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 LIFELINE JOINT COMMENTERS ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING TO MODERNIZE AND RESTRUCTURE THE LIFELINE PROGRAM

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SUMMARY

Since Congress first established the Lifeline program in 1985, participating eligible telecommunications carriers (ETCs) have provided affordable access to vital communications services for persons in need, connecting some of the most vulnerable populations in the country to emergency services, health care, childcare, family and jobs. Over time, the Federal Communications Commission (Commission) has taken steps to ensure that, as technology and the communications requirements for full participation in society and the economy evolve, so too does the Lifeline program.

Joint Commenters, which include wireless ETCs that participate in the program and a wholesale supplier of wireless services to ETCs, applaud the Commission's consideration of further reforms designed to modernize and protect the integrity and viability of the Lifeline program, but respectfully call on the Commission to recognize that consumer choice and competition produce better results than regulation. To that end, the Commission should focus its modernization efforts on two broad goals that will allow Lifeline service providers to improve service offerings for low-income households: maximizing competition among ETCs and minimizing regulatory costs of participation in the program.

Competition, Not Minimum Service Standards, Will Deliver Maximum Value

Competition is the best way to add value for consumers, not minimum service standards imposed by regulation. Lifeline subscribers should be free to choose wireless or wireline plans that include voice-only, text and broadband options. First and foremost, if the Commission sets minimum voice and/or broadband levels too high, Lifeline providers will be unable to offer the zero entry (no cost to consumer) services that consumers want, and that have driven adoption and participation in the Lifeline program since the mid-2000s. Elimination of the zero entry wireless

Lifeline model would drastically reduce participation in the Lifeline program in contravention of the Communications Act's universal service mandate.

Shifting the Commission's focus to promoting competition and minimizing regulation will result in better service offerings and more innovation. Conversely, regulatory uncertainty and inaction deter innovation and investment. The Commission and certain state commissions inhibit competition by failing to act promptly on applications filed by would-be competitors and by imposing onerous regulatory burdens with no cost benefit analysis and, in some cases, no authority.

The FCC's eligible telecommunications carrier (ETC) designation process is too protracted (years) and subjective. The Commission should impose a 90-day deadline for review and action on compliance plans, federal ETC petitions and related transaction after which they are "deemed granted."

The Commission should encourage states to adopt their own "deemed granted" deadlines and should roll back state regulation of the federal Lifeline program by making clear that that any Lifeline-specific requirements imposed by the states must be limited to that state's Lifeline program.

Finally, the Commission must act to set free those providers who want out of the Lifeline program and to provide a regulatory environment conducive to allowing those ETCs who wish to remain in to focus more on consumers and less on regulators. The Commission can start by extending its benefit port freeze from 60 days to 12 months (while still allowing subscribers to de-enroll and re-enroll with another provider at any time) so that those service providers that do want to serve Lifeline subscribers are provided with an incentive to make more significant investments in devices and services. The Commission can attract competitors and drive innovation by focusing on establishing a more rational and predictable regulatory environment that affords willing providers an opportunity to attract investment and to earn a reasonable profit.

The Commission Should Adopt a National Verification Framework that Leverages Existing State Eligibility Databases, Encourages More State Databases, and Fills the Gaps with Market-Based Solutions

In nearly all Lifeline enrollments, ETCs verify eligibility rather than determine it. Participation in a Lifeline-qualifying program (e.g., SNAP or Medicaid) determines eligibility and Lifeline providers verify that eligibility by reviewing proof of participation (e.g., SNAP card or Medicaid card) or dipping an eligibility database. Using this process, which will now require providers to retain the proof of eligibility for auditing, the Lifeline program has achieved a very low rate of improper payments (0.32%), which is much lower than the government average (4.5%). This low level of improper payments has been achieved with very low administrative costs of approximately 1 percent of the size of the program.

For this reason, any decision to "take the eligibility determination away from the Lifeline providers" should embrace a practical approach that does not impose burdensome costs on the Lifeline program and service providers. If the national eligibility database promised by the Commission is not possible, the agency should adopt a flexible approach that takes advantage of existing state eligibility databases (with certain performance standards), encourages states to build more eligibility databases, and fills the gaps with market-based solutions such as multiple, USAC-certified independent third-party eligibility verifiers that ETCs can choose based on what best suits their business model and customer base (e.g., real-time or not). A single, one-size-fits-all national verifier would be too inflexible and expensive.

The national eligibility verification framework, whether state database or third-party verifier, must preserve a real-time enrollment option, which is essential for equality of consumer experience between low-income and non-low-income consumers. Low-income consumers should not receive a second-class activation process in which they are forced to wait days for enrollment approval, a phone or service because the state database or the available verifiers do not provide real-time service.

Joint Commenters favor retaining all of the Lifeline-eligibility programs and adding programs for veterans and Women Infants and Children (WIC), and leveraging efficiencies from the Lifeline eligibility programs to improve customer awareness of Lifeline benefits. However, any such efforts should be technology neutral, carrier neutral and nonexclusive.

Joint Commenters also urge the Commission to reject calls for a Lifeline direct benefit, or "voucher," program. Lifeline vouchers would harm the program by adding new potential for fraud and abuse not present in today's Lifeline program, would balloon program administration costs, and are unnecessary to provide consumer choice.

The Commission Should Focus on Streamlining Its Existing Regulations Rather Than Piling on New, Unnecessary Ones

In considering its current rules and proposals for new ones in the Second FNPRM, the Commission should use competition—not regulation—as its North Star, and only regulate where it has identified a cost-effective and technology neutral solution to a real and well substantiated problem warranting the costs to be imposed. Proper data and due process, not political drama and made-for-media responses, should guide the Commission's choices. Where rules are not or no longer warranted, the Commission should ease and streamline them to the benefit of low-income consumers and ETCs. Taking this sound approach, the Commission should:

- **eliminate its 60-day non-usage rules**, not shorten the non-usage period. The non-usage rules impose substantial costs (that outweigh any perceived benefit) on consumers, ETCs, USAC, the Commission and the Lifeline program as a whole. To the extent the Commission retains any vestige of these rules, it should allow consumers to decide how best to use their services, including text, data, or even simply keeping the phone on and available in case of an anticipated need or emergency, without losing their service.

- **fix the NLAD's existing identity verification process**, which needlessly imposes burdens on consumers, providers and USAC, resulting in the delay or denial of Lifeline benefits to eligible consumers. ETCs should be permitted, but not required, to review photo identification at enrollment.

- **adopt OMB approved Lifeline forms**, but only if done through a collaborative process that results in streamlined and easy to understand forms that **respect the dignity of low-income consumers**. The forms need only include a single certification under penalty of perjury and should **not require a heightened standard beyond what is required by the E-SIGN Act** (e.g., no initialing requirements and no signature standards that are not required of others in today's digital economy). Standardizing forms would eliminate the waste of resources involved with audits that seek to recover funding because of findings regarding the particular wording or placement of certifications.

- **not impose additional application and customer notification requirements on wireless carriers**. The Commission has made reasoned determinations regarding when applications to the Commission and/or customer notices are required largely based on the type of service provided and the competitive nature of the industry. The Commission has not identified good cause to upset that long-standing regulatory regime for wireless Lifeline customers.

- **not impose burdensome new de-enrollment requirements, including a 24-hour customer service hotline**. Joint Commenters have received no customer complaints related to the inability to de-enroll past normal business hours, but would incur substantial costs to employ the resources necessary to staff a 24-hour customer service hotline.

- **end USAC's unlawful funding hold practices**, which violate the Commission's rules, federal law and principles of due process, before it takes action to **improve USAC's online disbursement tool** to make additional ETC funding information publicly available.

- **first ensure that the NLAD is functioning optimally with respect to its original, intended purpose before the Commission embarks on an effort to expand its roles and responsibilities**—imposing dramatic costs and undoubted delays in the process. Further, the Commission should follow the common sense principle that where all ETCs must use it (e.g., the NLAD, TPIV checks), the program should pay, but where only some ETCs choose to use it (e.g., USAC for recertification), the ETC should pay.

- **reject requiring ETC officers to certify that all individuals taking part in the ETC's enrollment processes have received sufficient training on the Lifeline rules.** The Commission does not have rules regarding what constitutes sufficient training. Further, where the Commission imposes vague compliance obligations without detail, the result too often is "gotcha" audits and enforcement, heightened regulatory costs, and less money available to serve program beneficiaries.

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The Lifeline Joint Commenters[1] (Joint Commenters), by and through the undersigned counsel, respectfully submit these comments in response to the Commission's Second Further Notice of Proposed Rulemaking (Second FNPRM) seeking comment on proposals to modernize and restructure the Lifeline program.[2] Joint Commenters are Eligible Telecommunications Carriers (ETCs) committed to defending the integrity of the Lifeline program so that it remains available for and to all who are eligible, enabling access to modern wireless telecommunications

[1] The Joint Commenters are comprised of the Lifeline Connects Coalition (Blue Jay Wireless, LLC, i-wireless LLC and Telrite Corporation) as well as American Broadband & Telecommunications Company, Assist Wireless, LLC, Easy Telephone Services Company d/b/a Easy Wireless, Prepaid Wireless Group LLC, TAG Mobile, LLC, Telscape Communications, Inc./Sage Telecom Communications, LLC (d/b/a TruConnect) and Total Call Mobile, Inc.

[2] *See In the Matter of Lifeline and Link Up Reform and Modernization*, *Telecommunications Carriers Eligible for Universal Service Support*, *Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71 (rel. June 22, 2015) (Second FNPRM).

necessary for low-income Americans to connect to jobs, healthcare, emergency services and family.

INTRODUCTION

Since 1985 when Congress first established the program, Lifeline has served as a promoter of opportunity and independence for low-income Americans. The program has provided vital communications services for persons in need, connecting some of the most vulnerable populations in the country to emergency services, health care, childcare, family and jobs. Crucially, over time, Congress and the Commission have taken steps to ensure that, as technology and the communications requirements for full participation in society and the economy evolve, so too does the Lifeline program. Among other innovations, the Commission has expanded the program to support resold wireless service and increased competitive offerings by opening Lifeline participation to non-facilities-based ETCs. Today, nearly three quarters of all Lifeline subscribers choose wireless resellers to meet their essential communications needs. As the Commission has modernized the program, it also has adopted useful regulatory controls (e.g., proof of eligibility) to reduce real and perceived waste, fraud and abuse in the program.[3]

With this Second FNPRM, the Commission once again seeks to modernize the Lifeline program. Joint Commenters applaud the Commission's consideration of further reforms designed to protect the integrity and viability of the Lifeline program, as well as its goal of modernizing the program so that it joins all other universal service programs in supporting broadband. However, Joint Commenters respectfully call on the Commission to adhere to the

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[3] *See Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training,* WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (2012) (2012 Lifeline Reform Order).

principle of regulatory restraint and humility. Consumer choice and competition produce better results than regulation. To that end, the Commission should focus its modernization efforts on two broad goals that will allow Lifeline service providers to improve service offerings for low-income households: maximizing competition among ETCs and minimizing regulatory costs of participation in the program. Together, these goals will enhance, rather than hinder, the Commission's efforts to reduce waste, fraud and abuse.

These comments proceed in five major sections. In Section I, Joint Commenters submit that, rather than establishing minimum service standards through regulation, the Commission should focus on promoting competition in the Lifeline program as a means of driving a wide variety of service offerings so that consumers, rather than regulators, get to choose the providers, services and plans that best meet their needs. In Section II, Joint Commenters propose that a national subscriber eligibility framework should not rely on a single national verifier, but instead should utilize existing state eligibility databases, promote development of more state databases and—where no state database is available—offer multiple options, including certified independent third-party eligibility verifiers. In Section III, Joint Commenters call on the Commission to reduce federal and state barriers to entry and improve federal and state benefits to encourage competition and more robust service offerings. In Section IV, Joint Commenters submit that, if the Commission does not eliminate its misguided, byzantine and discriminatory 60-day non-usage rules, those Lifeline rules should reflect the manner in which consumers, service providers and employers choose to communicate today, and should recognize text messaging, broadband data and subscribers turning on their phone as "usage." In Section V, Joint Commenters propose that additional modifications needed to promote efficient administration of the Lifeline program should utilize a light regulatory touch and seek only to address clearly identified problems, thereby avoiding unnecessary costs and unintended consequences.

I. THE COMMISSION SHOULD FOCUS ON PROMOTING COMPETITION, RATHER THAN ON REGULATING MINIMUM SERVICE STANDARDS, TO FURTHER IMPROVE LIFELINE SERVICE OFFERINGS

In the Second FNPRM, the Commission seeks comment on whether "to establish minimum service levels for all Lifeline service offerings to ensure the availability of robust services for low-income consumers," including both voice and broadband service.[4] Underlying its proposal is a concern that "the current program is not structured to drive sufficient competition," based on a perception that wireless voice service levels have not improved since the 2012 Lifeline Reform Order. The Commission's concern is misplaced.

As explained in more detail below, the Commission's view of the marketplace ignores the vigorous efforts of ETCs to meet evolving consumer demand for mobile services, and tellingly overlooks the fact that the Commission has artificially restrained competition in the delivery of Lifeline service by failing to act on 53 compliance plans and 38 federal ETC petitions that have remained pending before the Commission for as long as five years,[5] as well as the agency's failure to rationalize federal and state regulations, audits and investigations that impose heavy and often unnecessary costs on ETCs.

Maximizing competition and minimizing regulation is the best approach to ensuring that consumers receive good value in the Lifeline services they choose. However, if the Commission sees value in requiring ETCs to provide a specified array of voice and/or broadband service

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[4] *See* Second FNPRM ¶ 15. Joint Commenters support the Commission's effort to extend the Lifeline program to support broadband, and submit that the Commission has authority under Section 254 of the Communications Act of 1934, as amended, and Section 706 of the Telecommunications Act of 1996 to do so.

[5] *See* Section I.C. *infra*.

options, the Commission should be vigilant in preserving consumer choice, including the ability to choose a no-cost-to-consumer and voice only service option.[6] Moreover, the Commission should allow the market to set prices for service offerings and ensure that its rules are technologically neutral and square with established universal service standards. Finally, regardless of whether the Commission chooses competition and consumer choice over the more paternalistic and likely unmanageable regulation of minimum service standards, the Commission must ensure that any budget it may establish for the Lifeline program does not prevent eligible subscribers from obtaining Lifeline service.

A. Wireless ETCs Have Continued to Improve Lifeline Service Offerings Since 2012

In the Second FNPRM, the Commission assumes that because many providers continue to offer 250-minute service plans, the program has stagnated at levels insufficient for today's low-income consumers.[7] This assumption is flawed. Not only have ETCs improved Lifeline service and equipment offerings over time, but in many respects, they also have diversified service packages to meet evolving consumer demands.

Prior to the 2012 Lifeline Reform Order, wireless ETCs engaged in vigorous Lifeline service plan competition. As the Commission noted in the 2012 Lifeline Reform Order:

> Based on the record, the market is increasing the number of minutes that pre-paid wireless ETCs are offering. For example, TracFone initially provided approximately 68 minutes of airtime per month to subscribers, but due to competition from other providers, it now provides up to 250 minutes a month.[8]

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[6] For purposes of these comments, "voice only" services refer to those services that may include text, voicemail, three-way calling, call waiting and other similar ancillary services, but not to services with a voice and broadband component.

[7] *See* Second FNPRM ¶ 16.

[8] *See* 2012 Lifeline Reform Order ¶ 50.

Since 2012, wireless ETCs have continued to compete, offering innovative service packages to meet consumer demand for improved equipment and diverse mobile communications features. A number of the largest ETCs—including some of the undersigned ETCs—have increased their no-cost-to-consumer voice offerings beyond 250 minutes, including 500 minute offerings and 500 "unit" offerings, which can be used for either voice or text communication.[9] Additionally, responding to consumer demand for more advanced equipment, many ETCs have transitioned from offering refurbished handsets to offering new handsets, and in some markets from offering "feature phones" to offering "smartphones." Notably, wireless ETCs have borne these costs despite the fact that the Commission essentially eliminated the $30 per subscriber Link Up connection, making it available only to facilities-based recipients of high cost funding.[10]

Similarly, as consumers' appetite for text and data have increased, most ETCs have diversified their service plans to include text and many now offer broadband options.[11] Far from

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[9] Joint Commenters note, however, that the ability of ETCs to offer consumers more than 250 minutes as a part of a no-cost plan depends on a number of factors, including economies of scale that the ETC is able to obtain.

[10] The removal of Link Up placed significant financial pressure on wireless ETCs while creating an advantage for (primarily wireline) service providers that receive Connect America Fund dollars. The Commission should refrain from tilting the competitive landscape so as to drive outcomes that may not be preferred by consumers. Accordingly, the Commission should not adopt its proposed fixed-only broadband connection charge reimbursement unless it provides a similar connection charge for wireless ETCs. *See* Second FNPRM ¶ 54. The Commission's proposal is misguided because it is neither technology nor carrier neutral and it seeks to replace consumer choice with regulator choice. Oddly, the Commission's proposal would drive consumers to wireline networks at a time when a majority of low-income consumers prefer and choose wireless services. *See* Aaron Smith, *U.S. Smartphone Use in 2015*, Pew Research Center (Apr. 1, 2015), available at http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/. Lifeline subscribers choose wireless services at an even higher rate. If the Commission nevertheless decides to provide a one-time reimbursement subsidy to cover up-front broadband connection charges, it should allow consumers to apply to the one-time subsidy toward the purchase of a smartphone.

[11] Most wireless ETCs provide 250 minutes or texts and some have added 250 texts or unlimited texts to the no-cost-to-consumer basic offering. While, some ETCs may find it possible to offer a "taste" of broadband sufficient to establish and periodically check an email account, which is something that is increasingly an essential element of participating in today's digital world, the $9.25 reimbursement is not sufficient to provide robust broadband data and voice service packages at no cost to the Lifeline subscriber. Wireless ETCs do offer data top-ups in increments starting at $5.00 or $10.00 (for between 50 and 250 MB or more).

stagnating, these evolving service offerings demonstrate ETCs' continued efforts to keep pace with changing consumer demands, the offerings of other ETCs, and the offerings of the broader retail wireless market.

Finally, ETCs have improved their customer service, providing hands-on assistance at the point of enrollment and extended customer support hours during the life of the customer relationship. These customer service improvements have been critical to improving Lifeline participation and customer retention rates, ensuring that Americans most in need have access to resources and information that enable them to most effectively utilize Lifeline service and the many benefits it enables.

B. Commission and State Regulators Have Significantly Increased Regulatory and Administrative Costs for ETCs, Thwarting Further Enhancements to Service Offerings

Since the 2012 Lifeline Reform Order, the Commission and state regulators have significantly increased regulatory and administrative costs for ETCs at almost every stage of the consumer lifecycle. These costs include more obvious ones associated with enhanced enrollment and recertification requirements, as well as less obvious ones, such as virtually incessant auditing, redundant inquiries and boundless investigations. The rising tide of these costs has squeezed ETCs' thin margins and often unnecessarily diverted ETCs' limited resources away from serving Americans in need. If the Commission wants to extract more value for consumers, it needs to take a serious look at slimming down the costs it, USAC and state commissions impose on ETCs, in a quixotic effort to wring-out every last penny of real or imagined waste, fraud or abuse in a program with an improper payment rate much lower than E-rate and ten times lower than the national average for federal programs.[12]

The Commission's 2012 reforms imposed significant costs on ETCs associated with the subscriber enrollment process, duplicate detection, subscriber retention, and subscriber recertification. It is time for the Commission to carefully consider which of these costs deliver a worthwhile benefit and which do not. The Commission estimated the industry costs of enrollment alone to be $175.8 million annually.[13] The requirement from the 2012 Lifeline Reform Order to review proof of eligibility was a positive step forward in reducing waste, fraud and abuse in the program, but it and other enrollment requirements do not come without costs, which primarily are imposed upon the Lifeline providers. Joint Commenters have had to develop an electronic process to review proof of eligibility, take a picture of that proof for corporate review (often hiring dedicated staff to conduct reviews), and approval and then purge the proof to comply with the Commission's rules. Further, the development and implementation of the National Lifeline Accountability Database (NLAD) has imposed perhaps the greatest administrative costs on ETCs and their vendors, including the costs of building the ETCs' systems into the NLAD through an application programming interface (API).[14] While a national duplicates database was certainly needed (and was delivered by USAC with less than the

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[12] *See* Lifeline Connects, Fact Checker: Improper Payments, available at http://lifelineconnects.org/index/issues/fact-checker-improper-payments/.

[13] *See* United States Government Accountability Office, GAO 15-335, Report to the Chairman, Committee on Commerce, Science and Transportation, U.S. Senate: FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program, n. 54 (Mar. 2015) (2015 GAO Lifeline Report) ("Eligibility verification also imposes burdens on ETCs and USAC. FCC's Paperwork Reduction Act filing with the Office of Management and Budget stated that the annual costs of initial eligibility data collection and recertification would be $175,820,000 and $419,300,000 respectively.").

[14] While most of the Joint Commenters interact with the NLAD, TruConnect does not operate in states where the NLAD is available at this time. Further, Prepaid Wireless Group is a wholesale service provider and does not interact directly with the NLAD.

mandated functionality more than a year late), the Commission should not overlook the costs that it imposes on the industry.

The Commission also has imposed costly ongoing regulatory obligations on ETCs and their subscribers, requiring the development of complex technical systems and processes to meet Commission standards. For instance, to comply with the Commission's 60-day non-usage rule, ETCs and their vendors have had to build custom systems to track customer usage data, to provide reminders as necessary, to send warning messages and to effectuate required de-enrollments. Similarly, the new comprehensive annual subscriber recertification process has imposed substantial administrative costs on ETCs, including the costs of contacting all subscribers (often through multi-modal and repeated communications), establishing systems to obtain compliant certifications (e.g., interactive voice response (IVR) systems that meet the guidelines of the E-SIGN Act) and reporting obligations.[15] Prior to 2012, ETCs were required to annually recertify only a valid sampling of subscribers. After the 2012 reforms, all ETCs are required to annually recertify the eligibility of all of their subscribers, which is a substantially more expensive endeavor, the annual industry-wide cost of which the Commission has estimated at $419.3 million.[16] The burdens imposed through the current cycle of over-regulation (which followed a pre-2012 period where the Commission for too long had ignored calls for program reforms), are compounded by the fact that many of the Commission's Lifeline rules are too vague (e.g., marketing rules that give rise to a "know it when I see it" standard and absurd results).

In addition to the Commission's rule-based reforms, one of the largest drivers of

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[15] *See* 47 C.F.R. §§ 54.410(f), 54.416; *see also* 2012 Lifeline Reform Order ¶¶ 115-122, 129-148 (describing annual recertification requirements).

[16] *See supra* note 13.

unnecessary costs is the nearly incessant, uncoordinated and opaque barrage of audits and investigations of Lifeline providers. As it stands, ETCs often face multiple investigations and inquiries from multiple Commission bureaus, the FCC's Office of Inspector General and USAC at the same time. In some circumstances, the investigations seek "any and all" documents that ETCs hold related to the Lifeline program without a clear explanation of what the investigator seeks to discover or under what circumstances the investigation will end. In other circumstances, including audits of ETC certification forms, the audits have resulted in unnecessary and burdensome micromanagement based on ill-defined or undefined standards. For example, the Commission and USAC have never defined their methodology for duplicate detection, despite repeated requests from ETCs for clarity so that they can improve their own systems and ensure compliance. As a result, USAC's IDV and PQA audit processes remain a black box for ETCs, even as the Commission, through the NLAD, has taken the duplicate detection process out of ETCs' hands. Other inquiries have resulted in protracted debate over the placement and number of times "under penalty of perjury" legalese must be included in Lifeline enrollment forms, when once should be sufficient.

The Commission also needs to assess and rein-in unnecessary costs that state regulators impose on wireless ETCs in particular. Since 2012, state regulatory authorities have imposed burdensome (and often duplicative) regulatory requirements on wireless ETCs. For example, several states—such as Washington, New Mexico, Oregon and South Dakota—have developed costly and unnecessarily protracted ETC approval processes. These state approval processes frequently include voluminous data requests, financial reviews and other regulatory requirements that often exceed those states' legal authority to regulate wireless service. While Joint Commenters support efforts to reduce waste, fraud and abuse in the program, the Commission should more carefully consider the costs and benefits of such regulations and recognize that these additional federal and state compliance costs challenge the ability of ETCs to offer ever-improving levels of service to qualified subscribers.

One of the most extreme examples of state over-regulation of the federal Lifeline program is Oklahoma, which imposes a host of burdensome, duplicative, and generally unnecessary regulations on ETCs. First, the Oklahoma Corporation Commission (Oklahoma Commission) has imposed extensive marketing rules on wireless ETCs,[17] dictating the number, dimensions and content of on-site banners and tents, the required clothing for sales agents and what information must be at each location. Further, ETCs are required to provide notice to the Oklahoma Commission's Public Utility Division (PUD) in advance of all mobile and door-to-door marketing events, including the date, time and location of such events. Second, Oklahoma has imposed unnecessary and costly minimum service standards on ETCs.[18] Third, Oklahoma imposes significant document retention and notification requirements on ETCs. Under PUD rules, ETCs must annually submit a copy of the ETC's FCC Form 555[19]; promptly respond to any request for information made by Commission staff at any time[20]; maintain a point of contact at the company that can respond to any inquiry from PUD or Consumer Services Division (e.g., customer service, answering complaints, questions on Terms and Conditions) and provide written notice within 30 days of any changes to contact information[21]; and obtain documented

[17] *See* Okla. Admin. Code 165:55-23-16.

[18] *See* Okla. Admin. Code 165:55-23-15(n). As applied to wireless service providers, these regulations constitute impermissible rate regulation barred by Section 332 of the Communications Act. However, until the Commission's sweeping action in June 2015 to redefine Tribal lands in Oklahoma, the rule had little practical impact, as the Oklahoma Commission does not authorize competitive ETCs to serve most areas that had been designated as non-Tribal in the state.

[19] *See* Okla. Admin. Code 165:55-23-3(d)(1)(D).

[20] *See* Okla. Admin. Code 165:55-23-3(f).

[21] *See* Okla. Admin. Code 165:55-23-3(e).

proof of eligibility for each subscriber during the annual recertification process.[22]

There are numerous other examples of state commissions reaching beyond their regulatory authority to impose burdensome requirements on ETCs without any assessment of costs on providers and consumers. Missouri now requires ETCs to collect proof of eligibility during the recertification process every two years, even though the FCC rejected that kind of requirement and its own recertification rules do not require such proof.[23]

A final example that compels a "call-out" for its arbitrary and counterproductive nature, is Illinois' so-called "80/20" rule, under which at least 20 percent of an ETC's customers must be non-Lifeline. This pulled-from-thin-air requirement is burdensome on ETCs and unfair to low-income consumers because it raises the possibility that an ETC will need to turn away Lifeline customers in situations where the ETC does not have the requisite number of non-Lifeline customers to accept a new Lifeline enrollment. Of course, this text book example of bad regulation conflicts with the Commission's requirement that ETCs serve eligible customers. It is not too late for the Commission to rein-in these and other state requirements that add costs and regulatory uncertainty without commensurate benefit and in a manner that treats Lifeline subscribers as second class citizens. In light of the increased compliance costs that federal and state regulators have imposed on ETCs since 2012, the Commission's assertion that "Lifeline ETCs are not offering consumers 'innovative and sufficient service plans' or passing on their

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[22] *See* Okla. Admin. Code 165:55-23-12(b). The Oklahoma Commission was made aware of the FCC's position against requiring proof for recertification and adopted the rule despite vigorous opposition from the industry and the obvious conflict with federal rules.

[23] *See* Mo. Code Regs. Tit.4 § 240-31.120(2)(C) & (D). Indeed, the Commission considered and rejected a proof upon recertification requirement, stating that "[t]he upfront documentation requirement will serve as a sufficient initial check on consumer eligibility and alleviate the need for ETCs or third-party administrators to obtain documentation from subscribers on a recurring basis as part of the back-end re-certification process." 2012 Lifeline Reform Order ¶ 134. Further, the Commission determined that not requiring proof of eligibility for recertification would "reduce the burden of annual verifications on both consumers and ETCs." *Id.*

greater efficiencies to consumers"[24] seems (and is) less than fair and less than fully baked. Rather, the facts demonstrate that in the face of burdensome and inefficient regulations that balloon costs, ETCs that have not exited by choice or necessity[25] are continuing to provide the best possible service to subscribers for the value of the Lifeline subsidy. The Commission can get more for consumers by making sure that it and its state counterparts regulate more wisely and with more moderation and humility.

C. To Promote Competition, the Commission Should Clear Its Backlog of Federal ETC Petitions and Compliance Plans, Streamline Regulatory Obligations and Promote Mutually Advantageous Customer-Carrier Relationships

The Commission's interest in "extracting" the most value for consumers out of the Lifeline benefit would not be well served through the creation of regulated minimum service standards or any additional bureaucracy that would attempt to keep them current. Instead, the Commission can achieve a better result by (1) clearing its long-stagnant backlog of federal ETC petitions and compliance plans; (2) streamlining regulatory obligations and encouraging harmonization between federal and state requirements; (3) promoting a stable regulatory environment necessary for ETCs to attract investment needed to support improved service packages and ancillary offerings; and (4) promoting mutually advantageous longer term customer-carrier relationships.

More competition—not more regulation—is the best way to obtain the most value for the Lifeline benefit. The Commission has long held the belief that "trusting in the operation of

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[24] *See* Second FNPRM ¶ 42.

[25] Since the 2012 Lifeline Reform Order, a number of significant prepaid providers have exited the Lifeline program. These providers include Cincinnati Bell, Cricket Wireless and T-Mobile. *See* Phil Goldstein, *With just 400 Lifeline customers*, *T-Mobile to drop support for federal Lifeline program*, FierceWireless (Sept. 24, 2014); *see also* Cincinnati Bell Inc., Quarterly Report (Form 10-Q), 38 (Nov. 6, 2014) ("Effective July 1, 2014 we eliminated our lifeline program.").

market forces generally better serves the public interest than regulation."[26] The most effective and least burdensome way that the Commission can inject competition into the Lifeline market is to turn its attention to the review and approval of many of the compliance plans[27] and federal ETC petitions that remain outstanding and to encourage states to expeditiously approve ETC designations. According to the Commission's website tracker,[28] since the Commission adopted the 2012 Lifeline Reform Order, it has received 74 compliance plans from ETCs seeking to offer Lifeline service to low-income Americans.[29] Of these, it has approved only 20, denied only one, and let the remaining 53 languish. The Commission has not approved a compliance plan since December of 2012.[30] Consequently, the Commission has prevented 53 additional carriers from entering the market and "enhanc[ing] competition among retail providers."[31] Similarly, in the 12 states over which the Commission has ETC-granting authority, the agency's website demonstrates that it has approved only seven federal ETC petitions, with 38 remaining unaddressed. Most of these petitions have been pending for three or more years. If the Commission were to approve these outstanding petitions, it would likely spur an unprecedented

[26] *In the Matter of 1998 Biennial Regulatory Review, et al.*, WT Docket Nos. 98-205, 96-59, GN Docket No. 93-252, Notice of Proposed Rulemaking, FCC 98-308, ¶ 5 (1998).

[27] As explained in more detail below, as an alternative the Commission should consider removing its compliance plan requirement all together. *See* Section III.A. *infra*.

[28] *See* https://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions (last visited Aug. 31, 2015).

[29] In the 2012 Lifeline Reform Order, the Commission granted forbearance from the requirement under Section 214(e)(1)(A) of the Communications Act of 1934, as amended, that Lifeline-only ETCs must provide Lifeline service, at least in part, over their own facilities. The Commission conditioned its forbearance on a requirement that ETCs submit and receive approval for a compliance plan explaining how it will comply with the Commission's Lifeline rules and detailing its service, service availability, and service offerings. *See* 2012 Lifeline Reform Order ¶ 368; *see also* 47 U.S.C. § 214(e)(1)(A).

[30] *See* Wireline Competition Bureau Approves the Compliance Plans of Airvoice Wireless, Amerimex Communications, Blue Jay Wireless, Millennium 2000, Nexus Communications, Platinumtel Communications, Sage Telecom, Telrite and Telscape Communications, WC Docket Nos. 09-197, 11-42, Public Notice, DA 12-2063 (2012).

[31] 2012 Lifeline Reform Order ¶ 378.

increase in competition in the Lifeline market. This competition would benefit consumers by incentivizing improved service offerings and additional ancillary benefits (e.g., better handsets and better value options) while resolving any perception that the existing Lifeline market lacks sufficient competition.

In addition to increasing competition, it is clear that the Commission needs to embrace a regulation "roll-back" based on rational cost/benefit analyses and needs to adopt the same approach for any new regulations it considers with the goal of minimizing the numerous regulatory costs on ETCs. Among the Commission rules and procedures most ripe for reform are USAC audits, which are subject to inadequate oversight (e.g., USAC audits ETCs for duplicates when its own NLAD is supposed to prevent them), and the flood of Commission investigations that can involve three different offices/bureaus investigating the same issue, or far too often, involve fairly unbounded investigations into nothing in particular (or nearly any transparency with respect to what they might be looking at). To reduce needless burdens and costs on ETCs, the various Commission bureaus and offices should employ targeted, better-defined and transparent processes that complement rather than replicate or conflict with one another. The Commission also should better manage USAC to ensure that each audit has a specific and announced purpose and timeline, and that the standards by which ETCs are judged are those that the Commission has properly adopted through notice and comment rulemaking. Moreover, the Commission should eliminate its usage rules, which can have unintended consequences such as requiring the disconnection of a deaf person because her preferred method of communications does not count.[32] Finally, the Commission should harmonize and streamline its marketing and disclosure rules, which too often require legalese, repetition and similar

[32] *See* Section V.E. *infra*. for a detailed discussion of why the usage rules should be eliminated.

unnecessary obligations that only serve to confuse consumers and add costs (e.g., there is no rational justification for including legalese on road-side marketing signs).

As explained in Section I.B. *supra*, the Commission can and should also reduce ETCs' costs by reining-in regulations imposed by state commissions on the federal program. These regulations impose significant costs on ETCs, including the costs of designing customized marketing materials for the state, retaining documents, submitting forms, and undergoing separate audits and investigations. While Joint Commenters recognize states' interests in ensuring their own state low-income programs are well-functioning, the Commission should prohibit states from imposing unreasonable conditions or additional regulations on ETCs' participation in the federal Lifeline program.[33]

Finally, the Commission should take steps to promote mutually advantageous customer-carrier relationships to incentivize carriers to maximize value delivered to consumers. Specifically, the Commission should extend its benefit port freeze from 60 days to 12 months (while still allowing subscribers to de-enroll and re-enroll with another provider at any time).[34] This temporary benefit port freeze serves as a "velocity check" on unscrupulous consumers ("flippers") who can abuse the program by drawing multiple benefits from the program and

[33] Section 214(e)(2) of the Act, provides only limited authority for states to impose conditions on carriers in connection with the ETC designation process. *See* 47 U.S.C. § 214 (2). Section 214(e)(2) is not an independent grant of state rulemaking authority and does not expand the jurisdiction of state commissions to impose rules on federal programs or to regulate where they otherwise lack authority to do so.

[34] Federal Public Housing Assistance (Section 8), which qualifies the beneficiary for Lifeline, has a 12 month commitment to the jurisdiction of the Public Housing Authority. *See* U.S. Department of Housing and Urban Development, Housing Vouchers Fact Sheet, available at http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8 ("Under the voucher program, new voucher-holders may choose a unit anywhere in the United States if the family lived in the jurisdiction of the PHA issuing the voucher when the family applied for assistance. Those new voucher-holders not living in the jurisdiction of the PHA at the time the family applied for housing assistance must initially lease a unit within that jurisdiction for the first twelve months of assistance. A family that wishes to move to another PHA's jurisdiction must consult with the PHA that currently administers its housing assistance to verify the procedures for moving.").

multiple handsets from providers in a single month. This behavior contributes to negative perceptions of the Lifeline program. Further, by expanding the reasonable velocity check already in place from 60 days to 12 months, the Commission would provide service providers with an incentive to make more significant investments in devices and services, so that low-income consumers can benefit from the up-front advantages of longer term carrier relationships.[35]

D. The Commission Can Empower Low-Income Consumers Without Jeopardizing Preferred No-Cost-to-Consumer Service Plans, Mandating Plan Minimums or Setting Rates

The Commission seeks comments on how it can establish minimum service standards for Lifeline, including how it can ensure just, reasonable and affordable rates, and whether it should base a minimum service standard methodology on data or an objective standard.[36] Competition, not regulation, should set the standards for Lifeline service offerings and pricing. Lifeline providers must remain free to offer no-cost-to-consumer/no-barrier-to-adoption ("zero entry") plans that are preferred by low-income consumers and which have served a critical role in enhancing participation in the Lifeline program. If the Commission sees value in studying the market and calling consumers' attention to certain statistics—e.g., an industry average X-minute plan with Y GB of data—it should not set the price for such service and should not set the plan as a minimum Lifeline service level.[37] ETCs should be free to offer other plans and to apply the

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[35] Joint Commenters recognize that this proposal will not stop all types of "flipping" and therefore some carriers may still be reluctant to offer advanced mobile devices at no cost or significantly reduced cost to Lifeline subscribers. The Commission should explore additional ways to provide greater certainty and other incentives to enable ETCs to put smartphones and other broadband capable devices into the hands of low-income consumers.

[36] *See* Second FNPRM ¶ 35.

[37] If the Commission requires ETCs to provide certain plans, it should adopt a transition period of at least 180 days. More time may be required after considering the potential impact of any changes on consumers and particular low-income communities.

Lifeline discount to any voice and/or data plan, including a zero entry plan. Further, any service quality standards should be technology neutral.

1. The Commission Must Preserve the Popular No-Cost-to-Consumer Option

Lifeline providers should be free to offer service plans of their choosing. In a competitive marketplace, consumers—not regulators—will decide which providers and plans succeed and which do not. If consumer choice is respected, these options will include no-cost-to-consumer options, which are popular with low-income consumers and have served as an important stimulus for raising consumer awareness of and participation in the Lifeline program. In the 2012 Lifeline Reform Order, the Commission cogently set forth the many reasons why no-cost, zero-entry options are critical for the program and its beneficiaries. Specifically, in the context of rejecting a minimum charge, the Commission noted that foreclosing zero-entry options "could be burdensome for those low-income consumers who lack the ability to make such payments electronically or in person, potentially undermining the program's goal of serving low-income consumers in need."[38] Moreover, the Commission correctly recognized that "making regular payments to an ETC, even when those payments are minimal, may be difficult for low-income consumers who do not have bank accounts and might fail credit checks."[39] Finally, the Commission found that foreclosing a zero-entry option "could potentially discourage consumers from enrolling in the program and could result in current Lifeline subscribers leaving the program."[40]

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[38] 2012 Lifeline Reform Order ¶ 266.

[39] *Id.*

[40] *Id.* at ¶ 267.

The reasons that drove the Commission to avoid imposing a minimum charge in 2012 are as valid today as they were then. In fact, if the Commission includes broadband as a supported service, it will only heighten the need for a zero-entry option. First, price remains one of the principal barriers to broadband adoption.[41] Internet adoption continues to be significantly lower for low-income Americans than for those of greater means.[42] Indeed, participants in the Lifeline Broadband Pilot Program explained that the absence of no-cost/zero entry service options had a significantly negative impact on the ability of the program to increase broadband adoption.[43] Second, even among those who have adopted wireless broadband, the cost of the service prevents almost half of low-income broadband customers from maintaining their service once they have it. In a recent survey of smartphone owners, the Pew Research Center found that 44 percent of smartphone owners with annual income less than $30,000 have had to let their wireless service lapse because they were not able to afford the ongoing cost of service.[44] Therefore, it is critical that the Commission retain a no-cost-to-consumer option.[45]

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[41] *See* National Broadband Plan at 168; Julie Veach, Driving Lifeline Updates With Data, FCC: Blog (May 22, 2015), available at https://www.fcc.gov/blog/driving-lifeline-updates-data (Driving Lifeline Updates) ("[W]hile price is not the only barrier to broadband adoption, price matters").

[42] *See* Pew Research Center, 15% of Americans don't use the internet. Who are they? (July 28, 2015), available at http://www.pewresearch.org/fact-tank/2015/07/28/15-of-americans-dont-use-the-internet-who-are-they/ (last visited Aug. 18, 2015) (showing that 15 percent of U.S. adults do not use the Internet, but 25 percent of those earning less than $30,000 per year do not use the Internet).

[43] *See* Elaine M. Divelbliss, Senior Counsel, Sprint Nextel Corporation, to Marlene Dortch, Secretary, Federal Communications Commission, *Virgin Mobile USA, LP Participation in Broadband Lifeline Pilot Program, Lifeline and Link Up Reform Modernization*, WC Docket No. 11-42, 2 (Mar. 24, 2015) ("A required contribution, either upfront or in the form of a monthly recurring charge, even if it is relatively small, is a significant barrier to participation for Lifeline-eligible households.").

[44] *See* Aaron Smith, *U.S. Smartphone Use in 2015*, Pew Research Center (Apr. 1, 2015), available at http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/.

[45] Ultimately, preserving a no-cost-to-consumer option is about consumer choice and economic efficiency: the Commission should not shoehorn consumers into plans that exceed their demands for service, or require ETCs to pay for minutes or data that exceed consumer preferences. Rather, it should encourage (without requiring) ETCs to offer a range of options at a variety of service levels. As the Commission has recognized, "consumers respond well to having a choice of plans. Households have different needs for data speeds, usage amounts, service types and devices[,] . . . and low-income consumers do not all want or need the same products." Driving Lifeline Updates. For this reason, if a consumer only intends to use 250 minutes of voice (and no text or data) within a month and does

Imposing minimum service levels can have the same effect as imposing a minimum charge. For example, when the Georgia Public Service Commission (GPSC) was seeking to curtail use of the Lifeline program in the state, it first attempted to impose a minimum charge of $5.00 for Lifeline service.[46] Anticipating a successful legal challenge, the GPSC also attempted to impose a minimum service standard of 500 minutes.[47] Since no ETC at that time could provide the 500 minutes at no cost to the consumer, the proposed rule essentially imposed a minimum charge. The minimum service standard was challenged in federal court and the judge granted a preliminary injunction against the rule as impermissible rate regulation of a wireless service under Section 332 of the Communications Act.[48] The Court found that, "the requirement to bill and collect a minimum service rate of $5.00 per month is clearly a rate regulation. The alternative minimum service requirement of 500 minutes per month also regulates rates because the GPSC chose a level of service at which it believed the ETCs would charge a rate high enough to deter households from signing up for multiple lines."[49] While Section 332 does not bar the FCC from setting rates for wireless service, the legal authority for rate setting for wireless Lifeline services is murky at best.

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not have any discretionary income to spend on a more robust offering—e.g., a low-income grandmother who uses her Lifeline phone only in emergencies or for the occasional call with family—then the Commission should not foreclose that consumer from obtaining a service that meets her needs. Nor should the Commission require an ETC to purchase and provide additional services that the consumer will never use.

[46] *See Docket No. 35537: Notice of Proposed Rulemaking to Promulgate Rules Governing Eligible Telecommunications Carriers 515-12-1-.35, Eligible Telecommunications Carriers*, Order Adopting Rule, 3 (Jan. 29, 2013).

[47] *See Docket No. 35537: Notice of Proposed Rulemaking to Promulgate Rules Governing Eligible Telecommunications Carriers 515-12-1-.35, Eligible Telecommunications Carriers*, Order Adopting Rule, 3 (Oct. 18, 2013).

[48] *See CTIA v. Echols*, Civil Action No. 1:13-CV-399-RWS, Order (N.D.G.A. 2013).

[49] *See id.* at 4.

Several of the proposals raised in the Second FNPRM would eliminate the zero entry option for low-income consumers if imposed as minimum service standards for Lifeline service. For example, in the Second FNPRM, the Commission asks whether it should require mobile providers to offer unlimited talk and text to Lifeline consumers.[50] Joint Commenters submit that the Commission should not impose such a requirement unless it is willing to increase the recurring subsidy to cover the costs of providing the service it seeks to require.[51] Providing unlimited talk and text for $9.25 per month is uneconomical and unsustainable for an ETC, and would require ETCs to impose an end-user charge. Indeed, if the Commission mandates voice service levels that are too high, it will require carriers to abandon zero entry options to sustainably offer the service, which would inflict tremendous harm on low-income Americans and ETCs alike.

Similarly, the Commission should not use "average usage" as a baseline for minimum service, particularly in the broadband context, unless the Commission is willing to increase its subsidy levels.[52] The Commission asserts that the average postpaid wireless subscriber uses 644 minutes of voice service and 1.8 GB of data per month.[53] However, the market rate for both of these services far exceeds the current $9.25 subsidy. Unless the Commission increases the subsidy amount, meeting these averages would require ETCs to charge an amount to the consumer. The result would be to depress adoption rates and to drive ETCs and consumers from the Lifeline market.

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[50] *See* Second FNPRM ¶ 39.

[51] The Commission states in the Second FNPRM that, in California, "consumers may elect plans in progressively increasing tiers of minutes in exchange for providers receiving progressively larger combined state and federal subsidies." *See* Second FNPRM ¶ 40.

[52] *See id.* at ¶¶ 40, 44.

[53] *Id.*

2. The Commission Should Empower Consumers with Information and Promote a Variety of Services and Packages by Creating a Regulatory Environment Conducive to More Competition and Innovation

If the Commission sees policy (or political) value in certain service offerings in the Lifeline marketplace, it should encourage (not require) providers to make such plans available and it should encourage (not require) consumers to adopt them. The Commission also should study the market and provide information to consumers so that they are empowered to choose the highest value plans that best meet their particular needs. For some, this may be landline service that can be more effective in addressing the "homework gap" faced by that particular consumer.[54] For others, it may the wireless plan that offers the mobility essential to getting that call from an employer, healthcare provider, childcare provider or school, regardless of whether the consumer is at home, on the job or on the bus seeking the next shift or the next job. The plans should not be set as minimums to receive a Lifeline reimbursement and the Commission should not set the price for the offerings. A competitive marketplace fueled by a stable and light-touch regulatory regime is far more likely to deliver more value and faster innovation to consumers.

In order to make better information available to consumers, the Commission could periodically study the average usage among prepaid wireless users (the most relevant subset of consumers) and make that information available to the public. Since the vast majority of Lifeline consumers have access to multiple ETCs in any given region, such a published average would allow consumers to seek out plans that meet or exceed the published average, which would be offered and priced at the discretion of market competitors. In this way, the Commission can

[54] For some consumers, the homework gap may be better bridged by a Wi-Fi enabled mobile phone that can serve as a hotspot (an in-home broadband connection does not close the gap for a child who needs to do homework at places other than home).

encourage ETCs to provide such plans while providing valuable information to consumers as they decide which plan is right for them.

3. The Commission Should Ensure That Any Standards Are Technologically Neutral and Promote Regulatory Parity

In the Second FNPRM, the Commission asks how it can base Lifeline minimum service standards on statutory universal service principles, and whether and how service levels would vary between fixed and mobile broadband service.[55] If the Commission establishes any service quality standards (e.g., required speeds), it must preserve technological neutrality, recognizing that wireless and wireline service offerings are fundamentally different. If the Commission were to base service standards on a wireline-centric model, it could have the perverse effect of driving low-income consumers away from the wireless service they prefer.

Moreover, any Lifeline service quality standards for wireless should not exceed those of other universal service programs. For example, in the Connect America Fund Mobility Fund Phase I, the Commission required winning bidders to provide "3G or better mobile voice and broadband service."[56] Joint Commenters submit that 3G service is an appropriate baseline for Lifeline supported broadband service.[57] By tying service quality standards to those that the Commission already requires in analogous contexts, it will promote regulatory consistency between various universal service programs and set a fair baseline from which to meet its universal service goals.

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[55] *See* Second FNPRM ¶ 37.

[56] *See Connect America Fund*, *et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 334 n.567 (2011) (USF/ICC Transformation Order) (excluding from the definition of unserved census blocks those that offered 3G or better service.).

[57] If the Commission decides to adopt a wireline broadband standard for Lifeline below the Connect America Fund "broadband" definition, its reasons for doing so should be transparent and clearly explained.

E. The Commission Should Not Establish a Budget That Functions As a Cap for the Lifeline Program and Would Prevent Eligible Subscribers from Obtaining Lifeline Service

In the Second FNPRM, the Commission seeks comment whether and how to establish a budget for the Lifeline Program.[58] The Joint Commenters do not support any budget that would serve (or effectively serve) as a program cap that could leave eligible low-income consumers unserved, especially because program participation currently stands at approximately one-third of the eligible households.[59] A budget must be flexible enough to avoid that potential outcome and should be established after the Commission makes important decisions regarding the direction and function of the Lifeline program. In any budget-setting exercise, the Commission should recognize the current participation rate, the ever-shifting eligible subscriber base and the evolving communications needs of low-income Americans.

Joint Commenters estimate the current participation rate is one-third of eligible low-income Americans. It would be manifestly unjust for an ETC to turn away an eligible applicant who—through no fault of their own—happened to apply for service the month after the cap was reached. Similarly, as the Commission recognizes, it would be unfair for the Commission to "suddenly halt support for individuals that otherwise meet the eligibility requirement."[60]

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[58] *See* Second FNPRM ¶¶ 56-58.

[59] This estimate is made by applying a factor that was developed by reverse-engineering the 36 percent participation rate established for 2009 by USAC. *See* 2012 Lifeline Reform Order ¶ 272. It is generally consistent with the participation rate based on the number of households eligible for Lifeline according to the 2015 GAO Lifeline Report. *See* 2015 GAO Lifeline Report at 15. The GAO Report states that there were 40 million households eligible for Lifeline in 2012. *Id*. According to the 2012 USAC Annual Report, Lifeline supported an average of 17,039,098 subscribers in 2012, which would make the participation rate in 2012 42 percent. *See* USAC 2012 Annual Report at 9, available at http://www.usac.org/_res/documents/about/pdf/annual-reports/usac-annual-report-2012.pdf. Other estimates of program participation range as high as 50 – 60 percent of the eligible population. In any event, these estimates demonstrate that the Lifeline program remains undersubscribed.

[60] *See* Second FNPRM ¶ 58.

II. A ONE-SIZE-FITS-ALL NATIONAL ELIGIBILITY VERIFIER WILL COST TOO MUCH AND DELIVER TOO LITTLE; THE COMMISSION SHOULD INSTEAD LEVERAGE EXISTING STATE-LEVEL ELIGIBILITY DATABASES, ENCOURAGE MORE STATE ELIGIBILITY DATABASES AND FILL IN THE GAPS WITH OPTIONS SUCH AS A FLEXIBLE, MARKET-BASED CERTIFIED THIRD-PARTY VERIFIER PROGRAM

In the Second FNPRM, the Commission seeks comment on ways to shift the responsibility for verifying consumer eligibility for Lifeline service from ETCs to a national eligibility verifier and leverage other programs serving the low-income market to realize savings for the Fund.[61] As explained in more detail below, there is no compelling reason to shift the Lifeline program, which operates on a lean administrative budget and has very low levels of improper payments, to a costly and inflexible single-source national eligibility verifier. However, if the Commission decides to implement a national eligibility verifier framework, it should use a flexible approach that utilizes existing state eligibility databases, encourages more state eligibility databases through the adoption of standards, and includes options such as multiple third-party verifiers that can be certified by the Commission or USAC. In this way, the Commission can allow the marketplace to develop and ETCs to select a verifier that best meets their needs and business model while promoting the ultimate goal of preserving and protecting the integrity of the Lifeline program.

A. Joint Commenters Do Not Support a Single National Verifier

In the Second FNPRM, the Commission seeks comment on whether to establish a national Lifeline eligibility verifier to make eligibility determinations and perform other functions related to the Lifeline program.[62] Specifically, the Commission seeks comment on: (a)

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[61] *See id.* at ¶ 63.

[62] *See id.* at ¶ 63.

the core functions of such a verifier (or verifiers); (b) the relationship between subscribers, the verifier, and ETCs; (c) the processing of subscriber applications; (d) the interaction between a national verifier and existing state eligibility databases and state verifiers; (e) dispute resolution; (f) privacy; (g) document retention; and (h) other potential functions of the verifier, including whether the verifier(s) should be responsible for annual subscriber recertification.[63]

The national verifier proposal is a proposed solution to a (political) problem created by news media and fueled by political rhetoric, including too much from the Commission itself. The Commission is well aware that ETCs currently verify, but do not determine, subscriber eligibility (except for the small minority of cases where a consumer relies on income qualification). Since replacing the consumer self-certification of eligibility in 2012, the subscriber's proof of program participation—e.g., SNAP card or Medicaid card—determines and signifies eligibility, and the ETC simply verifies the proof prior to enrolling the consumer via the NLAD. This system has worked. Since these 2012 reforms went into effect, incidences of waste, fraud and abuse have decreased dramatically. In 2014, the Commission found that improper payments in the program dropped to 0.32 percent (indicating a 99.68 percent score on getting it right). Indeed, this metric compares quite favorably to the 4.5 percent government-program average in the same year.[64] Therefore, if there is a problem with the existing eligibility framework, it is one of perception. While it is important to address problems of perception, solutions should be well tailored to addressing those problems and should avoid the costs and unintended consequences of "fixing" what is not in practice broken.

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[63] *See id.* at ¶¶ 65-90.

[64] *See* Lifeline Connects, Fact Checker: Improper Payments, available at http://lifelineconnects.org/index/issues/fact-checker-improper-payments/.

If the Commission decides that a third-party verification mechanism is nonetheless necessary, there are several compelling reasons why it should not establish a single national verifier. Most notably, a one-size-fits-all national verifier would be too inflexible and expensive, and it would not likely achieve better results.[65] The Lifeline program currently is administered by USAC with a fairly modest $17 million in annual administrative costs (about 1 percent of the size of the fund). To be efficient and effective, the program need not replicate or absorb the costs of ETCs' already-built eligibility verification infrastructure, the cost of which the Commission has estimated at approximately $175,820,000.[66]

A sole-source provider easily becomes isolated from competitive pressure and typically becomes less nimble or even inflexible, as it merely needs to deliver the prescribed widget for the agreed-upon period of time. This can lead to a mismatch between the verifier's approach and particular ETCs' consumer-centric processes (e.g., California's administrator cannot support real-time enrollments). Inefficiencies and ineffective processes can also produce unintended consequences harmful to consumers, programs and providers (e.g., Texas' administrator cannot seem to eliminate a zip code match requirement for its state eligibility database, despite the highly transient nature of the eligible population).

[65] The development and implementation of the NLAD provides a useful analogy. In the 2012 Lifeline Reform Order, the Commission directed USAC to establish a national duplicates database as an essential means to prevent waste, fraud and abuse in the program by providing a single repository against which ETCs could screen for potential duplicates at the point of enrollment. The NLAD launched over a year late, leading some ETCs to develop (at their own cost) a stop-gap intercompany duplicate detection database. The NLAD—which was designed expressly to prevent duplicate subscriber enrollments—itself had "production duplicates" in the database, costing ETCs millions of dollars in revenue to serve and then remove. Further, at launch, the NLAD's duplicate detection methodology was significantly less robust than ETCs' own duplicate detection processes. In short, by centralizing responsibility for Lifeline eligibility determination in a single quasi-governmental entity, the Commission ended up with a system that was late, expensive, and, in many respects, less effective than the system that the market was already providing. Were the Commission to establish a single national verifier, it likely would be "déjà vu all over again" for ETCs, who once again would be faced with unnecessary uncertainty, delay, cost and error on the part of the national verifier.

[66] *See supra* note 13.

Government selected solutions also are not likely to outperform private sector alternatives. For example, when USAC performs recertification, it fails at an alarming rate, very likely causing the de-enrollment of eligible consumers while feeding negative perceptions about the Lifeline program. With three years' experience, USAC's recertification success rate stands at an unfortunate 40 percent. Fortunately, the Commission's rules do not require use of a national recertification processor. When Lifeline providers perform recertification, success rates can exceed 90 percent, without the imposition of any costs on the program.

Finally, one-size solutions do not typically work well for all and when they do, they typically are too expensive as they must come loaded with options which may not be needed or utilized by all. For example, a national verifier framework would have to offer real-time solutions to accommodate those ETCs that have a business model enabling real-time verification and service/handset distribution (which reflect wireless consumers' desire to walk away from the store or enrollment even with an activated phones just like non-low-income consumers[67]). However, while many ETCs prefer real-time eligibility verifications and are therefore willing to pay for the benefit of a real-time check, other ETCs—e.g., wireline ETCs—may not need to conduct a real-time verification because their distribution models don't require it.

B. A National Verifier Framework Should Leverage Existing State Eligibility Databases and Adopt Standards to Facilitate More State Databases

The Commission also seeks comment on how or whether verifiers should interact with existing state eligibility databases and processes.[68] Where a state has already made a substantial

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[67] The Commission should carefully consider ways in which it can avoid adding to the stigma some perceive regarding the acceptance of public benefits such as Lifeline. Promoting real-time enrollment is perhaps the most critical way through which the Commission can ensure low-income consumers are afforded dignity in the enrollment process.

[68] *See* Second FNPRM ¶¶ 72-73.

investment in establishing a state eligibility database, the Commission should rely on its requirement that ETCs verify a prospective applicant through the state database.[69] In addition, the Commission should encourage more states to develop eligibility verification databases by developing baseline standards akin to the baseline standards the Commission established for state duplicate databases (i.e., NLAD opt-out).

To ensure that eligible low-income consumers are not denied Lifeline service, states that have or seek to develop Lifeline eligibility databases should be required to adhere to certain reasonable standards designed to protect the integrity of the program and the dignity of low-income consumers.[70] As explained in more detail below, these database standards should include (1) real-time API access; (2) timely updates, which ideally would be real-time or within twenty-four hours; (3) a simple yes/no response and transaction ID without access to underlying data; (4) a match based on last name, date-of-birth and last four digits of the applicant's social security number (SSN) (without address-related fields); (5) efficient exceptions and dispute resolution processes; and (6) access to transaction records for audit purposes. To minimize the chances that eligible consumers will have Lifeline benefits delayed or denied, ETCs should be required to use a state eligibility database only when it meets these reasonable standards.

In order to be effective, any eligibility database must function to allow ETCs to build an API into the database for real-time responses.[71] Many ETCs engage in face-to-face Lifeline

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[69] *See Wireline Competition Bureau Reminds Carriers That They Must Re-Certify Eligibility of All Lifeline Subscribers By December 31, 2012*, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, Public Notice, DA 12-1626 (2012).

[70] *See* John J. Heitmann and Joshua T. Guyan, Counsel to the Lifeline Reform 2.0 Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Lifeline Reform 2.0 Coalition Written* Ex Parte *Presentation*, WC Docket No. 11-42, 5-9 (Apr. 14, 2014).

[71] The API should be available at all times. ETCs often run their lists of subscribers to be recertified through the database overnight so as not to slow the database performance during the day when enrollments are ongoing.

enrollments either in ETC-branded stores or at mobile enrollment tents and events, which allow the ETCs to see the applicant, check photo ID (as necessary or desired) and show approved applicants how to activate and use their wireless handsets. For such enrollments, all of the undersigned ETCs have real-time Internet connectivity to their enrollment backbone, which allows them to check their own subscriber databases, state eligibility databases, NLAD and service territory databases prior to approving the application. If a state eligibility database requires an end-of-month batch submission process, rather than real-time API access, ETCs are not able to check the applicant's eligibility in real-time. Consequently, they cannot confirm eligibility and send the customer home with an activated handset that the consumer knows how to use so that they immediately can connect to jobs, healthcare, emergency services and family. Most consumers of communications services are able to acquire a phone and service in real-time. Lifeline subscribers should not be relegated to a second-class status because the regulatory apparatus has not been well conceived or well executed.

It is also important that the eligibility database be updated either in real-time or within at most twenty-four hours. The longer it takes for a database to be updated, the more eligible consumers could potentially be denied their benefit because they are not found in the database. The Commission should neither accept nor embrace database solutions and audit processes that result in the denial of Lifeline benefits to eligible consumers.

To protect consumer privacy, the state eligibility database should only provide an ETC dipping the database with a "yes" or "no" response regarding the applicant's eligibility and a corresponding transaction ID. To preserve and protect the integrity of the process, ETCs should be required to sign a Memorandum of Understanding with the state database administrator regarding the authorized uses of the database. To facilitate this process, the Commission should work collaboratively with industry and state administrators to develop simple templates that can be adjusted to particular circumstances.

To avoid false negative responses from an eligibility database, state databases should only use those fields that rarely if ever change to identify the applicant as eligible. While Lifeline applicants' names generally do not change, and their date of birth and SSN cannot change, their addresses change frequently. Although there have been many improvements to the Texas duplicates and eligibility databases, the Texas eligibility database continues to use applicant zip code as a required field for eligibility confirmation. This results in too many eligible applicants being denied or delayed access to Lifeline service. Although the fix for this is obvious and easy, neither the Commission nor the Texas database administrator has taken sufficient action to correct the problem.

State database solutions must be designed to efficiently address exceptions and resolve disputes when they arise. No automated system will be perfect. In designing the NLAD, the Commission recognized the need to address exceptions and institute a dispute resolution process, however, it has not always implemented an efficient or effective solution.[72] In the same manner, meeting the database requirements discussed herein will allow state eligibility databases to adequately serve the identified need for a fast and reliable eligibility verification method for Lifeline enrollment, but the databases are unlikely to be perfect. To that end, they should be

[72] NLAD's third-party identity verification (TPIV) serves as an example of a failed dispute resolution process. The TPIV check uses Lexis Nexis databases and presently requires an exact match of the information provided by the vendor even when Lexis Nexis can confirm an individual's identity without an exact match and even though such use is both not intended and ill-advised. This critically flawed process produces exceptions where there should be none, costing consumers, ETCs and USAC too much. The present dispute resolution process (which replaces the prior poorly conceived process) available to resolve these exceptions (of which an unknown number are truly necessary) piles on additional needless burdens by requiring documentary proof of all data elements, including those for which no discrepancy exists. The merengue on this pie of lemons being thrown in the face of providers and low-income consumers is that the process is then rendered largely unworkable because it requires that an ETC assign a telephone number to submit a dispute resolution without assurance that the applicant will be approved. *See* Section II.G. *infra* for a full discussion.

designed with an exceptions and dispute resolution process that is, wherever possible, handled electronically and in real-time. One component of an effective dispute resolution process would permit consumers who are not found in the state eligibility database to provide proof of eligibility to the ETC, which could be verified through a third-party eligibility verifier, as discussed in detail below.

Finally, any state eligibility database should of course make available to the Commission or USAC access to transaction records for audit purposes. Any costs related to such access should be borne by the program.

C. Where a Qualifying State Database Is Not Available, the Commission Should Fill the Gaps with Options Such as a Market-Based, Certified Third-party Verification Program

To fill in the gaps where a state eligibility database is not available, any third-party verifier framework should include a market-based solution with multiple, USAC-certified independent third-party eligibility verifiers offering ETCs a range of flexible and scalable options. Under this approach, USAC would be required to certify a minimum number of third-party verifiers that will conduct the subscriber eligibility verification.[73] The Commission—in collaboration with industry—should establish a simple set of standards the verifiers must meet to be eligible for certified third-party verifier status. Beyond these minimum standards, the Commission should allow the verifiers to compete with one another for ETCs based on price and service offerings. To address the incentive structure concerns (largely perceived and misperceived—rational ETCs have no interest in making customer acquisition investments on

[73] If a state has an existing system for verifying eligibility (apart from its eligibility database), that state should be required to apply for certified third-party verifier status. In this way, the Commission can achieve its goal—ensuring a third-party verification system—while avoiding the need to expend tremendous resources to develop a separate, new eligibility verification system. This process also should provide alternatives for ETCs to use where they do not seek state Lifeline funding.

consumers who are not eligible), these verifiers should not have a direct interest in the outcome of the verification determination for individual subscribers (i.e., they should not be paid on a commission basis). Finally, use of a certified third-party verifier should provide ETCs with a safe harbor for customer eligibility verifications.[74] This safe harbor will provide a much needed element of regulatory certainty, driving a positive outcome for the Commission, providers and consumers.

1. Third-Party Verifiers Should Be Capable of Performing a Discrete Set of Clearly Defined Functions

The core functions of each certified third-party verifier should include: (1) reviewing each Lifeline application for completeness and data accuracy; (2) reviewing proof of eligibility documentation[75]; (3) confirming that the applicant's name and date of birth match those on the application; (4) confirming that the applicant's name matches the name on any proof of eligibility documentation; and (5) confirming that the address on an applicant's proof of eligibility documentation (if any) matches the address on the application, if the address is not verifiable through the AMS or NLAD.[76]

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[74] Joint Commenters encourage the Commission to provide ETCs with additional options, under any third-party verification framework. For example, as an alternative to using a certified third-party verifier, ETCs should be permitted to conduct their own eligibility checks subject to a periodic review by an independent third-party auditor. Under this framework, while ETCs that use a certified third-party verifier (or national verifier) would enjoy a safe harbor from audit, enforcement and liability, those ETCs that elect to perform their own eligibility checks subject to an independent third-party audit would not be eligible for safe harbor protection. This solution would effectively achieve the Commission's goal to ensure third-party oversight of eligibility verifications while simultaneously providing options to ETCs and minimizing the disruption and administrative costs that the transition to a certified third-party verifier system would impose on the industry.

[75] USAC should give verifiers specific guidance regarding what constitutes acceptable proof of eligibility. Further, USAC should respond quickly to inquiries from verifiers regarding proof of eligibility documentation and other verification issues.

[76] These steps are consistent with those that all of the Joint Commenter ETCs currently take to verify eligibility, whether through a non-commission-based employee or non-commission-based vendor.

Further, the Commission should ensure that at least three of the certified verifiers have the capability to perform real-time eligibility verification before the obligation to use a third-party verifier begins.[77] ETCs should be not be required to start using verifiers prior to 180 days after the third verifier with real-time review capabilities is certified. A real-time verification component is essential to ensure parity of wireless customer experience between non-Lifeline and Lifeline customers: low-income consumers should have the option of signing up for service and walking away from a store or enrollment event with an activated phone and service, just like non-low-income consumers. However, as stated above, Joint Commenters recognize that real-time verification may not be as important to other ETCs (e.g., landline ETCs), and therefore real-time verification does not need to be mandatory for all ETCs or for all third-party verifiers.[78]

2. Direct Consumer Interaction with Third-Party Verifiers Should Be Permitted but Not Required

In the Second FNPRM, the Commission asks whether consumers should be permitted to directly interface with a third-party verifier, and if not, whether there are other ways that consumers could interact with the verifiers.[79] Although the Commission may permit, under no circumstances should it require, consumers to interact directly with the verifiers. When a consumer is enrolling in Lifeline, he or she is establishing a relationship with a carrier, not a third-party vendor (whether governmental or quasi-governmental). Adding a new, unfamiliar party into the enrollment process could cause consumer confusion and distrust, particularly because the consumer would be required to provide sensitive information to the verifier.

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[77] The entity that certifies third-party verifiers (likely USAC) should be required to act on applications for certification from verifiers within 60 days.

[78] As stated above, while a single national verifier would require real-time verification to support many ETCs' business models, a flexible system would not require all third-party verifiers to support real-time verification.

[79] *See* Second FNPRM ¶¶ 66-67.

Notwithstanding these concerns, ETCs should be able to work with third-party verifiers to develop solutions that best fit their business model.

3. A Certified Third-Party Verification Framework Must Offer Real-time Approval and Enrollment

With respect to processing applications, the Commission seeks comment on whether to allow providers to provision service to a consumer prior to verification of eligibility.[80] The Commission further seeks comment on whether a multi-day approval process would negatively impact consumers.[81] The Commission further assumes that a delayed (rather than real-time) approval process would reduce waste, fraud and abuse,[82] and asks whether the Commission should adopt a "pre-approval" mechanism similar to the one used in California.

Joint Commenters submit that, to be successful, the Commission must ensure that a real-time option is available, and that pre-approval is not necessary if the verification process is real-time. While the approval process currently utilized in California[83] facilitates real-time distribution and provides Lifeline applicants in California with the ability to get immediate access to mobile wireless services, it is a fix necessitated by a problem best avoided rather than replicated. Currently, the California administrator cannot perform in real-time the same eligibility verification performed by Lifeline providers in real-time in states that do not have a

[80] *See* Second FNPRM ¶ 68.

[81] *Id.*

[82] *Id.*

[83] The Commission misconstrues California's "pre-approval" process. The approved process does not provide temporary approval, but rather permits an ETC, based on its own verification practices, to provide Lifeline applicants an opportunity to sign-up for non-Lifeline service which typically provides on a promotional basis an allocation of mobile service intended to bridge the gap created by the lack of a real-time Lifeline application approval process in California. Although the California Commission should be commended for its collaborative work with service providers on this solution, the FCC should recognize that the solution that works best is one that works in real-time and thus meets reasonable consumer expectations while providing superior protection against waste, fraud and abuse.

state verifier (those states pay nothing for comparable results delivered in real-time). This and other process flaws in California's single source administrator actually elevate the potential for waste, fraud and abuse, rather than reduce it. These process flaws include the lack of a process to prevent consumers from submitting multiple applications through multiple ETCs. This abuse results in significant costs to service providers and the California LifeLine program. California's failure to meet or exceed the sixty-day benefit port freeze incorporated into the NLAD exposes the federal Lifeline program to multiple linear support claims each month for consumers intent on abusing the program. While the vast majority of consumers have no intent to abuse the program, there are still too many that do. Until remedied, the lack of a benefit port freeze in California provides "flippers" with the chance to ruin or significantly damage the recent advances made by the California Commission in creating a Lifeline program that provides consumers with more affordable access to a wide and robust array of mobile voice, text and broadband communications services. While California's approach to Lifeline is worthy of study and certain elements of it are worthy of praise and emulation (e.g., additional state funding), the lack of a real-time enrollment option is something to be rectified rather than repeated.

4. Any Third-Party Verification Solution Must Include an Efficient Dispute Resolution Process

In the Second FNPRM, the Commission seeks comment on any means or process for consumers or providers to contest a rejection of a prospective consumer's eligibility.[84] A streamlined and real-time dispute resolution process is essential so that any third-party verification solution does not improperly deny eligible consumers the benefits of Lifeline. The third-party verifier should provide, in real time, specific responses describing why an application

[84] *See* Second FNPRM ¶ 84.

has been denied to give the applicant an opportunity to dispute the determination at the point of enrollment. By contrast, the Commission's current NLAD third-party identity verification (TPIV) dispute resolution process provides a model of what not to do. It needlessly creates disputes through the misuse of LexIDs[85] and establishes a needlessly cumbersome process that imposes unnecessary burdens on consumers, ETCs and USAC. Adding insult to injury, the process can take days to complete. Costly, inefficient and burdensome regulatory processes like these do more harm to the program than good, and suggest that the Commission's perception of consumer dignity needs to be more closely tethered to the real-world implications of the rules and processes it administers.

One component of an effective dispute resolution process (as described above) is to permit consumers who are not found in the state eligibility database to provide proof of eligibility to the ETC (which can be verified through a third-party eligibility verifier).[86] This is particularly important because today some states do not timely update their databases, resulting in false negatives and consumer frustration.

5. Third-Party Verifier Certification Should Be Conditioned on the Establishment of Reasonable Privacy and Data Security Safeguards

Joint Commenters support efforts to ensure that third-party eligibility verifiers adopt reasonable privacy and data security safeguards to mitigate the risk of unauthorized use, breach or disclosure of the personal information of Lifeline applicants and subscribers.[87] As part of any

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[85] It is estimated that about half of all enrollment attempts in Puerto Rico will trigger a TPIV failure, as a result of the NLAD's rigid requirement to confirm birth dates and flawed decision not to use LexIDs where available. For this reason and perhaps others, Puerto Rico's request to join the NLAD has been delayed. In addition, one ETC has experienced TPIV failure rates in the U.S. Virgin Islands that are so high that it has drastically impacted the ETC's ability to enroll eligible low-income consumers in the Lifeline program.

[86] *See supra* Section II.B.

[87] *See* Second FNPRM ¶ 85.

national verifier framework that the Commission adopts, the Commission should provide ETCs with a safe harbor from Commission enforcement in the event of a breach of the verifier's system that is not caused by the ETC. While Joint Commenters do not herein propose any specific privacy or data security rules, any conditioned requirements of certification should be clear and specific to ensure that eligibility verifiers can readily understand what is required of them, auditors can easily check to determine whether a verifier is complying and ETCs can feel confident that their subscribers' (or prospective subscribers') information will be protected. As with any regulation that the Commission adopts or condition that it imposes, it should perform a cost-benefit analysis to ensure that it does not impose obligations in a manner that unnecessarily inflates program or providers costs (producing avoidable losses for consumers who support the program, as well as for those eligible consumers who receive support from it).

6. Certified Third-Party Verifiers Should Be Permitted But Not Required to Interact with NLAD, Facilitate Recertification or Perform Additional Functions

In addition to those functions specifically related to subscriber eligibility verification, the Commission also asks whether the certified third-party verifiers should assume additional responsibilities, including the annual subscriber recertification process[88] or duplicate checks through the NLAD.[89] Joint Commenters respectfully submit that the Commission should facilitate rather than require third-party verifier solutions, including enrollment functions (e.g., NLAD dips), Form 497 verification and recertification. Moreover, the Commission should focus on streamlining program administration, rather than adding new layers to it that add costs in an attempt to fix problems that either don't exist or are already well controlled by current processes.

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[88] *See* Second FNPRM ¶¶ 86-90.

[89] *See id.* at ¶ 87.

The Commission should not require third-party NLAD dipping or third-party verification of ETCs' FCC Forms 497. Many ETCs already choose such services provided by CGM and other third-party vendors. With respect to Form 497 filings, audits can efficiently and effectively confirm the accuracy of such filings. Imposing a requirement that ETCs transfer routinely to USAC or any third-party all of the enrollment and de-enrollment data necessary to accurately prepare Form 497s, including revisions, is the essence of regulatory overkill. The Commission can mandate the replication by USAC or third parties of everything that ETCs already do today. However, it is highly doubtful that such duplication of effort would produce any benefits, let alone a sufficient amount to balance out the costs.[90]

With respect to recertification, the Commission should not adopt as part of a third-party eligibility verification framework—or otherwise, a requirement that a third-party verifier handle or verify subscriber recertifications. USAC's performance with respect to recertification is dismal compared to the performance of many ETCs.[91] At the very least, the USAC recertification experience demonstrates that third-party solutions are not likely to be more effective or efficient, especially when that provider is controlled by the Commission.

Because ETCs invest heavily (through outreach, care and service designed to meet the needs of Lifeline subscribers) in direct customer relationships and have a financial incentive to ensure that eligible consumers (and no others) remain subscribed to the Lifeline program, ETCs are generally best positioned to handle recertification. Indeed, customers are more likely to respond to recertification requests from their carrier—a known and trusted entity with whom the

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[90] In the Second FNPRM, the Commission asks whether, if it declines to adopt a national verifier, ETCs should send eligibility documents to USAC for later audit. *See id.* at ¶ 90. As explained in more detail in Section II.C.7 *infra*, Joint Commenters support an approach that facilitates verification and rational auditing of proof of eligibility, and would welcome an opportunity to shift the retention of such documentation to a trusted third-party or USAC.

[91] USAC's recertification success rate stands at 40 percent while Lifeline providers' success rate can exceed 90 percent.

subscriber has an established direct relationship—than from an unknown third-party verification organization (particularly if those messages involve prerecorded or artificial voice messages) that consumers may perceive to be acting on behalf of the government. To further develop their relationship with their customers, many wireless ETCs already have invested heavily in infrastructure and processes designed to successfully recertify Lifeline subscribers. Today, wireless ETCs rely on a web of phone calls, text messages, online portals, kiosks, IVR platforms, hot-lining and more to mitigate the chances that eligible consumers are denied benefits due to failure to comply with the Commission's recertification requirements (which should be streamlined). It is difficult to conceive how the Commission could mandate or how a single third-party could provide a more effective solution.

As Joint Commenters have stated with respect to many aspects of the Commission's national verifier proposals, the Commission should permit the use of third-party verification solutions rather than mandate them. Many ETCs already use such third-party solutions as part of their own enrollment, recertification and Form 497 reimbursement screening processes. To ensure robust options for service providers, the Commission should take certain steps to facilitate third-party interaction with the NLAD. For example, changes to today's NLAD-ETC interfaces can be developed to enable additional third-party solutions. In situations where a third-party eligibility verifier is used, a methodology for interactions between the ETC, the verifier and the NLAD should be developed. With a manageable level of effort, a process could be designed whereby the ETC conducts applicant intake and submits the initial NLAD check for a duplicate (the "verify call"), which creates a transaction ID. If the applicant clears the verify call, the ETC could then submit the applicant's information, including proof of eligibility, to the third-party verifier, which would use the transaction ID to confirm with NLAD the identity of the applicant that is being reviewed.[92] If the verifier approves the applicant, it would inform NLAD and the ETC of that fact and the ETC would then enroll the applicant in NLAD using the transaction ID and phone number.[93] This process flow, illustrated in the Exhibit, provides but one example of how industry, USAC and the Commission can work collaboratively to facilitate certain aspects of the national verifier framework proposed in these comments.

7. Document Retention Requirements Should Shift to Third-party Verifiers or USAC

The Commission asks in the Second FNPRM how establishing an eligibility verifier would affect existing document retention requirements.[94] An ETC's use of a certified third-party eligibility verifier should eliminate the need for document retention, or at the very least shift that requirement to the certified third-party verifier. Regardless, the Commission should consider carefully proposals to limit the duplication of and retention period applicable to such documentation. If the Commission desires to have access to that documentation for greater than a sixty or ninety day period of time, it should adopt a process whereby the documents are transferred to USAC and purged elsewhere. By shifting these costs and risks to the program, the Commission can gather data necessary to make better informed decisions regarding the retention of consumer data. In short, if the Commission ultimately establishes an eligibility verifier, and therefore provides ETCs with a safe harbor for verifier-approved enrollments, ETCs should not have a document retention requirement. In that case, eligibility verifiers should be responsible

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[92] This process eliminates the need for a second TPIV check and avoids the cost incurred for that check because the transaction ID is preserved from the verify call.

[93] *See* Exhibit.

[94] *See* Second FNPRM ¶ 91.

for assuming document retention obligations, subject to meaningful Commission oversight (e.g., periodic audits).

D. Coordinated Enrollment Efforts with Other Federal and State Programs Must Be Technology Neutral, Carrier Neutral and Nonexclusive

In the Second FNPRM, the Commission seeks comment on how it can coordinate with federal agencies and their state counterparts to educate consumers about, or to allow consumers to directly enroll in, the Lifeline program.[95] Specifically, the Commission seeks comment on ways that it can support "coordinated enrollment," which "permits, but does not compel, consumers to enroll in Lifeline at the same time they enroll in" a Lifeline eligible benefit program.[96]

Joint Commenters support general efforts to improve consumer awareness about the Lifeline program, as well as efforts to streamline the enrollment process. To that end, it could be beneficial for government offices that facilitate Lifeline eligibility programs such as SNAP and Medicaid to educate consumers about the advantages of Lifeline service. However, any coordinated enrollment efforts, including those that are limited to improving consumer awareness about Lifeline eligibility and program rules, should be technology neutral, carrier neutral, and nonexclusive. That is, any coordinating agency should be prohibited from promoting wireline services over wireless services (or vice versa), promoting the services of one carrier over any other carrier or establishing an exclusive partnership with a particular service provider. Instead, participating, coordinating agencies should be required to refer consumers to

[95] *See id.* at ¶¶ 92-96.

[96] *See* Second FNPRM ¶ 93 n.200.

all approved ETCs in the consumer's service territory, so that the consumer can select the service and provider that best meets his or her needs.

E. Lifeline Benefits Should Not Be Transferred Directly to the Consumer

In the FNPRM, the Commission seeks comment on whether it should directly transfer Lifeline benefits to individual consumers through a portable benefit (e.g., a physical media or a unique code).[97] Joint Commenters vigorously oppose a direct benefit transfer or voucher framework because such a framework would increase the risks of fraud; impose significant, unjustifiable costs; complicate the ability for Lifeline subscribers to receive Lifeline benefits; and undermine ETCs' incentives to provide up-front value to customers.

First, a voucher system would increase the risks of consumer fraud and undermine the Commission's efforts since the 2012 Lifeline Reform Order. Under a voucher system, unscrupulous actors would have a significant incentive to barter or sell the vouchers to individuals who could then use the voucher to receive service from unsuspecting communications service providers. As a result, these providers could receive payments from the program without having to meet existing Lifeline program requirements, such as certifying FCC Forms 497 to receive reimbursements or facing USAC audits to root out waste, fraud and abuse.

Second, a voucher system would impose enormous administrative costs on the Lifeline program that would reduce the funds available to provide services to those in need, especially if the Commission imposes a tight budget on the program. Vouchers are unnecessary and administratively costly regardless of the function that the Commission intends the vouchers to serve. On the one hand, if the purpose of the voucher is to act as a portable electronic benefit,

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[97] *See id.* at ¶¶ 104-110.

which would replace requiring ETCs to process payments to submit FCC Forms 497 to seek reimbursement from USAC, then the portable electronic benefit has to be tied to a payments process like the SNAP benefit. As a result, the Commission would have to set up a bank to process the payments—as J.P. Morgan and others do for SNAP—so that the program could automatically pay the $9.25 to the ETC when the applicant presents the voucher, just like a grocery store automatically gets a payment when a consumer uses an EBT card. Establishing a payments processing system with a bank to process Lifeline payments would impose significant additional administrative costs on the program that would serve only to divert valuable resources from the program.

On the other hand, if the purpose of a voucher is to demonstrate eligibility, the consumer's SNAP card or Medicaid card already does that. If the Commission simply wants an entity other than the ETC to verify eligibility, then that is what an eligibility database or third-party eligibility verifiers (as a part of a national verifier framework) are designed to do.[98] In addition, a voucher system does not reduce the burden on the ETCs because an ETC still has to verify the voucher and presumably the applicant's identity prior to enrollment. In this way, the process would be similar to current enrollments, but would require an additional, costly step. Finally, because ETCs still have to submit FCC Forms 497 and undergo audits on them, a voucher system would perversely result in more net regulatory costs for ETCs, rather than less.

Third, a voucher would only complicate, not simplify, monthly billing for subscribers. Currently, when customers enroll in Lifeline using their SNAP or Medicaid card, they automatically receive service every month until they cancel service or switch providers (or are no

[98] Indeed, low-income consumers can (and already do) take their SNAP card to any Lifeline provider with a retail presence for Lifeline-discounted service, including wireline or wireless providers. They can then switch service providers at any time, but they don't have to visit a store or retail site every month to receive the service.

longer eligible). The customer does not have to go back to the store or enrollment event to present their proof of eligibility every month. Shifting the monthly discount to a voucher would present low-income consumers with a complex new system. Under a direct benefit system, Lifeline subscribers presumably would have to bring their portable electronic benefit to their ETC's store or mobile enrollment event on a monthly basis to apply the discount—an extreme and unjustified burden.[99]

Fourth, a voucher program could have a significant negative impact on ETCs' business models and ability to serve Lifeline subscribers. Specifically, while some parties may support a voucher system to allow Lifeline customers to more freely move between different service providers, in fact, such a scheme would disincentivize ETCs from providing up-front value to consumers (e.g., subsidized handsets). Services that consumers purchase on a month-to-month basis are always the most expensive as opposed to those purchased over time. Further, Lifeline customers already can take their proof of eligibility to any Lifeline ETC and can change service providers at any time.

F. The Commission Should Retain All Current Qualifiers for Lifeline Support, and Add Additional Qualifying Programs to Support Veterans, Women and Children

In the Second FNPRM, the Commission seeks comment on "the prospect of modifying the way low-income consumers qualify for support under the Lifeline program to target the Lifeline subsidy to those low-income consumers most in need of support."[100] To that end, the

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[99] Even if consumers don't have to bring the portable electronic benefit to the store every month (e.g., if the consumer establishes monthly auto-pay), that system would not be different from the current system. Similarly, if the Commission were to create or require an online portal that enabled consumers to apply their benefit each month, such a system would be costly and administratively burdensome, and would require consumers find Internet access and to use limited available data.

[100] Second FNPRM ¶ 112.

Commission asks which benefit programs it should use to qualify consumers for Lifeline support, and the potential drawbacks of limiting the current list of qualifying methods (e.g., removing all qualifying programs except SNAP or removing income-based eligibility).[101] Moreover, the Commission asks whether it should add new qualifying programs to the current list.[102]

Joint Commenters respectfully submit that the Commission should retain income eligibility and all of the existing qualifying programs because of the variable eligibility standards and timeframes of the qualifying programs and the difficult personal choices made by those in need to sign up for different qualifying programs. For the same reason, the Commission should further broaden the qualification options by adding the Veterans Pension program, a program for homeless veterans and the Women, Infants and Children (WIC) program as qualifying programs for Lifeline.

The variable eligibility standards and timeframes of the qualification programs heightens the need for having multiple qualifying programs. For instance, under the SNAP program, if a household has no dependent children, then the benefit only lasts for three months out of 36 months and provides a possible gap in Lifeline eligibility.[103] This variable eligibility creates administrative challenges for ETCs and consumers alike, and heightens the risks of consumer non-compliance with the Lifeline rules. The Commission should seek to fully understand the triggers for program eligibility before making any changes to the qualifying benefit programs.

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[101] *See id.* at ¶ 113 n.234.

[102] *See id.* at ¶ 115.

[103] *See* U.S. Dep't of Agric. Supplemental Nutrition Assistance Program: Able Bodied Adults Without Dependents (Mar. 24, 2015), available at http://www.fns.usda.gov/snap/able-bodied-adults-without-dependents-abawds.

The Commission also should be sensitive to the fact that seeking federal assistance can be a difficult and emotional choice for many low-income Americans, and the particular programs in which a person or family chooses to enroll stem from personal and specific needs. As such, removing qualifying benefit programs or eliminating income-based eligibility could have the effect of unfairly disqualifying Americans in need or forcing them to enroll in programs not of their choosing. That result would be an affront to the dignity of these consumers and the broad public goals underlying the Lifeline program. For these reasons, the Commission should provide maximum flexibility for low-income consumers to obtain the Lifeline benefit for which they are eligible, and should not unnecessarily limit the means through which they can qualify for Lifeline service.

To better facilitate the ability of Americans most in need and deserving of Lifeline service to obtain it, Joint Commenters support adding the Veterans Pension benefit, a program for homeless veterans and the WIC program as qualifying programs. The Veterans Pension benefit would be a common-sense addition to the Commission's list of qualifying programs.[104] That benefit is based on income, active duty (including wartime) service to our military and age or disability-related qualifiers[105] and serves an important and honored constituency that deserves the hand up that Lifeline can offer.

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[104] *See* Veterans Administration, Veterans Pension Program, available at http://www.benefits.va.gov/pension/. Indeed, Joint Commenters already have been tremendously supportive of our troops and their families. For example, Telrite d/b/a Life Wireless has established the Connecting Our Heroes program to provide veterans with access to communications services. *See* Life Wireless's 'Connecting Our Heroes' program provides 100 extra minutes of calling time to eligible military veterans (Jul. 2, 2014), available at http://www.prnewswire.com/news-releases/life-wirelesss-connecting-our-heroes-program-provides-100-extra-minutes-of-calling-time-to-eligible-military-veterans-265551141.html. Blue Jay Wireless has launched the Samaritan Program to create career opportunities for those, like veterans, who have sacrificed so much for our country. *See* Blue Jay Wireless Announces Samaritan Program, available at http://www.bluejaywireless.com/blue-jay-wireless-announces-samaritan-program-2/.

[105] *See* Veterans Administration, Veterans Pension, available at http://www.benefits.va.gov/pension/vetpen.asp.

To further serve our veterans, Joint Commenters support the establishment of a program-based eligibility standard for homeless veterans in coordination with the Veterans Homeless Initiative Office. This program-based eligibility would allow veterans without any income to demonstrate eligibility for Lifeline benefits. As many veterans are moved off of Medicaid and onto health care provided by the Department of Veterans Affairs, they can no longer automatically qualify for Lifeline benefits by showing a Medicaid card.[106] Homeless veterans should receive a streamlined method of demonstrating eligibility for participation in the Lifeline program.

In addition, the Commission should extend eligibility to cover participants in the WIC program. The Lifeline program's goals and benefits are closely aligned with those of the WIC program.[107] The program has an income requirement, participants in the program have important healthcare communications needs (e.g., the ability to regularly contact obstetricians, pediatricians, child care and schools (and be reached by such entities in case of emergency or more routine needs)), and over 25% percent of WIC participants do not participate in another federal assistance program.[108] Moreover, if (as it proposes) the Commission transitions its Lifeline benefit to supporting broadband services, expectant and new mothers will be able to access the virtually unlimited information on the Internet regarding pregnancy, childrearing and health care, as well as free mobile applications designed for mobile handsets with data plans,

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[106] Many states are moving veterans off of Medicaid and onto health care provided by the VA in order to balance budgets. *See* Pamela Prah, States Save by Moving Vets From Medicaid's Rolls to VA's, Stateline.org (July 18, 2011), available at http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2011/07/18/states-save-by-moving-vets-from-medicaids-rolls-to-vas (2011).

[107] Indeed, California already accepts the WIC program as a qualifying program for Lifeline. *See* California LifeLine, available at *http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/lifelinedetails.htm* (last visited Aug. 31, 2015).

[108] *See* Office of Policy Support, Food and Nutrition Service, U.S. Dept. of Agriculture, WIC Participant and Program Characteristics 2012 Final Report, 33-35 (2013), available at http://www.fns.usda.gov/sites/default/files/WICPC2012.pdf.

such as Kidsdoc, Total Baby and playground locators.

G. The Commission Should Permit, but Not Require, Review of Photo Identification, and Should Focus on Improving Its Existing Identity Verification Process

In the Second FNPRM, the Commission proposes to require ETCs to obtain from Lifeline applicants "eligibility documentation that includes identification information or a photograph."[109] The Commission reasons that "program eligibility documentation may not contain sufficient information to tie the documentation to the identity of the prospective subscriber and often does not include a photograph," and that "requiring prospective subscribers to produce a government issued photo ID would improve the identity verification process and more easily tie the identity of the prospective subscriber to the proffered eligibility documentation."[110]

The Commission should permit, but not require, review of a government issued photo identification at enrollment.[111] Now that the NLAD is in place, and includes (as required) a TPIV check, the Commission's proposal is unnecessarily burdensome and duplicative.[112] Moreover, the proposal would not solve the problem the Commission seeks to solve because some forms of proof of eligibility do not contain the beneficiary's name. Therefore, viewing a photo identification would not "tie the identity of the prospective subscriber to the proffered eligibility documentation."

Rather than impose new, burdensome regulatory requirements—particularly those that will increase administrative costs and collection of consumer proprietary information—the

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[109] Second FNPRM ¶ 118.

[110] *Id.* at ¶¶ 119-120.

[111] Photo identification is not proof of eligibility and therefore should not be required to be retained.

[112] The Commission already has effectively imposed a photo ID requirement on some, but not all, ETCs through their compliance plans. Given that this requirement has been rendered duplicative by the NLAD, the Commission should absolve compliance plan holders from the obligation.

Commission should fix its existing identity verification process, which needlessly imposes burdens on consumers, providers and USAC, resulting in the delay or denial of Lifeline benefits to eligible consumers.

Several steps are required to fix the current flawed TPIV process. First, USAC should replace its exact match with a reasonable match standard for TPIV checks. The current NLAD TPIV process creates too many failures because it requires an exact match of all Lexis Nexis data for all applicant information fields[113] rather than matching enough information to confirm the identity (which is what the Lexis Nexis solution is designed to do). This problem is exacerbated where the databases that Lexis Nexis uses include bad data or little data.[114] Replacing the current exact match process will result in far fewer TPIV failures, thus reducing the adverse impact the current process has on eligible consumers and service providers.[115]

Second, the TPIV dispute resolution process needs to be modified to remove needless documentation requirements it imposes on service providers and consumers. The current TPIV dispute resolution process requires ETCs to collect proof of all categories of enrollment information, even if a single piece of information cannot be confirmed. For example, if an applicant's date-of-birth cannot be confirmed by Lexis Nexis, but the other information checks out (name and last four digits of SSN), the current TPIV dispute resolution process requires the

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[113] Lexis Nexis would no doubt admit that not all information in its database is correct. Rather, the Lexis Nexis process looks for enough information to confirm the person's identity. Lexis Nexis does not require an exact match on all data fields to identify someone, but NLAD does.

[114] This will become especially important if Lifeline subscribers in Puerto Rico are migrated to the NLAD because TPIV failure rates are much higher in Puerto Rico due to imperfect Lexis Nexis DOB data.

[115] Requiring exact matches on all fields and the failure to use LexID for duplicate detection led in large part to the "production duplicates" that the Commission and USAC announced in December 2014 had been permitted to enroll in NLAD. *See* Letter from John J. Heitmann and Joshua Guyan, Counsel for the Lifeline Reform 2.0 Coalition, to Marlene Dortch, Secretary, Federal Communications Commission, *Notice of Written Ex Parte Presentation Regarding National Lifeline Accountability Database Production Duplicates Resolution Process*, WC Docket No. 11-42 (Mar. 1, 2015).

ETC to collect documentation to prove not only the date-of-birth (such as a driver's license), but also proof of the applicant's SSN.[116] This is unnecessary and overly burdensome on both ETCs and low-income consumers. Forcing low-income Americans to bring documentation to prove their SSN because Lexis Nexis cannot confirm their correct DOB (even though they have a valid driver's license confirming their correct DOB) is a bad idea and a good example of a process that fails to treat low-income consumers with dignity and respect, particularly in situations where a potential subscriber does not have his or her social security card available and must return home to retrieve it before enrolling.

Third, USAC should permit the use of temporary "dummy" numbers for TPIV dispute resolutions. The current TPIV dispute resolution process is underutilized because it requires an ETC to provide an active telephone number, which means that the ETC has to effectively activate service and incur related costs without knowing whether the exception will be granted.

III. TO INCREASE COMPETITION AND INNOVATION IN THE LIFELINE MARKETPLACE, THE COMMISSION SHOULD REDUCE FEDERAL AND STATE BARRIERS TO ENTRY AND IMPROVE FEDERAL AND STATE BENEFITS TO ENCOURAGE MORE ROBUST SERVICE OFFERINGS

In the Second FNPRM, the Commission seeks comment on "ways to increase competition and innovation in the Lifeline marketplace."[117] To that end, the Commission seeks comment how it can streamline the ETC designation process. As stated above, the Commission—through its own actions—has artificially constrained competition in the Lifeline market by failing, *for years*, to act on long-pending petitions from wireless carriers to operate in

[116] *See* National Lifeline Accountability Database: TPIV Failure Resolution, available at http://www.usac.org/li/tools/nlad/dispute-resolution/tpiv-failure-dr.aspx (last checked Aug. 18, 2015) ("Carriers may submit a dispute resolution request only after reviewing subscriber documentation that verifies first name, last name, last four digits of Social Security number or Tribal ID, and date of birth.").

[117] Second FNPRM ¶ 121.

the 12 "federal jurisdiction states" and proposed compliance plans from non-facilities-based wireless providers. This regulatory uncertainty hinders competition, deters investment and diminishes innovation. To enhance competition and promote innovation, the Commission should take the following, concrete actions: (1) establish a 90-day shot clock for Bureau action on federal ETC petitions, compliance plans and audit appeals; (2) prohibit state-level restrictions on participation in the federal Lifeline program, ensuring one set of rules for ETCs; (3) allow ETCs relief from Lifeline obligations where sufficient competition exists; (4) incentivize states to provide additional Lifeline funding; and (5) promote service innovation by using a light regulatory touch.

A. The Commission Should Establish a 90-Day Shot Clock for Federal ETC Petitions, Compliance Plans and Audit Appeals

The Commission should adopt a rule in which it establishes a shot clock within which the Bureau must take action on federal ETC petitions and compliance plans, and within which USAC and the Commission must take action on audit appeals.

As the Commission has recognized, the regulatory certainty that predictable decision timelines create is essential to promoting competition and maintaining adequate investment in regulated markets.[118] Here, the Commission is now in an ideal position to unleash competition in the Lifeline market. Specifically, with the NLAD now in place and operational for more than a year, the Commission has resolved the core area of waste, fraud and abuse in the program and the only real concern related to having multiple competitors in the same area.

To increase competition and service innovation in the Lifeline market, Joint Commenters propose that if no action is taken on a federal ETC petition within 90 days of filing, it should be

[118] *See* 47 C.F.R. §§ 54.719, 54.724.

automatically deemed granted. Similarly, if no action is taken within 90 days of filing a federal compliance plan, it should be automatically approved. This timeframe should also apply to any modifications to approved federal ETC petitions and compliance plans. Finally, if no action is taken on a USAC audit appeal within 90 days, it should be granted and resolved to the benefit of the ETC. Recognizing that the Commission has many priorities and finite resources, Joint Commenters suggest that—consistent with the framework of Section 54.724 of the Commission's rules—the Commission should have the ability to extend these 90-day deadlines by up to an additional 90 days, but it should do so through a public notice and not as a default through lack of action.

In fact, seeking to avoid "indefinite delays" in the designation process, the Commission long ago adopted a similar shot-clock for ETC petitions in the high-cost context. In the Twelfth Report and Order in its Universal Service proceeding, the Commission imposed a six month shot-clock for ETC petitions filed pursuant to Section 214(e)(6) to receive high-cost support for serving non-tribal areas.[119] The Commission also "strongly encourage[d]" state commissions to impose the same deadline on state-level ETC petitions filed under Section 214(e)(2) of the Act.[120] In so doing, the Commission recognized that "indefinite delays in the designation process [would] thwart the intent of Congress" under Section 254 to promote competition and universal service.[121] To be sure, this shot-clock only involved ETC petitions to provide high-cost service, but the same core values—universal service, competition and affordability—counsel in

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[119] *See In the Matters of Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, FCC 00-208, ¶ 114 (2000).

[120] *See id.*

[121] *Id.*

favor of a shot-clock in the Lifeline context. Indeed, in the Lifeline context, the reasons animating a need for a shot-clock are as or more compelling. For example, while the Commission in the Twelfth Report and Order was concerned about year-and-a-half-long delays, here Joint Commenters have faced delays exceeding three years, stifling market entry and the competition that it brings. Moreover, while ETC designation in the high-cost context typically involves facilities-based providers and significantly more complex issues, in the Lifeline context, ETC applications—particularly those from non-facilities based providers—are generally more streamlined, involve fewer issues and therefore should not require as much of a delay to review and approve. For these reasons, Joint Commenters' proposal of a shot clock with 90 days for initial review and an optional 90-day extension (by public notice) is appropriate.

Alternatively, the Commission could eliminate the compliance plan requirement altogether. While the Commission is still statutorily required to designate certain ETCs, the compliance plan was an additional regulatory hurdle that was imposed by the Commission upon non-facilities-based entrants to the Lifeline market when the Commission began allowing non-facilities-based providers to participate in the Lifeline program. However, ten years in, the majority of Lifeline services are provided by non-facilities-based carriers that are required to follow the same Lifeline rules as ETCs with facilities. The compliance plan process is broken, as evidenced by the fact that the Commission has not approved one in two and a half years.

Further, the compliance plan process and the Bureau's selective and staggered approvals have resulted in an unequal playing field for similarly situated providers. Two or more ETCs competing in the same area may be required to operate under different requirements depending on the conditions that the Bureau was able to extract from the providers in their compliance plan approval process. Other ETCs may operate in the same area without an approved compliance plan (if they had been designated prior to December 2011).

Removing the compliance plan process would level the regulatory playing field and encourage more competition and innovation.[122] Such action also would remove the considerable regulatory uncertainty created by the Bureau's Public Notice announcing Bureau approval requirements for material changes in compliance plans, including transfers of control.[123]

B. The Commission Should Act to Limit State Regulation of and Restrictions on Participation in the Federal Lifeline Program

The Commission can create more competition by taking action to streamline the ETC designation process at the state level and to limit state regulation of the federal Lifeline program. Specifically, the Commission should prohibit states from imposing rules or additional conditions on ETC participation in the federal Lifeline program. As explained above in Section I, a number of states have imposed particularly egregious ongoing requirements on ETCs as conditions of granting a state-level ETC petition for participation in the federal Lifeline program.[124] However, Section 214 of the Communications Act does not give states the authority to regulate wireless service, Section 332 of the Act bars states from rate regulation, and the native state telecommunications statutes typically do not provide states with authority to impose these restrictions. Instead, the law provides that states "shall . . . designate" ETCs and provides no

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[122] At a minimum, the Commission should take action to absolve providers of requirements not reflected in the Commission's rules. Such action would remove the considerable regulatory uncertainty created by the Commission's role approving industry consolidation transactions.

[123] *See infra* Section V.D.1. (discussing in detail processes to streamline Commission review of transactions involving ETC designations and compliance plans, including imposing a shot clock).

[124] *See supra* at Section I.B (describing state regulations on the ETC certification process). Rules such as Illinois' 80/20 rule, which requires ETCs to maintain non-Lifeline subscribers as at least 20 percent of their customer base, and the Oklahoma and Missouri requirement that subscribers show proof of eligibility for annual recertification are the epitome of regulatory overreach and should be preempted.

independent grant of authority to impose eligibility requirements.[125]

The Commission can take additional action to bolster competition by requiring states to implement state-level shot clocks on ETC petitions for participation in the federal program. To resolve the problem of protracted designation processes in too many states, the Commission should adopt the shot-clock framework analogous to Joint Commenters' proposal for federal ETC petitions. Specifically, if no action is taken on a state ETC petition within 90 days of filing, it should be automatically granted, unless the state—through a public notice—exercises a one-time extension of the 90-day deadline of up to an additional 90 days. Alternatively, the Commission could establish a shot-clock framework similar to the framework adopted for municipal wireless facilities siting[126] or competitive cable franchises.[127] Under this alternative framework, if the state commission fails to act on a state ETC petition in a reasonable period of time, the ETC should have the right to seek relief at the Commission.

Finally, in order to attract market entry and increase competition, the Commission should act to ensure a single set of rules that apply to all Lifeline providers, rather than a patchwork of state and federal requirements, which only serve to increase administrative costs and depress competition. To achieve a single set of rules, the Commission should preempt any state rules intended to impose ongoing regulations that are not directly tied to whether a particular provider is eligible to provide service under the Federal Lifeline program, and limit the applicability of

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[125] *See* 47 U.S.C. 214(e)(2); *see also Texas Office of Pub. Counsel v. FCC*, 183 F. 3d 393, 418 n.31 (5th Cir. 1999).

[126] *See Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(b) to Ensure Timely Siting Review & to Preempt Under Section 253 State & Local Ordinances That Classify All Wireless Siting Proposals As Requiring A Variance*, WT Docket No. 08-165, Declaratory Ruling, FCC 09-99 (2009).

[127] *See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 As Amended By the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order, FCC 06-180 (2006) (Finding that local franchise authority failure to act on franchise applications within 90 days (for applicants with access to right of way) and six months (for applicants without such access) is unreasonable and applications are deemed granted.).

any ongoing state-level restrictions to state low-income programs.

C. The Commission Should Relieve ETCs from Lifeline Obligations Where a Sufficient Number of ETCs Offer Lifeline Service

The Commission seeks comment on a proposal to relieve ETCs of the obligation to provide Lifeline service in areas where there are a "sufficient" number of Lifeline providers.[128] While the Joint Commenters generally support efforts to increase competition in the Lifeline marketplace, no provider should be required to provide Lifeline where it is not in their business interest to do so.[129] Instead, the Commission should strive to design a Lifeline program in which ETCs provide service because they see a viable business model, not because they are compelled by law to do so. As a means of testing its progress toward achieving that goal, the Commission should modify its rules so that Lifeline providers are no longer required to offer Lifeline service in well-defined areas where at least three ETCs offer service and have active customers.

D. The Commission Should Incentivize States to Provide Additional Lifeline Funding

In the Second FNPRM, the Commission seeks comment on ways it can increase competition and quality of service within the Lifeline program by encouraging states to provide an additional subsidy for service.[130] Joint Commenters strongly support efforts to incentivize states to increase their own funding for the Lifeline program. Recent history demonstrates that in situations where an additional subsidy is available for ETCs to pass on to their consumers, competition and service enhancements blossom. California provides the best example where

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[128] *See* Second FNPRM ¶ 125.

[129] AT&T and other incumbents should not be required to offer Lifeline service. *See* Comments of the Joint Commenters, WC Docket No. 11-42 *et. al.*, at 13-14 (Apr. 2, 2012) (stating that incumbent LECs should be able to choose whether to participate in the Lifeline program).

[130] *See* Second FNPRM ¶ 128.

additional state funding has resulted in enhanced Lifeline service offerings, including unlimited voice minutes and text messages and several hundred megabytes of data service. California provides an additional subsidy of up to $12.65.[131] Kentucky also offers a $3.50 state subsidy[132] for which some providers are offering 500 minutes/texts monthly when combined with the federal subsidy.

To incentivize these additional state funds, the Commission should make available a matching subsidy in any state that provides its own supplemental Lifeline subsidy. However, while the Commission should incentivize or encourage states to provide an additional subsidy, it should not dictate how states should provide that subsidy, or place restrictions on how ETCs may use it. Instead, the Commission should allow states to serve as laboratories of Lifeline innovation, enabling the federal program to learn lessons from state successes—or miscues—to better improve the functioning of the federal program.

E. The Commission Should Promote Service Innovation by Funding Broadband Experiments and a National Lifeline Wi-Fi Network

The Commission asks how it can promote innovation in the service offerings that ETCs provide for the Lifeline benefit.[133] For example, the Commission seeks comment on how ETCs may use unlicensed spectrum or other technologies to benefit low-income consumers.[134] As has always been the case, the best way for the Commission or any agency to promote innovative service offerings is through pro-competitive competition policies and a light regulatory touch.

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[131] *See Order Instituting Rulemaking Regarding Revisions to the California Universal Telephone Service (LifeLine) Program*, Rulemaking 11-03-013, Decision Adopting Revisions to Modernize and Expand the California LifeLine Program, at 39 (2013).

[132] *See* Public Service Commission of Kentucky, A Guide to Telephone Service Programs for Low-Income Consumers, available at https://psc.ky.gov/agencies/psc/consumer/lifeline.pdf (last visited Aug. 19, 2015).

[133] *See* Second FNPRM ¶¶ 129-131.

[134] *See id.* at ¶ 129.

To achieve this threshold goal, the Commission should adopt the pro-competition and smart-regulatory proposals described in these comments. The more prescriptive the Commission is in its Lifeline rules, the less innovative providers can be in serving low-income consumers.

The Commission also can foster innovation by funding Lifeline service-level and equipment-focused experiments, including those that would make broadband service and smartphones (or equivalent landline devices) available at no cost to low-income consumers. Like the CAF broadband experiments,[135] these experiments can produce valuable data for the Commission to consider, as it seeks to address the broadband affordability and adoption challenges facing low-income Americans.

The Commission also should seek to establish a comprehensive "National Lifeline Wi-Fi Network," a nationwide, free-to-end-user Wi-Fi network for participants in the Lifeline program similar to the cable industry's Wi-Fi Alliance. As the Commission recognizes in the Second FNPRM, Wi-Fi offload is a critical component of modern wireless data usage, with approximately 80 percent of all mobile data offloaded onto Wi-Fi networks and average data offloads exceeding four times average on-net data usage.[136] Consequently, the most cost-effective way to ensure that Lifeline subscribers can experience mobile services in a manner comparable to non-Lifeline consumers is to incentivize offload options for low-income consumers wherever possible.

To achieve this goal, the Commission should make available to all ETCs subsidies for the deployment of Lifeline Wi-Fi hotspots. Under this program, Lifeline subscribers would be given an opportunity to opt-in to the network, certify their participation in the Lifeline program, and

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[135] *See In the Matter of Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 (2014).

[136] *See* Second FNPRM ¶¶ 44-45, n.134.

receive a user name and password through which they could access participating Lifeline Wi-Fi hotspots using any Wi-Fi capable device (e.g., PC, tablet, mobile phone or other Internet-enabled device).

To add additional nodes to the network, the Commission could incentivize community anchor institutions receiving E-Rate funds to deploy additional hotspots for the network. With enough participating nodes, the Commission could effectively blanket low-income communities with fast, reliable Wi-Fi offload to promote digital parity between Lifeline and non-Lifeline broadband consumers.

F. The Commission Should Improve the Existing Lifeline ETC Approval Process Before Considering a New Process

As an alternative to streamlining the Commission's current ETC designation process, the Commission seeks comment on creating a new designation process for participation in Lifeline.[137] The Communications Act requires a provider to be an ETC before receiving universal service.[138] This requirement is good for the program because providers should have to demonstrate that they understand the program, its responsibilities and that they have built or are building the appropriate infrastructure to manage services under the program. However, while it is important for a regulator to vet providers, the current approval process—at both the federal and state level—has become rife with burdensome requirements, protracted approval timelines, and significant uncertainty.[139] Federal and state regulations and conditions related to ETC

[137] *See* Second FNPRM ¶¶ 132-135.

[138] *See* 47 U.S.C. § 214(e).

[139] *See supra* at 8-11. For example, in New Mexico, the PSC has not approved a single ETC application submitted since 2012. Similarly, in South Dakota, the PUC has only approved two ETC applications since 2012, leaving six other applications pending for an average of 26 months. Since 2012, Washington State has left three ETC applications pending for an average of 29 months. And Oregon has not approved any ETC applications since 2012 after taking nearly three years to approve TracFone. Joint Commenters are not aware of any justifiable reason why these applications should be left pending for more than three months, let alone three years.

designation have costs, and those costs only serve to limit the services that an ETC can provide to low-income consumers.

Ultimately, the shift to broadband will require significant investments from entrepreneurial service providers, and the only way to ensure a smooth transition is through a stable and predictable regulatory environment. Therefore, rather than start from scratch with a new ETC approval process (or no ETC approval process), the Commission should first improve the current process by applying a 90-day shot-clock to review of ETC petitions by the Commission and the states to let competition flourish.[140]

IV. LIFELINE RULE MODIFICATIONS ARE NEEDED TO REFLECT THE MANNER IN WHICH THE PROGRAM IS USED TODAY

In the Second FNPRM, the Commission seeks comment on a series of administrative issues related to the way that consumers and ETCs interact with the Lifeline program, including (1) how Lifeline subscribers may demonstrate continued interest in receiving Lifeline benefits; (2) how and when Lifeline subscribers may de-enroll from Lifeline; and (3) how to facilitate Lifeline subscribers' access to handsets with Wireless Emergency Alerts (WEA) capabilities.

First, Joint Commenters urges the Commission to eliminate its non-usage rules entirely because the substantial costs imposed by the rule on the program, providers and Lifeline subscribers outweigh the rule's benefits. However, if the Commission retains the requirement, the Commission should treat consumer-initiated text messages, broadband data usage and turning a wireless phone on as "usage" for purposes of the non-usage rules.[141] Second, although the

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[140] *See* Sections III.A. and III.B. *supra*.

[141] While some of the Joint Commenters previously have supported TracFone's petition without calling for an end to the non-usage rules, it has become clear that the non-usage rules are an unworkable solution that only serves to disadvantage wireless ETCs and the subscribers most in need.

Joint Commenters allow Lifeline customers to de-enroll at any time for any reason, the Commission has not provided data (other than anecdotal evidence) identifying a substantial or widespread failure regarding de-enrollment to justify the costs of the Commission's proposed additional requirements. Third, while many Lifeline subscribers utilize handsets that are WEA-capable, an additional device upgrade subsidy and enhanced regulatory certainty in the Lifeline program would accelerate providers' ability to make the investments required to put more of those advanced handsets into the hands of low-income consumers.

A. If the Commission Does Not Eliminate Its Non-Usage Rules, It Should Treat Consumer-Initiated Text Messages, Data Usage and a Lifeline Phone Turned On as "Usage" for Purposes of the 60-Day Non-Usage Rule

In the Second FNPRM, the Commission once again seeks comment on a petition from TracFone to amend Section 54.407(c)(2) of the Commission's rules to "treat the sending of text messages as usage for the purpose of demonstrating usage sufficient to avoid de-enrollment from Lifeline service."[142] The Commission further requests comment on whether the distinction between voice, text and data, for purposes of the non-usage rule, remains relevant.

Consumers—not regulators—should choose the means and frequency of communication that are best for them. As explained in more detail in Section V.E. *infra*, the Commission should eliminate its non-usage rule, which discriminates against wireless ETCs and their subscribers and imposes significant and unnecessary costs on consumers, ETCs and the administration of the program. However, if the Commission retains the rule, Joint Commenters support TracFone's proposal to count consumer texts as usage, and further urge the Commission to treat consumer-initiated data usage and the act of charging and turning on a wireless Lifeline phone as usage for

[142] *See* Second FNPRM ¶ 143; *see also TracFone Wireless, Inc. Petition for Rulemaking and for Interim Relief*, WC Docket No. 11-42 (filed Oct. 1, 2014) (TracFone Petition).

purposes of Section 54.407(c)(2).[143] Further, as discussed below, the arbitrary decision to exclude text messaging and data usage from the enumerated list discriminates against Lifeline subscribers with certain disabilities and cannot stand.

1. The Commission's Rules Establishing Actions That Evidence a "Continued Desire" to Receive Lifeline Service Are Not and Need Not Be Limited to Supported Services

In the 2012 Lifeline Reform Order, the Commission established the 60-day non-usage rule and defined "usage" because it wanted Lifeline subscribers to demonstrate a "continued desire to continue to receive Lifeline benefits."[144] In its definition of "usage" the Commission decided that four actions undertaken by the subscriber would qualify as usage: (1) completion of an outbound call; (2) purchase of minutes from the ETC to add to the subscriber's service plan; (3) answering an incoming call from a party other than the ETC or the ETC's agent or representative; or (4) responding to direct contact from the ETC and confirming that he or she wants to continue receiving the Lifeline service.[145] The Commission declined to include sending or receiving a text message in the enumerated list because "text messaging is not a supported service."[146]

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[143] The following subsections draw heavily from the Lifeline Reform 2.0 Coalition's comments on the original TracFone petition. *See generally* Comments of the Lifeline Reform 2.0 Coalition to the TracFone Petition (Dec. 1, 2014).

[144] 2012 Lifeline Reform Order ¶ 263.

[145] *See* 47 C.F.R. § 54.407(c)(2).

[146] 2012 Lifeline Reform Order, n.709. In other contexts, however, the Commission has determined that text messages are calls, which would be a supported service. Although the express terms of the TCPA do not refer to text messages (instead referencing only "telephone calls or messages"), the Commission has determined that the TCPA applies equally to mobile phone calls and text messages. *See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, FCC 03-153, ¶ 165 (July 3, 2003) (2003 TCPA Order) (affirming that the TCPA "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls, provided the call is made to a telephone number assigned to such service"), upheld by *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 949, 951-54 (9th Cir. 2009) (holding "that it is reasonable to interpret 'call' under the TCPA to include both voice calls and text messages.").

Two of the four actions that constitute "usage" in the enumerated list involve use of the supported service—voice telephony service. The other two, however, do not necessarily require consumers to make or receive a voice call. A Lifeline subscriber can purchase minutes from the ETC to add to his or her service plan in person, by text message, online or potentially through an ETC application without making or receiving a call. Likewise, a Lifeline subscriber can respond to direct contact from the ETC and confirm that he or she wants to continue receiving the Lifeline service in person, by text message,[147] by email or potentially online through an ETC application without making or receiving a call. Those actions do not involve voice telephony service. However, such actions, such as purchasing a "top-up" card in person or telling an ETC's representative in person that the subscriber wants to continue receiving the Lifeline service, demonstrate a "continued desire to continue to receive Lifeline benefits" under the current rules. That should be the Commission's guiding principle for what constitutes usage.

Several actions taken by Lifeline subscribers can demonstrate a desire to continue to receive the Lifeline service without using the supported service. Sending a text message using the phone provided by a Lifeline ETC for use with the Lifeline-supported voice telephony service demonstrates a "continued desire to continue to receive Lifeline benefits" and shows that

[147] The Commission should be aware that USAC has taken the untenable position in at least one beneficiary audit that a subscriber's use of text messages to respond to the ETC that he or she wants to continue to receive the Lifeline service is impermissible. USAC has taken the position that it will not honor a subscriber's direct response to an ETC stating that the subscriber wants to continue to receive the Lifeline service simply because the medium of notification is a text message. Therefore, for example, if an ETC sent a text message to a Lifeline subscriber that is deaf or hard of hearing asking if he or she wants to continue to receive Lifeline service because the subscriber had not made any calls in 30 or 60 days, and the subscriber sends a text message back saying that he or she wants to keep the Lifeline service, USAC would ignore that subscriber's stated desire and require the ETC to de-enroll the subscriber from his or her essential communications services. USAC's position on this point misreads the Commission's rule and the 2012 Lifeline Reform Order and could result in egregious denials of benefits to eligible Lifeline subscribers, especially those with disabilities. The Commission should act immediately to correct USAC's mistaken understanding of the current usage rule.

the phone has not been abandoned, transferred to someone else, lost or broken, which are the concerns raised by the Commission in establishing the "usage" rule.

Further, using the phone's data service can demonstrate that the subscriber wants to continue to receive the Lifeline service.[148] Just as a Lifeline subscriber sending text messages to an employer to pick up a shift or to their childcare provider to let them know the subscriber may be late picking up their child, Lifeline subscribers can use data and broadband services—including over-the-top voice and text services—for important communications. In fact, the Commission has stated that more texts are actually sent by over-the-top texting applications, which use the wireless data service, than by traditional SMS.[149] In addition, using smartphones and broadband, Lifeline subscribers will be able to fill out and submit online job applications, email with a potential employer regarding an interview, and renew other essential government benefits.

In addition, a Lifeline subscriber can indicate his or her "continued desire to continue to receive Lifeline benefits" simply by turning on his or her wireless phone, which also requires the subscriber to keep the phone charged. Many subscribers, particularly the elderly, may want a wireless phone service for emergencies or for a road trip and keep the phone charged and on for

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[148] Joint Commenters note that the Commission also should decide to make broadband a supported service through this proceeding. The Commission's rules already permit Lifeline subscribers to apply the Lifeline discount to bundled packages of voice and data services. Further, in the 2012 Lifeline Reform Order, the Commission found sufficient existing statutory authority to expend up to $25 million to support Lifeline broadband pilots. *See* 2012 Lifeline Reform Order ¶ 324. Recognizing broadband and data usage is also consistent with the universal service goals of the Communications Act. Section 254(b) of the Act states, "The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles: . . . (2) Access to advanced telecommunications and information services should be provided in all regions of the Nation." 47 U.S.C. § 254(b)(2).

[149] *See Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153, 10-255, Policy Statement and Second Further Notice of Proposed Rulemaking, FCC 14-6, ¶ 6 (2014) ("Moreover, "over-the-top" (OTT) texting applications are growing increasingly popular and have already eclipsed short messaging service (SMS) text messages provided by wireless carriers in terms of volume.").

that purpose. That act of turning the phone on demonstrates that the subscriber desires the service and that the phone has not been abandoned, transferred to someone else, lost or broken. A subscriber that dutifully keeps his or her phone on and charged should not be de-enrolled from Lifeline service.

The Commission's reasoning in restricting the enumerated list of actions that constitute "usage" to supported services does not hold up to reasonable scrutiny and therefore excluding text messaging, data usage and keeping a Lifeline phone on and charged is arbitrary. Further, as discussed below, the arbitrary decision to exclude text messaging and data usage from the enumerated list discriminates against Lifeline subscribers with certain disabilities and cannot stand.

2. Failure to Recognize Text Messaging and Data or Broadband Use as Usage for Purposes of the Lifeline Program Discriminates Against Subscribers with Disabilities

The Commission's failure to recognize subscriber text messaging and data or broadband use as "usage" for purposes of retaining their Lifeline services impermissibly discriminates against subscribers with disabilities. It also puts Lifeline providers in an untenable position – caught between complying with the Commission's Lifeline rules and the disabilities access requirements of the Communications Act and other Commission rules.[150] TracFone notes that it has received a Request for Dispute Assistance from the Disability Rights Office from a deaf subscriber that cannot place a call every 60 days to meet the usage requirement and retain his or

[150] As the TracFone Petition states, Section 255(c) of the Act provides, "A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable." *See also* 47 C.F.R. § 6.5(b).

her Lifeline benefit.[151] All ETCs that are required to comply with the 60-day non-usage rule could potentially be subject to a similar complaint.

Further, in a "Recommendation Regarding Access for Eligible Individuals with Disabilities to Lifeline Service" the FCC Consumer Advisory Committee (CAC) urged the Commission "to encourage carriers to work with individuals with disabilities who rely on text message communications to facilitate Lifeline service that supports a reasonable level of text message communication and to *allow such individuals to maintain eligibility even if they do not make a voice call during a specified period*."[152]

While the CAC raises an important concern and it is imperative that Lifeline subscribers with disabilities not be discriminated against in their ability to retain the Lifeline services for which they remain eligible, the CAC has misdirected the assignment. It is not the carriers that need to be "encouraged" but rather the Commission, since it is the Commission's definition of "usage" that is the cause of the problem. Further, USAC's interpretation of the existing rule that prohibits those with disabilities from using text messages to indicate the desire to continue receiving Lifeline benefits in response to direct contact from the ETC is particularly disturbing for those with disabilities. Joint Commenters support TracFone's Petition to address the concern that the CAC raised by allowing Lifeline subscribers, including those with disabilities, to use text messages (whether via SMS or OTT) to demonstrate a "continued desire to continue to receive Lifeline benefits."

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[151] *See* TracFone Petition at 5.

[152] FCC Consumer Advisory Committee, Recommendation Regarding Access for Eligible Individuals with Disabilities to Lifeline Service, (Oct. 20, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-330090A1.pdf (Oct. 20, 2014) (emphasis added).

Joint Commenters also assert that Lifeline subscribers with many different disabilities may use broadband and data service where available for essential communications where they may not wish to (or are not able to) use voice services. For example, a Lifeline subscriber in California with autism, Asperger's Syndrome, Down Syndrome or a speech or learning disability may feel more comfortable using his or her smartphone and Lifeline-supported broadband service to access online job boards or social media such as LinkedIn to network and find employment than attending job fairs or calling contacts and potential employers. Lifeline subscribers facing such challenges should not lose their Lifeline service because of those challenges when they are using the service in a manner that demonstrates a "continued desire to continue to receive Lifeline benefits."

B. The Commission Has Not Identified a Substantial Failure Regarding De-enrollment to Justify the Substantial Costs of Its Proposed Additional Requirements

In the Second FNPRM, the Commission proposes to require ETCs to de-enroll subscribers at their request for any reason within two business days without having to submit any additional documents.[153] In addition, the Commission proposes to require ETCs to make readily available a 24-hour customer service hotline through which customers may de-enroll from Lifeline services for any reason, publicize this 24-hour customer service number "in a manner reasonably designed to reach their subscribers," indicate on all marketing materials that subscribers may cancel or de-enroll for any reason without having to submit any additional documents and record requests for termination for audit purposes[154] Moreover, the Commission seeks comment on how ETCs should authenticate customers contacting the ETC to de-enroll

[153] *See* Second FNPRM ¶ 150.

[154] *See id.* at ¶¶ 150-51.

from Lifeline service, and proposes "that ETCs authenticate subscribers solely through social security numbers, account numbers, or some other personal identification verifying the subscriber's identity."[155] The Commission proposes a six-month transition period for these new rules.[156]

The Commission has not identified any substantial failure regarding de-enrollments, especially to justify the costs of the Commission's proposed additional requirements. Indeed, Joint Commenters allow Lifeline customers to de-enroll at any time for any reason. The Commission fails to include a cost-benefit analysis weighing an identified problem with the burdens of the proposed solution, and fails to recognize that any such cost-benefit analysis would militate against the Commission's proposal.

First, with respect to the proposal requiring a 24-hour de-enrollment hotline, the Commission fails to offer any evidence that there is a problem warranting such an obligation. ETCs already have customer service numbers—and online resources—that enable consumers to de-enroll upon request. Those services are generally available during normal business hours in the customer's local time zone. In fact, the CTIA Consumer Code, which Lifeline providers can adopt to demonstrate compliance with the Commission's consumer protection and service quality standards,[157] requires that carriers provide a toll-free number for customer service during normal business hours.[158] Further, Joint Commenters have improved their customer service over time—including the availability of customer support call centers—as a result of competition between carriers, not top-down regulatory requirements. In addition, Joint Commenters are not

[155] *Id.* at ¶ 152.

[156] *See id.*

[157] *See* 47 C.F.R. § 54.202(a)(3).

[158] *See* CTIA Consumer Code for Wireless Service, Provision 8 at 4.

aware of any complaints from customers about the inability to de-enroll late at night or in the pre-dawn hours of the morning. As such, there is no problem warranting a government-mandated, 24-hour de-enrollment hotline.

On the other hand, the Commission's 24-hour customer service number proposal would impose significant costs on service providers. Specifically, the 24-hour customer service hotline would require ETCs to pay for additional staffing to handle overnight shifts on the off-chance of a subscriber termination request. Moreover, employing additional call centers and/or call center employees to cover these hours would increase compliance costs, including not only the Commission's proposed data retention requirement for de-enrollment requests, but also general privacy and data security requirements.[159] In addition, even where ETCs can establish interactive voice response (IVR) systems to handle de-enrollments, they must bear the costs of establishing the system.

Second, with respect to publicizing the customer service number, the Commission has not provided evidence that ETCs are not making their customer service number known and available to Lifeline subscribers. Most ETCs include their customer service number on marketing materials, welcome materials and their website. Wireless ETCs generally allow customers to dial *611 for customer service from their Lifeline handset. The CTIA Consumer Code requires ETCs to include contact information in billing statements, written responses to customer inquiries and on carrier websites. ETCs also do this because they have a business incentive to provide good customer service. Especially for resellers, customer service is one area where they can provide superior service to compete for customers. Whatever the cost of "publicizing" the

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[159] Indeed, given the Commission's recent privacy and data security actions against ETCs, and the Commission's ever-expanding view of its own privacy and data security authority, the costs of adding new or expanded call center capabilities is astronomical.

customer service number, it is not justified because the Commission has not demonstrated a problem to be regulated.

Third, with respect to the similar proposal to require ETCs to include the statement that Lifeline customers can de-enroll from Lifeline at any time without submitting additional documents, again the Commission has failed to identify any lack of consumer knowledge regarding the ability to de-enroll. However, the costs of including the de-enrollment statement on all "materials describing the service," which the Commission defines as all "print, audio, video and web materials used to describe or enroll in the Lifeline service offering" would be substantial and unnecessary. ETC marketing materials already include substantial required disclosures, which are cumbersome and the Commission's proposal would require ETCs to revise and re-issue all marketing materials with yet another disclosure. That process requires coordination between the ETC, its vendors, its counsel and others to ensure compliance.

Fourth, with respect to the proposed authentication scheme, carriers (including ETCs) are already required to authenticate customers under the Commission's rules before a carrier can disclose customer proprietary network information (CPNI).[160] In practice, Joint Commenters authenticate callers pursuant to the CPNI rules at the outset of each customer service call to ensure that caller is who she says she is. To the extent that the Commission seeks to impose authentication requirements in the specific context of requests for de-enrollment from Lifeline service, those requirements should be harmonized with the CPNI rules and should be no more burdensome than those requirements to avoid imposing unjustified costs on ETCs.

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[160] *See* 47 C.F.R. § 64.2010.

C. Advanced Handsets Are Required to Expand Use of Wireless Emergency Alerts

The Commission seeks comment on ways to increase ETC participation in the Wireless Emergency Alerts (WEA) system and whether "providers have sufficient incentive to participate in WEA on a voluntary basis."[161] Today, participation in the WEA system requires an advanced handset—either a recent-issue feature phone or a smartphone. Joint Commenters do provide many Lifeline subscribers with handsets that are WEA-capable, but there is not a sufficient economic incentive (or ability) to replace older handsets with newer WEA-capable handsets due to the economics of providing Lifeline service. If the Commission wants to accelerate use of such handsets it should provide an additional subsidy that will allow providers to make the investment in those advanced handsets. At a minimum, the Commission should adopt reforms consistent with these comments to provide the regulatory environment needed to justify service provider investments in smartphones or late model feature phones for Lifeline subscribers.

It is difficult for wireless Lifeline providers to put newer, more expensive handsets in the hands of Lifeline customers in the face of ballooning regulatory costs and shrinking margins. Thus, while ETCs already have a competitive incentive to provide the best possible handsets to their consumers, and ETCs are willing to make WEA available to consumers where possible, without additional subsidies for handsets or a more conducive regulatory environment, it will take time for ETCs to make the significant up-front investment needed to provide no-cost-to-consumer, WEA-capable handsets.

[161] *See* Second FNPRM ¶ 155.

V. ADDITIONAL MODIFICATIONS TO LIFELINE PROGRAM ADMINISTRATION SHOULD UTILIZE A LIGHT REGULATORY TOUCH TO ADDRESS CLEARLY IDENTIFIED PROBLEMS

In addition to the broader Lifeline reform proposals discussed above, the Commission also seeks comment on nine additional issues related to Lifeline program administration. In this section, Joint Commenters address each of these issues in turn, emphasizing the core themes underlying these comments: the Commission should use competition—not regulation—as its North Star, and only regulate where there is an identifiable, evidence-based problem warranting additional rules. Where such rules are not warranted, the Commission should ease and streamline them to the benefit of low-income consumers and ETCs.

A. The Commission Should Evaluate Program Effectiveness With Modernized Metrics

In the Second FNPRM, the Commission seeks comment on whether it should conduct a program evaluation to determine how well Lifeline has contributed towards fulfilling its intended objectives, including increasing the availability of voice service for low-income Americans.[162] The Commission also asks whether it should consider other potential objectives or indicia of progress in the Lifeline program, such as the affordability of service, the number of people who no longer need Lifeline or other beneficial outcomes that Lifeline engenders. Joint Commenters agree that a program evaluation can be an important tool for gauging program efficiency, but caution that any evaluation must be based on modernized, future-facing metrics.

First, rather than focusing on outdated metrics such as the penetration of voice services for low-income consumers, future program evaluation should seek to ensure that the Lifeline program is providing low-income Americans with affordable access to advanced

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[162] *See* Second FNPRM ¶ 157.

communications (similar to the Commission's annual Section 706 inquiry), including mobile broadband. To that end, the Commission should base its program evaluation on the extent to which low-income Americans are able—through the Lifeline subsidy—to access and use "the benefits that flow from getting consumers connected," including broadband-enabled applications and services that can close the homework gap, close the jobs gap (low-income Americans typically must engage in a perpetual job search to overcome unemployment, under-employment and other financial hardships) and provide improved access to health care and public services. The Commission must recognize that access to advanced communications is a moving—not static—target, and that the evaluations must be focused not only on meeting today's connectivity needs, but connectivity needs in the future.

Second, the Commission should also evaluate whether the existing one-per-household limitation on Lifeline subsidies best serves the Commission's goals for the program and whether it should be modified to better reflect how consumers use mobile services in particular (while more affluent families typically choose a single landline connection, few multi-member families rely on a single mobile device). When one member of the household takes his or her mobile device to a job or on an errand to reap the benefits of mobility, members of the household are left disconnected. Joint Commenters agree with the Community Technology Advisory Board of Seattle that "it is unreasonable to expect two or more adults who live together (such as couples, two-parent households, roommates, and multigenerational families) to share one phone line."[163] Even if a single subsidy could defray the costs of a family plan, the evidence demonstrates that even a minimum charge is a barrier to entry for many low-income consumers. In its evaluation,

[163] *See* Comments of the City of Seattle Community Technology Advisory Board, WC Docket No. 11-42 (Aug. 16, 2015).

if the Commission determines that the existing subsidy cannot meet a household's connectivity needs, it should eliminate the one-per-household requirement and establish a structure through which multiple-adult households, or households with dependents, can access multiple subsidies, or an enhanced subsidy that can be applied to a wireless family plan.

Third, affordability of voice and data service and program participation levels are critical metrics for determining whether the Lifeline program is meeting its goals. The Commission should study take-rates for no-cost-consumer/zero entry service options and higher price service options, recognizing that the costs of equipment (e.g., cable modems and smartphones are key factors). Program participation levels also should be studied. For years the Commission has touted its success in achieving savings and reducing significantly the total cost of the Lifeline program. To the extent that this success was achieved through rules that made it difficult for eligible consumers to enroll or to stay enrolled, or by withholding from low-income consumers the benefits of competition, the Commission should consider redefining what it considers to be success.

Finally, the Commission should structure the evaluation as a triennial (once every three years) inquiry, and should conduct the evaluation at the division or bureau level, rather than at the Commission level. The Commission should pay for the program evaluation out of its regular budget, just as it evaluates any other program.

B. The Commission's Electronic Signature Proposals Are at Odds with the Realities of the Digital Economy and Fail to Respect the Dignity of Low-Income Consumers

The Commission also asks how it can "strengthen the integrity of electronic signatures" in harmony with the E-SIGN Act and to further protect against waste, fraud and abuse.[164] Specifically, the Commission seeks comment on "whether coupling certain signature verification processes with additional proposed safeguards may help in demonstrating that a signature is in fact a valid 'electronic signature,'" but notes that it will not "permit a system where a random stray mark, attributed to stylus difficulties, or an automatically generated signature, without more constitute valid signatures."[165] The Commission further asks whether it should require ETCs to retain the IP address, MAC address, or other identifier affiliated with the e-mail or device used to enroll the subscriber.[166] Finally, the Commission proposes "that all written certifications (irrespective of whether they are in paper or electronic form) mandate that subscribers initial their acknowledgement" of each of the required certifications in the subscriber's application form.[167]

Joint Commenters submit that the Commission's proposal to heighten its authentication and document retention requirements in the context of E-SIGN is unnecessary, burdensome and ultimately harmful to Lifeline subscribers because such a change would fail to treat them like non-low-income consumers interacting with the digital economy. In today's digital economy, consumers understand that clicking a box, using a digital stylus or finger to an electronic signature pad or mobile device (regardless of whether the use replicates the consumer's typical

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[164] *See* Second FNPRM ¶¶ 172-177.

[165] *See id*. at ¶¶ 175, 176.

[166] *See id.* at 176.

[167] *See id.* at ¶ 177.

signature) or clicking an "I ACCEPT" button are legally valid and binding. Millions, if not billions, of legally binding transactions are completed in this way every day. The prospect of having USAC audit or the Enforcement Bureau investigate whether a consumer's initials or signature line markings are "acceptable" or "valid" should be prospect enough for those providers who do not provide Lifeline service to keep it that way and for those providers that do provide Lifeline service to head for the exits. Moreover, the proposals are an affront to the dignity of low-income consumers, as they suggest that the Commission does not consider them worthy of the trust and respect accorded to other Americans in today's digital economy.

For these reasons, the Commission should not require a heightened standard beyond what is required by the E-SIGN Act. To do so would impose burdens on consumers and ETCs with no resulting benefits, forcing low-income consumers to jump through additional regulatory hoops that do not apply for non-low-income Americans.

If the Commission is concerned about the current enrollment certification forms or the ways in which consumers complete them, then it should simplify the form. For example, the Commission could accept forms written in plain language free of legalese. In addition, the Commission should structure the form to have the applicant certify—once—that all of the certifications made in the application are under the penalty of perjury, rather than requiring the same certification multiple times throughout the form. Finally, the Commission could utilize standardized forms as discussed in Section V.H *infra*. Not only would adoption of these changes eliminate many of the problems perceived by the Commission with respect to the forms in use (most of which have been approved by the Bureau), it also would eliminate the waste of resources involved with audits that seek to recover funding because of findings regarding the particular wording or placement of certifications (findings which often conflict with other audit findings and often are accompanied by a refusal to provide any guidance on how to avoid the same finding in the future).

C. Rather than Expand the Functions of the National Lifeline Accountability Database, the Commission Should Improve the Existing Database

The Commission also seeks comment on a number of issues related to the NLAD, including (1) whether to use the NLAD to determine ETC reimbursements; (2) who should pay for existing and proposed NLAD functions; and (3) whether there are additional changes that could be made to improve the NLAD.[168] In addition, the Commission asks whether it should require ETCs to contribute additional USF funds to support the operation of the NLAD.[169]

1. The NLAD Is Not Well Suited to Manage Disbursements

The Commission asks whether subscriber information in the NLAD could be used to determine an ETCs' Lifeline reimbursement amount.[170] Before the Commission embarks on an effort to expand the roles and responsibilities of the NLAD—imposing dramatic costs and undoubted delays in the process—it should first ensure that the NLAD is functioning optimally with respect to its original, intended purpose. As discussed *supra*, the NLAD presents a case-study in the challenges of developing and launching a quasi-government-run subscriber database. The Commission originally announced that it would develop a national duplicates database in its 2012 Lifeline Reform Order and set a launch date of February 2013. USAC missed its deadline by well over a year, and at launch, the NLAD used a definition of duplicate that the Commission later revised and then used to discover "production duplicates" that NLAD had allowed to

[168] *See* Second FNPRM ¶¶ 179-183.

[169] *See id.* at ¶ 183.

[170] *See id.* at ¶ 179-182.

enroll.[171] Any changes to the NLAD definition of a duplicate must be implemented in the first instance on the front end to deny enrollments—never on the back end after the subscribers have been enrolled and provided with a phone and service. USAC—with the assistance of ETCs and their vendors—continues to improve the NLAD, but the process is not yet complete. For this reason alone, it would be premature to extend the NLAD into new areas when the NLAD has yet to be optimized for its primary role.

If the Commission ultimately transitions to using each ETC's subscriber base in the NLAD to determine reimbursement amounts,[172] it must first address several complications that such an approach would raise. First, as the Commission recognizes, several states and territories have opted out of the NLAD.[173] Consequently, unless the Commission were to bring subscriber data for those states into the NLAD, USAC cannot use the NLAD for reimbursement purposes in those states. To address this fact, USAC likely will have to maintain some Form 497 submission infrastructure and procedures, creating a two-track (or more) process for reimbursements and potentially increasing overhead costs of maintaining the system. These costs are significantly outweighed by the lack of meaningful failures within the existing reimbursement mechanism.

Second, some Lifeline subscribers remain enrolled in the NLAD after the time for which service to them can be reimbursed. Specifically, some ETCs subject to the Commission's 60-day non-usage rule use a 90-day process under which subscribers remain actively enrolled during the 30-day "cure" period following an initial 60 days of non-usage. In such situations, the ETC

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[171] A more comprehensive discussion of the problems with NLAD's TPIV solution can be found in Section II.G.

[172] *See* Second FNPRM ¶ 179.

[173] The Second FNPRM states, "Texas, Oregon, California, Vermont, and the territory of Puerto Rico have each received approval from the Commission to opt out of the NLAD." Second FNPRM ¶ 179 n.340. The Second FNPRM asks, "would Lifeline providers operating in states that opted out of the NLAD be required to continue to file FCC Form 497s for those states?" *Id.* at ¶ 179.

cannot claim a reimbursement for the 30-day cure period if the subscriber does not ultimately use the service, but such subscriber would still appear in the NLAD during the cure period. As a result, using the NLAD subscriber count to determine reimbursements could lead to incorrect totals of subscribers eligible for reimbursement.[174]

Third, ETCs regularly file upward and downward revisions to their Forms 497, which include subscriber counts. In some instances, these revisions stem from data entry errors or post-enrollment corporate auditing that result in increases or decreases to the number of reimbursable subscribers. The Commission's rules permit such revisions indefinitely for downward revisions and for up to one year for upward revisions.[175] If the Commission were to determine reimbursement amounts based on the NLAD, it would prevent ETCs from submitting a revision to an NLAD snapshot.

Fourth, the Commission would need to address the timing of enrollment in the NLAD and activation of the service. Specifically, some wireless Lifeline ETCs do not provide handsets to customers at enrollment in some circumstances (e.g., phone enrollments), but rather ship the phones to the address provided in the application. In those instances, the subscriber will be enrolled in NLAD a few days before they receive the phone and activate their Lifeline service. If the customer does not activate their service, they currently do not receive a reimbursement, but if they are enrolled in NLAD as of a snapshot date, it would trigger a reimbursement.

Importantly, if the Commission decides to transition to using NLAD to determine reimbursements, it should consult early and often with the industry on these and likely other

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[174] As discussed in Section V.E. *infra*, the Commission's Lifeline usage rules should be eliminated.

[175] *See* 2012 Lifeline Reform Order ¶305; USAC FCC Form 497 FAQs: General Questions, , available at http://www.usac.org/li/about/getting-started/faq-online-497-general.aspx (Response to Q7: "Carriers can revise any form that was submitted offline as long as it falls within the current administrative window.").

complications. In any event, if the Commission adopts its NLAD reform proposals, there should be an extended transition period of at least 180 days to allow all parties to adjust and update their systems.

2. The Commission Should Not Require ETCs to Pay to Use the NLAD for Reimbursement Purposes or TPIV Checks Unless They Have a Choice Whether to Use It

The Commission asks whether ETCs should pay for using the NLAD for its proposed expanded purposes, including reimbursement and conducting TPIV checks.[176] The NLAD is an important programmatic check against waste, fraud and abuse, and all Lifeline providers must use it (with limited exceptions[177]). Therefore, the Lifeline program, which currently operates on a lean administrative budget, should continue to bear its cost. Similarly, because all ETCs are required to confirm TPIV as part of the NLAD enrollment process, the Lifeline program should bear the costs of that service.[178] Based on this reasonable and fair approach, services that the NLAD or USAC perform at the option of ETCs should be paid for by those ETCs requesting optional services and functionality. For example, ETCs that elect to have USAC perform annual recertification for them should reimburse USAC for the costs of those services.

3. To Further Improve the NLAD, the Commission Should Make Its Existing Processes More Efficient and Transparent

The Commission asks whether it should use the information stored in the NLAD for other

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[176] *See* Second FNPRM ¶ 183.

[177] *See id.* at ¶ 179 n.340 (citing California, Oregon, Texas and Vermont, and the territory of Puerto Rico as receiving approval to opt out of the NLAD).

[178] The NLAD should have the lowest TPIV check cost available based on its volume, and yet, at 35 cents per transaction, this does not seem to be the case. *See id.* at ¶ 183 n.345 (citing LexisNexis, General Services Administration Federal Supply Service Authorized Federal Supply Schedule Price List at 104, https://www.gsaadvantage.gov/ref_text/GS02F0048M/0OGVPK.36D83V_GS-02F-0048M_GS02F0048MMAY2015.PDF). In fact, the Joint Commenters often are able to obtain TPIV confirmations at a better rate.

aspects of the Lifeline program, such as recertification,[179] and whether there are changes that could be made to the NLAD that would further limit the potential for waste, fraud and abuse.

Joint Commenters supported the development of the NLAD and believe that it has made a net positive contribution to the integrity of the Lifeline program. The NLAD has no clear role, however, with respect to annual recertification. The fact that a subscriber remains in the NLAD does not indicate that the subscriber will recertify eligibility when required to do so. Rather, ETCs should be responsible for annual recertification because they maintain the customer relationship and outreach methods to maximize success.[180]

With respect to NLAD improvements, Joint Commenters already have described many of the improvements that can be made, including regarding TPIV screening.[181] The Commission also should make its duplicate scrubbing process more transparent by revealing its duplicate detection methodology. To date, the Commission and USAC have failed to give any definitive guidance as to what constitutes a "duplicate" under the Commission's rules, opting instead for a protracted and unproductive game of "gotcha" with industry. This current process is bad for ETCs, bad for consumers, and bad for the program. It is time for the Commission and USAC to modernize their approach by embracing transparency and publishing the duplicate detection logic used in the NLAD. By "open sourcing" its duplicate detection logic, the Commission can allow third parties to suggest improvements (for prospective application only) to further combat waste, fraud and abuse to the benefit of the Commission, ETCs and the program as a whole.

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[179] *See* Second FNPRM ¶ 184.

[180] *See supra* Section II.C.6.

[181] A more comprehensive discussion of the problems with NLAD's TPIV solution can be found in Section II.G.

D. The Commission Should Ease Regulatory Burdens Associated with the Assumption of ETC Designations, Assignment of Lifeline Subscribers and Exiting the Market

In the Second FNPRM, the Commission proposes rules to minimize the disruption to Lifeline subscribers associated with the transfer of control of ETCs or the sale of assets including lists of customers receiving benefits under the program, as well as the transfer of ETC designations between providers.[182] Second, the Commission seeks comment on proposals for when it should permit an ETC to assume an ETC designation from another carrier.[183] Third, the Commission proposes establishing notification requirements when a wireless carrier sells or otherwise transfers Lifeline subscribers to another provider or exits the market.[184]

1. The Commission Should Adopt Its Proposal to Streamline the Transfer Approval Process Through a Shot Clock, and Should Extend Its Proposed Process to All Transactions

The Commission seeks comment on several proposals related to acquisitions of ETCs by non-ETCs where the acquired company is a Commission-designated ETC (i.e., where the Commission has designated the acquired Lifeline provider as an ETC for purposes of serving the federal jurisdiction states).[185] Specifically, the Commission proposes to retain its existing requirement that an acquiring entity that has not obtained ETC designation from the Commission must file a petition with the Commission seeking ETC designation for the relevant federal jurisdiction states.[186] However, the Commission proposes to streamline its transaction approval

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[182] *See* Second FNPRM ¶ 185.

[183] *See id.* at ¶ 185.

[184] *See id.* at ¶¶ 193-194.

[185] *See id.* at ¶¶ 188-190.

[186] *See id.* at ¶ 188. Further, the Commission proposes that the requirement to file a federal ETC petition would extend to acquirers that plan to use a different corporate name or operating entity, or when the acquiring entity keeps the acquiring ETC's corporate name or operating entity. *See id.* at ¶¶ 188-190.

process where both the acquirer and the target hold federal ETC designation.[187] Under its proposal, the acquiring ETC would only need to notify the Commission of its intent to assume control of the target, including in its notification pertinent details about the transaction and the acquiring entity, and a public interest analysis.[188] If the Commission failed to act on the ETC's notification, the transaction would be deemed approved.[189] The Commission seeks comment on the appropriate timeframes for these actions.[190]

Joint Commenters fully support the Commission's desire to streamline the transfer approval process, and appreciate the Commission's proposal to establish a shot-clock within which the Commission must act on a petition before it is deemed granted, which is a concept that should be used more liberally with respect to Commission and Bureau actions.

However, this streamlined approval process should extend beyond situations where the acquiring entity is an approved federal ETC. Joint Commenters propose that the 90-day shot clock should apply to all transactions (regardless of whether the acquiring entity has an approved compliance plan or federal ETC designation). In this way, the Commission can harmonize its transaction approval timeline with Joint Commenters' proposal to implement a 90-day shot clock on new federal ETC petitions, compliance plans and audit appeals,[191] and realize substantial efficiencies in program administration, along with increased competition and innovation.

The Commission's proposal to streamline the ETC transfer approval process should also address the process outlined for changes to compliance plans (should the Commission choose not

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[187] *See id.* at ¶ 190.

[188] *See id*.

[189] *See id*.

[190] *See id*.

[191] *See supra* Section III.A.

to eliminate them) under footnote 1000 of the 2012 Lifeline Reform Order and the Commission's Compliance Plan Change Public Notice,[192] which have caused considerable regulatory uncertainty and cast a pall on investment and beneficial consolidation in the Lifeline market.

According to the Compliance Plan Change Public Notice, despite what footnote 1000 says, this provision requires that when a non-facilities-based carrier attempts to acquire a Lifeline-only ETC with an approved compliance plan, the acquiring carrier must receive Bureau approval. Further, the Compliance Plan Change Public Notice requires that any "material" changes to an approved compliance plan, including changes in corporate ownership and control, must be pre-approved by the Bureau. However, because the Commission has essentially stopped granting compliance plans, these requirements have effectively blocked productive transactions between Lifeline-only ETCs and the economic efficiencies and consumer benefits that those transactions bring. With no guidance on what constitutes a material change and no clue as to how long the Bureau would take to review and approve such changes, footnote 1000 and the Compliance Plan Change Public Notice provide a striking example where the Commission has created and fueled regulatory uncertainty to the detriment of willing service providers and the low-income consumers they seek to serve. ETCs and investors need to know there is a light at the end of the tunnel, and Joint Commenters welcome the Commission's proposal to provide

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[192] *See Wireline Competition Bureau Reminds Carriers of Eligible Telecommunications Carrier Designation and Compliance Plan Approval Requirements for Receipt of Federal Lifeline Universal Service Support*, WC Docket Nos. 09-197, 11-42, Public Notice, DA 14-1052 (2014) ("Compliance Plan Change Public Notice"); Lifeline Reform Order ¶ 380 n.1000. Footnote 1000 states:

> In the event there is a change in ownership control of an existing Lifeline-only ETC that received forbearance of the facilities-based requirement, designated prior to December 29, 2011, and that Lifeline-only ETC is acquired by a telecommunications carrier that does not meet the definition of a facilities-based carrier under section 214(e)(1)(A), the controlling carrier may not rely on the existing Lifeline-only ETC's compliance plan and must submit a compliance plan for Bureau approval as detailed in paragraph 379 before receiving reimbursement from the program. *See* 2012 Lifeline Reform Order ¶ 380 n.1000.

certainty in this area. Therefore, the Bureau should act on any transactions involving transfer of control of a compliance plan within 90-days or the application should be deemed granted.[193]

2. The Commission Should Not Adopt Additional Notification Requirements in Advance of Subscriber Base Assignments or Exiting the Lifeline Market

In the Second FNPRM, the Commission also proposes to require an acquiring carrier that is not currently subject to Section 214 transfer application, carrier change notice or discontinuance requirements (i.e., wireless carriers) to provide notice to affected customers, the Commission, USAC and the state designating authority of a transaction involving assignment of a Lifeline subscriber base.[194] Furthermore, the Commission seeks comment on additional notification requirements where an ETC seeks to exit the Lifeline market entirely.[195] Finally, the Commission seeks comment on any other requirements that it should adopt.[196]

Additional notification requirements are unnecessary. The Commission has made reasoned determinations regarding when applications to the Commission and/or customer notices are required largely based on the type of service provided and the competitive nature of the industry. Such applications and notices generally are not required for wireless services and customers pursuant to Commission rules.[197] The Commission has not identified good cause to upset that long-standing regulatory regime for wireless Lifeline customers who generally have competitive service provider options.

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[193] If the Commission sees the wisdom in eliminating the compliance plan requirement because the process is broken and non-facilities-based providers dominate Lifeline service today, this streamlined processing proposal becomes moot. For a full discussion of the proposal to eliminate the compliance plan requirement *see supra* Section III.A.

[194] *See* Second FNPRM ¶¶ 192-193.

[195] *See id.* at ¶¶ 194-195.

[196] *See id.* at ¶¶ 196-197.

[197] *See id.* at ¶ 187.

Further, ETCs already have an incentive to notify affected subscribers of transactions that will affect those subscribers' service because it makes good business sense to do so. Regardless of whether an ETC is transferring part of its subscriber base or exiting the market entirely, ETCs have an interest in providing their subscribers with reasonable notice.

Moreover, apart from the federal ETC states, many state authorities already require ETCs to notify the state commission and affected subscribers of a transaction that would affect their service. To the extent that some ETCs have not provided adequate notice, the Commission has not identified a single incidence of a failure to notify that resulted in substantial consumer complaints. Further, because ETCs know their subscribers best, and how best to communicate with them, the Commission should not prescribe detailed time period, content and delivery obligations.

For these reasons, the Commission should not impose additional notice requirements on wireless carriers. However, if the Commission determines that a notification requirement is necessary, it should ensure that federal notification rules trump state notification requirements, and that ETCs have the flexibility to transmit notices in plain language (i.e., without legalese) by any means reasonably likely to reach the customer (e.g., text messages).

E. The Commission Should Eliminate the Non-Usage Rule—Not Shorten The Non-Usage Period

In the Second FNPRM, the Commission proposes to shorten the permissible non-usage period from 60 days to 30 days and require ETCs to de-enroll any subscriber that does not use the Lifeline service for 30 days.[198] Joint Commenters submit that the Commission should eliminate the non-usage rule, not shorten the usage period. In short, three years after the

[198] *See id.* at ¶ 198-199.

adoption of the 2012 Lifeline Reform Order, it has become clear that the harms and costs of the non-usage rule far outstrip any benefits that the rule provides to the Lifeline program.[199] As explained below, the non-usage rule : (1) harms consumers because it undermines consumer choice and disrespects one of the core purposes of the Lifeline program, availability in an emergency; (2) harms wireless ETCs and wireless consumers because it is not technology neutral; and (3) imposes substantial costs on ETCs and the Lifeline program without meaningful benefit.

First, the non-usage rule disrespects an important purpose for Lifeline service that many consumers want: availability in an emergency. Different consumers seek out Lifeline discounted service for different reasons. Many Lifeline subscribers use Lifeline service to keep in regular contact with employers, childcare providers and family. Other Lifeline subscribers, in particular the elderly and persons with disabilities, may want the service just in case of an emergency so that they can call 911, doctors or loved ones should the need arise. If that consumer chooses a wireline phone, they can retain that service without having to use it outside of an emergency. However, if that consumer wants a mobile service because the consumer wants the safety and security of access to emergency services from anywhere, and chooses a no-cost-to-consumer option for wireless service because money is tight, the consumer has to use the service every 60 days or lose it.[200]

Many consumers are also very careful with their minutes use, preferring to save their minutes for important events, like calls from an employer, a healthcare provider, a particular

[199] *See* 2012 Lifeline Reform Order ¶¶ 255-263.

[200] There is no similar usage requirement for the National School Lunch Free School Lunch Program. If a child or school qualifies and a child brings his or her lunch for a period of time, the benefit is not lost. Similarly, if a beneficiary of Federal Public Housing Assistance (Section 8) vouchers and does not stay in the discounted housing for 30 or 60 days, the discount is not lost.

family member or for an emergency. If the event doesn't come, they may not use the service for a period of time, but they still wish to retain the service in anticipation of the event. The Commission's Lifeline rules should respect the choices of consumers who need an emergency phone or are careful to preserve minutes for particular uses.

Second, the non-usage rule is not technologically neutral in practice and disproportionately impacts those most in need. The non-usage rule applies only if the subscriber does not have a regular billing relationship with the ETC (i.e., the subscriber does not receive no-cost-to-consumer service).[201] Practically speaking, then, the 60-day non-usage rule only applies to wireless subscribers because wireline providers do not provide popular no-cost-to-consumer service options and the rule explicitly excludes services that have a regular billing relationship. As a result, when deciding whether to enroll in Lifeline, consumers must decide between a wireline service that has no usage requirement but limits the consumer's mobility and requires a monthly payment, a wireless service with no usage requirement that requires a regular payment and is likely outside the consumer's ability to pay, or an affordable zero entry mobile service that restricts how and how often the consumer must use the service (or face de-enrollment). To promote regulatory parity, the Commission should remove the non-usage rule so that low-income consumers have the freedom to choose what services they want and how to use those services, in the same manner as non-low-income consumers.

Third, the non-usage rule creates substantial costs for consumers, ETCs and the Lifeline program. The 60-day non-usage rule imposes costs on consumers because every time they are de-enrolled for non-usage, they have to seek out and enroll for a new service. That involves traveling to a store or enrollment event and presenting all of the documentation necessary to

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[201] *See* 2012 Lifeline Reform Order ¶¶ 255-263.

enroll. The 60-day non-usage rule also imposes substantial costs on ETCs. The primary cost is associated with monitoring subscriber usage, sending the required 30-day notices to consumers about their usage requirement and opportunity to cure, de-enrolling subscribers and tracking and reporting de-enrollments to the FCC on FCC Forms 555. Further, ETCs incur the cost of acquiring a new customer (e.g., handset, onboarding, marketing and customer care costs), and NLAD API call expenses which can cost ETCs thousands of dollars per month. Together, these churn costs reduce the incentives for ETCs to make heavy upfront investments in new subscribers (e.g., handsets, promotional offerings, etc.).

Finally, the 60-day non-usage rule imposes churn costs on the Lifeline program. Every time a subscriber de-enrolls with an ETC and either re-enrolls with that same ETC or enrolls with another ETC, the program incurs costs for NLAD duplicate checks and TPIV checks.[202] Added together across all ETCs, these costs are substantial. For these reasons, it is past time that the Commission eliminate its non-usage rule and afford low-income consumers the dignity and respect they deserve by allowing them to choose how and when they want to use their Lifeline service.[203]

[202] The Commission has said each TPIV check costs $0.35.

[203] To address the value that is not provided to a Lifeline customer who does not use the service for 30 days, an ETC could allow rollover of the minutes from a non-usage month into the next month if the customer uses the service in that month. Such rollover may be capped at a reasonable amount (e.g., 1,000 minutes). If, however, the Commission shortens the non-usage period rather than removing it entirely, ETCs must have an adequate transition period—i.e., 180 days—to implement system to conform to the new rule and to educate consumers about the importance of using the service on a monthly basis. Furthermore, the Commission must address and clarify the issue of the relationship between the shortened non-usage period, the notice requirement and the snapshot date. Specifically, under the current 60-day non-usage structure, many ETCs send a non-usage notification after 30-days of non-usage, provide a subscriber with 30 days to cure, and if the subscriber cures, continue to claim the subscriber on the ETC's Form 497 without a gap in reimbursement. However, if the Commission were to shorten the period of non-usage to 30 days (and transition to a snapshot date), the process becomes more complex. It is unclear whether ETCs would still send a 30-day notice to consumers and whether ETCs would receive reimbursements for service after 30 days of non-usage but before the 30-day cure period is up. It is possible that would become irrelevant and only the snapshot would prevail (i.e., the ETC would receive reimbursement if the subscriber remained enrolled as of the first of the month, regardless of whether the subscriber was in a non-usage "cure" period and whether the subscriber ultimately "cured" by using the service).

F. The Commission Should Only Increase Public Access to Lifeline Program Disbursements and Subscriber Counts If It Eliminates Its Unlawful Funding Hold Practices and Preserves the Confidentiality of Sensitive Information

In the Second FNPRM, the Commission proposes to direct USAC to modify its online disbursement tool to display the total number of subscribers for which the ETC seeks support for each SAC, including how many are subscribers for which it claims enhanced Tribal support.[204] While Joint Commenters are in favor of transparency, with respect to USAC's and the Commission's processes, the Commission must balance transparency with confidentiality of sensitive information. For example, disbursement totals are also sensitive, as they may reveal ongoing funding holds and other competitively damaging information. If the Commission decides to make this information publicly available, it should end USAC's funding hold practices, which result in the denial of disbursements without due process.

USAC's funding hold practices are unlawful because they contravene the Commission's rules, the Communications Act, the Administrative Procedure Act (APA), and are unconstitutional violations of due process. The Commission's rules permit universal service funding suspensions in only limited circumstances, including where there has been a finding of civil or criminal liability, a failure to adequately respond to a USAC audit, or where the suspension is at the Commission's direction.[205] As such, USAC does not have the authority to impose funding holds where there has not been a finding of liability or where the funding hold is requested at the bureau level. However, under current funding hold practices, USAC too often suspends disbursements in the midst of an investigation at the direction of a Commission bureau

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[204] *See* Second FNPRM ¶ 200.

[205] *See* 47 C.F.R. § 54.8 (limiting suspension to situations involving a finding of liability); 47 C.F.R. § 54.707 (limiting grounds for suspension to situations where a company fails to respond to reasonable questions from USAC in an audit, or where directed by "the Commission").

(typically the Wireline Competition Bureau or the Enforcement Bureau) and before the investigation has concluded or made any findings. This process exceeds USAC's authority and consequently is unlawful.

Moreover, USAC's funding hold practices contravene the Commission's obligation to ensure that universal service funding is "specific, predictable, and sufficient."[206] Indeed, a process that allows a Bureau to direct USAC to hold an ETC's funding on a whim, without notice and without an opportunity to respond—potentially stranding thousands of low-income subscribers—is the antithesis of predictable.

In addition, the funding hold practices are arbitrary and capricious in violation of the APA because USAC (and by extension the bureau directing the holds), in imposing the holds on ETCs, fails to articulate a "satisfactory explanation for its action, including a rational connection between the facts found and the choice made," as required under the law.[207] In the context of funding holds, USAC and the Commission's bureaus fail to meet their burden under the APA. Too often in issuing the holds, USAC fails to provide any facts or adequate explanation justifying decisions to withhold funding from ETCs. Indeed, where the funding holds are imposed prior to the completion of an investigation, USAC can't meet its burden, since no facts have been "found." For that reason, there can be no rational link between the facts and the decision to implement the hold, and the funding hold practices are arbitrary and capricious.

Further, the funding hold process violates ETCs' due process rights. Due process requires that an administrative agency provide sufficient notice of the charges against a company—

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[206] *See* 47 U.S.C. § 254(d).

[207] *See Motor Vehicle Mfg. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983).

including the substance of the evidence against it—and an opportunity to respond.[208] Where, as here, the funding hold precedes the conclusion of the investigation, fails to include any indication of the evidence that USAC (or the bureau) has used to reach its decision, and denies recipients an opportunity to challenge the hold, the ETC is denied due process.

These unlawful funding hold practices are not only damaging to the ETCs affected by them, they negatively impact those ETCs' customers, and create uncertainty in the Lifeline program as whole. To make this information public would only further harm the program and its intended beneficiaries.

G. The Commission Should Simplify and Streamline Its Certification, Recertification and Household Worksheet Forms with Industry Input

The Commission asks whether it should adopt forms approved by OMB that all consumers, ETCs or states, where applicable, must use in order to certify consumers' initial and ongoing eligibility for Lifeline benefits.[209] The Commission notes that it has received "anecdotal evidence expressing concerns that the forms for these purposes are inconsistent, deficient, or are difficult for consumers to understand."[210]

Joint Commenters support standardized and simplified certification, recertification and Independent Economic Household (IEH) worksheet forms with the following caveats. First, in preparing the forms, the Commission should consult with the ETC community on the content of the form.[211] Second, the Commission should ensure that the forms are streamlined and easy for

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[208] *See Brock v. Roadway Exp., Inc*., 481 U.S. 252, 264-65 (1987) (noting that due process requires "the right to be informed not only of the nature of the charges but also the substance of the relevant supporting evidence").

[209] *See* Second FNPRM ¶ 203.

[210] *Id.* at ¶ 205.

[211] The Commission should use workshops to bring together stakeholders to develop compliant and consumer friendly application certification forms, recertification forms and IEH worksheets.

subscribers and potential subscribers to review and understand. The Commission should strive to ensure that the forms are written in plain language, are not repetitive,[212] and are available in multiple languages. Third, if the Commission issues standard forms, ETCs should have a safe harbor from enforcement or audit related to the content of the forms.

H. A Rule Requiring an Execution Date for Certification and Recertification Forms Is Unnecessary

In the Second FNPRM, the Commission proposes to require Lifeline providers to record the subscriber execution date on certification and recertification forms and, if so, whether the date should appear in a particular designated area on the form.[213] In the absence of any evidence that the Commission seeks to address a substantial and widespread industry failure, this rule proposal can be set aside as unnecessary. Joint Commenters' certification and recertification forms are already electronically date-stamped, as are the forms of any ETC using the CGM enrollment application. Commission micro-regulation regarding how execution dates are recorded would require ETCs to needlessly incur costs of rebuilding their application platforms and defending "gotcha" type audits, investigations and enforcement actions, which also add unnecessary costs to the program.[214]

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[212] Requiring customers to make each separate certification under penalty of perjury as opposed to applying that obligation to the form as a whole is repetitive and confusing to applicants.

[213] *See* Second FNPRM ¶¶ 207-209.

[214] However well-intentioned, under the proposed rule USAC could attempt to claw-back entire months of Lifeline reimbursements (for services that have already been provided to consumers) or the Commission could propose astronomical enforcement penalties because an ETC put the date of some enrollment forms in the wrong location on a form, or because the location of the date on a paper form is not the same as the location or manner of "stamping" used for online enrollments or enrollments through a tablet application. While such actions may seem unlikely, many ETCs have been subject to audit findings relating to how many places on a Lifeline enrollment form an "under penalty of perjury" certification should be repeated (creating a tremendous waste of resources and revealing a regrettable lack of respect for the dignity of low-income consumers who likely do not appreciate being asked "are you cheating?" any more than more affluent consumers do).

I. The Commission Should Not Impose an Officer Training Certification Requirement

Finally, the Commission proposes to require an officer of an ETC to certify on each FCC Form 497 that all individuals taking part in that ETC's enrollment and recertification processes have received sufficient training on the Lifeline rules.[215] The Commission further proposes to require that ETCs obtain a signature of all covered individuals certifying that the covered individual has completed such training.[216] The Commission should reject this proposal, which is yet another one that should scare away those not already providing Lifeline services and send those who are headed to the exits.

First, an officer training certification requirement (at best) would be premature because the Commission has not imposed specific training rules. Consequently, an officer training certification requirement would introduce significant compliance costs without any assurance that ETCs are meeting the Commission's vision of what constitutes "sufficient" training. As many of the Joint Commenters have learned through Commission and USAC duplicate detection enforcement, where the Commission imposes vague compliance obligations without detail, the result too often is "gotcha" enforcement, heightened regulatory costs and less money available to serve program beneficiaries.

Second, ETCs are already responsible for the acts of their agents, which the Commission confirmed in the 2012 Lifeline Reform Order and then reiterated in the Second FNPRM.[217] This requirement provides sufficient incentive for ETCs to provide ample training to employees and

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[215] *See* Second FNPRM ¶¶ 210.

[216] *See id.* at ¶ 214.

[217] *See* 2012 Lifeline Reform Order ¶ 110; *see also* Second FNPRM ¶ 406.

agents to achieve reasonable compliance with the rules. As such, there is no need to impose an additional certification requirement on the officers of ETCs or "covered" individuals.

Third, to the extent the Commission establishes a third-party verifier framework, the proposed officer training certification is misdirected. Specifically, a third-party verification framework —coupled with the NLAD's duplicate checks—would transfer responsibility for eligibility verifications away from the ETC. As such, ETCs would not have responsibility for the vast majority of the tasks that training would address.

CONCLUSION

With its Second FNPRM, the Commission has an unparalleled opportunity to leverage the successes of the Lifeline program to improve the lives of millions of low-income Americans, expanding access to affordable broadband and the countless benefits that that broadband connectivity enables. However, to maximize the value of this opportunity, the Commission must focus its efforts on promoting competition among service providers and streamlining federal and state regulatory burdens and administrative processes. To that end, the Commission should adopt rule modifications consistent with Joint Commenters' proposals discussed herein.

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August 31, 2015

EXHIBIT

Proposal & Data Flow for Independent Eligibility Verifiers

Introduction:

CGM does not support the belief that outsourced eligibility determination should be mandated within the Lifeline industry. Many ETCs perform this function for themselves, today, and should be allowed to continue this practice. The rate of improper payments in the Lifeline industry is .32%, which certainly indicates that current rules and practices for eligibility determination are highly successful at preventing waste fraud and abuse. In addition, industry bears the cost of this function, saving the Lifeline Program millions of dollars annually which results in more subscribers receiving the program's benefit.

We understand, however, that some companies, including some major cable service providers wish to outsource the operation and responsibility of eligibility determination and we support that. As such, we propose that companies interested in providing outsourced eligibility determination services to ETC designated companies should be certified by USAC to perform the function, somewhat similar to the way in which USAC provides training to Biennial Auditing companies. Multiple companies provide this type of service to the Lifeline marketplace today and should be allowed to continue to do so. Competition drives down cost and invites innovation to the marketplace. We need as much of both as we can get as the industry attempts to determine how to provide a viable broadband service with very limited financial resources.

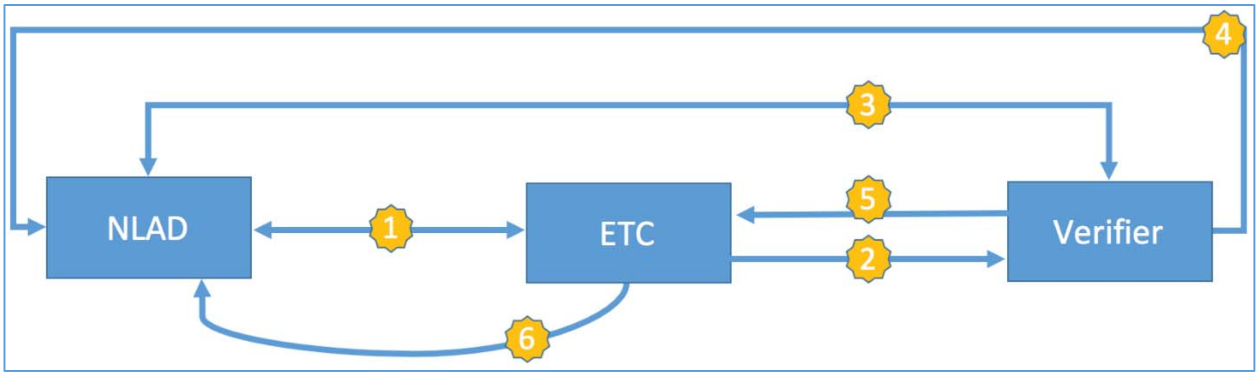
In response to numerous FNPRM questions on the topic, the data flow of the model we're proposing is diagrammed below. This model has three primary benefits:

- It leverages the existing NLAD-based enrollment platform that all ETCs have had to implement, and protects the considerable investment that ETC have made in data security, NLAD integration and compliance.
- It supports the concept of outsourcing as an option and creates a platform for multiple eligibility determination vendors.
- It reduces FCC's current cost of TPIV by an estimated 33%, in that only one TPIV dip will be performed on each attempted enrollment.

Creation of a Transaction ID

A Transaction ID will be introduced to the current NLAD-based enrollment process to preserve data integrity between the Verifier, the ETC and NLAD while introducing minimal changes to NLAD's and ETC's current workflow.

It supports independent third party participation in the Verifier program lowering cost and increasing ETC driven innovation (ex. Real-Time Review Queue). It Introduces significant cost savings to the fund by reducing the need for multiple TPIV verifications (Lex/Nex) for the same enrollment.



1. ETC prescreens Subscriber in NLAD via the Verify Call. NLAD includes new Transaction ID in its response.
    a. USAC – Modify NLAD Verify Call to include new Transaction ID.
    b. USAC – NLAD will continue to retain all data transmitted by the ETC that can be used by the Verifier to authenticate the Subscriber data.
    c. USAC – Retain Lex ID captured during the Verify Call.
2. If Subscriber passes the Verify Call, ETC sends Subscriber data and supporting documentation to Verifier.
    a. ETC – Transfer all Subscriber data to Verifier used during the NLAD Verify Call (step 1) including NLAD Transaction ID.
    b. ETC – Transfer Subscriber supporting documentation to Verifier.
        i. Program Eligibility Proof (ex. SNAP Card)
        ii. ID Proof if TPIV Check Failed (ex. Drivers License & SSN Card)
3. Verifier starts its Review Process.
    a. USAC – Develop new API for the Verifier to validate Subscriber data between NLAD, ETC and Verifier.
    b. Verifier – Pass subscriber data to NLAD (via new API 3A) along with Verify Transaction ID to confirm Subscriber data is a match with data provided by ETC to NLAD.
    c. Verifier – Reviews Subscriber supporting documentation and renders a decision.
4. Verifier renders a decision on Subscribers eligibility.
    a. USAC – Develop new API for Verifier to "unlock" Transaction ID.
    b. Verifier – Update NLAD record to reflect Subscriber eligibility verification.
5. Verifier notifies ETC the Subscribers eligibility has been verified.
6. ETC enrolls subscriber into NLAD.
    a. USAC – Update Enroll API to accept only the Transaction ID and MDN.
    b. USAC – Use retained Lex ID (if available) for duplicate check. This will provide a significant cost savings opportunity for the fund compared to the current operation, no need to perform an additional Lex ID check.

Additional Provisions:

For states with a real-time database, the Verifier will only be used in cases where the eligibility program being employed by the Subscriber is not included in the state's eligibility database, or in cases where the Subscriber is not found in the state's database but has the necessary documentation to demonstrate his participation in a qualifying program.

For enrollments that receive a positive decision from a third-party Verifier, we request that the commission provide a "safe harbor" from future audits related to the eligibility determination for that Subscriber. Similarly, we would request a waiver for the ETC from the obligation to retain any documentation provided to the Verifier, which was employed to determine eligibility.