

**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

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF STATE  
UTILITY CONSUMER ADVOCATES  
ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

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NASUCA's reply comments focus on rebutting two arguments put forth by carriers. First, we reply to comments suggesting that the Commission should not establish minimum standards for wireless Lifeline and broadband Lifeline. Second, we respond to arguments suggesting that the Lifeline program should be "delinked" from Eligible Telecommunications Carrier ("ETC") Obligations.

## **I. MINIMUM STANDARDS for WIRELESS VOICE**

With respect to wireless voice service, wireless carriers such as Joint Commenters argue that "competition" should set the standards for Lifeline service and pricing.<sup>1</sup> However, as both the Commission and AARP point out, to date, "competition among service providers for wireless Lifeline offerings has been stagnant...."<sup>2</sup> Further as NASUCA noted, the FCC has concluded that wireless costs have declined.<sup>3</sup> In a truly competitive environment, declining costs should lead to a more robust wireless offering at the same price point - including an increased number of minutes for the "free" wireless service - however, this has not occurred. Thus, NASUCA believes minimum standards are necessary to ensure that the Lifeline benefit is used to its greatest effect.

We agree that the "free" option, where the carrier receives a \$9.25 benefit and a customer receives service at no additional charge should remain;<sup>4</sup> however, the number of minutes should

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<sup>1</sup> Joint Commenters at 17. The Joint Commenters are comprised of the Lifeline Connects Coalition (Blue Jay Wireless, LLC, i-wireless LLC and Telrite Corporation) as well as American Broadband & Telecommunications Company, Assist Wireless, LLC, Easy Telephone Services Company d/b/a Easy Wireless, Prepaid Wireless Group LLC, TAG Mobile, LLC, Telscape Communications, Inc./Sage Telecom Communications, LLC (d/b/a TruConnect) and Total Call Mobile, Inc.

<sup>2</sup> AARP at 5; NPRM at ¶ 16.

<sup>3</sup> NPRM at ¶52; NASUCA at 5.

<sup>4</sup> Joint Commenters at 18.

be increased. Joint Commenters argue that the market rate for service far exceeds the \$9.25 subsidy. Yet, the market rate is not necessarily a reasonable measure for determining whether to require a greater number of minutes. As AARP points out, the cost-drivers for wireless service are video applications and machine-to-machine traffic, with voice making a negligible contribution to the costs of wireless data network expansion.<sup>5</sup> Importantly, AARP cites the NPRM's statement that Commission's data shows that wireless wholesale costs have "declined drastically."<sup>6</sup> These significant cost declines, combined with voice service having a negligible impact on costs, supports revising the minimum number of minutes for the "free" wireless Lifeline voice service to at least 500 and phasing in unlimited voice minutes over a three year period.<sup>7</sup>

## II. ETC OBLIGATIONS

AT&T's assertions that "Participation in the Lifeline Program Must be Voluntary and Delinked from ETC Status"<sup>8</sup> must be rejected.<sup>9</sup> Neither AT&T's – nor any other carrier's – arguments are either compelling or reasonable.

"Making participation in the Lifeline program voluntary for all service providers"<sup>10</sup> may be one way "to attract providers that want to compete for Lifeline consumers' business and offer the types of value-added services desired by these consumers."<sup>11</sup> However, like the general ETC

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<sup>5</sup> AARP at 6; citing NPRM, ¶ 42.

<sup>6</sup> AARP at 6; citing NPRM, ¶ 39.

<sup>7</sup> AARP at 6; see also NPRM, ¶ 40.

<sup>8</sup> AT&T at 28; see also USTelecom at 3 ("an election")..

<sup>9</sup> Elsewhere (e.g., id. at 29), things are phrased a little more tentatively as "should" rather than "must."

<sup>10</sup> Id.; see also Verizon at 9.

<sup>11</sup> AT&T at 29.

obligations, the purpose of a non-voluntary Lifeline program is to ensure that there will be a Lifeline provider for *all* customers.

AT&T states that “[t]he proliferation of Lifeline-only ETC status requests is a clear indication of the interest in participating in the program;” yet, it acknowledges that “that interest has been largely limited to a subset of prepaid wireless.”<sup>12</sup> AT&T can give no assurance that other carriers will be interested. AT&T asserts that “[c]ompetition for eligible consumers will become even more vibrant under New Lifeline, making it unnecessary to require a company receiving high-cost/CAF funding to offer Lifeline service.”<sup>13</sup> Respectfully, what vibrant competition is there now among Lifeline providers?

AT&T further asserts that “[t]he requirement that ETCs participate in Lifeline was imposed by Commission rule and not by section 214(e) of the Communications Act, and thus the ETC relinquishment requirements of section 214(e) also would not apply.”<sup>14</sup> Section 214(e) does not require participation in any specific section 254 program. However, a carrier designated as an ETC is obligated to fulfill all of the ETC obligations. The public interest supports Lifeline, in principle and in practice. Especially for that reason, the relinquishment requirements of § 214(e) apply.

AT&T says that it “has explained previously that providers like AT&T’s price cap carrier affiliates have ETC designations that mirror their vast service territories. For AT&T, most of the population in its affiliates’ ETC service areas reside in areas that are ineligible for CAF support.”<sup>15</sup> AT&T and its affiliates were not forced to combine and serve those territories,

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<sup>12</sup> Id. at 28-29; see also id. at 29 (“Moreover, there are far more Lifeline providers today than when the Commission first chose to tie the ETC designation to mandatory Lifeline participation.”).

<sup>13</sup> Id. at 29.

<sup>14</sup> Id. at 29.

<sup>15</sup> Id. at 31.

whether or not CAF support was received.<sup>16</sup> And, contrary to USTelecom, there is no requirement in the law that “continuing ETC obligations and designations [be] matched to support.”<sup>17</sup>

AT&T argues that “[t]here are geographic areas of an ETC’s service area where it does not offer broadband today and where it may never in the future ... because a non-ETC (e.g., a cable company) is already providing broadband service.”<sup>18</sup> The Commission’s CAF II maps show how rare such areas are.<sup>19</sup> AT&T’s noting that some areas are not served “because it is uneconomic to do so”<sup>20</sup> does not support its case either: Such areas would be unserved regardless of ETC rules; that is why universal funding is required by section 254. The ETC requirements do not conflict with section 254.<sup>21</sup> And the continuing application of these requirements does not conflict with section 706.<sup>22</sup>

AT&T asserts, “The Commission cannot, in the limited context of this Lifeline proceeding, simply propose to amend Section 54.101 of its rules to include broadband Internet access service as a supported service.”<sup>23</sup> AT&T then claims that making broadband a supported service would violate several statutory USF principles, but only mentions one – providing

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<sup>16</sup> And the law provides that AT&T can ask the Commission to allow it to withdraw service anywhere in the vast area. Neither AT&T nor any ILEC has sought that yet.

<sup>17</sup> USTelecom at 2.

<sup>18</sup> *Id.* at 29-30.

<sup>19</sup> See <https://www.fcc.gov/maps/connect-america-phase-ii-final-eligible-areas-map> Thus AT&T’s warning that “if a low-income consumer resides in an area that receives broadband service only from the non-ETC cable company, that consumer would likely never obtain broadband Internet access service as a Lifeline-supported service” (AT&T at 30) should not influence the Commission.

<sup>20</sup> AT&T at 29.

<sup>21</sup> Neither do they conflict with CAF II. USTelecom at 3.

<sup>22</sup> See *id.*

<sup>23</sup> AT&T at 30; see also Verizon at 7.

sufficient support for the provision of the required services.<sup>24</sup> AT&T ties this argument to its objection to the Commission’s requirement “mandating that ETCs provide broadband Internet access service throughout their ETC service areas....”<sup>25</sup> AT&T explains,

Because 47 C.F.R. § 54.201(d)(1) requires common carriers designated as ETCs to offer the services in § 54.101 throughout the service area for which the designation is received, addition of broadband internet access to 54.101 would effectively require ETCs to deploy Internet access throughout their service area without any funding for such expansion.<sup>26</sup>

Verizon argues this is a statutory violation of § 254(b)(5) based on lack of sufficient funding.<sup>27</sup>

Yet, sufficiency is not a requirement. As previously argued by NASUCA, it is an aspiration, phrased as “should,” not “shall.” It is one of the goals the Commission must consider and balance.<sup>28</sup> The Commission should consider making the requirement apply only where the ETC otherwise deploys broadband.<sup>29</sup> And the Commission can change its own rules.

Finally in this vein, AT&T complains that the ETC requirement “ignores the beneficial effects of the free market....”<sup>30</sup> Section 254 was adopted to address a market failure, namely, the need to ensure that those on very low incomes can afford to purchase essential telecommunication services, a category that now includes broadband.

Verizon raises an essentially jurisdictional argument, asserting that

[b]ecause broadband is an interstate service, states do not have the authority to layer additional obligations on top of federal requirements. And state-to-state

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<sup>24</sup> AT&T at 30.

<sup>25</sup> *Id.*; see also Verizon at 7.

<sup>26</sup> AT&T at 30, fn. 61.

<sup>27</sup> Verizon at 8.

<sup>28</sup> Cite *Qwest*.

<sup>29</sup> Verizon at 7-8.

<sup>30</sup> *Id.* Similarly, USTelecom asserts that ETC obligations are “at odds with competitive realities...” USTelecom at 3.

variations in Lifeline broadband discounts, eligibility, and other obligations would only further complicate any broadband-related mandates.<sup>31</sup>

To the contrary, the Commission should recognize the important role the states play in encouraging broadband as directed by section 706(a).

## **CONCLUSION**

NASUCA appreciates the work that has been done to craft a framework to expand the Lifeline program to include broadband. We look forward to working with the Commission and parties to develop a program that is fair, efficient, cost effective and preserves affordable access to voice service while enabling low income customers to utilize broadband.

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<sup>31</sup> Verizon at 10.