

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
_____)	

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

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September 30, 2015

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The Lifeline Joint Commenters¹ (Joint Commenters), by and through the undersigned counsel, respectfully submit these reply comments in response to the Commission’s Second Further Notice of Proposed Rulemaking (Second FNPRM) seeking comment on proposals to modernize and restructure the Lifeline program.²

¹ The Joint Commenters include 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. Joint Commenters are Eligible Telecommunications Carriers (ETCs) committed to defending the integrity of the Lifeline program so that it remains available for and to all who are eligible, enabling access to modern wireless telecommunications necessary for low-income Americans to connect to jobs, healthcare, emergency services, education and family.

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

INTRODUCTION & SUMMARY

In our initial comments, Joint Commenters focused on a simple principle: the best way to achieve the Commission’s goal of modernizing the Lifeline program is through robust competition and streamlined regulation, not through top-down, costly and unnecessary regulatory controls.³ To that end, Joint Commenters offered a series of common-sense steps that the Commission can take to unleash additional competition in the Lifeline market and reduce regulatory costs that needlessly have burdened ETCs and their subscribers. In general terms, Joint Commenters argued:

- **Competition is the best way to add value for consumers, not minimum service standards imposed by regulation.** While the existing Lifeline market is competitive and has driven innovation and consumer value, the Commission can do more. Specifically, to clear existing regulatory bottlenecks, the Commission should adopt a 90-day deadline for review and action on compliance plans, federal ETC petitions, and related transactions after which they are “deemed granted,” a similar deadline for audits to provide clarity and certainty to ETCs, and should encourage states to do the same. The Commission also should focus on establishing a more rational and predictable regulatory environment that affords willing providers an opportunity to invest in consumer relationships, including by extending its benefit port freeze from 60 days to 12 months.
- **The Commission should adopt a national verification framework that leverages existing state eligibility databases, encourages more state databases and fills the gaps with market-based solutions.** This national eligibility verification framework, whether a state database or third-party verifier, must preserve a real-time enrollment option. Further, the Commission should retain all of the existing Lifeline-eligibility programs, add programs for veterans and Women Infants and Children (WIC), and leverage efficiencies from the Lifeline eligibility programs to improve customer awareness of Lifeline benefits. However, any such efforts should be technology neutral, carrier neutral and nonexclusive. Finally, the Commission should reject calls for a Lifeline direct benefit, or “voucher,” program, which is unnecessary and would harm the

³ See generally *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Comments of the Lifeline Joint Commenters on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program (filed Aug. 31, 2015) (Joint Commenters Comments). Unless otherwise noted, all references to “Comments” in these reply comments will refer to the initial comments filed in response to the Second FNPRM on or around August 31, 2015.

program by adding a new potential for fraud and abuse and by ballooning program administration costs.

- **The Commission should focus on streamlining its existing regulations rather than piling on new, unnecessary ones.** Where rules are not or are no longer warranted, the Commission should sunset or streamline them to the benefit of low-income consumers and ETCs. Taking this sound approach, the Commission should: (1) eliminate its 60-day non-usage rules, not shorten the non-usage period; (2) fix the NLAD's existing identity verification process, allowing, but not requiring, review of photo identification; (3) adopt OMB-approved Lifeline forms through a collaborative process that respects the dignity of low-income consumers and avoids adding unnecessary costs; (4) streamline, not add, burdensome de-enrollment requirements that increase costs with no redeeming benefit; (5) end USAC's unlawful funding hold practices; (6) improve the NLAD's current functioning before expanding it to uncharted roles and responsibilities; and (7) reject officer training certification requirements, which are unnecessary absent concrete training obligations.

Joint Commenters focus these reply comments on three central issues. First, the record reflects widespread agreement that competition and streamlined regulation, not minimum service standards, will drive service-level innovation and consumer value. Second, many commenters agree that the Commission should leverage and improve existing enrollment and eligibility infrastructure rather than replacing it with a costly new system. Third, the Commission should reject the rehashed proposal from TracFone to ban in-person handset distribution and TracFone's new proposal to ban commission-based agents because those proposals are anticompetitive and would harm core Lifeline program goals. In the following sections, Joint Commenters address these issues in turn.

I. THE RECORD SUPPORTS PROMOTION OF CONSUMER VALUE THROUGH COMPETITION AND STREAMLINED REGULATION, NOT MINIMUM SERVICE STANDARDS

In our initial comments, Joint Commenters argued that competition is the best way to add value for consumers, not minimum service standards imposed by regulation. Consumers—not regulators—are best at choosing the plans that most effectively suit their needs. Lifeline

subscribers should be free to choose wireless or wireline plans that include voice-only, text and broadband options, and the Commission should modernize the program to expand, not restrict, consumer choice, competition and innovation. Minimum service standards would threaten consumer choice, including by constraining the ability of Lifeline providers to offer the zero entry (no cost to consumer) services that consumers demand and that have driven participation in the Lifeline program and realization of its goal of providing affordable access to communications services since the mid-2000s. Approximately 10 million Lifeline subscribers (or 80%) rely on these services today. If the Commission were to eliminate the zero entry wireless Lifeline model—either intentionally through a minimum charge or unintentionally through excessive standards—it would drastically reduce provider and consumer participation in the Lifeline program in contravention of the Communications Act’s universal service mandate. Rather than adopt minimum service standards or other burdensome regulations as proposed in the Second FNPRM, Joint Commenters submit that the Commission should focus this modernization proceeding on maximizing competition and minimizing regulation to drive better service offerings and consumer value. To that end, Joint Commenters respectfully call on the Commission to:

- Adopt a 90-day deadline for review and action on compliance plans, federal ETC petitions, and related transactions, after which they should be “deemed granted,” with a similar deadline for audits;
- Encourage states to adopt similar “deemed granted” deadlines and streamline state regulation of the federal Lifeline program;
- Extend the benefit port freeze from 60 days to 12 months (while still allowing subscribers to de-enroll and re-enroll with another provider at any time through a direct request to their current provider) so that Lifeline service providers have greater incentive to make more significant investments in devices and services;
- Streamline existing regulations and reject calls for new regulations that would add costs on ETCs and subscribers without redeeming benefit; and

- Act to set free those providers that want to exit the Lifeline program.

The record reflects substantial support for the objectives underlying these proposals. First, the record contains widespread support for Joint Commenters' position that competition, not minimum service standards, will maximize consumer value and service-level innovation. Proposals to adopt minimum service standards fail to address a valid existing problem in the program and, as such, fail to appreciate that such standards are unnecessary, administratively infeasible and—absent an increase in the subsidy—harmful to consumer choice, competition and the program as a whole. Second, the record reflects widespread agreement that the Commission should take steps to streamline regulations to promote further service-level enhancement. Those few commenters that support calls for maintaining or expanding regulatory burdens on ETCs and low-income consumers discount the significant costs that those regulations would impose and fail to substantiate redeeming benefits. For these reasons, the Commission should adopt Joint Commenters proposals, as set forth in our initial comments.

A. The Record Contains Widespread Support for Joint Commenters' Position That Competition, Not Minimum Service Standards, Will Maximize Consumer Value and Service-Level Innovation

In our initial comments, Joint Commenters demonstrated that competition in the Lifeline market has led to service-level improvements without the need for regulatory intervention.⁴ These improvements not only include increased minutes of service, but also include increased text messages and data, as well as improved handsets, customer care and other valuable features and functionalities of the service. At the same time, the Commission and state agencies have imposed staggering new regulatory costs and barriers to entry on ETCs, constraining further

⁴ *See id.* at 6-7.

competition and innovation.⁵ For these reasons, Joint Commenters opposed the Commission’s proposal to adopt minimum service standards, and called on the Commission to unleash additional competition in the Lifeline market by, among other things, acting on the scores of compliance plans and federal ETC petitions that needlessly have been trapped in administrative purgatory at the Commission.⁶

A wide array of commenters agree that the Lifeline market is competitive and has been delivering service-level innovation for years. Sprint remarks that service offerings for its Assurance Wireless brand have “improved dramatically” as a consequence of “vigorous competition” in the Lifeline market.⁷ TracFone highlights the “profound enhancements in wireless Lifeline benefits, all of which have resulted from market forces without the need for regulatory intervention.”⁸ CTIA notes that competition has driven ETCs “to include text messages, data services, and other features (such as roaming) in their service offerings.”⁹ COMPTTEL explains that “over the last several years, competitive forces have brought forth a wide variety of Lifeline service packages, features and innovations, including nationwide calling, rollover of unused minutes and upgraded phones—including the provision of refurbished

⁵ *See id.* at 7-10.

⁶ *See id.* at 13-15.

⁷ *See* Sprint Comments at 6-7, 11 (“Lifeline service offers have improved dramatically over the past few years, and this trend has continued, particularly in the case of Sprint’s Assurance Wireless brand offered by its Virgin Mobile USA, L.P. affiliate.”). Among other service improvements, Sprint’s Assurance Wireless brand has created a promotional offer of 500 free voice minutes plus unlimited texts for four months for new subscribers and 350 voice minutes plus unlimited texts thereafter, and has increased non-supported data offerings. *See id.* at 6-7.

⁸ *See* TracFone Comments at 11-12 (describing the history of service-level improvements since it entered the Lifeline market in 2008). Indeed, TracFone confirms that it recently increased its standard offering to provide a baseline of 350 minutes per month to Lifeline customers as a part of their entry-level, no cost to consumer plans. *See id.* at 12.

⁹ *See* CTIA-The Wireless Association Comments at 5 (CTIA Comments).

smartphones at no cost to Lifeline beneficiaries.”¹⁰ COMPTEL also shows that, contrary to the Commission’s assumption, the price of both voice minutes and broadband has stabilized in recent years.¹¹

Commenters also provide evidence that these service levels are meeting consumer needs. TracFone reveals in its comments that a supermajority of its consumer base finds current service levels sufficient for their needs.¹² ITTA notes that “the dearth of consumer complaints regarding the quality of their Lifeline services suggests that there is not sufficient record evidence to support implementation of minimum service levels.”¹³ Joint Commenters similarly have not heard a material number of complaints about the level of service that consumers have been receiving through the Lifeline program.

The record also supports Joint Commenters’ argument that federal and state regulatory costs and uncertainty have inhibited further competition and service-level innovation. AT&T notes that the Lifeline market incurs *more than \$600 million in annual administrative costs to comply with federal Lifeline program requirements* (not to mention state-level requirements, which are numerous), which “can be a powerful deterrent to participation from a diverse range of providers” and suppresses potential competition.¹⁴ COMPTEL similarly explains that these “additional [regulatory] costs have significantly diminished the value of the \$9.25 subsidy.”¹⁵ Assurance Wireless “has incurred millions of dollars in development and recurring costs to load

¹⁰ See COMPTEL Comments at 10.

¹¹ See *id.*

¹² See TracFone Comments at 16.

¹³ See ITTA Comments at 27.

¹⁴ See AT&T Comments at 5-6 (citing ETC relinquishments of T-Mobile USA Inc., Cricket Communications, Inc., and AT&T Mobility, LLC) (emphasis added).

¹⁵ See COMPTEL Comments at 9.

its customer lists into [the NLAD], and to access it on an on-going basis to check applicant identity, to ensure that a household is receiving only one Lifeline benefit, to process customer enrollments and de-enrollments, etc.”¹⁶ The National Association of Regulatory Utility Commissioners (NARUC), in a resolution attached to its comments, laments that “th[e] backlog of pending wireless carrier ETC designation petitions for [federal ETC] states has limited the competitive market for Lifeline Services.”¹⁷

For the reasons outlined above, a chorus of commenters urge the Commission not to adopt minimum service standards for voice or broadband service, but instead to focus on promoting consumer choice and competition.¹⁸ For example, the New York Public Service Commission (PSC) “urges the FCC to maintain as much competitive choice as possible by not restricting the product offerings available to low income customers via the imposition of minimum standards.”¹⁹ AT&T similarly opposes minimum service standards, arguing that “[r]egulators should not make [the choice of rate plan] for consumers by establishing overly prescriptive service standards but should instead encourage participating providers to offer Lifeline customers the choices available to non-Lifeline consumers to the greatest extent possible by allowing the marketplace to independently operate.”²⁰ COMPTTEL agrees, “urg[ing] the

¹⁶ See Sprint Comments at 10.

¹⁷ See NARUC Comments at 13.

¹⁸ See American Cable Association (ACA) Comments at 8 (“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”); see Comcast Comments at 12-13 (noting that “the best way” to ensure “the availability of robust services for low-income consumers . . . is to empower low-income consumers to use their Lifeline subsidy to purchase the level or combination of services that they need,” rather than to adopt minimum service standards); Cincinnati Bell Comments at 4; TracFone Comments at 10-18; United States Telecom Association Comments at 10-12; Windstream Comments at 4.

¹⁹ See New York PSC Comments at 7.

²⁰ See AT&T Comments at 8.

Commission to refrain from setting mandatory minimum service standards for fixed and mobile broadband lifeline offerings at this time,” and notes that “competition among providers should continue to be the prime determinant of the specific amounts of broadband and/or voice service that can effectively be provided, given the subsidy level set by the Commission.”²¹

Even those commenters that offer qualified support for minimum service standards warn that the failure to correctly calibrate such standards could depress competition and consumer choice. Public Knowledge emphasizes that, because imposing minimum service standards could limit an eligible consumer’s ability to obtain the service of their choice, “[a]t this time, the Commission should refrain from setting minimum service standards for services eligible to receive Lifeline support that are also available to the general public.”²² Free Press notes that requiring a minimum service standard higher than the amount that Lifeline ETCs voluntarily offer “might push certain ETCs out of the market,” and that “while setting the minimum service level well above 250 minutes might appear to be a way of improving program efficiency, it may just mean giving many people more of something that they neither need nor use, and upon which they place no additional value.”²³ A coalition of low-income consumer groups similarly concede that, in some situations, “[s]etting minimum service standards for broadband could hamper the speed at which products, or product improvements, are available for Lifeline consumers” and

²¹ See COMPTTEL Comments at 7, 11.

²² See Public Knowledge Comments at 22. While Public Knowledge opposes minimum service standards for service plans that are generally available to the public, it proposes that the Commission adopt minimum service standards for fixed and mobile broadband services that are “aimed only at Lifeline subscribers.” See *id.* at 23. However, this proposal is unnecessary because the Lifeline rules already require ETCs to apply the Lifeline discount to generally available plans. See 47 C.F.R. § 54.403(b).

²³ See Free Press Comments at 58.

“adds to the complexity of auditing the Lifeline program (e.g., checking on the provision of speeds and data packages for products at a point in time in the past).”²⁴

Commenters recognize that preserving a no cost to consumer/zero entry option and rejecting a minimum charge are critical to achieving Lifeline program goals of connectivity and affordability.²⁵ COMPTTEL cautions that any proposal to foreclose a no cost to consumer option “ignores the lived experience of low-income consumers.”²⁶ TracFone notes that an explicit or implicit minimum charge could deprive millions of low-income Americans of the benefits of affordable service and “strenuously opposes any Commission-imposed requirement that Lifeline consumers pay for a portion of the Lifeline benefits received or that Lifeline ETCs provide greater benefits than that which can be provided within the limits of the support amount (currently \$9.25 per month) under the Commission’s rules.”²⁷ CTIA agrees that “[a]ny minimum service standards should preserve . . . services offered at no charge to the consumer.”²⁸ Sprint also warns that “[i]f a carrier is unable to provide broadband Lifeline service at a FCC-mandated minimum service level at a rate equal to the prescribed support level, it will be forced to assess a charge on the end user (assuming that the carrier continues to be a Lifeline service provider),” which could “make the broadband Lifeline option completely unaffordable” for Lifeline subscribers.²⁹ Consumer groups such as National Association of State Utility Consumer Advocates (NASUCA) agree that zero entry services are critical to program effectiveness, and

²⁴ See Low Income Consumer Groups Comments at 6.

²⁵ See CTIA Comments at 12.

²⁶ See COMPTTEL Comments at 32.

²⁷ See TracFone Comments at 15-17 (citing an internal survey demonstrating that 86 percent of TracFone subscribers would discontinue their enrollment if they were required to pay *any* amount).

²⁸ See CTIA Comments at 12.

²⁹ See Sprint Comments at 13 & n.24.

that the Commission should respect the ability of consumers to obtain Lifeline service at no cost.³⁰ The American Library Association (ALA) stresses that the Commission should not “unrealistically expect that most low-income Americans can afford to cover costs beyond the subsidy.”³¹

Together, these commenters demonstrate widespread opposition to and concern with Commission-imposed minimum service standards. While the Commission can do much more to spur competition, the current Lifeline market is competitive and has delivered increasing value and service innovation to consumers for years, notwithstanding substantial increases in federal and state regulatory costs. Setting minimum service standards would unnecessarily impose additional costs to the detriment of ETCs, their customers and the Lifeline program as a whole. As such, the Commission should heed the warnings of Joint Commenters and many others not to establish minimum standards, and instead act to maximize competition and minimize regulatory overhang on ETCs.

B. Supporters of Minimum Service Standards Fail to Appreciate That Such Standards are Unnecessary, Administratively Infeasible and Harmful to Consumer Choice and Competition

Several commenters propose that the Commission adopt minimum service standards for Lifeline. These proposals fall generally into two categories: those that propose specific standards for voice or broadband (e.g., 750 minutes of voice service or 1 GB of data), and those that propose general frameworks through which the Commission could establish such a standard. These general frameworks are designed to mimic market dynamics, either by creating an

³⁰ See NASUCA Comments at 8 (“[I]n 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.”).

³¹ See ALA Comments at 13.

approximation of consumer demand (e.g., average usage or particular use cases), or by conducting a complex reverse auction to determine what level of service providers are willing to supply. The Commission should not adopt these proposals because they are unnecessary, administratively infeasible and harmful to consumer choice and competition (absent an offsetting increase in the subsidy).

The Commission should not adopt these proposals because they are unnecessary: as demonstrated above, the Lifeline market already is competitive and ETCs deliver good value in exchange for the subsidy provided to low-income consumers.³² If the Commission is concerned that today's baseline Lifeline offerings are not providing consumers with value that is reasonably comparable to service levels that non-Lifeline consumers can obtain for the subsidy amount, then the appropriate responses include: injecting more competitors into the market, streamlining regulatory requirements (and, by extension, costs), and increasing the subsidy as necessary. The wrong approach would be to divine and then mandate minimum service standards, which would impose significant costs and require continual updating. Indeed, a well-functioning market can

³² See *supra* Section I.A. In its comments, the Oklahoma Corporation Commission (OCC) Public Utility Division (PUD) attributes the “lack of improvement” in Lifeline service offerings not to “a lack of competition but rather, in large part, to a preponderance of wireless resellers in the market place.” See PUD Comments at 3. The PUD further asserts that “wireless resellers are not network or service innovators, but instead are really marketing organizations, with the natural incentive to manage their margins . . . as opposed to implementing service improvements and enhancements.” See *id.* The PUD is doubly wrong. Not only are wireless resellers in the Lifeline market fiercely competitive, but because they survive on thin margins, they have an added—not reduced—incentive to offer unique, innovative service offerings to consumers. In addition to serving at the forefront of wireless innovation, wireless resellers also have an added incentive to differentiate themselves through excellent customer service and partnerships—value adds that are critical to a successful Lifeline program. Finally, wireless resellers have been essential to driving Lifeline enrollments, and will continue to play a key role in the broadband Lifeline era. For these reasons, the Commission should give no weight to the PUD’s criticisms of wireless resellers, and recognize the value of resellers in the Lifeline program and the benefits that additional competition in the Lifeline market (as opposed to minimum service standards) would have for low-income consumers.

better achieve at far lower costs all of the objectives that the Commission would seek to accomplish through such standards.

Not only are minimum service standards unnecessary, they also are administratively infeasible.³³ For example, Free Press asks the Commission to conduct a reverse auction to “mimic” the market and determine how much ETCs are willing to provide in exchange for the Lifeline subsidy.³⁴ However, conducting a reverse auction in a market with scores of ETCs—including wireline and wireless providers of voice and broadband services with a variety of network technologies (including network operators and resellers)—would be an enormous and needlessly expensive undertaking. Even assuming the Commission could conduct such an auction, the time it would take to develop, conduct and issue minimum standards would render those standards instantly obsolete.

Other seemingly more straightforward approaches also raise significant administrative challenges. For example, TechFreedom suggests that the Commission could establish and periodically revise minimum service standards based on a “clear methodology,” such as a requirement that Lifeline service speeds “be not less than some fraction of the average speed used by overall consumers during peak hours.”³⁵ TechFreedom fails to address how this approach serves the core goal of providing affordable service options to low-income consumers. Moreover, the questions raised by the proposal reveal that it is too complicated to be administratively feasible and would encourage, not limit, the potential politically motivated

³³ See Sprint Comments at 18 (“Cost studies are extremely complicated and resource-intensive for both the regulator and regulatee,” and are “wholly unwarranted where, as here, the market is competitive.”).

³⁴ See Free Press Comments at 58. Free Press also suggests that the Commission make the benefit portable. Joint Commenters oppose a portable benefit solution for the reasons outlined in our initial round of comments. See Joint Commenters Comments at 43-45.

³⁵ TechFreedom Comments at 8.

judgment calls (e.g., what “fraction” is appropriate?; how often should the Commission recalibrate the minimum standards?). Even if the Commission were up to the challenge presented by this complicated approach, questions about the elements incorporated into the proposal reveal that it is substantively flawed (e.g., why “speed” and not some other metric that is more appropriate for mobile networks?; why “overall” customers when consumer behavior varies significantly between fixed and mobile users, and, within mobile, between prepaid and postpaid users?).

Commenters that propose a “functional” test to approximate consumer demand based on specific use cases—e.g., health care, education or employment applications—face similar, difficult line-drawing problems.³⁶ For example, proponents typically fail to explain how the Commission could determine which applications and services count for the analysis and how it should account for new services and rapidly changing consumer demand. While well intentioned, these proposals also fail to address affordability in a meaningful way.

Indeed, imposing such standards would impair consumer choice and competition, unless the Commission is willing to peg the subsidy level to the market value of any minimum service standards.³⁷ For example, the National Hispanic Media Coalition suggests that the Commission use average monthly use to set a minimum voice service level, which it estimates between 700

³⁶ See Low-Income Consumer Groups Comments at 6; MMTC Comments at 9; The Leadership Conference on Civil and Human Rights Comments at 2; National Association of the Deaf et al. Comments at 5-7; Public Knowledge Comments at 23.

³⁷ The California Public Utility Commission (CPUC) explicitly calls for the Commission to “reevaluate the \$9.25 federal subsidy to determine whether it is sufficient to allow federal Lifeline participants affordable, high-quality federal Lifeline services that are reasonably comparable to the retail services provided in urban areas,” noting that “[i]f the subsidy amount is not increased it may be difficult for the FCC to achieve its goal of modernizing the federal ‘Lifeline program so that all consumers can utilize advanced networks.’” See CPUC Comments at 11-12 (citing Second FNPRM ¶ 9).

and 1000 minutes.³⁸ A coalition of consumer groups similarly requests that the Commission use “average” usage as a minimum service level.³⁹ However, the proposed averages already exceed what today’s market can provide at no cost to the end user (at current subsidy levels), and would require a pass-through charge unless the Commission raises the current subsidy above \$9.25 per month. Consequently, if the Commission were to set minimum service standards at these levels without increasing the subsidy amount to an “average” spend amount, not only would it drive existing and would-be providers from the market, limiting competition and consumer choice, but ETCs also would be forced to pass through a charge to consumers.⁴⁰ Moreover, determining

³⁸ See National Hispanic Media Coalition Comments at 12; *see also* Consumers Union Comments at 2 (claiming that “250 minutes is not enough to meet the basic needs of Lifeline populations”). Several parties propose that the Commission require ETCs to “offer” unlimited talk and/or text message plans, or some lower amount. See NASUCA Comments at 5 (suggesting that the Commission should set a minimum of unlimited talk and text, or “[i]f 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”); Michigan Public Service Commission Comments at 4-5 (stating that it “does not oppose requiring mobile providers to offer unlimited talk and text to Lifeline customers,” although it appears to support a “voice only” Lifeline tier with a limited number of minutes); CETF Comments at 16-17. Joint Commenters do not read, and urge the Commission not to read, these proposals as calling for unlimited voice minutes or text messages on a free-to-end-user basis. Instead, Joint Commenters view these proposals as requesting that ETCs include an option for unlimited talk and/or text messages among other service plans. (Indeed, the CPUC confirms that retail rates for unlimited talk and text offerings far outstrip the current \$9.25 subsidy, and would be impossible to offer at no cost to consumer unless the Commission substantially increases the subsidy. See CPUC Comments at 8-9.) So long as ETCs may set their own price for such unlimited services and the Commission preserves the ability of ETCs to offer zero entry services, Joint Commenters do not oppose a requirement to include an unlimited talk and/or text message offering within a menu of wireless services.

³⁹ See Low Income Consumer Groups Comments at 5.

⁴⁰ See Joint Commenters Comments at 5-7. Relatedly, those commenters that suggest minimum broadband speeds appear to focus on a wireline world, and fail to appreciate the differences between fixed and mobile broadband. Specifically, the National Association of the Deaf—together with other disabilities rights advocates—suggest a minimum broadband speed of between 5-10 Mbps of symmetrical bandwidth. See National Association of the Deaf, et al. Comments at 6. Consumer Action suggests that the Commission should require providers to offer speeds of 25 Mbps. See Consumer Action Comments at 2. Establishing speed-based benchmarks for wireless service would be entirely inappropriate. Indeed, it is for this reason that the Commission in the past has set its mobile service benchmarks based on “generation” (e.g., 3G) rather than bitrate.

minimum service standards based on data-intensive use cases such as video-conferencing or telemedicine—as some commenters propose—similarly would result in expensive data plans that make Lifeline participation too costly for ETCs and their subscribers.⁴¹ Regardless of how the Commission would set a minimum service standard (whether through use of an arbitrary service level, an “average” service level or a service level based on functional use cases), if it sets the standard too high without offsetting the standard with an increased subsidy, the Commission would undermine its core goal of ensuring affordable service for low-income Americans. Instead, the Commission should rely on existing market dynamics—bolstered by increased competition and reduced regulatory overhang—to deliver to low-income consumers innovative service offerings at no cost. Retaining ETCs’ ability to offer a no cost service to qualifying individuals desirous of such service should be among the Commission’s primary goals.

C. The Record Contains Widespread Support for Joint Commenters’ Position That the Commission Should Streamline, not Expand, Regulatory Burdens on ETCs to Promote Competition and Service-Level Innovation

The record reveals widespread agreement among commenters that the Commission can further enhance competition and consumer value in the Lifeline market by lowering regulatory barriers. The vast majority of commenters support streamlining the ETC designation process to promote competition in the market for Lifeline service. Further, many commenters oppose the Commission’s proposals to shorten the 60-day non-usage rule and impose new regulatory costs

⁴¹ The vast majority of services that low-income consumers utilize to access jobs, health care information and homework are simply websites or applications that most of today’s mobile networks can handle. However, the applications that commenters highlight—e.g., video conferencing and telemedicine—require significantly higher bandwidth that may not be available in many areas where Lifeline subscribers reside, including rural areas and Tribal lands. Further, even if the Commission could fairly determine which applications should count, and conduct a separate market analysis for fixed and mobile networks, the speed of innovation and changing consumer demands would require new and different analyses on a frequent basis. Together, these threshold challenges render a “functional” standard completely inappropriate for determining minimum service standards.

through enhanced electronic signature requirements, new customer and regulator notification requirements, a 24-hour de-enrollment number and officer training certifications. The isolated commenters that support the Commission’s proposals on these issues fail to provide any compelling benefit outweighing the significant costs that those rules would impose. Finally, the record reveals widespread support for the objectives underlying Joint Commenters’ call for extending the benefit port freeze from 60 days to 12 months.

1. The Record Supports Streamlining the ETC Designation Process

A number of commenters lend their voices to Joint Commenters’ call to infuse the Lifeline market with competition and service-level innovation by clearing the bottleneck on pending federal and state ETC petitions and compliance plans.⁴² ACA proposes a process under which “an ETC applicant before a state commission [may] seek designation by the Commission if the state commission has failed to act within 90 days after the filing of an application.”⁴³ Similarly, COMPTTEL calls on the Commission to “take immediate steps to reform, streamline and reboot its Lifeline ETC compliance plan process; and equally important, . . . act to increase competition in the Lifeline marketplace by *resuming* approvals of compliance plans and erasing the backlog of pending plans immediately”⁴⁴ Further, WTA proposes that the Commission

⁴² Joint Commenters reiterate that while the ETC designation process should be streamlined, it should not be eliminated.

⁴³ See ACA Comments at 11. Of course, in order to ensure the maximum impact of this proposal and to prevent state-level delay from becoming federal ETC purgatory, Joint Commenters call on the Commission to adopt Joint Commenters proposal to establish a shot-clock for federal-level ETC designations as well.

⁴⁴ See COMPTTEL Comments at 22. COMPTTEL also supports removing “extraneous ‘requirements’ that have become encrusted onto the ETC designation process over the years.” See *id.* at 20.

establish a six-month shot-clock for ETC and Lifeline-only ETC petitions, after which they should be deemed granted.⁴⁵

Several state agencies also support streamlining the ETC designation process. The Indiana Utility Regulatory Commission calls on the Commission to “encourage states to review and streamline their ETC designation process and reduce or eliminate any compliance reporting requirements that are no longer necessary or duplicative of federal requirements.”⁴⁶ The Pennsylvania Public Utility Commission (PUC) asks the Commission to expedite the compliance plan approval process.⁴⁷ The Michigan PSC proposes that the FCC could make its compliance plan process “more efficient by setting a time-frame for completing compliance plans (e.g., 60 days from submission, etc.).”⁴⁸

Other non-carrier commenters also supported calls to streamline the ETC designation process. For example, the California Emerging Technology Fund (CETF) calls for the Commission to simplify the ETC designation process “to encourage as many providers [as possible] to offer broadband to low-income households.”⁴⁹ The American Library Association submits that “[c]reating a mechanism that eases the burden on providers to become [ETCs] in the Lifeline program should yield a greater pool of interested participants, thereby increasing choices for Lifeline recipients.”⁵⁰

Parties that oppose efforts to streamline the ETC designation process—citing concerns about waste, fraud and abuse—fail to provide evidence or a compelling reason for their

⁴⁵ See WTA – Advocates for Rural Broadband Comments at 15.

⁴⁶ See Indiana Utility Regulatory Commission Comments at 4.

⁴⁷ See Pennsylvania PUC Comments at 29.

⁴⁸ See Michigan PSC Comments at 13-14.

⁴⁹ See CETF Comments at 44.

⁵⁰ See ALA Comments at 15.

position.⁵¹ While Joint Commenters appreciate state regulators’ concerns, there is no evidence that these processes have had a measurable impact on curtailing waste, fraud and abuse. Further, these state-level ETC designation processes—which have only expanded over the years—have become a significant drag on the market. A better approach is to rely on targeted audits by USAC and enforcement by the Commission (with input from the states as necessary and appropriate). However, to get the most out of its federal Lifeline dollars, the Commission should not countenance duplicative regulatory overhang that only serves to depress innovation and competition in the Lifeline market. For these reasons, Joint Commenters reiterate our request that the Commission roll back state regulation of the federal Lifeline program by making clear that any Lifeline-specific requirements imposed by the states must be limited to that state’s Lifeline program.

2. The Record Reveals Strong Opposition to and Little Support for the Commission’s Remaining Proposals to Adopt Additional Regulations

Commenters also roundly oppose the Commission proposals to heap additional regulatory burdens and costs on Lifeline ETCs and their customers. Those few commenters that support calls for additional regulations fail to adequately appreciate the significant costs that those regulations would impose without redeeming benefit.

The vast majority of commenters that address the Commission’s proposal to shorten the 60-day non-usage rule strongly oppose it, and the two commenters that support the proposal fail

⁵¹ See Michigan PSC Comments at 12-13 (raising concerns that streamlining the ETC designation process could limit a state’s ability to request information and prevent fraud and abuse); Missouri PUC Comments at 10 (“Fraud has been a problem with the Lifeline program and the Missouri Commission’s rules were designed to help address fraud and complement the FCC’s reforms to the Lifeline program”); Nebraska PSC Comments at 3 (arguing that the current ETC designation process should remain in effect to “allow states to consider local and regional factors” and to allow the PSC to facilitate administration of Nebraska’s state Lifeline program); NARUC Comments at 10-12.

to provide any justification supporting such a reduction.⁵² Further, commenters provide substantial evidence to support Joint Commenters' proposal to eliminate the 60-day non-usage rule. For example, Professor David Super of Georgetown University Law Center cautions that “[t]he Commission should be extremely hesitant to set any rules that attach consequences to either high or low utilization of Lifeline benefits and related services,” proposing that the non-usage period should trigger consumer training and awareness, not punishment through de-enrollment.⁵³ The Missouri PSC opposes a reduction of the 60-day non-usage rule in part because “Missouri Commission Staff’s analysis of Form 555 results over the past several years suggest many subscribers de-enrolled for non-usage may be re-enrolling in the Lifeline

⁵² See Missouri PSC Comments at 6; Sprint Comments at 30; Professor David Super Comments at 20; TracFone Comments at 49; *but see* Michigan PSC Comments at 16; Florida PSC Comments at 10. The CPUC neither supports nor opposes the proposal to reduce the non-usage period, but notes that the Second FNPRM fails to provide sufficient information to warrant a change at this time. See CPUC Comments at 43. In light of the evidence presented in the initial round of comments, Joint Commenters submit that the record now counsels against reducing the non-usage period (and, indeed, supports eliminating the non-usage period altogether).

⁵³ See Professor David Super Comments at 20 (“[T]he Commission should not assume that a recipient who uses little or none of her or his Lifeline benefit is no longer in need. Some low-income people, knowing that they lack the funds to purchase additional service, may take an extremely conservative approach to their allocation to make sure it is available should an emergency arise. This kind of caution may seem extreme and irrational to a middle-income person who can afford, if necessary, to purchase more service, but for those as impoverished as many Lifeline recipients such purchases, even in an emergency, may not be possible. In addition to being partially or wholly illiterate, some Lifeline recipients also are partially or wholly innumerate and thus may have difficulty tracking their usage. For them, too, an extremely conservative approach to usage may seem the most prudent. Some also may rely on word-of-mouth that Lifeline is for emergencies and believe it improper or even dishonest to use it for non-emergency purposes. Finally, some recipients may sign up for Lifeline in anticipation of learning how to use the internet but face delays in obtaining that training (or in feeling sufficiently comfortable to start putting it to use). When eligible recipients fail to use their Lifeline benefit, it is entirely appropriate for someone to reach out to them to ensure that they understand how the program works and to offer training in the use of the benefit if needed. (In the current administrative structure, it is unclear who might provide such outreach or training, but perhaps some states might be willing to assume that responsibility.) But no action should be taken to cancel or curtail the individual's benefits. Signing up for Lifeline may be a first, uneasy step towards greater connectedness for an individual who has lacked previous access to the internet; many such uncertain recipients would regard the cancellation of their service as a result of non-use as a failure and a sign that they should abandon the effort. That would be most unfortunate.”).

program.”⁵⁴ TracFone similarly notes that “a substantial portion of those Lifeline customers who would be de-enrolled for non-usage after only 30 days would remain Lifeline-eligible, would intend to continue to use their service, and would re-enroll in the program.”⁵⁵ Sprint provides more evidence that a significant number of subscribers that are de-enrolled for non-usage re-enroll for Lifeline service, evidencing a continued desire to receive the service.⁵⁶ The findings of TracFone, the Missouri PSC, and Sprint all support eliminating—not retaining or shortening—the 60-day non-usage rule. As structured, the rule discriminates against new adopters and many of the most vulnerable subscribers and unfairly de-enrolls subscribers who maintain a continuing desire to receive Lifeline service. For the reasons explained in our initial comments,⁵⁷ and those so eloquently presented by Professor Super, the Commission should eliminate the 60-day non-usage rule and not take any other action to amplify its pernicious effects.

Commenters also roundly oppose the Commission’s other proposals that would heap additional regulatory costs on ETCs.⁵⁸ For example, no commenter supports the Commission’s proposal to deny low-income consumers dignity by requiring more than the E-SIGN compliant signatures that drive today’s digital economy. Further, while three commenters address the Commission’s proposal to impose new notification provisions on ETCs in the event of an assignment of subscribers or discontinuance of service, none of those commenters provide evidence to demonstrate that there is an existing notification issue warranting a new rule.⁵⁹ In addition, commenters overwhelmingly oppose the Commission’s proposal to require ETCs to

⁵⁴ Missouri PSC Comments at 6.

⁵⁵ TracFone Comments at 50.

⁵⁶ See Sprint Comments at 30-31.

⁵⁷ See Joint Commenters Comments at 87-90.

⁵⁸ See COMPTEL Comments at 22-27.

⁵⁹ See CPUC Comments at 59; Missouri PSC Comments at 7; Sprint Comments at 32-33.

establish a 24-hour de-enrollment number.⁶⁰ Further, all but one commenter that discussed the Commission’s proposal to require officer training certifications opposes it, arguing that the certifications are unnecessary and would impose undue burdens on ETCs.⁶¹ Indeed, the Michigan PSC’s support for the proposal appears to be based on a desire for training guidelines or requirements that do not exist.

3. The Record Demonstrates Support for the Objectives Underlying Joint Commenters’ Proposal to Extend the Benefit Port Freeze from 60 Days to 12 Months

While commenters in the initial round did not have the benefit of Joint Commenters’ proposal to extend the benefit port freeze from 60 days to 12 months, the record contains widespread support for the principles underlying such an extension. In our initial comments, Joint Commenters explained that the existing temporary benefit port freeze serves as a “velocity check” on unscrupulous consumers (“flippers”) who can abuse the program by drawing multiple benefits from the program and multiple handsets from providers in a single month.⁶² Not only does “flipping” contribute to negative perceptions of the Lifeline program, it also limits the ability of ETCs to offer the most innovative service plans and devices to consumers. Broadband will require a higher level of ETC investment in devices and service offerings. Unless the

⁶⁰ See AT&T Comments at 37; ITTA Comments at 28-29; TracFone Comments at 51; Verizon Comments at 6; WTA – Advocates for Rural Broadband Comments at 21. While the CPUC supports a modified de-enrollment process, it does not affirmatively support a 24-hour de-enrollment number. See CPUC Comments at 40-42. Instead, it highlights its own de-enrollment system (which, incidentally, does not have a 24-hour de-enrollment number) as a potential option. See *id.* The Commission should reject the invitation to adopt a de-enrollment infrastructure in the image of California’s complex system, which needlessly imposes significant costs without any evidence that the current ETC-driven federal process is flawed.

⁶¹ See AT&T Comments at 38; Frontier Comments at 9; ITTA Comments at 21-23; Small Carrier Coalition Comments at 4; Sprint Comments at 33; Unites States Telecom Association Comments at 12-13; Verizon Comments at 6; *but see* Michigan PSC Comments at 16.

⁶² See Joint Commenters Comments at 16-17.

Commission is willing to shift those costs to the Lifeline program through a non-recurring subsidy, it needs to carefully consider the best means of ensuring that ETCs have appropriate incentives to take on this higher level of investment in and commitment to individual subscribers.

The first step on this path is for the Commission to promote mutually advantageous customer-carrier relationships. To do so in a manner that incentivizes carriers to maximize consumer value, Joint Commenters propose that the Commission extend its benefit port freeze from 60 days to 12 months (while still allowing subscribers to de-enroll and re-enroll with another provider at any time) and require its application in all jurisdictions, including those that opt-out of the NLAD. Extending the benefit port freeze will have a number of important benefits that satisfy core Commission and commenter objectives, including: (1) promoting even more innovative handset and service offerings; (2) reducing the perception of waste, fraud and abuse in the program; and (3) promoting comparability of service between Lifeline and non-Lifeline services.

As an initial matter, an extension of the benefit port freeze will promote the Commission's goal of service innovation in no cost to consumer offerings—including through data-enabled handsets, Wi-Fi hotspots and increased service levels—by encouraging greater upfront investments in subscribers. Moreover, with greater confidence that consumers will not “flip” their handsets, ETCs will be able to better serve low-income consumers through partnerships with organizations that benefit low-income consumers (e.g., job banks, public assistance agencies, non-profit organizations and community anchor institutions).

Moreover, a longer benefit port freeze will satisfy the goals of many commenters that seek to further reduce real and perceived waste, fraud and abuse in the program. Flippers are a

source of real waste and abuse of ETC resources, including free handsets and significant compliance costs associated with federal and state regulations and processes. This is true even when the flippers are eligible to receive Lifeline service and comply with Commission rules. Indeed, ETCs expend millions of dollars per year on administrative costs associated with individual database dips, TPIV overrides and back-end expenses for enrolling and de-enrolling these customers, not to mention, for wireless ETCs, the cost of distributing handsets at no cost to consumers. Extending the existing benefit port freeze will minimize these risks of waste, fraud and abuse of the Lifeline program, including negative news coverage that portrays “flippers” touting their ability to collect multiple no-cost handsets.

Finally, Joint Commenters’ proposal to extend the benefit port freeze will promote comparability of Lifeline and non-Lifeline consumer experience. Specifically, a benefit port freeze increase will ensure that a consumer’s experience with obtaining a handset in connection with his or her Lifeline service will be more in line with those of non-Lifeline retail offerings. Indeed, to the extent that some commenters are interested in ensuring that consumers have “skin in the game,” the best solution is to promote consumer accountability, ensuring that consumers enrolling in the Lifeline program understand that enrollment is a serious endeavor, and that by abusing the program, it negatively impacts providers, ETCs and the program as a whole.

Therefore, the Commission should adopt Joint Commenters’ proposal to extend the benefit port freeze (while continuing to allow well-meaning customers to de-enroll and re-enroll at any time).

II. THE COMMISSION SHOULD LEVERAGE AND IMPROVE THE EXISTING ENROLLMENT INFRASTRUCTURE RATHER THAN COMPLETELY REPLACING IT AT GREAT EXPENSE TO THE LIFELINE PROGRAM AND THE LOW-INCOME CONSUMERS IT SERVES

The current administration of Lifeline program enrollments is efficient, with low administrative costs and a very low rate of improper payments. As such, the Commission should ensure that any changes it makes to the enrollment process realize additional efficiencies through achievable solutions, rather than needlessly adding complexity and cost.

Commenters almost uniformly agree with the Commission and Joint Commenters that the Commission should allow third-party eligibility verifiers to assume the responsibility for eligibility verification for those Lifeline service providers that wish to outsource it. While the record includes several suggestions for how to accomplish this objective, the Commission should adopt Joint Commenters' proposed third-party eligibility verification framework—which would leverage existing state databases, encourage more state databases, and fill in the gaps with a market-based third-party verification system (allowing multiple vendors to provide the service)—because it will result in the greatest efficiencies for the program and is the most readily achievable.

In addition, there is significant support in the record for Joint Commenters' argument that the Commission should support efforts to work with state agencies that administer low-income programs to educate beneficiaries about eligibility for and benefits of Lifeline service in a technology neutral, carrier neutral and nonexclusive manner. However, the role of these and other agencies should be limited to consumer education, and we agree with other commenters that co-administration or co-enrollment of Lifeline with other programs (e.g., SNAP) is neither realistic nor advisable for reasons of cost, oversight and prevention of waste, fraud and abuse. For that reason, the Commission should reject AT&T's proposal for co-enrollment with SNAP

because it is unworkable. Indeed, the United States Department of Agriculture’s Food and Nutrition Service (FNS) affirms in its comments that such a co-enrollment scheme would require states to negotiate individually with state SNAP administrators; would constrain already tight budgets and resources; and would deny eligibility for some of the most vulnerable low-income populations, such as the elderly.

Further, the record reflects substantial support for Joint Commenters’ position that the Commission should not allow the use of vouchers or other “direct benefit” systems to provide Lifeline subsidies directly to consumers. A direct benefit system would harm the program by adding new potential for waste, fraud and abuse not present in today’s Lifeline program; would balloon program administration costs; would be too complicated; and would deter ETCs from providing up-front value to consumers through subsidized handsets and otherwise.

Finally, the record supports Joint Commenters’ request that the Commission broaden, rather than narrow, the number of programs through which low-income consumers may demonstrate eligibility for Lifeline. Specifically, the record supports retaining all current forms of Lifeline eligibility and adding the WIC, Veterans Pension and homeless veterans’ programs.

A. The Commission Should Leverage and Incorporate the Outreach and Enrollment Infrastructure Built by ETCs and States Into a Third-Party Verification Framework

In our comments, Joint Commenters argued that if the national eligibility database that the Commission promised is not possible, the agency should adopt a flexible approach that takes advantage of existing state eligibility databases, encourages states to build more eligibility databases, and fills the gaps with market-based solutions such as utilizing multiple, USAC-certified independent third-party eligibility verifiers that ETCs can choose based on what best

suits their business model and customer base.⁶³ The commenters almost uniformly support the Commission’s proposal to take the eligibility verification away from Lifeline providers. However, the commenters support several different ways to accomplish this objective. In general, the record contains support for: (1) a national eligibility database; (2) a single nationwide verifier, potentially through expanding the NLAD; and (3) a third-party eligibility verification framework.

Before exploring the various proposals that commenters discussed in the initial round, it is important to outline three key criteria that the Commission should keep in mind when deciding between commenters’ proposals for a third-party verification solution. These criteria are: the need for simplicity, the need for a customer-facing application collection solution and the need for real-time eligibility verification.

With respect to simplicity, as the Center on Budget and Policy Priorities notes, “the Lifeline eligibility determination should be kept simple since it is a small benefit and it is tied to other programs that have more rigorous eligibility determinations. . . . Making the eligibility process more complicated will not help to bring more families in and it doesn’t help with the small amount of fraud in the program”⁶⁴ In 2014, the Commission found that improper payments in the program dropped to 0.32 percent (indicating a 99.68 percent score on getting it right).⁶⁵ If the Lifeline program has a problem with the existing eligibility verification processes,

⁶³ See Joint Commenters Comments at iii, 28-42.

⁶⁴ See Center on Budget and Policy Priorities *Ex Parte* at 2, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 31, 2015) (CBPP *Ex Parte*). Professor Super notes, “[t]he Commission should make policy going forward based on the strengths and weaknesses of the program today, not based on outdated perceptions from before the duplicates database was implemented.” Professor David Super Comments at 14.

⁶⁵ See Lifeline Connects, Fact Checker: Improper Payments, *available at* <http://lifelineconnects.org/index/issues/fact-checker-improper-payments/>.

it is small and one of perception. In addition, USAC currently administers the Lifeline program with a fairly modest \$17 million in annual administrative costs (about 1 percent of the size of the program). These facts counsel in favor of incremental changes rather than sweeping reform as the best means of moving perceptions closer to—and retaining—the reality that the Lifeline program enjoys remarkably low levels of waste, fraud and abuse, as well as remarkably low administrative costs.⁶⁶

With respect to the need for a customer-facing application collection solution, the Commission must balance, on the one hand, the desire to remove responsibilities from Lifeline providers (e.g., having applicants apply with the verifier rather than service providers) to reduce enrollment costs for providers and to incentivize new competitors with, on the other hand, the fact that the program is under-subscribed and the valuable role that ETCs perform in reaching out to eligible consumers and collecting applications and proof of eligibility.⁶⁷ As such, while several parties support direct interaction between Lifeline applicants and a national verifier,⁶⁸ they fail to appreciate the need for in-person interaction to collect the documentation necessary for a Lifeline application—a role served by ETCs today. In fact, low-income consumers rarely have ready or regular access to fax machines, computers, scanners, email or the Internet (for online portals) that would be necessary to interact directly with a national verifier.⁶⁹ As

Professor Super notes,

⁶⁶ USAC's modest administrative costs should not be conflated with the administrative costs that ETCs incur as a result of participation in the Lifeline program, as explained in more detail *supra*, Section I.

⁶⁷ See Joint Commenters Comments at 24 n.59.

⁶⁸ See NCTA Comments at 5; AARP Comments at 26; CETF Comments at 34; ITTA Comments at 15.

⁶⁹ Solix touts the value of direct enrollment interactions between Lifeline applicants and Solix as the Low-Income Discount Administrator (LIDA) in Texas. Solix notes that the Public Utilities Commission of Texas “provides a toll-free number and E-mail address for those consumers who

Lifeline has evolved the enviable practice of having [outreach, enrollment explanation and application assistance] provided for it by telecommunications [providers] without charge either to the program or to recipients. The Commission should recognize the value of these efforts and the likely irreplaceable benefit they confer on the program and its beneficiaries. It should not lightly adopt any reforms that undermine this role.⁷⁰

Indeed, the Joint Commenter ETCs engage in outreach into low-income communities and set up retail stores and mobile enrollment events where the eligible consumers live, work and congregate. These ETCs bring Internet-connected tablets and computers and collect application information, proof of eligibility and applicant certifications, and connect to databases like the NLAD in real-time to confirm eligibility for Lifeline. Even if the Commission were able to convince and pay 50 state SNAP administrators to co-enroll Lifeline applicants (which is doubtful given the fact the Commission could not negotiate access to state SNAP databases for a national eligibility database that was due in 2013),⁷¹ the Lifeline program still needs the face-to-face outreach and information collection solutions that ETCs provide. Even in California, where applicants can apply for Lifeline directly through the state's Lifeline administrator, ETCs still conduct outreach and collect applicant information from the overwhelming majority of Lifeline

want to apply through self-enrollment. Consumers have the option of contacting Solix' call center for live assistance . . . or they can submit an application to Solix via mail or FAX . . . by September 2015 customers will also be provided with an option to apply online, including uploading supporting documents." Solix Comments at 6-7. Although allowing Lifeline applicants and subscribers to contact verifiers to ask questions, inquire as to status and make changes or corrections makes sense, phone calls for Lifeline applications are only feasible where eligibility is determined based on an eligibility database check, as is done in Texas. If the national verifier is not checking databases, but rather verifying proof documents, a phone application will not work. Further, online applications will not be effective for most Lifeline applicants until more low-income Americans have reliable Internet access, which is the purpose of Lifeline modernization in the first place. In the meantime, ETC in-person outreach and application collection will remain essential. Finally, it should be noted that only a very small number of Texas enrollees actually use the Solix-direct process. The vast majority enroll through the ETC.

⁷⁰ Professor David Super Comments at 16.

⁷¹ See *infra* at 40.

applicants.⁷² While ETCs continue to perform many of the verification steps they perform in other states, the California state administrator completes the verification process.⁷³

Finally, eligibility verification must occur in real-time, particularly for wireless services, as any other result could force ETCs to treat Lifeline applicants like second-class consumers. Consumers typically expect to select their wireless service provider, device and plan in real-time. If wireless ETCs cannot verify an applicant's eligibility in real-time, as many do today, the ETCs may not be able to provide the applicant with a device and service at the place and time of enrollment. Non-Lifeline consumers can walk into a retail store, a kiosk at the mall or mobile enrollment events and walk away with an activated wireless handset and service. The Commission must ensure that the verification requirements and solutions it selects allow ETCs to provide a comparable experience to low-income consumers eligible for Lifeline, particularly because this is what is available today. And it will be difficult for the Commission to find a more effective, low-cost and fraud preventing approach than the process of real-time review that most wireless ETCs currently employ.

Keeping these three criteria in mind, Joint Commenters evaluate the verification solutions that other commenters propose in turn.

⁷² See CPUC Comments at 26 (“The existing process requires all consumers to go through a provider to start the application process and does not allow consumers to apply directly with the Administrator.”).

⁷³ See *id.* at 29. As Joint Commenters explained in our initial comments, the California Lifeline enrollment process includes several features which should be corrected rather than emulated. See Joint Commenters Comments at 35-36. First, although the CPUC and ETCs have established a work-around, the eligibility verification is not real-time. Second, without a benefit port freeze (California has been permitted to opt-out of NLAD notwithstanding this substantial gap) to stop Lifeline applicants from applying with multiple providers or automatically switching providers in rapid succession, the program is subject to abuse by some consumers intent on abusing the system by drawing multiple disbursements from the federal Lifeline fund and multiple handsets from providers. See *supra* at 22-24.

National Eligibility Database. Joint Commenters support the establishment of a national eligibility database. However, if such a database is not possible, then Joint Commenters propose an alternative approach, which is discussed further in our initial comments and *infra*.⁷⁴ CTIA “support[s] creation of a single, integrated national consumer eligibility database or interface as the most effective method for protecting the Lifeline program against waste, fraud, and abuse.”⁷⁵ CETF also appears to support a national eligibility database, although it describes the database as a “verifier” in its comments.⁷⁶ While Joint Commenters continue to support the establishment of a national eligibility database, we appreciate that the Commission appears now to concede (albeit in language that is far from plain) that such a database is not achievable at this time. Joint Commenters encourage the Commission to learn from its inability to deliver a national eligibility database by its self-imposed deadline of December 31, 2013. Single-source solutions likely are not achievable. Nor are they likely to be more cost effective than alternatives that the Commission can develop in partnership with private sector entities, or than the practices in place in the industry today, which have achieved a 99.68% success rate in preventing improper payments.

National Eligibility Verifier. In our comments, Joint Commenters strongly opposed a single-source national eligibility verifier because it would be too inflexible and expensive, would be unlikely to perform as well as private sector alternatives and may not offer real-time verification.⁷⁷ While many commenters support the establishment of a national eligibility

⁷⁴ See Joint Commenters Comments at iii.

⁷⁵ See CTIA Comments at 13.

⁷⁶ See CETF at 34 (“CETF suggests that eligibility should be allowed if enrolled in specific federal and state low-income programs, and such eligibility may be determined faster and more efficiently, if a federal hub system collects eligibility data from each of these acceptable programs and assists in facilitating the eligibility determination through a data dip.”).

⁷⁷ See Joint Commenter Comments at 27-28.

verifier, few of them discuss details or logistics of how it would work, or its advantages over other means of third-party verification.⁷⁸ Indeed, the support for a national verifier in the record can largely be characterized as support for a concept rather than support for a particular proposal. Joint Commenters agree with the Commission and those commenters that the Lifeline program would benefit from removing doubt over eligibility verification by incorporating third-parties so that those determinations are either made or reviewed by third-parties. Joint Commenters diverge from those commenters that appear to embrace one option for achieving this result (a single national verifier) because a single national verifier would be too inflexible and expensive, likely would not provide essential real-time verifications and likely would suffer from similar failings as the NLAD.

Joint Commenters oppose a single, national eligibility verifier because it would be too inflexible and expensive, producing outcomes no better or perhaps significantly worse than the current process for higher costs. A single-source solution provided by the government or a contractor would not be subject to competitive pressure to drive process improvements. For example, USAC's development and implementation of the NLAD's duplicate detection and identification verification processes have been characterized by long delays and a secretive rather than collaborative approach toward process changes (which have not always been improvements). While we do not ascribe to USAC a desire to underperform and acknowledge

⁷⁸ Evidently seeking a different means to acquire this information, as well as information with respect to how much it would cost, USAC (perhaps too quietly) issued a Request for Information (RFI) ten days after the comments were due in this proceeding with a response deadline two days prior to the reply comments in this proceeding. See USAC Request for Information, Lifeline Eligibility Verification Services, USAC-LI-2015-09-002, available at <http://www.usac.org/res/documents/about/pdf/rfp/RFI-Lifeline-Eligibility-Verification-Services.pdf>. (USAC RFI). Joint Commenters urge the Commission to fully consider the record of this proceeding, which is still ongoing, before deciding on a course that could unnecessarily take a sure-to-be substantial amount of program dollars away from low-income consumers to pay bureaucrats and government vendors.

that there are things USAC does well, recent history with the NLAD suggests that a government-selected, single-source national eligibility verifier is not likely to outperform private sector alternatives in terms of efficiency or effectiveness. Not only would a single-source provider be less flexible, it also would be significantly more expensive to build and maintain. The Lifeline administrative costs for all states including California were \$17 million last year, and a single national verifier would impose substantial additional administrative costs on the program, likely greatly exceeding the approximately \$8.5 million per year spent by California.⁷⁹

Joint Commenters also oppose a single, national verifier solution because it likely could not process enrollment verifications in real-time, given the coordination that would be required with hundreds of ETCs operating nationwide. Indeed, USAC's recent RFI focuses on a 24-hour turnaround (even though it seeks information on shorter periods) and contemplates the verifier processing an average of 700,000 successful eligibility reviews per month,⁸⁰ which is over 23,000 per day. Veering further off-course, the RFI inquires as to the benefits of an annual, limited eligibility request window, as if poverty and the varied programs the Commission smartly leverages for eligibility could be neatly squeezed into a box small enough to make manageable a proposal that is inherently unmanageable.⁸¹ Further, delayed verifications could limit the ability of or incentives for ETCs to distribute devices and initiate service at the point of consumer interaction. If ETCs cannot distribute devices and initiate service at the point of enrollment, they would lose a significant opportunity to answer questions about the service and

⁷⁹ The CPUC, which uses a Lifeline administrator, reports that it spent \$30 million from the end of 2011 to the present on Lifeline administrative fees. *See* CPUC Comments at 30. California Lifeline enrollments constitute less than one-fifth of all enrollments (2.2 million of 12.4 million or 17 percent). *See* CPUC Comments at 19 (as of July 31, 2015, approximately 2.2 million households received California LifeLine discounts).

⁸⁰ *See* USAC RFI at 3, 6.

⁸¹ *Id.* at 7.

provide training to consumers—particularly new adopters and the elderly. Further, without real-time enrollment, it would result in disparate treatment of low-income consumers, denying them the dignity of the real-time access to communications services and products that more affluent consumers can take for granted, and negatively impacting Lifeline adoption rates.

Additionally, Joint Commenters oppose the suggestion of some commenters that the Commission should expand the NLAD to act as the national eligibility verifier⁸² and to require the NLAD (or other verifier) to conduct annual Lifeline recertifications.⁸³ These proposals invite repetition and amplification of NLAD failures and shortcomings without any convincing explanation as to the benefits of doing so. The NLAD has had significant failures with respect to both of its main missions: third party identity verification (TPIV)⁸⁴ and duplicate detection.⁸⁵ The NLAD TPIV process continues to be seriously flawed because it unnecessarily requires an exact match standard for TPIV checks, and requires the collection of needless documentation and the provision of an active telephone number for dispute resolutions. The NLAD duplicate detection process failed when the Commission and USAC identified so-called “production duplicates” after applying changes to the duplicate detection logic on the “back end” (after the NLAD determined that no duplicate existed and had approved the enrollments).

⁸² See TracFone comments at 30-31; Cox Comments at 5; ITTA Comments at 15; AT&T Comments at 13 (calling for USAC to oversee all Lifeline administration functions); Low Income Consumer Groups Comments at 11.

⁸³ See, e.g., ITTA Comments at 14; Cox Comments at 7; Verizon Comments at 3.

⁸⁴ See Joint Commenters Comments at 50-51.

⁸⁵ See *id.* at 50 n.115 (discussion of “production duplicates”); CommNet and Choice Comments at 5 (“CommNet/Choice suffered from the errors which accompanied the initial roll-out of the [NLAD]. At that time, CommNet/Choice signed up numerous new subscribers based upon an initial report of the person not already being a Lifeline subscriber, and incurred expenses associated with providing a free handset, adding network capacity and for sales and outreach, only to have the subscribers invalidated months later.”). USAC still conducts audits for duplicates, even though the NLAD is supposed to catch all of them at the time of attempted enrollment.

Notwithstanding commitments to avoid such second-guessing in the future, USAC continues to audit ETCs' NLAD-approved non-duplicate enrollments for duplicates. Until the NLAD can perform these core functions more effectively, the Commission should refrain from adding more.

Similarly, commenters suggesting that NLAD, USAC or a single national verifier perform the annual recertification process overlook USAC's dismal performance to date in performing recertification on behalf of ETCs that choose not to conduct their own recertification processes. Successful recertification requires repeated attempts and interaction with subscribers in order to obtain a successful response. This is a core competency of service providers, not USAC or another national verifier that has no direct relationship with the consumer, no customer service infrastructure and no incentive to be persistent or to adopt multiple consumer-friendly means to complete the task.⁸⁶ That is why after three years of experience, USAC's recertification success rate stands at a regrettable 40 percent. This performance (which comes at considerable costs to the program and even greater cost to the ETCs that are subject to it) contrasts poorly with that of ETCs performing recertification with success rates that can exceed 90 percent (which cost the program nothing). Having USAC or a national verifier perform recertification likely would result in millions of de-enrolled but still eligible Lifeline subscribers each year. Some of those de-enrolled subscribers would go without essential communications services, at least for a time, and others would re-enroll and impose substantial enrollment costs on the Lifeline program and providers (e.g., potentially another device). ETC-conducted recertifications, including those involving dips of state eligibility databases, have been tested

⁸⁶ See Wisconsin PSC Comments at 5 (“the FCC should opt for the Lifeline verification process that is least intrusive in the provider-customer relationship....”); Sprint Comments at 24. Indeed, third parties conducting recertification lack many of the tools that ETCs have found essential to recertification, including direct SMS communications, inbound-triggered interactive voice response systems, and customer “hot-lining.”

through auditing which can be backed by targeted enforcement, as needed. Nothing in the record or in the experience of Joint Commenters indicates that this is not working well or that alternative approaches work better.

Third-Party Eligibility Verification Framework. In our initial comments Joint Commenters proposed a third-party eligibility framework—which COMPTTEL supports in concept⁸⁷—under which the Commission would first leverage existing state eligibility databases and encourage the development of additional state databases through the adoption of performance criteria. The record strongly supports this approach.⁸⁸ This framework would fill the gaps where there are no state databases with market-based solutions, such as multiple, USAC-certified third-party verifiers that ETCs can choose based on what best suits their business model and customer base. ETCs would enjoy a safe harbor from audit and enforcement if they used a USAC-certified third-party verifier. Finally, ETCs could continue to perform the verification check themselves (through a non-commission-compensated employee, representative or entity), subject to periodic audit by a third-party auditor (at their own expense, similar to the biennial audit model) and without a safe harbor.

⁸⁷ COMPTTEL’s comments include support for the concept of a national third-party eligibility framework. *See* COMPTTEL Comments at 18. COMPTTEL’s primary proposal is to leverage state SNAP databases, but that is essentially the national eligibility database approach that the Commission confirmed is not feasible. COMPTTEL’s fallback is “a process under which [the] Commission and/or USAC certify a finite number of third party vendors that meet Commission-determined standards and are able to access many or most pertinent federal and state program databases to perform the functions of a national verifier on behalf of Lifeline service providers.” *See id.* Joint Commenters would disagree only in that ETCs do not need the national verifier to check state databases (ETCs are doing that themselves) and in that there need not be a “finite” limit on USAC-certified (or otherwise “trusted”) third-party service providers or solutions.

⁸⁸ *See* Wisconsin PSC Comments at 6 (states with Lifeline eligibility databases like Wisconsin should be “exempt from the government-focused national verifier”); The Leadership Conference on Civil and Human Rights Comments at 4 (“the FCC should not duplicate databases that are already functional”); New York PSC Comments at 5 (“There is no valid reason for federal preemption of sufficiently rigorous state verification programs”); Michigan PSC Comments at 7; Pennsylvania PUC Comments at 21; TracFone Comments at 25-26.

In contrast to other proposals, Joint Commenters' approach satisfies each of the three threshold criteria of a successful verification system: it is flexible and inexpensive, includes a customer-facing application collection solution, and contains real-time eligibility verification options. First, this market-based system would be flexible and inexpensive to the program. Competition breeds innovation, and the competing verifiers would be incentivized to innovate, automate processes and adapt in response to ETC and consumer concerns. The framework would be inexpensive to the program because it would take advantage of existing Lifeline enrollment infrastructure, including state eligibility databases and ETC outreach efforts. Second, the framework provides a customer-facing application solution, leveraging the efforts of ETCs to collect application information in the field, which would then be verified by the third-party verifier.⁸⁹ In this way, those eligible Lifeline applicants that do not have access to fax machines, email or Internet portals would still be able to enroll for Lifeline service because of the ETC outreach efforts that have been so successful for the program thus far. Third, it would enable (without mandating) a real-time eligibility verification solution. Those ETCs with business models that rely on real-time enrollment and handset distribution would have multiple options capable of providing that functionality. At the same time, ETCs with business models that do not require real-time verifications may be able to procure a less expensive verification solution that does not include real-time functionality. In sum, Joint Commenters' proposed third-party verification framework holds the same advantages as other proposed options with respect to combatting opportunities for and perceptions about waste, fraud and abuse, but is superior to those options because it leverages the existing enrollment infrastructure to keep costs down and

⁸⁹ Importantly, ETCs have found that U.S. Mail is not an effective method for recertification of wireless Lifeline subscribers, who tend to be more transient than their wireline counterparts.

continue to find and enroll eligible low-income consumers for Lifeline discounts in real-time, just like non-Lifeline consumers.

B. The Commission Should Coordinate Lifeline Education and Outreach with Federal, State and Local Entities that Serve Low-Income Populations in a Manner That Is Technology Neutral, Carrier Neutral and Nonexclusive

In our comments, Joint Commenters supported efforts to improve consumer awareness about the Lifeline program and efforts to streamline the enrollment process, but urged the Commission to ensure that coordinated enrollment efforts are technology neutral, carrier neutral and nonexclusive.⁹⁰ The record reflects support for educating low-income consumers about the availability and benefits of Lifeline service at the time of enrollment in other low-income programs.⁹¹ However, the Joint Commenters agree with commenters that co-administration or co-enrollment of Lifeline with other programs such as SNAP is neither realistic nor advisable.⁹²

The Joint Commenters agree with CETF that the Commission should “leverage other federal agencies and their state counterparts to perform important education on the federal Lifeline program.”⁹³ For example, as Common Sense Kids Action suggests, “SNAP, Medicaid, SSI, and USAC could provide educational packets at the time of verification and/or enrollment.”⁹⁴ Moreover, there is a strong reason to believe that state administrators of these programs would be willing to support such educational efforts voluntarily because, as AmeriHealth Caritas notes, “[h]aving a phone to use as a contact point is often a critical

⁹⁰ See Joint Commenters Comments at 42-43.

⁹¹ See CETF Comments at 39; Common Sense Kids Action Comments at 12; AmeriHealth Caritas Comments at 2.

⁹² See CBPP *Ex Parte* at 2 (“there is no perfect 50 state solution for how to cross-enroll individuals in multiple programs.”).

⁹³ See CETF Comments at 39.

⁹⁴ See Common Sense Kids Action Comments at 12.

component in the ability to receive [public assistance] services.”⁹⁵ These educational efforts would be beneficial for program participation, but should be technology neutral, carrier neutral and nonexclusive.

With one exception, those parties that support co-administration or co-enrollment of Lifeline with other low-income programs, most particularly SNAP, do so without fully appreciating the administrative, jurisdictional and cost concerns inherent in such an approach.⁹⁶ The one party that did offer a comprehensive proposal demonstrates just how complex and costly a co-administration/co-enrollment process can be. Specifically, AT&T offers an extensive (and expensive) proposal for co-enrollment of Lifeline with the SNAP and Food Distribution Program on Indian Reservations (FDPIR) programs. According to AT&T, the Commission should negotiate with *and pay* the various state SNAP administrators and Indian Tribal Organizations (ITOs) to enroll consumers in the Lifeline program.⁹⁷ The state agencies would serve as a local point of contact, prepare the enrollment application, authorize the use of the consumer’s SNAP or FDPIR information in the application, verify program eligibility, approve the enrollment, authorize the issuance of benefits and notify the consumer of the acceptance or rejection of their enrollment request.⁹⁸ Then the state agency would pass the applicant off to USAC, which would authorize Lifeline enrollment and send a notice to the applicant’s address with the date to expect

⁹⁵ See AmeriHealth Caritas Comments at 2.

⁹⁶ See Leadership Conference on Civil and Human Rights Comments at 5; Lifeline Supporters Comments at 13; Cox Comments at 6-7; Low Income Consumer Groups at 11-12. CPUC notes that California rules require it to coordinate its California Alternate Rates for Energy (CARE) Program with the California LifeLine program, but that it has not been able to coordinate enrollment due to privacy and other legal concerns. See CPUC Comments at 30-31. Further, it “has also been unable to leverage/use other California state agencies’ eligibility databases to enroll customers in the LifeLine program.” CPUC Comments at 31.

⁹⁷ See AT&T Comments at 24.

⁹⁸ See *id.* at 16-17.

to receive a Lifeline debit card.⁹⁹ Either the state agency or USAC would provide the applicant with a list of Lifeline Registered Providers.¹⁰⁰ AT&T stops short of explaining how the verified applicant would contact the Registered Provider or procure service and a device.

There are several flaws in AT&T's proposal. First, the authoritative comments of the USDA FNS, which administers the SNAP program together with state agencies, show that AT&T's proposal is unrealistic and not likely achievable. Following the Commission's decision in the 2012 Lifeline Reform Order to create a national eligibility database, the Commission failed to negotiate access to a yes/no eligibility response from state SNAP or other program databases with the various state entities that administer those programs. AT&T provides no reason to believe that the Commission would be successful in convincing those state SNAP program administrators to take the additional, giant step of actually enrolling Lifeline applicants.

The USDA FNS's comments shed considerable light on the difficulties involved with AT&T's proposal and conclude that "coordination with Lifeline to administer Lifeline eligibility and certification functions is particularly challenging on a nationwide basis."¹⁰¹ These challenges likely are insurmountable. The reasons include the fact that SNAP is administered by state agencies with local control over administrative decisions and they are limited to using current funding to administer food programs.¹⁰² For AT&T's proposal to succeed, the Commission would have to negotiate funding individually with each agency and ultimately

⁹⁹ *See id.* at 18.

¹⁰⁰ *See id.* at 18-19.

¹⁰¹ *See* USDA FNS Comments at 1.

¹⁰² *See id.* at 2-4.

would have to get all of the state agencies and ITOs to agree to co-enrollment.¹⁰³ Because the Commission would have to individually negotiate these arrangements, it is impossible to forecast how much this could cost the Lifeline program or how long the process would take (or if it could ever be concluded).

USDA FNS also states that state agencies are under intense pressure to maintain or improve service under tight budgets.¹⁰⁴ Therefore, some state agencies simply will not have the bandwidth to take on Lifeline enrollments, even if the Commission could provide funding. Further, USDA FNS concludes that “SNAP is not an appropriate vehicle for solely determining Lifeline eligibility” because “SNAP is unable to serve certain segments of the low-income population who may still be eligible for Lifeline services” and “[e]lderly households are notably underserved by SNAP.”¹⁰⁵

Second, not only would AT&T’s proposal exclude many low-income consumers in need, such as the elderly, it also would have the potential to balloon the size of the Lifeline program. As of the fourth quarter of 2014 there were 12.4 million households receiving Lifeline¹⁰⁶ and 22.5 million households on SNAP (roughly 1.8 times the number on Lifeline).¹⁰⁷ If state SNAP administrators were to co-enroll SNAP recipients in Lifeline, the program could rapidly increase from \$1.6 billion¹⁰⁸ to \$2.88 billion (1.8 times). Joint Commenters support the goal of achieving

¹⁰³ AT&T recognizes that “the Commission does not have jurisdiction to order state agencies to participate in ‘New Lifeline.’” See AT&T Comments at 23. AT&T’s proposal does not seem to allow for other means of qualification for Lifeline outside the SNAP co-enrollment scenario.

¹⁰⁴ See USDA FNS Comments at 3.

¹⁰⁵ *Id.* at 5.

¹⁰⁶ See USAC 2014 Annual Report at 9, available at <http://www.usac.org/res/documents/about/pdf/annual-reports/usac-annual-report-2014.pdf>.

¹⁰⁷ See USDA SNAP Monthly Data, available at <http://www.fns.usda.gov/sites/default/files/pd/34SNAPmonthly.pdf>.

¹⁰⁸ See USAC 2014 Annual Report at 9.

greater participation in the Lifeline program, but caution that too much success, too soon, could destabilize the program. For these reasons, the Commission should encourage state agencies that administer low-income programs to educate consumers about the availability and advantages of Lifeline discounted communications service in a technology neutral, carrier neutral and nonexclusive manner, but should reject AT&T's proposal for Lifeline co-enrollment with SNAP and FDPIR.

C. Vouchers or Another Means of Direct-to-Consumer “Portable” Benefit Would Open New Avenues for Waste, Fraud and Abuse and Result in Massive Administrative Costs Without Corresponding Benefits for Consumers or the Lifeline Program

In our comments, Joint Commenters opposed the use of vouchers or other means of providing benefits directly to consumers because they would harm the program by adding new potential for waste, fraud and abuse not present in today's Lifeline program, would balloon program administration costs, would be too complicated and would discourage ETCs from providing up-front value to consumers such as subsidized handsets.¹⁰⁹ The record reflects substantial support for these points.

Among other commenters, the Low-Income Consumer Groups caution that issuing loaded debit cards to consumers carries the “grave risk to the public perception of the program that stem from a physical embodiment of the Lifeline benefit (e.g., allegations that Lifeline cards are being sold on Craigslist).”¹¹⁰ The Commission should be closing avenues of potential or perceived waste, fraud and abuse, not opening up new ones.

¹⁰⁹ See Joint Commenters Comments at 43-45.

¹¹⁰ See Low-Income Consumer Groups at 14. See also Sprint Comments at 27-28; TracFone Comments at 37; CPUC Comments at 32.

In addition, many commenters are justifiably concerned about the expense—for both the program and providers—of implementing a voucher program.¹¹¹ No party, including the Commission, has estimated the costs involved in procuring a bank to take over the Lifeline payments process (including transaction fees) and issue debit cards (and replacement cards), compared to the current system, under which ETCs complete and file Forms 497 and submit them to USAC for reimbursement, along with several certifications. In addition, the Lifeline providers that provide service at no cost to the consumer would be required to implement new billing systems to process the vouchers.¹¹²

Further, several commenters note that converting Lifeline to vouchers is a drastic change that would add unnecessary complexity to the program and would create customer confusion.¹¹³

¹¹¹ See Sprint Comments at 28 (“[T]here are substantial costs associated with a voucher system. Obviously, there are administrative costs of such a system (USAC or some other third party would have to issue and manage debit cards or PINs), and the development and recurring operational costs each and every ETC would have to expend to be able to accept a payment voucher. Wireless carriers that currently provide Lifeline service free of charge to the end user will have to implement new billing platforms and processes to accept direct end user payment.”); Consumer Action Comments at 3 (“We encourage the FCC to conduct a study that estimates what the actual cost would be to distribute PINs to millions of Lifeline customers each month and comparing that [to] what it costs now for the FCC to pay a few dozen carriers.”).

¹¹² See Sprint Comments at 28 (“Wireless carriers that currently provide Lifeline service free of charge to the end user will have to implement new billing platforms and processes to accept direct end user payment.”).

¹¹³ See Low-Income Consumer Groups Comments at 14 (“At this time, we do not support the drastic modification of the Lifeline administration to transfer benefits directly to the subscriber via a physical card, voucher or PIN because it creates undue complexity in the program”); AARP Comments at 27 (“AARP is concerned that the administration of a direct payment program will be complex, and that customer confusion may be more likely.”); Leadership Conference on Civil and Human Rights Comments at 5 n.22 (noting that using a physical medium such as a SNAP EBT card or a unique identifier such as a PIN “seem[s] to add a significant amount of complexity to the current system with no corresponding increase in portability or efficiency.” The Leadership Conference prefers a system whereby a national eligibility database can pre-qualify consumers for a year who could then switch providers without reapplying.); Consumer Action Comments at 3; CPUC Comments at 32 (“This proposal would fundamentally alter the distribution method for subsidy payments from ETCs to eligible consumers. The FCC needs to gather more data to evaluate this proposal. The CPUC also recommends that the FCC explore other, additional ways to distribute discounts before changing the current method.”).

What is clear, according to USDA FNS, is that a Lifeline voucher could not be included on SNAP EBT cards.¹¹⁴ However, many questions remain regarding the logistics of a voucher program. Neither the Commission nor the main proponent of vouchers (AT&T) has clarified what would happen if a consumer loses his or her debit card. They have not discussed whether state Lifeline benefits would be included on the debit card as well. If state benefits will be included on the card, it is not clear how the state Lifeline programs would interact with the bank, fund the state benefits and who would pay for the integration. If state benefits won't be included on the card, it is not clear how consumers would receive the full federal and state discounts and how providers would apply them. It also remains unanswered whether it is possible that, under this system, a consumer could use his or her federal benefits with any Registered Provider as AT&T proposes, but could use state Lifeline benefits to purchase services only from ETCs. The complexity of processing federal and state reimbursements is currently handled by ETCs, but with vouchers, much of that responsibility would be on consumers.

Those commenters that support vouchers largely do not delve into the details regarding how a voucher program would work, how much it would cost and who would cover those costs.¹¹⁵ Many commenters support the concept of a portable benefit, but may not appreciate

¹¹⁴ See USDA FNS Comments at 5-6 (noting that while “Lifeline benefits cannot be placed directly into the SNAP benefit account,” they could potentially be added to an EBT or electronic payment card cash account; however, the money in cash accounts “can be used anywhere, [so] there is no guarantee that the Lifeline benefits would be used to pay” the ETC without significantly increased administrative costs).

¹¹⁵ See Lifeline Supporters Comments at 13-14; Michigan PSC Comments at 12; Missouri PSC Comments at 5 (“how such a process might work remains unclear”); ITTA Comments at 16; Comcast Comments at 9. AT&T, however, did provide some detail, and its voucher proposal serves as an appropriate template for considering the pitfalls of vouchers in the Lifeline program. AT&T proposes that after Lifeline eligibility is verified, USAC would send a notice with the subscriber’s details to the bank that will be responsible for issuing Lifeline debit cards. See AT&T Comments at 21. The bank then sends a Lifeline debit card to the Lifeline customer and begins to deposit the benefit each month on the debit card, which can only be used to purchase communications services from a Registered Provider. See *id.*

that the current Lifeline benefit already is portable.¹¹⁶ As a coalition of low-income consumer groups correctly concludes, vouchers are “not necessary to ensure consumers can choose their service and provider and shop around for a better service.”¹¹⁷

Moreover, those that see month-to-month portability as a means of spurring improved service offerings fail to understand marketplace realities. Joint Commenters agree with Sprint that if “a Lifeline customer can switch to a new service provider with the swipe of a card, it becomes far too risky for wireless carriers to issue a free or discounted handset, much less a costly broadband device, to each new customer.”¹¹⁸ Indeed, by diminishing ETCs’ likelihood of recovering up-front investments in customer acquisition and devices, vouchers actually would deter ETCs from improving service offerings. The Commission instead should discourage rapid benefit transfers through a 12 month benefit port freeze (while preserving the right to de-enroll and re-enroll with another provider at any time) so that Lifeline service providers will have incentives to improve service offerings and provide the devices that are necessary to the success of the Lifeline program, but not currently supported by the program.¹¹⁹

¹¹⁶ See Leadership Conference on Civil and Human Rights Comments at 5 n.22 (opposing vouchers because using a physical medium such as a SNAP EBT card or a unique identifier such as a PIN “seem[s] to add a significant amount of complexity to the current system with no corresponding increase in portability or efficiency”); Sprint Comments at 27-28. Every 60 days, a Lifeline subscriber can switch their service provider automatically in NLAD by enrolling with a new provider (benefit port) and at any time a Lifeline subscriber can de-enroll with his or her current Lifeline provider and re-enroll with any other Lifeline provider.

¹¹⁷ See Low-Income Consumer Groups Comments at 14.

¹¹⁸ See Sprint Comments at 29.

¹¹⁹ See *supra* at Section I.C.3.

D. The Commission Should Expand, Not Contract, the Programs That Qualify Low-Income Consumers for Lifeline

In our comments, Joint Commenters supported retaining all current eligibility methods, and adding the Women, Infants and Children (WIC), Veterans Pension and a homeless veterans program as qualifying programs.¹²⁰ The vast majority of the commenters agree that the Commission should at least retain the current Lifeline eligibility programs,¹²¹ if not also add new ones.¹²² In particular, strong support exists for retaining Medicaid as an eligibility program¹²³ and adding the Veterans Pension benefit program and/or other veterans programs to the list of eligibility programs.¹²⁴ For example, Senator Blumenthal, the Ranking Member of the Senate Committee on Veterans' Affairs, calls on the Commission to collaborate on outreach efforts to veterans to widely disseminate information regarding the "historically successful" Lifeline program and look to create coordinated enrollment opportunities to "provide support for our veterans' population as they transition from the armed services to civilian employment and as

¹²⁰ See Joint Commenters Comments at 45-49.

¹²¹ See AARP Comments at 35-36; Leadership Conference on Civil and Human Rights Comments at 4 ("Low-income households have differing needs and therefore will participate in different benefits programs, so eliminating programs will add barriers to Lifeline participation."); Professor David Super Comments at 15; TracFone Comments at 42-43 (opposing a reduction in qualifying programs while questioning the efficacy of—but not opposing—eliminating income eligibility); Connected Nation Comments at 18-20.

¹²² See Professor David Super Comments at 15 ("the Commission should confer automatic eligibility on as many such programs as is administratively feasible."); CPUC Comments at 18 ("The FCC should adopt more permissive rather than more restrictive eligibility criteria to allow more households to qualify for the program.").

¹²³ See AmeriHealth Comments at 2; Association of Community Health Plans of America at 2; The Arc Comments at 2; Magellan Health Comments at 2; Medicaid Health Plans of America Comments at 2-3; Molina Healthcare Comments at 1-2; TracFone Comments at 43-44. This widespread and convincing support for retaining Medicaid as a qualifying program counsels against the severe restriction of Lifeline eligibility to just SNAP, as discussed below.

¹²⁴ See AARP Comments at 36 (it is "appropriate" to add Veterans Pension benefits given that those benefits are means tested on the basis of both low-income status, and net worth limitations); Low Income Consumer Groups Comments at 17; Lifeline Supporters Comments at 14; Sprint Comments at 31; TracFone Comments at 43.

they transition from homelessness into housing.”¹²⁵ In addition, the Commission’s proposal to add the WIC program as a Lifeline qualifying program in the 2012 Further Notice of Proposed Rulemaking garnered widespread support.¹²⁶

A small minority of the commenters support severe restrictions on the number of Lifeline-qualifying programs, ostensibly to simplify Lifeline eligibility.¹²⁷ These commenters generally focus on using the SNAP program as the sole eligibility program for Lifeline. However, such an approach is misguided. The Commission’s statutory mandate is to ensure affordable access to communications for all low-income Americans, and not only to those who qualify for and elect to participate in SNAP. With a participation rate of roughly one-third of the eligible low-income population, the Lifeline program should not, and need not, limit the low-income programs that establish eligibility. Further, as the USDA FNS states in its comments, SNAP is not an appropriate program for solely determining Lifeline eligibility because it does not serve certain segments of the low-income population and disproportionately underserves the elderly.¹²⁸ Veterans, too, appear to be underserved by the programs that the Commission

¹²⁵ See *Ex Parte* Letter from Senator Blumenthal, WC Docket No. 11-42 at 1-2 (Aug. 31, 2015). While there are challenges with establishing co-enrollment with other government agencies, coordinated enrollment is certainly possible. However, in this context, the coordination must be preceded Commission action to add the Veterans Pension and homeless veterans’ programs to the list of programs that establish automatic Lifeline eligibility.

¹²⁶ See Comments of the National Association of State Utility Consumer Advocates, WC Docket No. 11-42 et al., 15-16 (Apr. 2, 2012); Comments of the Joint Consumers, WC Docket No. 11-42 et al., 8-9 (Apr. 2, 2012); Comments of the Michigan Public Service Commission, WC Docket No. 11-42 et al., 7 (Apr. 2, 2012); Comments of the Florida Public Service Commission, WC Docket No. 11-42 et al., 3-4 (Apr. 2, 2012); Comments of i-wireless, WC Docket No. 11-42 et al., 7-8 (Apr. 2, 2012); Comments of General Communications, Inc., WC Docket No. 11-42 et al., 8-9 (Apr. 2, 2012); Comments of TracFone, WC Docket No. 11-42 et al., 14-15 (Apr. 2, 2012); Comments of Sprint Nextel, WC Docket No. 11-42 et al., 11-13 (Apr. 2, 2012); Comments of the National Hispanic Media Coalition, WC Docket No. 11-42 et al., 14-15 (Apr. 2, 2012).

¹²⁷ See AT&T Comments at 14-15; COMPTTEL Comments at 16-17.

¹²⁸ See *supra*, note 102. In addition, if a household has no dependent children, then the benefit only lasts for three months out of 36 months and provides a possible gap in Lifeline eligibility. See Joint Commenters Comments at 46. See also CPUC Comments at 20 (noting that the SNAP

currently uses to determine Lifeline eligibility.¹²⁹ Thus, the record supports Joint Commenters' position that the number of programs presently used to determine eligibility for Lifeline is too narrow, not too broad, and should be expanded.¹³⁰

Moreover, because a significant number of low-income consumers do not participate in any of the programs that currently determine eligibility for Lifeline, the Commission should retain income eligibility. Such consumers should not be forced to sign up for a government aid program that they do not want, in order to receive the Lifeline discount that they do want. As Professor Super explains,

If [the Commission] were to impose obstacles on income-based eligibility, the primary losers would be childless adults (who may need Lifeline to help find employment) and elderly and disabled persons with incomes between 75% and 130% of the federal poverty line (whose incomes exceed the SSI eligibility limits and who have a low participation rate in SNAP). Income eligibility also could be important to low-wage working families that do not get SNAP because they find the administrative burden excessive relative to the benefit they would receive.¹³¹

The primary argument in favor of eliminating income eligibility is ease of administration.¹³² However, the administrative burdens associated with maintaining and administering income eligibility do not appear to outweigh the benefits of ensuring access to those in need who by

income qualification threshold is 200 percent compared to the Lifeline threshold at 135 percent); CETF Comments at 37 (CETF “cautions the Commission against reliance on a single program as the sole qualifier” and states that “designating one program can leave target populations out as in the case of SNAP which prohibits people accepting SSI benefits from receiving SNAP benefits. A lot of services and people with disabilities receive SSI.”).

¹²⁹ As many veterans are moved off of Medicaid and onto health care provided by the Department of Veterans Affairs, they can no longer automatically qualify for Lifeline benefits by showing a Medicaid card. *See* Joint Commenters Comments at 47.

¹³⁰ *See* Professor David Super Comments at 15 (“the Commission should confer automatic eligibility on as many such programs as is administratively feasible.”).

¹³¹ *See id.*

¹³² *See* COMPTTEL Comments at 18; TracFone Comments at 42; Missouri PSC Comments at 4. The Missouri PSC also notes that the data collected for income eligibility is sensitive. For that reason, the Joint Commenters proposed that the USAC third-party verifier certification should include reasonable privacy and data security safeguards. *See* Joint Commenters Comments at 37-38.

choice or circumstance do not participate in one of the programs currently used to determine eligibility for Lifeline. As the CPUC states, “[t]he FCC should not eliminate income qualification because it is still used, albeit on a declining basis, by many California LifeLine participants to renew their eligibility....”¹³³ The CPUC data shows that 22 percent of Lifeline renewals thus far in 2015 were still by income only.¹³⁴

III. THE COMMISSION SHOULD REJECT TRACFONE’S ANTICOMPETITIVE AND MISGUIDED PROPOSALS TO BAN IN-PERSON HANDSET DISTRIBUTION AND TO ELIMINATE INCENTIVE-BASED COMPENSATION

Joint Commenters submit that the Commission should reject two proposals from TracFone that were not among the myriad issues raised for comment in the Second FNPRM. First, TracFone attempts to resuscitate its 2013 petition to “prohibit[] the practice of in-person handing out of phones at public places in connection with Lifeline,”¹³⁵ which the Commission has not granted (and for good reason).¹³⁶ Second, TracFone introduces a new proposal to prohibit “the practice of utilizing third party agents and sub-agents who are subject to incentive-based compensation arrangements to market Lifeline services and distribute Lifeline handsets.”¹³⁷ The Commission should reject both of these self-serving proposals, which distract attention from legitimate issues and would cause significant harm to consumers by eliminating some of the most pro-consumer and effective elements of the Lifeline program.

¹³³ CPUC Comments at 19.

¹³⁴ *See id.* at 20.

¹³⁵ *See* TracFone Comments at 7-9.

¹³⁶ Consistent with Joint Commenters’ view that the Commission can and should do more to promote competition and consumer choice by minimizing regulatory uncertainty and burdens, the Commission should act to deny TracFone’s petition and should establish shot clocks for its consideration of resolution of such items in the future.

¹³⁷ *See id.*

A. TracFone’s Proposal to Ban In-Person Handset Distribution Would Not Reduce Waste, Fraud and Abuse, But Rather Would Further TracFone’s Chosen Distribution Model to the Detriment of Competitors and Consumers

In its comments, TracFone seeks to divert attention from the broad range of issues on which the Commission sought comment by reasserting the company’s anticompetitive 2013 petition for rulemaking to ban the practice of in-person distribution of handsets to eligible Lifeline subscribers.¹³⁸ The Commission should decline TracFone’s request to enhance its competitive position at the expense of its competition and consumers. Not only does in-person enrollment and handset distribution have distinct advantages for eligible consumers (e.g., comparability of service experience and an opportunity for consumer education), it also enables Lifeline service providers to proactively curb waste, fraud and abuse (e.g., through chain-of-custody controls and training regarding program rules) in a manner that can be significantly more effective than mail-only distribution.

TracFone’s proposal to ban in-person handset distribution is an anticompetitive attempt to impose, by rule, its chosen business practice to the detriment of its competitors, including Joint Commenter ETCs. TracFone has made the business decision not to utilize in-person handset distribution. As a result, despite efforts to increase in-person and in-community

¹³⁸ See *id.*; *Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers; Lifeline and Link Up Reform and Modernization et al.*, Petition for Rulemaking, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (May 13, 2013) (TracFone Petition). TracFone argued in its 2013 petition that the “primary purpose” of banning in-person handset distribution is to curb waste, fraud and abuse in the Lifeline program. See TracFone Petition. However, as several of the Joint Commenter companies and others noted in their initial comments in response to the petition, it is clear that primary purpose of TracFone’s proposal is to curb its competition. See *generally* Comments of Absolute Mobile, Assist Wireless, Blue Jay Wireless, Boomerang Wireless, Easy Wireless, Global Connection, i-wireless and Telrite (June 17, 2013); see also Comments of Budget Prepay, Inc. (June 17, 2013); Initial Comments of National ALEC Association/Prepaid Communications Association (“NALA/PCA”) to the Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers (June 17, 2013); Comments of Q Link Wireless LLC (June 17, 2013); Comments of TerraCom, Inc. (June 17, 2013).

outreach to consumers, TracFone has been unable to match the ability of its smaller, more nimble competitors to provide real-time service activation and in-person handset distribution in the manner that most wireless consumers expect and deserve. Here, rather than invest in the controls and process changes needed to fairly compete with other ETCs, TracFone again asks the Commission to ban its competitors' successful distribution practices based on the unfounded premise that doing so is essential to controlling waste, fraud and abuse. In the interest of preserving a healthy Lifeline market that maximizes competition and consumer benefits, the Commission should reject TracFone's proposal.

Not only is TracFone's proposal patently anticompetitive, it also would harm proven and effective efforts that benefit low-income consumers. In-person enrollment and handset distribution offers a number of important and distinct advantages for low-income Americans. As an initial matter, in-person enrollment and handset distribution has been an essential driver of Lifeline service adoption among low-income consumers, enabling ETCs to forge meaningful and beneficial relationships with low-income communities, community anchor institutions and other organizations focused on serving those in need. Indeed, in-person enrollment and handset distribution enables ETCs to effectively serve some of the most vulnerable low-income communities in America, including the homeless and those who have been displaced by natural disasters and other emergencies. People in these circumstances often lack a permanent address to which an ETC could ship a handset. Moreover, in-person enrollment and handset distribution promotes dignity in the enrollment process, allowing low-income Americans to access wireless devices and service in real-time at the point of enrollment in the same manner that most non-low-income consumers expect and deserve. In addition, in-person enrollment and handset distribution provides a vital consumer education touchpoint, giving eligible Lifeline subscribers

the opportunity to ask questions about how to use the device and the service, understand eligibility criteria and program rules, and make informed choices and enrollment certifications. As the Commission seeks to extend Lifeline support to broadband services, in-person enrollment and handset distribution will serve as an important vehicle for promoting broadband adoption and digital literacy.

In-person enrollment and handset distribution also enables ETCs to proactively curb waste, fraud and abuse at the point of enrollment in a manner that can be significantly more effective than is possible with a mail-only distribution method. For example, distributing handsets in-person at the point of enrollment allows ETCs to verify that the Lifeline-eligible consumer is the person who receives and activates the wireless handset, ensuring an unbroken chain of custody between the ETC and the eligible subscriber.¹³⁹ Furthermore, in-person enrollment and handset distribution provides ETCs with an opportunity to promote responsible use of Lifeline benefits, explaining Lifeline program rules, describing the consequences of rule violations and enabling the prospective subscriber to ask questions. These educational touch-points reduce the likelihood that a subscriber will inadvertently violate program rules, or engage in other wasteful or abusive practices such as “flipping.”

For these reasons, the Commission should not adopt TracFone’s proposal to ban in-person handset distribution, which would harm competition, consumers, and the Lifeline program without providing any redeeming, evidence-based benefit.

¹³⁹ For this reason, TracFone’s suggestions that in-person enrollment and handset distribution inhibits proper verification misses that mark. *See* TracFone Comments at 7-8. In fact, through the use of live Internet connections, Joint Commenter ETCs are able to complete required verifications (e.g., NLAD and state database dips) and perform other controls (e.g., real-time review and approval) by personnel not paid on a commission or per-enrollment basis to ensure that the consumer is eligible for Lifeline service. Further, all of the Joint Commenter ETCs require approved Lifeline subscribers to activate their handset by making a call prior to leaving the place of enrollment.

B. TracFone’s Proposal to Ban Incentive-Based Compensation for Enrollment Agents Is Without Merit

TracFone’s brand-new proposal to prohibit “the practice of utilizing third party agents and sub-agents who are subject to incentive-based compensation arrangements to market Lifeline services and distribute Lifeline handsets” should be rejected for many of the same reasons that the Commission should reject TracFone’s proposal to ban in-person handset distribution. First, incentive-based compensation has played a vital role in driving adoption of Lifeline services over the last several years. Second, to the extent that an isolated few commission-based agents have acted improperly, the appropriate remedy is to adopt smart, narrowly tailored controls to address those isolated incidences, rather than to ban commission-based agents entirely.

Incentive-based compensation has played an important role in driving adoption of Lifeline services. Many ETCs use agents to provide applicants with personalized and immediate assistance during in-person enrollments at events and in retail stores. Compensating these individuals in the form of commissions or other performance rewards creates an incentive for them to find, educate and enroll *eligible* subscribers. Indeed, in its recent report on Lifeline, the Government Accountability Office recognized that in-person, in-community outreach and enrollment events conducted by ETCs and their agent partners are an effective means of boosting Lifeline participation rates, while achieving a 99.68% success rate in preventing waste fraud and

abuse.¹⁴⁰ These efforts remain essential today, as the Lifeline program currently has no more than a one-third participation rate.¹⁴¹

TracFone asserts that an incentive-based compensation structure motivates agents to “look for ways to get around program requirements and limitations.”¹⁴² Joint Commenters do not disagree that there will be, from time-to-time, agents and other incentive-based personnel who act in ways contrary to the good of consumers, ETCs and the Lifeline program. However, the Commission should not let these few isolated incidences overshadow the valuable role that agents—particularly commission-based agents—have played in helping millions of low-income Americans obtain access to essential communications through the Lifeline program. Furthermore, the Communications Act already includes effective controls for curbing agent abuse,¹⁴³ and most ETCs already have adopted effective controls to prevent improper activity among commission-based agents, and have procedures in place to address bad acts in the event that they arise. Among other methods, Joint Commenters use non-commission-based personnel (to review and approve applications and verify eligibility), commission claw-back, “secret shopping” and daily photo audits to ensure compliance with company and Lifeline program

¹⁴⁰ See United States Government Accountability Office, GAO 15-335, Report to the Chairman, Committee on Commerce, Science and Transportation, U.S. Senate: FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program, 30 (Mar. 2015) (2015 GAO Lifeline Report) (“Prepaid wireless ETCs conduct outreach, including in-person outreach and enrollment, to overcome challenges such as lack of customer knowledge about the program, inability to submit applications, and recertification. FCC and USAC officials report that states with more ETCs offering prepaid wireless service tend to have higher Lifeline participation rates due to greater outreach.”). In-person outreach and enrollment for many ETCs include distributing handsets to eligible subscribers, the benefits of which are discussed above.

¹⁴¹ See Joint Commenters Comments at 24 n.59.

¹⁴² See TracFone Comments at 8.

¹⁴³ The Communications Act makes clear that ETCs are responsible for the actions of their agents. See *2012 Lifeline Reform Order*, 27 FCC Rcd at 6708-09, ¶ 110; see also *Lifeline Providers are Liable if Their Agents or Representatives Violate the FCC’s Lifeline Program Rules*, Enforcement Advisory No. 2013-4, DA 13-1435, 2 (rel. June 25, 2013).

rules. These controls have worked, and have resulted in a vanishingly small improper payment rate in the Lifeline program.

Rather than impose TracFone's ill-conceived ban on commission-based agents, the Commission should require ETCs to conduct a non-commission-based review and approval of all enrollments before activating the service or seeking reimbursement from the Lifeline program.¹⁴⁴ Under this framework, the Commission would permit commission-based agents to conduct outreach and to assist applicants with collection and understanding of the information and certifications required for a Lifeline application, but would require ETCs to have a non-commission-based employee review the application and verify eligibility, or to have a non-commission-based independent party conduct the same review.¹⁴⁵ In other words, agents would serve as data-collectors and educators, but would not have authority to give final approval of an enrollment attempt. The Commission could adopt this proposal as a part of the national third-party eligibility verifier framework that Joint Commenters have proposed in our initial comments and as set forth in Section II.A., *supra*. In this way, ETCs can insert an additional layer of fraud protection, effectively address negative perceptions of the program and achieve the Commission's goal of "tak[ing] the eligibility verification away from Lifeline providers,"¹⁴⁶

¹⁴⁴ Joint Commenters herein adopt the earlier proposal of the Lifeline Reform 2.0 Coalition as set forth in that coalition's 2013 petition for rulemaking and reply comments. *See Petition for Rulemaking to Further Reform the Lifeline Program, Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service*, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Reply Comments of the Lifeline Reform 2.0 Coalition at 9 (Aug. 29, 2013) (Lifeline Reform 2.0 Coalition Reply Comments); *see also Lifeline Reform 2.0 Coalition's Petition for Rulemaking To Further Reform The Lifeline Program*, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed June 28, 2013) (Lifeline Reform 2.0 Coalition Petition).

¹⁴⁵ A number of nationwide ETCs support this proposal. *See Lifeline Reform 2.0 Coalition Reply Comments* at 9 n.27.

¹⁴⁶ *See supra*, Section II.

while at the same time maximizing the benefits that commission-based agents have for Lifeline service adoption and consumer education.¹⁴⁷

Therefore, rather than prohibit commission-based agents, who have provided tremendous benefits to the Lifeline program and eligible subscribers, the Commission should adopt the proposal set forth in the Lifeline Reform 2.0 Coalition Petition to require that a non-commission-based employee or independent party review and approve every Lifeline enrollment.

¹⁴⁷ Of course, ETCs (including TracFone) should have a choice whether or not to use agents or incentive-based personnel depending on their business needs. However, as with the proposed ban on in-person handset distribution, the Commission should decline TracFone's invitation to force its chosen business model on all ETCs, which would be both anticompetitive and anti-consumer.

CONCLUSION

The comments submitted in this proceeding evidence widespread agreement with the principle, as elucidated in our initial comments, that through free-market dynamics and smart, streamlined regulatory controls, the Commission can best modernize the Lifeline program and deliver maximum value to consumers. Those commenters that ask the Commission to impose heavy-handed regulations or establish massive new regulatory structures (e.g., a single national eligibility verifier) fail to appreciate the cost, complexity and consequences of those proposals for low-income consumers, ETCs and the Lifeline program as a whole. For these reasons, the Commission should adopt proposals consistent with those that Joint Commenters set forth in our initial comments and further elucidated herein.

Respectfully submitted,



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