N A R U C

National Association of Regulatory Utility Commissioners

***NOTICE VIA ELECTRONIC FILING***

March 16, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**RE: Notice of Written Ex Parte filed:** *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket 09-197, *Connect America Fund*, WC Docket 10-90.

**Secretary Dortch:**

On March 18, 2016, California Commissioner **Catherine Sandoval,** District of Columbia Chairman **Betty Ann Kane,** her advisor, **Cary Hinton,** and the undersigned[1] met separately with

(i) FCC Commissioner **Mignon Clyburn** and her wireline advisor, **Rebekah Goodheart**,
(ii) FCC Commissioner Michael O'Reilly, and his wireline advisor, Amy Bender,
(iii) **Gigi B. Sohn,** *Counselor to the Chairman,* **Stephanie Weiner,** *Senior Legal Advisor, Wireline,* **Ryan B. Palmer,** *Chief, Telecommunications Access Policy Division, Wireline Competition Bureau,* and **Eric Feigenbaum,** *Office of Media Relations, and*
(iv) **Travis Litman,** *Senior Legal Advisor to Commissioner Rosenworcel.*

The meetings were requested to discuss recent *ex partes* filed by others arguing that the FCC can give lifeline funding to entities that have not been designated as eligible telecommunications carriers under 47 U.S.C. 214(e), that the FCC can establish a federal "ETC" designation process that bypasses the 47 U.S.C. 214(e) requirement that States in the first instance conduct such designations, and elements of the Fact Sheet the FCC released on March 8, 2016.

Both Commissioners, like NARUC have long supported the expansion of the Lifeline program to cover Broadband.

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[1] NARUC is opposing the creation of a new "optional" ETC designation procedure. We agree strongly with argument that that "option" is illegal and will undermine State matching programs, will result in more fraud and abuse, permits carriers to choose the level of oversight and decide on the level of subsidy provided (at least in States with matching programs), will increase customer confusion, and limit options for Lifeline subscribers to successfully complain about poor service quality. Moreover, it seems unlikely to have any real impact on drawing providers that are not currently certified as Lifeline providers into the Lifeline business. *NARUC has not had an opportunity to take a position on the other specific policy recommendations raised during these conversations.*

During each of these, those present made one or more of the advocacy points listed on the attached document. Commissioner Sandoval provided each office with an un-annotated version of this attachment. The undersigned made annotations to the sheet to reflect other points raised during the discussions in each office. On this attachment, all the annotations are in 10 point font. The original document is in 14 point font. Questions about this filing should be directed to the undersigned at jramsay@naruc.org or 202.898.2207.

Sincerely,

James Bradford Ramsay
NARUC General Counsel

**cc** **Gigi B. Sohn,** ***Counselor to the Chairman***
**Jon Wilkins,** ***FCC Managing Director and Chief Operating Officer***
**Eric Feigenbaum,** ***Office of Media Relations.***
**Rebekah Goodheart,** ***Legal Advisor to Commissioner Clyburn on Wireline***
**Travis Litman,** ***Senior Legal Advisor to Commissioner Rosenworcel***
**Nicholas Degani,** ***Legal Advisor to Commissioner Pia on Wireline***
**Amy Bender,** ***Legal Advisor to Commissioner O'Reilly on Wireline***
**Ryan B. Palmer,** ***Chief, Telecommunications Access Policy Division, Wireline Competition Bureau***

**Suggestions re: FCC Fact Sheet Proposing Rules to Modernize Lifeline Program**
**Commissioner Catherine Sandoval, California Public Utilities Commission (CPUC)[2]**
**March 11, 2016**

1) **State ETC role is critical to protecting against fraud and is rooted in statute**:

a) **Issue**: Eligible Telecommunications Carrier Designation (ETC) & State role. FCC Fact Sheet proposes to centralize with a single federal administrator ETC designation for Lifeline providers.

b) **Suggestion**: *Preserve the State's authority and flexibility to administer the federal Lifeline program in conjunction with State LifeLine Programs irrespective of the services subsidized by the FCC. Recognize the state role in ETC designation, the enrollment process, and determining eligibility criteria, and delegate authority to the States to administer VoIP or IP enabled services ETC designation and program administration for lifeline purposes. Recognize State requirements for wireless registration or CPCN to offer interconnected voice service within a state.*

c) **Suggestion**: *Continue to allow States such as California to opt out of NLAD and the National Eligibility Verifier. Require states that opt-out to implement controls and third-party verification.*

d) **Comment:** For bundled packages that include voice as well as data and text, state ETC designation is critical to preventing fraud, ensuring compliance with state and federal rules, and is rooted in statute in the Telecommunications Act. States have a statutory role for voice service consumer protection, consumer complaints, and have an interest in ensuring service quality and coverage within the service area approved for the Lifeline provider.

e) **Example**: One carrier who applied in 2008 for California State LifeLine (California Lifeline or CST) had never paid state public purpose program surcharges, and stopped paying user fees in 2003 though it was operating in California and was later found to owe those fees. The ETC applicant was paying all its federal surcharges, but no California state surcharges. The CPUC imposed a $10 million fine, on top of a $24 million surcharge recovery, and granted ETC designation in late 2015. The State role in ETC designation identified the failure to

[2] These suggestions are the *ex parte* comments of Catherine Sandoval, Commissioner, California Public Utilities Commission, and do not represent the official position of the Commission as a whole, though they are consistent with the CPUC's filed comments in the FCC's Lifeline proceeding.

pay state surcharges and was critical to the settlement and payment of the fine and fees critical to support of state LifeLine and other public purpose programs.

**ANNOTATION:**

[] *The optional industry-backed approach permits carriers to choose the level of oversight and the level of subsidy (in States with matching programs) that the subscriber can receive*. As NARUC pointed out in a recent *ex parte*, many State Lifeline programs provide support subsidies ranging from $2.50 to well over $10.00 per month to qualifying Lifeline recipients.[3]

[] *The optional industry-backed approach prevents State experiments with the level of service that can be profitably provided at a given subsidy level.* Long term allow this option will deprive the FCC of needed empirical data about the balance between the level of Lifeline services required needed to induce carriers to participate in a market segment. For example, in California, where there is a $13:50 match for lifeline, the commission provided options for subsidies – one was 1000 minutes a month and one was unlimited voice minutes a month. Ultimately, all carriers migrated to "unlimited" to get the maximum State subsidy.

[] *The optional industry-backed approach will undermine service quality for Lifeline recipients and increase instances of fraud and abuse*. California has rules and protections for carriers that the FCC does not impose – including requirements for lifeline providers to provide access to a multi-lingual operator and that lifeline services, wireless or no, must be operational inside a residence. As noted below, California Lifeline providers also include text, which is not a supported service under the Federal program. California uses the ETC process and oversight of the ETC's operations to protect program integrity. D.C., which only handles wireline Lifeline services, also has a very extensive procedure to assure that only qualified entities can get into the program via a third party administrator – and that Verizon's requests for reimbursement are carefully reviewed. There is no question that States include more protections for consumers via the ETC designation procedure. States also assure that carriers comply with FCC standards. Commissioner Sandoval provided an example of a carrier in CA that was not complying with the requirement to advertise Lifeline Voice Services. California required that carrier to conduct educational outreach and to partner with other utilities in joint advertisements.

[] The FCC should specify its new minimum standards do not impact in any way existing State authority, via the existing ETC designation process, or through via other applicable provisions of state law, to, in the words of 47 U.S.C. §253 to impose "requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." The FCC should also specify that 47 U.S.C. §254 cannot be construed to preempt such State authority as "burdening the federal program" (granted an illogical notion given the express text of §§214(e), 253, 254, and 1302, but one that AT&T has already advanced in *ex partes* in this proceeding.)

## 2) **Program Eligibility**

a) **Issue**: FCC Proposal limits list of federal programs that may be used to validate Lifeline eligibility to SNAP, SSI, Medicaid, Veterans Pension, Tribal along with income-based eligibility

b) **Suggestion**: *Allow States to add programs to qualify for Lifeline in that State including Women Infants and Children (WIC) and the School Lunch program - as*

[3] States responding to a March 2016 informal request about monthly Lifeline subsides, indicated, **Vermont** provides the greater of **$7 or 50 % of the basic service charge**, **California** provides a **$13.50** subsidy, **Connecticut** offers **$10.42**, the **District of Columbia** between **$6.50 & $8.50**, **Kansas, $7.77**, **Missouri, $6.50**. Several other States offer **$3.50/month**, including **Arkansas, Minnesota, Nebraska**, and **Oregon**. **Idaho's** subsidy is **$2.50** while New York's subsidy varies.

*long as they meet federal income guidelines. Income-based eligibility adds administrative costs compared to program eligibility.*

**ANNOTATION:**

[] *WIC and the School Lunch program are both focused on children. They are also the criteria Comcast uses to qualify subscribers for access to their low income Broadband Essentials program. Both Commissioners provided anecdotes of individuals that qualified for food stamps or other welfare programs, but would not apply for those benefits. In both examples, since WIC and the School Lunch Program focused on their children, they were willing to seek the subsidy via that program. If the income-based eligibility requirements match these programs, there is no reason NOT to include them as possible qualifying programs.*

## 3) Geographic coverage must be verified, don't rely on coverage claims

a) **Issue**: FCC Lifeline Fact sheet does not address geographic coverage of Lifeline providers.

b) **Suggestion**: *Allow States to approve and verify Lifeline geographic coverage for ETCs designation.* In California Lifeline carriers are approved for a geographical region and must demonstrate adequate coverage of that region. The CPUC staff analyzes coverage claims and have reshaped approved service regions for mobile LifeLine voice providers based on actual coverage analysis. Availability of broadband Internet access services provided by wireless telephone service providers is very geographic-specific. The lack of ubiquitous availability may fall short in delivering voice as a broadband VoIP app. This is particularly important in rural and tribal areas where broadband coverage is more limited, especially in light of the additional support offered to carriers providing Lifeline in tribal areas.

**ANNOTATION:**

[] 47 U.S.C. §214(e)(2) specifies that a State designates a carrier as an ETC "for a service area designated by a state commission." There is a reason for that requirement. Indeed, the ability to mandate a carrier provide Lifeline service in §214(e)(2) is based on a carrier not already being designated for a particular area. By creating an optional procedure allowing national designations the FCC is undermining the Congressional scheme. This is not a hypothetical concern. Carriers will "offer" service for a designated area even if they cannot provide the designated minimum speeds or even any service at all. In California, the Commission has required more generous equipment return policies for wireless carriers specifically because of this problem. And other studies have shown that in at least some cases, carriers do not provide advertised speeds.

## 4) Broadband support and consumer choice

a) The FCC Fact Sheet proposes support for robust broadband, and allows Lifeline support for stand-alone mobile or fixed broadband Internet access service.

b) **Suggestion**: *Allow Lifeline customers to apply federal Lifeline support to any available retail mobile or fixed broadband service plan.* The CPUC allows consumers to apply the support to any retail plan offered by the ETC that includes minimum standards/service elements that conform to California state LifeLine program rules.

c) **Question**: Will Lifeline Broadband providers be designated as Eligible Telecommunications Carriers (ETC) under Section 214 of the Telecom Act?

**ANNOTATION:**

[] UNDER THE OPTIONAL APPROACH – SOME CONSUMERS MAY NO LONGER BE ABLE TO AFFORD STAND ALONE VOICE. It is not clear. It appears under the "optional" broadband ETC proposal, that carriers can seek "national" permission and receive a subsidy for either stand-alone broadband or for a bundle that includes the standalone broadband.

That means a lifeline subscriber that just wants voice service – can only get it through a "nationally designated" service though buying a bundle of services.

Perversely, this means the subscriber may well end up paying MORE out-of-pocket to just get voice service from a carrier so designated. A combined broadband and voice package – even with low cost programs like Comcast's Internet Essentials – is likely to cost a family more than just voice alone.

In cases where there is a matching State subsidy and the subject carrier actually decides (and is permitted to by the new rules) also seek State designations the same problem arises. In DC for example, which provides between $6.50 and $7.50 in Lifeline Voice subsidies, recipients can leverage the federal Lifeline subsidy to get stand alone voice for $1 to $3 a month. If the providing carrier uses the optional procedure, and – as it appears from the fact sheet, the subsidy can only be applied to either standalone broadband or a bundle of broadband and voice, the customer will be paying more if they wish to use that carrier.

5) **FCC Fact Sheet Proposal support for mobile voice with unlimited talk through the end of 2019, after which Lifeline providers of mobile services will be required to include broadband as part of any supported service.**

a) **Comment**: Voice continues to be critical to Lifeline customers.

b) **Suggestion:** *Be clear that unlimited voice will continue to be required for Lifeline, and that voice service must conform to federal and state rules about interconnected voice including 911 access, and state rules about basic service*.

6) **Lifeline mobile voice minutes and quality**: Proposal requires unlimited minutes for mobile voice service, starting in December 1, 2016

a) **Comment**: Unlimited voice minutes for mobile Lifeline is important to consumers and feasible for carriers, 13 of 14 California state LifeLine carriers offer unlimited mobile voice at no additional cost to the LifeLine customer.

b) **Suggestion**: **Voice Quality and State Basic Service Requirements**: *Ensure that all federal Lifeline providers offer services that are reasonably comparable to retail services and comply with state basic service rules for interconnected voice*

c) **Suggestion**: **Text**: *Should providers be required to a provider minimum number of text message allowance? 14 of 14 California LifeLine wireless providers offer text in their plans.*

7) **Support for fixed-only voice service remains in light of ongoing affordability challenges**

a) **Comment**: Support for fixed-only voice is important for many customers, and for states such as California that have Carrier of Last Resort (COLR) obligations that require COLRs to provide residential basic voice phone service. In California COLRS must comply with state basic service rules which includes access to operator services including multi-lingual translation services, 911, dialtone quality, the voice service must work inside the residence, etc.

**b) Suggestion:** *Clarify that the fixed-only voice obligation is not time limited. Clarify that the FCC Lifeline decision does not preempt the states from imposing and administering state basic service obligations to voice service including Lifeline.*

**c) California LifeLine wireless participants = 1,507,522 = about 1.5 million** (14 of 14 California LifeLine carriers offer at no additional charge to the customer unlimited voice, all offering text, several offer broadband)

**d) California LifeLine wireline participants = 627,382 = about 627K, all offering unlimited voice** (long distance and toll service is available at an additional charge, except for Time Warner Lifeline which does not distinguish between local and long distance calls)

8) **Coordination between FCC and State Lifeline programs**

**a) Suggestion:** *Specifically clarify that FCC Lifeline does not limit state Lifeline or the ability of states to administer their own state Lifeline program including designation of eligible participants and program rules.*

**b) Suggestion**: *For States with their own Lifeline programs, allow flexibility in administering Lifeline, e.g. divide subsidies so federal Lifeline supports broadband and state Lifeline supports voice and text, and allow state administration of both programs including ETC designation and customer eligibility determination using a third-party administrator and allow opt-out of NLAD.*

[] THE OPTIONAL APPROACH DIRECTLY UNDERMINES CONTINUED COORDINATION. Its also bad policy for States with matching programs or States that do ETC designations. Consumers will be confused about how to seek relief if there are problems with the services, but the State is better positioned to know a carriers coverage, reputation, level of complaints both before and after an ETC designation. States with matching programs are the only ones positions to coordinate the subsidies., – SOME CONSUMERS MAY NO LONGER BE ABLE TO AFFORD STAND ALONE VOICE. It is not clear. It appears under the "optional" broadband ETC proposal, that carriers can seek "national" permission and receive a subsidy for either stand-alone broadband or for a bundle that includes the standalone broadband.

## 9) Contribution base:

a) *Address the contribution base for Lifeline in light of the proposed budget and support of broadband.*

b) *Clarify whether broadband and/or text are subject to universal service surcharges. In California some text carriers are assessing a surcharge and others are not.*