

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Lifeline and Link Up Reform and Modernization

Telecommunications Carriers Eligible for
Universal Service Support

Connect America Fund

WC Docket No. 11-42

WC Docket No. 09-197

WC Docket No. 10-90

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ respectfully submits these comments in response to the Second Further Notice of Proposed Rulemaking (“FNPRM”) released by the Federal Communications Commission (“FCC”) on June 22, 2015.² Building on momentum from its recent Lifeline reforms, the FCC seeks comment on a number of proposals to implement further changes to the program.³ The FCC specifically requests input from states.⁴ The MDTC welcomes this request and respectfully submits that the FCC should not adopt certain proposals aimed at “streamlining” the ETC designation process and developing a new “opt-out” process, as the proposals would violate §§ 214(e) and 254, and

¹ The MDTC regulates telecommunications and cable services within Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; MASS. GEN. LAWS ch. 166A, § 16.

² *In re Lifeline & Link Up Reform & Modernization; Telecomms. Carriers Eligible for Universal Serv. Support; Connect Am. Fund*, WC Docket No. 11-42, et al., *Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report & Order, & Memorandum Opinion & Order* (rel. Jun. 22, 2015) (“FNPRM”). Silence on any matter not addressed in these comments does not connote agreement or opposition by the MDTC.

³ FNPRM, ¶¶ 3, 8-10.

⁴ *Id.* ¶¶ 2, 37.

otherwise erode important state oversight, consumer protections, and efforts to combat waste, fraud, and abuse.⁵

I. Overriding the State ETC Designation Process Would Violate Federal Law

The FCC should not adopt the proposals to rework or remove the ETC designation process. The FCC contemplates a more uniform ETC designation process at both the federal and state levels and also seeks comment on proposals previously raised by AT&T to create a process for carriers to become Lifeline providers outside of the congressionally-mandated ETC designation process.⁶

As the FCC acknowledges, the preservation and advancement of universal service has long been a federal-state partnership.⁷ Prominent in this partnership are the explicit requirements that only carriers designated as ETCs under § 214(e) are eligible to receive universal service support, and that “[a] state commission shall” designate carriers as ETCs where they meet certain requirements.⁸ Accordingly, to the extent they would circumvent these requirements by permitting the receipt of universal service support outside the ETC designation process, the referenced proposals would violate federal law and should be disregarded.

⁵ 47 U.S.C. §§ 214(e), 254. The MDTC notes that it is precluded from offering comment on certain issues raised in the FNPRM due to an ongoing investigation into the Lifeline program in Massachusetts. *See Investigation by the Dep’t on its Own Motion into the Implementation in Mass. of the Fed. Comm’n’s Comm’n’s Order Reforming the Lifeline Program*, MDTC Docket No. 13-4 (“*Massachusetts Lifeline Investigation*”).

⁶ *See* FNPRM, ¶¶ 114, 121-126, 132-141; Letter from Jamie M. Tan, Director, Fed. Regulatory, AT&T, to Marlene Dortch, Sec’y, FCC, WC Docket No. 03-109, GN Docket Nos. 09-51, 09-47, 09-137 (Dec. 22, 2009).

⁷ FNPRM, ¶ 140; *see also* 47 U.S.C. § 254; *In re Fed.-State Joint Bd. On Universal Serv.*, CC Docket No. 96-45, *Report & Order*, FCC 97-157 (rel. May 8, 1997), ¶ 818 (“We fully appreciate and support the continuation of the historical informal partnership between the states and the Commission in preserving and advancing the universal service support mechanisms envisioned by section 254. Indeed, we believe that section 254 envisions the continuation of this partnership”).

⁸ 47 U.S.C. §§ 214(e)(2), 254(e); *see also* FNPRM, ¶ 136. In addition, states “may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.” 47 U.S.C. § 254(f). The MDTC has done this and the FCC could look to these requirements as a guide during this rulemaking. *See Massachusetts Lifeline Investigation*, Massachusetts Lifeline Requirements, available at: <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/massachusetts-lifeline-requirements-final-3.pdf>.

Moreover, these proposals are bad policy because ETC designations are the first line of defense against waste, fraud, and abuse.⁹ The MDTC, like other state commissions, strives to act in the best interests of all stakeholders and has a vested interest in ensuring Lifeline support benefits low-income consumers in the Commonwealth.¹⁰ However, that interest must be balanced via the ETC designation process with the goal of minimizing waste, fraud, and abuse in the program.¹¹ For example, the MDTC's ETC designation process includes discovery, legal briefs, and public and evidentiary hearings. This process enables the MDTC to determine whether a carrier complies with federal and state laws and is technically and financially capable of providing service as an ETC, as well as whether designation of the carrier as an ETC is in the public interest consistent with § 214.¹² The MDTC takes this role seriously and, indeed, acts as a gatekeeper when the requirements for ETC designation are not met.¹³

⁹ See, e.g., MDTC Reply Comments, WC Docket No. 11-42, et al. (May 1, 2012) (“MDTC 2012 Lifeline Comments”) at 15-17.

¹⁰ Of the nearly \$8.5 billion spent on all of the USF programs in 2013, it is estimated that Massachusetts businesses and consumers contributed over \$210 million to that total. See *2014 Universal Service Monitoring Report*, CC Docket No. 96-45, et al., (rel. Dec. 2014) (“*2014 USF Monitoring Report*”). Only about \$59 million flowed back into the Commonwealth through the various USF programs, with approximately \$33 million paid to ETCs for reimbursement for Lifeline services and the remainder going largely to support services to Massachusetts schools and libraries. *Id.*

¹¹ See Government Accountability Office Report, *FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program*, GAO-15-335 (March 2015), at 7-8 (noting that FCC actions in 2005 and 2008 paved the way for wireless resellers to offer Lifeline service, “whereby participation in Lifeline as well as disbursements began to increase significantly”); *In re Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, *Recommended Decision*, FCC 10J-3 (rel. Nov. 4, 2010), at Statement of Chairman Ray Baum, Concurring in Part, Dissenting in Part (“[t]he tremendous growth rate of the low-income fund can be attributed to the FCC’s granting of forbearance to wireless resellers, and the designation of new ETCs for the sole purpose of obtaining low-income support funds” without ensuring appropriate accountability and other measures).

¹² 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(h); see also MDTC Reply Comments, WC Docket No. 10-90, et al. (Sept. 8, 2014) (“MDTC CAF Comments”) at 5.

¹³ E.g., *Application of BLC Mgmt., LLC d/b/a Angles Commc’n Solutions for Certification as an Eligible Telecomms. Carrier*, MDTC Docket No. 09-2, *Order* (Aug. 23, 2010) (denying the entity’s petition for designation as an ETC in Massachusetts); see also *Petition of YMax Commc’ns Corp. for Ltd. Designation as a Lifeline-Only Eligible Telecomms. Carrier*, MDTC Docket No. 12-9, *Order* (June 14, 2013) (granting the entity’s request—a request that was filed the day the MDTC’s discovery requests would have been due—to withdraw without prejudice its petition for designation as an ETC in Massachusetts).

The FCC highlights comments from the cable/broadband industry decrying the ETC designation process, with generic assertions by certain providers pointing to the process as a factor for why they are not offering Lifeline service throughout their footprint.¹⁴ The MDTC cannot speak to activity in other states, but in Massachusetts the MDTC has never received a petition for ETC designation from an incumbent cable or broadband provider. As a result, it is hard to give much weight to these claims when, at least in Massachusetts, the parties making the claims have never even begun the process.¹⁵

In sum, if the FCC eliminated the ETC designation requirement, state commissions stand to lose key oversight authority, and carriers would be able to circumvent state-specific Lifeline requirements such as those imposed in Massachusetts.¹⁶ With the risk of waste, fraud, and abuse in the Lifeline program still a concern, such an approach is unwarranted.¹⁷

II. An Opt-Out Approach to Providing Lifeline Service Would Not Serve the Public Interest and Would Threaten Continuity of Service To Vulnerable Consumers

Similarly, the FCC should once again choose not to adopt an AT&T proposal to allow ETCs to opt-out of providing Lifeline service in certain circumstances.¹⁸ As the MDTC has

¹⁴ See FNPRM, ¶ 132 & n.272.

¹⁵ Also of note is the fact that, as facilities-based, wireline providers, cable operators need not obtain approval of a compliance plan prior to obtaining an ETC designation. See *In re Lifeline & Link Up Reform & Modernization, et al.*, WC Docket No. 11-42, et al., *Report & Order & Further Notice of Proposed Rulemaking* (rel. Feb. 6, 2012), ¶ 368.

¹⁶ See *Massachusetts Lifeline Investigation*, Massachusetts Lifeline Requirements, available at: <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/massachusetts-lifeline-requirements-final-3.pdf>; MDTC 2012 Lifeline Comments at 15-16.

¹⁷ As an alternative to eliminating the ETC designation requirement, the FCC contemplates imposing a “uniform, streamlined approach” to designations at both the federal and state level. FNPRM, ¶¶ 122-124. While the MDTC opposes mandating such an approach for the reasons discussed above, the MDTC would welcome permissive FCC guidelines on the designation process, consistent with past practice. See *id.* ¶ 124 n.254.

¹⁸ See *id.* ¶ 125-126; Letter from Mary L. Henze, Asst. Vice President, Fed. Regulatory, AT&T, to Marlene Dortch, Sec’y, FCC, WC Docket Nos. 11-42, 03-109 (Jan. 24, 2012) (proposing that wireline companies should be able to choose whether to participate in the Lifeline program).

stated in the past, this proposal could present a critical problem for Massachusetts consumers in remote or rural areas where consumers rely on wireline service due to the unavailability of other options.¹⁹ Although the proposal references areas where there are a sufficient number of Lifeline providers, simply because a carrier is designated as an ETC in a service area does not mean that it offers or is able to provide reliable service to the entire service area. This proposal could also eliminate consumer choice, as numerous consumers continue to rely on wireline service, and for a variety of reasons, they may have no desire to leave that service.²⁰

Accordingly, if adopted, this proposal could leave countless consumers without any option, or at least their preferred option for Lifeline service.²¹ If a consumer cannot receive quality, or in some cases any, wireless service in his or her home, then Lifeline “service” from a wireless ETC would not serve the many vital purposes of the Lifeline program.²² This situation would also violate the continuity of service requirement mandated where an ETC seeks to relinquish its ETC designation.²³

¹⁹ See MDTC CAF Comments at 8-9; MDTC 2012 Lifeline Comments at 12-14.

²⁰ Over 2.4 million customers nationwide subscribe to ILEC Lifeline offerings. *Compare 2014 USF Monitoring Report* at Table 2.4 (showing that as of 2013, ILECs accounted for 16.5 percent of Lifeline claims), *with id.* at Table 2.7 (showing that the total number of Lifeline subscribers nationwide in December 2013 was 14,413,223). Separately, AT&T, Verizon, and their affiliates accounted for 11.8% of Lifeline claims nationwide in 2013. See *id.* at Table 2.5; see also FCC, *Local Telephone Competition: Status as of December 31, 2013* (Oct. 2014) (“*Local Competition Report*”), at Table 10 (showing that there were nearly 1 million residential landline subscriptions with ILECs in Massachusetts at the end of 2013).

²¹ In Massachusetts alone, approximately 20,000 wireline Lifeline subscribers would be in jeopardy of losing their phone service, or, at best, their chosen service provider and technology. See USAC, Funding Disbursement Search - Lifeline Program, <http://www.usac.org/li/tools/disbursements/default.aspx>, Massachusetts July 2015 disbursements for service in June 2015.

²² See 47 U.S.C. § 254(b)(1) (outlining the Lifeline principle that “[q]uality services should be available at just, reasonable, and affordable rates.”) (emphasis added); see also FCC Map, *Terrestrial Wireless Coverage by Number of Providers (Census Block Level)* (updated Jun. 10, 2015), <https://www.fcc.gov/maps/terrestrial-wireless-coverage-number-providers> (emphasizing “that a provider reporting mobile wireless or mobile broadband coverage in a particular census block may not provide coverage everywhere in the census block [...] and] the number of providers in a census block does not necessarily reflect the number of choices available to a particular individual or household”).

²³ See 47 U.S.C. § 214(e)(4); MDTC CAF Comments at 7-9.

Additionally, as the MDTC has repeatedly noted, “AT&T’s proposal is unnecessary because Congress has already fashioned ‘a single means by which an ETC may relinquish its designation.’ Section 214(e)(4) enables an ETC to relinquish its ETC designation—and, thereby, its Lifeline responsibilities—in specific areas . . . and AT&T has not provided an explanation as to why section 214(e)(4) is insufficient.”²⁴

The FCC should once again disregard this proposal and avoid establishing a duplicative process that permits ETCs to force a single, potentially less reliable technology upon low-income consumers. If the FCC moves forward with this approach, then the FCC should clarify whether it deems wireless service to be an effective substitute to wireline service, especially throughout geographic areas without reliable wireless coverage, and what that would mean under such an approach.²⁵ This is pertinent because facilities-based wireline carriers are likely much more entrenched in the market and not dependent on the provisioning of service from an underlying carrier.

III. CONCLUSION

The FCC should not adopt certain proposals as outlined above, as they would violate §§ 214(e) and 254 and otherwise erode state oversight and authority, consumer protections, and efforts to combat waste, fraud, and abuse. Specifically, ETC designations are the first line of defense against waste, fraud, and abuse and should not be modified. In addition, permitting an opt-out approach for the provision of Lifeline service is unnecessary, would not serve the public interest, and would threaten the continuity of service to consumers.

²⁴ MDTC 2012 Lifeline Comments at 13 (quoting NASUCA Comments, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45 (Apr. 2, 2012) at 22) (footnotes omitted).

²⁵ See MDTC CAF Comments at 9; see also *Local Competition Report* at n.3 (noting that presentation of wireless phone subscription data “does not constitute, or imply, Commission analysis of the extent to which wireline and mobile wireless telephone services are demand substitutes or complements in general or in any particular situation”).

Respectfully submitted,

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