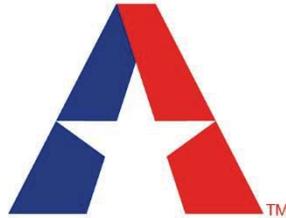


**Before the
Federal Communications Commission
Washington, DC 20554**

Lifeline and Link Up Reform and Connect 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



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TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	2
II. REFORMING THE STRUCTURE AND OPERATIONS OF THE LIFELINE PROGRAM TO ENCOURAGE PARTICIPATION BY WIRELINE VOICE AND BROADBAND SERVICE PROVIDERS	5
A. Providers Should Be Able to Require Pre-payment for Services	6
B. Support for Broadband Should Cover Recurring and One-Time Costs.....	7
C. Lifeline Customers Should Be Able to Subscribe to any Broadband Service Offered, and the Commission Should Not Impose any Service Requirements	8
D. Eligibility Verification Should Be Handled by Third Parties and Not Service Providers	8
E. Lifeline Customers Should Directly Receive Benefits	9
F. The ETC Designation Process Should Be Eliminated or Streamlined	10
III. CONCLUSION.....	12

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COMMENTS OF THE AMERICAN CABLE ASSOCIATION

The American Cable Association (“ACA”) hereby submits its comments in response to the Second Further Notice of Proposed Rulemaking (“FNPRM”)¹ seeking comment on new and additional solutions for the Lifeline program. ACA has not heretofore submitted comments on the Lifeline program; however, because the Commission is considering expanding the program to provide support to enable low-income consumers to access broadband service, and because ACA members, many of whom already participate in the program, provide broadband (in addition to currently-supported voice) service over their wireline networks, ACA and its members have an interest in the program and believe the Commission would benefit from its views in reforming the Lifeline program. Whether the Commission can succeed in providing

¹ See *In the Matter of Lifeline and Link Up Reform, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71, WC Docket Nos. 11-42, 09-197, and 10-90 (rel. June 22, 2015).

low-income consumers access to broadband service from a variety of providers will depend, as discussed herein, on the adoption of substantial, fundamental reforms to the program.

I. INTRODUCTION AND SUMMARY

ACA represents over 800 small and medium-sized cable operators, incumbent telephone companies, municipal utilities, and other local facilities-based, wireline providers of broadband service passing about 19 million locations and serving almost 7 million locations. These members range in size from a few hundred to up to a million subscribers; half serve fewer than 1,000 subscribers. Most of these providers operate primarily in smaller communities and rural areas. Others operate as overbuilders in more urban areas. In both instances, they pass locations where low-income consumers reside.

ACA supports the aim of the Lifeline program to provide essential communications capabilities to low-income consumers. Universal connectivity for all Americans in all areas of the country provides countless, substantial benefits, including increased opportunities to work, learn, access critical care, interact with others, and participate in our political processes. To date, the Lifeline program, by supporting access to voice service, has helped provide that communications connectivity for low-income consumers. Because critical communications connectivity now includes broadband, as well as voice, service, it is reasonable for the Commission to seek to expand the program so that broadband is a supported service.

Many of ACA's incumbent telephone company members have provided Lifeline service for decades due to being Eligible Telecommunications Carriers ("ETCs"), which is a status required of carriers to receive legacy high-cost and now Connect America Fund ("CAF") support; yet most or all are finding the program's requirements increasingly burdensome. As with other wireline providers, they have seen their Lifeline customer-base shrink as wireless providers have taken the lion's share of supported voice customers, and they have seen the

administrative requirements grow as the Commission imposes new mandates to address waste, fraud, and abuse in the program. Although the program's problems are not so great that these carriers would forgo being an ETC and receiving CAF support, they create disincentives for carriers to compete for Lifeline customers. Unless these problems are addressed, they will continue to undermine the effectiveness of the program, particularly as it expands to support broadband service.

In contrast to ACA's local telephone company members, few cable operator members offer Lifeline service for a number of reasons. First, most smaller cable operators only began to provide voice service about a decade or so ago, and, as one would expect, they focused initially on providing service to their overall customer base. Then when their voice service offerings matured, there was no market opportunity – it was evident that regardless of the price or service offered by wireline Lifeline service providers, consumers preferred wireless Lifeline service. Second, due to the intrusive and burdensome Lifeline administrative and reporting requirements, smaller cable operators would earn less providing service to eligible Lifeline customers than they would from non-Lifeline customers. Third, smaller operators view the ETC requirements as onerous, particularly when measured against the number of potential Lifeline customers.

In sum, wireline providers have little, or at least reduced, incentive to participate in the Lifeline program. Costs are high, and benefits are not great. While changes to the program would not alter consumers' preference for wireless voice service over wireline service, should the program support broadband and should the Commission adopt the program reforms, as discussed herein, wireline providers would be more likely to participate and compete for customers.

While ACA shares the Commission’s aim to expand the Lifeline program to encompass the provision of broadband service to low-income consumers, the Commission should not undertake such expansion without adopting measures to ensure fiscal responsibility. The Commission should cap the annual amount of support for the program, which has doubled in size since 2005 – even with the reforms adopted several years ago. ACA has consistently registered concern about the growth in the overall budget of the universal service fund and the large, direct burden it places on consumers, especially those least able to afford it.² In addition, because the universal service programs involve “off-budget” expenditures, the Commission has a much greater responsibility to ensure they operate within reasonable fiscal bounds. Accordingly, as it did with the high-cost programs, the Commission should adopt a cap (or budget) to restrict funding for the Lifeline program.

In addition, if the Commission wishes to increase the program’s effectiveness and efficiency by encouraging participation by smaller cable operators,³ it should recognize that substantial reforms to the program’s structure and operations are necessary. Accordingly, the Commission must adopt the following measures:

- **Providers Should Be Able to Require Pre-payment for Services** – A provider should be able to charge Lifeline subscribers for recurring and one-time costs on a prepaid basis.
- **Support for Broadband Should Cover Recurring and One-Time Costs** – As with voice service, support for broadband service should cover recurring costs for the provision of service but should also provide support to cover one-time costs, such as installation fees and modem rental or purchase.
- **Lifeline Customers Should Be Able to Subscribe to any Broadband Service Offered, and the Commission Should Not Impose any Service Requirements** – Low-income

² See e.g. Comments of the American Cable Association, WC Docket No. 10-90 et al. at 8-12.

³ Because providers have certain unavoidable, significant requirements (fixed costs) for participation in the program, very small cable operators – those with less than a few hundred customers – are unlikely to participate even if fundamental reforms are made.

consumers should be able to subscribe to voice and broadband services offered by wireline providers to all customers; accordingly, because these services are standard market offerings and to provide incentives for wireline providers to participate, the Commission should not establish any minimum (or maximum) service requirements or requirements as to affordability.⁴

- **Eligibility Verification Should Be Handled by Third Parties and Not Service Providers** – Providers should not be responsible for verifying the eligibility of a low-income consumer for participation in the program or for recertifying eligibility; this task should be performed by one or multiple third party verifiers.
- **Lifeline Customers Should Directly Receive Benefits** – Support should be transferred directly to eligible low-income consumers who can then shop among eligible service providers to subscribe to voice and broadband service.
- **The ETC Designation Process Should Be Eliminated or Streamlined** – The Commission should either eliminate the ETC requirement or should streamline the process for becoming a Lifeline ETC.⁵

Should the Commission adopt these measures, facilities-based wireline providers will have a greater incentive to participate in the program, thereby assisting low-income consumers and increasing the value of the program.⁶

II. REFORMING THE STRUCTURE AND OPERATIONS OF THE LIFELINE PROGRAM TO ENCOURAGE PARTICIPATION BY WIRELINE VOICE AND

⁴ The Commission should not require a service provider that is not an ETC to participate in the Lifeline program. There is no policy rationale for mandating participation by an entity that has not chosen to be an ETC or that has not chosen to access federal universal service support. Moreover, the Commission cannot require a provider that does not access federal universal service support to become a Lifeline ETC. Finally, the Commission has not properly noticed the issue of mandating non-ETCs to be Lifeline ETCs in the *FNPRM*.

⁵ If the Commission adopts the reforms proposed by ACA, service providers would no longer have to verify consumers and seek to obtain support. This then would enable the Commission to reduce its reporting requirements for providers.

⁶ ACA's aim of encouraging participation by wireline service providers is consistent with that espoused by Commissioner Clyburn, the Commission's leading proponent of Lifeline service. See *Statement of Commissioner Mignon L. Clyburn, FNPRM* at 133 (the Commission should "encourage broader participation, by thinking outside the box, reducing unnecessary administrative burdens and rethinking the process for participation in the program.") As for ensuring fiscal responsibility, Commissioner Clyburn too discussed this in her statement, and Commissioner O'Rielly asked the Commission to set a firm annual budget of \$1.6 billion. See *Statement of Commissioner Michael O'Rielly, FNPRM* at 141.

BROADBAND SERVICE PROVIDERS

In the *FNPRM*, the Commission states that it wants to “facilitate broader participation in the Lifeline program and encourage competition with most robust service offerings in the Lifeline market.”⁷ To that end, it offers a number of proposals to achieve that objective. To directly encourage participation, the Commission offers proposals to streamline the ETC designation process.⁸ To indirectly encourage participation, it seeks to enhance the effectiveness and efficiency of the program by proposing numerous reforms to alter the program’s structure and operations.⁹

If the Commission truly wants to encourage participation by wireline service providers, particularly cable operators, it will need to adopt basic and substantial reforms to the structure and operations of the Lifeline program. Wireline providers that offer Lifeline service have become increasingly concerned about the administrative and compliance burdens, especially as their Lifeline customer-base shrinks. Cable operators, knowing these burdens far outweigh any benefits, see little reason to participate. These are not minor concerns; rather, they go to the heart of the program. Unless the Commission makes fundamental changes to the program, it is evident wireline providers or will not participate to any significant degree.

A. Providers Should Be Able to Require Pre-payment for Services

Because the program does not allow participating providers to refuse to serve customers with poor credit history, providers should be permitted to require pre-payment for service, installation, and equipment. It is standard industry practice for service providers of all stripes to perform credit checks on new customers and to require pre-payment for customers that have a

⁷ See *FNPRM*, ¶ 121.

⁸ See *id.*, ¶¶ 122-124.

⁹ See *id.*, ¶¶ 61-120.

high credit risk. In the broadband service provider industry, this practice is no different. Broadband providers often require pre-payment based on a customer's creditworthiness for installation and provision of equipment and for the recurring service. Thus, providers participating in the Lifeline program should be able to follow this standard practice and require that charges be pre-paid, particularly because they are unable to turn down eligible customers that lack creditworthiness. If this is not permitted, a provider's cost of service to this class of customers would increase, thereby discouraging providers from participating in the program.

B. Support for Broadband Should Cover Recurring and One-Time Costs

Wireline broadband service providers will need to charge for the recurring costs of providing service and for any equipment (*e.g.* modem) and installation costs.¹⁰ The Lifeline program needs to reflect this reality and provide additional support to cover these one-time costs. This will ensure that eligible customers who can afford monthly recurring costs of service are not

¹⁰ In the *FNPRM* (§ 52), the Commission tentatively concludes that monthly recurring support should be set at \$9.25 (the existing amount) and inquires whether this is sufficient to cover broadband service. The Commission also inquires about whether to provide reimbursement for any up-front broadband connection charges for fixed service, noting that these charges may be substantial and inhibit subscription by low-income consumers.

To calculate the amount of recurring support required for broadband service, which should at least cover the administrative costs a provider incurs to participate, ACA suggests the Commission conduct a survey of current pre-paid wireline introductory broadband service offerings, which are made available without any support. Shentel, for example, just launched a pre-paid entry-level (3 Mbps) broadband service priced at \$19.99 with no credit restrictions. (*See* "Shentel Trots Out 'Flex' Prepaid Internet Service," Multichannel News (Aug. 17, 2015) available at: <http://www.multichannel.com/news/technology/shentel-trots-out-flex-prepaid-internet-service/393053>.) The Commission can then determine the average price for unsubsidized, introductory level broadband service and develop, based on a comparison to current voice pricing and support, a subsidy level. As for the amount of support for the non-recurring installation charge, it should include both the cost of installation (the truck roll) and the cost of the modem. Shentel's "unsupported" non-recurring charge of \$79, for example, includes both costs. Further, the Commission should be more flexible in the amount of support provided for installation of service since these costs can vary by geographic area. The Commission again can establish the level of support by surveying providers' current supported charges to determine an average cost for particular areas (*e.g.* urban versus rural).

dissuaded from signing up for service because of an inability to pay for the costs of installation and equipment.

C. Lifeline Customers Should Be Able to Subscribe to any Broadband Service Offered, and the Commission Should Not Impose any Service Requirements

The Commission should not link access to the subsidy to a minimum level of broadband service for wireline providers; there is no evidence that today's standard wireline broadband service offerings (as well standard voice offerings) are inadequate or not reasonably priced, even for introductory levels of service. Moreover, by imposing additional service requirements on providers, the Commission would discourage their participation, which would in turn limit the number and variety of broadband services available to low-income consumers. In addition, because it would be contrary to its policies to foster higher-performance broadband service, the Commission should not require wireline providers to offer an introductory broadband service at a performance level lower than they already offer. Such an approach would not provide low-income consumers with the same level of broadband access all other customers of providers believe they need.

D. Eligibility Verification Should Be Handled by Third Parties and Not Service Providers

ACA applauds the Commission's proposal to remove from service providers the responsibility to conduct the eligibility determination and establish one or more third party verifiers, with whom low-income consumers would directly interface.¹¹ The Commission should extend this proposal so that services providers also are not charged with recertifying eligibility and third party verifier(s) handle that task. ACA members who participate today in the program

¹¹ See *FNPRM*, ¶ 63.

without exception find this the most troublesome and burdensome requirement. One ACA member currently providing Lifeline service explained:

A consumer participating in SNAP [Supplemental Nutrition Assistance Program] applies for that assistance via a governmental agency. The consumer isn't required to take their very personal financial information to a grocer to have that grocer determine if the consumer is eligible for SNAP. The grocer has no other requirements to that consumer except to be the best grocer they can be. The consumer retains their privacy and has the ability to shop at the grocer of their choosing. [Given that] nearly 80% of those customers qualifying for Lifeline are eligible through one of the federal programs...having Lifeline administered akin to that of SNAP (or other governmental assistance program) creates efficiencies for the consumer, the carrier, and the government while also reducing waste, fraud, abuse and redundancy.

The burdens imposed on service providers extend to more than simply verifying eligibility.

Providers, for instance, need to adopt measures to ensure that consumers' sensitive personal information, which they obtained in verifying eligibility and are required to retain, is not exposed. This information that must be protected is in addition to information that an operator protects for regular customers. ACA thus believes it is essential that the Commission promptly establish one or more third party verifiers¹² and remove service providers from this obligation.

E. Lifeline Customers Should Directly Receive Benefits

ACA too believes the Commission should operate the program as other government benefit programs are operating and provide Lifeline benefits directly to consumers rather than passing them through to service providers.¹³ This would enable consumers participating in the program to use their support to purchase the service that best meets their needs from the provider of their choice. In addition, by adopting this reform, the Commission would make participation

¹² Third party verifiers would coordinate their activities with relevant federal and state databases and interface with the National Lifeline Accountability Database to ensure compliance with the one-person per household requirement.

¹³ See *FNPRM*, ¶ 104.

in the program more attractive for service providers, which would in turn increase consumer choice and enhance competition.

F. The ETC Designation Process Should Be Eliminated or Streamlined

The Commission inquires about its authority under section 214(e) to streamline the ETC designation process and about policies it could adopt to streamline the process.¹⁴ ACA has commented extensively on the need to streamline the ETC designation process in the context of the CAF because it imposes unreasonable and onerous requirements, which act as a barrier to participation by reputable, capable and experienced service providers that are not currently ETCs.¹⁵ This in turn reduces the competitive provision of “universal” voice and broadband services. Moreover, ACA has explained at length that the Commission has authority to streamline the process,¹⁶ and it has been heartened by the Commission’s turnabout in the CAF program to undertake some streamlining and consider additional steps.¹⁷ ACA, therefore, agrees

¹⁴ *See id.*

¹⁵ *See e.g.* Comments of the American Cable Association, WC Docket No. 10-90 *et al.*, at 21-28 (Jan. 18, 2102) (“The existing state ETC designation process is inherently burdensome because it potentially requires that carriers file multiple applications, the Commission does not control the timing of decision, and states often impose burdensome requirements.”); *see also* Reply Comments of American Cable Association on the Further Notice of Proposed Rulemaking on Next Generation Network Experiments in Rural America, WC Docket No. 10-90 at 7 (Apr. 14, 2014) (“ACA therefore supported the Commission’s proposal to streamline the ETC designation process by permitting applicants to become ETCs only after they receive an award, rather than when they initially apply. ACA also proposed enhancements to the Commission’s proposal to ensure the ETC process operates consistent with the goals of the Experiments: the Commission should establish a time limit for completion of state action – at most 60 days, and the Commission should prohibit a state from imposing requirements on the awardee that are either contrary or in addition to those adopted by the Commission for the Experiments.”)

¹⁶ *See e.g.* Reply Comments of the American Cable Association, WC Docket No. 10-90 *et al.*, at 10-16 (Feb. 17, 2102) (wherein ACA discusses at length the Commission’s authority to streamline or otherwise control the ETC designation process.).

¹⁷ *See Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98, WC Docket Nos. 10-90 *et al.*, ¶¶ 22-23 (rel. July 14, 2014) (“We not conclude that, for purposes of this experiment, if after 90 days a state has failed to act on a pending ETC application, an entity may request that the Commission

with the Commission that it has “substantial flexibility to design a more streamlined [Lifeline] ETC designation process for federal default states.”¹⁸ Moreover, the Commission has sufficient authority to undertake that task for non-default states. Thus, at a minimum, the Commission should enable an ETC applicant before a state commission to seek designation by the Commission if the state commission has failed to act within 90 days after the filing of an application. This approach balances the interests of states to oversee ETC designation with the interests of the Commission to encourage entry and the applicant to enter without undue delay. Given the extensive history of Lifeline ETC designations, the Commission can and should create a model ETC designation template to guide state actions and to enable an applicant to seek relief from the Commission should a state not follow that template.

The Commission also inquires as to whether “creating a process to participate in Lifeline that is entirely separate from the ETC designation process required to receive high cost universal service support [would] encourage broader participation by providers.”¹⁹ The Commission bases this inquiry on the assertion by various providers the statute does not require ETC designation for a provider to receive Lifeline support.²⁰ ACA agrees that the statute allows the Commission

designate it as an ETC, pursuant to section 214(e)(6).”); *see also Connect America Fund et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54, WC Docket Nos. 10-90 *et al.*, ¶¶ 181-182 (rel. June 10, 2014) (“we propose to adopt a requirement that a winning bidder must submit an application to become an ETC within 30 days of public notice that it is the winning bidder for the offer of support in those areas where it has not already been designated an ETC...we propose to adopt a rebuttable presumption that a state commission lacks jurisdiction over an ETC designation petition for purposes of Connect America Phase II competitive bidding or Remote Areas Fund if it fails to initiate a proceeding on that petition within 60 days of receiving it. We seek comment on whether we should adopt a similar rebuttable presumption if a state fails to decide a petition within a certain period of time, such as 90 days after initiating a proceeding on it.”).

¹⁸ *See FNPRM*, ¶ 122.

¹⁹ *See id.*, ¶ 132.

²⁰ *See id.*, ¶ 136.

to permit providers that have not been designated as ETCs to participate in the Lifeline program. At its most basic, this conclusion is based on the fact that the Commission created the Lifeline program a decade before section 254 was enacted using its existing Title I and II authority, and the provisions in section 254 do not vitiate this authority or otherwise limit it.²¹ As a result, the Commission should find that it has the authority to craft a Lifeline designation process that fits a “modernized” program.

As for the process and mechanism the Commission should adopt and implement to designate providers that could receive Lifeline support, ACA believes the Commission can draw on its current process. That said, elsewhere in the *FNPRM*, the Commission is exploring making changes to the program that will materially affect a designation inquiry. For instance, if service providers no longer need to verify and recertify consumers and if consumer receive support directly, oversight of service providers can be simpler and cost effective. ACA thus suggests the Commission develop a “universal” designation process once it has determined how to reform other aspects of the Lifeline program.

III. CONCLUSION

ACA shares the Commission’s ambitions to expand the reach of the Lifeline program to include broadband service and to undertake a series of other reforms to enhance the program’s effectiveness. In doing so, ACA avers that there is value in having wireline providers participate, but the many significant problems with the program’s current structure and operations act as barriers to achieving this aim. Providers will not participate if it results in them earning less for each customer they sign up on their lower priced tier. Accordingly, the Commission should recognize that half-measures will not suffice in addressing basic problems in

²¹ See *id.*, ¶ 137, noting the Commission actions support this conclusion.

the program. Major reforms are required and ACA urges the Commission to undertake them promptly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ross J. Lieberman". The signature is fluid and cursive, with the first name "Ross" being particularly prominent.

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