts to obtain returned documentation from Lifeline

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[14] *See generally* USAC Reverification, *available at* https://www.usac.org/li/tools/national-verifier/migration.aspx. Service providers can elect to have USAC perform the reverification on their behalf. *See id.*

[15] USAC will accept documentation for subscribers enrolled after January 1, 2018.

[16] NaLA agrees with TracFone's request to shorten the Lifeline application form and make it more understandable for low-income Americans. *See* TracFone Emergency Petition at 11-19.

subscribers have never been very successful.[17] Unfortunately, USAC has recently made the process even more burdensome on these low-income Americans. As TracFone describes in its petition, USAC recently announced several changes in policy with respect to documentation of Lifeline eligibility.[18] As of December 4, 2018, USAC started requiring that SNAP cards have a date showing that they were issued within the last 12 months, or a future expiration date. As Q Link has noted, the 2012 Lifeline Reform Order specifically contemplates the use of SNAP cards for Lifeline eligibility, and there was no Commission rulemaking with an analysis of state SNAP cards and public comment on the impact of this decision on vulnerable low-income Americans.[19] Rather, USAC changed the policy by sending an email to people that signed up for Lifeline Updates.[20] If the Commission had studied this issue in an open proceeding, it would have discovered that almost all state-issued SNAP cards do not have the required dates on them. Without any public comment and little notice, USAC has removed the large majority of SNAP cards as Lifeline eligibility documentation contrary to the 2012 Lifeline Reform Order.[21]

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[17] Two NaLA ETCs have indicated that they generally experience successful responses to requests to provide eligibility documentation from less than one percent of those contacted.

[18] *See* TracFone Emergency Petition at 7-11. USAC's decision to apply these changes in some instances and not in others (e.g., first wave states), creates confusion and uncertainty that should be addressed through a fully transparent rulemaking process.

[19] *See* Written *Ex Parte* Letter of Q Link Wireless, LLC, WC Docket Nos. 17-287, 11-42, 09-197 at 1 (Dec. 6, 2018) (citing *Lifeline and Link Up Reform and Modernization et al*, WC Docket No. 11-42 et al, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, ¶ 101 (2012)).

[20] *See* USAC Lifeline Program Reminder: Updates to National Verifier Processes Effective December 4, Nov. 28, 2018. *See also* https://www.usac.org/li/tools/national-verifier/acceptable-eligibility-documentation.aspx. The new policy has not even yet been incorporated into USAC's National Verifier Acceptable Use Guidelines. *See* https://www.usac.org/_res/documents/li/pdf/nv/Guidelines-Accepted-Documentation-Service%20Providers.pdf (date revised Oct 15, 2018).

[21] Unsurprisingly, several NaLA ETCs report that SNAP recipients do not generally retain their SNAP award letters.

In addition, USAC is asking any Lifeline subscribers whose address cannot be validated to provide "a printed satellite image with a mapping tool icon (pin) identifying the subscriber's residence and the latitude and longitude coordinates."[22] Eligibility requirements must be reasonable in context. It is unrealistic to expect that most Lifeline subscribers, many of whom (a) are seniors and/or struggle with disabilities; (b) lack access to computers, printers and the Internet; and (c) suffer from literacy and digital literacy challenges, will be able to complete this complex task.

These USAC policy changes guarantee that only an insignificant number of Lifeline subscribers will return the necessary documentation to reverify their eligibility on time.[23] Those de-enrolled Lifeline subscribers will find the process of re-enrolling more difficult as well because the National Verifier thus far does not include service provider application programming interfaces (APIs)[24] necessary to enable ETCs to assist consumers with in-person and online enrollment and because of the new Lifeline eligibility documentation requirements that have arbitrarily removed the great majority of SNAP cards as Lifeline eligibility documentation.

USAC Cannot Be Permitted to Implement the National Verifier in a Manner that Results in Mass De-Enrollment of Eligible Lifeline Subscribers and Bars Enrollment or Re-Enrollment through Documentation Requirements that Conflict with Commission Policy

USAC does not have the authority to make policy or interpret Commission rules and orders.[25] The Commission cannot and must not allow USAC to change proof of eligibility

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[22] *See* USAC, Lifeline National Verifier, *available at* https://www.usac.org/li/tools/national-verifier/first-wave-states-training.aspx?utm_source.

[23] NaLA agrees with Sprint that the corresponding deadlines for subscriber responses should be extended for Groups 2 and 3 in the first wave states. *See Ex Parte* Letter of Sprint, WC Docket No. 11-42 (filed Dec. 3, 2018).

[24] *See* National Lifeline Association Comments on Emergency Petition of Q Link Wireless, LLC for an Order Directing the Universal Service Administrative Company to Implement Machine-to-Machine Interfaces for the National Verifier, WC Docket Nos. 17-287, 11-42, 09-197 (filed Aug. 10, 2018).

[25] 47 C.F.R. § 54.702(c).

requirements and implement the National Verifier in a manner that will impose undue burdens on, and result in de-enrollment of, at least three million Lifeline subscribers (the majority of whom likely continue to be eligible). Such changes require the Commission to conduct an open and transparent rulemaking so that the impacts can be studied and the proper choices made. The current draconian path should, if at all, be chosen only with a full understanding of why such action is in the public interest and with the Commission making a transparent and public decision to deny access to Lifeline to potentially millions of eligible low-income Americans.

As it stands now, USAC (and the Commission) face both a transparency and an accountability gap with National Verifier implementation decisions threatening to inflict substantial harm on millions of low-income Americans, including Tribal Lifeline subscribers, rural subscribers, seniors and veterans. Consistent with its mandate under Section 254 of the Communications Act and with USAC's limited authority to implement Commission policy, NaLA respectfully urges the Commission to hit the pause button now on the reverification and new documentation aspects of the National Verifier roll-out – before any affected consumers lose access to essential communications services on January 2, 2019.

Conclusion

Because USAC has proceeded to hard launch in states where it lacks adequate database access and has made reverification too difficult for this vulnerable class of consumers, more than three million, and possibly millions more, Lifeline subscribers face imminent de-enrollment from the Lifeline program. NaLA respectfully urges the Commission to put a hold on USAC's current reverification process and new documentation requirements so that it can work with industry, USAC and other stakeholders to assess the impacts of the current reverification and documentation requirements and work toward a more appropriate balance between consumer access and program integrity. This balance should include rolling out the National Verifier only in states where USAC has secured access to the SNAP and Medicaid databases and modifying unrealistic eligibility documentation requirements imposed by USAC. Unless the Commission takes decisive action immediately, too many consumers who are eligible for Lifeline will be de-enrolled and disconnected and many more who are eligible and not yet served will remain stranded on the wrong side of the digital divide.

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Respectfully submitted,

By: ______________________________

John J. Heitmann
Joshua Guyan
KELLEY DRYE & WARREN LLP
3050 K Street NW, Suite 400
Washington, D.C. 20007
(202) 342-8400 (voice)
(202) 342-8451 (facsimile)
jheitmann@kelleydrye.com

Counsel for the National Lifeline Association

December 18, 2018