

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
)	
To: The Commission		

**COMMENTS OF COMMNET WIRELESS, LLC
AND CHOICE COMMUNICATIONS, LLC**

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Commnet Wireless, LLC (“Commnet”) and Choice Communications, LLC (“Choice”)¹, by their attorney and pursuant to Section 1.419 of the Commission’s Rules, hereby submit Comments in response to the *Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order* (“*Second FNPRM*”), FCC 15-71, released June 22, 2015.²

Commnet’s Interest in This Proceeding

Commnet began operations in the 1990s with a simple business model – construct and operate cellular systems (initially using Phase 2 unserved area licensing) to serve remote and extremely rural areas where the national carriers had chosen *not* to build and where the national carriers believed there was insufficient demand to justify the capital expenditures. Over time,

¹ Each of Commnet and Choice is a 100% subsidiary of Atlantic Tele-Network, Inc. (“ATN”). The two subsidiaries have a common retail marketing and customer-care department, with all retail offerings under the “Choice Wireless” mark. Commnet operates in the continental United States, while Choice operates in the U.S. Virgin Islands (“USVI”). Each is an ETC receiving Lifeline support funding.

² These Comments are timely filed. *See Order*, DA 15-885 (WCB, released August 5, 2015), extending the deadline for filing comments in this proceeding.

Commnet proved that if people in remote and extremely rural areas are offered the opportunity to have high-quality wireless service, they will jump at that opportunity. Commnet has grown, often using spectrum purchased at auction, while remaining true to its initial premise of serving those in the most remote areas. Today, Commnet offers retail service, and serves thousands of Tribal and Non-Tribal Lifeline subscribers, predominantly in communities of 2,500 people or less, in extremely rural portions of Arizona, Colorado, New Mexico, and Nevada.³

Choice's Interest in This Proceeding

Choice, on the other hand, offers retail service and serves thousands of Non-Tribal Lifeline customers in the USVI. Although the USVI is not rural, in terms of population density, the terrain is unforgiving and the islands are often affected by hurricanes and storms that impact the Islands' communication systems. Backhaul costs to the mainland are extremely high. Furthermore, the unemployment rate is more than double that on the continental US and the per capita income is less than \$20,000/year. Most importantly, nearly 25% of the population in the USVI live below the poverty line and rely heavily on Lifeline service.

Therefore, the outcome of this proceeding will have a significant impact on Commnet/Choice's operations and upon its ability to provide and extend its services.

Commnet/Choice Lifeline Service Offerings

Commnet currently offers Tribal Lifeline-eligible households in its ETC areas the following:

- UNLIMITED nationwide calling while within the Commnet service area*
- UNLIMITED texting and picture-messaging while within the Commnet service area*

³ The thousands of Tribal Lifeline subscribers served by Commnet are in addition to, and separate from, the many thousands of Navajo Nation Lifeline subscribers served by NTUA Wireless, LLC ("NTUAW").

NTUAW is partially-owned by Commnet but majority-owned by Navajo Tribal Utility Authority, an instrumentality of the Navajo Nation government. NTUAW is filing its own comments in this proceeding, and Commnet supports the positions taken by NTUAW.

- 500 MB data every month while within the Commnet service area*
- 100 minutes of domestic voice roaming per month, when traveling beyond the Commnet service area*
- Voicemail, 3-way calling, caller ID, and call forwarding
- Up to ten directory assistance (411) calls each month, at no additional charge.

For non-Tribal Lifeline subscribers, Commnet/Choice offers the following plan:

- 300 free minutes nationwide calling while within the Commnet/Choice service area*
- UNLIMITED texting and picture-messaging while within the Commnet/Choice service area*
- 100 MB data every month while within the Commnet/Choice service area*
- Voicemail, 3-way calling, caller ID, and call forwarding
- Up to ten directory assistance (411) calls each month, at no additional charge.

*For both plans, the Commnet service area is the combined Commnet/NTUAW footprint, all of which is “local”

Thus, in contrast to the statements in the *Second FNPRM*, Commnet/Choice already offers a better and more robust service plan than the “250 minutes voice/zero data” plans of most Lifeline providers, and Commnet offers an especially robust service plan for its Tribal Lifeline subscribers⁴ despite the unique challenges it faces in Indian Country.

⁴ In its separate Comments being filed, NTUAW suggests a definition of “At-Risk Tribal Areas”, to distinguish truly needy Native American populations from, for example, persons living in downtown Tulsa, Oklahoma. Commnet supports the NTUAW proposal; all of Commnet’s Tribal Lifeline subscribers reside in areas meeting the proposed definition of At-Risk Tribal Area.

Summary of Commnet/Choice's Positions

Minimum service levels are not in the public interest; more robust service offerings appear when there is some level of competition regardless of geography or income levels. If the Commission insists upon having minimum service levels, then there must be different minimums for low-density, remote areas that are costly to serve such as the areas Commnet serves and for insular areas, *i.e.*, island areas outside the North American mainland that are much more expensive to serve, and suffer from extreme poverty levels, such as Choice's service area -- the USVI. In these areas, the costs of extending service to households can be incrementally high. Perversely, imposing too high a minimum service level could preclude extension of *some* level of service where there was absolutely no service before.

Also, if there have to be minimum service levels, then median non-Lifeline usage patterns in urban areas are not a good proxy for where to establish minimum broadband service levels in low-density/low-income areas, or insular areas outside the continental United States, such as the USVI. Unless the Commission institutes much higher support payments for broadband than Commnet/Choice anticipates, it is unrealistic to insist upon wireless Lifeline providers including 1.8 GB/month in broadband usage in return for a Lifeline broadband subscription.

There should be a \$9.25/month subsidy for those Lifeline-eligible households that desire broadband access in lieu of voice. For those eligible households that desire a subscription for *both* voice and broadband, there should be a bundled subsidy of \$15/month. (Such amounts would be for non-Tribal Lifeline recipients; In Tribal areas the Commission should increase the Tier 4 subsidy from \$25 to \$35.)

Commnet/Choice suffered from the errors which accompanied the initial roll-out of the National Lifeline Accountability Database (“NLAD”). At that time, Commnet/Choice signed up numerous new subscribers based upon an initial report of the person not already being a Lifeline subscriber, and incurred expenses associated with providing a free handset, adding network capacity and for sales and outreach, only to have the subscribers invalidated months later, sometimes as long as six months later. Neither Commnet/Choice nor the public can afford a repeat of that situation.

Now that the NLAD system has survived its growing pains to become a reliable system, there is no need to replace the NLAD database with some new database that a third-party verifier would create. If the Commission wants a third-party verifier to take over the maintenance of the existing NLAD database (as opposed to creating a new system from scratch), such a third-party verifier could be an enhancement of the current arrangement.

Members of the public should not interface directly with a national verifier. Nor should there be any “portable benefit” that individuals carry with them from carrier to carrier. Perhaps if the reforms implemented after this rulemaking eventually create a more Internet-savvy universe of Lifeline users several years down the road, the viability of a portable benefit could be revisited. But to attempt to implement such a system now, with a user population that, by definition, is one of the least Internet-savvy population groups in the country, is a recipe for disaster.

Although the Commission should promote competition among providers of Lifeline service, Lifeline support should continue to be limited to ETCs. While streamlining of the ETC designation process is appropriate, neither should newcomers be allowed to come in and cream-skim. By continuing to require ETC status, the Commission has a mechanism to preclude

cream-skimming if, as a result of the new reforms to be adopted herein, someone was tempted to game the system.

I. “Minimum Service Levels” Are Contrary to the Public Interest

A. Competition, Not Regulation, Better Achieves the Goal of Quality Service

The Commission should allow the marketplace to dictate the levels of service based factors unique and specific to each market. The Commission should, however, promote policies that discourage cream-skimming in connection with the Lifeline program, especially in extremely rural and low income areas -- such as Tribal areas and the USVI. In particular, small facilities-based service providers should not be subjected to cherry-picking in portions of their ETC service areas from MVNOs or other resellers.

To that end, the Commission should require new entrants to the Lifeline program to serve the broader part of the target population in such areas. But assuming a new entrant is willing to be certified and to serve the broader area, then the best way to raise the level of service offerings to Lifeline subscribers is to have competition for their business. For instance, when Commnet was designated as a Lifeline ETC in parts of the Southwest (Nevada, New Mexico and Colorado in particular), Commnet and Choice attracted subscribers by offering 300 included minutes and unlimited text messaging per month, instead of the 250 minutes/text messages offered by the competition, and by offering 100 MB of included data as well (as opposed to no included data). That is the formula for improved service and a successful business model.

B. Any Minimum Service Levels Must Reflect Different Market Characteristics

If, notwithstanding the discussion immediately above, the Commission adopts any minimum service levels, it should either limit the reach of those minimum service levels to areas of higher-density populations, or establish different levels for remote low-density areas and for

insular areas not contiguous to the rest of the United States, such as the USVI which have unique characteristics and challenges. For example, where Commnet holds 700 MHz spectrum authority, it constructs LTE facilities and offers 4G speeds, as that term is defined in Section 54.1006(b) of the Rules (*i.e.*, “200kbps uplink/768 kbps downlink, with transmission latency low enough to enable the use of real time applications, such as VoIP”). However, Commnet does not hold 700 MHz spectrum authority in every locality where it is an ETC. And where Commnet does not hold such authority, eliminating Lifeline support for 3G wireless broadband service will likely result in Commnet being unable to offer Lifeline broadband service at retail.

In the USVI, Choice does not hold 700 MHz spectrum. Choice has had to utilize 2.5 GHz spectrum to initiate LTE deployment on the islands of St. Thomas and St. John, a more expensive proposition than doing so at 700 MHz. Among other non-routine expenses, Choice’s backhaul costs for broadband are much higher than they are for mainland service providers, because Choice must pay for undersea cable that moves traffic to and from the mainland. For St. Croix, which has a lower population density than St. Thomas and is more remote from St. Thomas than is St. John, Choice simply has no means of achieving a return on investment for the capital infrastructure that would be required to deliver reliable 4G broadband Lifeline service at this time.

For this reason, at least in the very low-population-density areas that Commnet serves, and the insular areas that Choice serves, the Commission should not mandate a level of Lifeline broadband service higher than 3G.

C. Median Non-Lifeline Usage Patterns in Urban Areas Are Not a Sound Basis for Establishing Minimum Service Levels in Low-Density or Insular Areas

At *Second FNPRM*, ¶ 44, the Commission asks whether the 1.8 GB/month used by the average American wireless consumer should be used as the basis for any minimum service level

requirements for Lifeline ETC providers. At least in the absence of large increases in Lifeline support funding, requiring wireless ETCs in extremely rural and insular areas to provide that much data each month to mobile wireless broadband users as part of the basic subscription package is unworkable. Indeed, imposing such a minimum service level on carriers such as Commnet/Choice could have the perverse result of precluding service to some areas.

As noted, Commnet already includes 500 MB of data in its Tribal Lifeline service offerings, and Commnet/Choice includes 100 MB of data in non-Tribal settings. If Commnet/Choice were to receive an enhanced subsidy for bundled voice/broadband services along the lines discussed in Part II, *infra*, Commnet/Choice could perhaps extend its offerings to additional remote areas or achieve a higher broadband penetration rate in the USVI, and could perhaps increase its included amount of data to one GB/month. But to require Commnet/Choice to construct enough additional capacity to provide 1.8 GB/month across-the-board, at no additional cost to subscribers, is not rational.

Where, as here, the costs of service must be spread across a much smaller base of users per cell site, and the backhaul costs are so much higher than they are in urban areas in the continental US, using these mainland urban-area usage patterns to establish new minimum service levels in the areas where Commnet and Choice operate is inappropriate. Doing so will lead to distortions and reduced services.

II. Additional Lifeline Support for Broadband Is Needed

Just as the Commission today provides Lifeline support of \$9.25/month for voice service, so should the Commission provide Lifeline support of \$9.25/month for those Lifeline-eligible households that desire to subscribe *only* for broadband, and not for voice. This would provide such households the flexibility to acquire a different kind of CPE device, such as a laptop, if

mobility is not important and if higher speeds can be achieved via proper placement of a fixed antenna. (In such cases, the household would still have the option of obtaining voice service by some form of VoIP, including forms of VoIP, such as Skype, that cost less because they do not involve assignment of a ten-digit telephone number.)

For the majority of Lifeline-eligible households that would prefer a bundle including both voice and broadband, the Commission should provide a support payment of \$15/month, an increase from the current \$9.25/month for voice service, but less than the \$18.50/month represented by the sum of two \$9.25/month payments. There are efficiencies that a provider such as Commnet/Choice achieves when a single household subscribes for both voice and broadband in a single account, and Commnet/Choice is happy to pass the savings derived from such efficiencies back to the Universal Service Fund to assure the Fund's continued viability over the long term.

The prospect of a \$15/month support payment, up from the current \$9.25/month, would provide a powerful incentive to wireless ETCs to upgrade their networks to deliver quality voice and broadband services, including the upgrade of data networks to 4G levels whenever spectrum holdings allow. Conversely, in the absence of a substantial increase over the current \$9.25/month support amount, carriers have no real incentive to make the capital investment to deliver quality broadband service.

III. Additional Support Is Needed for Broadband CPE⁵

As the Commission noted, *Second FNPRM*, ¶ 7, among the poorest of the poor, a smartphone often is more prevalent, precisely because for such households, there is only money

⁵ CPE is “customer premises equipment”, such as a phone, smartphone, or tablet. Where the service is fixed wireless broadband, the device might be a router, connected by wire to an outdoor antenna.

for one item of CPE. The Commission also asked about how the cost of more expensive items of CPE, such as smartphones, “would influence affordability of mobile broadband service to low-income consumers.” *Id.*, ¶ 46. The answer is simple – failure to support low-income consumers’ acquisition of smartphones is a barrier to those consumers’ ability to afford broadband.

Therefore, as part of its reform of the Lifeline program, the Commission should establish a separate subsidy for Lifeline households to rent, and eventually acquire, broadband-capable CPE.

Commnet/Choice suggests that the Commission establish a one-time support payment to the ETC for having supplied the broadband-capable CPE to the subscriber, either as a separate type of Linkup payment for non-Tribal Lifeline subscribers, or otherwise. In order to induce eligible households to make the step up to broadband and step across the digital divide, that one-time subsidy has to be significant. Commnet/Choice suggests a \$100 payment, available for the benefit of the subscriber once every four years, to be applied toward the purchase or rental of broadband-capable CPE.

The Commission should also impose certain conditions upon ETCs for the protection of subscribers, such as that: (a) in the case of a rental, after a certain number of months of rental payments (Commnet suggests 24 months), title to the CPE passes to the subscriber; and (b) once title passes to the subscriber, either through a purchase or completion of a long-term rental, the carrier must unlock the CPE device. This would ensure that the benefit is flowing to the household as opposed to the carrier, and would also ensure that the household has the freedom to switch providers as and when a competitive ETC enters the market.

IV. Any Third-Party Verifier Should Complement, Not Replace, NLAD

The Commission has made considerable progress in removing waste, fraud, and abuse from the Lifeline program over the past few years, and is to be commended for its progress. Of

course, Commnet/Choice as an ETC has a solid track record of not tolerating waste, fraud or abuse of the Lifeline program. Commnet/Choice relies heavily upon the NLAD database to validate or decline potential new sign-ups, as do most wireless ETCs. The Commission should not jettison a tool, NLAD, which is working.

After some very serious hiccups when it was first launched, NLAD has developed into a reliable database for carriers to access to determine Lifeline eligibility. If some hypothetical new national verifier were to take over maintenance of NLAD, it could potentially be a useful addition to the current anti-fraud regime. But if a new national verifier were to replace NLAD, it could be a disaster for the Lifeline program, and for the wireless ETCs, such as Commnet/Choice, that rely upon their ability to validate new sign-ups in real time by utilizing the NLAD database.

Establishing any new database to replace NLAD would inevitably result in serious disruption when the ETCs around the country transition to the new system. Any new and separate database would create a repeat of the severe disruptions which accompanied the initial roll-out of NLAD. That initial roll-out resulted in many new subscribers initially being “validated” by the system, but then retroactively “invalidated” months later, *after* the ETC had provided the handset and the phone service! It is unfair to ask small rural or insular ETCs such as Commnet/Choice to carry the risk of such retroactive invalidation, especially if they cannot rely upon their own employees’ efforts, but must rely on the efforts of employees of some third-party verifier whose employees have less incentive to get it right the first time.

V. If There Is a Verifier, Interaction with It Should Be Limited

If there is a new national verifier, then: a) ETCs should still be able to validate new sign-ups in real-time by accessing NLAD, as they do now, without having to separately interact with

the verifier except in unusual cases; and b) when interaction is necessary in such unusual cases, such verifier should interact only with the ETCs, not directly with consumers. This is true for reasons of efficiency and to ensure that the purpose of having such an independent verifier, *i.e.*, prevention of waste, fraud and abuse, is achieved.

Any third-party verifier will have to have a battery of personnel manning telephone lines, to resolve, in real-time, issues that cannot be resolved by an ETC via online access to NLAD. When an ETC is signing up a prospective new Lifeline subscriber, as noted in Part III, *supra*, the ETC has to receive an accurate *and definitive* answer immediately, as to whether that particular individual is or is not eligible. If a national verifier has to maintain a second bank of telephone operators to also receive and resolve calls from members of the public, the costs would be overwhelming, and not worth the incremental benefit derived.

VI. A Portable Benefit Is Not Feasible

Lifeline subscribers, at least the ones in rural and insular areas that Commnet/Choice serves, are not accustomed to mobile banking, or PINs, or in most cases, to other features of the internet. Many Commnet/Choice Lifeline subscribers are not particularly adept with respect to the latest technologies. By definition, this population is and has been on the other side of the digital divide. Also, Commnet Lifeline subscribers are not always in a position to physically visit a retail store, sometimes many miles away, to “touch” a physical card in order to pay an invoice.

Perhaps that will not remain the case if the Commission reforms the Lifeline program in this proceeding, and as a result, customs and habits evolve over time. But if such a system were implemented today, it would cause havoc with Commnet/Choice’s ability to receive payment for

service, and require Commnet/Choice to substantially increase its staff dedicated to collections, thereby unduly raising the cost of providing Lifeline service.

Part of the reason Commnet/Choice can offer the service that it does at the pricing that it does, is that once a subscriber is found eligible, the bulk of the money he/she owes each month is delivered directly to Commnet/Choice from USAC. If, suddenly, that were no longer the case, Commnet/Choice's Lifeline business model would be jeopardized.

CONCLUSION

Minimum service levels are unnecessary; to obtain more robust service offerings, the Commission should promote competition. If the Commission nonetheless insists upon minimum service levels, they cannot be one-size-fits-all; they must be different for areas with different characteristics. Median non-Lifeline usage patterns in urban areas are not a good proxy for where to establish minimum service levels in low-density/low-income areas, or in insular areas. It is difficult enough for Commnet to include 500 MB of data in its Tribal Lifeline offerings, and Commnet/Choice to include 100 MB of data in its non-Tribal offerings, without having to construct additional capacity to enable 1.8 GB of data within the basic Lifeline offering.

The Commission should increase the Lifeline support level in order to stimulate broadband penetration among Lifeline-eligible households. Specifically: (a) for any Lifeline household choosing to subscribe to broadband *only* (*i.e.*, instead of voice), the ETC should receive a \$9.25/month support payment; and (b) for any Lifeline household choosing to subscribe to both voice and broadband, the ETC should receive a bundled support payment of \$15/month. In addition, there should be a one-time support payment for broadband CPE, in the amount of \$100. These additional support payments will enable Lifeline-eligible households to afford broadband and join the American mainstream.

Any ETC must be able to verify new sign-ups *in real time*, and allow those new sign-ups to walk away from the encounter with their phone (or other device) in hand after being validated. Any new procedure must avoid requiring these new sign-ups to wait several days and then drive long distances just to pick up their handset.

If a new national third-party verifier is established, that verifier must work using the existing NLAD system, and, except in unusual cases, ETCs should continue to sign up new subscribers by accessing NLAD in real-time, without interfacing with such verifier directly.

Respectfully submitted,
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