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 NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

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I. Introduction and Executive Summary

The National Association of State Utility Consumer Advocates ("NASUCA")[1] supports the FCC's proposal to expand Lifeline program to include broadband.[2] This position is reflected in our resolutions[3] and in comments previously filed at the Commission.[4]

Crafting a broadband Lifeline program that fully accomplishes the goals set forth by the Commission in the Notice of Proposed Rulemaking ("NPRM") is a complicated undertaking. NASUCA wholeheartedly endorses the goals of making the program as efficient as possible; ensuring that broadband Lifeline is provided at a reasonable cost for both Lifeline customers and the voice telephone customers who (currently) ultimately fund the entire Lifeline program; and precluding abuse of Lifeline funds. At the same time, it is crucial that the broadband Lifeline program achieves the stated goals of the program and that efforts to expand Lifeline to include broadband also preserve affordable

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[1] NASUCA is a voluntary association of 44 consumer advocate offices in 41 states and the District of Columbia and additional associate members, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates for utility ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

[2] Second Further Notice of Proposed Rulemaking, FCC 15-71 (rel. June 22. 2015) ("NPRM"). FCC 15-71 also contained an Order on Reconsideration, a Second Report and Order, and a Memorandum Opinion and Order.

[3] E.g., NASUCA Resolution 2009-06, *Calling for Lifeline and Link-up Program Support for Broadband Internet Access Services and Devices* (June 30, 2009).

[4] E.g., National Broadband Plan for Our Future, GN Docket No. 09-51, et al. NASUCA Comments (December 7, 2009) at 26-34.

and reliable *voice* Lifeline service. This is a difficult balancing act. NASUCA anticipates providing further comments in the reply phase of this proceeding, after having the benefit of reviewing the comments of other parties. We will address issues pertaining to the proposed national Third Party Verifier ("TPV") in reply comments.

The framework set forth in the NPRM is a good first step. It is not perfect, however, it would at least provide Lifeline customers the ability to choose to apply the Lifeline benefit to broadband service. Nevertheless, we are entering uncharted territory. The Commission has previously taken general comment on broadband Lifeline, but has never solicited comment at the level of detail contained in the NPRM. There are many issues that simply cannot be fully explored in the relatively short time allowed for comment and neither the Commission nor the parties will have a full understanding of how some of these proposals will play out in practice until the program is implemented. Therefore, it will likely be necessary for the Commission to revisit some aspects of the program after it has been implemented.

NASUCA proposes that the Commission take an incremental approach to establishing the broadband Lifeline program, leaving open the option of modifying the program once it has been in place for at least one year. This will provide the FCC, state commissions, state consumer advocates, telecommunications customers and Lifeline providers the ability to assess the results and consider whether modifications are needed. Accordingly, we recommend that the Commission:

•Affirm its legal authority to expand the Lifeline program to include broadband.

•Leave as much of the current Lifeline program in place as possible and forebear from immediately ruling on issues that do not have to be decided to initiate broadband Lifeline.

•Ensure that actions taken to permit broadband Lifeline do not adversely affect voice Lifeline service, and require providers to continue offering a stand-alone voice service.[5]

• Immediately allow *wireline* carriers to provide broadband Lifeline to Lifeline customers at a minimum of 4 Mbps down/1 Mbps up, with a $9.25 discount off the service/bundle of the customer's choice. Lifeline customers should have the option to choose to which broadband service they wish to apply the discount, and whether the service is prepaid or provided for a monthly rate.

• Immediately allow *wireless* carriers to provide broadband Lifeline to Lifeline customers at a minimum service standard of 4 Mbps down/1 Mbps up with unlimited talk and text, and no data caps for service at speeds below the median wireless broadband offering. Where speeds are provided to non-Lifeline customers above 4/1Mbps, the Lifeline customer should be allowed to apply the discount to a higher-speed tier. Exceptions should be made to permit Lifeline customers to use the discount on data services at slower speeds in areas where satellite is the only option for obtaining broadband service.

•Prohibit disconnection of wireline or wireless voice services if broadband is not paid for, if the broadband and voice services are either purchased in a bundle or as a stand-alone service from a single provider and the provider has received Lifeline payments on behalf of the customer.[6]

•Find that broadband Lifeline offerings should not be tied to a long-term contract period.

•Adopt consumer protections to grant customers the right to challenge a decision to deny Lifeline eligibility, allow consumer advocates to represent individuals in disputes regarding Lifeline eligibility, and protect Customer Proprietary Network Information (CPNI).

•Require that customer notices be provided in the language used to sell Lifeline service to the consumer, or in the 10 languages most commonly spoken in the census tract in which the sale occurred.

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[5] NPRM at ¶38.

[6] NASUCA Resolution 2010-02, *Calling for Reform of the Lifeline Program, Including Reform for Prepaid Wireless Lifeline Service* (June 5, 2010).

II. The Commission Should Adopt and Enforce Minimum Service Standards.

The Commission "seek[s] comment on how to set appropriate minimum service levels that evolve with technology and innovation, and how to ensure compliance with those levels."[7] The Commission should adopt and enforce minimum service standards for broadband Lifeline. Like many aspects of a fledgling broadband Lifeline program, the Commission must walk a careful path. On one hand, Lifeline customers should not be deprived of data speeds that meet the Commission's requirements for broadband service. On the other hand, the reality is that, in some geographic areas data speeds that comply with the Commission's definition of broadband are not available for either wireline or wireless customers. In these areas, Lifeline customers would still benefit greatly from receiving data service at slower speeds, with an expectation that as improved service becomes available, the minimum standard for that area will evolve to incorporate higher speeds up to those defined by the FCC as constituting "broadband service."[8]

Therefore, in the near term, NASUCA recommends that the Commission immediately allow *wireline* carriers to provide broadband Lifeline to Lifeline customers at a minimum of 4 Mbps up/1 Mbps down, with a $9.25 discount off the service/bundle of the customer's choice. Customers should have the option to choose which broadband service or bundle of services they wish to apply the discount to. If service at speeds higher than the minimum is available in an area, Lifeline customers should have the option to apply their Lifeline benefit to purchase those services. Carriers offering service

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[7] NPRM, ¶ 48.

[8] See FCC 2015 Broadband Progress Report, https://www.fcc.gov/reports/2015-broadband-progress-report (broadband defined as 25 Mbps down/3 Mbps up.

at slower speeds should be permitted to seek a limited-term exception from the Commission to permit Lifeline customers to apply the discount to data services at slower speeds in areas where slow digital subscriber line ("DSL") or satellite is the only option for obtaining the service.

With respect to wireless broadband, the Commission should immediately allow *wireless* carriers to provide broadband Lifeline to Lifeline customers with a $9.25 discount off the service/bundle of the customer's choice, with unlimited talk and text. The NPRM notes that "the cost of provisioning wireless voice service has declined significantly since the *Lifeline Reform Order*."[9] The FCC's conclusion that wireless voice costs have declined supports the case for unlimited talk and text, and might also indicate that the addition of wireless broadband to voice service may not greatly increase the cost of service.[10] If the Commission declines to allow unlimited talk and text, then at a minimum, wireless Lifeline customers should receive at least 750 minutes of talk and unlimited text, in accordance with the data presented at paragraph 40 of the NPRM.

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[9] NPRM at ¶ 52.

[10] While the Commission notes that wired and fixed wireless broadband may involve additional connection costs, NPRM at ¶54, wireless carriers often bundle data, text and talk for a single price that may be comparable or even lower than the price for daily talk and text. For example, Boost Mobile offers a $35 per month talk, text and data package compared to a $2.00 per day talk and text package. See http://www.boostmobile.com/shop/plans/databoost/ Other carriers charge more when data is added, but the increases are in the range of $5.00 to $10.00 per month. See Illinois Valley Cellular, http://www.ivcel.com/plans/c/nationwide/freedom45-plan/ ($40.00 for talk and text and $45 for talk, text and data) (accessed on August 28, 2015); Cricket Wireless offers talk and text for $25.00 and talk, text and data for $35.00 (automatic payment credit included), https://www.cricketwireless.com/cell-phones/basic and https://www.cricketwireless.com/cell-phone-plans ; PureTalk Wireless charges $5.00 for 80 minutes or $12.95 for 500 minutes but adds only $9.95 for data. https://www.puretalkusa.com/mobile-simple-plan.php Data is so integrated into the wireless telecommunications system that several carriers only offer talk, text and data together. See https://www.metropcs.com/cell-plans.html ; http://www.verizonwireless.com/landingpages/cell-phone-plans/ (Verizon includes unlimited talk and text in all packages and bases the price on the amount of data, starting at $30.00 per month for 1 GB of data); compare http://www.t-mobile.com/cell-phone-plans/individual.html and http://prepaid-phones.t-mobile.com/other-prepaid-plans (T-Mobile offers talk, text and data for $50 per month while its prepaid service costs $30 for 100 minutes of talk, unlimited text, and 5 GB of data at 4G speeds). All sites accessed on August 28, 2015.

Further, for service below the speed of the median wireless broadband carrier's national offering, or the offering of such carrier(s) in a given state if the carrier(s) have no benchmark national offering, there should be no data caps, i.e., limitations on usage. Exceptions should be made to permit Lifeline customers to use the discount on data services at slower speeds in areas where satellite is the only other option for obtaining broadband service.

There are different approaches the Commission might adopt for applying the existing $9.25 benefit to wireless broadband Lifeline. One option would be to apply the model used for federal *wireline* Lifeline service, and allow customers to apply the benefit to receive any service, including bundled voice and data, at a discounted price. Another would be to apply the existing practice used for *wireless* Lifeline *voice* service and allow wireless Eligible Telecommunications Carriers ("ETCs") to offer *both* broadband and voice service free of charge to customers in return for receiving the $9.25 benefit from the Universal Service Administrative Company (USAC), the administrator of the Lifeline programs. We recommend that the Commission apply both the wireline and wireless models to broadband Lifeline support. Lifeline customers should be allowed to choose which services they purchase, including the option of having a minimal "free" service offered under the current wireless Lifeline approach.

The Commission also requested comment on California's tiered system. The California Public Utilities Commission ("CPUC") has set minimum standards for different levels of service (between 501 and 999 voice minutes) that are available for purchase by Lifeline customers, with different levels of fixed California fund subsidy provided to carriers depending on the service.[11] NASUCA takes no position on the California tiered approach at this time, but may address the question further in reply.

For both wireline and wireless broadband Lifeline, the offering should not be tied to a long-term contract period and service should be provided on a monthly contract. In New Jersey there are situations where customers are tied to long-term contracts. For example, CenturyLink provides broadband Lifeline at a monthly $9.95 plus tax and fees (fees undisclosed on their site), consisting of a slow service at speeds of up to 1.5Mbps down.[12] Verizon's bundled services under its FiOS product ties discounts to 12 or 24 month contracts.[13] The New Jersey Division of the Rate Counsel has received complaints regarding wireless customers being tied to contracts for Verizon's 4G service. Customers report that Verizon will sign up customers for 4G service in areas where there is only 3G reception due to lack of sufficient cell tower support. Customers are then tied to a

[11] NPRM at ¶40. See California Public Utilities Commission, *Order Instituting Rulemaking Regarding Revisions to the California Universal Telephone Service (LifeLine) Program and Decision Adopting Revisions to Modernize and Expand the California Lifeline Program*, D. 14-01-036 ("CPUC Lifeline Decision") at p. 40, Rulemaking 11-03-013 (filed March 24, 2011) Effective January 16, 2014, Issued January 27, 2014.

[12] CenturyLink Internet Basics service offering may also require additional fees after the first year. http://www.centurylink.com/home/internetbasics/?rid=internetbasics.

[13] Verizon FiOS differs from Verizon's Voice Link & 4G LTE service offerings. Internet is faster with all offerings serving internet at speeds of 25/25 Mbps. See, http://www.verizon.com/home/MLP/OnlineOFW2.html?x1=DP_CLG_OFW&promotion_code=JUNCT/W04&CMP=AFC-CON_2015-Q2_CJ-NA-Q12015FiOSDPCusTxtCJ_0003&AID=12189572&PID=3744337&SID=4131324386200

Verizon FiOS Internet Only – at $44.99 per month plus fees and equipment charges and installation costs under a2-year contract with up to a $165 early termination fee ("ETF"). Verizon FiOS Double Play (internet & TV [20 local channels with 5 HD channels includes HBO]) three available packages with the lowest cost offering consists of a 2-year contract: $50+ undisclosed fees for the first year, $70+ undisclosed fees at months 13-24, with a $230 ETF. Verizon FiOS Triple-Play also offers three packages with the lowest cost offering at $79.99 (unlimited nationwide calling, internet and TV all premium channels at year 1 only) under a 2-year contract with a $350 ETF. Note – these are limited offerings – *e.g.* this offer ends 8/30/2015). Similarly, offerings are tied to geographic location and availability of services, *e.g.,* South Jersey.

contract and are told they need to purchase additional equipment, called a "*network extender*" at an additional price of $249.99 if they do not want the Internet service to fade in and out or downloads to freeze or cause the service to crash. Without the extender customers may suffer service interruption or loss of internet access for hours and sometimes days.[14] In southern New Jersey, Verizon's wireless broadband offering requires a $100 deposit, a 12-month contract and includes early termination penalties.[15]

Prohibiting long-term contracts for Lifeline offerings would benefit customers in at least three ways. First, in situations where the speeds do not comport with the Commission's broadband definition, if an improved service becomes available, the Lifeline customer would have the ability to upgrade and subscribe to the new service. Second, when the economic situation of a Lifeline customer improves, the customer would be able to upgrade service without the need to pay an early termination fee to exit his or her current Lifeline broadband service arrangement. Third, if a Lifeline customer moves to a location that is not served, or not adequately served by their existing provider, the customer will not be penalized, and can continue to receive the essential service through an alternative carrier.

Moreover, in the case of prepaid wireless service, the Commission should require carriers to offer a minimum number of voice minutes and amount of broadband data that the carrier is willing to provide in exchange for the $9.25 Lifeline discount, at no direct cost to the Lifeline customer. This would be consistent with the unique structure of the

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[14]See, http://www.verizonwireless.com/support/network-extender-faqs/ and at http://www.verizonwireless.com/accessories/samsung-network-extender-scs-2u01/%20

[15] The $100 deposit applies to South Jersey affected towns under the Stipulation of Settlement negotiated by the NJ Board of Public Utilities and Verizon. See *In The Matter Of Verizon New Jersey, Inc.'s Alleged Failure To Comply With Opportunity New Jersey Commitments*, Docket No. T012020155, dated April 29, 2013, "Order" at p. 3 and Stipulation at p. 4. http://www.state.nj.us/bpu/pdf/boardorders/2014/20140423/4-23-14-4B.pdf

existing wireless Lifeline program, which allows the carrier to determine the program benefits instead of the Commission. NASUCA urges the Commission to act to ensure a minimum number of minutes and amount of data, or encourage carriers to maximize those offerings in exchange for the subsidy. The Commission should also encourage USAC to prepare information describing the specific benefits that each wireless Lifeline ETC offers in exchange for the $9.25/month payment to the ETC and explore how this information could be provided to Lifeline customers beyond including the information on its website.[16] This would enable Lifeline customers to shop for the most value for USF support and provide Lifeline carriers with an incentive to offer the best selection of services.

The Commission also "propose[s] to delegate to the Wireline Competition Bureau (Bureau) the responsibility for establishing and regularly updating a mechanism setting the minimum service levels that are tied to objective, publicly available data."[17] NASUCA would expect to address these issues in reply comments, but for now will submit that there is a need for minimum service levels, and that compliance must be ensured. In this area of § 254 universal service, it is especially important that the service for Lifeline customers – which all customers are supporting – is adequate now and in the future.

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[16] USAC has provided state by state Lifeline ETC information on its website, but should be encouraged to provide more details with respect to specific benefits offered by each ETC.

[17] NPRM, ¶ 49.

III. Ensuring Reasonably Comparable Service - Affordability: Both Broadband and Voice Service Need to be Affordable for Lifeline-Eligible Customers Under the Proposals Outlined in the NPRM.

The NPRM is addressing goals that are at least partially competing. On one hand, the NPRM asks several questions indicating the need to ensure that services are affordable for Lifeline and other low income customers.[18] On the other hand, the proposal is to expand the program to incorporate a new broadband service while retaining the current single subsidy of $9.25 per household.[19] The Commission should insure that the Lifeline program will truly enable Lifeline-eligible customers to be able to afford both essential voice and broadband services.

Wireline voice, whether provided using legacy Time Division Multiplexing (TDM) or fixed Voice over Internet Protocol (VoIP), and broadband are distinct telecommunications services. Both are essential, albeit in different respects.

Voice service (whether wireline or wireless) remains essential for effective communication with, for example, first responders and relatives in times of emergency, and discussions with medical professionals, caregivers, employers, schools, businesses and government agencies.[20] Fixed wireline voice is arguably the most reliable service from a public safety standpoint, offering the most accurate location information for first responders[21] and, for those on copper networks, continuing to function during lengthy

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[18] Id., at ¶¶ 31, 36, 38, 41.

[19] Id., at ¶ 52.

[20] *See*, for example, Prepared Remarks of Acting FCC Chairwoman Mignon Clyburn, New American Foundation, Communications Safety Net: How Lifeline Connects Families and Communities, Washington D.C., September 12, 2013, at 3.

[21] *See*, for example, USA Today, 911's deadly flaw: lack of location data, February 22, 2015

power outages. Notwithstanding, as the NPRM describes in detail, broadband has now become essential to participate in society. This includes, for example, the ability to search for employment and submit job applications, file taxes, research and complete homework assignments, be employed in professions that require the use of e-mail and Internet resources, communicate with medical service providers, submit data to state agencies for programs involving water conservation or pesticide usage, and the list goes on.[22]

The NPRM asks, "[i]s there a price to the low-income consumer above which voice telephony service is no longer affordable?"[23] In NASUCA's view, that question applies to all Lifeline services - wireline and wireless voice and broadband, and bundles containing two or more of these services that may be available as Lifeline offerings. Wireline and wireless broadband prices are not regulated. As noted earlier, the NPRM states that "the cost of provisioning wireless voice service has declined significantly since the *Lifeline Reform Order*."[24] In many states, VoIP is deregulated and the rates for some legacy wireline voice services have also become deregulated, (although some states that have deregulated rates continue to regulate service quality and consumer protection). There is no check on price increases for services provided to Lifeline customers or low-income customers who are not eligible for Lifeline. Retaining the current single $9.25 benefit per household[25] may mean that Lifeline customers will be required to choose between two essential services, voice and broadband. Further, absent any restrictions on

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[22] *See*, for example, NPRM at ¶ 5; http://broadband.about.com/od/broadbandapplications/a/Benefits-Of-Broadband.htm.

[23] NPRM at ¶ 41.

[24] NPRM at ¶53.

[25] Id., at ¶ 52.

price increases, the true monetary benefit of the federal discount could be effectively diminished by rising rates and charges.

The provision of a single benefit per eligible household creates an incentive for customers to purchase bundles including wired or wireless voice and broadband services, if the ETC offers such a bundle. This has both benefits and drawbacks. On the beneficial side, the proposal keeps costs under control, particularly when paired with the Lifeline reforms already undertaken and additional reforms described in the NPRM. Applying the single benefit to a bundle also would allow the customer to receive two (and possibly three) essential services for a discounted price.

However, there are also pitfalls to incenting customers to apply the single discount to a bundle. For example, this would leave customers vulnerable to upselling, unless safeguards are put in place.[26] Further, bundles are often sold at a promotional discount with prices rising considerably after the introductory period expires. Lifeline customers as vulnerable as other customers to being stung by provisions in the fine print of telecommunications service contracts. Unexpected price increases can drive low-income consumers off the Lifeline service altogether and stress the limited resources available for other necessities.

Moreover, the services contained in a bundle may not be optimal for customers. For example, a broadband service superior in terms of speed and quality may be bundled with a phone service that is unreliable during power outages or lacks fundamental

[26] NASUCA Resolution 2010-02, Calling for Reform of the Lifeline Program, Including Reform for Prepaid Wireless Lifeline Services (June 15, 2010), which stated that "… the offering of service packages to Lifeline customers gives those customers choices, but there are concerns that carriers will heavily market packages to Lifeline customers that are beyond the customers' means, and that Lifeline customers will therefore have service disconnected for non-payment at a rate significantly greater than that applicable to Lifeline customers who subscribe only to limited services…."

regulatory protections (e.g., service quality or the right to formally complain). Alternatively, a customer might rely on a cell phone for employment, but may need a wireline broadband connection in order to conduct the essential tasks identified in the NPRM such as submitting job applications or homework. Such a customer would have to choose between applying their single Lifeline benefit to two essential services.

The NPRM notes that the data from the FCC's broadband trials showed that affordability was a factor in the choices made by customers.[27] Similarly, the Pew Research Center recently released findings noting that those with low household incomes and levels of educational attainment tend to rely on smartphones for Internet access "at elevated levels," while reporting that relying on smartphones for Internet access was a significant financial burden for many customers, and noting that "fully 48% of smartphone-dependent Americans have had to cancel or shut off their cell phone service for a period of time because the cost of maintaining that service was a financial hardship."[28]

At some point, to achieve affordable access to essential services for Lifeline customers, it will likely be necessary to consider expanding the contribution base to include broadband, or support broadband access through some other means. As NASUCA has pointed out in resolutions and prior comments, it is not realistic or equitable for voice service customers to fund universal service support for a service that is not in the contribution base,[29] and not subject to the same consumer protections.

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[27] NPRM at ¶ 31: "For example, patterns within the data indicate that cost to customers does have an effect on adoption and which service plans they choose."

[28] The Benton Foundation - Pew Identifies the "Smartphone-Dependent" - What Could It Mean for Lifeline?

[29] *See*, for example, NASUCA Resolution 2009-06, *Calling for Lifeline and Link-up Program Support for Broadband Internet Access Services and Devices* (June 30, 2009); NASUCA Resolution 2012-03,

As we stated earlier in these comments, the framework set forth in the NPRM is not perfect, nor do we expect it to remain unaltered. However, for the time being, the FCC should proceed with the single benefit approach as the most expeditious means of enabling Lifeline customers to access broadband. We may provide further comment on these issues in reply.

In the meantime, the Commission can take an important step toward ensuring service is affordable by prohibiting disconnection of wireline or wireless voice services when the carrier receives the Lifeline payment even if the customer fails to pay his or her broadband portion of the customer's bill.[30]

Further, the Commission should continue the "free service" model for wireless voice service. For wireless broadband service, data caps should be permitted only where the service is provided at the median wireless broadband speed. In situations where a customer reaches or exceeds an initial cap, providers should be required to both provide clear notice that the customer is approaching the data cap and ensure that the essential voice service continues to function after the data cap is reached or exceeded.[31] Data caps should be set at a level sufficient to cover most customers' monthly usage, based on data available to the Commission. The FCC should regularly revisit the data cap level to ensure that it is sufficient. If many Lifeline customers routinely meet or exceed data

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Supporting the adoption of federal universal service support contribution mechanisms that ensure all carriers and services that benefit from high cost universal service funding contribute to the program's funding base (June 15, 2012).

[30] In *Texas OPC v FCC*, 183 F.3d 393, 421 (5th Cir 1999), the Court rejected the FCC's arguments in support of prohibiting local Lifeline disconnection for failure to pay interstate toll. Given the expansive holding of *In re: FCC 11-161* (10th Cir. May 25, 2014), and the other bases of authority for Lifeline (see Part IV, below), the 1999 holding is no longer binding.

[31]Wireless carriers routinely inform customers that they are approaching data caps and the carriers have the ability to enforce data caps while customers retain voice service. See, for example, http://www.myrateplan.com/cell-phone-plan/sprint/sprint-as-you-go-unlimited-basic

caps, that will be evidence that the cap is set too low. Since broadband is an essential service, it is important to ensure that customers can make full use of the service.

IV. The Commission Should Ensure that Expanding the Lifeline Program to Include Broadband Does not Jeopardize Public Safety for Lifeline and Low-Income Customers.[32]

As recognized in the NPRM, Congress has directed the Commission to consider the extent to which supported services are essential to public safety.[33] The NPRM notes that the National Broadband Plan described ways in which broadband can bolster public safety, including helping "public safety personnel prevent emergencies and respond swiftly when they occur" and providing the public with new ways to call for help and receive emergency information.[34] The NPRM also noted that Next Generation 911 (NG911) networks based on broadband technology hold "the potential to improve access to 911 through services such as text-to-911" and provide "Public Safety Answering Points (PSAPs) with more flexible and resilient options for routing 911 calls."[35] While broadband has the potential to contribute to public safety, NG911 is still in testing mode and, as the multi-state 911 outage demonstrated, the transition to broadband IP networks can also contribute to serious public safety problems.[36]

When networks are adequately maintained, wireline voice is arguably the most

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[32] NPRM at ¶ 29.

[33] Id.

[34] Id.

[35] Id.

[36] See PS Docket No. 14-174, Report and Order, FCC 15-98 (rel. August 7, 2015), ¶¶ 11-13.

reliable service from a public safety standpoint, offering the most accurate location information for first responders[37] and, for those on copper networks, continuing to function during lengthy power outages. While it is undoubtedly true that wireline distribution plant is being upgraded to fiber - that is not line-powered - in many urban and suburban areas, there are still vast geographic regions where copper distribution plant is the most economical wireline option.

For example, in California, 96 percent of the population is located in urban areas (not all of which are served by fiber distribution plant), however, 95 percent of the geographic area of the state (with over 1.5 million residents[38]) is rural and continues to be served by copper plant.[39] Due to the topography and dense vegetation, wireless is not a reliable means of receiving either voice or broadband in many rural areas of the country. In these circumstances, from a public safety standpoint, it is essential that Lifeline customers have the ability to receive affordable, reliable wireline service.

The Commission recently released its Report and Order on battery-back-up (Backup Power Order).[40] The Backup Power Order requires providers to make available to customers batteries providing 8 hours of stand-by back-up power, at the customer's option and expense.[41] Within three years, providers must offer customers a 24-hour back-

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[37] See, for example, USA Today, 911's deadly flaw: lack of location data, February 22, 2015

[38] http://quickfacts.census.gov/qfd/states/06000.html

[39] Before the California Public Utilities Commission, *In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc., Verizon California, Inc., Verizon Long Distance LLC and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California, Inc. And Related Approval of Transfer of Assets and Certifications*, A.15-03-005, Workshop (Panel), Santa Clara, CA, July 27, 2015, presentation of Robert Tse, State Broadband Coordinator for USDA CA Rural Development, TR. 210-211.

[40] Before the Federal Communications Communication, *In the Matter of Ensuring Continuity of 911 Communication*, PS Docket No. 14-174, *Report and Order*, Adopted August 6, 2015, Released August 7, 2015.

[41] *Id.*, at ¶9.

up power solution, at the customer's expense.[42] Unfortunately, the Commission seems to have accepted the industry argument that back-up power and reliable service is "an optional accessory" for customers.[43] This approach could place customers who are financially challenged especially at risk.

As discussed earlier in these comments, under the structure laid out in the NPRM, Lifeline customers who want to obtain both voice and broadband would be strongly incented to purchase bundles. However, many voice/broadband bundles involve the need to purchase back-up batteries in order for the services to function during power outages and, therefore, to ensure reliable service in times of greatest need. A choice between buying food, paying the electric bill, or paying for a battery so that the phone works during a prolonged power outage is not a voluntary choice to purchase "an optional accessory." Airbags and smoke detectors are no longer "optional accessories," and treating reliable telecommunications service as optional is a step backward for public safety. The Commission notes that Comcast sells backup batteries for its Comcast Wired voice modem for $35.00, plus $5.95 for shipping and handling.[44] This is comparable to the service connection fees that have been shown to deter adoption of wireline phone service.[45] For the purposes of this proceeding, the Commission should recognize that Lifeline and low-income customers are the members of the population least able to afford the purchase of back-up batteries. The Commission should consider requiring providers

[42] *Id.*, at ¶30.

[43] *Id.*, at ¶42.

[44] *Id.*, at ¶44, fn 135.

[45] CPUC Lifeline Decision, D. 14-01-036, Decision Adopting Revisions to Modernize and Expand the California Lifeline Program., at 42. *See:* http://www.cpuc.ca.gov/NR/rdonlyres/3AF6F731-5B5A-45F8-AADD163EAA5E1284/0/DecisionAdoptingRevisionstoModernizeandExpandtheCaliforniaLifelineProgram.pdf

to offer the batteries to Lifeline customers at cost or with the price amortized over a 12 month period. This would allow Lifeline customers to continue to receive reliable voice service while not increasing the size of the fund.

V. The Commission Has the Authority to Expand the Lifeline Program to Include Broadband.

In the *Open Internet Order*, the FCC found that broadband Internet access service (referred to here as "broadband"), was a telecommunications service under 47 U.S.C. § 153(53).[46] As such, it falls among the services that may be supported by the federal Universal Service Fund ("USF").[47]

The Commission created the Lifeline program in 1985, pursuant to sections 1, 4(i), 201, and 205 of the Communications Act.[48] Although the Commission received broader authority under § 254 of the 1996 Act, the Commission has recognized that its authority to restrict, expand, or otherwise modify the Lifeline program through provisions other than section 254 has been well established over the past decade."[49]

Clearly, the FCC has wide discretion to provide USF to carriers.[50] That discretion could hardly be better implemented than in bringing the benefits of broadband to low-income customers, and in assisting low-income customers with their purchase of

[46] *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC No. 15-24 (rel. Mar 12, 2015) ("*Open Internet Order*"), ¶ 43; on appeal sub nom. *USTelecom v FCC* (D.C. Cir Docket No. 15-1063) (oral argument scheduled).

[47] NPRM, ¶ 61. Whether specific other services are able to be supported by the USF is beyond the scope of these comments.

[48] Id., ¶133.

[49] Id., ¶ 134, citation omitted.

[50] *See In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

broadband.[51]

VI. Eligibility

A. The Commission Should Adopt Consumer Protections Pertaining to Eligibility.

Regardless of whether the Commission determines that a national third party verifier should be established to determine eligibility, the eligibility process should include the following consumer protections reasonably calculated to protect the public interest.

First, the Commission should establish an administrative process subject to the Administrative Procedure Act ("APA"), or substantially include similar protections, that would allow telephony and broadband customers a clear pathway to challenge a carrier's or third party verifier's decision to deny them eligibility, without the unnecessary expense and burden of requiring such customers to bring legal action. Moreover, the Commission's process should allow consumer representatives, including but not limited to, state consumer advocate offices or attorneys general, to represent individuals or classes of customers in disputes regarding Lifeline telephony or broadband eligibility, or eligibility for such other services as may be provided under the Lifeline program.

Second, as the Commission has amply shown through its previous rule making proceedings, enforcement activities and generic orders, the protection of Customer Proprietary Network Information ("CPNI") is extremely important to consumers. The storage and use of such data by third-party verifiers and by broadband providers adds

[51] *See* 47 U.S.C. § 254(b).

initial risks to the security of such data that did not exist and/or were firmly regulated when such data was only in the hands of incumbent local exchange carriers ("ILECs") or competitive local exchange carriers ("CLECs"). To keep broadband providers from conditioning rates designed to facilitate the universal service broadband program and product(s) upon the commercial use of CPNI, the Commission should exercise its authority to regulate and/or forbid such activity.

Finally, the Commission should provide a series of strong "best practices" provided in concert with the National Institute of Standards and Technology, the National Telecommunications and Information Administration ("NTIA") and such other federal agencies as may be convenient or necessary, to create a comprehensive set of regulations concerning the handling of CPNI by 3rd party verifiers, and specifying customer and carrier notification requirements when a data breach occurs with the 3rd verifier or carrier in the program. To the extent the deliberations and findings of the Comprehensive National Cybersecurity Initiative are applicable, such findings should be incorporated into the final regulations.[52]

B. Eligibility - Customer Notice in Appropriate Languages

The Commission should require that notices issued by a national third-party verifier be issued in the ten most commonly spoken languages in a given telephony or broadband provider's service territory, or in the census tract in which the customer resides. Where similar or more specific requirements are already established by statute or ordinance in the respective service territories, the Commission should follow the local

[52] https://www.whitehouse.gov/issues/foreign-policy/cybersecurity/national-initiative

requirement(s).[53] If no such requirement exists, the verifying entity should use the data sets provided by the Bureau of the Census' American Community Survey (ACS), such as but not limited to the ACS' 2013 study of language segregation in metropolitan areas [54] Any certification/decertification hotline established by such a verifying entity should be required to adhere to the same standard.

VII. Critiques of the Commission's Goal of Modernizing Lifeline to Allow Low-Income Consumers To Access Broadband Services Fail to Provide a Viable Alternative Means of Enabling Lifeline Eligible Customers to Afford Broadband.

NASUCA supports the Commission's initial proposal to create Lifeline broadband options without incurring the cost of creating a new, separate broadband universal service program and without increasing the cost of the existing Lifeline

[53] Illinois law requires that verification of a change in telecommunications carrier be conducted in the language used in the underlying transaction. 220 ILCS 5/13-902(c)(10):

> Other requirements for third party verification. All third party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. In accordance with the procedures set forth in paragraph (2)(B) of this subsection, submitting carriers shall maintain and preserve audio records of verification of subscriber authorization for a minimum period of 2 years after obtaining such verification. Automated systems must provide consumers with an option to speak with a live person at any time during the call.

California's Third Party Administrator is required to produce all forms, instructions and letters to customers in their language of sale if that language is one of those supported by the program. Those languages supported by the program are English, Spanish, Chinese, Korean, Vietnamese, Tagalog, Japanese and English Braille. CPUC General Order 153, Section 6.1.1. http://docs.cpuc.ca.gov/WORD_PDF/GENERAL_ORDER/154648.pdf

Further, California LifeLine carriers also have in-language requirements for customer service representatives and certain notices that vary with the type of service and marketing practices of the carrier. See, CPUC Decision 14-01-036 (Rulemaking 11-03-013) and Decision 07-07-043 (Rulemaking 07-01-021) and General Order 153, Section 4.6).

[54] See http://www.census.gov/library/working-papers/2013/demo/2013_Julian.html.

program.

In a recent Forbes Magazine article, the author criticized the idea of expanding the Lifeline program along the path set forth by the FCC in the NPRM.[55] The article states that "expanding broadband access is a laudable goal." The article recognizes that broadband produces positive externalities and spillover effects, and states that a "simple policy prescription" is to "[t]ax the industries that produce negative externalities and subsidize those that produce positive spillovers."

However, the author argues that the FCC's approach will eventually lead to "taxing" the Internet, thereby creating a perverse outcome, and argues that it would be better to subsidize broadband from the general treasury, offset by the elimination of existing subsidies for sugar, corn, coal or oil, "all of which generate negative externalities." The article may be well-intentioned but is misguided, at least as a near-term approach.

First, there is a market failure here. Millions of low income Americans are unable to afford what has become an essential service and the market has failed to provide a viable solution. The author of the Forbes article agrees with the FCC that this problem needs to be addressed, albeit not by the approach available to the Commission.

However, the contribution mechanism is mandated by Congress. Since the 1996 Act was passed, universal service has required a contribution from the broad class of customers in order to provide an important and necessary benefit to those unable to afford service at the prices prevailing in the market, including Lifeline customers and all customers in certain high cost areas of the country. The reliance on a § 254 contribution

[55] Hal Singer, Don't Tax Broadband In Order To Subsidize It, Forbes (August 13, 2015), http://www.forbes.com/sites/halsinger/2015/08/13/dont-tax-broadband-in-order-to-subsidize-it./.

mechanism cannot be changed absent legislation. Recent attempts to pass telecommunication legislation in a number of areas, including broadband, have failed. The author himself admits that Congress has difficulty adopting taxes that, as an economist, he believes would serve the greater public good,[56] citing the lack of a gas tax to finance crumbling roads. The author does not address the difficulties involved in passing legislation that would eliminate subsidies to sugar, corn, coal and oil and shifting those subsidies to broadband.

The approach proposed by the author is not practical. NASUCA supports the Commission's effort to modernize Lifeline without raising the current $9.25/subsidy as an incremental approach to expanding the Lifeline program to include broadband service.

VIII. The FCC should Maintain and Expand Lifeline ETC Obligations.

In a Public Notice (DA 15-851[57]), the FCC states,

> Against the backdrop of the relief already granted in the *December 2014 Connect America Order*,[58] we … seek to refresh the record on issues raised in various proceedings related to ETC designations and obligations in areas served by price cap carriers. In the *USF/ICC Transformation FNPRM*, the Commission noted that ETC service obligations and funding should be "appropriately matched, while avoiding consumer disruption in access to communications services."[59] It sought comment on how existing

[56] "This understanding leads to a simple policy prescription: Tax the industries that produce negative externalities and subsidize those that produce positive spillovers. Yet our politicians won't support a gas tax to finance our crumbling roads, reflecting their constituents' myopic desires, even if the result runs counter to economic theory."

[57] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Public Notice, DA 15-851 (rel. July 23, 2015).,

[58] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15663-71, paras. 50-70 (2014) (*December 2014 Connect America Order*), referred to here as the *CAF II Order* (footnotes as in original).

[59] *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18062, para. 1089 (2011) (*USF/ICC Transformation FNPRM*).

> voice telephony service obligations for ETCs would change as funding shifts to new, more targeted mechanisms, including potentially via forbearance from the relevant requirements of section 214(e)(1).[60] In the *April 2014 Connect America FNPRM*, the Commission sought to develop the record further on how relieving incumbent local exchange carriers (LECs) of their ETC obligations would comport with section 214 of the Communications Act and what specific obligations incumbent LECs would be relieved of in areas where they do not receive high-cost support.[61] In October 2014, USTelecom submitted a petition seeking, among other things, forbearance from the enforcement of section 214(e)(1)(A) where a price cap carrier receives no high-cost support.[62] And recently the Commission released a FNPRM for the Lifeline program seeking comment on proposals for ETC relief from Lifeline obligations and incorporating the record from the Connect America and USTelecom forbearance petition proceedings into that docket.[63]

The instant comments are submitted on the Lifeline FPRM.[64] However, as the Commission notes, the issue of broadband Lifeline has much in common with ETC requirements.

NASUCA opposed the ETC forbearance for price-cap carriers granted in the *CAF II Order*.[65] NASUCA supported the denial of forbearance to price-cap carriers for Lifeline ETC obligations. NASUCA's position here is the same.

As the Commission notes,

> In the *December 2014 Connect America Order*, the Commission did not resolve the issues that were raised in the Connect America Fund rulemaking proceeding and the forbearance petition regarding possible

[60] *See id.* at 18062-66, paras. 1089-1102.

[61] *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7117, paras. 195-98 (2014) (*April 2014 Connect America FNPRM*).

[62] Petition for Forbearance of the United States Telecom Association, WC Docket No. 14-192, at 60-73 (filed Oct. 6, 2014) (USTelecom Oct. 6, 2014 Forbearance Petition); *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Incumbent LEC Regulatory Obligations*, WC Docket No. 14-192, Public Notice, 29 FCC Rcd 13535 (Wireline Comp. Bur. 2014).

[63] NPRM, ¶¶ 125-26 (internal footnotes in original).

[64] NASUCA expects also to file comments on the Public Notice.

[65] See WC Docket No. 14-192, NASUCA Comments on USTelecom Petition for Forbearance (December 5, 2014) at 9-16.

> forbearance or other relief from the price cap carriers' ETC designations or the regulatory requirements imposed on ETCs for those census blocks where forbearance was not granted. Moreover, the Commission did not resolve the issue of granting broader forbearance or other relief from the ETC designations of the price cap carriers serving the census blocks where limited forbearance was granted. The Commission neither accepted nor rejected commenters' various arguments—whether in favor of, or against—such proposals.[66] These issues remain pending to the extent originally raised in the rulemaking proceeding or the forbearance proceeding (or both).[67]

However the issues are resolved in the other dockets (and NASUCA expects and respectfully requests the FCC to restore, rather than remove, ETC obligations). In this docket, for Lifeline voice and broadband services, the FCC should maintain the obligation of ETCs to provide voice Lifeline and expand the ETC obligation to provide broadband Lifeline. First, the FCC should not forbear from enforcing the Lifeline obligation. Thus ILECs (price-cap or rate-of-return), the wireless ETCs, and other ETCs

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[66] *See generally December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70 (addressing the section 10 criteria insofar as the Commission granted forbearance, but not addressing whether the section 10 criteria were or were not met with respect to any possible additional forbearance, and not reaching in that *Order* other theories for relief); *see also, e.g.*, *id*. at 15664, para. 52 (recognizing that "except for the two circumstances expressly described" in that section of the *Order*, for which forbearance was granted, "[w]e do not address at this time" possible forbearance "from enforcing the section 214(e) obligation of a price cap carrier to offer voice telephony services in extremely high-cost areas where it is not receiving support"); *id*. at 15669-70, para. 67 (citing differing views in the record regarding certain additional actions that some commenters proposed and, without resolving them, noting why they were not implicated by the actions actually taken in the *Order*); *id.* at 15671, para. 70 & n.158 (explaining that the forbearance granted in the *Order* does not relieve price cap carriers of their Lifeline obligations, but referencing still-pending comments in which LECs and certain wireless Internet service providers have advocated that the Commission de-link the high-cost ETC and Lifeline ETC designations); *id*. at 15702, para. 167 (making clear that the *Order* granted in part the USTelecom forbearance petition, without otherwise addressing or resolving all of the issues raised in that petition); Reply Comments of USTelecom, WC Docket No. 14-192 at 25 (filed Dec. 22, 2014) (USTelecom Dec. 22, 2014 Forbearance Reply) ("applaud[ing the] relief" granted in the *December 2014 Connect America Order* and arguing that the Commission should grant further relief in the context of the pending forbearance petition).

[67] Public Notice, ¶ 5 (internal footnote in original). AT&T appealed the *CAF II Order* because of the FCC's failure to grant total ETC forbearance. *AT&T v. FCC* (DC Cir Docket No. 15-1038). The FCC has asked that the appeal be held in abeyance pending resolution of AT&T's issues in 1) the USTelecom .forbearance petition; 2) the high-cost rulemaking; and 3) this Lifeline proceeding.

– like Time Warner Cable in a few states[68] – should now be required to offer Lifeline voice and broadband services, as described elsewhere herein.

The *CAF II Order* did not forbear from Lifeline obligations, even where it forbore from other ETC obligations.[69] (Or, more accurately, forbore from "enforcing" the § 214(e) obligations.[70]) The *CAF II Order* did not find that the § 160 conditions for forbearance were met. And they still have not yet been met.

Second, the FCC should, over the upcoming months, examine whether and how to incent other carriers to provide Lifeline voice and broadband services. This is in keeping with the incrementalist approach generally proposed here.

NASUCA proposes that the Commission make providing Lifeline (including broadband) a condition of at least all merger and acquisition transaction approvals involving ETCs. The Commission has found broadband to be a telecommunications service,[71] and the NPRM clearly demonstrates the need for broadband universal service.[72] Meeting this universal service goal should be a mission of the entire industry. The recently-approved AT&T/DirectTV merger included, along with general broadband buildout requirements, a low-income broadband access condition.[73] In addition, Charter/Time Warner have proposed a low-income service that builds on Time Warner's

[68] Time Warner Cable, for example, elected for its VoIP service to become a telecommunications carrier and ETC for purposes of Lifeline in New York in a petition submitted to the New York Public Service Commission (PSCNY) in 2012. See, March 18, 2013 Order in case CASE 12-C-0510

[69] *CAF II Order*, ¶ 70.

[70] Id., ¶ 51. The FCC seems to have overlooked this distinction, as in the ETC record refresh Order, supra footnote 63.

[71] Open Internet Order, supra footnote46.

[72] As summarized in the NPRM, ¶¶ 4-7.

[73] MB Docket No. 14-90, FCC 15-94 (rel. July 28, 2015), ¶ 397.

current program in some states.[74] Thus it can and should be done.

IX. Conclusion

The NPRM presents a compelling case for expanding Lifeline to include broadband service. As society and the global economy evolve broadband is playing an increasingly important role and is now an essential service, as recognized by the NPRM.[75] Voice service also continues to be an essential service.[76] As the Commission expands the Lifeline program to include broadband, it must ensure that affordable access to reliable voice service is preserved. We agree with the Commission that it is past time to expand the Lifeline program to include broadband; however, the Commission must proceed with caution. We urge the Commission to take an incremental approach to expanding the Lifeline program to include broadband, with the expectation that the program will evolve.

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[74] See http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-comcast-time-warner-internet-merger-20150418-story.html.

[75] NPRM, ¶ 4.

[76] Id., ¶ 165.