

March 22, 2016

VIA ECFS

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: *Ex Parte* Submission, Lifeline and Link Up Reform and Modernization
WC Docket Nos. 11-42, 09-197, 10-90**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this letter hereby provides notice that on March 18, 2016, I spoke by telephone with Rebekah Goodheart, Legal Advisor to Commissioner Clyburn, with regard to the above captioned proceedings on behalf of True Wireless, LLC and TerraCom, Inc. (the "companies"), both of which are wireless service providers focused on the Low Income ("Lifeline") universal service program. Specifically, I addressed the following critical issues that the Commission has raised in the FNPRM and/or the draft order announced by Chairman Wheeler and Commissioner Clyburn in a March 8, 2016 "fact sheet" that summarizes a draft order being circulated.¹

1. ***Maintaining the subsidy for voice-only mobile Lifeline services.*** The companies strongly support the Commission's core proposal to extend federal Lifeline support to broadband services. However, the March 8 fact sheet ignores the fact that many—indeed, possibly a significant majority—of current Lifeline subscribers neither desire nor need a broadband or bundled voice-and-broadband Lifeline service, and this will predictably continue to be the case indefinitely. It is an unfortunate but undeniable fact that many elderly and other low income recipients will continue to be slow to adopt broadband services, and will continue to rely primarily or entirely on voice service as their "Lifeline" to job opportunities, family and friends, caregivers, health care and emergency services, and the world at large, for the foreseeable future. In the companies' experience, many low-income individuals—especially elderly consumers—prefer to use wireless voice service to perform important daily tasks such as making appointments for health care. ***But adoption of the draft order as summarized in the fact sheet would effectively cut off Lifeline service to these particularly vulnerable populations, by requiring them for the first time to forego the significant benefits that mobile voice services***

¹ Fact Sheet, "Chairman Wheeler and Commissioner Clyburn Propose Rules to Modernize Lifeline Program to Provide Affordable Broadband for Low-Income Americans" (rel. Mar. 8, 2016).

bring because they will be unable to pay significant “co-pays” for an unwanted bundled service with equally unwanted, costly, mandatory minimum service standards. By immediately depriving millions of vulnerable Americans of the only telephone service they can afford, this action would directly contradict the key objective of Section 254,² which is to ensure that all Americans have access to telephone service.³ As a result, taking this action would be contrary to the Communications Act and arbitrary and capricious under the Administrative Procedure Act. At a minimum, before taking such an action, the Commission would have to explicitly recognize that it would deprive millions of Americans of the only phone service they have, and explain why that considerable human cost is worth incurring in light of other overriding statutory objectives.⁴ Nothing in the materials the Commission has made available about its proposal even recognizes the existence of this problem, much less provides a reasoned explanation of why this aspect of the proposal makes sense in light of it.

Moreover, the retention of the subsidy for unbundled voice services only when provided via wireline technology is problematic in other important ways: it unduly favors one technology over another, and ignores the fact that low income Americans are more likely to “cut the cord” than other segments of the population. Indeed, nearly 60 percent of poor Americans live in households with only wireless telephones.⁵ The current proposal relegates the most vulnerable low income Americans seeking a basic voice service to a wireline service tethered to their home, which, of course, is a non-starter for the homeless or even those with transient housing situations. **There is no reason—in fact or in the record underlying the FNPRM proceeding—to abolish or phase out support for voice-only mobile Lifeline service.**

² 47 U.S.C. § 254.

³ The overall goal of Section 254 is “the preservation and advancement of universal service.” *Id.*, § 254(b). Moreover, Section 254 provides that the FCC “shall” base its policies on the principle that “[t]here should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.” *Id.* § 254(b)(5); *see also id.* § 254(e) (support “should be explicit and sufficient to achieve the purposes of this section”); *id.* § 254(b)(3) (rural consumers should have access to affordable services that are reasonably comparable to those available to urban consumers); *see also Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001) (*Qwest I*). In light of these statutory directives, at a minimum, the Commission must “cogently explain why it has exercised its discretion in a given manner.” *Motor Vehicle Manufacturers Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 48 (1983).

⁴ *See, e.g., Qwest I*, 258 F.3d at 1205; *Qwest Commc’ns Int’l, Inc. v. FCC*, 398 F.3d 1222, 1239 (10th Cir. 2005); *Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313, 327 (5th Cir. 2001).

⁵ *See* U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2015” (released December 2015), *available at* <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201512.pdf>.

2. ***Minimum service standards and out-of-pocket payments.*** The March 8 fact sheet reflects an effort to “push the edge of the envelope” by thrusting a robust broadband service offering onto Lifeline service providers and customers alike. Despite its high ambitions—which would be a virtue if properly funded and implemented—the proposed order fails to understand the challenges of serving the very poorest. At a stagnant monthly subsidy of \$9.25 that was intended and designed to support only voice service (and freezes in place 2011 subsidy levels), the proposal will almost certainly require Lifeline customers to pay an out-of-pocket monthly fee to receive the bundled or broadband-only Lifeline service and the smartphones necessary to access the service, **even if they do not want, need, or even know how to use** the broadband service, or be limited to a wireline voice-only line in their homes, if they even have a home.

As several commenters have noted, there is no reliable evidence in the record to support the FNPRM’s bare assumption that wireless service costs have continued to decline significantly, such that the standard 250 monthly voice minute plans offered by most prepaid wireless Lifeline providers, with no out-of-pocket charge to Lifeline customer, had become inadequate under the \$9.25 monthly Lifeline subsidy. Yet the March 8 draft order apparently doubles and triples down on that assumption by (1) requiring mobile voice Lifeline plans to include *unlimited* monthly minutes, before phasing out mobile voice-only plans entirely, and (2) requiring robust and escalating mobile and fixed broadband minimum standards and service levels and, necessarily, expensive smartphones—all, magically, at an unchanged \$9.25 monthly subsidy level that was set based on the average subsidy available five years ago in 2011. The Commission is clearly “betting” that one of two things will occur:

1. that service providers will be able to meet these wholly new minimum service standards through a combination of a \$9.25 subsidy and internal cross-subsidization, which could only be done by the largest providers, ***undercutting the Commission’s stated goal of increasing competition in the Lifeline program***; or
2. that implicitly imposing out-of-pocket payments on all Lifeline subscribers to make up the difference will succeed, even though such a payment obligation was ***shown very clearly in the Commission’s own Lifeline broadband pilot program to have disastrous effects on broadband adoption by low income consumers.***⁶

Neither of these alternative assumptions/policy prescriptions is justified by the record in this proceeding. In fact, the retail pricing of large (and almost exclusively, facilities-based providers) cited in the recent blog post by the Chiefs of the Wireline and Wireless Competition Bureaus, is in fact, the wholesale pricing paid by smaller providers without the economies of scale of the

⁶ See Wireline Competition Bureau, *Low-Income Broadband Pilot Program Staff Report*, DA 15-624 (rel. May 22, 2015). See also Sprint Corporation *ex parte* notice (filed Mar. 2, 2016); Comments of CompTel (filed Aug. 31, 2015) at p. 35.

nation's largest carriers.⁷ More importantly, these proposals threaten to devastate the Lifeline program and displace scores of thousands of participants who neither want nor can afford the extra cost of these lofty standards, because it is precisely the smaller carriers who finally raised the program's historically low participation rate from well under 30% to today's 40%. Relying only on large ILEC providers has never been the solution, and is contrary to the Commission's stated goal of promoting competition. The recent growth in Lifeline participation is directly attributable to innovative competitors who have brought a valuable service to millions of Americans. Prior to this innovative market entry, consumer choice was limited, the ILECs were reluctant and indifferent Lifeline providers, and services designed for low income Americans were hard to find.

Accordingly, while increasing broadband adoption among Lifeline customers rightfully should be an important public policy objective of the Commission, it simply would be utterly wasteful, counterproductive and indeed foolhardy, as well as arbitrary and capricious,⁸ for the Commission to phase out Lifeline support for mobile voice-only Lifeline services and, in practical effect, "force" all Lifeline customers to accept a broadband service, or regress to only receiving a wireline voice-only service. There is no record to support a *compulsory* broadband Lifeline offering. Nor is there any justification or record support for the likely significant out-of-pocket co-pay that would now have to be paid by virtually *all* Lifeline customers—including particularly vulnerable low income populations that do not even *want* a broadband Lifeline service and will not be able to afford the additional charge to receive it.

3. ***Failure to abolish or meaningfully streamline the ETC compliance plan process and act on long-pending compliance plans.*** Although the fact sheet describing the March 8 draft order promises "streamlined, nationwide entry for a new category of providers, called Lifeline Broadband Providers,"⁹ there is no indication that the Commission will make any changes to its utterly broken Lifeline compliance plan approval requirement for non-facilities based wireless voice service providers. If that is the case, such inaction is grossly unfair and inequitable to the scores of Lifeline ETCs, including True Wireless, that have been awaiting action on their compliance plans for more than three years. As several commenters have noted, the Commission

⁷ Lifeline: Striking the Right Balance, blog post by Jon Wilkins, Chief, Wireless Competition Bureau and Matt DelNero, Chief, Wireline Competition Bureau (Mar. 21, 2016), available at <https://www.fcc.gov/news-events/blog/2016/03/21/lifeline-striking-right-balance> (citing data from the FCC 18th Mobile Competition Report).

⁸ See, e.g., *Motor Vehicle Manufacturers Ass'n*, 463 U.S. at 43 (agency action is arbitrary and capricious if it "runs counter to the evidence before the agency").

⁹ March 8 fact sheet at p. 2

has not granted a single compliance plan since December 2012.¹⁰ It also runs counter to the Commission's stated objective to increase entry and competition among service providers.

4. ***Undermining or abolishing the ability to perform real-time eligibility verification.*** The March 8 summary of the draft order also announces the advent of a "third-party National Eligibility Verifier," but is oddly silent on whether this regime will continue to support real-time, one-stop eligibility verification. If it does not, a delayed process would burden Lifeline applicants, such as by involving the mailing of documents and/or handsets to this typically itinerant population; would serve to discourage Lifeline adoption by increasing processing times and possibly requiring multiple trips to the provider's place of business and multiple communications with the national verifier and/or the carrier; and would unduly advantage certain service provider business models over others.

For these reasons, the Commission should (1) preserve Lifeline support for stand-alone mobile voice service (which, as the FCC has long recognized, can be critical in emergency situations); (2) reject proposals to impose minimum service requirements that increase the number of minutes of service ETCs must provide while freezing the monthly subsidy they receive on behalf of their customers; (3) promptly act on long-pending compliance plans and streamline the process for ETC eligibility; and (4) ensure that any new process to establish customer eligibility allows real-time verification. At a minimum, the Commission should maintain full Lifeline support for stand-alone voice service without an "unlimited" requirement at least until it has solicited and considered further evidence on the real cost of providing such service, as well as the likely impact of prospective out-of-pocket monthly payments on Lifeline program participation. The record and sound policy support these proposals; and contrary Commission action not only would be arbitrary and capricious, but also would undermine the Commission's stated goals of promoting robust competition among Lifeline providers and promoting broadband adoption by the low-income individuals whom the revamped Lifeline program is intended to serve.

¹⁰ See FCC, *Lifeline Compliance Plans & ETC Petitions*, available at <https://www.fcc.gov/general/lifeline-compliance-plans-etc-petitions>; Comments of CompTel at p. 21.

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Respectfully submitted,

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