

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

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90

**COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (Pa. PUC) files these Comments in response to the Federal Communication Commission’s (FCC or Commission) Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order¹ (collectively “*Second FNPRM*”) that was released on June 22, 2015, and published in the Federal Register on July 17, 2015² soliciting comments on its efforts to reform and streamline the Lifeline program administrative process and to modernize and enhance the program. The Wireline Competition Bureau released a Public Notice (Notice) that announced the deadline for filing comments as August 17, 2015, and the deadline for filing reply comments as September 15, 2015.³ By a subsequent Notice released August 5, 2015, the Commission extended the initial deadlines to file comments in this proceeding to August 31, 2015, for comments and to September 30, 2015, for reply comments.⁴

¹ *In re Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42 *et al.*, (FCC, Rel. June 22, 2015), Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order and Memorandum Opinion and Order, FCC 15-71, 80 Fed. Reg. 42670 (July 17, 2015) (*Second FNPRM*).

² 80 Fed. Reg. 42670.

³ *In re Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, *et al.*, Public Notice, DA 15-828 (July 17, 2015).

⁴ *In re Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, *et al.*, Public Notice, DA 15-885 (August 5, 2015).

Introduction and Summary

In the instant *Second FNPRM*, the Commission continues its ongoing commitment to monitor, re-examine, reform and modernize all components of the federal Universal Service Fund's (USF or Fund) Lifeline program (Lifeline) to increase accountability and efficiency, while supporting broadband deployment and adoption across the Nation. Specifically, the Commission seeks to establish minimum service level standards for any provider that receives a Lifeline support. Additionally, the Commission seeks to focus its efforts on targeting funding to those low-income consumers who really need it, while at the same time shifting the burden of determining consumer eligibility for Lifeline support from the provider. The Commission also proposes various ways to further reduce any incentive for waste, fraud and abuse of the Lifeline program and to streamline the customer eligibility process. Further, the Commission also seeks ways to increase competition and innovation in the Lifeline marketplace by streamlining the eligible telecommunications carrier (ETC) designation process and enhance consumer protections.

The Pa. PUC is not submitting a comment on each discussion topic presented in the *Second FNPRM*. Rather, the Pa. PUC's comments focus on the issues which are relevant to it and impact the states. As an initial matter, these Comments should not be construed as binding on the Pa. PUC in any matter before the Pa. PUC. Moreover, the Pa. PUC's position set forth in these Comments could change in response to later events, including the review of other initial Comments or Ex Parte filings, and/or other legal proceedings or other regulatory developments at the state or federal level. Lastly, the Comments may build upon and reiterate prior filings of the Pa. PUC on Lifeline reform.

In summary fashion, the Pa. PUC states the following in this Comment:

- The Commission has the statutory authority pursuant to Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254, to establish and adopt minimum service levels for the fixed and mobile voice service that Lifeline providers must offer to all Lifeline customers in order to be eligible to receive its Lifeline reimbursement from the Fund.

- The Lifeline provider receiving federal universal service fund (USF or Fund) support must offer to eligible low-income consumers a stand-alone voice-only Lifeline service.
- If the Commission determines that broadband should be a Lifeline-supported service, the provider must also offer to eligible low-income consumers a broadband service at predetermined speeds as a condition in order to receive any broadband Lifeline universal service support funds.
- The core function of an independent third party national verifier should be to review consumer eligibility documentation to verify Lifeline eligibility to receive Lifeline support. Nevertheless, the national verifier should be required to interface with state eligibility databases to verify Lifeline eligibility in those states that have already put in place state eligibility databases and/or processes to check documentary proof of eligibility and the states should have the ability to “opt out” of any national verification process in those cases where the state has developed a process to examine subscribers’ eligibility and/or a state eligibility database that meets any federal minimum requirements to verify Lifeline subscriber eligibility and where the state wishes to continue to perform the eligibility screening function on its own.
- The Pa. PUC is not opposed to the Commission seeking to streamline the ETC designation process at the federal level for those ETC designation petitions of which it rules upon pursuant to 47 U.S.C. § 214(e)(6).⁵ However, the Pa PUC is opposed to the Commission exercising any federal preemption based on some need to coordinate the state ETC designation process with the federal ETC designation process as the states have been given primary authority over ETC designations pursuant to 47 U.S.C. § 214(e).
- The Pa. PUC is opposed to the proposal to permit ETCs to relinquish their obligation to provide Lifeline supported service in specific areas where there are multiple and competing Lifeline providers as it is in contravention of the statutory universal service principles set forth in 47 U.S.C. § 254.

⁵ 47 U.S.C. § 214(e)(6). Section 214(e)(6) of the Act directs the Commission to designate carriers when those carriers are not subject to the jurisdiction of a state commission. Under Section 214(e)(6), the Commission may designate only common carriers “providing telephone exchange service and exchange access” as ETCs. *Id.* Because of the complex interrelationships among Tribal, state, and federal authority, providers may seek designation directly from the Commission to provide service in Tribal areas without an affirmative statement from the relevant state that it lacks jurisdiction. *Federal-State Board on Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12265-69, paras. 115-27 (2000).

- The Pa. PUC recommends that the Commission retain the compliance plan process for any potential Lifeline providers without their own integrated facilities-based telecommunications network. However, the Pa. PUC suggests that the Commission should take steps to expedite the compliance plan process and rule on them in a quicker fashion so as not to deter states from promptly processing pending ETC petitions from non-facilities based applicants.
- The Commission should retain the rule that only ETCs are able to obtain Lifeline universal service support reimbursements and retain any current requirement that any provider receiving Connect America Fund II (CAF II) or Mobility Fund II (MF II) or its equivalent be required to offer Lifeline as a precondition to receiving CAF II or MF II support.
- The Commission should not mandate that states provide additional support in order for Lifeline providers to offer more innovative service offering to Lifeline subscribers.
- The Pa. PUC cautions the Commission from adopting any proposals involving the use of FCC forbearance in the ETC designation process that would result in a direct or indirect federal preemption of independent state law or impinge upon or violate the clear and independent statutory role of the Pa. PUC and other state utility commissions.

I. The Establishment of Minimum Service Standards for All Lifeline Offerings

In the instant *Second FNPRM*, the Commission seeks comments on its proposal to establish minimum service levels for the fixed and mobile voice and broadband service that Lifeline providers must offer to all Lifeline customers in order to be eligible to receive Lifeline reimbursement from the Fund.⁶ The Commission determined that taking such action will ensure maximum value for the dollars contributed to the federal USF and the offering of more services to low-income Americans consistent with the obligations set forth in Section 254 of the Communications Act of 1934 (Act), as amended, 47 U.S.C. § 254.⁷

The Commission seeks comment on how to develop these minimum standards and requests comment on whether it would be appropriate to develop an objective, data-based methodology for establishing such levels and whether an established objective standard could be

⁶ See *Second FNPRM* at paras. 14-17, 34, pp. 10-11 & 20.

⁷ *Id.*

updated on a regular basis.⁸ Lastly, the Commission requests comment on how to ensure that the minimum service levels that it proposes to adopt result in service offerings that are affordable, but also, “reasonably comparable” for eligible low-income Americans in urban and rural areas.⁹

a. Minimum Service Standards For Voice Lifeline Offerings

1. Lifeline Providers Offering Stand-Alone Voice Lifeline Service

With regards to Lifeline voice offerings, the Commission seeks comment on how to require Lifeline providers to continue offering affordable stand-alone voice service to provide Lifeline consumers’ access to critical employment, health care, public safety or educational opportunities.¹⁰ Additionally, the Commission seeks comment on how requiring Lifeline providers to offer stand-alone Lifeline voice service affects their business models and affordability to the consumer.¹¹

Since its inception, one of the primary purposes of the federal Lifeline program has been to ensure the availability of and access to affordable telecommunications services from local telephone companies to low-income Americans. The Pa. PUC agrees with the Commission’s determination that it is necessary to establish minimum standards for fixed and mobile voice service that Lifeline providers offer to all Lifeline customers. This helps to ensure maximum value for each dollar of federal USF support contributed by ratepayers and that eligible Lifeline consumers receive reasonably comparable service to non-Lifeline customers.¹² Such a requirement also helps the Commission effectuate its statutory universal service directives set forth in Section 254 of the Act, which includes that quality services should be available at affordable rates to consumers throughout the nation.¹³

⁸ See *Second FNPRM* at para. 35, p. 20.

⁹ See *Second FNPRM* at para. 36.

¹⁰ See *Second FNPRM* at para. 38, p. 21.

¹¹ *Id.*

¹² See *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, 27 FCC Rcd 6656, 6671, paras. 27-28 (2012) (*Lifeline Reform Order*).

¹³ 47 U.S.C. § 254(b)(1), (b)(3); see also *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2780, para. 29.

The Commission has noted that voice service still remains an essential prerequisite for full participation in our economy and society.¹⁴ Thus, as a condition of receiving Lifeline reimbursements, providers should be required to offer voice telephony as a stand-alone service to eligible low-income Lifeline consumers throughout their service areas. The offering of a stand-alone voice Lifeline service means that consumers are not required to purchase any other services (*e.g.*, broadband) in order to obtain essential voice service. It also incentivizes carriers already receiving support to deploy broadband from the Connect America Fund II (CAF II) and other funds to mesh their respective broadband service offerings with voice service, a benefit to low-income consumers. The Pa. PUC also believes that Section 254 requires carriers receiving Lifeline universal service support funds to offer voice telephony service on a stand-alone basis, at rates that are reasonably comparable to urban rates. This is consistent with the universal service directives in Sections 254(b)(1) and 254(b)(3) of the Act that quality services should be available at affordable rates and to consumers throughout the nation.¹⁵

The Pa. PUC notes that the Commission made a similar determination regarding stand-alone voice service in its *USF/ICC Transformation Order* in the *Connect America Fund* proceeding where it required ETCs to offer voice telephony as a stand-alone service throughout their designated service area as a condition of receiving high-cost universal service support from the Connect America Fund (CAF).¹⁶ The Commission determined that this requirement was in the public interest and appropriate to help ensure that consumers have access to a voice telephony service that best fits their particular needs.¹⁷ There, the Commission concluded that carriers must offer voice telephony service to be eligible to receive high cost support from the CAF. This includes voice telephony service offered on a stand-alone basis, at rates that are reasonably comparable to urban rates, as this requirement was consistent with the Section 254(b) principle that "[c]onsumers in all regions of the Nation ... should have access to

¹⁴ See *Lifeline Reform Order*, 27 FCC Rcd at 6666, para. 17.

¹⁵ 47 U.S.C. § 254(b)(1), (b)(3); see also *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2780, para. 29.

¹⁶ See *Connect America Fund et al.*; WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17693, para. 80 (2011) (*USF/ICC Transformation Order*) *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *certiorari petitions denied*, *NARUC v. FCC*, S.Ct., No. 14-901, *Allband Com. Coop. v. FCC*, S.Ct., No. 14-900, May 4, 2015.

¹⁷ *USF/ICC Transformation Order*, 26 FCC Rcd 17663, 17693, para. 81

telecommunications ... that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”¹⁸ Thus, a stand-alone telecommunications voice service is entirely consistent with current FCC policy.

Likewise, applying the same rationale, the Pa. PUC asserts that the Commission should adopt a similar requirement for Lifeline providers seeking Lifeline reimbursements from the Fund as it is also in the public interest. The Commission should condition the receipt of such reimbursement from the Fund on whether the Lifeline provider is offering voice telephony as a stand-alone service to eligible low-income Lifeline consumers throughout their service areas. The Pa. PUC states that this requirement will not have a detrimental impact on the business models of providers participating in the Lifeline program and will not substantially affect the affordability of voice service provided to Lifeline consumers. This requirement is also competitively neutral in those situations where a Lifeline ETC may not necessarily be a CAF II or Mobility Fund II (MF II) ETC designee. Moreover, this requirement is consistent with the statutory goals of Section 254 of the Act.

2. Offering More Diverse Voice-Only Services to Lifeline Consumers

To date, telecommunications voice services consumers have various options for fixed and/or mobile voice services. Wireless service has taken particular importance as more Americans are likely to reside in wireless-only households than ever before.

At first, the Lifeline program strictly supported a wireline-only voice services program that was exclusively offered by regulated traditional incumbent local telephone companies (ILECs) with eligible telecommunications carrier (ETC) designations. Over time, the Lifeline program has evolved to now support both wireless and other wireline voice services. This evolution reflects that such voice services, including voice over the Internet Protocol or VoIP, are increasingly offered by a variety of wireline and wireless/mobile providers.

¹⁸ 47 U.S.C. § 254(b).

However, the Commission states that despite years of participation by multiple providers offering voice services in competition with one another, there have not been much meaningful improvements in the available voice offerings to low-income Lifeline consumers.¹⁹ For example, the Commission notes that the standard voice Lifeline market offering for prepaid wireless service has remained largely unchanged at 250 minutes at no cost to the recipient. But, on the contrary, the competitive offerings by these same providers to non-Lifeline customers, is robust, diverse and competitive.²⁰ The Commission determines that the fact that service levels for Lifeline voice offerings have remained stagnant and have not increased over time may suggest that the current program is not structured to drive sufficient competition.²¹

In order to promote more innovative voice service offerings to low-income consumers, one possibility would be to increase the reimbursement amount from the Fund for carriers that offer more voice service offerings to Lifeline consumers. However, the Pa. PUC also notes the lack of diversity of voice offerings to Lifeline customers may be reasonable when considering the service is intended to be a basic access service that is supported by non-Lifeline customers often at no cost to the wireless Lifeline recipients. Lifeline is “access to basic needs” service that is supported by non-Lifeline customers and should not be robust by design. The Pa. PUC also questions how to pay for increasing Lifeline reimbursements for more service offerings to Lifeline customers while staying within the existing funding requirement for the Low-Income program portion of the federal USF. The Pa. PUC submits that, prior to increasing Lifeline reimbursements, the Commission needs to assess the financial impact of such an increase on the program/fund.

The FCC’s most-recent 2014 *Universal Service Monitoring Report* showed that Pennsylvania household units with voice service, including mobile, fell from 98.2% in 2009 to 98% in 2014.²² While this two-tenths of one percent may seem like “the perfect being the enemy of the possible,” the US Census Bureau shows that Pennsylvania has 4.9 million

¹⁹ *Second FNPRM* at para. 16, pp. 10-11.

²⁰ *Id.*

²¹ *Id.*

²² *Universal Service Monitoring Report, (2014)*, Docket No. 96-45 (Data Through September 2014), Table 6.6.

households with 2.48 persons per household.²³ This two-tenths of one percent translates into about 9,917 households (or approximately 24,594 people) losing service from 2009 through 2013, or about 2000 households (5,000 people) per year. Clearly, support that benefits Pennsylvania's consumers, whether stand-alone voice or in a combination with broadband, warrants adoption.

The Pa. PUC notes the Commission's concerns whether wireless ETC providers of voice Lifeline services positively utilize reductions in their operational costs (e.g., access expenses), for the price and the level of their offerings.²⁴ The Pa. PUC suggests that both fixed and mobile voice Lifeline providers should be required to pass on any measurable decline in their costs for providing voice telephony to their eligible low-income Lifeline consumers in the form of more innovative service offerings to these Lifeline consumers.

However, the Pa. PUC recommends that the Commission first collect objective and measurable data from Lifeline providers and conduct an analysis of: (1) whether there has been a reduction in the overall costs of providing voice telephony; and (2) whether they are passing on any such reductions in their overall costs to provide quality voice service to their low-income Lifeline end-users. After such a review, the Commission will be able to make a better determination of whether voice Lifeline providers are or are not passing on the decline in their costs to their low-income Lifeline consumers in the form of quality and innovative voice services, and will be better able to fashion a remedy if Lifeline providers are not doing so. Furthermore, such incentives will have implications for the overall level of funding requirements for the Low Income portion of the federal USF mechanism and must be appropriately policed in order to prevent and deter waste, fraud, and abuse.

²³ <http://quickfacts.census.gov/qfd/states/42000.html> (last visited 8/20/15).

²⁴ *Second FNPRM*, para. 42, at 22. For example, a Lifeline voice service subscriber or household that primarily makes local calls will be at a clear disadvantage through the use of 250 free minutes (4.17 hours) from a wireless provider as compared with the unlimited local calling capability of a conventional landline telephone service for the same \$9.25 support amount.

b. Minimum Service Standards For Broadband Lifeline Offerings

The Commission also acknowledges that the ability to use and participate in a 21st Century economy increasingly requires broadband access services for education, health care, public safety, and for persons with disabilities to communicate on par with their peers.²⁵ Accordingly, the Commission also proposes to establish minimum service levels for all fixed and mobile broadband Lifeline service offerings, to ensure the availability of robust services for low-income consumers.²⁶ The Commission seeks comment on whether it should define an objective standard for fixed service by looking at what kinds of services are typically offered or subscribed to “in urban areas” or by a substantial majority of Americans and whether it could establish an objective standard that could be updated on a regular basis simply by examining new data about fixed broadband service.²⁷ Further, the Commission seeks comment on whether it should apply the standards, as well as capacity and latency requirements, adopted in the *Connect America Fund* proceeding to Lifeline broadband services.²⁸ Lastly, the Commission seeks comment on what criteria it should utilize to set a minimum level of capacity for fixed broadband service.

If, as the Commission has already noted, the ability to participate in a 21st Century economy increasingly requires access to broadband services; thus, it is no longer a luxury for consumers but rather a necessity.²⁹ The Pa. PUC asserts that providing Lifeline universal service support to fixed Lifeline providers encourages the availability of broadband-capable networks and any broadband service, as does stimulating the demand for wholesale broadband access services by providing Lifeline support to non-facilities-based Lifeline providers. Again, this is consistent with the Commission statutory universal service principles in Section 254 of the Act.

However, the Pa. PUC questions how to pay for Lifeline universal service support while staying within the existing funding requirement for the Low-Income program portion of the federal USF. The Pa. PUC submits that before expanding Lifeline to include broadband support, the Commission needs to assess the financial impact of such an expansion on the program/fund.

²⁵ *Id.* at para. 17, p. 11.

²⁶ *Id.* at paras. 14, 43-46, pp. 10 & 22-23.

²⁷ *Id.* at para. 43, pp. 22-23.

²⁸ *Id.*

²⁹ *See Second FNPRM* at paras. 17-31.

Nevertheless, if the Commission expands the Lifeline program to include broadband support, the Pa. PUC states that it is in the public interest to establish minimum service levels for supported broadband services. The Pa. PUC notes that, in the *USF/ICC Transformation Order*, the Commission had determined that it was in the public interest to require companies receiving high-cost support to meet certain minimum performance obligations for their broadband offerings, and that the FCC has continued to update the relevant standards.³⁰ Thus, the Commission set minimum speed requirements among other things for broadband offerings for those companies that receive high-cost universal service support.³¹ Likewise, the Pa. PUC states that it is in the public interest to establish the same minimum service levels for the broadband services that Lifeline providers must offer to all low-income Lifeline customers in order to be eligible to receive Lifeline reimbursement. The Pa. PUC sees no reasons why low-income consumers in any supported census block should be denied services already supported for other consumers, particularly in those situations where other federal support exists.

If the Lifeline program is expanded to include broadband, the Commission should adopt technical standards regarding prices, usage levels, latency, and download and upload speeds for fixed Lifeline broadband services so that low-income consumers have reasonable comparable access to broadband services as non-Lifeline consumers. The Pa. PUC believes that a minimum standard for the price, usage level, latency, and download and upload speeds of fixed Lifeline broadband service offerings should be based on an objective, data-based methodology, such as was determined in the *USF/ICC Transformation Order* where the Commission established minimum service levels for recipients of high-cost universal support. There, the Commission reviewed the data included in: (1) the annual broadband deployment or broadband progress

³⁰ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17695, para. 86.

³¹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17697, para. 94, 17721, para. 147, 17726, paras. 160-62, 17740, para. 206.

reports required under Section 706 of the Act;³² (2) the National Broadband Plan;³³ (3) and other technical reports/white papers on broadband access;³⁴ (4) the annual reports filed with the Commission by carriers and other entities;³⁵ and (5) the U.S. census reports. However, the Commission has acknowledged that technical capabilities and user needs will continue to evolve, and the Commission should continue to monitor trends in both urban and rural broadband offerings, and be compelled to initiate future proceedings to review broadband service performance requirements to ensure that Lifeline funding continues to support broadband service that is reasonably comparable to service in urban areas, consistent with the 47 U.S.C. § 254(b)(3)(4).³⁶

For example, in the Commission's *April 2014 Connect America FNPRM*³⁷, the Commission initiated a proceeding in order to revise and adopt public interest obligations for recipients of high-cost universal service support, including the obligation to offer broadband service at an initial minimum speed.³⁸ The Commission looked at objective data in the form of

³² 47 U.S.C. § 1302(b) (2010). Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (the Act), as amended in relevant part by the Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (BDIA), is now codified in Title 47, Chapter 12 of the United States Code. See 47 U.S.C. § 1301 et seq. See generally *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act; A National Broadband Plan for Our Future*, GN Docket Nos. 09-137, 09-51, Report, 25 FCC Rcd 9556, (2010) (*2010 Sixth Broadband Progress Report*); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Progress Report And Order On Reconsideration, 26 FCC Rcd 8008, (2011) (*2011 Seventh Broadband Progress Report*).

³³ See generally Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010), at xi (National Broadband Plan); see also American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115,516 (Recovery Act). In developing the National Broadband Plan as directed by the United States Congress, the Commission reviewed data to analyze user behavior and the demands this usage places on the network, and the recent experience in network evolution in order to recommend a national broadband availability target for every household in America, which at that time was broadband service offering actual download speeds of at least 4 Mbps and actual upload speeds of at least 1 Mbps.

³⁴ See generally Omnibus Broadband Initiative, *Broadband Performance: OBI Technical Paper No.4*, at 8 (OBI, Broadband Performance); see also *International Broadband Data Report*, IB Docket No. 10-171.

³⁵ See generally FCC Form 477 Part IA broadband data collection, E-RATE Program and Broadband Usage surveys.

³⁶ See *USF/ICC Transformation Order and/or FNPRM*, 26 FCC Rcd at 17703, para. 106.

³⁷ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051 (2014) (*April 2014 Connect America Order and/or FNPRM*).

³⁸ See *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7100, para. 138.

the most recent State Broadband Initiative (SBI) data for December 2013.³⁹ As a result of that review, the Commission determined to increase the minimum broadband speed for recipients of high-cost universal service support to further the statutory goal in Section 254 of ensuring that consumers in rural and high-cost areas of the country have access to advanced telecommunications and information services that are reasonably comparable to those services in urban areas, at reasonably comparable rates.⁴⁰ Specifically, the Commission now requires companies receiving CAF funding for fixed broadband to serve consumers with speeds of at least 10 Mbps for downloads and 1 Mbps for uploads (10/1).⁴¹ Support for the reality of an evolving standard is further evident in the FCC's February 2015 *Progress Report* in which the FCC set the definition of broadband availability to be 3 Mbps up/25 Mbps down.⁴²

Additionally, if the Lifeline program is expanded to include broadband, the Commission should apply minimum service levels to Lifeline mobile broadband offerings. The Pa. PUC states that the Commission should also use an objective standard for mobile broadband service as we proposed above for fixed broadband service. The mobile minimum standard could be tied to what mobile broadband services a majority of Americans subscribe to or what service standards are applicable to carriers supported by MF I or MF II. Also, mobile broadband Lifeline providers should be required to make available any broadband offering that is at or above the

³⁹ At that time, current deployment data indicated that 92% of Americans in urban areas, and 47% in rural areas, have access to fixed broadband with speeds of at least 25/3 Mbps. SBI Data, as of December 31, 2013, In particular, current deployment data showed that 99 percent of Americans living in urban areas have access to fixed broadband with speeds of at least 10 Mbps downstream/768 kbps upstream (10 Mbps/768 kbps), and a majority of Americans have already chosen to adopt such service. Moreover, fixed broadband services with even higher speeds, such as 25 Mbps downstream /3 Mbps upstream (25/3 Mbps) or higher, are available to the vast majority of urban households. In contrast, the SBI data also indicated that 31 percent of the population residing in rural census blocks lack access to fixed broadband providing at least 10 Mbps/768 kbps speeds.

⁴⁰ See *December 2014 Connect America Order*, 29 FCC Rcd at 15649, para. 15 (2014).

⁴¹ On August 1, 2014, the Commission adopted the *Tenth Broadband Progress Notice of Inquiry*, which sought comment on whether to modify the 4/1 Mbps speed benchmark the Commission had relied on since 2010. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, Tenth Broadband Progress Notice of Inquiry, 29 FCC Rcd 9747, 9755, para. 14 (2014). See also *In re Connect America Fund; ETC Annual Reports and Certifications, et al.*, WC Docket Nos. 10-90 & 14-58 et al., (FCC, Rel. Dec. 18, 2014), Report and Order, *slip op.* FCC 14-190 (FCC December 2014 CAF-ETC Order), para. 20, p. 8.

⁴² *In re: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Docket No. GN 14-126 (February 4, 2015), para. 45.

minimum speed to its Lifeline customers and permit them to apply the Lifeline discount to those other higher tiered broadband services as well.

However, the establishment of minimum service standards that the Commission expects the carriers to meet for their broadband services should be done in close coordination with the states and without preempting state law. The Pa. PUC recognizes that changes in the legal, regulatory or technological views of what constitutes interstate telecommunications may result in the Commission establishing a minimum threshold for broadband service that exceeds any threshold for broadband service that has already been deployed under state law. It is quite one thing to set a minimum federal standard that may be higher than those of a state but it is quite another to preempt state standards regardless of their relationship to the federal minimum standard. The end-users of Pennsylvania Chapter 30⁴³ ILECs with incentive alternative regulation and network modernization plans have already partially financed this statutorily mandated broadband deployment through almost automatic and periodic intrastate revenue and rate increases and likely federal support since 2006. Thus, the Pa. PUC raises its concerns about not preempting independent state law or the potential interference with independent state laws governing intrastate matters, and possibly replacing state mandates with FCC rules in the Commission's ongoing effort to spur quality broadband availability to low-income Lifeline consumers.

c. Updating Minimum Standards and Compliance

The Commission seeks comment on how to monitor and ensure compliance with any voice and broadband minimum service levels that it adopts and how to set appropriate minimum service levels that evolve with technology and innovation. The Pa. PUC agrees with the Commission that it needs to establish a mechanism to ensure that any minimum service levels it adopts stay relevant over time. The Pa. PUC agrees with the Commission's proposal that regular updating of minimum service levels should be tied to objective, publicly available data such as the Form 477 data, which reflects the broadband service that a majority of residential consumers subscribe to. Additionally, the Commission can review a Lifeline provider's compliance with

⁴³ 66 Pa. C.S. § 3010 et seq.

any minimum standards it has adopted as part of the annual certification of Lifeline providers by the Commission.

The issue of the states' involvement in any oversight process will necessarily need to address how resources for that work will be provided, particularly in states where the level of intrastate revenues are declining markedly or have deregulated telecommunications entirely. It may be appropriate to adopt some kind of safe-harbor rule as occurred with VoIP or authorize a very small assessment on interstate revenues generated within any given jurisdiction so that carriers are not billed more than once and the states have a stable and predictable revenue base to assist in Commission efforts.

d. Amount of Support Level for Lifeline Providers

Recently, GAO noted that the Commission has not established a permanent support amount.⁴⁴ Accordingly, the Commission proposes to retain the current, interim non-Tribal Lifeline support amount of \$9.25 that it adopted in the *Lifeline Reform Order* and set it as the permanent support amount.⁴⁵ The Commission seeks comment on whether the \$9.25 support amount should be reduced for Lifeline supported mobile voice-only service since the cost of provisioning wireless voice service has decreased significantly since the *Lifeline Reform Order*. The Commission also seeks comment on whether an end-user charge would be necessary if the minimum service level of \$9.25 is insufficient to cover broadband service. Further, the Commission seeks comment on whether a different level of support would be appropriate for a voice and broadband bundle. Lastly, the Commission seeks comment on whether it should provide a one-time reimbursement to Lifeline consumers to cover any up-front broadband connection charges for fixed residential broadband service and how to appropriately set the level of the broadband connection charge subsidy it establishes.

The Pa. PUC states that the Commission must ensure that support is "sufficient" to meet universal service obligations and thus, a further study is possibly warranted to adequately address

⁴⁴ See GAO March 2015 Report at 11-12.

⁴⁵ See *Lifeline Reform Order*, 27 FCC Rcd at 6683, para. 58 (setting the interim support amount at \$9.25).

these issues.⁴⁶ The Pa. PUC suggests that the Commission continue to gather data and study the effectiveness of the \$9.25 subsidy before it makes it the permanent subsidy amount in order to determine if it accurately accounts for the overall costs to support the provision of voice and broadband services to Lifeline consumers. However, the Pa. PUC questions whether the \$9.25 monthly support amount is sufficient for the provision of stand-alone voice, let alone a combination of supported voice and broadband access services for eligible Lifeline consumers. For example, the FCC's own Urban Rate Survey indicates that the benchmark rate for fixed broadband access at the 10/1 standard and with a 100 GB (gigabyte) monthly allowance is at \$71.40 per month.⁴⁷ Even if a Lifeline voice component were rolled into a bundle under the same monthly \$71.40 price, the \$9.25 monthly support level currently provided to stand-alone voice is likely going to be ineffectual for low-income households.

The Commission notes that it may be appropriate to establish a different level of support for a voice and broadband bundle instead of retaining a uniform flat subsidy rate, especially to achieve the dual goal of the Lifeline program which is assuring both a sufficient level of broadband service low-income Lifeline consumers but that is also affordable to them. Additionally, the Commission notes that the costs associated with connecting a low-income consumer to fixed broadband may serve as a barrier for low-income consumers to adopt broadband, particularly if consumers have to pay an ongoing charge for robust Lifeline supported broadband service.

e. Managing Program Finances

The Commission seeks comment on establishing a budget for the Lifeline program.⁴⁸ The Commission states that the purpose of a budget is to ensure that all of our goals are met as

⁴⁶ For example, more basic levels of broadband access (less than the 10/1 standard) can be offered at much lesser prices than what is suggested in the Urban Rate Survey. Under such circumstances, the \$9.25 level of support, or other variable levels of support, can make such Lifeline broadband offerings more available and affordable for eligible Lifeline consumers. The issue then becomes of adequately policing what levels of broadband access are *actually* delivered to the Lifeline consumers for the corresponding reimbursement from the federal USF.

⁴⁷ FCC Public Notice, *Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice and Broadband Services and Posting of Survey Data and Explanatory Notes*, (FCC, Rel. Apr. 16, 2015), DA 15-470.

⁴⁸ *See id.* at 6810, para. 359.

the Lifeline program transitions to broadband, including minimizing the contribution burden on ratepayers, while allowing the Commission to take account of the unique nature and goals of the Lifeline program.

The Pa. PUC notes that in the *USF/ICC Transformation Order*, the Commission established a defined budget for the high-cost component of the universal service fund.⁴⁹ However, as the Commission itself acknowledges, adopting a budget for the Lifeline program raises a number of implementation issues that are not present for carriers receiving high-cost support. The Commission would have to determine that there is reliable data available that indicates that the yearly budget for a particular year is sufficient to cover all qualifying low-income households that seek voice and/or broadband services.

At the same time the Pa. PUC states that funding requirements imposed on the federal USF mechanism, including those that will arise from the availability of supported voice and broadband access services to eligible Lifeline consumers, underlines the need for accountability and urgency for reforming the contribution base of the federal USF mechanism.⁵⁰ Furthermore, because a number of states have their own state-specific USF mechanisms with some (e.g., California) providing their own and dedicated Lifeline support funding, the federal USF contribution base reforms must be properly coordinated with the state-specific USF mechanisms.⁵¹ Finally, Pennsylvania's historic role as a net contributor overall (last year in the amount of \$136 M dollars) and the fact that some of its rural carriers are net recipients underscores the need for a careful and thorough consideration of what a budget should be and how these programs can be supported.

⁴⁹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17710, para. 123, 17711, para. 126.

⁵⁰ See generally *In re Universal Service Contribution Methodology, et al.*, WC Docket No. 06-122 *et al.*, (FCC, Rel. Apr. 30, 2012), Further Notice of Proposed Rulemaking, *slip op.* FCC 12-46, 27 FCC Rcd 5357 (2012).

⁵¹ See generally WC Docket No. 06-122, Reply Comments of the Pennsylvania Public Utility Commission, Reply Comments of the State Members of the Federal-State Joint Board on Universal Service, Reply Comments of the National Association of Regulatory Utility Commissioners, submitted August 6, 2012.

f. Legal Authority to Support Lifeline Broadband Service

In this instant *Second FNPRM*, the Commission proposes to amend its rules to include broadband Internet access service, as defined in the *Open Internet Order*,⁵² as a supported service in the Lifeline program.⁵³ In the *Open Internet Order*, the Commission concluded that Broadband Internet access service (BIAS) is a “telecommunications service.”⁵⁴ The Commission states that including broadband Internet access service as a supported service for Lifeline purposes is consistent with Congress’s principles for universal service⁵⁵ as Section 254(c) defines universal service as “an evolving level of telecommunications service.”⁵⁶ The Commission also states that defining broadband Internet access service as a supported service is also consistent with the criteria in Section 254 (c)(1)(A)-(D).⁵⁷

The Pa. PUC reminds the FCC that it has historically supported the classification of BIAS as a Title II service in the proceedings leading up to that decision. The Pa. PUC further states that the Telecommunications Act of 1996 (TA-96) expanded the traditional goal of universal service to include increased access to both telecommunications and *advanced services* – such as high-speed Internet – for all consumers at just, reasonable and affordable rates. TA-96 established principles for universal service that specifically focused on increasing access to evolving services, now focused on an expansion to broadband services, for consumers living in rural and insular areas, and for consumers with low-incomes. The Pa. PUC asserts that expanding Lifeline to include broadband as a supported service helps assure universal access to advanced services. Accordingly, the Pa. PUC believes that the Commission’s proposal to amend Sections 54.101, 54.400, and 54.401 to include broadband as a supported service is consistent with applicable federal law.

⁵² See *Open Internet Order*, 80 Fed. Reg. at 19764, para. 187.

⁵³ See 47 C.F.R. §§ 54.401-54.403 (defining the supported service in the Lifeline program as “voice telephony service” and explaining how the support amount should be allocated to a subscriber’s package).

⁵⁴ See *Open Internet Order*, 80 Fed. Reg. at 19786-87, paras. 331-35.

⁵⁵ See 47 U.S.C. § 254(b).

⁵⁶ 47 U.S.C. § 254(c).

⁵⁷ See 47 U.S.C. § 254(c)(1)(A-D) (“The Joint Board in recommending, and the Commission in establishing, the definition of services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services – (A) are essential to education, public health, or public safety; (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (C) are being deployed in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience, and necessity.”).

However, the Pa. PUC respectfully reminds the Commission that under Section 706(a) of the Act, 47 U.S.C. § 1302(a), the Pa. PUC — as well as other state utility regulatory commissions — have *joint* responsibilities for the deployment of broadband access networks, capabilities, and services. This is a critical factor in why the Pa. PUC participates in this and other broadband proceedings. The Pa. PUC would not support any result that obviates the federally mandated role of the states under Section 706.

Furthermore, the availability of fixed broadband services is already directly or indirectly assisted by state-specific USF mechanisms and a number of states (e.g., California) have their own and dedicated Lifeline funding support. Broadband network deployment is already required under independent state law such as Pennsylvania’s Chapter 30.⁵⁸ These state activities coupled with the mandates of independent state laws contribute to the maintenance and enhancement of the revised universal service concept that now includes supported broadband access services. Consequently, although the Commission’s March 2015 *Open Internet Order* declared that BIAS were jurisdictionally interstate services, the states continue to have a substantial role in their provision, especially in the context of supported Lifeline services to eligible consumers and addressing oversight and consumer issues.

II. Third-Party Lifeline Eligibility Determination

In the instant *Second FNPRM*, the Commission proposes to remove the responsibility of conducting the eligibility determination from the Lifeline service providers and seeks comment on various ways to shift this responsibility to a third-party national Lifeline eligibility verifier in order to further reduce waste, fraud, and abuse in the Lifeline program, and leverage other programs serving the same constituency to extract savings for the Fund.⁵⁹ Hence, the Commission seeks comment on whether it should establish a national Lifeline eligibility verifier (national verifier) to make eligibility determinations and perform other functions related to the Lifeline program. The Commission seeks comment on whether such an approach could be adopted on a national scale and on the costs and the timeframe to do so as it recognizes that a

⁵⁸ 66 Pa. C.S. § 3010 et seq.

⁵⁹ See *Second FNPRM* at paras. 63-64, pp. 28-29.

number of states have already implemented their own Lifeline eligibility verification systems. Accordingly, the Commission seeks comment and quantifiable data from the states so as to better understand how such systems function when implemented. The Commission also seeks comment on how providers and/or consumers should transmit and receive Lifeline applications and proof documentation with a national verifier.⁶⁰ Lastly, the Commission seeks comment on whether to provide eligible consumers with a portable benefit, provided by the third-party verifying eligibility, which they could use with any Lifeline provider.

The Commission determines that by removing the eligibility verification determination from the Lifeline service provider, it has removed one potential source of waste, fraud, and abuse from the program, while also creating more efficiencies overall in the program administration.⁶¹ The Commission also acknowledges that a number of states have been proactive in their efforts to bring further efficiencies into the program by establishing state eligibility databases or other means to verify Lifeline eligibility and seeks on the best ways to build off of these successful efforts and extract benefits for the federal Lifeline program. Consequently, the Commission purports that a national verifier would review consumer eligibility documentation to verify Lifeline eligibility, and where feasible, interface with state eligibility databases to verify Lifeline eligibility. Additionally, the Commission states that a national verifier could operate in a manner similar to the systems some states have already implemented and notes the state of California as a prime example.⁶²

The Pa. PUC is not opposed to the Commission removing the responsibility of conducting eligibility determinations for Lifeline subscribers from the Lifeline providers and proposing to establish a third-party national Lifeline eligibility verifier (national verifier) to do such verifications. The Commission states that the national verifier would, at a minimum, review consumers' proof of eligibility and certification forms, and be responsible for determining prospective subscribers' eligibility to receive the Lifeline discount. The Pa. PUC

⁶⁰ *Second FNPRM* at para. 71, p. 31.

⁶¹ *Id.* at para. 63, p. 28.

⁶² *See Second FNPRM* at para. 64, fns. 166-67, p. 29. In California, the state's third-party administrator examines documentary proof of eligibility and verifies that the prospective subscriber has executed a proper Lifeline certification.

agrees that the core function of a national verifier should be to review consumer eligibility documentation to verify Lifeline eligibility to receive Lifeline support.

Nevertheless, the national verifier should be required to develop standards for interfacing with state eligibility databases to verify Lifeline eligibility in those states that have already put in place state eligibility databases and/or processes to check documentary proof of eligibility. Where feasible, the national verifier should interact with the states so that it can access state eligibility databases to verify subscriber eligibility prior to review of consumer eligibility determination.

Additionally, the states should have the ability to “opt out” of any national verification process in those cases where the state has developed a process to examine subscribers’ eligibility and/or a state eligibility database that meets any federal minimum requirements established by the Commission to verify Lifeline eligibility and where the state wishes to continue to perform the eligibility screening function on its own. Nonetheless, if the Commission establishes standards for state eligibility databases that it expects the states to meet and adhere to in order to opt out, the Commission should also establish a requisite funding mechanism that is not dependent upon limited state funding initiatives so as not to establish an unfunded mandate for a federal program, especially for those states that are net contributors to the federal USF.

The Pa. PUC states that consumers should be permitted to directly interface with a national verifier who will verify the potential subscriber’s eligibility to receive Lifeline support as well. The Pa. PUC suggests that consumers be required to submit their Lifeline applications and proof documentation to a national verifier. There is a tangible benefit to allowing subscribers to directly interface with a national verifier. While many consumers may likely be unfamiliar with many of the Lifeline application documents and program requirements, a national verifier will be able to provide its expertise and efficiently instruct them regarding the Lifeline application and all relevant documentation needed to verify the customer’s eligibility to subscribe to the Lifeline program.

Additionally, if potential Lifeline subscribers need information regarding the Lifeline providers that serve their area, they can obtain such information from the state commissions, other relevant state social service agencies or the Universal Service Administrative Company (USAC). However, if the Commission implements a national verifier scheme process, the entity chosen as such should have adequate safeguards and reasonable data security practices in place to protect Lifeline applicants' personal information from misappropriation, breach, and unlawful disclosure. The Pa. PUC recommends that the national verifier should have the responsibility and duty to notify consumers if their information has been compromised.

The Pa. PUC also expects that the national verifier will play a more concrete role in collaboration with the Lifeline service providers and the states in periodically re-certifying the eligibility of Lifeline consumers. The Pa. PUC maintains serious doubts whether self-certification processes for periodic eligibility re-certification are adequate safeguards against potential waste, fraud and abuse. This parameter is of increased importance as the national Lifeline program is being expanded to include broadband access services.

Furthermore, the Pa. PUC is opposed to transferring Lifeline benefits directly to the individual Lifeline consumer via a portable benefit. The national verifier should be the conduit between the potential subscriber and the Lifeline service provider. The Pa. PUC recommends that the Lifeline support should be tied to a specific Lifeline provider chosen by the consumer. The Pa. PUC suggests that the Lifeline subscriber be required to submit a code/number that has been assigned to a specific Lifeline provider that will be deemed as evidence by the customer that it is requesting that the requisite Lifeline reimbursement be transferred to that particular carrier for provisioning Lifeline service. The Pa. PUC state that this would be more efficient way to expedite the provisioning of Lifeline service, address any concerns regarding waste, fraud and abuse, and facilitate appropriate policing of the federal USF Lifeline reimbursements.⁶³

⁶³ By focusing on the providers of Lifeline services, the national verifier and the federal USF reimbursement mechanism can better accommodate the potential provision of voice and broadband services by *different* providers to the same eligible Lifeline consumer or household (e.g., mobile voice services and fixed broadband access).

The Pa. PUC also is opposed to allowing a Lifeline service provider to provision service to a Lifeline applicant prior to verification of the eligibility determination by a national verifier and is also opposed to implementing a “pre-approval” process. The Commission takes note of California’s “pre-approval” process which mitigates the effects of the delay from the time the consumer submits a Lifeline application and supporting documentation and an eligibility determination. As explained by the Commission, in California, the pre-approval occurs subsequent to a duplicates check and ID verification, but before the third-party administrator performs a full review of the consumer’s documentation for eligibility and occurs in a matter of minutes. However, currently, providers are required to evaluate and verify a prospective subscriber’s eligibility prior to activating a Lifeline service and this practice should continue regardless of which entity provides the ultimate verification.⁶⁴ Under any implementation of a national verifier, where the verifier must review eligibility documentation, there will be a delay between a national verifier receiving documentation and the time a national verifier makes an eligibility determination. The Pa. PUC asserts that the benefits of reduced waste, fraud, and abuse in the program outweigh any harm a slight delay may cause in providing verification for eligibility to receive a Lifeline discount.

The Commission also needs to address the resolution of disputes certain to arise under the final third-party verifier process that may emerge. The Pa. PUC suggests that in those instances where an applicant and the third-party verifier disagree, the state commissions or their equivalent may be the appropriate forum to address those disputes. This prevents any delay in addressing such disputes likely to arise if only one federal agency, the Commission, is tasked with addressing those disputes.

Finally, as noted earlier, the issue of providing resources in support of state efforts to implement the federal universal service program needs to be address. It may be possible to consider a safe-harbor rule whereby no more than a predetermined percentage of a supported carriers’ revenues are deemed to be intrastate and eligible for the assessments on intrastate

⁶⁴ See generally *Lifeline and Link Up Modernization and Reform*, WC Docket No. 11-42, Order, 28 FCC Rcd 9057 (Wireline Comp. Bur. 2013).

revenues that currently supports many state efforts. Alternatively, the Commission could permit states to collect a very limited and small assessment on interstate revenues objectively generated within each state to support those efforts, an approach that precludes double-assessments in the states.

III. Streamlining the ETC Designation Process

The Commission seeks comment on streamlining and coordinating the ETC designation process at both the state and federal levels to increase market entry into the Lifeline space. The Commission seeks comment on what are the benefits and drawbacks to a uniform, streamlined approach at both the state and federal levels. It also seeks comment on how state commissions can best be encouraged to adopt a path similar to a federal streamlined approach.

1. Coordination of Federal and State ETC Designation Process

The Commission states that it has substantial flexibility and authority under Section 214(e) to streamline the ETC designation process for federal ETC designations. The Pa. PUC notes that, in the limited cases where a common carrier is not subject to the jurisdiction of a state commission, Section 214(e)(6) of the Act authorizes the Commission, upon request, to designate ETCs.⁶⁵ Additionally, the Pa. PUC notes in the *ETC Designation Order*, the Commission adopted requirements consistent with Section 214 of the Act, which all ETC applicants must meet in order to be designated as an ETC by the Commission and it encouraged, but did not mandate, that the states that have jurisdiction over ETC designations adopt these same requirements.⁶⁶ Accordingly, the Pa. PUC is not opposed to the Commission seeking to

⁶⁵ See 47 U.S.C. § 214(e)(6).

⁶⁶ See *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order*, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*) (the Commission declined to mandate that state commissions adopt the Commission's ETC designation requirements; rather, the Commission encouraged states that exercise jurisdiction over ETC designations to adopt the same requirements as the Commission when deciding whether a common carrier should be designated as an ETC).

streamline the ETC designation process at the federal level for those ETC designation petitions of which it rules upon pursuant to 47 U.S.C. § 214(e)(6).⁶⁷

However, the Pa PUC is opposed to the Commission attempting to coordinate or preempt the state ETC designation process with the federal ETC designation process. Section 214(e) of the Act “gives states primary responsibility for ETC designation.”⁶⁸ The Pa. PUC asserts that the States, through their respective state utility commissions, exercise authority for designating *telecommunications carriers* as ETCs in strict accordance with the explicit statutory mandate of Section 214(e)(2) that addresses such designation for *common carriers*.⁶⁹ Accordingly, the Pa. PUC exercises jurisdiction over the designation of telecommunications carriers, including wireless carriers⁷⁰, as ETCs. The Pa. PUC states that the Commission should not attempt to directly or indirectly preempt the states’ role or authority over the ETC designation process. Such an outcome does not seem consistent with the jurisdictional mandate in Section 214(e).⁷¹ The Pa. PUC states that the final determination of ETC designations for petitioning telecommunications carriers rests with it and other similarly situated state utility commissions under Section 214(e) of the Act.

⁶⁷ 47 U.S.C. § 214(e)(6). Section 214(e)(6) of the Act directs the Commission to designate carriers when those carriers are not subject to the jurisdiction of a state commission. Under Section 214(e)(6), the Commission may designate only common carriers “providing telephone exchange service and exchange access” as ETCs. *Id.* Because of the complex interrelationships among Tribal, state, and federal authority, providers may seek designation directly from the Commission to provide service in Tribal areas without an affirmative statement from the relevant state that it lacks jurisdiction. *Federal-State Board on Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12265-69, paras. 115-27 (2000).

⁶⁸ 47 U.S.C. 214(e)(2). Section 214(e)(2) states: “DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS. — A State commission shall upon its own motion or upon request designate a *common carrier* that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State Commission.” 47 U.S.C. § 214(e)(2) (emphasis added). The term “telecommunications carrier” and “common carrier” have the same meaning for the Pa. PUC and many other state commissions in numerous regulatory matters including ETC designations.

⁶⁹ *Id.*

⁷⁰ The Pa. PUC discloses that it does not exercise intrastate regulatory jurisdiction over the operations and services of wireless carriers, but it does have the authority to entertain, consider and rule upon an ETC petition submitted by a wireless carrier.

⁷¹ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999) (nothing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements in addition to those described in section 214(e)(1)).

2. Proposals for ETC Relief from Lifeline Obligations

The Commission also seeks comment on a proposal from a certain carrier⁷² that it permit ETCs to opt-out of providing Lifeline supported service in certain circumstances where several ETCs provision Lifeline supported service to the same potential customer base. Thus, the Commission seeks comment on whether it should relieve ETCs of the obligation to provide Lifeline supported service in specific areas where there is a sufficient number of Lifeline providers.⁷³

a. Permitting ETCs To Opt-Out of Providing Lifeline Supported Service Where There Are Multiple ETCs

Permitting ETCs to opt out of providing Lifeline-supported service in areas with multiple ETCs contravenes the Act. Specifically, Section 214(e)(2) of the Act provides for the designation of more than one carrier as an ETC.⁷⁴ Thus, the language of the Act suggests that universal service is to be provided on a competitive basis with multiple ETCs designated in non-rural service territories and, after a comprehensive public interest determination, in rural service territories.⁷⁵ Clearly, Congress envisioned several ETCs, at least in urban areas, offering competitively provided universal service and established a framework for competition in all areas of telecommunications, including universal service. Accordingly, the Pa. PUC is opposed to the proposal to permit ETCs to relinquish their obligation to provide Lifeline supported service in specific areas where there are multiple and competing Lifeline providers.

Having multiple ETCs in an area also promotes universal service. An ETC ensures that all consumers, even those who cannot afford advanced services or those in high cost service areas, have access to some basic level of service. Only ETCs are permitted to offer Lifeline

⁷² See, e.g., Comments of AT&T, WC Docket No. 11-42 *et al.*, CC Docket No. 96-45, at 19 (filed Apr. 2, 2012) (AT&T 2012 Comments).

⁷³ See *Lifeline Reform Order*, 29 FCC Rcd at 6856-57, paras. 502-504.

⁷⁴ 47 U.S.C. § 214(e)(2).

⁷⁵ Section 214(2) of the Act states in pertinent part, “Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of [subsection 214(e)(1)]. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. 47 U.S.C. § 214(e)(2).

supported services and receive Lifeline reimbursements for provisioning such services. One of the primary purposes for the receipt of universal service support is to ensure that all Americans, including low-income Americans, have affordable access to voice telephony service in every state and territory.⁷⁶ The Pa. PUC states the having competitive ETCs provisioning Lifeline service offers more choice for eligible low-income consumers. Thus, residential subscribers are better off because of increased choice in a more buyer-oriented market. There is no rational basis or set of specific criteria at this time to permit ETCs to separate or “de-link” their obligations to provide Lifeline supported services from their status as a designated ETC. This position would be in direct contravention to the statutory goals of the Act, which is to ensure universal service and access to advanced telecommunications and information services via competing carriers that have been designated as ETCs.⁷⁷

Having multiple ETCs in an area promotes the benefits of competition. The Pa. PUC acknowledges that competition in the marketplace often leads to the availability of affordable offerings as no single producer, or group of producers, and no single consumer, or group of consumers, can dictate how the market operates. Nor can they individually determine the price of goods and services and how much will be exchanged.

Additionally, the Pa. PUC also questions how the Commission would determine what constitutes a “sufficient” number of providers so as to allow an ETC to be relieved of its obligation to provide Lifeline supported service in that particular service territory. Furthermore, what conditions would the Commission impose to protect the public interest and would such a determination be consistent or made on a case-by-case ad hoc basis. For these reasons, the Pa. PUC is not in favor of an opt-out mechanism that permits an ETC to seek relief from the obligation of providing Lifeline supported service in an area served by multiple ETCs.

Furthermore, the Pa. PUC does not see any reason why the current ETC designation process and the responsibilities of the states in that process should be modified when it comes to

⁷⁶ 47 U.S.C. §§ 254(b)(2) and (3); (e).

⁷⁷ See 47 U.S.C. § 214(e)(2).

the ETC designation of entities that may wish to provide Lifeline supported broadband access services. The current system works and is consistent with federal law. Although such services have been declared as interstate telecommunications services under the FCC's *Open Internet Order*, nothing in the Act prohibits the states from exercising their lawful ETC designation and subsequent monitoring roles. In this manner, there can be a better degree of joint state and federal oversight and policing of the broadband access services *actually* delivered to eligible Lifeline consumers or households, and of the corresponding federal USF mechanism reimbursements to the broadband providers involved. Finally, states are well equipped to initiate and timely complete formal proceedings regarding the ETC status of Lifeline service providers thus more effectively policing their behavior and safeguarding the federal USF support funding outlays.

b. Ease of Market Entry For Lifeline Providers

The Commission seeks comment on other ways to ease market entry for Lifeline providers. The Commission states that there are many other requirements for new companies wishing to offer Lifeline service.⁷⁸ The Commission notes that non-facilities-based wireless providers must file and receive approval of a compliance plan prior to entering the market.⁷⁹ Thus, it seeks comment on whether there are other specific state or federal regulatory barriers or economic barriers that make it difficult for companies to participate and remain in the Lifeline program.

Section 214(e)(1) of the Act requires that, in order to be eligible for universal service support, a common carrier must offer the services supported by federal universal service support mechanisms throughout a service area *either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier)*.⁸⁰ In the *Lifeline Reform Order*, the Commission amended its rules to define voice telephony as the supported service, eliminate support for toll limitation services and removed directory assistance and operator services, among other things, from the

⁷⁸ See 47 C.F.R. §§ 54.400 *et seq.*

⁷⁹ See *Lifeline Reform Order*, 29 FCC Rcd at 6818, para. 379.

⁸⁰ 47 U.S.C. § 214(e)(1).

list of supported services. As a result of those amendments, many Lifeline-only ETCs were no longer able to meet the facilities requirement set forth in Section 214(e)(1). Consequently, the Commission instituted a compliance plan process in which the Commission determined it was in the public interest to grant conditional blanket forbearance of the facilities requirement for Lifeline-only ETCs, subject to the carriers meeting certain public safety and compliance obligations. The Commission required that each carrier seeking to avail itself of the blanket facilities forbearance granted in the *Lifeline Reform Order* submit for approval by the Wireline Competition Bureau, a compliance plan outlining certain measures to prevent waste in the Lifeline fund.

The Pa. PUC recommends that the Commission retain the compliance plan process for those potential Lifeline providers without their own integrated facilities-based telecommunications networks. Retention of this requirement is consistent with the Commission's prior determination that at least some portion of the supported services offered by an eligible carrier be services that are not offered solely through the resale of another carrier's services.⁸¹ Conversely, the language of the Act specifies that ETCs will provide service through their own facilities or through a combination of their own facilities and resale of other carriers' services. The language does not, however, require any set percentage of service that must be provided through an ETC's own network facilities. Thus, this language seems only to preclude the possibility of an ETC discharging its duties solely through resale or having no facilities whatsoever.

Since the language of the Act appears to preclude the possibility of an ETC which provides service solely through resale, it is safe to assume that potential ETCs should, to some extent, be facilities-based entities. However, the Pa. PUC suggests that the Commission expedite the compliance plan process in those instances where it has decided to forbear the statutory facilities requirement for the potential applicant. The Pa. PUC is concerned with the amount of time that the Commission has taken to process the compliance plans of the pending ETCs. The Pa. PUC has ETC petitions pending from 2011 and 2012. These carriers are still waiting for the

⁸¹ *Universal Service First Report and Order*, 12 FCC Rcd 8776, 8861, para. 152.

Commission to approve their compliance plans. These carriers and the Pa. PUC cannot proceed forward until the Commission reviews and approves their compliance plans. Accordingly, the Pa. PUC would like to see a quicker review and approval process for the pending compliance plans.

c. Creating A Process To Participate In Lifeline That Is Entirely Separate From The ETC Designation Process

The Commission seeks comment on alternative means by which we can increase competition in this Lifeline marketplace. The Commission notes that its rules currently require that a provider become an ETC prior to receiving Lifeline universal service support.⁸² However, the Commission specifically seeks comment on whether “creating a process to participate in Lifeline that is entirely separate from the ETC designation process required to receive high cost universal service support” would “encourage broader participation by providers.”⁸³ The Commission states that evidence in the record before it indicates that the ETC designation may be an impediment to broader participation in the Lifeline program.⁸⁴

Section 254(e) provides that, after the effective date of the Commission's regulations implementing Section 254, only an ETC designated under Section 214(e) shall be eligible to receive specific federal universal service support.⁸⁵ However, a carrier is not automatically entitled to receive universal service support once it has become designated as an ETC. A carrier's continuing status as an eligible carrier is contingent upon continued compliance with the requirements of Section 214(e) and only an eligible carrier that succeeds in attracting and/or maintaining a customer base to whom it provides universal service will receive universal service support. Accordingly, the Pa. PUC asserts that a carrier must meet the Section 214(e) criteria as a condition of its being designated an eligible carrier and *then* must provide the designated services to customers pursuant to the terms of Section 214(e) in order to receive federal Lifeline support.

⁸² 47 C.F.R. § 54.201(a)(1).

⁸³ *Second FNPRM* at para. 132, p. 49.

⁸⁴ *Second FNPRM* at para. 132, fn. 272, p. 49.

⁸⁵ 47 U.S.C. § 254(e).

Moreover, non-ETCs should not be eligible to receive Lifeline monies. Indeed, the language of Section 254(e) states that only an ETC designated under Section 214(e) shall be *eligible* to receive universal service support. Allowing non-ETCs to receive Lifeline funds not only will undermine legitimate Pa. PUC goals under independent state law regarding the preservation and enhancement of the evolving universal service concept and COLR obligations, but, also, can lead to serious instances of fraud and abuse of the limited Lifeline support resources. Such a result cannot be countenanced by the Pa. PUC. Pennsylvania is consistently a net contributor State to the federal USF mechanism and allowing non-ETCs to obtain Lifeline funding is a position that cannot be sustained by the Commission.

Furthermore, allowing non-ETCs to receive Lifeline money may make it more difficult for states to ensure that consumers are receiving safe, adequate, and reliable service. The Pa. PUC plays an inherent role under the federal Telecommunications Act of 1996 (TA-96), relevant Pennsylvania statutory law,⁸⁶ and applicable federal and State regulations, in ensuring the reliable and safe operation of common carrier telecommunications network facilities and provided services. The Pa. PUC entertains ETC designation petitions by entities that are customarily engaged in telecommunications carrier (or common carrier) operations, and that provide telecommunications services (or common carrier services). Wireline incumbent local exchange carriers (ILECs) with ETC designations that operate under Pa. PUC regulatory jurisdiction also have carrier of last resort (COLR) obligations for their respective study areas. Thus, the Pa. PUC and other state utility commissions will be faced with a legal and regulatory quandary if non-ETCs are permitted to obtain Lifeline universal service support. This would allow “entities” or “providers” that do not necessarily or easily fit the definition of a telecommunications carrier or common carrier under Section 214(e) to tap into scarce federal USF mechanism funding support resources. Thus, the Pa. PUC has an inherent State interest in ensuring that carriers are required to seek ETC designations and that they also fulfill certain facility and service

⁸⁶ See generally 66 Pa. C.S. § 3011(2) (Pennsylvania General Assembly declaration of policy involving the maintenance of universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas, by ILECs with incentive alternative regulation and network modernization mechanisms and plans).

parameters, especially when such an ETC designation will provide an entitlement to scarce Lifeline support funding resources.⁸⁷

In streamlining the ETC designation process, the Pa. PUC also is opposed to the Commission contemplating the adoption of specific timeframes for a state to initiate and finalize actions on ETC designation petitions. Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs, and the Commission does not possess the requisite statutory authority to override Section 214(e)(2) and impose specific time frames.⁸⁸ Because the Pa. PUC and a number of other state commissions actively exercise their Section 214(e)(2) jurisdiction and authority in adjudicating ETC designation petitions or applications from both wireline and wireless carriers, the FCC cannot invoke Section 214(e)(6) to supplant the state jurisdictional authority that is clearly and unambiguously prescribed by Section 214 of the Act. The states have primary jurisdiction over ETC designations regardless of the type of “technology” used by the potential ETC applicant to provision telecommunications service. This is because the technology utilized to provision service is totally immaterial for the purpose of exercising appropriate jurisdiction under Section 214(e) for ETC designation purposes.

Moreover, Congress never imposed timeline or presumption mandates on state actions in Section 214, likely in recognition of the complex issues and relatively long procedural process the states needed to comply with that mandate. Congress’ recognition of the complex nature of state determinations is entirely consistent with the experience of the Pa. PUC. Thus, the Commission does not have the statutory authority to rewrite federal law by substituting agency interpretations in place of legislative intent.

The Pa. PUC and other state utility commissions have a strong interest in preserving and enhancing the evolving concept of universal service both under federal and applicable state law.

⁸⁷ See generally *In re Connect America Fund; ETC Annual Reports and Certifications, et al.*, WC Docket Nos. 10-90, 14-58 *et al.*, Reply Comments of the Pennsylvania Public Utility Commission, September 8, 2014.

⁸⁸ The Commission itself has acknowledged that “[u]nder section 214 of the Act, the states *possess primary authority* for designating ETCs and setting their ‘service area[s],’ although the Commission *may* step in to the *extent* state commissions *lack jurisdiction.*” *USF/ICC Transformation Order*, ¶ 1090, *slip op.* at 399, 26 FCC Rcd 17663, 18062 (emphasis added, footnote omitted).

They also have a very strong interest in being able to identify and contact supported carriers serving low-income consumers. The Pa. PUC's primary jurisdiction and responsibility for adjudicating ETC designation petitions are inextricably linked with the preservation and enhancement of the evolving universal service concept.

The Pa. PUC respectfully suggests that the FCC should cooperatively work with the states in addressing these matters without resorting to direct or indirect federal preemption that is statutorily unsustainable and inadvisable. One possible solution would be a federal registration process similar to that adopted in the recent VoIP Numbering Order and required for every state in which a carrier receives federal support. This could be accompanied by a concomitant requirement to report revenues assessable for low-income support on an aggregate national total and state-by-state basis. This provides needed information to the states and the FCC that would assist with state implementation and/or oversight of federal programs and directives within their respective jurisdictional boundaries.

In prior filings submitted to the Commission, the Pa. PUC has commented that it is inadvisable for the Commission to follow certain proposals involving the use of FCC forbearance in the ETC designation process in an attempt to change the clear and independent statutory role of the Pa. PUC and other state utility commissions. Such proposals run contrary to both the letter and the spirit of cooperative federalism that is embodied in the unambiguous statutory language of Section 214(e).

It must also be understood that the maintenance of COLR obligations has largely paralleled the ETC designations for ILECs and is a major contributing factor for the preservation of the evolving universal service concept. The Pa. PUC is concerned that any Commission determination to relieve ETC of their statutory obligations will undermine the specific statutory universal service-related goals of Sections 214(e)(3) and 254(c)(1), 47 U.S.C. §§ 214(e)(3) and 254(c)(1), and will have detrimental effects for the maintenance and enhancement of the evolving universal service concept. This is especially true when considering the lack of specificity as to what obligations would be relieved. The Pa. PUC

states that the Commission must exercise the appropriate degree of care when entertaining invitations to alter statutory interpretations that can negatively affect the preservation of universal service for end-user consumers

The Commission also seeks specific comment on ways that it can increase competition and the quality of service by encouraging states to provide an additional subsidy for Lifeline service. The Commission notes that in states that provide a significant separate subsidy, service is more affordable for a given level of service and ETCs generally offer a higher level of service.⁸⁹ The Commission seeks ways that it can reduce state Lifeline costs so that the savings can be used for an increased state subsidy and specifically requests feedback from the states on ways in which competition can be increased and the quality of service among service providers providing service to low-income consumers under the Lifeline program can be improved.

Universal service is a key component of both Federal and State communications policy. The Pa. PUC acknowledges that combined state and federal contributions to Lifeline may increase competition and the quality of service among service providers providing service to low-income consumers under the Lifeline program. State universal service programs and USF mechanisms are a significant tool for meeting the important policy goal of ensuring access to telecommunications for all citizens, regardless of where they live or their financial status. State-specific USFs both add to support provided by the federal USF and are used to provide targeted support to address specific issues faced by each state's consumers. The Pa. PUC notes that 45 states provide some form of state universal service support in addition to the federal USF mechanism.⁹⁰ However, the Pennsylvania state USF Fund is strictly designed to support rural carriers that are obligated to provide carrier of last resort services throughout their service territories but does not include separate funding for Lifeline services. Thus, in Pennsylvania, state USF funding is directed solely to rural carriers that provide service in high cost or remote

⁸⁹ The Commission cited Lifeline offerings by Assurance Wireless in California. https://www.assurancewireless.com/public/MorePrograms_CA.aspx, (last visited June 18, 2015); Budget Mobile, Budget Mobile Lifeline, <http://www.budgetmobile.com/california/>, (last visited June 18, 2015).

⁹⁰ <http://nrri.org/download/nrri-15-05-state-usf/>.

areas and primarily supports the provisioning of affordable local exchange telecommunications services.

Although some states may not have a state USF for Lifeline purposes, most require all carriers to provide Lifeline service. Hence, the states retain an important role in working with the Commission to ensure that Lifeline service providers continue to meet social policy goals, including the universal availability of communications services, and providing reasonably comparable and affordable service between urban and rural areas. If the Commission seeks to shift more of the burden for universal service support to the states for Lifeline supported services, it should take pains not to handicap state funding mechanisms or preempt independent state law. State USF mechanisms should be allowed to function in concert with the operation of any federal mechanism, and the Commission should affirmatively and conclusively forestall interpretations of federal law to the contrary.

Additionally, the Commission should not mandate that states provide additional support in order for Lifeline providers to offer more innovative service offerings to Lifeline subscribers. Such a mandate would result in a multi-billion dollar unfunded state liability, especially for net contributor states like Pennsylvania, and which is strictly not necessary in order for the Commission to achieve the goal to increase competition and the quality of Lifeline services offered by various providers. Notwithstanding, if the Commission seeks to encourage states to provide additional support for Lifeline service, it should clearly determine that states have the requisite authority to expand the contribution base for state-specific USF mechanisms through the inclusion of various carriers and services that may not currently be subject to such contribution assessments. In this manner, states can supplement the contemplated federal support for telecommunications and broadband access services to eligible Lifeline consumers or households that is the subject of the instant Proposed Rulemaking.

The Pa. PUC appreciates this opportunity to file Comments in this proceeding.

Respectfully submitted,

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Dated: August 31, 2015