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

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

THIRD REPORT AND ORDER, FURTHER REPORT AND ORDER, AND ORDER ON RECONSIDERATION

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By the Commission: Chairman Wheeler and Commissioners Clyburn and Rosenworcel issuing separate statements; Commissioners Pai and O'Rielly dissenting and issuing separate statements.

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I. INTRODUCTION

1. The time has come to modernize Lifeline for the 21st Century to help low-income Americans afford access to today's vital communications network—the Internet, the most powerful and pervasive platform in our Nation's history. Accessing the Internet has become a prerequisite to full and meaningful participation in society. For those Americans with access, the Internet has the power to transform almost every aspect of their lives, including their ability to stay in contact with work, friends, and family; to stay abreast of news, to monitor important civic initiatives, to look for a new home, or to make essential financial decisions. Households with schoolchildren access the Internet to research issues, check assignments, and complete homework, while people with critical or even routine health needs use the Internet to access information about their condition and stay in touch with health care providers.

2. But not all Americans are able to enjoy the benefits of broadband in today's society, even as the importance of broadband grows. There are still 64.5 million people without a connection to the Internet and that figure hits hardest on those with the lowest incomes. The biggest reason these Americans don't sign up for broadband today is cost. Only half of all households in the lowest income tier subscribe to a broadband service and 43 percent say the biggest reason for not subscribing is the cost of the service. Of the low income consumers who have subscribed to mobile broadband, over 40 percent have to cancel or suspend their service due to financial constraints. Affordability remains the primary barrier to broadband adoption.

3. In this Order, we adopt reforms to make the Commission's Lifeline program a key driver of the solution to our Nation's broadband affordability challenge. Intended initially as a mechanism to reduce the cost of phone service for low-income customers, the Lifeline program has worked in lockstep with telephone providers and consumers to increase the uptake in phone service throughout the country and has kept pace with changes in technology as the Nation moved from a wireline world to one where the number of mobile devices and services now exceeds the population of the United States. But at a time when our economy and lives are increasingly moving online and millions of Americans remain offline, the Lifeline program must keep pace with this technological evolution to fulfill its core mission.

4. Our actions here are also compelled by the Congressional directives that guide our approach to all of universal service. Congress expressed its intent in the Communications Act of 1934 to make available communications service to "all the people of the United States"[1] and, more recently, in the Telecommunications Act of 1996, Congress asserted the principle that rates should be "affordable," and that access should be provided to low-income consumers in all regions of the nation.[2] Congress also recognized at the same time that new technologies, in addition to landline telephone service, could provide telecommunication services to consumers and that "[u]niversal service is an evolving level of telecommunications services."[3] Given the evolution of communications technologies and the great strides the Commission has made in improving the performance of the Lifeline program, we must modernize the Lifeline program so it can play an essential and important role in helping those low-income Americans that most need access to valuable broadband services.

5. The Order we adopt today focuses the Lifeline program on broadband by encouraging broadband providers to offer supported broadband services that meet standards we set to ensure ratepayers supporting the program are obtaining value for their contributions and Lifeline subscribers can participate fully in today's society. We also take important steps to improve the management and design of the program by streamlining program rules and eliminating outdated program obligations with the goal of providing incentives for broadband providers to participate and increasing competition and meaningful broadband offerings to Lifeline subscribers. Finally, we follow through on the important and highly effective reforms the Commission initiated in 2012 by making several additional changes to combat waste, fraud, and abuse, including establishing a National Lifeline Eligibility Verifier (National Verifier) that will remove the responsibility of determining Lifeline subscriber eligibility from providers.

II. EXECUTIVE SUMMARY

6. To create a competitive Lifeline broadband program, this Order takes a variety of actions that work together to encourage more Lifeline providers to deliver supported broadband services as we transition from primarily supporting voice services to targeting support at modern broadband services. We first allow support for robust, standalone fixed and mobile broadband services to ensure meaningful levels of connectivity and we continue to support bundled voice and broadband services. We also establish minimum service standards for broadband and mobile voice services to ensure those services meet the needs of the consumers, and we recognize and allow an exception in areas where fixed broadband providers do not meet the minimum standards. Finally, in recognition of the important operational needs of Lifeline providers we implement a five and one-half year transition, during which we will gradually increase mobile voice and data requirements and gradually decrease voice support levels. After completion of this multi-year transition, Lifeline funding will be focused on supporting modern services.

7. We next take a step that will curb abuse in the program and encourage provider participation by creating the National Verifier, which will transfer the responsibility of eligibility determination away from Lifeline providers. By lowering Lifeline providers' costs of conducting verification and reducing the risks of facing a verification-related enforcement action, the National Verifier will make the Lifeline program more attractive to providers. The National Verifier will also remove many opportunities for Lifeline providers to inappropriately enroll subscribers. This step—taking determination of eligibility out of the hands of the same parties that stand to benefit financially from a finding of eligibility—is critical to preventing waste, fraud, and abuse. At the same time, we streamline

[1] Communications Act of 1934, Pub. L. No. 73-416, § 1 (1934) (codified as amended at 47 U.S.C. § 151) (creating the Federal Communications Commission).

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, § 101(a) (1996) (codified at 47 U.S.C. § 254(b)); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8955, para. 335. (1997) (*Universal Service First Report and Order*).

[3] 47 U.S.C. § 254(c)(1).

the criteria for Lifeline program qualification in recognition of the way the vast majority of Lifeline subscribers gain entry to the program as well as through a new program for veterans. We will allow entry based on participation in SNAP, Medicaid, SSI, Federal Public Housing Assistance, and the Veterans Pension benefit program, as well as all current Tribal qualifying programs. We will continue to allow low-income consumers to qualify by demonstrating income of less than 135 percent of the federal poverty guidelines.

8. The Order also encourages entry of new Lifeline providers to supply broadband by creating a streamlined federal Lifeline Broadband Provider (LBP) designation process.[4] Working within the statutory construct in sections 214 and 254 limiting support to eligible telecommunications carriers (ETCs), we establish a process by which broadband providers may receive a designation from FCC staff to provide broadband Lifeline to qualifying low-income consumers. This new LBP designation process provides an additional alternative to the current ETC designation processes, which remain in place. At the same time, we modernize the obligations of broadband Lifeline providers by interpreting and forbearing from parts of the statute that are not needed in the modern broadband marketplace to ensure just and reasonable rates and the protection of consumers. In particular, we allow for broadband-only provision of service, flexibility in service areas, and streamlining of the relinquishment process. We also interpret section 214(e)(1)(B) to minimize advertising burdens on providers. We establish a pathway for certain existing Lifeline providers currently obligated to provide voice services to obtain relief from such obligations as clear, measurable benchmarks are met. The benchmarks are designed in such a way that providers have strong incentives to encourage uptake of broadband services.

9. We also recognize that increasing digital inclusion means more than addressing the affordability of broadband service. To that end, we require that Lifeline providers make available Wi-Fi enabled devices when providing such devices for use with the Lifeline-supported service. We also require Lifeline providers of mobile broadband service to make available hotspot-enabled devices. We believe these measures will help to extend the connectivity of the service Lifeline supports. We also direct the Consumer and Governmental Affairs Bureau (CGB) to develop and execute a digital inclusion plan that will bring together a variety of stakeholders to determine how Lifeline can best be leveraged.

10. This Order next recognizes the importance of fiscal responsibility in the program, establishes an annual budget of $2.25 billion, and directs the Bureau to submit a report to the Commission if Lifeline disbursements in a year exceed 90 percent of this level, with an expectation that the Commission will act within six months of this report. It is essential that we ensure the program is designed to operate in an efficient, highly accountable manner that obtains great value from the expenditure of ratepayer dollars. In establishing a budget mechanism, we bring the Lifeline program into alignment with the other three programs of the Universal Service Fund, each of which operates within a budget.

11. We also make a number of changes to further improve the efficient administration and accountability of the Lifeline program. We implement measures to evaluate the Lifeline program to determine whether it is achieving its objectives, we reform the non-usage rules, we make recertification a rolling process, we establish a 12-month benefit port freeze for broadband offerings, we take steps to increase transparency in the program, and we modify program forms to reduce administrative burdens on providers.

[4] Since Lifeline Broadband Providers will be a subset of eligible telecommunications carriers (ETCs) but ETCs that are not LBPs may also be eligible to receive reimbursement for offering Lifeline-supported broadband Internet access service, *see infra* section III.E (Increasing Competition for Lifeline Consumers), some of our rules will apply specifically to LBPs while others will apply more broadly to all ETCs participating in the Lifeline program. In this Order we refer to LBPs specifically when the rule being discussed applies only to LBPs.

III. THIRD REPORT AND ORDER

A. Modernizing Lifeline to Support Broadband

1. Background

a. Importance of Broadband

12. Much like telephone service a generation ago, broadband has evolved into the essential communications medium of the digital economy,[5] continuing to transform the landscape of America even more rapidly and pervasively than earlier infrastructure networks. "Like railroads and highways, broadband accelerates the velocity of commerce, reducing the costs of distance," but at speeds we have never experienced before in our history.[6] Access to broadband shortens the distance to high-quality education, meaningful employment, and reliable healthcare. It is now the dominant technology used to communicate, educate, inform, and entertain. Congress recognized this in 2009 when it directed the Commission to develop a National Broadband Plan ensuring that every American has "access to broadband."[7]

13. As explained in the *2015 Lifeline FNPRM*[8] and confirmed by an overwhelming majority of commenters, broadband access is of critical importance for consumers of all incomes. Surveys show that when households have the means, they connect to the Internet at home at rates upward of 95 percent[9] and very often also connect to the Internet with mobile devices that provide new functionalities and a different user experience. Like telephone service in the last century, a broadband connection has become an essential tool for participating in the 21st Century economy.

14. Our Nation's students and teachers are using broadband in greater and more innovative ways, not only during the day in class but also at home after school when continuing their learning. In order to complete assignments, conduct research, and otherwise stay connected to their schools, students must be able to access the Internet outside of school hours.[10] Commenters have cited numerous studies that confirm that a lack of Internet access at home puts students at a disadvantage with regard to completing their assignments and keeping up with their peers.[11] Lifeline can help bridge this homework gap by providing more opportunities for students to meaningfully access the Internet at home.

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[5] *See* Ralph B. Everett, Georgetown University Center For Business and Public Policy, The Digital Economy and Closing the Opportunity Gap at 4 (2015), http://www.gcbpp.org/files/EPV/EPV_Everett_OpportunityGap62015.pdf; (Georgetown Everett Study); *see also* Letter from The Leadership Conference on Civil and Human Rights, to Tom Wheeler, Chairman, FCC, WC Docket No. 11-42 et al., at 2 (filed June 10, 2015) (The Leadership Conference June 10, 2015 Letter).

[6] FCC, Connecting America: The National Broadband Plan at 3 (2010), http://www.broadband.gov/plan (National Broadband Plan).

[7] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Title VI, § 6001(k)(2)(D), 123 Stat. 115, 516 (2009) (ARRA of 2009).

[8] *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818 (2015) (*2015 Lifeline FNPRM*).

[9] *See, e.g.*, Nat'l Telecomm. and Info. Admin., U.S. Dept. of Commerce, Exploring the Digital Nation, Embracing the Mobile Internet at Figure 10 (2014), https://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_embracing_the_mobile_internet_10162014.pdf.

[10] *See, e.g.*, Public Knowledge, Appalshop, and Center for Rural Strategies Comments at 5-7; Mobile Beacon Comments at 1-5.

[11] *See, e.g.*, Georgetown Everett Study, *supra* note 5, at 4; Linda Darling-Hammond et al., Stanford Ctr. For Opportunity Policy in Educ., Using Technology to Support At-Risk Students' Learning at 2-3, fig. 2 (2014),

(continued….)

15. The Internet also provides immense benefits to consumers seeking employment not only by helping them search and apply for jobs online, but also as a research tool to learn more about potential employers.[12] Based on a recent study by Pew Research Center, as many as 79 percent of Americans used online resources in searching for jobs within the last two years.[13] One-third of recent job seekers have reported that the Internet was the most important resource available in finding employment.[14] Further, digital literacy skills are increasingly essential when applying for employment. Currently, more than half of all jobs require digital literacy skills, with that number expected to increase to 77 percent by 2021.[15]

16. Commenters have also recognized how broadband increasingly helps consumers to access health information and services and improve health care outcomes.[16] Commissioner Mignon Clyburn has noted that within a recent telemedicine trial, healthcare costs were reduced by 27 percent, acute and long-term care costs were reduced by 32 percent and hospitalizations were reduced by 45 percent.[17] For most, the Internet is now a primary source of communications and source of information in the United States.

17. The growing importance and value of online content, applications, and services has fueled consumer demand for faster and better broadband, which, in turn, has led to robust investment and deployment by broadband providers. The Commission's *2016 Broadband Progress Report* noted that the private sector invested roughly $78 billion in 2014.[18] Wireless providers in the U.S. have spent more than

(Continued from previous page)
https://edpolicy.stanford.edu/sites/default/files/scope-pub-using-technology-report.pdf; Kristen Purcell et al,. Pew Research Ctr., How Teachers Are Using Technology at Home and in Their Classrooms at 2 (2013), http://www.pewinternet.org/files/old-media//Files/Reports/2013/PIP_TeachersandTechnologywithmethodology_PDF.pdf.

[12] Connected Nation, The 2012 Jobs and Broadband Report: National Projections on How American Businesses Use Computers and Broadband to Grow, Hire, and Thrive at 2 (2012), http://www.connectednation.org/sites/default/files/connected-nation/files/cn_biz_whitepaper2012_final.pdf (noting that in 2012, over 2.5 million U.S. businesses used the Internet to advertise job openings or accept job applications, including approximately 139,000 businesses that only accept online job applications).

[13] Aaron Smith, Pew Research Center, Searching for Work in the Digital Era at 2 (2015), http://www.pewinternet.org/files/2015/11/PI_2015-11-19-Internet-and-Job-Seeking_FINAL.pdf (finding the Internet as a top resource for many of today's job hunters) (2015 Pew Study on Internet as Resource for Jobs); *see also* David A. Super Comments at 3-4 (providing examples of how broadband helps consumers find employment).

[14] 2015 Pew Study on Internet as Resource for Jobs at 3.

[15] FCC, Broadband Adoption Task Force, Broadband Adoption Presentation to FCC Open Meeting, slide 11 (Nov. 30, 2011), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311281A1.pdf.

[16] *See, e.g.*, Standing Rock Sioux Tribe Comments at 3 (noting that broadband access could help with initiatives for healthcare on the Reservation); California Telehealth Network Comments at 1-2 (contending that having in-home broadband is vital to utilize telemedicine, which improves personal health and lowers healthcare costs); Pew Research Center, The Diagnosis Difference at 14 (2013), http://www.pewinternet.org/files/old-media//Files/Reports/2013/PewResearch_DiagnosisDifference.pdf.

[17] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7949, Statement of Commissioner Mignon L Clyburn.

[18] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2016 Broadband Progress Report, 31 FCC Rcd 699, 758, para. 137 (2016) (*2016 Broadband Progress Report*) (citing USTelecom, Broadband Investment Gains Continued in 2014, USTelecom Research Brief (2015), http://www.ustelecom.org/sites/default/files/documents/Investment-2014-Research-Brief-July-2015.pdf).

$32 billion in capital investments in 2014 and over $430 billion since 1985.[19] The private industry's investment and focus on the deployment of broadband to consumers provides yet another example of how our economy has rapidly moved to the digital age, where most information is exchanged.

b. Narrowing the Digital Divide

18. The Commission has emphasized that "Americans turn to broadband Internet access service for every facet of daily life, from finding a job to finding a doctor, from connecting with family to making new friends, from becoming educated to being entertained."[20] The importance of broadband Internet to our Nation makes it critical that every American has access to the Internet.

19. Yet a digital divide persists across the United States, with low-income consumers adopting broadband at rates well below the rest of the country.[21] According to the Pew Research Center, 84 percent of American adults use the Internet, with the highest adopters being younger adults from more affluent households.[22] Most of those without access to these services tend to be disproportionately minorities, economically disadvantaged, without formal education, non-English speaking, and older.[23] As articulated by commenters representing a wide array of industry groups and consumers, without access to broadband service, low-income consumers are unable to fully participate in our society and economy.[24]

20. When available, many vulnerable populations access the Internet using mobile devices. Now 64 percent of Americans own a smartphone[25] and 19 percent use such devices to access online content regarding employment, education, health care, and government services.[26] These are positive developments, but the evidence indicates that the digital divide still persists. Forty-eight percent of Americans, particularly from vulnerable communities, found the cost of maintaining wireless services to be a financial hardship.[27] In addition to the cost of the service acting as a barrier, smartphone-dependent users frequently reached their data caps as part of their monthly plan.[28] Recognizing these hardships,

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[19] *2016 Broadband Progress Report*, 31 FCC Rcd at 758, para. 137; CTIA, Annual Wireless Industry Survey (2015), http://www.ctia.org/your-wireless-life/how-wireless-works/annual-wireless-industry-survey.

[20] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability To All Americans In A Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant To Section 706 of the Telecommunications Act of 1996, As Amended By the Broadband Data Improvement Act*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, 1377, para. 2 (2015) (*2015 Broadband Progress Report*).

[21] *See* Andrew Perrin and Maeve Duggan, Pew Research Center, Americans' Internet Access: 2000-2015 (2015), http://www.pewinternet.org/files/2015/06/2015-06-26_internet-usage-across-demographics-discover_FINAL.pdf (Americans' Internet Access Study).

[22] *See id.* at 2.

[23] *See* John B. Horrigan, Pew Research Center, The Numbers Behind the Broadband "Homework Gap" (Apr. 20, 2015), http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/.

[24] *See, e.g.*, ITIF Comments at 2-4; California Emerging Technology Fund Comments at 10-14 (California ETF Comments); AT&T Comments at 2.

[25] *See* Pew Research Center, U.S. Smartphone Use in 2015 at 3-4 (2015), http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf (Pew Study on Smartphone Use); Monica Anderson, Pew Research Center, 6 Facts about Americans and their Smartphones (Apr. 1, 2015), http://www.pewresearch.org/fact-tank/2015/04/01/6-facts-about-americans-and-their-smartphones/.

[26] *See* John Horrigan and Maeve Duggan, Pew Research Center, Home Broadband 2015 at 2 (2015), http://www.pewinternet.org/files/2015/12/Broadband-adoption-full.pdf (Pew Study Home Broadband 2015); Pew Study on Smartphone Use at 2.

[27] Pew Study on Smartphone Use at 4.

[28] *Id.*

many commenters participating in this modernization of the Lifeline program have urged the Commission to implement policies that ensure low-income consumers have access to affordable broadband.[29]

21. Narrowing the digital divide positively impacts low-income consumers as well as our communities at-large. The National Telecommunications and Information Administration (NTIA) has found that when disadvantaged groups get online, they use the Internet to find jobs, which helps both the individual and the national economy.[30] Commenters have submitted that broadband adoption has positive effects on the nation's job base, economic growth, and standard of living.[31] With increased adoption, businesses gain access to new customers even as they give those customers access to cheaper goods and services online. Governments at all levels are better able to efficiently communicate with and deliver services to their citizens online.

22. In order to narrow the digital divide and provide broadband access to all consumers, commenters have claimed that the Commission needs to ensure that such consumers have access to robust service offerings.[32] Given that broadband is an essential tool for completing homework, searching and applying for jobs, and interacting with healthcare providers, it is imperative that everyone has access to sufficient service.[33] To narrow the digital divide, low-income consumers should have access to services that are reasonably comparable to those which are available to a majority of Americans.[34]

c. History and Purpose of Lifeline

23. Ensuring the availability of communications services for low-income households has long been a partnership among, and a significant priority for, the Commission, the states, and the private sector.[35] Universal service has been a fundamental goal for Congress and the Commission since the passage of the Communications Act of 1934, in which Congress stated its intention to "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges."[36] Consistent with its universal service goals, the Commission originally implemented a low-income support program in 1985, after the divestiture of AT&T, that required carriers to offer discounted service to qualifying low-income consumers.[37] At the time, the Commission was concerned that the implementation of subscriber line charges (SLC) would force low-income consumers to drop landline telephone service, which, the Commission found, had "become crucial to full participation in our society and economy . . . ."[38] To ensure that the charge would not have an adverse effect on universal service, carriers were required to

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[29] *See, e.g.*, Leadership Conference on Civil and Human Rights Comments.

[30] *See* NTIA, Exploring the Digital Nation: America's Emerging Online Experience at ii (2013), http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_-_americas_emerging_online_experience.pdf.

[31] Public Knowledge Comments at 18; Benton Foundation Comments at 5-6.

[32] *See, e.g.*, California ETF Comments at 15-17; Benton Foundation Comments at 7-11.

[33] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7828-37, paras. 17-33.

[34] *Id*. at 7828, para. 17.

[35] The Commission originally established the Lifeline program pursuant to its general authority under sections 1, 4(i), 201, and 205 of the Communications Act of 1934. *See Universal Service First Report and Order*, 12 FCC Rcd at 8952-53, para. 329.

[36] 47 U.S.C. § 151 (creating the Federal Communications Commission).

[37] *MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (1985) (*MTS and WATS Market Structure Report and Order*).

[38] *Id*. at 942, para. 11.

waive the SLC for low-income consumers, and in turn, the Lifeline program would make such carriers whole.[39]

24. With the passage of the Telecommunications Act of 1996, Congress codified the commitment to advancing the availability of telecommunications services to low-income consumers and established principles upon which the Commission "shall base policies for the preservation and advancement of universal service."[40] When implementing this directive through codification of Lifeline and Link Up support programs, the Commission observed that, for the first time, Congress expressed the principle that rates should be "affordable," and that access should be provided to low-income consumers in all regions of the nation.[41] Congress also recognized that new technologies, in addition to landline telephone service, could provide telecommunication services to consumers and that "[u]niversal service is an evolving level of telecommunications services."[42] At that time, landline telephone delivered primarily through a pair of copper wires to the home was the dominant mode of service that consumers relied upon to connect with other people and emergency services and to access information.

25. In 2005, acknowledging the rapid change in communications technologies, the Commission updated the Lifeline program, permitting a path to participation by non-facilities-based telecommunications providers and, in 2008, expanding the Lifeline market to prepaid wireless service resellers.[43] Unfortunately, the Commission did not at the same time adjust the program rules to keep pace with the new technologies, the financial incentives, or the subsequent growth in the program. Without adequate protections in place, there was an onset of waste and abuse that had not been present in the Lifeline program before. Countering these developments, in 2011 and 2012 the Commission, with the help of the Federal-State Joint Board on Universal Service, comprehensively reformed the program to address waste and abuse and also took the first steps in modernizing the Lifeline program to represent the needs of low-income consumers in the 21st Century.[44]

d. Commission's Call to Action to Increase Availability of Broadband to Low-Income Americans

26. Congress, in 2009, directed the Commission to develop a National Broadband Plan to address critical problems slowing the progress of availability, adoption, and utilization of broadband throughout the United States.[45] Congress indicated the plan should include, among other things, "a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public[.]"[46] As part of its efforts to understand these issues, in February 2010, the Commission published the results of its first Broadband Consumer Survey, which identified the issues preventing Americans from adopting broadband.[47] The survey results demonstrated how some

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[39] *See id.*

[40] 47 U.S.C. § 254(b); *Universal Service First Report and Order*, 12 FCC Rcd at 8955, para. 335.

[41] *Id*.

[42] 47 U.S.C. § 254(c)(1).

[43] *See, e.g.*, *Petition of TracFone Wireless, Inc. for Forbearance*, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*); *TracFone Wireless, Inc.*, *Petition for Designation as an Eligible Telecommunications Carrier in New York et al.*, Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*).

[44] *See generally 2012 Lifeline Reform Order*.

[45] *See* ARRA of 2009.

[46] *Id.* § 6001(k)(2)(B), 123 Stat. at 516.

[47] John Horrigan, FCC, Broadband Adoption and Use in America, OBI Working Paper No. 1 at 11 (2010). At the time, this survey was distinct given its focus on non-adopters of broadband at home. *Id.*

demographic groups, such as low-income households, were less likely to subscribe to broadband at home. In 2010, roughly 35 percent of Americans (or 80 million adults) did not use broadband at home.[48]

27. Building off these survey results, the 2010 National Broadband Plan recognized that although increasing numbers of consumers had broadband at home, some segments of the population—particularly low-income households—did not subscribe to broadband at levels similar to that of the population at large.[49] The National Broadband Plan noted that in 2010, the cost of digital exclusion was large and growing. "As more aspects of daily life move online and offline alternatives disappear, the range of choices available to people without broadband narrows. Digital exclusion compounds inequities for historically marginalized groups."[50]

28. The National Broadband Plan identified three major barriers to adoption—cost, digital literacy, and relevance—that kept non-adopters from subscribing to broadband service.[51] To help in overcoming cost barriers for low-income consumers, the National Broadband Plan recommended that the Commission implement a low-income pilot program to generate high-quality data about how best to design efficient and effective long-term broadband support mechanisms for low-income consumers within the Lifeline program.[52]

29. In its *2012 Lifeline Reform Order*, the Commission established an express goal for Lifeline to ensure the availability of broadband service for low-income Americans.[53] As a first step in achieving this goal, the Commission directed the Bureau to launch a low-income broadband pilot program.[54] Each pilot project provided support for broadband service to qualifying low-income consumers for 12 months. In selecting the pilot projects, Commission staff struck a balance between allowing providers enough flexibility in the design of the pilots and ensuring the structure of each project would result in data that would be statistically and economically relevant.[55] The Bureau prepared a report to assist the Commission in considering reforms to the Lifeline Program and released for public review and consumption all of the data reported by the participating carriers.[56] In the *2015 Lifeline FNPRM*, the Commission proposed to modernize the Lifeline program by including support for broadband and sought comment on how to restructure the program to reflect the realities of the 21st Century communications marketplace.[57]

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[48] National Broadband Plan at 167-68.

[49] *Id*.

[50] *Id*. at 128.

[51] *Id*. at 168-69.

[52] *Id*. at 172-73. In 2010, the Commission also hosted a roundtable discussion to solicit input on how to design a pilot program to test the effectiveness of supporting broadband services directed to low-income households. *See Wireline Competition Bureau Announces June 23, 2010 Roundtable Discussion to Explore Broadband Pilot Programs for Low-Income Consumers*, Public Notice, 25 FCC Rcd 7272 (2010), http://www.fcc.gov/events/roundtable-discussion-explore-broadband-pilot-programs.

[53] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6673-74, paras. 33-34.

[54] *See id.* at 6794-96, paras. 323-27.

[55] *See generally Lifeline and Link Up Reform and Modernization*, Order, 27 FCC Rcd 15842 (WCB 2012).

[56] *See generally* Broadband Pilot Report, Wireline Competition Bureau Staff Report, 30 FCC Rcd 4960 (WCB 2015) (Broadband Pilot Report); *see also* Connected Nation, Inc. Comments at 12-15 (submitting that, based on results of the Commission's Lifeline Pilot Program, Lifeline can have an impact on closing the broadband adoption gap); John Mayo, Olga Ukhaneva, and Scott Wallsten Comments at 3-4 (discussing how the pilot projects were instructive to better understanding broadband adoption).

[57] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7824-25, para. 9.

2. Discussion

a. Broadband as a Supported Service

30. There is widespread consensus among commenters that the time has come for the Commission to modernize the Lifeline program to support broadband consistent with the national policy of promoting universal service. Based on the record before us, we take the important step toward achieving one of the express goals of the program by amending the definition of Lifeline to include broadband Internet access service (BIAS) as a supported service in the Lifeline program. Through our actions today, we hereby amend section 54.101 to include BIAS as a supported service.[58] More specifically, our definition of BIAS mirrors that under section 8.2(a) of the Commission rules, which defines BIAS as "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service."[59] Finally, consistent with our change to section 54.101, we also amend section 54.401 in our Lifeline rules to include BIAS as eligible for Lifeline support.[60] By adopting these amendments as well as our forbearance in section III.E.2 (Lifeline Obligations for Eligible Telecommunications Carriers), we allow service providers to provide BIAS as a standalone offering to qualifying low-income consumers. The obligations for receiving Lifeline support for both BIAS and voice telephony service are further defined below.[61]

31. Our actions today are consistent with the universal service goals promulgated by Congress.[62] Congress articulated national goals in section 254 of the Act that services should be available at "affordable" rates and that "consumers in all regions of the nation, including low-income consumers . . . should have access to telecommunications and information services."[63] Congress also made clear in section 254(c) that "[u]niversal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services."[64] As recently as 2009, Congress, in directing the Commission to develop a National Broadband Plan, specifically dictated that such a plan must provide a detailed strategy for achieving affordability of broadband services.[65]

32. Within the record before us, there is ample evidence to find that BIAS meets the standard set forth in section 254(c) given the many ways that individuals rely on broadband in their daily lives, the significant percentage of the population with means subscribing to such services, and the deployment and investment spent on infrastructure.[66] Taking these factors into account, we conclude it is imperative for us to include BIAS as a supported service.

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[58] *See* Letter of Matthew F. Wood, Policy Director, Free Press, and New America's Open Technology Institute (OTI), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1-2 (filed Feb. 26, 2016) (Free Press and OTI Feb. 26 *Ex Parte*) (advocating for the Commission to amend 54.101 to include broadband).

[59] 47 CFR § 8.2(a) (defining broadband Internet access service).

[60] These amendments to the Commission rules will take effect on the same date as the minimum service standards set forth in section 54.408 of the Commission rules. *See infra* section III.B.2 (Minimum Service Standards).

[61] *See infra* section III.B (Characteristics of Lifeline Support).

[62] *See, e.g.*, Public Knowledge Comments at 20-21.

[63] 47 U.S.C. § 254(b)(1),(3).

[64] 47 U.S.C. § 254(c).

[65] *See* ARRA of 2009 § 6001(k)(2)(B).

[66] 47 U.S.C. § 254(c). In determining whether services are supported by the Fund, Congress directed the Commission to consider the extent to which such services: "(A) are essential to education, public health, or public safety; (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority

(continued….)

33. More than 200 commenters responded to the Commission's *2015 Lifeline FNPRM* with nearly all of them urging the Commission to include broadband in the Lifeline program.[67] There is widespread consensus from a range of commenters including service providers,[68] state public utilities commissions,[69] academics,[70] software companies,[71] and consumer advocates.[72]

34. Moreover, objections to modernizing the Lifeline program to include support for broadband principally concern collateral effects that can be addressed without sacrificing program modernization. We do so elsewhere in today's Order. For example, both AT&T and Verizon have expressed concern over amendments to section 54.101 to include BIAS as a supported service[73] on the theory that all ETCs receiving high-cost support would be obligated to offer BIAS throughout their designated service areas, even in those areas where they do not receive high-cost support or have not deployed broadband networks with the minimum speed standards.[74] We recognize that, subsequent to the 1996 Act, state public utilities commissions designated ILECs as ETCs wherever they offered voice telephony service in a state and defined their designated service areas for purposes of receiving federal universal service support as such, including Census blocks where the provider does not currently receive high-cost support or is not obligated to build-out broadband at 10 megabits per second (Mbps) download/1 Mbps upload (10/1 Mbps) speeds pursuant to Commission rules. As a result, ILECs have had the Lifeline obligation to provide discounted voice service throughout their designated service area.[75] We are sympathetic to ILECs' concerns about requiring them to offer broadband in Census blocks within their ETC designated service areas where the provider is not obligated to build-out broadband services pursuant to our high-cost rules, where broadband services are not commercially available, and in those Census blocks where the provider does not receive high-cost support. To address these concerns, in

(Continued from previous page)
of residential customers; (C) are being deployed in public telecommunications networks by telecommunications carries; and (D) are consistent with the public interest, convenience and necessity." *Id.*

[67] *See* Letter from Access Humboldt et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1 (advocating for the Commission to modernize the Lifeline program to include BIAS with twenty three entities listed as supporting such reforms) (filed Mar. 1, 2016) (Coalition *Ex Parte*).

[68] *See, e.g.*, Frontier Communications Comments at 5 (Frontier); Sprint Comments at 13; Cox Comments at 2.

[69] *See, e.g.*, Public Utility Commission of Texas Comments at 8 (Texas PUC); Pennsylvania Public Utility Commission Comments at 18 (Pennsylvania PUC); New York State Public Service Commission Comments at 2 (New York PSC).

[70] *See, e.g.*, David A. Super Comments; Center on Budget and Policy Priorities Reply at 1 (CBPP).

[71] *See, e.g.*, Microsoft Comments at 1; Qualcomm Comments at 1.

[72] *See, e.g.*, National Hispanic Media Coalition Comments at 1; National Association of the Deaf Comments at 4; Common Cause Comments at 1.

[73] *See* Verizon Comments at 7-8; AT&T Comments at 29-31.

[74] *Connect America Fund, ETC Annual Reports and Certifications, Petition of US Telecom for Forbearance Pursuant to 47 U.S.C.§ 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, Report and Order, 29 FCC Rcd 15644, 15649, para. 15 (2014) (*Dec. 2014 CAF Order)*; *see infra* section III.B.2. (

Minimum Service Standards); s*ee also* Verizon Comments at 7-8; AT&T Comments at 29-31.

[75] Existing ETCs currently continue to have a Lifeline voice obligation throughout their designated service areas, regardless of their receipt of high-cost support. *See, e.g., Petition of USTelecom for Forbearance Pursuant To 47 U.S.C. § 160(c) From Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks; Lifeline and Link Up Reform and Modernization; Connect America Fund*, Memorandum Opinion and Order, FCC 15-166, paras. 108-110 (rel. Dec. 28, 2015) (*2015 USTelecom Forbearance Order*). In this Order, however, we provide conditional forbearance from this obligation. *See infra* section III.E.2.c. (Forbearance Regarding the Lifeline Voice Service Obligation).

section III.E.2.b (Forbearance Regarding the Lifeline Broadband Service Obligation), we forbear from section 214(e)(1) such that ETCs are not required to offer Lifeline-supported broadband service in Census blocks throughout their designated service areas, but instead only where the provider receives high-cost support and is commercially providing broadband consistent with the provider's obligations set forth in the Commission's high-cost rules and the requirements set forth in section III.B.2 (Minimum Service Standards).[76]

35. In addition, for recipients of high-cost support, in those areas where the provider receives high-cost support but has not yet deployed a broadband network consistent with the provider's high-cost public interest obligation to offer broadband, the obligation to provide Lifeline broadband services does not begin until such time as the provider has deployed a broadband network and is commercially offering service to that area.[77] We also recognize some carriers' arguments that the Commission should not impose a Lifeline broadband obligation on ETCs in areas where those carriers receive frozen high-cost support, because the frozen support program is an interim program that will be eliminated after the Commission conducts the Connect America Fund Phase II competitive bidding process and frozen support recipients are not required to meet the Lifeline program's minimum speed standards for BIAS offerings.[78] We agree that carriers' receipt of frozen high-cost support should not carry with it a Lifeline broadband obligation, and we therefore clarify that those ETCs receiving frozen high-cost support—whether incumbent providers or competitive ETCs—are not required to offer Lifeline-supported broadband services in their designated service areas where they receive frozen support.[79] Finally, we also clarify in section III.E.2.b (Forbearance Regarding the Lifeline Broadband Service Obligation) that ETCs receiving high-cost support are not required to offer broadband services in Census blocks where the ETC does not receive high-cost support.[80] We adopt these requirements to ensure that all consumers living in high-cost areas, including low-income consumers, have the option of subscribing to broadband once it is commercially available.

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[76] *See generally* 47 CFR Part 54, Subparts D, K, L, M. For purposes of this discussion, we note that the high-cost program provides support for the local loop of incumbent rate-of-return carriers that provide transmission, typically under tariff, to non-regulated affiliates that offer the retail BIAS to consumers. The high-cost program does not support other costs associated with the provision of BIAS, such as middle mile costs and nonregulated non-network costs that the non-regulated affiliate typically incurs to provide retail BIAS to end user customers, such as sales and marketing functions. In making BIAS a supported service, we do not intend to change our current rules regarding what specific costs are supported under the high-cost program.

[77] For example, we recognize that many high-cost recipients receiving CAF Phase II support have not deployed broadband-capable networks in all of the Census blocks where they receive high-cost support, but are required to do so pursuant to deadlines set forth in the Commission's high-cost rules. *See* 47 CFR § 54.310(c) (setting forth deployment obligations for Connect America Phase II recipients). Competitive ETCs that are receiving phased-down identical high-cost support do not have any broadband deployment obligations associated with the receipt of such support. In such instances, they do not have any Lifeline broadband obligations if they do not offer BIAS at the minimum service levels, but must continue to comply with all high-cost and Lifeline rules as they relate to the offer of voice throughout their designated service areas. *See* 47 CFR § 54.307(e) (setting forth support to competitive ETCs).

[78] *See* Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-2 (filed Mar. 24, 2016).

[79] *See* 47 CFR §§ 54.312(a); 54.313(c)(4) (requirements for incumbent LECs receiving Phase I frozen support); 47 CFR § 54.307 (frozen support for competitive ETCs). However, those carriers serving non-contiguous areas that elected to continue receiving their existing high-cost support amounts in lieu of model-based support for Connect America Phase II will be subject to Lifeline broadband obligations once the Commission adopts their carrier-specific Phase II obligations. *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15662, para. 46 (2014).

[80] *See infra* section III.E.2.b (Forbearance Regarding the Lifeline Broadband Service Obligation).

36. Some parties, such as ITTA, suggest that the Lifeline program should be overhauled before providing support for broadband.[81] This argument, however, overlooks the significant measures already put in place over the last five years to root out waste, fraud, and abuse and, just as importantly, underestimates the critical importance broadband plays for individuals on a daily basis. Since 2012, when the Universal Service Administrative Company (USAC), the Administrator of the Fund, disbursed more than $2.1 billion in Lifeline support payments, reforms to improve program integrity have reduced disbursements by nearly a third, with Lifeline support payments dropping below $1.5 billion in 2015.[82]

37. In modernizing the Lifeline program to include broadband, we also clarify that the current rule that prohibits the collection of service deposits "for plans that . . . [d]o not charge subscribers additional fees for toll calls,"[83] applies only to standalone voice services. Lifeline service providers are not precluded from collecting service deposits for eligible broadband services.[84] That rule plainly was written with standalone voice service in mind, and it does not have an analog in the context of broadband offerings. For these reasons, section 54.401(c) is amended to clarify that the prohibition on collecting service deposits is limited to voice-only service plans.[85]

b. Legal Authority

38. The principles listed in section 254 of the Act make clear that deployment of, and access to, telecommunications and information services are important components of a robust and successful federal universal service program, including the directive to address low-income needs.[86] In section 254, Congress expressly recognized the importance of ensuring that low-income consumers "have access to telecommunications and information services, including . . . advanced telecommunications and information services" and that universal service is an "evolving level of telecommunications service."[87] Section 254 of the Act also sets forth the principles that "[q]uality services should be available at just, reasonable, and affordable rates" and that "access to advanced telecommunications and information services should be provided in all regions of the Nation."[88]

39. Consistent with those statutory objectives, we conclude that section 254 authorizes us to support bundled voice and BIAS as well as standalone BIAS by defining BIAS as a supported service for purposes of a Lifeline broadband program.[89] For purposes of a given universal service program,[90] section 254(c)(1) authorizes the Commission to define universal service as an evolving level of telecommunications services that the Commission establishes periodically based on an analysis of several

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[81] ITTA Comments at 5-8. Given the significant changes we adopt within the Lifeline program, we adopt a budget to continue to reduce the contribution burden on consumers. *See infra* section III.G. (Managing Program Finances).

[82] *See* USAC 2016 Second Quarter FCC Filings, LI06 Historical Data, http://www.usac.org/about/tools/fcc/filings/2016/q2.aspx.

[83] 47 CFR § 54.401(c)(1).

[84] *See, e.g.*, USTelecom Comments at 6-7; Letter from Kevin G. Rupy, Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42, et al., at 4 (filed Mar. 4, 2016).

[85] *See* 47 CFR §54.401(c).

[86] 47 U.S.C. § 254(b)(1), (b)(3) (implementing Congress's universal service directives in sections 254(b)(1) and 254(b)(3) that quality services should be available at affordable rates and to consumers throughout the nation).

[87] *See* 47 U.S.C. §§ 254(b)(3); 254(c).

[88] *Id*.

[89] *See infra* section III.B.1 (Supported Modes of Service).

[90] *See Modernizing the E-Rate Program for Schools and Libraries*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8897, para. 72 & n.155 (2014) (*E-rate Modernization Order* or *E-rate Modernization FNPRM*) (discussing the Commission's interpretation of section 254(c)(1) as allowing the definition of supported services specific to particular universal service programs or rules).

factors.[91] The BIAS that we define as a supported service for the Lifeline broadband program is a telecommunications service that warrants inclusion in the definition of universal service in this context.[92]

40. Based on the record before us, we find there is ample evidence for us to conclude that circumstances have "evolved" where BIAS can and should be included as an element of universal service pursuant to section 254(c) and made available to Lifeline participants. The criteria set forth in section 254(c) fully justify our finding. BIAS has, indeed, become "essential to education, public health and public safety . . . ."[93] As detailed above, the Commission has a legal and factual basis to include BIAS as a supported service.[94] The Commission also previously has concluded that directly applying section 254 to BIAS will help enable us to promote adoption of broadband services and more flexibility going forward.[95] We thus conclude that defining BIAS as the supported service for purposes of the Lifeline broadband program strongly advances the public interest, convenience, and necessity under section 254(c)(1)(D).[96]

41. Our approach is also supported by section 254(c)(1)(A). Under that provision, the Commission considers whether a given supported service is "essential to education, public health, or public safety."[97] We explain above the importance of BIAS to education and healthcare, among other things, along with the need for discounts in order to enable low-income consumers to realize those benefits.[98] We therefore conclude that BIAS is essential for education and public health for low-income Americans.

42. Section 254(c)(1)(B) directs the Commission to consider whether the service at issue has "through the operation of market choices by customers, been subscribed to by a substantial majority of

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[91] 47 U.S.C. § 254(c)(1).

[92] In the *Open Internet Order*, the Commission concluded that BIAS is a telecommunications service subject to our regulatory authority under Title II of the Act regardless of the technological platform over which the service is offered. *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling and Order, 30 FCC Rcd 5601, 5743-45, paras. 331-35 (2015) (*Open Internet Order*) *pets. for review pending sub nom USTA v. FCC*, No. 15-1063 (D.C. Cir. filed May 22, 2015). Even before that, however, during the time the Commission had classified BIAS as generally an information service, it recognized the possibility of broadband Internet access transmission being offered on a common carrier basis as a telecommunications service. *See, e.g., Appropriate Regulatory Treatment For Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, 5913-14, para. 33 (2007); *United Power Line Council's Petition For Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, Memorandum Opinion and Order, 21 FCC Rcd 13281, 13289-90, para. 15 (2006); *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al*., Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14900-03, paras. 89-95 (2005). Thus, even beyond the classification of BIAS generally, we make clear that BIAS as the supported service for the Lifeline broadband program is a telecommunications service.

[93] 47 U.S.C. § 254(c). Low-income consumers should have access to the same public safety features as all Americans. Lifeline providers offering a supported service must meet any obligations generally applicable to that service, including, for example, with respect to Next Generation 911 Services. *See generally* 47 CFR § 20.18. We also make clear that Lifeline providers offering texting services must provide text-to-911 capability to subscribers in accordance with Commission rules. *See* 47 CFR § 20.18(q). Lifeline providers should not assess a fee for texts or calls to 911.

[94] *See infra* paras. 38-43.

[95] *Open Internet Order*, 30 FCC Rcd at 5834-35, paras. 486-87.

[96] 47 U.S.C. § 254(c)(1)(D).

[97] 47 U.S.C. § 254(c)(1)(A).

[98] *See supra* section III.A.1.a. (Importance of Broadband); section III.A.1.d. (Commission's Call to Action to Increase Availability of Broadband to Low-Income Americans).

residential customers."[99] As noted above, it is reported that 84 percent of American adults use the Internet and surveys have shown that when households have the means, they connect to the Internet at home at rates upward of 95 percent with approximately two-thirds of Americans subscribing to broadband at home.[100] Based on this data, we find that a substantial majority of residential customers subscribe to broadband services. Likewise, we find that BIAS is widely "being deployed in public telecommunications networks by telecommunications carriers" under section 254(c)(1)(C)[101] given the billions of dollars in capital investment that broadband service providers have spent on broadband networks over the last few years.[102]

43. We also conclude that our action to include BIAS as a supported service is consistent with and advances the Congressional direction and goals set forth under section 706 of the 1996 Act. Section 706(a) directs the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[103] Section 706(b) requires the Commission to determine whether "advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. . . ." and, if the Commission concludes that it is not, to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."[104] The Commission has determined that broadband deployment is not proceeding in a reasonable and timely manner, most recently in the *2016 Broadband Progress Report*.[105] Providing support to service providers to subsidize low-income consumers' purchase of BIAS helps achieve our 706 objective of "removing barriers to infrastructure investment."[106] The Commission has recognized that a key barrier to infrastructure investment is lack of affordable broadband Internet access service.[107] The Commission has previously recognized that providing federal support for low-income consumers' purchase of BIAS will broaden the base of consumers able to purchase such services, thereby increasing consumer demand and incentives to deploy broadband in areas where broadband is not yet available.[108] Given the Commission's objective of ensuring availability and affordability of broadband services, and the importance of broadband to consumers in the 21st Century, providing support to Lifeline providers to subsidize low-income consumers' purchase of broadband services helps achieve our section 706 objectives.

B. Characteristics of Lifeline Support

44. In section III.A, Modernizing Lifeline to Support Broadband, we take the important step of amending our rules to include BIAS as a supported service.[109] In this section, we now act on several proposals in the *2015 Lifeline FNPRM* directed at improving the Lifeline program so that it better supports robust service and strategically targets valuable universal service funds in a way that is faithful

[99] 47 U.S.C. § 254(c)(1)(B).

[100] *See supra* para. 13; *see also* Pew Study Home Broadband 2015, *supra* note 26, at 2 (explaining, based on surveys, that 67 percent of Americans subscribe to broadband at home).

[101] 47 U.S.C. § 254(c)(1)(C).

[102] *See supra* para. 17.

[103] 47 U.S.C. § 1302(a).

[104] 47 U.S.C. § 1302(b).

[105] *2016 Broadband Progress Report*, 31 FCC Rcd at 701, para. 4.

[106] 47 U.S.C. § 1302(b).

[107] *2016 Broadband Progress Report*, 31 FCC Rcd at 751-52, 754, paras. 125-26, 131.

[108] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6799, para. 332.

[109] *See supra* paras. 30-43.

to our mandate to make services affordable to low-income consumers.[110] We are persuaded that giving qualifying consumers the choice of receiving support for either fixed or mobile offerings will better serve consumers as competitive forces help to encourage all Lifeline providers to make attractive offerings within the Lifeline market. In particular, we modify our Lifeline rules to direct support over time to broadband services. We also adopt minimum service standards designed to ensure robust service levels for Lifeline subscribers and which can be updated on a regular basis so that the support provided by the Lifeline program continues to meet our statutory mandate to ensure "reasonable comparability" of services.[111] We also establish permanent monthly support levels.[112]

1. Supported Modes of Service

45. *Background*. Consistent with its universal service goals, the Commission established the Lifeline program to ensure that all people of the United States have access to telecommunications services at affordable rates.[113] Since that time, fixed service Lifeline providers have offered discounted phone service to qualifying low-income consumers and, since 2008, non-facilities-based wireless providers have offered mobile voice service supported by the Lifeline program. In 2012, when evaluating the Lifeline program in light of the advances in communications technology, the Commission updated the definition of Lifeline as "voice telephony service."[114] By updating the definition of Lifeline in this way, the Commission embraced the definition of supported services for rural, insular, and high-cost areas found in section 54.101 of its rules, and explained that the revised definition would allow carriers to provide service using innovative and new technologies such as Internet Protocol (IP-enabled networks) that would result in additional options and benefits to Lifeline consumers and help the neediest to subscribe to advanced services enjoyed by many Americans.[115] Concurrently, the Commission amended its rules to allow qualifying low-income consumers to apply Lifeline discounts to all residential service plans that provide voice telephony service, including bundled service packages combining voice and broadband, or packages containing optional calling features.[116] Providers could also permit qualifying consumers to apply their Lifeline discount to family shared calling plans.[117]

46. In addition to updating the definition of Lifeline, the Commission codified a rule limiting Lifeline support to a single subscription per household and defined "household" as an economic unit consisting of all adult individuals contributing to and sharing in the income and expenses of a household.[118] Although the Commission recognized the concerns of commenters advocating for a rule allowing Lifeline support per person rather than per household, the Commission concluded that the program's ability to subsidize service for each eligible low-income individual was tempered by the need to minimize the contribution burden on the program for all consumers.[119]

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[110] 47 U.S.C. § 254(b)(1), (b)(3).

[111] *See 2015 Lifeline FNPRM* at 7837-41; paras. 34-51 (seeking comment on minimum service levels and how to update standards and compliance).

[112] *See id.* at 7842-43; paras. 52-54 (seeking comment on support levels and tentatively concluding that the Commission set $9.25 as permanent support amount).

[113] 47 U.S.C. § 254(b)(1).

[114] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6678, para. 47.

[115] *See id*.

[116] *See id.* at 6792, para. 315. In adopting this rule, the Commission provided flexibility in allowing ETCs to choose whether to make bundled service packages or packages containing optional calling features available to low-income consumers. *Id.*

[117] *See id.*

[118] *See* 47 CFR § 54.400*; 2012 Lifeline Reform Order*, 27 FCC Rcd at 6689, para. 74.

[119] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6693-94, paras. 81-82.

47. In the *2015 Lifeline FNPRM*, the Commission again looked at modes of supported service within the Lifeline program, and sought comment on support levels for both voice and broadband services with the goal of securing more value for low-income consumers.[120] The Commission stressed a central goal of the Lifeline program is affordability and that whatever reforms occur would provide qualifying consumers a sufficient level of service at affordable rates.[121] In considering what to support, the Commission sought comment on ways to increase participation in a broadband-focused Lifeline program, which would include standalone broadband offerings, such as current offerings marketed to families with school-age children.[122] The Commission also sought comment on the support that should be provided for fixed and mobile voice-only service, as well as bundles that include both voice and broadband.[123]

48. *Discussion*. In this section, we adopt several reforms to empower low-income consumers with competitive choices for robust, affordable Lifeline services necessary for full participation in today's economy. First, to keep pace with the marketplace and our goals of ensuring the availability of broadband and voice services, we hereby amend our rules to permit Lifeline providers to receive Lifeline support for standalone mobile or fixed broadband service offerings.[124] Second, for both fixed and mobile voice services, to ensure the Lifeline program continues to focus its funding on modern, future-facing services for which affordability is an issue, we phase in a requirement that to be eligible for Lifeline support, a voice service must include broadband service, thereby phasing-out support for voice service as a standalone option. In doing this, we carve out an exception for the phase-out of standalone voice service provided by ETCs in those Census blocks where the ETC is the only Lifeline service provider in that given Census block.[125] To prevent undue disruption and allow the marketplace to adjust, we adopt a multi-year transition and also direct the Bureau, near the end of the transition, to review the Lifeline market and submit a report to the Commission recommending whether action should be taken to revise the approach to supported services that we adopt today (State of the Lifeline Marketplace Report).[126] We expect the full Commission will take appropriate action if necessary to make changes to the program within six months of receiving the report, for example adjusting support levels or minimum service standards, so that the Lifeline program continues to achieve its objectives. Barring further Commission action, once this transition is complete, we will require voice service to be bundled with an eligible broadband service in order for it to be supported. Finally, we retain our approach to permit support for bundled offerings[127] and our limit of one Lifeline subscription per household.

49. *Fixed and Mobile Broadband Offerings.* Given the importance of broadband to consumers in our society and how it is has become essential to education, public health, and public safety, we believe it is necessary to provide Lifeline consumers the option of applying the Lifeline benefit to a

[120] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7842, para. 52.

[121] *Id.*

[122] *See id.* at 7832-37; paras. 23-33 (providing examples of innovative broadband plans such as Mobile Beacon and Kajeet, which offer standalone broadband services to help low-income families use broadband at home for school assignments).

[123] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7838, 7842, paras. 38, 52-53 (seeking comment on support for voice-only services and bundles).

[124] In referring to "fixed services," we also consider fixed wireless technology to serve as an example of the technology used to provide fixed voice and broadband services.

[125] *See infra* paras. 117-122 (detailing the process for phasing-out support for standalone voice service for ETCs).

[126] *See infra* paras. 62-64 (setting forth a transition to phase out voice-only service).

[127] 47 CFR § 54.401 (allowing qualifying low-income consumers to apply Lifeline discounts to bundled packages that include voice and broadband services).

standalone broadband offering.[128] Standalone broadband services are increasingly popular as consumers transition from bundled services to broadband-only plans.[129] In many areas, as the communications market evolves, broadband is replacing traditional telephone service[130] and providing subscribers with voice and texting options in addition to Internet access. To close the digital divide and ramp up digital readiness for all consumers in the United States, we amend our rules to give Lifeline providers the option of offering standalone broadband services as a Lifeline supported service.[131] By allowing support for standalone broadband services with Lifeline, we add an additional measure of consumer choice as well as the opportunity for innovative providers to serve low-income consumers in new ways.[132] Supporting standalone broadband offerings will not only allow consumers to subscribe to offerings that work best for their needs, but Lifeline providers will also seek to find solutions that work best for their customers.[133]

50. We allow Lifeline subscribers to apply the discount to fixed or mobile standalone broadband offerings.[134] We empower consumers to make this choice. While fixed and mobile broadband services both provide access to online services, there are some key tradeoffs consumers must consider regarding the utility of each service.[135] We recognize these tradeoffs both in terms of technological constraints and how each mode is offered in the market.[136] We also recognize different households will have different preferences for certain product characteristics, such as mobility or data usage allowance.[137] Therefore, we find it important to give qualifying consumers the choice of receiving support for either fixed or mobile broadband service. This allows households a choice as to which service to apply the discount towards. Permitting a Lifeline provider to offer standalone broadband offerings will also ensure

[128] 47 U.S.C. § 254(c)(1).

[129] *Preparing for Life After Cable*, The New York Times (Aug. 21, 2015), http://www.nytimes.com/2015/08/21/opinion/consumers-are-cutting-the-cord-to-gain-choices-and-pay-less.html.

[130] *See, e.g.*, Benton Foundation Comments at 7-8 (explaining how broadband is a necessity for parents and students in communicating with schools).

[131] *See infra* section III.E.1. (Creating a Lifeline Broadband Provider Designation).

[132] *See* California ETF Comments at 45-6 (discussing innovative ways of providing broadband services to low-income communities, such as Wi-Fi services, that the FCC should consider).

[133] We make clear that ETCs receiving high-cost support are required to offer a Lifeline-supported standalone broadband offering where the ETC is required to offer Lifeline-supported BIAS to ensure that all low-income consumers, including those living in high-cost areas, have the option to subscribe to standalone broadband offerings.

[134] In the *USF/ICC Transformation Order*, the Commission made clear that carriers may not charge any Lifeline customers an Access Recovery Charge (ARC). *See Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17989, para. 909 & n.1782 (2011) (*USF/ICC Transformation Order)*. By extension, as we include broadband as a Lifeline-supported service, we make clear that rate-of-return carriers are not required to impute an amount equal to their ARC rate for consumer broadband-only loops provided to Lifeline broadband customers. *See* 47 CFR § 51.917(f)(4) (setting forth the imputation requirement for consumer broadband-only loops).

[135] *See* Benton Foundation Comments at 26-28 (setting forth details distinguishing fixed versus mobile broadband services); Frontier Comments at 4-5 ("[W]hile low-income families are adopting smartphones with Internet access at high rates, let me submit to you that a phone is just not how you want to research and type a paper, apply for jobs, or further your education." (quoting Commissioner Rosenworcel)).

[136] *See* California ETF Comments at 15-21 (discussing differences between fixed and mobile broadband services); *2016 Broadband Progress Report*, 31 FCC Rcd at 710, para. 25 (noting the distinct functionalities between fixed and mobile broadband).

[137] *See* COMPTEL Comments at 6 (noting that some households, especially those with school-age children, may utilize desktops or laptops using fixed broadband, while other consumers might choose to use smartphones for broadband access); AARP Comments at 8-10 (providing examples of benefits that fixed broadband provides that would be difficult to perform using smartphones).

that Lifeline consumers are not forced to purchase services they may not want within a bundle. We agree with many commenters who argue that it is important to enable low-income consumers to choose the services that best meet their needs, but at the same time put measures in place to ensure such Lifeline offerings are affordable and comparable to what is currently available in the market.[138] For many people, this includes the option of subscribing to a standalone broadband offering.[139]

51. We are persuaded that giving qualifying consumers the option of receiving support for either fixed or mobile standalone broadband will better serve consumers as competitive forces encourage Lifeline providers to make valuable broadband offerings supported by the Lifeline program. More attractive offers which result in higher consumer benefits will mean that the funds provided by contributors will be used to provide greater value. For example, we envision a Lifeline provider seeking to address various "digitally divided" consumers with attractive offers of service unique to families with children or the elderly.[140]

52. *Voice-only Offerings.* As part of our modernization efforts, and with a keen view toward directing Lifeline funds toward services in a way that reflects the technological and marketplace evolution toward data services, we find that Lifeline services must include a broadband offering after the transition period set forth below.[141] To be sustainable and achieve our goals of providing low-income consumers with robust, affordable, and modern service offerings, a forward-looking Lifeline program must focus on broadband services. Therefore, based on the record before us, we conclude that it is necessary that going forward the Lifeline discount will no longer apply to a voice-only offering following an extended transition period, except as provided below in Census blocks with only one Lifeline provider.[142] We are persuaded that it is necessary to use a multi-year transition ending in 2021. After this transition, we will continue to support voice service when bundled with a broadband service which meets the minimum service standards set forth below.

53. As a general matter, we adopt a technologically neutral approach and the schedule with respect to support for standalone voice service will apply equally to mobile and fixed providers of voice services. We recognize, however, that in some limited circumstances an ETC that is providing voice service may be the only Lifeline provider in a given area when Lifeline support for standalone voice service otherwise would have been phased out. With respect to any area where a provider is the only Lifeline provider, consistent with the transition described in detail below, the provider will retain its ETC obligations as a Lifeline provider and may receive Lifeline support up to $5.25 per month for standalone voice service provided to eligible subscribers.[143]

54. The animating principle of the Lifeline program has always been affordability. For years, Lifeline support focused on making affordable fixed residential voice services, providing a discount that combined with a customer contribution to help low-income Americans connect to the telephone network.

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[138] *See infra* section III.B.2 (Minimum Service Standards).

[139] *See, e.g.*, New America's Open Technology Institute Comments at 3-4 (New America's); Letter from Gregory W. Guice, Counsel to Gila River Telecommunications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 2 (filed Feb. 16, 2016); Letter from Krystle Brandt, Boulder Housing Partners, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42 et al., at 1 (filed Dec. 22, 2015).

[140] Common Sense Comments at 7-8 (citing Anchorage School District, Mobile Beacon, http://www.mobilebeacon.org/anchorage-school-district/ (last visited Mar. 30, 2016) (providing examples of how a broadband plan offered within schools was utilized to help low-income students successfully complete high school).

[141] *See infra* paras. 62-64 (adopting a transition for phasing out support for voice as a standalone option).

[142] *See id.*

[143] *See infra* section III.B.3 (Support Levels). This assumes that the ETC has not qualified for the conditional forbearance described in section III.E.2.c (Forbearance Regarding the Lifeline Voice Service Obligations) or relinquished its ETC status in relevant part.

In 2005, we expanded the program to allow participation by non-facilities-based providers, including prepaid wireless resellers. Since then, the marketplace for both Lifeline and non-Lifeline voice offerings has evolved dramatically. Indeed, non-Lifeline voice rates have fallen drastically since the *2012 Lifeline Reform Order*.[144] Some observers have pointed out that even though millions of households are eligible for—but do not participate in—the Lifeline program, the vast majority of these non-participating households still manage to obtain access to voice communications.[145] In contrast, broadband adoption among low-income households remains well below that of other groups, and affordability is widely cited as one of the primary reasons.[146]

55. Our review of the record reveals that voice service is declining in price within the marketplace.[147] This is particularly true of mobile voice services. Some voice-only plans run as low as $10 per month.[148] As we recognized in the *2015 Lifeline FNPRM*, the cost of provisioning wireless voice service has decreased significantly since the *2012 Lifeline Reform Order*, and there are no indications such cost decreases will cease.[149] Even outside the Lifeline program, cost decreases have led to a large variety of reasonably priced voice options provided by providers.[150] One indication that voice service is declining in price is that, as of January 2014, mobile voice adoption rates exceeded 90 percent overall and 84 percent for low-income adults.[151] In the *Eighteenth Mobile Competition Report*, the Wireless

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[144] By the end of 2011, an offering of 450 voice minutes and unlimited text, would cost $49.99. *See Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Service*, Sixteenth Report, 28 FCC Rcd 3700, 3807, para. 154, Table 23 (2013) (*Sixteenth Mobile Competition Report*). Today, one can subscribe to an unlimited voice and text plan for $25 per month. *See* Mobile PCS Offerings, https://www.metropcs.com/25forall.html (last visited Mar. 30, 2016).

[145] USAC reports that there are at least 39.7 million eligible Lifeline households in the states and District of Columbia with a participation rate of 32 percent. Universal Service Administrative Company, USAC Data on the federal Universal Service Lifeline Program at 5 (2016), http://apps.fcc.gov/ecfs/document/view?id=60001517799. This implies approximately 26 million households are eligible for Lifeline but do not participate. However, the telephone penetration rate in the United States for low-income groups is well over 90 percent, meaning millions of Lifeline eligible consumers are still obtaining voice service without Lifeline. *See Universal Service Monitoring Report*, CC Docket No. 96-45 et al., at 23, Table 6.2 (WCB 2015), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0129/DOC-337019A1.pdf (*2015 Universal Service Report*).

[146] *See* Americans' Internet Access Study, *supra* note 21.

[147] *See, e.g.*, US Mobile, https://www.usmobile.com/ (last visited Mar. 30, 2016) (offering plans priced as low as $3.00 per month for 100 minutes).

[148] *See, e.g.*, Cell Phone Plans, Consumer Cellular (2016), https://www.consumercellular.com/Info/Plans; Phone Plans, Republic Wireless, https://republicwireless.com/plans/ (last visited Mar. 30, 2016) ($10 per month voice plans).

[149] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7842, para. 53; AARP Comments at 6 (supporting the Commission's assessment that the cost of providing wireless voice services has decreased significantly given the migration to broadband mobility platforms).

[150] *See, e.g.*, Rates, Ting (2016), https://ting.com/rates (offering up to 500 voice minutes at $9 per month along with $6 monthly charge for device or the option of bringing your own device); Phone Plans, Republic Wireless, https://republicwireless.com/plans (last visited Mar. 30, 2106) (offering unlimited talk, text and 1 GB of data for $25 per month as a reseller); Giv Mobile, https://www.givmobile.com/about/compare_mobile_plans (offering unlimited talk, text, and data for $30 per month as a reseller).

[151] *Mobile Technology Fact Sheet*, Pew Research Center (Oct. 2014), http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/ (Pew Fact Sheet). Additionally, preliminary results from the January – June 2015 National Health Interview Survey (NHIS) indicate that nearly half of American homes (47.4 percent) had only wireless telephones and more than two-thirds of all adults aged 25-34 were living in wireless-only households. *See* Stephen J. Blumberg, Ph.D. and Julian V. Luke, Division of Health Interview Statistics, National Center for Health

(continued….)

Telecommunications Bureau reported that the nationwide penetration for mobile connections now exceeds 100 percent, meaning that the number of connected devices exceeds the total population of the United States.[152] As of September 2015, CTIA has reported over 355.4 million mobile phone subscribers.[153] The *Eighteenth Mobile Competition Report* also noted that, according to CTIA, reported annual minutes of use in 2014 reached over 2.45 trillion.[154] In contrast, the record reveals that data is not as ubiquitous as voice and certainly not as affordable. Pew Research Center recently reported that home broadband adoption appears to have plateaued with 67 percent subscribing to such service, down slightly from 70 percent in 2013.[155] Smartphone adoption is also only 64 percent overall and 13 percent of low-income Americans rely solely on a smartphone for their Internet access.[156] Furthermore, as demonstrated by the Pew Research Center, many Americans experience difficulties in affording and retaining service on smartphones.[157] In fact, those who rely the most on only their smartphone for Internet access have the most difficulty retaining service given that such consumers frequently reached their data caps as part of their monthly plan.[158]

56. Technological evolution and market dynamics have also resulted in more choices and decreasing prices for fixed voice service. The record reflects that customers are increasingly opting for voice services made possible through fixed broadband connections, including VoIP as well as over-the-top voice applications.[159] While some differences between VoIP and traditional fixed voice service remain, we agree with commenters that note that such VoIP services will likely improve and introduce more competition into the marketplace over time.[160] Meanwhile, the Consumer Price Index, maintained by the Bureau of Labor Statistics, has found that telephone services, including both mobile and fixed offerings, have only increased in price during one year from 2010 to 2014, while the price of all goods and services generally increased each year during the same time period.[161] We also recognize the nationwide trend that consumers are increasingly migrating away from fixed residential voice service to mobile voice services, which, as discussed above, have decreased in price. This information further supports our technologically neutral conclusion that, while recent trends in fixed and mobile voice service

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Statistics, National Health Interview Survey Early Release Program (Dec. 2015), http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201512.pdf.

[152] *Eighteenth Mobile Competition Report*, Order, 30 FCC Rcd 14515, 14547, para. 43 (WTB 2015) (*Eighteenth Mobile Competition Report*).

[153] *Id.* at 14548, Chart III.B.1 (citing CTIA).

[154] *Id.* at 14608-609, para. 148.

[155] Pew Study Home Broadband 2015, *supra* note 26, at 2.

[156] *See* Pew Study on Smartphone Use, *supra* note 25, at 3-4; Monica Anderson, *6 Facts about Americans and their Smartphones*, Pew Research Center (Apr. 1, 2015), http://www.pewresearch.org/fact-tank/2015/04/01/6-facts-about-americans-and-their-smartphones/. In the *Eighteenth Mobile Competition Report*, the Wireless Telecommunications Bureau noted that, according to ComScore, approximately 77 percent of all mobile subscribers had a smartphone in the third quarter of 2015, compared to approximately 51 percent in the third quarter of 2012. *Eighteenth Mobile Competition Report*, 30 FCC Rcd at 14606, para. 144.

[157] Pew Study on Smartphone Use, *supra* note 25, at 3-4.

[158] *Id.*

[159] *See* New York State Public Service Commission Comments at 3; Pennsylvania Public Utility Commission Comments at 7 (. . . [V]oice services, including voice over the Internet Protocol or VoIP, are increasingly offered by a variety of wireline and wireless/mobile providers"); USTelecom Comments at 3 (noting that 30 percent of households with telephone service use non-traditional services such as VoIP via broadband, predominantly from cable companies).

[160] *See* California Emerging Technology Fund Comments at 20.

[161] *See 2015 Universal Service Report* at 59, Table 7.2.

offerings are not identical, both modes of voice service are undergoing significant change in response to technological developments and new competitive service offerings enabled by those developments.

57. Affordability must remain a central touchstone within the Lifeline program. Mindful of Congress's section 254 mandate that "[q]uality services should be available at just, reasonable and affordable rates,"[162] we believe that the Lifeline program should directly support those services that are otherwise unaffordable to consumers, but for a Lifeline discount.[163] We also find that continuing to support a voice-only product that is reasonably priced will result in a Lifeline program that fails to deliver the "evolving level" of services that "*are being* deployed" (emphasis added).[164] While much of the Lifeline market is competitive, we are concerned that continuing to support a voice-only service would artificially perpetuate a market with decreasing demand and incent Lifeline providers to avoid adjusting their business practices.[165] Instead, these Lifeline providers may have an incentive to maintain the *status quo* and avoid providing low-income customers with modern services as Congress intended. For these reasons, we do not believe it is consistent with Congress' directive to continue providing support to voice-only service within the Lifeline program outside of the transition period discussed below.

58. Several commenters have argued that the Commission should continue to permit Lifeline providers to offer standalone voice service.[166] These parties contend that the Commission should retain support for standalone voice service given that many low-income and unemployed Americans rely on such means of communication within their daily lives.[167] We agree with such commenters that voice continues to be an important resource for consumers to utilize in communicating with others. But we are not persuaded that such service will no longer be available or affordable if it is part of a bundle with broadband services. We make this judgment based on evidence of the power of market forces in the marketplace to compete and innovate to meet consumer demand. We take it as given that many consumers have demanded and will continue to demand voice communications.[168] We predict that Lifeline providers will be responsive to this consumer demand by bundling voice with data offerings and

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[162] 47 U.S.C. § 254(b)(1).

[163] We do not interpret and implement the concept of "affordability" under sections 254(b)(1) and 254(i) by looking narrowly at whether and when a customer would not purchase a service at all but for discounts made possible, directly or indirectly, by universal service support. In applying that concept we also consider the risk that, while some low-income consumers subscribe to a service, they must spend an undue portion of their funds to do so but for the provision of universal service support. *See, e.g., High-Cost Universal Service Support et al.*, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4089-90, para. 32 (2010) (concluding that then-existing universal service programs "provide support that is sufficient to ensure that rates are affordable, as required by section 254(b)(1)" by evaluating factors including telephone subscribership penetration and the portion of household expenditures associated with telephone service). Moreover, the Commission recently has cited evidence that certain segments of existing broadband subscribers, including low income subscribers, "more frequently have to cancel or suspend service due to financial constraints," reinforcing that subscribership at a given moment in time does not, standing alone, provide sufficient insight into such issues of affordability under our section 254. *2015 Broadband Progress Report*, 31 FCC Rcd at 716, para. 39. Ultimately, any decisions about which households should benefit from Lifeline support mechanisms, and under what circumstances, involves an exercise in drawing administrable lines while balancing the various policy objectives in section 254 of the Act and section 706 of the 1996 Act.

[164] 47 U.S.C. § 254(c)(1)(C).

[165] *See* Letter from Lenny Schad, Houston Independent School District, and Dan Stoneman, San Diego Unified School District, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 11-42 et al., at 2 (July 30, 2015) (expressing concern that consumers that qualify for Lifeline will choose a wireless voice service, most of which is free, over broadband, thereby negating any progress toward closing the "homework gap" for school-aged children).

[166] *See, e.g.*, TracFone Comments at 10-18; AARP Comments at 5-6; Public Knowledge Comments at 24-6.

[167] *See* Letter from Phillip Berenbroick, Counsel, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Jan. 20, 2016).

[168] *See, e.g.*, AARP Comments at 4; MMTC Comments at 6.

otherwise ensuring consumers are able to easily use a voice service with their data plan. We believe that the innovative Lifeline providers currently in the program will be just as innovative in packaging competitive voice offerings with the supported broadband service. Indeed, wireless Lifeline providers have already recognized the increased demand for broadband and as a result are starting to include broadband options within their Lifeline offerings.[169]

59. We further recognize that, in the existing Lifeline marketplace, Lifeline providers have met consumers' demands for texting, although it is not a Lifeline-supported service. Many Lifeline providers under their own volition have offered unlimited texting with the Lifeline voice service.[170] Mobile plans offered to non-Lifeline subscribers are priced as low as $20 for unlimited talk and text when bundled with data, whereas some Lifeline plans offer as much as approximately 500 voice minutes and text.[171] In the same way, we would expect Lifeline providers would be incentivized by competitive forces to meet the demand for voice service and make voice services available to customers.

60. We emphasize that nothing in our rule change will prevent a Lifeline provider from offering a bundle of voice and broadband service that delivers the voice component over either non-IP or IP technologies. In this way, we allow for Lifeline providers to choose how, whether, and when to transition to the use of newer technologies for delivering voice service. As part of the overall Lifeline modernization, this change sets the stage for a full program modernization where Lifeline providers are delivering voice services to customers over modern technologies in a much more efficient way that benefits consumers and provides more value to the Fund.

61. In summary, to ensure that future Lifeline offerings are sufficient for consumers to participate in the 21st Century economy at affordable rates, and to obtain the most value possible from the Lifeline benefit, we modify the Lifeline rules to support voice services only through a bundle that includes broadband services pursuant to the transition period detailed below. This phase-out of support will not apply to ETCs providing voice service in census blocks where they are the only Lifeline service provider. We are persuaded that Lifeline must provide a robust, affordable service and be forward-looking so that as newer technologies become more widely available, the program can continue to deliver value to the low-income subscriber and to the ratepayers supporting the program. Encouraging use of such voice-only service indefinitely is inconsistent with the Act's guidance that "[u]niversal service is an evolving level of telecommunications services" that "are being deployed in public telecommunications networks."[172]

62. *Transition.* We recognize, however, that a transition is necessary to avoid undue consumer disruption and to allow Lifeline providers sufficient time to adjust operations as the Commission moves from a primarily voice-only Lifeline program to a Lifeline program embracing broadband services. We believe the best way to conduct this transition is by gradually reducing the monthly support level for voice-only service. At the same time, we will phase-in higher mobile broadband minimum service standards. As detailed in sections III.B.3 (Support Levels) and III.B.2.b (Minimum Service Standards for Lifeline Services), the support level for voice-only service will decline over a multi-year period while the minimum service standard for mobile voice-only service will be set at an initial level, and will be increased until the minimum standard will be 1,000 minutes per month. Such

[169] *See* Joint Wireless Commenters Comments at 6-7.

[170] *See, e.g.*, Assurance Wireless Lifeline plans, http://www.assurancewireless.com/public/moreprograms.aspx; Safelink Wireless Lifeline plans, https://www.safelinkwireless.com/Enrollment/Safelink/en/NewPublic/index.html.

[171] *See, e.g.*, Cell Phone Plans, Sprint (2016), http://www.sprint.com/shop/plan-wall/#!/?plan=individual (offering plans as low as $40 per month for unlimited talk, text, and 1GB of data, with unlimited 2G data); *see also* Sprint Comments at 6-8 (explaining how Assurance Wireless, Sprint's Lifeline brand, offered consumers 500 voice minutes and unlimited texting with no monthly cost to the consumer); Joint Wireless Commenters Comments at 6. *See also infra* section III.B.2 (Minimum Service Standards).

[172] 47 U.S.C. § 254(c)(1)

a path to robust offerings is in line with the fact that a "substantial majority" of non-Lifeline subscribers already purchase plans with 1,000 or more minutes using either fixed or mobile services.[173] Given that fixed voice service often already includes unlimited minutes, we will not impose minimum service standards on fixed voice service offerings.

63. This initial voice-only minimum service standard will become effective the later of December 1, 2016 or 60 days after the date when the Commission receives approval from the Office of Management and Budget (OMB) for the new information collection requirements in this Order subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. At the same time, beginning on the same date, a phase-in of mobile broadband support will begin. As described below, this transition is scheduled to continue until December 1, 2021. During the initial phase-in period, from December 1, 2016 through November 30, 2019, a voice and broadband Lifeline bundle must include at least one supported service meeting the minimum service standards applicable at that time. From December 1, 2019 to November 30, 2021, a voice and broadband Lifeline bundle must include a BIAS offering that meets the broadband minimum service standards applicable at that time in order to receive the full $9.25 benefit. From December 1, 2019 to November 30, 2021, a voice and broadband Lifeline bundle with a broadband offering that does not meet the applicable mobile broadband minimum service standards but does meet the mobile voice minimum service standard may receive the applicable support level for standalone mobile voice.

64. Prior to December 1, 2019, voice-only support will be set at $9.25 per month. Beginning December 1, 2019 the support amount will decline to $7.25 per month; beginning December 1, 2020, it will decline further to $5.25 per month. During that time period, we will also phase-in increasing minimum service standards for mobile voice service. Beginning the later of December 1, 2016 or 60 days after PRA approval, supported mobile voice offerings must include at least 500 minutes per month; beginning December 1, 2017, supported mobile voice offerings must include at least 750 minutes per month; and beginning December 1, 2018, supported mobile voice offerings must include 1000 minutes per month.[174] Beginning December 1, 2021, there will no longer be support for voice-only service, or voice service bundled with a broadband offering that does not meet the applicable minimum service standard for BIAS, unless the Commission has acted upon recommendations to do otherwise presented in the State of the Lifeline Marketplace Report. However, voice service will continue to be supported as long as it is offered with a broadband service meeting the minimum service standards.

65. Over the same period for which the voice-only support level declines for fixed and mobile voice services, fixed and mobile broadband will receive $9.25 in monthly support and the minimum service standard for mobile broadband service will gradually increase.[175] Specifically, on the later of December 1, 2016 or 60 days after the Commission receives PRA approval of the information collection requirements in this Order, the mobile broadband minimum service standards for data usage allowance will be set at 500 megabytes (MB) monthly at 3G speeds. The minimum data usage allowance will increase to 1 gigabyte (GB) on December 1, 2017 and to 2 GB on December 1, 2018. On December 1, 2019, the minimum standard for mobile data usage will be set based on a forward-facing updating mechanism using objective data as described below.[176] From December 1, 2016 to November 30, 2019, a voice and broadband Lifeline bundle must include at least one supported service meeting the minimum service standard applicable at that time for such supported service.[177] As discussed above,[178] from

[173] *See infra* section III.B.2 (Minimum Service Standards).

[174] *See infra* section III.B.2.b(iv) (Mobile Voice).

[175] *See infra* section III.B.2 (Minimum Service Standards).

[176] *See infra* section III.B.2 (Minimum Service Standards).

[177] *See infra* section III.B.2 (Minimum Service Standards). After December 1, 2021, in order to receive the full support amount of $9.25 for mobile services, ETCs must provide the minimum service standards for BIAS as a Lifeline supported service to qualifying low-income consumers. *See infra* paras. 117-22.

December 1, 2019 to November 30, 2021 a voice and broadband Lifeline bundle must include a broadband offering that meets the applicable minimum service standard to be eligible for the full $9.25 benefit.

66. However, given the inherent uncertainty in the future Lifeline marketplace, we also direct the Bureau by June 30, 2021, to submit to the Commission a State of the Lifeline Marketplace Report. This report should review the Lifeline marketplace for the purpose of recommending to the Commission whether the transition set out in this Order should be completed or whether the Commission should act to continue delaying Lifeline's transition to chiefly supporting broadband services. This report should in particular consider the prevalence of subscriptions to various service offerings in the Lifeline program, the affordability of both voice and broadband services, the pace since adoption of this Order at which voice and data usage has changed, and the associated net benefits of continuing to support voice service as a standalone option.[179] We expect the full Commission will take appropriate action if necessary to make changes to the program within six months of receiving the report, for example, adjusting support levels or minimum service standards, so that the Lifeline program continues to achieve its objectives. If the Commission does not act following the recommendation(s) in the State of the Lifeline Marketplace Report then the transition will be completed on December 1, 2021.

67. *Bundled Service Offerings.* We continue to allow low-income consumers to apply the Lifeline discount to support fixed and mobile bundles that include one or more of the supported services so long as one of the supported services offered satisfies the minimum service standard requirements. In other words, the discount may be applied to a mobile bundle of voice and data services so long as *either* the voice service *or* the data service meets the applicable minimum service standard. Other non-supported services (*e.g.*, texting) may be bundled with supported services and the Lifeline discount may be applied to the bundle. This does not represent a change in policy as many Lifeline providers have voluntarily offered non-supported services to consumers bundled with Lifeline-supported services.[180] We agree with commenters and view such offerings as enhancing consumer benefits.[181] We recognize this as an illustrative case whereby Lifeline providers identify consumer demand for a non-supported service such as texting and voluntarily provide the service consumers demand apart from any regulation from the Commission.

68. *One-Per-Household Rule.* Through our reforms today, we continue to believe it is necessary to apply the one-per-household requirement within the Lifeline program. Just as the Commission concluded in the 2012 *Lifeline Reform Order*, we believe a one-per-person rule or one-per-service rule --- providing an individual household an opportunity to receive one supported service for both voice and broadband --- could increase the size of the Lifeline program by a significant percentage above the projected Fund size.[182] By limiting support to one Lifeline offering and one household, we find that continued implementation of the one-per-household rule strikes an appropriate balance between ensuring that support is available for eligible low-income households against disbursing universal service

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[178] *See supra* para. 63.

[179] The Bureau in the State of the Lifeline Marketplace Report should in particular follow the principles presented in Part E of OMB Circular A-4 for the purpose of determining whether to continue support for voice-only service. *See* OMB Circular A-4 https://www.whitehouse.gov/omb/circulars_a004_a-4/.

[180] *See* Sprint Comments at 6-8 (explaining how Assurance Wireless, Sprint's Lifeline brand, offered consumers 500 voice minutes and unlimited texting with no monthly cost to the consumer); Joint Wireless Commenters Comments at 5-7.

[181] *See* Sprint Comments at 6-8; Joint Wireless Commenters Comments at 5-7.

[182] *See* section III.G (Managing Program Finances).

funds in a fiscally prudent and sustainable way.[183] By continuing to enforce the one-per-household rule, we also decline to adopt some commenters' suggestions that a household be able to receive more than one discount to support multiple services.[184] Instead we take an alternate path suggested by commenters, providing consumers a choice as to which service (or set of bundled services) their Lifeline discount is used to support.[185]

2. Minimum Service Standards

a. Introduction

69. In the *2015 Lifeline FNPRM*, we proposed establishing minimum service standards for all Lifeline service offerings "to ensure the availability of robust services for low-income consumers,"[186] and we proposed updating the minimum service standards.[187] We now adopt detailed rules in line with these proposals, and revise section 54.408 of the rules.[188] In order for Lifeline customers to obtain the type of robust service which is essential to participate in today's society,[189] we conclude that forward-looking minimum service standards are required, and that those standards must be updated on a regular basis.

70. The minimum service standards we adopt are rooted in the statutory directives to ensure that quality services are available at "just, reasonable, and affordable rates,"[190] and that advanced telecommunications services, the services which have "been subscribed to by a substantial majority of residential customers,"[191] are available throughout the nation.[192] We interpret these directives as requiring the Commission to ensure that low-income consumers can both afford and physically access services that are available throughout the Nation.[193] The standards adopted below ensure that Lifeline supports the type of service the Act specifically requires,[194] and the updating mechanisms will give Lifeline subscribers confidence that their supported service will remain robust as technology improves through a predictable mechanism.[195]

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[183] *See Modernizing the E-rate Program for Schools and Libraries, Connect America Fund, Second Report and Order and Order on Reconsideration*, 29 FCC Rcd 15538, 15580-81, para. 106 (2014) (*Second E-rate Modernization Order*) ("We have an obligation to balance having a specific, predictable, and sufficient support mechanism with our 'responsibility to be a prudent guardian of the public's resources.'") (quoting *Vermont PSC v. FCC*, 661 F.3d 54, 65 (D.C. Cir. 2011). See *also, e.g.*, AT&T Comments at 9-10 (recommending that the Commission retain the current "one-per-household" monthly benefit of $9.25 for non-Tribal and $34.25 for Tribal regardless of the covered service).

[184] *See, e.g.*, Joint Wireless Commenters Comments at 74-5; General Communication Inc. (GCI) Comments at 21 (recommending that the one-per-household requirement not apply where the eligible household has school children); David A. Super Comments at 10-11; California ETF Comments at 4.

[185] *See, e.g.*, AT&T Comments at 9-10; Centurylink Reply at 6.

[186] 2015 *Lifeline FNPRM*, 30 FCC Rcd at 7827, para. 15.

[187] *Id.* at 7841, para. 49.

[188] *See* Appx. A.

[189] *See* 2015 *Lifeline FNPRM*, 30 FCC Rcd at 7821-22, para. 4.

[190] 47 U.S.C. § 254(b)(1).

[191] 47 U.S.C. § 254(c)(1)(B).

[192] 47 U.S.C. § 254(b)(2).

[193] *2012 Lifeline Reform Order*, 27 FCC Rcd at 6671, para. 28.

[194] 47 U.S.C. § 254(b)(3).

[195] 47 U.S.C. § 254(c)(1).

71. The minimum standards we establish will also account for the need for Lifeline service offerings to be affordable. As we noted, "the Lifeline program is specifically targeted at affordability,"[196] and it is necessary to establish minimum service levels that are both affordable and reasonably comparable.[197] Commenters also emphasized the importance of affordability to facilitate broadband adoption.[198] The minimum standards that we establish strike a balance between the demands of affordability and reasonable comparability by providing consumers with services that allow them to experience many of the Internet's offerings, but not mandating the purchase of prohibitively expensive offerings.

72. We first explain which services will have minimum service standards. We also set initial minimum service standards and provide updating mechanisms. Finally, we describe exceptions made for providers who do not offer services meeting our minimum standards.

b. Minimum Service Standards for Lifeline Services

73. *Background*. In the *2015 Lifeline FNPRM*, we sought comment not only on whether minimum service standards were appropriate, but also on what criteria to use when creating minimum service standards.[199] When setting minimum service standards, we are guided by the statutory principle that consumers must have access to services that a substantial majority of American consumers have already subscribed to,[200] and that Universal Service Funds must support an "evolving level" of telecommunications services."[201] With this in mind, we proposed establishing minimum service standards for Lifeline supported services.[202]

74. *Discussion*. We now modify our rules to establish minimum service standards for all Lifeline supported services based on services to which a "substantial majority" of consumers have already subscribed.[203] We also set forth the data sources that will be used to set and update minimum service standards. We establish separate standards covering speed and data usage allowances for both fixed and mobile services in recognition of each service's distinct characteristics, and we establish minimum standards for mobile voice service, until standalone mobile voice is no longer a supported service.[204]

75. Numerous commenters support establishing minimum service standards for broadband; they emphasize that Lifeline customers should not need to accept "second-tier" service,[205] and that functional Internet access is essential to allow consumers to fully participate in society.[206] Broadband access can help households meet their "basic needs for education, health care, disabilities access, and

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[196] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7837, para. 36; 47 U.S.C. § 254(b)(1).

[197] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7837-38, para. 36.

[198] EveryoneOn Comments, WC Docket Nos. 11-42, 03-190, CC Docket No. 94-45, at 3 (Filed Aug. 31, 2015); Public Knowledge Reply at 10.

[199] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7839, para. 43.

[200] 47 U.S.C. § 254(c)(1)(B); *see supra* paras. 69-71.

[201] 47 U.S.C. § 254(c)(1).

[202] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7837, para. 35.

[203] 47 U.S.C. § 254(c)(1)(B).

[204] *See supra* para. 52.

[205] *See, e.g.*, New America's Comments at 2-3; State Members of the Federal State Joint Conference on Advanced Services Comments at 4 (one NARUC member stated that the Commission should "establish minimum standards, which should be based on competitive retail service offerings").

[206] The Benton Foundation Reply at 9-10.

public safety."[207] While other commenters argue that minimum service standards are unnecessary,[208] or unduly burdensome,[209] we generally believe that, at a minimum, services that are subscribed to by a substantial majority of the nation's consumers should receive Lifeline funding. We are unpersuaded by the argument that minimum service standards are unduly burdensome. As discussed in greater detail, *infra*,[210] we grant exemptions in certain situations where a fixed broadband provider does not currently offer service meeting the minimum standards.

76. In the *2015 Lifeline FNPRM*, we also sought comment on "whether and how service levels would vary between fixed and mobile broadband service."[211] While some commenters argued that the same standards should apply to fixed and mobile broadband,[212] we believe that different standards are appropriate because of the technological differences between fixed and mobile broadband, the two services' different capacity patterns, and the different constraints on service.[213] For example, mobile broadband providers face spectrum constraints that fixed providers do not,[214] and the speed mobile broadband providers can deliver to consumers is far more dependent on the consumer's location.[215] For similar reasons, the Commission has established different minimum service standards for fixed and mobile broadband when setting carrier obligations in the Connect America Fund (CAF).[216] Based on all of these factors, we conclude that different minimum service standards for fixed and mobile broadband are appropriate.

77. Finally, while setting initial minimum service standards is necessary to guarantee access to services that a "substantial majority" of residential consumers have already subscribed to,[217] it is equally important to regularly update those standards to make sure that Lifeline continues to support an evolving level of telecommunications service.[218] Because technology develops at a rapid pace, any minimum standards we set would quickly become outdated without a timely updating mechanism. Commenters also agree that any minimum service level must be updated regularly.[219] Accordingly, we conclude that minimum standards must be updated on a regular basis to ensure that consumers are able to continue to receive sufficiently robust service similar to what a substantial majority of American consumers subscribe to. We also conclude that the updating mechanism will rely on an "objective, data-

[207] Low-Income Consumer Groups Comments at 4-5.

[208] CTIA Reply at 5; Sprint Reply at 2.

[209] ITTA Comments at 26.

[210] *See* section III.B.2.d (Exceptions Where Providers Do Not Meet Minimum Service Standards).

[211] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7838, para. 37.

[212] ADTRAN Comments at 10.

[213] Illinois Comments at 6; CETF Reply at 11; Sprint Reply at 4; Benton Foundation Comments at 26.

[214] Sprint Reply at 4; *Eighteenth Mobile Competition Report*, 30 FCC Rcd at 14549, para. 47.

[215] *Eighteenth Mobile Competition Report*, 30 FCC Rcd at 14594, para. 126.

[216] *Compare Dec. 2014 CAF Order*, 29 FCC Rcd at 15649, para. 15 (imposing 10/1 Mbps minimum service standards for fixed broadband) *with Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17792, para. 362 (2011) (*USF/ICC Transformation Order)* (imposing 768 kbps/200 kbps minimum service standards for mobile broadband), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[217] 47 U.S.C. § 254(c)(1)(B).

[218] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7841, para. 49.

[219] GVNW Comments at 9; Pennsylvania PUC Comments at 14-15; State of Illinois Comments at 6.

based methodology,"[220] as we proposed in the *2015 Lifeline FNPRM*. Finally, we update section 54.408 of our rules in accordance with this conclusion.[221]

(i) Fixed Broadband

78. We first discuss the minimum standards for fixed broadband service.[222] In the *2015 Lifeline FNPRM*, we sought comment on "establish[ing] an objective standard that could be updated on a regular basis simply by examining new data about fixed broadband service."[223] Although we recognized that "the prevailing benchmark for fixed broadband is the speed of the service,"[224] we also sought comment on data caps and whether to set a minimum data usage allowance for fixed broadband service.[225] While some commenters opposed minimum service standards for fixed broadband,[226] many other commenters suggested that minimum standards were necessary for both speed[227] and data usage allowance.[228] We believe that for consumers to fully benefit from the same type of Internet service that has "been subscribed to by a substantial majority" of Americans, those consumers must have access to services of both sufficient speed and data usage allowance. Accordingly, we establish minimum service standards for both speed and data usage allowance which both must be met for providers to receive Lifeline funds.

79. *Data Sources*. In response to the *2015 Lifeline FNPRM* commenters proposed various methods to set initial minimum service standards for fixed broadband: some commenters proposed using specific numerical thresholds;[229] others supported using existing Commission testing mechanisms to determine initial minimum service standards;[230] and a third group of commenters supported "functional" minimum service standards with a focus on making sure that consumers could "perform a full range of online activities."[231]

80. In the *2015 Lifeline FNPRM* we asked if we should "consider setting any minimum standards based on the FCC Form 477 (Form 477) data,"[232] and several commenters supported the idea.[233] We also sought comment on using CAF standards in the Lifeline program.[234] While a few commenters opposed using CAF standards because meeting the CAF standards would be too expensive for providers,[235] or because the CAF standards would not provide sufficient flexibility for providers who do

[220] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7837, para. 35.

[221] *See* 47 CFR § 54.408.

[222] *See id*.

[223] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7839, para. 43.

[224] *Id.*

[225] *Id.*.

[226] Comcast Comments at 12; Frontier Communications Comments at 3; AT&T Reply at 11.

[227] CWA Reply at 2; CETF Comments at 16.

[228] Consumers Union Comments at 2-3; Mobile Beacon Comments at 5; Benton Foundation Reply at 14.

[229] CWA Reply at 2 (proposing a 10/1 Mbps standard); City of Seattle Comments at 2 (supporting a standard of 25/3 Mbps).

[230] ADTRAN Comments at 11 (proposing that the Commission utilize the testing programs from the Measuring Broadband America reports).

[231] Leadership Conference on Civil and Human Rights Comments at 2; The Benton Foundation Reply at 9-10.

[232] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7839, para. 43.

[233] Pennsylvania PUC Comments at 14.

[234] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7839, para. 43.

not currently meet the standards,[236] other commenters supported using CAF standards to determine the initial minimum standards for fixed broadband.[237]

81. We conclude that the minimum service standards for fixed broadband speed should be based on the service to which a "substantial majority"[238] of consumers subscribe as determined using available subscriber data reported on the Form 477. As we discuss in greater detail below,[239] while we do not formally define the term "substantial majority" for all supported services, we believe that 70 percent of consumers constitutes a "substantial majority" in the context of fixed broadband speeds.[240]

82. We also conclude that focusing solely on the "functionality" of a consumer's Internet service would not provide a workable standard for the Commission to use when updating annual service standards because it would require the Commission to determine the numerical threshold of "functionality" on a regular basis. By using numerical thresholds indexed to what consumers actually subscribe to, the Commission will allow consumer usage to determine what speeds are "reasonably comparable."

83. Because providers already "report extensively on their offerings"[241] on Form 477 twice a year, it is an appropriate repository for data to set and regularly update the minimum service standard for fixed broadband speeds.[242] Additionally, the Commission previously emphasized that it uses Form 477 to "update our universal service policies and monitor whether our statutory universal service goals are being achieved."[243] Because Form 477 provides an accurate picture of what services American consumers actually subscribe to, and because it is collected on a regular basis, we conclude that Form 477 provides the best data with which to set and update the minimum service standard for fixed broadband speeds.

84. In addition, for the fixed broadband data usage allowance minimum service standard, we conclude that the data usage allowance standards currently used in the Connect America Fund for rate of return carriers electing A-CAM support[244] are appropriate. We base the initial data usage allowance standard on this CAF standard because we do not currently have a source of available data that could be used to determine what percentage of subscribers purchase offerings with certain data usage allowance limits.[245] We therefore set the initial data usage allowance standard for fixed broadband at the CAF rate-of-return standard for carriers electing A-CAM support, which is 150 GB per month for fixed

(Continued from previous page)

[235] Cincinnati Bell Comments at 4-5; Frontier Comments at 10.

[236] EveryoneOn Comments at 3.

[237] Rural Broadband Policy Group Comments at 17; GVNW Comments at 10.

[238] 47 U.S.C. § 254(c)(1)(B).

[239] *See infra* para. 86.

[240] While we conclude that 70 percent of consumers constitutes a "substantial majority" as it relates to fixed broadband speeds, we lack the data to precisely determine what percent of consumers subscribe to other modes of service at particular service levels. Despite this, we still set minimum standards for other supported services at levels that in our judgement constitute a substantial majority of consumers based on the information available.

[241] Comcast Comments at 12.

[242] Pennsylvania PUC Comments at 14.

[243] *Modernizing the FCC Form 477 Data Program*, Report and Order, 28 FCC Rcd 9887, 9892-93, para. 14 (2013).

[244] A-CAM is the "Alternative Connect America Cost Model." *Wireline Competition Bureau Revises A-Cam Study Area Map*, Public Notice, 30 FCC Rcd 4610, 4610 (WCB 2015).

[245] In contrast to Form 477, which can be used to determine what fixed broadband speeds are purchased.

broadband.[246] We further conclude that the minimum service standards for data usage shall be updated based on data in the Commission's Urban Rate Survey and other appropriate and relevant data sources. The Urban Rate Survey was originally created as part of the Commission's Connect America Fund initiative in part to allow the Bureau "to specify an appropriate minimum for data usage allowance allowances"[247] in CAF, and we believe it can serve a similar purpose here. While we set the initial data usage allowance standard for fixed broadband based on the CAF rate-of-return standard for carriers electing A-CAM support, we also believe the Urban Rate Survey in the future will help guide the Bureau to determine the usage allowance most commonly offered in the fixed broadband marketplace.[248]

85. *Initial Minimum Service Standards.* While we conclude that Form 477 data will be used to set and update the minimum standards for download and upload speeds, we also conclude that the Connect America Fund rate-of-return standard is the best starting point for setting minimum service standards for data usage allowance. Finally, we recognize that for the purpose of updating the minimum standard for capacity, the Urban Rate Survey and potentially other data will be useful sources for the Bureau to consider.

86. *Speed*. We conclude that in order to determine what fixed broadband speeds a "substantial majority" of Americans subscribe to, we will use the 30th percentile of subscribed speeds based on Form 477 data. By using the 30th percentile, we arrive at a speed to which 70 percent of Americans already subscribe, and we conclude that 70 percent constitutes a substantial majority. Although the Commission has not previously defined what constitutes a "substantial majority," it has concluded that it is more than a simple majority.[249] Based on the most recent Form 477 data, the 30th percentile of subscribed fixed broadband speeds is 10/1 Mbps. Put differently, this means that 70 percent of residential broadband subscriptions already meet or exceed 10/1 Mbps speeds.[250] Based on Form 477 data on what consumers actually subscribe to, we set the initial minimum service speed standards for fixed broadband at 10 Mbps for download and 1 Mbps for upload. An offering must meet both download and upload speed minimums to be considered to meet the minimum service standards.

87. *Usage Allowance*. As stated above,[251] we set the initial usage allowance standard for fixed broadband at the CAF rate-of-return standard, which is 150 GB per month for fixed broadband.[252]

88. *Updating Minimum Service Standards*. We conclude that Form 477 will be used to update the minimum service standard for fixed broadband speed. When updating the minimum service

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[246] *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33, at 13, para. 27 (March 30, 2016) (*March 2016 CAF Order*).

[247] *USF/ICC Transformation Order*, 26 FCC Rcd at 17699, para. 99.

[248] We also encourage providers to explore options for increasing usage allowances for Lifeline consumers who are deaf, hard of hearing, deaf-blind, or have a speech disability and rely on video connection for Video Relay Services and point-to-point calls and other bandwidth-intensive accessibility functionalities. *See* National Association of the Deaf Comments at 6-7; Letter from National Association of the Deaf *et al*. to Marlene H. Dortch, Secretary, FCC, March 23, 2016 (explaining that 500 MB per month of data will provide about 60 minutes per month of calls that are made through a Video Relay Service or point-to-point by videophone by deaf and hard of hearing consumers who rely on video communications technology for such calls).

[249] *In Re Fed.-State Joint Bd. on Universal Serv.*, Recommended Decision, 17 FCC Rcd 14095, 14105-06, para. 25 (2002) (holding that because "only 50.5 percent of US households use computers to access" the Internet, a substantial majority of subscribers did not use computers to access the Internet).

[250] To order the subscription data in Form 477 for the purposes of determining percentiles, residential subscriptions were ordered lexicographically by download speed and then upload speed.

[251] *See supra* para. 84.

[252] *March 2016 CAF Order* at 13, para. 27.

standards in the future, the Bureau will use data from the most recently available and usable Form 477. Using Form 477, the 30th percentile level of residential broadband service speeds reported nationally will be used as the speed component of the minimum service standard. We find that this benchmark represents a service standard that is consistent with our statutory directive in section 254 of the Act. Accordingly, we conclude that using the 30th percentile of residential broadband speed is appropriate, because this level indicates that seventy percent of Americans subscribe to it, or something more robust.

89. For the fixed broadband minimum service standards, the Bureau will, on delegated authority, on an annual basis, release a Public Notice on or before July 31 notifying the public of the updated standard levels for speed and data usage allowance to be effective on December 1 for the next twelve months. The updated speed standard will be calculated using the above specified values from the most recent available Form 477. In the event the Bureau does not issue the Public Notice by July 31, or if any of the data required by the calculation are older than 18 months, the minimum service level for fixed broadband speed will be set at the greater of either (1) its current level; or (2) the fixed broadband speed standard used in the Connect America Fund for rate-of-return carriers. Because the Connect America Fund is also designed to provide advanced telecommunications services to America's consumers,[253] we conclude that its fixed broadband speed standards provide an acceptable alternative in the event the Bureau does not complete its update in a timely manner.

90. For the fixed broadband minimum service data allowance usage standard, the Bureau will, on delegated authority, on an annual basis, release a Public Notice on or before July 31 notifying the public of the updated standard level to be effective on December 1 for the next twelve months. The updated fixed broadband minimum service standard for data allowance usage will be the greater of (1) an amount the Bureau concludes a "substantial majority" of American consumers already subscribe to; or (2) the Connect America Fund data usage allowance standard set for rate-of-return carriers.

(ii) Mobile Broadband

91. We next discuss the minimum service levels for mobile broadband services in the Lifeline program and revise section 54.408 of the rules.[254] In the *2015 Lifeline FNPRM*, we sought comment on whether minimum standards were appropriate for mobile broadband, and what criteria should be used to set those standards.[255] Multiple commenters supported minimum standards for mobile broadband,[256] while others were opposed.[257] We agree with commenters who argue that some consumers only have access to mobile broadband, and that low-income consumers are particularly likely to only have access to mobile broadband.[258] For these low-income consumers, it is vital that the offered service provides sufficient speed and capacity to allow the user to utilize all that the Internet has to offer. Accordingly, we conclude that minimum standards for both speed and data usage allowance are appropriate.

92. *Data Sources*. In the *2015 Lifeline FNPRM*, we sought comment on setting minimum service standards for mobile broadband. We specifically sought comment on setting a minimum standard for capacity at 1.8 GB per person per month, which is what the average American consumer used in

[253] *Dec. 2014 CAF Order*, 29 FCC Rcd at 15645, para. 2.

[254] *See* 47 CFR § 54.408.

[255] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7840, para. 44.

[256] Pennsylvania PUC Comments at 13-14; Illinois Comments at 6; California ETF Comments at 21.

[257] Budget Reply at 7; Information Technology and Innovation Foundation Comments at 6.

[258] CETF Comments at 11; Victoria Rideout and Vikki S. Katz, Opportunity for all? Technology and learning in lower-income families at 5 (2016), http://digitalequityforlearning.org/wp-content/uploads/2015/12/jgcc_opportunityforall.pdf (stating that "one quarter (23%) of families below the median income level and one third (33%) of those below the poverty level rely on mobile-only Internet access").

2014.[259] Some commenters believed that requiring 1.8 GB would be too expensive for providers, or would require a significant charge for consumers,[260] while others argued that 1.8 GB per month per subscriber would be insufficient for consumers without access to fixed broadband.[261] While most commenters did not propose specific numerical thresholds, one commenter proposed requiring 1 GB of 4G data and unlimited 3G data.[262] We are mindful that Lifeline is meant to support a household, as opposed to an individual,[263] and we must take this into consideration when setting the proper minimum service standard for mobile broadband. Accordingly, as we discuss in more detail below, we conclude that after an initial schedule of minimum service standards, updated minimum service standards for mobile broadband data usage allowance will be based on calculation of a mobile data usage level by using data set forth in the Commission's annual *Mobile Competition Report* and other available data sources. For the mobile broadband minimum service standard for speed, we rely on Form 477 data while also incorporating industry mobile technology generation (i.e. 3G, 4G).

93. *Initial Schedule of Data Usage Allowance*. We conclude that, in order to allow the Lifeline market an appropriate period to adjust to the introduction of mobile broadband into the program, we should adopt a phased-in schedule of minimum service standards for mobile data usage allowances. After the period of time addressed in the schedule, the regular updating mechanism for mobile broadband service will apply unless the Commission acts otherwise based on recommendations in the State of the Lifeline Marketplace Report.[264] Beginning on the later of December 1, 2016 or 60 days after PRA approval, the minimum data usage allowance standard for mobile broadband will be 500 MB per month. Beginning December 1, 2017, the minimum data usage allowance standard for mobile broadband will increase to 1 GB per month. Beginning December 1, 2018, the minimum data usage allowance standard for mobile broadband will increase to 2 GB per month. Beginning December 1, 2019, the minimum data usage allowance standard for mobile broadband will be determined, and updated thereafter, based on the procedures below.[265]

94. *Data Usage Allowance*. We conclude that after the phase-in of mobile data usage allowance standards,[266] in order to update mobile broadband standards for data usage allowance in line with the principle of supporting services that a "substantial majority" of American consumers subscribe to, and given the types of data that are publically and regularly available, the minimum service standard for mobile broadband data usage allowance will be 70 percent of the calculated average mobile data usage per household. These values will be calculated as follows:

- First, the average number of mobile subscriptions per household will be determined by dividing the total number of mobile-cellular subscriptions in the United States, as reported in the *Mobile Competition Report*[267] or by CTIA, by the total number of

[259] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7840, para. 44.

[260] Commnet Comments at 8; NTUA Wireless Comments at 11-12.

[261] California ETF Comments at 21.

[262] Seattle CTAB Comments at 3-4.

[263] 47 CFR § 54.410(d)(1)(ii).

[264] *See supra* para. 66.

[265] *See infra* para. 94

[266] *See supra* para. 93.

[267] *Eighteenth Mobile Competition Report*, 30 FCC Rcd at 14523, Chart II.B.2.

American households, as determined by the U.S. Census Bureau.[268] This number will be rounded to the hundredths place.[269]

- Second, the number of mobile subscriptions per American household will be multiplied by the percentage of mobile subscribers who own a smart phone, as reported by the Commission in its annual *Mobile Competition Report*,[270] or other publicly available data sources if necessary, in order to determine the number of mobile smartphone subscriptions per American household. Because this value should not include mobile subscriptions that are not data-capable, phones that are not data-capable will not be used when calculating the mobile broadband minimum service standards. Additionally, phones that are not data-capable have no impact on the average household's mobile data capacity. This product will be rounded to the hundredths place.[271]
- Third, the calculated average number of mobile smartphone subscriptions per household will be multiplied by the average data used per mobile smartphone subscriber, as reported by the Commission in its annual *Mobile Competition Report*,[272] to determine the average mobile broadband data usage per household. This number will be rounded to the hundredths place and then multiplied by 0.7[273] to adjust for the fact that in these circumstances a "substantial majority" of subscribers will use less than the average.[274]
- Fourth, to provide more simplicity for providers, the per-household capacity will be rounded down to the nearest 250 MB.[275]

95. If applied today, the minimum service standards for mobile data usage allowance would be set at 2 GB per month, however, as discussed above,[276] we choose to adopt a more gradual phase-in of this standard. After the phase-in, in order to update the minimum standard for mobile broadband capacity, the Bureau will perform the same calculations listed above with the updated data from the *Mobile Competition Report* and other specified sources.

96. *Speed*. We now set the initial value for the minimum speed standard for mobile broadband. As stated above, our initial mobile broadband speed standard is based on technology

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[268] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2014 American Community Survey 1-Year Estimates (stating that there are 117,259,427 American households) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_S1101&prodType=table (last visited Apr. 7, 2016)

[269] Based on the most recent data, there are 3.03 mobile subscriptions per American household. [355,400,000/117,259,427].

[270] *Eighteenth Mobile Competition Report*, 30 FCC Rcd at 14606, para. 144, Chart VII.A (stating that 77 percent of mobile subscribers own smartphones).

[271] Based on the most recent data, there are 2.33 smartphone subscriptions per household. [3.03 * .77].

[272] *Eighteenth Mobile Competition Report*, 30 FCC Rcd at 14609, Chart VII.B.2 (stating that the average smartphone user uses 1.361 GB per month of data).

[273] Based on the most recent data, this currently amounts to 2.22 GB per month per household [2.33 * 1.361*0.7].

[274] *See generally*, Ovum, Smartphone and Tablet Usage Trends and Insights (2015), http://www.ovum.com/smartphone-tablet-usage-trends-insights. The typically right skewed nature of mobile data usage distributions suggests the median level of usage is lower than the average which in turn means a "substantial majority" value would also be less than the average. Given the lack of public data on the exact shape of such data usage distributions, we believe a multiplier of 0.7, representing 70 percent of the average is a reasonable value.

[275] Based on current data, the 2.22 GB household capacity leads to a minimum capacity standard of 2 GB per month.

[276] *See supra* para. 93.

generation, while the updated standard will incorporate Form 477 data.[277] A coalition of Lifeline providers indicated that the Commission should require mobile broadband providers to offer speeds of 3G or better,[278] and we agree. We conclude that, to claim Lifeline support for a mobile broadband service, a provider must provide to the Lifeline subscriber a service advertising at least 3G mobile technology for at least the amount of data usage allowance specified by the minimum service standards.[279] We believe this is an appropriate starting point given the Commission's actions in the Mobility Fund, where funding was limited to those who deployed networks at 3G or higher.[280] The initial mobile speed minimum service standard will be effective beginning on the later of December 1, 2016 or 60 days after PRA approval.

97. *Updating Minimum Service Standards.* For the mobile broadband minimum service standards, the Bureau will on delegated authority, on an annual basis, release a Public Notice on or before July 31 notifying the public of the updated standard to be effective on December 1 of the same year for the next 12 months. After the phase-in of the data usage allowance minimum standards,[281] the updated data usage allowance standard will be calculated using the above specified values from the most recent versions available of each required data source. In the event the Bureau does not issue the Public Notice by July 31, or if any of the data sources required by the calculations are older than 18 months, the minimum service level for mobile broadband capacity will automatically increase or decrease on December 1 of the same year from its previous level by the most recent year-over-year percentage change in smartphone data usage per household, as reported in the two most recent *Mobile Competition Reports*. The value of the previous minimum service level adjusted by the most recent year-over-year percentage change in smartphone data usage per subscriber will then be rounded up to the nearest 250 MB level. As an example, in 2013, the average smartphone user used 1.152 GB per month. In 2014, the average smartphone user used 1.361 GB per month. This indicates an 18.1 percent increase.[282] If the Bureau did not issue the required Public Notice performing the calculations detailed above, the most recent minimum standard would be increased by 18.1 percent and rounded up to the nearest 250 MB level.

98. We recognize that the minimum service standards for mobile broadband speeds may not need to be updated as frequently as the mobile data usage allowance standard given the pace at which new mobile technology generations are deployed. We therefore direct the Bureau to consider updating the mobile broadband speed standard at the same time it updates the minimum service standard for mobile broadband data usage allowance. The Bureau should consider mobile Form 477 data and other relevant sources to determine whether the mobile speed standard should be updated. Because we recognize that the minimum standard for mobile broadband speeds may not need to be updated on an annual basis, it will not be subject to an automatic increase; instead, it will only be adjusted if the Bureau determines that it ought to be adjusted after determining that, based on Form 477 data or other relevant sources, the "substantial majority" principle is best satisfied by an adjusted speed standard. In any case, the same Public Notice updating the mobile broadband data usage allowance standard should also establish the mobile broadband speed standard in effect beginning December 1, regardless of whether it is adjusted from its previous level.

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[277] *See supra* para. 92.

[278] Letter from John Heitmann, Counsel, Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Dec. 7, 2015) (Lifeline Connects Coalition *Ex Parte*).

[279] Many mobile offerings will provide a certain amount of data at a certain speed and then provide data service beyond that amount at lower speeds. The minimum service standard requires the usage allowance standard be met at the speed standard.

[280] *USF/ICC Transformation Order*, 26 FCC Rcd at 17675, para. 28.

[281] *See supra* para. 93.

[282] *Eighteenth Mobile Competition Report*, 30 FCC Rcd at 14609, Chart VII.B.2.

(iii) Fixed Voice

99. In the *2015 Lifeline FNPRM*, we sought comment on how to ensure fixed voice service is "reasonably comparable" and affordable to low-income consumers.[283] After consideration of the record, we decline to set minimum service standards for fixed voice service and instead maintain the *status quo* in this portion of the Lifeline market. It is not apparent that in this segment of the market Lifeline consumers are likely to be offered a less robust service than non-Lifeline consumers. In the fixed voice segment, providers typically apply the Lifeline discount to the price of the generally available residential voice service. In this way, the same services available to non-Lifeline customers are made more affordable to Lifeline customers.[284] Additionally, while numerous commenters emphasize the need to retain fixed voice as a supported service,[285] no commenters stated that specific minimum service standards for fixed voice service are necessary. Accordingly, we see no need at this time to intervene in such a situation.

(iv) Mobile Voice

100. In the *2015 Lifeline FNPRM*, we proposed establishing minimum service levels for voice-only service, and we sought comment on requiring providers to offer unlimited talk and text to consumers.[286] Commenters emphasized that voice-only service remained an essential part of the program,[287] at least until the IP-enabled transition is complete,[288] and many other commenters supported requiring providers to offer unlimited talk and text.[289] While some providers argued that minimum standards for mobile voice are unnecessary[290] or "uneconomical,"[291] we believe that requiring mobile voice providers to offer 1,000 minutes to consumers is consistent with our statutory directive to ensure that Lifeline consumers have access to the same services to which a substantial majority of American consumers subscribe. While we conclude that requiring providers to offer 1,000 minutes is appropriate, we are also mindful of providers' concerns about the affordability and feasibility of immediately requiring providers to offer 1,000 minutes and the resulting disruption to current Lifeline subscribers.[292] Accordingly, we adopt a transition period beginning with an initial minimum standard of 500 voice minutes per month increasing over time to 1,000 minutes on December 1, 2018. We also at this time

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[283] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7839, para. 41.

[284] *See generally supra* para. 62.

[285] *See generally* National Hispanic Media Coalition Reply at 4 & n. 11 (citing other commenters arguing that fixed voice should remain a supported service).

[286] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7838, para. 39.

[287] Budget Reply at 3-4; Free Press Reply at 10-11; The Leadership Conference on Civil and Human Rights Comments at 3.

[288] California ETF Comments at 20.

[289] California ETF Comments at 17; Michigan Public Service Commission Comments at 4 (Michigan PSC); NASUCA Comments at 7.

[290] Joint Commenters Comments at 4-7.

[291] TracFone Reply at 6.

[292] *See, e.g.*, Letter of Rebecca Murphy Thompson, EVP & General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 3 (filed Mar. 16, 2016) (CCA *Ex Parte*); Letter from Norina T. Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1 (filed Mar. 21, 2016) (Sprint Mar. 21 *Ex Parte*).

decline to include texting as a supported service, and thus we also decline to follow some commenters' suggestion that we set a minimum service standard for texting.[293]

101. Based on recently available data, it is clear that a "substantial majority"[294] of American consumers already subscribe to plans that offer 1,000 or more minutes, because "none of the smartphone plans for the United States have limited minutes,"[295] and 77 percent of cell phones in the United States are smartphones.[296] Accordingly, we conclude that Lifeline providers that seek support for mobile voice-only service, after the transition set out here, must provide 1,000 voice minutes in order to satisfy the minimum service standards until mobile voice is no longer a supported standalone service.[297] Because we will require mobile voice providers to offer at least 1,000 minutes beginning on December 1, 2018, the mobile voice minimum service standard will not be updated annually after that date.

102. We therefore adopt the following transition for mobile voice minimum service requirements.[298] The minimum service standards for mobile voice are as follows. Beginning the later of December 1, 2016 or 60 days after PRA approval, providers will be required to offer at least 500 minutes per month to mobile voice consumers. Multiple providers have indicated that they will be able to offer consumers 500 minutes a month,[299] and we accordingly conclude that this requirement is not unduly burdensome. Beginning December 1, 2017, providers will be required to offer at least 750 minutes per month to mobile voice consumers. Beginning December 1, 2018, and until voice telephony is no longer a supported service, providers will be required to offer at least 1000 minutes per month to mobile voice consumers. We believe this provides a gradual transition period that will allow Lifeline providers and consumers to adjust to the new mobile voice minimum standards reflective of the mobile voice plans offered to the substantial majority of American consumers.

(v) Bundled Offerings

103. In the *2012 Lifeline Reform Order*, we amended our rules to allow providers to offer bundled packages of voice and data service.[300] In the *2015 Lifeline FNPRM* we sought comment on how

[293] *See*, *e.g.*, NASUCA Comments at 5 (stating that the Commission should require providers to offer unlimited texting); National Health IT Collaborative for the Underserved Comments at 2 (stating that some level of texting should be included in the minimum service standards) (NHIT Comments).

[294] 47 U.S.C. § 254(c)(1)(B).

[295] *International Comparison Requirements Pursuant to the Broadband Data Improvement Act; International Broadband Data Report*, GN Docket No. 14-126, Fourth Report, 30 FCC Rcd 14994, 15035 (IB 2015).

[296] *Eighteenth Mobile Competition Report*, 30 FCC Rcd at 14606, para. 144, Chart VII.A.1.

[297] *See supra* para. 52 (explaining that standalone voice will be phased out as a supported service).

[298] *See supra* para. 100.

[299] *See*, *e.g.*, Letter from Scott Bergmann, Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 3 (filed Mar. 23, 2016) (CTIA Mar. 23 *Ex Parte* Letter) (indicating that a minimum standard of 500 minutes, with an increasing amount of minutes to "reflect cost savings associated with the implementation of a national third party eligibility verification system" would be acceptable); Letter from Danielle Frappier, Counsel for True Wireless, LLC, and TerraCom, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 3 (filed Mar. 24, 2016) (True Wireless Mar. 24 *Ex Parte* Letter); Letter from Todd B. Lantor, Counsel for Budget PrePay, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1-2 (filed Mar. 24, 2016) (Budget PrePay Mar. 24 *Ex Parte* Letter) (stating that the Commission could impose minimum service standards for 500 minutes and 250 MB of data); Letter from Mitchell F. Brecher, Counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 2 (filed Mar. 23, 2016) (TracFone Mar. 23 *Ex Parte* Letter) (stating its intention to provide 500 minutes and unlimited texting at no cost to its Lifeline consumers). To the extent that some of these providers suggest we should not at this time schedule any increase above 500 minutes, we disagree. Under the schedule we have adopted, providers will have well over 18 months to prepare for a phase-in of the 750-minute minimum standard and another year to prepare for the phase-in of the 1,000 minutes requirement.

[300] *2012 Lifeline Reform Order*, 27 FCC Rcd at 6792, para. 315.

bundles should affect the Lifeline support level.[301] We now clarify that providers remain free to offer bundled offerings as a way to improve their service offerings and attract consumers. However, beginning December 1, 2019, when support for voice-only service is phased down, in order for Lifeline providers to receive the full $9.25 reimbursement from the program for services offered as part of a bundle, the broadband component of the bundle must meet the applicable minimum service standards.[302] We believe this requirement is necessary to ensure that Lifeline subscribers continue to receive robust broadband service while affording reasonable flexibility to the provider and choice to the consumer.

c. Application of the Minimum Service Standard

104. While numerous commenters supported minimum service standards, many commenters worried about reduced consumer choice,[303] or providers being forced from the Lifeline market if they could not offer services that meet the minimum standard.[304] We are mindful of these issues, but we conclude that allowing the Lifeline benefit to be used on services that do not meet our minimum service standards would lead to the type of "second class" service that the minimum service standards are meant to eliminate. One of the reasons behind adopting minimum service standards was our belief that such standards would "remove the incentive for providers to offer minimal, un-innovative services."[305] If providers were able to collect support for services that did not meet our standards, this would lead providers to continue to offer low-quality services. For this reason, we require, for fixed broadband, that any Lifeline supported service meet both the speed and data usage allowance minimum standards.

105. We also decline to allow mobile broadband services to be supported if the service does not meet the minimum service standards for both speed and data usage allowance. We do not believe that mobile broadband speeds of less than 3G are sufficiently advanced to warrant Lifeline funding. Further, we believe the current wireless and Lifeline marketplaces would allow mobile service providers to structure their offerings in such a way that the minimum service standards would not promote robust service. For this reason, we require that any Lifeline mobile broadband service meet both the speed and data usage allowance minimum service standards. For mobile voice-only service, as long as it is supported as a standalone service and subject to the transition detailed above,[306] the service provided must meet the minimum service standard.

106. In order to ensure that Lifeline service meets the minimum service standards, we require service providers to annually certify compliance with the applicable minimum service level rules. Accordingly, we amend § 54.422(b) to require carriers to certify their compliance with these requirements on our Form 481.

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[301] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7842, para. 52.

[302] If the broadband component does not meet the applicable minimum service standard but the voice offering does meet the applicable minimum service standard, then the provider may still receive the then-applicable benefit provided for voice-only service. *See supra* para. 63.

[303] ITTA Comments at 27 (stating that a customer who did not want to purchase 10/1 speeds would be precluded from using the benefit on their desired product); New York State Public Service Commission Comments at 7 (stating that minimum standards could preclude consumers who wish to purchase offerings below the minimum service standards from using the benefit).

[304] Native Nations Broadband Task Force Reply at 3 (stating that 10/1 speeds are not available in many rural areas and Tribal Nations, and that without an exception, a "massive exclusion" would occur).

[305] 2015 *Lifeline FNPRM*, 30 FCC Rcd at 7837, para. 34.

[306] *See supra* para. 62.

d. Exceptions Where Providers Do Not Meet Minimum Service Standards

107. We next provide an exception to our minimum standard requirements targeted towards fixed providers who have yet to deploy broadband capable networks in specific geographic areas that meet the minimum service standards. While we are mindful of our statutory directive to ensure that residents of underserved areas have access to services that are "reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas,"[307] we have also recognized that many people, especially those living in rural areas, might not yet have access to broadband services that meet our minimum service requirements.[308] Many commenters have similarly emphasized the different levels of infrastructure present in rural areas.[309] In the *2016 Broadband Progress Report*, the Commission noted that 25 percent of residents of rural areas did not have access to download speeds of at least 10 Mbps.[310]

108. We recognize that the necessary infrastructure is not present in all areas, and that there are providers which are not currently capable of offering services which meet or exceed the minimum service standards. Accordingly, we address commenters' concerns with a limited exception to our minimum service standards. This approach maintains our objective of providing robust service where available while also not precluding a subscriber from obtaining a Lifeline benefit in situations where the infrastructure does not yet support the minimum service standard. Additionally, our conclusion is consistent with Commission precedent, as the Commission has previously granted certain recipients of Universal Service funding waivers from our minimum service standards because of infrastructure constraints.[311] As we explain in more detail below, the exception applies in the following circumstances.

109. *First*, we apply the exception only to fixed broadband providers.[312] We find the exception is only appropriate for fixed broadband because fixed broadband is the mode for which there are still significant areas of the country in which locations do not have access to the minimum fixed broadband standards.[313] While we acknowledge that some areas also do not have mobile broadband coverage meeting the minimum standards, there are far fewer of these areas.[314] Further, we are concerned, given inherent differences in mobile and fixed technologies and the attendant business models of each, that an exception for mobile service could more easily be used to undercut our objective of supporting robust service in the Lifeline program.[315]

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[307] 47 U.S.C.A. § 254(b)(3).

[308] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7873, para. 159 & n. 309.

[309] California Public Utilities Commission (California PUC) Comments at 9; WTA Reply at 5-6; ARC Comments at 7-8; Cincinnati Bell Comments at 4.

[310] *2016 Broadband Progress Report*, 31 FCC Rcd at 732, para. 79 & n. 242.

[311] *USF/ICC Transformation Order*, 26 FCC Rcd at 17837, para. 533.

[312] 47 CFR § 8.2(d) (defining a fixed broadband service as a "broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes fixed wireless services (including fixed unlicensed wireless services, and fixed satellite services.").

[313] *2016 Broadband Progress Report*, 31 FCC Rcd at 732, para. 79 & n. 242.

[314] *Eighteenth Mobile Competition Report*, 30 FCC Rcd at 14544, Chart III.A.5 (stating that 99.9 percent of the non-rural population lives in Census blocks with mobile LTE coverage, as does 97.9 percent of the rural population).

[315] More specifically, for mobile services, we find that the business economics of the marketplace mean a mobile broadband provider could much more easily than a fixed broadband provider craft a business model with a set of very low usage allowance offerings for the purpose of triggering this exception to meeting the minimum service standards. We find that allowing such behavior would undercut this Order's commitment to funding meaningful levels of robust service.

110. *Second*, the exception applies only where the provider does not offer *any* generally available residential fixed broadband packages which meet the minimum service standards at a prospective subscriber's residence. Because we do not believe Lifeline funding should support "second-tier" service, we find that providers who meet the minimum service standards with a generally available residential offering to a location should not be eligible for the exception at the location where they meet the minimum service standards.

111. *Third*, the exception only applies if the provider offers a generally available residential fixed broadband service to the prospective subscriber with speeds meeting or exceeding 4 Mbps download and 1 Mbps upload. We believe this requirement is necessary to ensure that providers who offer "second-tier" service are not rewarded for failing to upgrade their networks. We delegate to the Bureau the rulemaking authority to increase, but not decrease, this speed floor as it determines is appropriate.

112. A provider qualifying for this exception may claim Lifeline support for a household even when providing service that does not meet the minimum standards for fixed broadband as long as the Lifeline discount is applied only to the purchase of its highest performing generally available residential offering that meets or exceeds 4Mbps/1Mbps. A provider will certify that it is providing the service in accordance with Commission rules, including that this exception has been appropriately applied. However, as always, the Commission will retain its audit authority and may use it to periodically evaluate whether a provider is complying with the rule.

113. Finally, while we do not at this time provide an exception to the minimum service standards for mobile broadband, our longstanding waiver rule permits the Commission to waive any rule "in whole or in part, for good cause shown."[316] We accordingly will consider waivers on a case-by-case basis for providers who do not meet our minimum speed standard for mobile broadband in particular areas. Pursuant to our general waiver rule, waiver of the mobile minimum service standards for broadband would be appropriate only if special circumstances warrant a deviation from those standards, and such a deviation will serve the public interest.[317] We could envision that such special circumstances and public interest benefits would most likely be present in cases in which a provider seeks a waiver to apply the Lifeline benefit to the fastest mobile broadband product it offers, but that product does not meet the minimum service standards for mobile broadband due to lack of a deployed network able to achieve that standard.[318]

3. Support Levels

114. *Baseline Level of Support.* In the 2015 Lifeline FNPRM, we tentatively concluded that we should make permanent the non-Tribal support amount of $9.25 per month.[319] We now conclude that the non-Tribal support amount will be up to $9.25 per month. We believe that establishing a permanent support amount provides an additional amount of certainty for interested parties, and it allows for continued administrative simplicity by enabling more accurate funding need projections.[320] While $9.25

[316] *See* 47 CFR § 1.3.

[317] *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[318] *See, e.g.*, Letter from Chris Nierman, Senior Counsel, Federal Affairs, for General Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-2 (filed Mar. 24, 2016) (GCI Mar. 24 *Ex Parte* Letter) (stating that there are many areas in Alaska where the fastest mobile broadband speed available is 2G).

[319] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7842, para. 52.

[320] Michigan PSC Comments at 5; ITTA Comments at 8-9.

will be the permanent support level which will apply to all modes of service other than voice-only service, the non-Tribal support level for voice-only service will be adjusted as specified below.[321]

115. Many commenters argue that the current $9.25 support level may be insufficient to cover the total cost of the supported service.[322] Other commenters support the adoption of "tiered" service levels, with the amount of Lifeline support varying with the service provided,[323] and the provision of a greater benefit for broadband service and a smaller benefit for voice-only service.[324] We partially adopt such proposals, because we conclude that a greater benefit amount should be offered for broadband providers to facilitate the program's transition to broadband.

116. Although we take no position on whether $9.25 will be sufficient to support the entire cost of supported service, we emphasize that Lifeline was created to provide affordable, rather than free service,[325] and past Commission decisions have emphasized this point.[326] Additionally, we believe that other changes made in today's Order, such as the creation of a National Verifier and the streamlined eligibility determination process, will lower Lifeline providers' costs, and those savings can be passed on to consumers.

117. *Support for Voice-only Service*. For voice-only service, we adopt a schedule indicating the level of Lifeline support provided for voice-only service. As discussed above, prior to December 1, 2019, voice-only service meeting the minimum service standards shall be supported by $9.25 per month. From December 1, 2019 through November 30, 2020, voice-only service meeting the minimum service standards shall be supported by $7.25 per month. From December 1, 2020 through November 30, 2021, voice-only service meeting the minimum service standards shall be supported by $5.25 per month. On December 1, 2021, no support generally shall be provided for voice-only service except in certain circumstances identified below,[327] or unless the Commission, having considered the recommendations of State of the Lifeline Marketplace Report,[328] orders otherwise. In all events, voice service may still be provided in the context of an offering receiving Lifeline support if bundled with BIAS meeting the applicable minimum service standards.

118. Although we decide generally to phase-out Lifeline support for voice-only service as of December 1, 2021, we create an exception where particular circumstances are met. Specifically, we preserve the final phase-down level of Lifeline support ($5.25) even after December 1, 2021, for the provision of voice-only service to eligible subscribers by a provider that is the only Lifeline provider in a Census block. In particular, in any such Census block, such a provider will continue to receive $5.25 per month in federal Lifeline support for providing voice telephony service meeting the minimum standards to eligible subscribers, and thus will discount such voice service in the amount of the support received in accordance with our Lifeline rules.[329]

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[321] *See infra* para. 117.

[322] Competitive Carriers Association Reply at 6-7 (CCA); Pennsylvania PUC Comments at 15-16 (stating that $9.25 may not be sufficient to support broadband service).

[323] California PUC Comments at 16; Leadership Conference Comments at 2-3.

[324] Low-Income Consumer Groups Comment at 8.

[325] 47 U.S.C. § 254(b)(1).

[326] *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42 et al., 26 FCC Rcd 2770, 2776, para. 14 (2011) (*2011 Lifeline NPRM*) (stating that Lifeline "was designed to allow companies to be made whole for foregone revenues associated with discounts provided to eligible Lifeline/Link Up consumers").

[327] *See infra* paras. 118-122.

[328] *See supra* para. 66.

[329] 47 CFR §§ 54.401, 54.403, 54.405.

119. Although we conclude that Lifeline should transition to focus more on broadband Internet access service given the increasingly important role that broadband service plays in the marketplace,[330] we remain mindful of the importance historically placed on voice service.[331] We also recognize that although we provide a transition during which support is phased down, consumer migration to new technologies is not always uniform,[332] and certain measures to continue addressing the affordability of voice service may be appropriate consistent with the objectives of sections 254(b)(1), (b)(3) and (i).[333] At the same time, in implementing section 254, the Commission has a "responsibility to be a prudent guardian of the public's resources."[334] Collectively, this persuades us that although it remains appropriate to use some universal service resources for Lifeline voice even after such support otherwise generally has been phased out, we should prioritize supporting, in an administrable way, those areas where we anticipate there to be the greatest likely need for doing so.

120. Balancing those objectives, we conclude that the pre-December 1, 2021, level of Lifeline support—$5.25—will remain available even after December 1, 2021, for a provider to provide voice-only service to eligible subscribers in any Census block where it is the only Lifeline provider. Although one theoretically could imagine targeting this continued Lifeline support for voice-only service in other ways—*e.g.*, to other geographies, on the basis of certain demographic criteria, or otherwise—we are not persuaded that such other approaches would be as readily administrable, either in terms of identifying the area(s) or consumer(s) to be served with discounted service in implementing the Lifeline mechanism and/or in terms of our ability to estimate and predict Lifeline demand for purposes of budget evaluations.[335]

121. Further, having focused on these areas, we conclude that it makes more sense to provide any continued Lifeline support for voice-only service to the existing, single ETC serving the relevant Census block, rather than necessitating the designation of an entirely new ETC simply to serve this post-phase out role, particularly given that the Commission is phasing out Lifeline support for voice-only service more generally. With respect to any such Census block, Lifeline support for voice-only service provided by the sole Lifeline provider shall remain in place – together with the ETC's obligations as a Lifeline provider[336] – until the first year after the Commission (or the Bureau, acting on delegated authority) announces that a second Lifeline provider has begun providing service in the Census block.

122. For purposes of identifying the providers and Census blocks initially subject to this rule, we direct the Bureau to conduct a process to identify the Census blocks where there only is one Lifeline

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[330] *See supra* section III.A (Modernizing Lifeline to Support Broadband).

[331] *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17680, para. 49.

[332] *See, e.g.*, *2016 Broadband Progress Report*, 31 FCC Rcd at 744-45, paras. 101-02 & Table 11 (providing data on fixed broadband adoption).

[333] 47 U.S.C. § 254(b)(1) ("Quality services should be available at just, reasonable, and affordable rates."); 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."); 254(i) ("The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.").

[334] *High-Cost Universal Service Support et al.*, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4088, para. 29 (2010) *aff'd Vt. Pub. Serv. Bd. v. FCC*, 661 F.3d 54 (D.C. Cir. 2011).

[335] As described below, data sufficient to initiate the analysis required under our approach will already be available to the Commission as part of its implementation of universal service support.

[336] This assumes that the ETC has not qualified for the conditional forbearance described in section III.E.2.c (Forbearance Regarding the Lifeline Voice Service Obligations) or relinquished its ETC status in relevant part.

provider. The results of that initial process should be announced at least six months prior to the date on which support for standalone voice is scheduled to phase down to $0, *i.e.*, by June 1, 2021. The Bureau will have substantial data available to it by the time this process would need to occur in order to identify proposed Census blocks, and providers, that would (or would not) be encompassed by this continued Lifeline support for voice-only service. In particular, data will be available from the NLAD, from states that previously opted-out of the NLAD, and from the National Verifier, among others. This list shall be updated on an annual basis, such that support for standalone voice service provided by the relevant provider – and thus any accompanying obligation to offer service discounted by passing through the Lifeline support – shall end in a census block as of December 1 of the year that the Bureau identifies the census block as being served by more than one Lifeline provider.

123. *Support for Bundled Service.* For a bundled voice and broadband service, the support level will depend on whether the voice and broadband components meet the minimum service standard effective at the time. If the broadband component meets the broadband minimum service standards (both speed and data usage allowance) then $9.25 per month of support shall be provided. If the broadband component does not meet the minimum service standards but the voice component meets the minimum service standard, then support shall be provided at the level in effect for voice-only service as explained above.[337]

124. *Other Issues.* We also address concerns raised by several providers claiming that they are unable to process any form of payment.[338] While some Lifeline providers currently operate as prepaid wireless carriers, and therefore do not have dedicated billing departments, these providers nevertheless collect revenue from both Lifeline and non-Lifeline customers, such as through the purchase of reload cards, and they appear to be able to receive funds either via online payment or by mail.[339] Many of these providers partner with physical retailers who provide locations for Lifeline providers to sell such cards or even process payments.[340] In addition, we also highlight the flexibility provided for providers under the rules we adopt. Since the $9.25 of monthly support must only be applied to an eligible service provided for a month's time, and since we do not mandate pricing or any terms of payment for the Lifeline-supported service, a provider has a wide range of options for collecting additional revenue from the consumer if it so desires. For example, a provider may choose to have the consumer make a one-time payment upon enrollment, monthly payments, or payments on a more flexible schedule. A wide variety of approaches are possible, thus allowing providers the ability to find approaches to their business which work best for their customers. In sum, we are confident that a dynamic and competitive Lifeline marketplace will adapt to the changes we make.

125. Finally, we address the issue of whether the Lifeline program should support the cost of handsets or customer premise equipment. In the *2015 Lifeline FNPRM*, we sought comment on whether to include the cost of Consumer Premise Equipment (CPE) when determining a service's affordability.[341] While many commenters stated that the cost of CPE must be considered, and that the Commission should provide a subsidy to facilitate the purchase of the equipment,[342] we do not believe that such a subsidy is warranted at this time. Past Commission precedent makes it clear that Lifeline, with the exception of a

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[337] *See supra* para. 117.

[338] TracFone Comments, at 16 & n.23 (stating that TracFone does not have a billing system, and a mandatory charge would require it to create a billing system), http://apps.fcc.gov/ecfs/document/view?id=60001223293.

[339] *See e.g.*, TracFone, Buy Airtime, http://www.tracfone.com/got_a_tracfone.jsp (last visited Dec. 30, 2015).

[340] *See e.g.*, TracFone, Find a Retailer, http://www.tracfone.com/retailer_location.jsp?nextPage=retailer_location.jsp&task=retloc (last visited Dec. 30, 2015).

[341] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7840, para. 46.

[342] The Benton Foundation Reply at 9; California Telehealth Network Comments at 3.

brief period after Hurricane Katrina,[343] has been used to fund services, and not equipment.[344] At this time we see no reason to deviate from that approach. While we do not separately fund the purchase of equipment, we encourage the private sector to work collaboratively with the Lifeline program and Lifeline providers to help make devices more available. We further encourage Lifeline providers to explore options for offering accessible devices for consumers with disabilities.[345]

C. National Lifeline Eligibility Verifier

126. In this section, we establish a National Lifeline Eligibility Verifier (National Verifier) to make eligibility determinations and perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline Program. The National Verifier is more than simply a piece of technology; it is a system relying on both human resources and technological elements to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission. As described below, the National Verifier will have both electronic and manual methods to process eligibility determinations and will have at its center a Lifeline Eligibility Database (LED), which will contain records of all subscribers deemed eligible by the National Verifier. The National Verifier will also engage in a variety of other functions, such as, but not limited to, enabling access by authorized users, providing support payments to providers, and conducting recertification of subscribers, to add to the efficient administration of the Lifeline program. This Order directs USAC, with the oversight and approval of the Bureau and OMD, to procure the necessary parts to the National Verifier. As described below, certain aspects of the implementation will be overseen mainly by the Bureau with additional oversight by OMD, as necessary and appropriate. We delegate to the Bureau and OMD all aspects of the development, implementation, and performance management of the National Verifier. We delegate to the Bureau authority to provide any rule clarifications or guidance with respect to the National Verifier. Along with the other important changes we make to the program today, the National Verifier is an integral part of our vision for the future of this program. We revise sections 54.400 and 54.410 of the Lifeline rules to incorporate the National Verifier.[346]

127. *Background*. Lifeline providers have been primarily responsible in most states for determining eligibility and enrolling eligible subscribers into the program.[347] In recent years, however, some states have taken a proactive role in establishing state administrators and databases to determine eligibility for subscribers.[348] Today, depending on the state, eligibility can be established by documentation provided by the subscriber to a Lifeline provider, by approval of a state administrator, or

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[343] *Fed.-State Joint Bd. on Universal Serv. Sch. & Libraries Universal Serv. Support Mechanism Rural Health Care Support Mechanism Lifeline & Link-Up*, Order, 20 FCC Rcd. 16883, 16889-90, para. 13 (2005) (adopting temporary rules to include the provision of a free handset along with voice service to those directly impacted by Hurricane Katrina).

[344] *2012 Lifeline Reform Order*, 27 FCC Rcd at 6804, para. 348.

[345] *See* National Association of the Deaf Comments at 11; Letter from Robert Felgar, General Manager and Counsel, Odin Mobile, and Zainab Alkebsi, Policy Counsel, National Association of the Deaf, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1 (filed Nov. 2, 2015) (explaining that mobile handsets currently offered by many Lifeline providers frequently do not meet the needs of individuals with disabilities).

[346] *See* Appendix A.

[347] *See* 47 CFR § 54.410(a). *See also 2012 Lifeline Reform Order*, 27 FCC Rcd at 6697-98, para. 91.

[348] *See, e.g.*, *2012 Lifeline Reform Order*, 27 FCC Rcd at 6822-23, paras. 400-401; Texas PUC Comments at 2; California ETF Comments at 31; Michigan PSC Comments at 7-8 ; Florida Public Service Commission Comments at 9-10 (Florida PSC Comments); Nebraska Public Service Commission Comments at 1-2 (Nebraska PSC Comments): California PUC Comments at 23 ; Illinois Comments at 7.

by checking information with a state database.[349] While this patchwork system has succeeded in enrolling a number of qualified subscribers, it has also presented a number of challenges, increased costs and burdens, and opened opportunities for waste, fraud, and abuse.[350] Therefore, we proposed in the *2015 Lifeline FNPRM* to establish a National Verifier to make eligibility determinations and perform other functions related to the Lifeline program.[351] Our proposal was overwhelmingly supported by the majority of commenters.[352]

1. Objectives for the National Verifier

128. The Commission's key objectives for the National Verifier are to protect against and reduce waste, fraud, and abuse; to lower costs to the Fund and Lifeline providers through administrative efficiencies; and to better serve eligible beneficiaries by facilitating choice and improving the enrollment experience.

129. *Reducing Waste, Fraud, and Abuse*. As recognized by commenters, the National Verifier will close one of the main avenues historically leading to fraud and abuse in the Lifeline program:

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[349] *See, e.g.*, *2015 Lifeline FNPRM*, 30 FCC Rcd at 7846, para. 64; Illinois Comments at 7 (using a state database to checking for eligibility); California PUC Comments at 23 (utilizing a state administrator to determine eligibility); Frontier Comments at 6 (noting that providers have been required to act as independent verification agencies and to navigate a patchwork of state processes and systems and as a result have had to take on responsibilities that are fundamentally separate from their core functions as telecommunications carriers); AT&T Comments at 6 (commenting that the Commission's cost estimate for complying with the Lifeline rules is understated because it does not include the cost of complying with different state requirements). *See also* 47 CFR § 54.410(b), (c).

[350] *See, e.g.*, *Lifeline Providers are Liable if their Agents or Representatives Violate the FCC's Lifeline Program Rules*, Public Notice, 28 FCC Rcd 9022 (EB 2013) (reminding ETCs that they can be held liable for the actions of their agents, contractors, or representatives who violate the Lifeline program rules including confirming eligibility before activating Lifeline service).

[351] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7846-53, paras. 64-91.

[352] *See, e.g.*, Coalition *Ex Parte* at 1; Letter from the Honorable Gregg C. Sayre, State Chair, Federal State Joint Conference on Advanced Services, to Marlene H. Dortch, Secretary, FCC, at 4 (Dec. 22, 2015) (Federal State Joint Conference *Ex Parte*); Illinois Comments at 7; Oklahoma PUD Comments at 7; AT&T Comments at 13; Connected Nation Comments at 3; Public Knowledge, Appalshop, and Center for Rural Studies Comments at 33; Frontier Comments at 6; Windstream Services, LLC Comments at 3 (Windstream); Castleberry Telephone Company, Inc. Comments at 2 (Castleberry); Alaska Communications Comments at 6 (ACS); Connected Nation Comments at 16. *Compare* California PUC Comments at 21 (supporting a third party verifier but stating that participation should be optional where a state has developed its third party administrator to determine eligibility); New York PSC Comments at 5 (supporting a national verifier, but cautioning that a federal system should not preclude states from continuing their own third-party verification systems); Texas PUC Comments at 1-2 (stating that the Commission should have an opt out process for the national verifier if a state has process to examine eligibility or the state has developed a database and would like to continue to perform the eligibility screen); Pennsylvania PUC Comments at 21 (supporting a national verifier, but stating that states should be permitted to opt out, that the National Verifier should interface with states with databases, should develop standards for interfacing with states that have databases, and that states should be provided federal funding to meet the standards established by the Commission); Michigan PSC Comments at 6-11 (noting a number of challenges that the National Verifier will need to address, such as consumer privacy, obtaining access to state data, verifying consumer eligibility in a timely fashion); TracFone Comments at iii, 23 (stating that it has concerns about the National Verifier but believes such a system could be workable and offers suggestions). For example, TracFone suggests that if the Commission does adopt a national verifier it create a system called the "Centralized NLAD Certification System," that enhances the NLAD's functionality. *See id*. at 30-31; Verizon Comments at 1 (national third party verifier should be optional and providers should be permitted to choose between using it or making customer eligibility decisions); Commnet Wireless, LLC and Choice Communications, LLC Comments at 11 (ETCs should still be able to validate new sign-ups in real-time by accessing the NLAD without having to separately interact with the National Verifier except in unusual cases and that the National Verifier should only interact with providers).

Lifeline providers determining subscriber eligibility.[353] Before 2008 when the first non-facilities-based wireless providers started to enter the program, Lifeline was a traditional wireline voice service program and consumer eligibility determinations were necessarily made by the providers.[354] Today, the Lifeline program is a modern, dynamic, multi-provider program with wireline, wireless, and broadband service.[355] Modern Lifeline providers have varied business models and some have a greater financial interest in the eligibility determination, as the more subscribers they enroll, the higher the disbursement they will receive from the Fund.[356] Therefore, commenters have noted that the program should remove the responsibility of determining eligibility from an entity who is providing service to the subscriber.[357] Commenters agree that given today's modernization, adopting the National Verifier eligibility process to help enforce program rules and address concerns with eligibility determinations will greatly increase Lifeline accountability.[358]

130. *Reducing Costs to Lifeline Providers*. As noted in the comments, by removing the responsibility of determining eligibility from providers, the Lifeline program will also be a more attractive business opportunity as providers recognize significant reductions in administrative and compliance costs.[359] Commenters argue that variation across states has made the program more costly for multi-state providers who have had to use and comply with multiple eligibility systems and that the overall costs most likely exceed $600 million per year.[360] By providing a central point of verification, Lifeline providers can avoid the patchwork of systems currently required to enroll subscribers in various states. By reducing compliance costs and burdens and attracting more Lifeline providers, the program will benefit from greater competition and, as a result, deliver more value to subscribers. Once implemented, the National Verifier functionality will further reduce administrative burdens for Lifeline providers by streamlining the flow of payments from USAC to providers. Further, commenters note that the risk of enforcement liability caused by the actions of third parties prevents providers from

[353] *See, e.g.*, Pennsylvania PUC Comments at 23; Connected Nation Comments at 16; Frontier Comments at 2, 7; Windstream Comments at 3, 7; ACS Comments at iii.

[354] *See Universal Service First Report and Order*, 12 FCC Rcd at 8954-56, paras. 332-340; AT&T Comments at 2.

[355] *See, e.g*, TracFone Comments at 3-6 (describing the evolution of the Lifeline program from an offset to increases in monthly charges for telephone service resulting from the breakup of the Bell System, to a program that allows both wireline and wireless service options, including features such as all distance calling, roaming, and others).

[356] *See* 47 CFR §§ 54.407, 54.410.

[357] *See, e.g.*, AT&T Comments at 7 (stating that the "program lacks appropriate checks and balances to safeguard against waste, fraud, and base, by failing to structurally separate the party responsible for eligibility and enrollment-related functions from the party responsible for service provision and benefit delivery"). SNAP, for example, separates responsibilities for eligibility and enrollment-related functions (that are handled by a state agency) from retailer responsibilities and imposes internal controls requirements on state agencies that administer SNAP. *Id*. at 13.

[358] *See, e.g.*, Pennsylvania PUC Comments at 23; Connected Nation Comments at 16; Frontier Comments at 2, 7; Windstream Comments at 3, 7; ACS Comments at iii.

[359] *See, e.g.*, Coalition *Ex Parte* at 1 ("[adopting a third-party verifier] will both strengthen the program and reduce the costs to providers of servicing the Lifeline market"); Public Knowledge et al. Comments at 33 (noting that centralizing eligibility decisions will lower the costs and administrative burdens for carriers to participate in Lifeline); Frontier Comments at 2 (stating that the establishment of a centralized third-party verification administrator will reduce opportunities for fraud and abuse while streamlining the administration of the program for providers); AT&T Comments at 3 (recommending that the Commission remove Lifeline providers from Lifeline program administration functions, including enrollment, eligibility verification, and de-enrollment).

[360] *See, e.g.*, AT&T Comments at 6; Verizon Comments at 3 (noting that the costs to providers probably exceed $600 million per year for a program that distributes about $1.8 billion annually).

participating in the Program.[361] By adopting the National Verifier, the risk of enforcement actions against providers for eligibility related issues will decline as the National Verifier takes on the risk of determining eligibility for subscribers. Overall, transferring the eligibility certification process away from providers will make it easier on providers to comply with the Lifeline rules.

131. *Facilitating Consumer Choice and Improving the Enrollment Process.* The National Verifier will also facilitate subscriber choice, and serve as a single, unified platform for administering the new modernized Lifeline program.[362] Commenters note that Lifeline's current model of primarily determining eligibility through ETCs places significant limitations on the choices of eligible subscribers.[363] The existing model leaves little room for participation by third-party organizations, such as schools, community-based organizations, or digital literacy groups, to assist eligible subscribers in understanding the value of the Lifeline benefit as well as navigating the process of seeking an eligibility determination. As we move to a broadband-supporting Lifeline program, we agree with commenters that it is critical to provide maximum subscriber choice as well as enlist the assistance of third-party organizations to help subscribers get and stay connected with broadband.[364] These comments note that organizations who do not have a financial interest in the provision of Lifeline benefits and have social motivations to help low-income subscribers will improve the integrity of and participation in the program.[365] A subscriber-focused National Verifier will facilitate third-party participation by allowing them to help subscribers with eligibility questions and in applying the benefit to a Lifeline-supported service.[366]

2. Functions of the National Verifier

132. As supported by the record, we establish the National Verifier and explain how its core functions will achieve each objective described above.[367] The National Verifier is a comprehensive integrator of processes and systems. The National Verifier will, first and foremost, determine subscriber eligibility for the Lifeline program. It will also perform other necessary functions, such as enabling Lifeline providers to verify eligibility of a subscriber, providing access to authorized users, and providing support payments to providers. At the core of the National Verifier will be the Lifeline Eligibility Database (LED), which will contain a list of Lifeline eligible, non-duplicative potential subscribers.[368] While we set forth the basic functions and structure below, we direct USAC to work with the Bureau, and OMD as appropriate, to implement the National Verifier and to make administrative and efficiency improvements consistent with the core elements described below.

133. *Determination of Subscriber Eligibility*. A primary function of the National Verifier will be to determine eligibility for potential Lifeline subscribers in a manner that is cost-effective and

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[361] *See, e.g.*, AT&T Comments at 6 (citing to T-Mobile's relinquishment of its Lifeline-Only ETC designation and AT&T's own notice of relinquishment and noting that "the significant administrative burdens of being a Lifeline ETC coupled with potential FCC enforcement actions can be a powerful deterrent to participation from a diverse range of providers.").

[362] *See supra* section III.A. (Modernizing Lifeline to Support Broadband).

[363] *See, e.g.*, AT&T Comments at 2 (asserting that Lifeline consumers should have the same choices other consumers enjoy and be able to choose from an array of services and Lifeline providers).

[364] *See* Connected Nation Comments at i.

[365] *See, e.g.*, *id*. at 15.

[366] *See id.*

[367] *See supra* para. 128; *see also* TracFone Comments at 32; AT&T Comments at 13; Verizon Comments at 3.

[368] As described below, USAC may propose to the Bureau how and whether the information in the NLAD can or should be used to populate the LED.

administratively efficient. As revised by this Order,[369] subscribers will demonstrate eligibility for the Lifeline program by showing proof of enrollment in specific Federal and Tribal programs. These programs, such as the Supplemental Nutrition Assistance Program (SNAP) and Medicaid, have extremely robust program integrity and enrollment procedures.[370] By using these programs as determinants of eligibility here, the Lifeline program can draw upon their vast fraud prevention and program integrity capabilities. As recommended by commenters, the eligibility certification process will have both manual and electronic components to accommodate the needs of subscribers.[371] Manual certification will use human review of documents and other information to assess eligibility, while electronic certification will rely on communications between the National Verifier and other systems and databases.[372] We agree with the commenters that the program databases checked should, to the extent possible, include those owned by states,[373] those owned by Federal entities, or those owned by other entities.[374] We expect that the National Verifier will be able to accommodate and utilize many of the varying state databases available. We also envision that the electronic certification process will produce at least near real-time results.

134. Both the manual and electronic approaches will apply program rules, including identity verification, as necessary, to determine a subscriber's eligibility.[375] The National Verifier will also check to ensure that the subscriber is not a duplicate of any existing subscriber already receiving a Lifeline benefit. By checking this, the National Verifier will reinforce and build on the NLAD to enforce Lifeline's one-per-household rule, and prevent duplicates.[376] Subscribers will be able to submit information about themselves (e.g. such as verifying identity and documenting the basis for eligibility) to the National Verifier through a variety of methods, such as via mail and an online portal, and certify their

[369] *See infra* section III.D.2 (Criteria for Streamlining Lifeline Eligibility).

[370] *See, e.g.*, United States Department of Agriculture, Agency Financial Report, Fiscal Year 2014 at 199 (citing a 0.00 percent error rate for improper payments made based on inability to authenticate eligibility).

[371] *See, e.g.* AT&T Comments at 3; TracFone Comments at iv (stating that the certification system should include: state eligibility databases, federal databases, and applicant provided documentation); Frontier Comments at 7 (stating that the National Verifier should be required to review customers' certification forms and take on the recertification responsibilities).

[372] We direct USAC to propose acceptable documentation for the manual review to the Bureau. In particular, USAC shall consider how the National Verifier can address possible misuse of eligibility documentation (*e.g.* SNAP cards lacking identifying information).

[373] For example, the SNAP program uses databases that are owned by the states. *See* United States Department of Agriculture, Food and Nutrition Service Comments at 5 (USDA FNS).

[374] For example, the Supplemental Security Income program uses databases that are owned by the Social Security Administration. *See* Social Security, Disability, https://faq.ssa.gov/link/portal/34011/34019/ArticleFolder/417/Disability (last visited Feb. 17, 2016).

[375] For example, if a state administrator verifies identity in the same robust manner as the federal identification verification check, USAC may propose to the Bureau to rely on the state's check.

[376] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6734, para. 179.

eligibility.[377] The National Verifier will also have a dispute resolution process whereby subscribers found to be ineligible may have an opportunity to dispute the finding.[378]

135. The National Verifier will have both a manual and electronic certification process. We agree with commenters that our long-term goal should be to determine the eligibility of most subscribers through the more efficient means of electronic certification.[379] We recognize that electronic certification of eligibility will generally have lower long-run costs relative to labor-intensive manual certification. We have streamlined the programs used to determine eligibility for Lifeline to those that have substantial automation and electronic process in place already.[380] We direct USAC to seek the most cost effective and efficient means to incorporate electronic eligibility certification into the National Verifier wherever feasible. We expect USAC and the Bureau to work closely with the states, other federal agencies, and Tribal Nations to foster partnerships that will help the National Verifier develop the most efficient pathways to determining subscriber eligibility. For example, USAC should consider co-enrollment with states, other federal entities, or Tribal Nations or coordination with other entities that have enrollment responsibilities to more efficiently determine eligibility.[381] We believe such actions based on electronic certification will better support our objectives to reduce the costs to the Fund and to better serve subscribers with an improved certification process.

136. The National Verifier will implement a complete eligibility review prior to providing a Lifeline benefit. We believe that it is vital to deploy the National Verifier with the expectation that it will conduct comprehensive and timely reviews.[382] In the *2015 Lifeline FNPRM*, we sought comment on whether we should implement a pre-approval process to mitigate delays in the review period.[383] Commenters argued that completing full reviews of eligibility will reduce waste, fraud, and abuse.[384] We agree with the comments filed and, at this time, do not adopt a pre-approval process that would allow Lifeline providers to claim Lifeline support for a subscriber prior to a full review. Only after a full review is complete may the Lifeline provider claim and receive support for the subscriber. Lifeline supported service must begin on the day that the Lifeline provider certifies it will begin claiming support for serving

[377] USAC currently maintains a list of documents that can be used to establish identity. *See* USAC, *Third Party Verification Failure Resolution*, http://www.usac.org/li/tools/nlad/dispute-resolution/tpiv-failure-dr.aspx (last visited Dec. 14, 2015). Commenters have suggested that improvements be made to the documents used to establish identity. *See* TracFone Comments at 25 (urging the Commission to promulgate clear and specific applicant identification requirements because documents such as utility bills, are "wholly insufficient"). TracFone recommends that the documents contain (1) full name; (2) address; (3) date of birth; (4) social security or Tribal identification number (last four digits); and (5) photo ID. *See id*. at 42. Thus, we direct USAC to review the website list and propose to the Bureau changes to the list.

[378] We direct USAC to propose a process for dispute resolution to the Bureau for approval for the National Verifier.

[379] *See, e.g.*, TracFone Comments at 28 (noting that some states with manual processes have very slow turn-around times).

[380] *See infra* section III.D. (Streamlining Eligibility for Lifeline Support).

[381] *See, e.g.*, AT&T Comments at 16-21.

[382] *See, e.g.*, Pennsylvania PUC Comments at 23 (stating that the delay caused by verifier review of documents is outweighed by the benefits of reducing waste, fraud, abuse); Illinois Comments at 7.

[383] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7847, para. 69.

[384] *See, e.g.*, Pennsylvania PUC Comments at 23 (stating that the delay caused by verifier review of documents is outweighed by the benefits of reducing waste, fraud, abuse); Illinois Comments at 7.

the subscriber.[385] If the subscriber is not listed and claimed in the Lifeline Eligibility Database (LED), the Lifeline provider has no claim on support.

137. *Population of the Lifeline Eligibility Database*. The LED will contain records of Lifeline-eligible subscribers. As such, another important function of the National Verifier will be to allow for cost effective and administratively efficient ways to populate the LED.[386] The National Verifier will populate the LED with all necessary subscriber records after determining the subscriber is eligible. However, this need not be the only method of populating the LED with eligible subscribers.[387] We envision multiple other methods, including utilizing state databases, which are already being used today by current Lifeline providers in a number of states,[388] and building on existing processes used by states and/or community organizations which interact regularly with low-income subscribers. Our objective is to provide multiple pathways to populate the LED with records associated with Lifeline-eligible subscribers in order to simplify the enrollment process for subscribers and Lifeline providers. We therefore direct USAC to work with the Bureau to develop other efficient and reliable methods of listing eligible subscribers in the LED. Additionally, USAC must develop processes regardless of the pathway used, to obtain subscriber consent to the collection, retention, use, and sharing of a subscriber's personally identifiable information, including information about their use of Lifeline services with USAC, the National Verifier, and other appropriate users. As described further below, the LED will also maintain information about the supported services of the Lifeline subscribers.[389]

138. *Access by Different Users*. The National Verifier will also function as an interface for authorized users for many different activities. We agree with commenters and anticipate that eligible subscribers, Lifeline providers, states, and Tribal Nations will require access to establish or verify eligibility. We also expect the National Verifier to have varying interface methods to accommodate these different groups of users.[390] We direct USAC to work with the Bureau to develop interfaces that promote the objectives of the National Verifier and serve the needs of users in a cost-effective and efficient manner.

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[385] Note that a provider could "claim" a subscriber in the Lifeline Eligibility Database (LED) but not claim support until a later time when service begins. The claiming process in the National Verifier will make it clear when the provider is certifying to providing service and therefore eligible to collect support for a subscriber.

[386] For the purposes of defining a framework for the National Verifier, "database" is not intended to have any technological meaning requiring the National Verifier to follow a specific path toward technically implementing these requirements. "Database" is meant as a general term denoting a collection of data organized for rapid search and retrieval. The Commission directs USAC to implement the National Verifier in accordance with this section using the most appropriate technological means.

[387] *See, e.g.* TracFone Comments at iv (stating that the certification system should include state eligibility databases, federal databases, and applicant provided documentation).

[388] For example, TracFone notes that it has worked with seventeen states to access state databases. *See* TracFone Comments at iii. *See also* Federal State Joint Conference *Ex Parte* (noting that at least fifteen states use their social service databases to confirm consumer eligibility for participation in the Lifeline program); USAC, Summary Report of Responses to USAC Request for Information (RFI) Regarding Potential Implementation of a National Verifier, (March 4, 2016), http://www.usac.org/li/about/process-overview/program-stats.aspx (USAC RFI Summary Report).

[389] *See* section III. E.2.c.ii. (Increasing Competition for Lifeline Consumers, ETCs that are not Lifeline-Only).

[390] For example, the National Verifier may have an interface that is consumer-friendly and geared towards subscribers. It may have another interface that is geared toward providers that may allow application programming interfaces (machine-to-machine interaction).

139. *Access by Lifeline Providers*. For Lifeline providers, the National Verifier will support many functions, such as allowing permissible queries to the LED to verify if a subscriber is eligible,[391] allowing the claiming of a subscriber as a Lifeline customer, and allowing reimbursement based upon subscribers served. For example, the National Verifier will allow Lifeline providers to easily confirm a subscriber's eligibility status in the LED by using an appropriate set of personal information provided by the subscriber. After obtaining authorization from the subscriber, Lifeline providers intending to initiate a supported service will use the LED to claim that subscriber as a Lifeline customer. By claiming the subscriber, the Lifeline provider will certify that it will be providing a Lifeline-supported service to the subscriber in accordance with Commission rules. Providers will be able to enter into the LED the correct support amount (non-Tribal or Tribal) for the claimed subscriber. We also agree with commenters who argue that the National Verifier should also allow Lifeline providers to relinquish subscribers in the LED, thus discontinuing support, in accordance with Commission rules.[392] We expect that the technology used for the National Verifier will allow claiming and relinquishing either a single subscriber record or batches of records. However, irrespective of the technical abilities of the National Verifier, service providers must follow the Commission's rules on enrollment and de-enrollment.[393]

140. *Access by Subscribers*. The National Verifier will also allow potential subscribers[394] to contact it directly to initiate and complete eligibility determinations and applications for Lifeline service, to obtain information about Lifeline providers and services, and to resolve any issues through dispute resolution as recommended by commenters.[395] The National Verifier may use standardized forms and easy-to-use processes to assist subscribers in completing applications. It will have internal controls and utilize document management processes to aid the submission of complete applications, regardless of the submission method used.[396] During the application and certification process, the National Verifier will communicate with subscribers to notify them of application status at relevant milestones in the process. Subscribers will be notified of either an affirmative or negative eligibility determinations by the National Verifier. Once a subscriber is listed in the LED, he or she will be notified, and be given information such as, but not limited to, the manner in which the Lifeline benefit may be used, as well as information on services and Lifeline providers in their area.[397] Subscribers must consent to providing the information to the National Verifier, should be made aware of what information is being stored and used by the National Verifier, and should also be allowed to view and modify their records in the National Verifier as appropriate. The National Verifier may also communicate with subscribers for other purposes related to

[391] The National Verifier will only permit queries which facilitate the purposes of the Lifeline program. After obtaining approval of the Bureau, USAC may implement useful administrative queries to facilitate the needs of the modernized program.

[392] *See, e.g.*, Texas PUC Comments at 5 (suggesting that the reason for de-claiming or de-enrollment be included in the transaction information); TracFone Comments at 32.

[393] *See, e.g.*, 47 CFR §§ 54.405, 54.410.

[394] We use the term potential subscribers here generally to refer to both successful and unsuccessful applicants to the Lifeline program.

[395] *See, e.g.* Pennsylvania PUC Comments at 21 (supporting the ability of consumers to connect directly with the National Verifier and provide documentation and get information about services and Lifeline providers in their area); Verizon Comments at 4; Frontier Comments at 7 (recommending that the customers directly interface with the National Verifier); Castleberry Comments at 3; ACS Comments at 7. *Compare* Boomerang Comments at 16 (recommending that the Commission improve the dispute resolution and third party identification verification processes currently in place).

[396] For example, applications submitted via a secure website should have standardized, mandatory fields that require input and provide error messages before advancing to the next screen.

[397] *See, e.g.*, Illinois Comments at 7 (stating that the National Verifier could inform consumers about the available providers via a call center or Internet site).

the efficient administration of the program as determined to be necessary by USAC, with the approval of the Bureau.

141. We also expect the National Verifier to use a variety of methods to communicate with subscribers who have limited means of connection, both in terms of the mode used (such as mail, telephone, text messages, email, etc.) and in terms of form used (such as various languages and access for disabled individuals). The mode of communication from the National Verifier to the subscriber at a minimum must be appropriate and commensurate with the mode through which the subscriber initiated contact with the National Verifier or requested to be contacted. We also expect the National Verifier to provide access to subscribers with disabilities in accordance with all applicable laws and to provide service in multiple languages as directed by the Bureau.

142. *Access by States, Tribal Governments and State/Tribal Administrators.* As recommended by commenters, the National Verifier will also support access by states, Tribal governments, and state/Tribal administrators and will also support communications between it and the states.[398] Commenters note that some states have already implemented processes for determining Lifeline eligibility for individuals in their states, and we seek to cooperate with such state efforts as we jointly continue to protect the integrity of the program and the subscriber experience with the Lifeline eligibility certification process.[399] Recognizing that existing state efforts will provide a way to more efficiently and cost-effectively determine eligibility, we direct USAC, as part of its development and operation of the National Verifier to consider opportunities to coordinate and partner with states.[400] USAC should ensure any partnership promotes the objectives of the National Verifier to improve administrative efficiency, better the subscriber experience, and prevent waste, fraud, and abuse in the program.[401] It is also imperative that a Tribal or state eligibility determination is congruent with the Commission's rules. Prior to initiating these Tribal or state partnerships, USAC must submit a proposed partnership plan to the Bureau indicating how it is congruent with the National Verifier and the Bureau must approve of establishing such a partnership as proposed by USAC.

143. *Support Payments Based on the National Verifier.* The National Verifier will also function as the default basis for determining support payments to providers.[402] Providers will be paid based upon the records of claimed subscribers in the LED absent some other basis for suspending,

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[398] *See, e.g.*, TracFone Comments at 27; Federal State Joint Conference *Ex Parte* at 2 (noting that twenty-one states have some type of verification process); Joint Commenters Comments at iii (supporting the utilization of existing state databases, including certified independent third-party eligible verifiers, rather than a single national verifier). *See* USAC RFI Summary Report.

[399] *See, e.g.*, Illinois Comments at 7 (stating that the national verifier could connect with its state database); AT&T Comments at 14 (state agencies cold perform certain administrative functions, just as they do for SNAP).

[400] *See, e.g.*, TracFone Comments at 25 (noting that it has partnered with seventeen states to access state eligibility databases and that it expects to reach agreements with other states in 2016). *Compare* GCI Comments at 20 (commenting that the Commission should give states the option to conduct their own eligibility verification).

[401] One commenter suggested that connection to a state database should only be mandatory if the provider has more than 5,000 subscribers in the state. *See* Windstream Comments at 8. While we do not impose such a policy here, we direct USAC to consider the most efficient ways to partner with the states.

[402] After obtaining approval from the Bureau, we also direct USAC to implement administrative solutions to resolving concerns with the accuracy of the number of active subscribers in the database. *See* TracFone Comments at v (opposing the use of NLAD to calculate Lifeline support payments because, according to TracFone, NLAD does not accurately state the number of active subscribers, and in many cases would overstate that amount, causing waste of USF resources). *See also* Joint Commenters Comments at 78 (noting that subscribers remain enrolled in the NLAD after the time for which service to them can be reimbursed). For example, subscribers remain actively enrolled during the 30 day cure period following an initial 60 days of non-usage. *Id.* at 79

delaying or declining to provide such support.[403] This approach will serve to enforce Commission rules and significantly reduce duplicates, ineligible subscribers, and improper payments.[404] We direct USAC to provide the Bureau and OMD with a transition plan for phasing out the FCC Form 497, currently used to seek Lifeline support. With approval of the Bureau and OMD, USAC will begin executing this plan and moving to a system where support payments are based on the records in the LED. We also direct USAC to propose to the Bureau and OMD improved methods of providing payment to the Lifeline providers that will reduce costs and burdens to the Fund and to Lifeline providers. For example, we received comments from AT&T suggesting that payments could be received by providers as electronic funds transfers.[405] USAC should consider comments such as these and provide recommendations to the Bureau as to whether the model of payment currently in place is the most efficient method of serving Lifeline subscribers.

144. Additionally, we direct USAC to consider how the National Verifier might facilitate initiatives that aggregate eligible subscribers' Lifeline benefits so as to streamline the payment of benefits and therefore encourage provider participation. The Bureau will work with USAC to establish procedures and guidance USAC can use to coordinate "aggregation projects" in the Lifeline program consistent with the objective of preventing waste, fraud, and abuse. At a minimum, to create an aggregation project, the Lifeline provider must certify that the aggregation project will provide Lifeline eligible service directly to the eligible low-income subscribers' residences, describe the technologies the Lifeline provider plans to utilize for that specific project, and certify that the service provided through the project will otherwise comply with all other Lifeline rules. We note here that aggregated benefit programs must meet the minimum standards set out in the Lifeline rules, as measured by the service provided to each individual subscriber. We therefore amend section 54.401 to enable payment for providers' servicing aggregation

[403] For a provider to receive Lifeline support for serving a claimed subscriber, not only must there be a record of the claimed subscriber in the LED, but the service provider must be acting in compliance with relevant applicable statutory requirements and Lifeline program rules. Moreover, section 54.707 of the rules authorizes USAC to suspend or delay universal service support amounts if a carrier fails to provide adequate verification of its entitlement to such support upon reasonable request or if USAC is directed by the Commission to suspend or delay universal service support amounts. 47 CFR § 54.707. In the *2012 Lifeline Reform Order*, the Commission provided guidance to USAC regarding the procedures it should follow in the Lifeline context regarding the suspension or delay of universal service support amounts if a carrier fails to provide adequate verification of its entitlement to such support upon reasonable request under section 54.707 of the rules. *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6785, para. 298. As also observed in the 2012 Lifeline Reform Order, the Commission has responsibilities to maintain the integrity of the universal service fund and will pursue recapture of funds and/or seek to impose penalties where warranted. *Id*. at 6785, para. 299. *See also, e.g., Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight et al.*, Report and Order, 22 FCC Rcd 16372, 16386, para. 30 (2007); 47 CFR Part 1, Subpart O (Collection of Claims Owed the United States). Thus, in addition to the role of USAC audits under section 54.707 of the rules and the associated guidance in the *2012 Lifeline Reform Order*, the Commission itself can direct USAC to suspend or delay universal service support amounts under section 54.707 of the rules, as noted above. In this context, we anticipate that the Commission could direct USAC to suspend or delay universal service support amounts, either wholly or in part, when the Commission has proof, or credible information, that leads it to reasonably believe, based on the totality of the information available, that all or part of a payment would be in violation of the statutes and regulations applicable to the Lifeline program. Furthermore, in extraordinary cases where advance notice would likely cause significant harm to the universal service fund, for instance, by hindering the possibility of recovering funds, the Commission reserves the right to direct USAC to initiate the suspension or delay of Lifeline support amounts even in advance of notice to the relevant service provider. *Cf., e.g.*, ABA, Inc. v. District of Columbia, 40 F.Supp.3d 153, 167-68 (D.D.C. 2014) ("All Circuits that have addressed the issue have determined that a temporary suspension of Medicare or Medicaid payments does not implicate due process and that no pre-suspension hearing is required.") (emphasis in original).

[404] *See, e.g.*, Verizon Comments at 5 (supporting payment based on NLAD customer counts).

[405] *See* Letter from Anisa Latif, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, Attach. at 13 (filed Nov. 23, 2015).

projects. Further, we direct the Bureau to work with USAC, as part of implementing the National Verifier, to provide Lifeline providers with guidance and procedures for creating aggregation projects and for enrolling subscribers in aggregation projects.[406] Finally, total reimbursement distributed to the Lifeline provider will be tied directly to the number of subscribers affiliated with an aggregation project who have been determined eligible for a Lifeline benefit.

3. Performance Management of the National Verifier

145. In this section, we direct USAC to develop a robust performance management system to advance the objectives and to analyze, on an ongoing-basis, the effectiveness of the National Verifier. We recognize that our success with the National Verifier is integral to the Lifeline program. We provide below a range of components to be utilized in evaluating the performance of the National Verifier. Our list is not exhaustive, and we expect USAC, in consultation with the Bureau and OMD, to continue to update the performance of the National Verifier and its performance management system.

146. *Time of Review*. We first discuss the time it will take for the National Verifier to review a subscriber's eligibility.[407] We expect that both the manual and electronic certification processes will be completed in a reasonable amount of time from the time of application receipt by the National Verifier to final eligibility determination and population of the LED. We expect that the National Verifier will develop review processes that balance the needs of subscribers to receive a decision quickly with our responsibility to conduct accurate eligibility reviews. To the extent it would improve the subscriber's experience and improve program efficiency, the National Verifier may implement any solutions, such as queuing, to manage demand. We also require the National Verifier to forecast and provide innovative solutions to enrollment fluctuations that may affect review times. At a minimum, the National Verifier should use project management processes, maximum automation, and flexible staffing to facilitate the rapid response time required to best serve the stakeholder community.

147. *Performance of the LED*. The LED will, at a minimum, maintain a list of subscribers for whom eligibility has been confirmed for Lifeline-supported services and a list of claimed subscribers. Recognizing that some providers and subscribers may have concerns about the frequency with which the LED is updated, we direct USAC to have the National Verifier modify and make available listings, de-listings, and other record changes in the LED quickly, taking into account the need for reliable information and cost considerations of varying levels of service.

148. *Development Environment*. The National Verifier must include a development environment that can be used by interested parties to test the components of the National Verifier prior to the live date. The development environment should allow the National Verifier and stakeholders to test new functionalities before the National Verifier launches and as new functions are added.

149. *Use of the NLAD*. In order to build the National Verifier in an efficient and timely manner, we permit USAC to integrate or repurpose the NLAD in whole or in part as necessary.[408] If the

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[406] USAC's role will be to develop processes to ease and streamline the administration of aggregation projects by implementing special systems, technical support, and coordination efforts. USAC will not fund consumer outreach efforts but may provide administration and expertise to community-based organizations, housing associations, and institutions seeking to coordinate the aggregation of benefits.

[407] *See e.g.*, Michigan PSC Comments at 7 (noting that one of the challenges for the national verifier will be to verify consumer eligibility timely); Joint Commenters Comments at iii (commenting that the verification must preserve a real-time enrollment option).

[408] *See, e.g.*, TracFone Comments at 32 (citing advantages to using information in the NLAD, including no service disruption to those customers); AT&T Comments at 13 (supporting the transformation of the NLAD into a national level database used by USAC to oversee all Lifeline program administration functions, and implement program controls that rely upon actual consumer information); Commnet Comments at 10 (recommending that a verifier should complement and not replace the NLAD); Castleberry Comments at 2 (commenting that the National Verifier should have access to the NLAD to ensure duplicate benefits are not provided).

National Verifier has integrated into it all the responsibilities and functions of the NLAD, including but not limited to subscriber duplicate prevention and detection and identify verification, then USAC may propose to the Bureau to discontinue the NLAD. Further, records currently contained in the NLAD may be incorporated into the National Verifier if such incorporation promotes the operation of the National Verifier.[409] We delegate to the Bureau the ability to revise the rules regarding the NLAD, including but not limited to section 54.404, as necessary to allow for the transition and implementation of the National Verifier.

150. *Use of Acceptable Documents for Eligibility and Identity Certification.* The National Verifier will require subscribers to submit documentation for determination of eligibility. Given the great diversity in types of documentation available for establishing identity and eligibility across the states, territories, Tribal Nations, and eligibility portals, the National Verifier will maintain information on acceptable documentation types and will provide guidance about the types of documentation that are acceptable for establishing identity and eligibility for the Lifeline program. We also delegate to the Bureau to work with USAC to develop new forms, update or revise current forms, and/or retire forms if the Bureau believes it appropriate and necessary to aid program administration and to facilitate the implementation of the National Verifier.

151. *Document and Data Retention by the National Verifier.* The National Verifier will retain eligibility information collected as a result of the eligibility determination process. Lifeline providers will not be required to retain eligibility documentation for subscribers who have been determined eligible by the National Verifier. However, current Lifeline program rules regarding record retention of eligibility documentation will remain in effect for Lifeline providers who have determined the eligibility of a current subscriber when enrolling that subscriber, as this is necessary for Lifeline program evaluations and audits.

152. *Comprehensive Help Desk.* The National Verifier will have a help desk equipped to handle inquiries from all stakeholders, including subscribers, Lifeline providers, states, and aggregators. At a minimum, the help desk will have the ability to interact with stakeholders in multiple languages and for specified time periods.[410]

153. *Training and User Support.* We direct USAC to develop and implement a training plan and ongoing National Verifier user support strategy. The training should include, but not be limited to, training for USAC and National Verifier personnel, training for Lifeline providers and states, and outreach packets for state PUCs and PSCs for subscribers and aggregators. We direct USAC to develop on-going training and user plans for all the stakeholders as needed.

154. *Security and Privacy of the National Verifier.* We direct USAC, working with OMD and its Office of the Chief Information Officer (OCIO), to ensure that the National Verifier will incorporate robust privacy and data security best practices in its creation and operation of the National Verifier. USAC must ensure that the National Verifier complies with all applicable laws and Federal government guidance on privacy and security and other applicable technology requirements such as those enacted by the Federal Information Security Management Act (FISMA), National Institute of Standards and Technology (NIST) publications, and the Privacy Act. As USAC seeks vendors to build the National Verifier, it should require that potential vendors demonstrate and incorporate in their proposals principles, including but not limited to, privacy-by-design and security-by-design principles for the National Verifier. Potential vendors must also include statements that allow sharing their proposals with USAC and the Commission for review and discussion prior to beginning the work. Any vendor selected must commit to abiding by the principles described here and must build and operate the National Verifier using agile development methodologies. We recognize that privacy and data security best practices change over

[409] *See, e.g.*, TracFone Comments at 10 (recommending that existing Lifeline subscribers be grandfathered into the program, if the rules for program eligibility change).

[410] *See, e.g.*, Verizon Comments at 4 (noting that the California Lifeline program's call center supports nine languages).

time, so we direct USAC to ensure that the National Verifier's privacy and data security practices remain consistent with Federal government guidance, legal requirements and best practices, and to hire a third-party firm to independently audit and verify the National Verifier's compliance with these policies annually and provide recommendations based on any audit findings. USAC should report to the Commission annually the results of this third-party audit and verification, as well as its efforts to ensure compliance with regards to its privacy and data security practices.[411]

155. The National Verifier must follow the NIST guidance for secure, encrypted methods for obtaining, transmitting, storing, and disposal of consumer and provider information.[412] The National Verifier should also follow NIST guidance for firewalls, boundary protections, protective naming conventions, and adoption of strong user authentication requirements and usage restrictions to protect the confidentiality of consumer and provider information.[413] We further direct USAC to ensure that, per NIST guidance, access to consumer and provider data is limited and subject to secure authentication systems for Verifier personnel,[414] for service providers and for other users who will have access to consumer or provider data in the possession or control of the National Verifier. We also direct USAC, per NIST guidance, to ensure that Verifier personnel working with consumer or provider data held by the National Verifier receive USAC's yearly rules of behavior, regular privacy and data security training.[415] USAC must maintain records of the trainings and attendees. We further direct USAC, per NIST guidance, to ensure that the National Verifier limit its data collection to information it needs to perform its functions as National Verifier, and to promptly and securely dispose of data that it no longer needs. We direct USAC, in accordance with NIST 800-53[416] to ensure that the National Verifier program has all of the necessary documentation and verification of authority to operate, yearly updates, continuous monitoring, plans of actions and milestones (POAMS)[417] and proper continuity and disaster recovery plans. The National Verifier must have subscriber notification procedures in the event of breach that are compliant with Department of Homeland Security (DHS)[418] and OMB guidance.[419] All these efforts and other guidance on privacy and security such as FISMA NIST Publications, and the Privacy Act should be independently audited and verified by a third party, hired by USAC to assess its annual compliance with these policies annually, as well as provide recommendations based on any audit findings. USAC must also provide the Commission with assistance and documentation should any of the above items or aspects

[411] USAC may incorporate this annual reporting requirement on privacy and data security practices in the *National Verifier Annual Report* described below. *See infra* para. 166.

[412] *See, e.g.*, National Institute of Standards and Technology, *NIST Special Publications* (Jan. 28, 2016), http://csrc.nist.gov/publications/PubsSPs.html.

[413] In discussing the privacy of consumer information, we do not limit it to active subscribers. The Verifier must also protect information gathered from applicants to the Lifeline program, whether unsuccessful or successful, and past subscribers.

[414] The personnel for the Verifier include, but are not limited to, personnel at USAC, personnel at an entity procured by USAC to execute the functions of the Verifier, or personnel procured by USAC to support any of the functions of the National Verifier.

[415] We expect that USAC annually will update its rules of behavior as needed.

[416] The NIST 800-53 is a security publication issued by NIST. *See* National Institute of Standards and Technology, *NIST Special Publications, SP-800s Computer Security*, (Jan. 28, 2016), http://csrc.nist.gov/publications/PubsSPs.html#SP%20800.

[417] These are required by NIST.

[418] The United States Computer Emergency Readiness Team within DHS issues regulations around breach.

[419] *See* Pennsylvania PUC Comments at 21 (noting that the national verifier should have adequate safeguards and data security practices to protect applicant's personal information from breach, misappropriation and unlawful disclosure and that the National Verifier should have the duty to inform consumers if their information is breached); Michigan PUC Comments at 9; Public Knowledge, Appalshop, and Center for Rural Studies Comments at 33.

of the National Verifier relate to audits or investigations of the Commission's compliance with federal laws and regulations.

156. *Reporting and Internal Controls Component*. The National Verifier will include a component responsible for coordinating with USAC on audits of internal controls to ensure consistency with the Lifeline program rules, for conducting surveys to ensure satisfaction in the performance of National Verifier personnel, and for producing reports to Lifeline providers, USAC, and the Commission. With respect to the reports to the Commission, the National Verifier must also produce reports necessary to ensure the Commission's compliance with federal rules and regulations pursuant to direction from the Bureau and OMD. The reporting capabilities will include the use of data analytics and fraud prevention software to help detect fraud before improper payments are made to Lifeline providers. In the event of data and security breaches, it will inform USAC and the Commission, and carry out the process of subscriber notification. We direct the Bureau to work with USAC and determine the appropriate reports to be incorporated into the National Verifier.

157. *Internal Controls and Procedures Manual*. We also direct USAC to create written procedures for the National Verifier, including but not limited to, procedures for all functions, processes, quality control standards, and internal controls. Subject to Bureau and OMD approval, USAC should use the Government Accountability Office's (GAO) Green Book to serve as a guide to developing internal controls for the National Verifier.[420]

158. *Unforeseen Circumstances and Clarifications*. Given the complex nature of the National Verifier and the importance of developing it in an efficient and timely manner, as stated above, the Commission delegates to the Bureau the role of providing USAC with any needed clarifications or interpretations of the Commission's orders for all aspects of the National Verifier, including, but not limited to, development, design, and maintenance of the National Verifier. Further, the Bureau may provide guidance to USAC concerning the National Verifier in the event of unforeseen circumstances. Any such guidance must be in line with the intentions of the Commission's directives for the National Verifier.

159. *National Verifier Procurement and Funding*. We direct USAC, working with the Bureau and OMD, to use efficient and cost effective means to manage the funding and procurement of the National Verifier. USAC will be primarily responsible for the procurement of both the human resources and the technological components of the National Verifier with oversight from the Bureau and OMD.[421] USAC may also propose to the Bureau and OMD to manage certain activities in-house, if most cost effective. We direct USAC to prepare a procurement plan for the National Verifier for review by the Bureau and OMD. We direct USAC to incorporate, as feasible, into the National Verifier contract requirements, payment terms and conditions that reasonably reduce the risks inherent in the ambitious task of developing the National Verifier and that incent timely completion of tasks while also considering cost considerations. USAC may also as part of developing and maintaining the National Verifier, procure from other entities (including other government entities), access to or connection with databases and systems if USAC determines this is the most reasonable approach, taking into consideration cost and other factors, to achieve the objectives of the National Verifier.[422] In the event of disagreement, the

[420] *See* GAO, The Green Book: Standards for Internal Control in the Federal Government, http://www.gao.gov/greenbook/overview (last visited Feb. 17, 2016). *See also* AT&T Comments at 7 (describing the internal controls for the SNAP program).

[421] USAC has already obtained information from entities via its RFI issued in 2015. *See generally*, USAC RFI Summary Report.

[422] *See, e.g.*, Illinois Comments at 7 (suggesting that the federal government could provide funding to states to enable the development of a centralized point of contact for all eligibility information for that state); Pennsylvania PUC Comments at 23; AT&T Comments at 24-25 (noting that the Commission has previously provided state reimbursement for administrative costs associated with the National Deaf-Blind Equipment distribution Program).

Bureau and OMD will provide USAC with a final determination. The USF will fund the development and ongoing maintenance of the National Verifier, including all procurement of the various components, testing environment, and its ongoing activities.[423]

160. *Stakeholder Engagement.* We direct USAC, working with the Bureau, to develop a plan to allow for meaningful collaboration from potential users on the administrative aspects of implementation of the National Verifier. We expect that potential users, such as service providers, states, Tribal Nations, and others, who may have valuable recommendations on a variety of implementation areas, including but not limited to, best practices for IT requirements, efficient interface for electronic and manual eligibility pathways, effective payment pathways, and effective communication strategies for consumer beneficiaries. We therefore encourage USAC to create a stakeholder committee to advise USAC on the "Draft National Verifier Plan" (described below). After such collaborative efforts conclude, USAC shall incorporate stakeholder input and recommendations into its "Draft National Verifier Plan", which it submits to the Bureau. The Bureau shall determine the appropriate path forward after balancing factors, such as but not limited to, cost, administrative efficiency, and ease of use. Overall, we believe that the National Verifier system that is developed with a high degree of collaborative input from users will best advance our goals.

161. *Implementation Timeline and Transition.* Implementation of the National Verifier is a considerable undertaking and will require significant resources from both the Commission and USAC. We here establish milestones to chart the implementation of the National Verifier. If USAC determines that additional time is necessary, it will inform the Bureau and OMD and request a reasonable extension.

162. Before December 1, 2016, USAC shall submit to the Bureau and OMD the "Draft National Verifier Plan" as the first implementation milestone. This plan will comprehensively describe the National Verifier to be developed and implemented. The plan will also set out a proposed strategy, estimated timeline, and estimated budget for progressively deploying each part of the National Verifier. As part of the strategy, this plan will explain in detail how USAC expects to procure services for the National Verifier, to partner with states, and to incorporate other federal databases and systems into the National Verifier. The Bureau and OMD will work with USAC to make any necessary revisions, and will approve the revised "National Verifier Plan."[424]

163. After approval of the National Verifier Plan, on or before July 31 and January 31 of each year until the National Verifier implementation is complete, USAC will submit to the Bureau and OMD a National Verifier Implementation Update. This document will provide regular information to the Bureau and OMD on progress toward the approved National Verifier Plan.

164. Given the complexity of the National Verifier and wide variety of databases and systems to which the National Verifier may connect, we provide flexibility in how and when USAC chooses to incorporate such systems. We require the NLAD opt-out states to provide existing subscriber information to USAC by December 1, 2016, and ongoing thereafter, including any information regarding services that Lifeline subscribers subscribe to as described further below.[425] We set as an expectation that USAC will deploy the National Verifier in at least five states by December 31, 2017. We further expect that between January 1, 2018 and December 31, 2018 the National Verifier will be deployed in an additional 20 states. By December 31, 2019, we expect Lifeline eligibility will be determined in all states and territories using

[423] *See, e.g.*, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., and Federal-State Joint Board on Universal Service*, Order on Reconsideration, Report and Order, and Second Order on Reconsideration, 12 FCC Rcd 18400, 18426-27, para. 47 (1997).

[424] While the National Verifier Plan is the official vehicle for approving the planned details of the National Verifier, USAC, from the effective date of this Order, may begin taking actions in preparation for developing and implementing the National Verifier.

[425] These states include California, Texas, Oregon, and Vermont. *See* section III.E.2.c.ii. (Increasing Competition for Lifeline Consumers, ETCs that are not Lifeline-Only).

the National Verifier. We also expect that USAC may require testing and trials of the National Verifier prior to deployment and we allow this with the approval of the Bureau.

165. *National Verifier Deployment and Notification Responsibilities.* Because deploying the National Verifier in a state means the Lifeline eligibility responsibilities will be transitioned from ETCs or state administrators to the National Verifier, the deployment must be carefully managed and progressively achieved. When USAC is ready to deploy the National Verifier in a particular state, USAC must inform the Bureau of its deployment and transition plans in that state, in addition to providing sufficient advance notice to the Lifeline providers, state administrators and all other participants. This process will allow for a transparent, progressive and staggered roll-out of the National Verifier across the nation while retaining the Commission's oversight. Our rules requiring National Verifier eligibility certification will become effective in a state when USAC deploys the National Verifier in that state and we direct the Bureau to issue a notification to all interested participants providing information about effective dates and any other relevant obligations. Such notification will make clear which Commission rules will no longer be applicable in the state(s) where the National Verifier is deployed.

166. *National Verifier Annual Report and Data.* In addition to the specific reports required of USAC as part of the development and implementation of the National Verifier, once the National Verifier is fully operational in the first states, USAC will submit to the Bureau in January of each year a report on the operations of the National Verifier. This report will, at a minimum, provide a current overview of the National Verifier, including details and data about National Verifier operations consistent with our objective of making transparent, to the greatest extent possible, information about the Lifeline program. The report should also recommend improvements to the National Verifier and should particularly focus on ways to lower costs, increase efficiency, and improve the consumer and Lifeline provider experiences. In its annual reports on the National Verifier, we direct USAC to assess whether the National Verifier is effectuating the objectives described in this section and whether there are ways to improve the performance of the National Verifier for all of its users, USAC and the Commission. Overall, we require the National Verifier to have the capability to report comprehensive program data information to promote transparency in the Lifeline program and allow for effective program evaluation.

D. Streamlining Eligibility for Lifeline Support

167. We next take steps to streamline eligibility for Lifeline support to increase efficiency and improve the program for consumers, Lifeline providers, and other participants. Beginning on the later of December 1, 2016 or 60 days following PRA approval, low-income households who qualify for and receive SNAP, Medicaid, Supplemental Security Income ("SSI"), Federal Public Housing Assistance ("FPHA"), or the Veterans Pension benefit[426] will be eligible for enrollment in the Lifeline program.[427] We amend our rules to remove Low–Income Home Energy Assistance Program ("LIHEAP"); National School Lunch Program's free lunch program ("NSLP"); and Temporary Assistance for Needy Families ("TANF") from the default federal assistance eligibility for Lifeline.[428] Finally, we do not modify the income-based eligibility nor the Tribal eligibility criteria.[429]

[426] U.S. Department of Veterans Affairs, *Veterans Benefits Administration, Pension,* http://www.benefits.va.gov/PENSION/ (last visited June 18, 2015).

[427] 47 CFR § 54.409(a). Consistent with the new annual eligibility rules, subscribers already enrolled prior to December 1, 2016 under any of the retired eligibility criteria will be eligible until their next re-certification. We direct USAC to communicate with carriers and consumers as necessary to provide information where a retired eligibility program is being used.

[428] 47 CFR § 54.409(a)(2).

[429] 47 CFR § 54.409(a), (b).

1. Background

168. In the *2015 Lifeline FNPRM*, the Commission sought comment on updating the eligibility criteria for Lifeline support to streamline program administration.[430] Specifically, the Commission sought comment on the potential benefits for providers, state administrators, and a National Verifier of reducing the eligibility criteria consumers use to enroll in the program.[431] The eligibility criteria currently in place is another vestige of the pre-wireless Lifeline program when there were far fewer Lifeline providers and there was a focus on advertising and general awareness of the program and its benefits. As a result, among other program requirements intended to increase awareness, the Commission placed a premium on the number of ways a potential Lifeline subscriber could enroll, with more qualifying programs added over the years for the express purpose of trying to ensure low-income consumers knew about the program. Now, however, there is less of a need for the many qualifying programs and ways to enroll in Lifeline because of the increased marketing and outreach done by many of the current Lifeline providers and the fact that very few Lifeline subscribers enroll through many of the qualifying programs.[432] We recognize the difficulty placed on providers, state commissions, and low-income consumers to verify Lifeline eligibility and we understand that the more programs and methods consumers have to enroll, the harder it becomes to provide effective oversight. By limiting Lifeline eligibility to low-income consumers participating in the selected federal assistance programs, we take important steps to foster a long-term technological solution to Lifeline eligibility.

169. Currently, Commission rules require low-income consumers to have a household income at or below 135 percent of the Federal Poverty Guidelines[433] or receive benefits from at least one of a number of federal assistance programs[434] to be eligible for Lifeline assistance. Additionally, consumers may also gain entry to the Lifeline program if they are able to meet eligibility criteria established by a state.[435] As of September 2015, roughly 13.1 million households participate in the Lifeline program.[436] Lifeline subscribers typically use federal assistance programs to qualify for Lifeline, with nearly 82

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[430] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7861, para. 116.

[431] *Id.*

[432] *See* USAC, *Lifeline Program: Subscribers by Eligibility Program*, http://www.usac.org/_res/documents/about/pdf/quarterly-stats/LI/Subscribers-by-Eligibility-Program.pdf (last visited Feb. 3, 2016).

[433] *See* 47 CFR § 54.409(a)(1). Based on the 2016 Federal Poverty Guidelines for the 48 contiguous states and Washington, DC, annual income of 135 percent of the guidelines is $16,038 for a one-person household or family; $21,627 for a two-person household or family; $27,216 for a three-person household or family; and $32,805 for a four-person household or family. The schedule continues up to $55,202 for an eight-person household, after which $5,616 is added for each additional member. *See* Annual Update of the U.S. Department of Health and Human Services Poverty Guidelines, 81 Fed. Reg. 4036-37 (Jan. 22, 2016); USAC, *2016 Federal Poverty Guidelines*, http://www.usac.org/_res/documents/li/pdf/handouts/Income_Requirements.pdf (last visited Mar. 8, 2016).

[434] 47 CFR § 54.409(a)(2). The federal assistance programs include: Medicaid; Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamps; Supplemental Security Income (SSI); Federal Public Housing Assistance; Low-Income Home Energy Assistance Program (LIHEAP); National School Lunch Program's (NSLP) free lunch program; and Temporary Assistance for Needy Families (TANF). Low-income households living on Tribal lands may also qualify by participation in one of several additional assistance programs: Bureau of Indian Affairs (BIA) general assistance; Tribally-administered TANF (TTANF); Head Start (only those meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR). 47 CFR § 54.409(b).

[435] 47 CFR § 54.409(a)(3).

[436] *See* USAC, *Lifeline Program: Subscribers by State or Jurisdiction-January 2015 to December 2015*, http://www.usac.org/about/tools/fcc/filings/2016/Q2/LI08%20Lifeline%20Subscribers%20by%20State%20or%20Jurisdiction%20-%20January%202015%20through%20December%202015.xlsx (last visited Feb. 2, 2016).

percent of all such subscribers demonstrating their eligibility through participation in federal assistance programs.[437]

2. Criteria for Streamlining Lifeline Eligibility

170. We make these reforms as part of our modernization of the Lifeline program to increase efficiency and reduce burdens on participants. In the *2015 Lifeline FNPRM*, we asked about various changes to the way consumers qualify for Lifeline in order to improve the eligibility determination process.[438] In considering improvements, we first look to the federal assistance programs most used by low-income consumers who enroll in the Lifeline program. In choosing to focus on the programs most utilized by Lifeline subscribers, we will ensure continued access to Lifeline through well-established and often-used avenues. Moreover, in choosing programs that currently represent the highest enrollment rates in Lifeline, Lifeline will be more administratively efficient.

171. In evaluating the eligibility criteria, we next focus on the ability to develop long-term technological efficiencies by easily accessing systems and databases from other assistance programs. An efficient eligibility database to be used in the administration of Lifeline will streamline the program for consumers and providers alike. The ability to access eligibility databases for federal assistance programs is key to the success of the National Verifier.[439] In streamlining eligibility programs, we selected programs where a database or data sharing agreement could likely be achieved.

172. Finally, we remain committed to preventing waste, fraud and abuse within the Lifeline program. By relying on highly accountable programs that demonstrate limited eligibility fraud, Lifeline will greatly reduce the potential of waste, fraud, and abuse occurring due to eligibility errors. Federal assistance programs that have demonstrated limited eligibility errors offer the ability to leverage prevention efforts within Lifeline. We recognize that fraud is a continuing concern within many federal programs and tying eligibility to other assistance programs that have limited eligibility error rates reduces the potential for problems within Lifeline.

a. Establishing Eligibility for Low-Income Veterans and Survivors

173. Today, we modify our rules to grant eligibility for Lifeline to low-income consumers receiving Veterans Pension benefit or Survivors Pension benefit.[440] The Veterans Pension benefit program is a means-based program that supports veterans and their spouses by providing up to $13,855 annually minus any countable family income.[441]

174. *Background*. The Commission in the *2015 Lifeline FNPRM* sought comment on whether to include federal low-income assistance programs for veterans to qualify those individuals for Lifeline

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[437] Currently in Lifeline, only 2.52 percent of the program enrolls in state-specific assistance programs, while 11.92 percent of current Lifeline subscribers qualify through a state program that relies on the federal default criteria. Additionally, three percent qualify by demonstrating income, and 0.16 percent of the programs enrolls through Tribal qualifying programs. USAC, *Lifeline Program: Subscribers by Eligibility Program*, http://www.usac.org/_res/documents/about/pdf/quarterly-stats/LI/Subscribers-by-Eligibility-Program.pdf (last visited Feb. 3, 2016); *see also* California PUC Comments at 20; Texas PUC Comments, at 3.

[438] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7860-62, paras. 116-20.

[439] For example, the Commission and SNAP have an existing data sharing agreement that allows current ETCs to verify if a low-income consumer is receiving SNAP benefits after coordinating with the state SNAP administrator. USDA FNS Comments at 4; Letter from the United States Department of Agriculture and Julie Veach, Chief, Wireline Competition Bureau, to SNAP Regional Directors (June 13, 2014); COMPTEL Comments at Exhibit 1.

[440] Any reference to the Veterans Pension benefit as a default federal assistance program is meant to include the Survivors Pension benefit as well.

[441] U.S. Department of Veterans Affairs, *Veterans Benefits Administration, Pension*, http://www.benefits.va.gov/PENSION/pencalc.asp (last visited Feb. 3, 2016).

support.[442] Specifically, we sought comment on whether veterans and their families eligible for the Veterans Pension benefit should qualify for Lifeline support.[443]

175. *Discussion.* We add Veterans Pension benefit or Survivors Pension benefit to Lifeline's eligibility program. Providing assistance to America's veterans furthers the Commission's mission by specifically targeting a low-income group lacking broadband and voice access.[444] To qualify for the Veterans Pension benefit program, veterans must have at least 90 days of active duty, including one day during a wartime period, and meet other means-tested criteria such as low-income limits and net worth limitations established by Congress.[445] Additionally, any surviving spouse or dependent of a deceased eligible veteran can qualify for the Survivors Pensions benefit.[446] The program includes income and net wealth limitations to ensure the funding is sufficiently targeted to individuals in need. Further, many commenters support this change and have demonstrated an established need for armed forces veterans to access affordable phone service.[447]

176. The Veterans Pension benefit also allows the Commission to foster a long-term technological solution to verifying eligibility. By collaborating with Veterans Affairs, the Commission will be able to foster a similar database access agreement as we have with the USDA FNS.[448] The National Personnel Records Center has digitized armed service personnel records,[449] which will provide an efficient, streamlined solution to verifying eligibility. The Veterans Pension benefit also provides a highly accountable program to further help combat waste, fraud, and abuse within the Lifeline program.[450]

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[442] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7861, para. 115.

[443] *Id.*

[444] *See* U.S. Senator Richard Blumenthal Comments at 1-2; National Association of American Veterans Comments at 1-2.

[445] *See* U.S. Department of Veterans Affairs, *Veterans Benefits Administration, Pension*, http://www.benefits.va.gov/PENSION/ (last visited Feb. 3, 2016). The other means-tested criteria to qualify for pension benefits include that a veteran must be: (1) age 65 or older with limited or no income, or; (2) totally and permanently disabled, or; (3) a patient in a nursing home receiving skilled nursing care, or; (4) receiving Social Security Disability Insurance; or (5) receiving Supplemental Security Income. *Id.*

[446] *See* Department of Veterans Affairs, *Veterans Benefits Administration, Survivors Pension*, http://www.benefits.va.gov/pension/spousepen.asp (last visited Feb. 3, 2016).

[447] *See* Sprint Comments at 10 (stating growth of Assurance Wireless customers who are veterans to 10 percent of total customers); Joint Commenters Comments at 45-48; Low-Income Consumer Groups Comments at 3, 16-17; Illinois UTAC Comments at 8; Letter from Olivia Wein, Lead Telecom Project Attorney, NCLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al.,, at 2 (filed Jan. 22, 2016) (NCLC Jan. 22, 2016 *Ex Parte*); Letter from Center for Media Justice, *et al.*, to Marlene H. Dortch, Secretary. FCC, WC Docket No. 11-42, et al., at 1-4 (filed Mar. 2, 2016) (Center for Media Justice, *et al. Ex Parte*) (voicing support from Center for Media Justice, Color of Change, Community Solutions, Iraq and Afghanistan Veterans of America, National Alliance to End Homelessness, National Coalition for Homeless Veterans, NCLC on behalf of its low-income clients, National League of Cities, Swords to Plowshares, United Church of Christ, OC Inc., Veterans Education Success, and Volunteers of America, Inc.).

[448] *See* USDA FNS Comments at 4; Letter from the United States Department of Agriculture and Julie Veach, Chief, Wireline Competition Bureau, to SNAP Regional Directors (June 13, 2014); COMPTEL Comments at Exh. 1. Note also that the Veterans Pension benefit can be used as an eligibility pathway even prior to incorporation of the VA's database as benefit recipients will already have or are able to obtain documentation from the VA.

[449] National Archives, *Access to Military Service and Pension Records*, http://www.archives.gov/research/order/order-vets-records.html, (last visited Feb. 3, 2016).

[450] *See* Department of Veterans Affairs, Office of Inspector General, FY 2014 Review of VA's Compliance with the Improper Payments Elimination and Recovery Act, at table 3, pg. 25 (May 14, 2014), http://www.va.gov/oig/pubs/VAOIG-14-03380-356.pdf; Department of Veterans Affairs, 2015 Agency Financial

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Further, Veterans Affairs is currently implementing the Veterans Benefits Management System ("VBMS") with the goal of improving processing accuracy of all benefit claims to 98 percent.[451] VBMS, once fully implemented, will provide a completely electronic solution to incrementally validate application requirements, processes, and administrative functions.[452] We find Lifeline will reduce waste, fraud, and abuse by leveraging the Veterans Pension benefits' accountability rather than duplicating eligibility determinations.

b. Relying on High-Participation Federal Assistance Programs

177. In our evaluation of the existing ways households may qualify for the Lifeline program, we first consider whether Lifeline eligibility programs are being utilized by subscribers for qualification and how many current subscribers enroll in Lifeline using the eligibility programs. The overwhelming majority of current Lifeline consumers enroll based on participation in SNAP, Medicaid, and SSI,[453] and we maintain these programs in the Lifeline eligibility criteria. As of November 2015, nearly 80 percent of all consumers participating in Lifeline demonstrate eligibility by participation in SNAP, Medicaid, or SSI.[454] Additionally, these programs capture 80 percent of the eligible low-income population under the existing Lifeline eligibility rules.[455] In streamlining Lifeline to rely on the federal assistance programs that are most frequently used to provide access to Lifeline, we will leverage eligibility efficiencies provided by these programs.[456] In sum, we conclude that continuing to use SNAP, Medicaid, and SSI as qualifying programs recognizes the attractiveness of Lifeline to SNAP, Medicaid, and SSI participants, as well as the administrative efficiencies.[457]

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Report, at section III-12, 14 (Nov. 16, 2015), http://www.va.gov/finance/docs/afr/2015VAafrFullWeb.pdf. The VA states that approximately 2.17 percent of pension outlays are improper. *Id.* It is important to note that the improper payment percentage includes both under and overpayments. *Id.* It is likely that the true eligibility error rate is marginally higher or lower than improper payment rate attributable to eligibility errors since payments may not be proportionally related to participation.

[451] Department of Veterans Affairs, Office of Inspector General, *Follow-up Review of the Veterans Benefits Management System*, at 1 (Sept. 14, 2015), http://www.va.gov/oig/pubs/VAOIG-13-00690-455.pdf.

[452] *Id.*

[453] Currently, the enrollment for these eligibility programs are: SNAP 38.28 percent; Medicaid 37.58 percent; and SSI 2.98 percent. *See* USAC, *Lifeline Program: Subscribers by Eligibility Program*, http://www.usac.org/_res/documents/about/pdf/quarterly-stats/LI/Subscribers-by-Eligibility-Program.pdf (last visited Feb. 3, 2016).

[454] *Id.*

[455] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7860, para. 111; CBPP Comments at 40.

[456] CBPP Comments at 39.

[457] While a small percentage of subscribers currently enroll in Lifeline by demonstrating participation in FPHA, Lifeline's goal is to provide meaningful access to needed telecommunication technology for low-income individuals. *See Universal Service First Report and Order*, 12 FCC Rcd at 8952-53, para. 329 ("Universal service has been a fundamental goal for Congress and the Commission since the passage of the Communications Act of 1934, in which Congress stated its intention to "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges"). The balance of factors discussed below demonstrate that FPHA provides highly accountable and broad assistance to low-income individuals with an advanced, centralized database to enable a long-term technological solution to Lifeline eligibility verification and recertification. *See infra* section III.D.2.c (Fostering a Long-Term Technological Solution for Lifeline Eligibility); section III.D.2.d (Protecting Against Waste, Fraud, and Abuse by Utilizing Highly Accountable Programs).

178. We are persuaded that SNAP, Medicaid, SSI, and FPHA will maintain access to Lifeline support for those most in need of the Lifeline service.[458] Specifically, SNAP assists 46 million low-income Americans with the majority of the households including children, senior citizens, individuals with disabilities, and working adults.[459] Two-thirds of SNAP benefits go to households with children and three-quarters of recipient households have a child, an elderly member, or a disabled individual.[460] Medicaid provides assistance to 40 million low-income seniors and other adults.[461] Of these individuals, 11 million are non-elderly adults with incomes below 133 percent of the federal poverty guideline, and 8.8 million are individuals with disabilities.[462] SSI provides assistance to 8.2 million low-income aged, blind, or disabled individuals.[463] 7.2 million are disabled individuals under age 65, and 1.6 million individuals are either elderly-disabled or over 65 with an income less than $733 per month.[464] FPHA provides assistance to 4.8 million low-income households comprising 9.8 million individuals.[465] Of the 4.8 million assisted households, one-half are headed by elderly or disabled individuals.[466] These programs target a broad audience of low-income households in need of improved access to voice and broadband services.

c. Fostering a Long-Term Technological Solution for Lifeline Eligibility

179. It is also vitally important that any qualifying federal assistance program enables Lifeline to access systems and databases in order to develop a National Verifier. Through the use of data sharing agreements and database access, the National Verifier must be able to effectively verify eligibility of potential low-income consumers without relying solely on self-certification or documentation. The existing databases for SNAP, Medicaid, SSI, FPHA, and the Veterans Pension benefit enable a long-term technological solution to eligibility determination.

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[458] CBPP Comments at 1; Florida PSC Comments at 6; ITIF Comments at 8; John Mayo Comments at 1-5; New York PSC Comments at 5-6; AT&T Comments at 14-15; COMPTEL Comments at 16-17; AmeriHealth Comments at 2; Association of Community Health Plans of America Comments 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; AARP Comments at 36; Low Income Consumer Groups Comments at 17; Lifeline Supporters Comments at 14; Sprint Comments at 31.

[459] USDA FNS, Fact Sheet: White House Report Highlights New Research on SNAP's Effectiveness and the Importance of Adequate Food Assistance, Release No WH 120815 (Dec. 8, 2015), http://www.fns.usda.gov/pressrelease/2015/wh-120815.

[460] *Id.*

[461] Department of Health and Human Services Centers for Medicare & Medicaid Services, Medicaid & CHIP: October 2015 Monthly Applications, Eligibility Determinations and Enrollment Report (Dec. 30, 2015), https://www.medicaid.gov/medicaid-chip-program-information/program-information/downloads/october-2015-enrollment-report.pdf; Medicaid.gov, *Medicaid by Population*, https://www.medicaid.gov/medicaid-chip-program-information/by-population/by-population.html (last visited Feb. 3, 2016).

[462] Medicaid.gov, *Medicaid by Population*, https://www.medicaid.gov/medicaid-chip-program-information/by-population/by-population.html (last visited Feb. 3, 2016).

[463] Social Security Administration, Annual Report of the Supplemental Security Income Program, Executive Summary (Aug. 27, 2015), https://ssa.gov/oact/ssir/SSI15/ssi2015.pdf.

[464] *Id.*

[465] Congressional Budget Office, Federal Housing Assistance for Low-Income Households, at 3 (Sept. 2015) https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50782-LowIncomeHousing-OneColumn.pdf.

[466] *Id.*

180. Moving to a technological solution for Lifeline eligibility verification will reduce the burden for low-income consumers in having to provide additional documentation and will reduce the potential risk to consumers' personal identifying information. The incorporation of existing database solutions will also reduce waste, fraud, and abuse of the program.[467] While the transition to a National Verifier will not be immediate, our selection of qualifying assistance programs that permit easy technological solutions lays the groundwork for a successful National Verifier.

181. SNAP, Medicaid, SSI, FPHA, and the Veterans Pension benefit program all provide the potential for streamlined interactions between those programs' systems and the National Verifier. The current data sharing agreement with SNAP, for example, demonstrates an effective technological solution to Lifeline eligibility determinations. SNAP is administrated on the state level with Federal monitoring and oversight by the United States Department of Agriculture, Food and Nutrition Service ("USDA FNS").[468] The data sharing agreement allows current ETCs to verify if a low-income consumer is receiving SNAP benefits after coordinating with the state SNAP administrator[469] and has enabled a technological solution for the verification of SNAP participation, for Lifeline enrollment purposes, in many states.[470]

182. Medicaid, SSI, FPHA, and the Veterans Pension benefit program also have accessible systems and databases the National Verifier will be able to use.[471] SNAP and Medicaid are often administered by the same state agencies, allowing for more efficient database access solutions.[472] By reaching agreements with the state administrators, the National Verifier will be able to develop an electronic verification system that will reduce the administrative burden of the Lifeline program. SSI is federally administered by the Social Security Administration and the Veterans Pension benefit is administered by the Department of Veterans Affairs. Both have sophisticated computer matching and communication capabilities that can be utilized by the National Verifier to benefit the Lifeline program.[473] FPHA is administered by the United States Department of Housing and Urban Development ("HUD").[474] HUD maintains a federal database containing participation information for all individuals receiving FPHA that can also be utilized by the National Verifier for eligibility verification and recertification.[475]

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[467] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7820-21, para. 3; *2012 Lifeline Reform Order*, 27 FCC Rcd at 6734-35, para. 181.

[468] USDA Comments at 1.

[469] USDA Comments at 4; Letter from the United States Department of Agriculture and Julie Veach, Chief, Wireline Competition Bureau, to SNAP Regional Directors (June 13, 2014); COMPTEL Comments at Exhibit 1.

[470] *See* Texas PUC Comments at 2; California PUC Comments at 20; Illinois UTAC Comments at 5; Florida PSC Comments at 5; Michigan PSC Comments at 7-8.; USAC, *Summary Report of Responses to USAC Request for Information (RFI) Regarding potential implementation of a National Verifier*, at 3-5 (March 4, 2016) http://www.usac.org/_res/documents/about/pdf/quarterly-stats/LI/RFI-Implementation-of-a-Potential-National-Verifier.pdf (*USAC RFI Summary*); *See* Letter of Kevin G. Rupy, Vice President, Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 2-3 (filed Mar. 4, 2016) (USTelecom *Ex Parte*).

[471] *See* Texas PUC Comments at 2 (verifying Medicaid participation); California PUC Comments at 20 (verifying both Medicaid and SSI); Illinois UTAC Comments at 5 (verifying Medicaid participation); Florida PSC Comments at 5 (verifying Medicaid participation); Michigan PSC Comments at 7-8 (verifying Medicaid and SSI participation).

[472] CBPP Comments at 38-40; Paul Meyer (Voxiva) Comments at 3.

[473] CBPP Comments at 41-42.

[474] Letter from Robert F. Greenblum, Senior Policy Advisor to Secretary Castro, United States Department of Housing and Urban Development, to Marlene H. Dortch, Secretary. FCC, WC Docket Nos. 11-42, 09-197, 10-90, at 1-2 (filed Mar. 30, 2016) (HUD *Ex Parte*).

[475] *Id.*

d. Protecting Against Waste, Fraud, and Abuse by Utilizing Highly Accountable Programs

183. By relying on highly accountable programs that demonstrate limited eligibility fraud, Lifeline will greatly reduce the potential of waste, fraud, and abuse occurring due to eligibility errors. The Commission and stakeholders have made substantial strides to create a more efficient and effective Lifeline program and that has transformed Lifeline into a more accountable program that provides vital telecommunications services to low-income consumers.[476] Lifeline's streamlined eligibility programs will continue to guard against waste, fraud, and abuse by allowing Lifeline to leverage efficiencies from federal programs with limited eligibility and enrollment error rates.[477]

184. *Discussion.* SNAP is a meaningful assistance program for Lifeline because it maintains one of the lowest eligibility error rates of any federal assistance program. SNAP has a 99 percent accuracy rate in its eligibility determinations.[478] SNAP eligibility problems occur when an individual receives benefits, but does not meet the eligibility criteria for the program.[479] To combat this concern, SNAP employs one of the most sophisticated quality control systems of any federal assistance program,[480] ensuring that 99 percent of all recipients are eligible for the program.[481] We find that SNAP's low eligibility error rate provides a high level of accountability that the Commission should leverage.

185. Medicaid provides similar efficiencies in eligibility determinations for the Lifeline program. Like SNAP, Medicaid has a low incidence of eligibility fraud[482] and the United States Department of Health and Human Services, Office of Inspector General ("HHS OIG") has instituted new tools to combat waste, fraud, and abuse within Medicaid.[483] By using data analysis, predictive analytics, trend evaluation, and modeling approaches to analyze and target fraudulent behavior, HHS OIG has substantially affected payment errors based on eligibility.[484] Accordingly, we find that conferring

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[476] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7820-21, para. 3; *2012 Lifeline Reform Order*, 27 FCC Rcd 6656.

[477] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7860, para. 112.

[478] We distinguish between eligibility problems, which involve ineligible individuals enrolling in SNAP and are minimal, and SNAP trafficking problems, which occur when individuals sell or purchase SNAP benefits in exchange for cash or equivalents and, while prevalent in the last 15 years, have been greatly reduced in large part due to aggressive enforcement and prevention measures. Trafficking fraud, however, is not directly relevant to Lifeline's use of SNAP as an eligibility program because Lifeline only relies on the eligibility determination made by SNAP to determine eligibility in Lifeline. *See* USDA FNS, *Fraud* (Nov. 13, 2013) http://www.fns.usda.gov/fraud/what-fns-doing-fight-snap-fraud; USAD, Agency Financial Report at 211, Exh. 20 Type of Improper Payment (2014) http://www.ocfo.usda.gov/docs/USDA%20AFR%202014-12.30.2014.pdf.

[479] *Id.*

[480] Super Comments at 14.

[481] USDA FNS, *Fraud* (Nov. 13, 2013), http://www.fns.usda.gov/fraud/what-fns-doing-fight-snap-fraud; USDA, Agency Financial Report at 211, Exh. 20 Type of Improper Payment (2014), http://www.ocfo.usda.gov/docs/USDA%20AFR%202014-12.30.2014.pdf.

[482] Medicaid's payment error rate due to eligibility errors is only 2.3 percent. *See* Center for Medicare & Medicaid Services, Payment Error Rate Measurement Program (PERM) Medicaid Error Rates (Nov. 2014), https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/Downloads/PERMMedicaidErrorRates2014.pdf. It should be noted that CMS only measures errors based on payment and not based on program participation; therefore, it is possible the eligibility error rate is marginally higher or lower as payments may not be directly proportional to participation. *Id.*

[483] Center for Medicare & Medicaid Services, *The Health Care Fraud and Abuse Control Program Protects Consumers and Taxpayers by Combating Health Care Fraud* (Mar. 19, 2015), https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-03-19.html.

eligibility based on Medicaid participation will support the prevention of waste, fraud, and abuse in Lifeline.

186. SSI demonstrates similar accountability. The Social Security Administration conducts routine audits between its own systems and those of other federal and state agencies to verify eligibility and determine if an SSI recipient's information is accurate.[485] SSI has a limited overpayment rate resulting from eligibility errors.[486] SSI has demonstrated continued accountability and commitment to combating waste, fraud, and abuse. For the same reasons SNAP and Medicaid provide eligibility and verification efficiencies, the utilization of the SSI program's robust eligibility verification process will benefit the Lifeline program.

187. Finally, HUD has undertaken many steps to ensure that FPHA is highly accountable. HUD actively employs an Enterprise Income Verification (EIV) system that matches data from the Social Security Administration and the National Directory of New Hires to provide income data.[487] The EIV system is used to verify annual income and benefit information for FPHA participants, and further enables measures to prevent waste, fraud, and abuse within the program by providing auditable information to collect improper payments. FPHA has limited improper payments.[488] HUD has demonstrated continued accountability and commitment to combating waste, fraud, and abuse. FPHA's accountable eligibility determinations will benefit Lifeline's efforts to combat waste, fraud, and abuse.

3. Removing Eligibility Based on Certain Federal Assistance Programs

188. We amend our rules to remove LIHEAP, NSLP, and TANF from the default federal assistance eligibility for Lifeline.[489] In streamlining the eligibility criteria, we choose to remove these programs in part due to low enrollment in Lifeline. Further weighing our criteria for selecting eligibility programs, these programs do not offer the same advantages in developing a federal eligibility database, preventing waste, fraud, and abuse, nor better targeting of the neediest low-income households as SNAP, Medicaid, SSI, FPHA, and the Veterans Pension benefit.

189. *Background.* Currently, in addition to SNAP, Medicaid, SSI, and FPHA, a low-income household may qualify for Lifeline by receiving assistance from other federal assistance programs, including LIHEAP, NSLP, or TANF.[490] The Lifeline federal assistance eligibility criteria have gone

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[484] *Id.* Medicaid's payment error rate due to eligibility errors is only 2.3 percent. *Id.* It should be noted that CMS only measures errors based on payment and not based on program participation; therefore, it is possible the eligibility error rate is marginally higher or lower as payments may not be directly proportional to participation. *Id.*; Maximus Comments at 4.

[485] Social Security Administration Office of the Inspector General, *Protecting the Safety Net from Fraud, Waste, and Abuse* (June 3, 2015), http://oig.ssa.gov/newsroom/congressional-testimony/june3-ssi.

[486] This figure represents an estimate based on publically available data as SSA only reports overpayment (7.2 percent) and underpayment rates (1.9 percent). *See* Social Security, *Agency Program Information*, https://www.ssa.gov/improperpayments/SSI_progInfo.html#sb=3 (last visited Apr. 7, 2016). SSA additionally reports the major causes of payment errors of which 89 percent are attributable to eligibility errors. *See* Social Security, *Major Causes of SSI Improper Payments*, https://www.socialsecurity.gov/improperpayments/SSI_majorCauses.html#sb=3 (last visited Apr. 7, 2016). Therefore, the effective overpayment rate due to eligibility errors is approximately 6.3 percent. It should be noted that these error rates are based on payment and not participation; therefore, it is possible the eligibility error rate is marginally higher or lower as payments may not be directly proportional to participation.

[487] United States Department of Housing and Urban Development, Agency Financial Report, at 219 (Nov. 23, 2015), http://portal.hud.gov/hudportal/documents/huddoc?id=AFR2015.PDF.

[488] HUD reports an improper payment percentage of 4.01 percent due to eligibility errors. *See id.* at 213.

[489] 47 CFR § 54.409(a)(2).

[490] *Id.*

through many iterations,[491] but the current selection of programs has been in effect since 2005[492] when the Commission added TANF and NSLP to improve participation in the Lifeline program,[493] believing that additional contact with more federal assistance programs would increase awareness and enrollment.[494] At that time, however, the Commission noted that it was difficult to project the potential increase in subscribers due to the overlap of participation in existing federal assistance programs.[495]

190. *Discussion*. We amend our rules to remove LIHEAP, NSLP, and TANF from the default federal assistance eligibility for Lifeline.[496] In doing so, we retain the programs used by the overwhelming majority of current Lifeline subscribers while retaining eligibility for millions of low-income consumers.[497] By streamlining eligibility criteria, we will improve the administrative efficiency of the program and reduce the burden on consumers, providers, and the Fund. Only 2.74 percent of current Lifeline consumers enroll through LIHEAP, TANF, and NSLP combined.[498]

191. Commenters argue that the elimination of these federal eligibility programs will create "eligibility gaps" where a low-income consumer would be eligible based on income, but other restrictions prevent access.[499] Many commenters argue that limiting Lifeline eligibility will prevent access to the program by low-income consumers in need of support[500]and that Lifeline's low participation rate suggests

[491] *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000) (*2000 Tribal Order*); *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas et al.*, Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Ruther Notice of Proposed Rulemaking, 18 FCC Rcd 10958 (2003); *Lifeline and Link Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004) (*2004 Lifeline Order*); *Federal-State Joint Board on Universal Service et al*, Order, 25 FCC Rcd 7554 (2010); *2012 Lifeline Reform Order*, 27 FCC Rcd 6656; *2015 Lifeline FNPRM*, 30 FCC Rcd 7818.

[492] *See 2004 Lifeline Order*, 19 FCC Rcd 8302.

[493] *Id.* at 8312, para. 13.

[494] *Id.*

[495] *Id.* at 8312-13, para. 14.

[496] 47 CFR § 54.409(a)(2).

[497] States will still be able to condition eligibility for state-specific lifeline payments, but will no longer be able to broaden federal Lifeline eligibility. This will allow states, like California, to continue to provide additional payments beyond current Lifeline benefits and develop the necessary state-specific eligibility criteria. *See generally* California PUC Comments (describing the state specific lifeline program).

[498] USAC, *Lifeline Program: Subscribers by Eligibility Program*, http://www.usac.org/_res/documents/about/pdf/quarterly-stats/LI/Subscribers-by-Eligibility-Program.pdf (last visited Apr. 7, 2016). Individually, the programs contribute: LIHEAP – 1.23 percent; TANF – 1.20 percent; NSLP - 0.31 percent.

[499] *See* Joint Commenters Comments at 46; USDA FNS Comments at 2-4; California ETF 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.").

[500] Asian Americans Advancing Justice (AAJC) Comments at 4-10; Budget Reply at 15; California Association of Tribal Governments Reply at 2; California ETF Comments at 19, 36-38, 41, 46; California PUC at 18-21; California Telehealth Network Comments at 3; City of Seattle CTAB Comments at 5; Connected Nation Comments at 18; Connected Nation Reply at 4; Consumer Action Comments at 4; GCI Comments at 20; Joint Commenters Comments at 35-48; Michigan PSC Comments at 12; National Association for the Advancement of Colored People Comments at 2 (NAACP Comments); National Congress of American Indians, Comments at 7-8 (NCAI Comments); Low-Income Consumer Groups Comments at 16-17; National Consumers League Reply at 2 (NCL Reply); Smith Bagley Comments at 32-33; Telecommunications Regulatory Board of Puerto Rico Comments at 23-

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that we need to increase the number of eligibility programs to capture more consumers.[501] However, we find that focusing on federal assistance programs that serve a broader range of the low-income households will leverage the reach of those programs.[502] SNAP, Medicaid, SSI, and FPHA have high adoption rates among eligible households and currently account for 80 percent of program participation.[503] Additionally, the programs target a wide variety of low-income consumers in different age and life situations, thereby alleviating commenters' concerns of "eligibility gaps" resulting from limiting Lifeline eligibility.[504]

192. We disagree with those commenters who caution against removing NSLP[505] and who argue that providing community-based eligibility or retaining federal assistance programs that allow for such eligibility, such as NSLP, increases administrative efficiency or appropriately protects the use of funds.[506] First, eliminating NSLP as a qualifying program will affect very few participants since NSLP only accounts for 0.31 percent of the total participation in the Lifeline program.[507] In addition, because there is substantial overlap between SNAP participation and NSLP participation, with 87 percent of NSLP students qualifying directly through SNAP participation of the household, we are confident there will be minimal disruption to qualifying households.[508]

193. Also, NSLP cannot be effectively verified by a federal eligibility database. The federal administration of NSLP cannot authorize any access to the databases that maintain participation information.[509] This would require duplicative efforts of the Commission to coordinate with state administrators to verify eligibility, as it currently must with SNAP and Medicaid. However, this access is complicated by federal regulations that would require written consent from all students' parents or

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25 (TRBPR Comments).

[501] Joint Commenters Reply at 47; AARP Comments at 35-36; Leadership Conference Comments at 4; Connected Nation Comments at 18-20.

[502] CBPP Comments at 39.

[503] *See id.* (finding that SNAP reaches 90 percent of eligible households and high adoption rates among Medicaid and SSI.); *see also* USAC, *Lifeline Program: Subscribers by Eligibility Program*, http://www.usac.org/_res/documents/about/pdf/quarterly-stats/LI/Subscribers-by-Eligibility-Program.pdf (last visited Jan. 27, 2016).

[504] *See* Joint Commenters Comments at 46; USDA FNS Comments at 2-4; California ETF 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.").

[505] AAJC Comments at 4-10; California ATG Reply at 3; California PUC Comments at 18-21; California Telehealth Network Comments at 3; Seattle CTAB Comments at 5; Consumer Action Comments at 2; Joint Commenters Comments at 45-48; Michigan PSC Comments at 12; NAACP Comments at 2; NCAI Comments at 7-8; Low-Income Consumer Groups Comments at 3, 16-17; NCL Reply at 2; Smith Bagley Comments at 32-33; TRBPR Comments at 23-25; New York PSC Comment at 5-6; California ETF Comments at 36-38, 41-46 (specifically cautioning against eliminating NSLP).

[506] California ETF Comments at 19.

[507] *See* USAC, *Lifeline Program: Subscribers by Eligibility Program*, http://www.usac.org/_res/documents/about/pdf/quarterly-stats/LI/Subscribers-by-Eligibility-Program.pdf (last visited Jan. 27, 2016).

[508] USDA FNS Comments at 7-8.

[509] *Id.* at 8.

guardians in order to disclose any information.[510] The experience of state commissions demonstrates that this process is untenable and works against streamlining the administration of Lifeline.[511]

194. Further, NSLP is currently undergoing program overhauls and transitioning to a community-based approach that will complicate the ability to determine individual household eligibility.[512] The Community Eligibility Provision ("CEP") allows for participation in free or reduced meals for an entire school district, group of schools, or individual school if 40 percent of its students are "identified students."[513] USDA adopted this change to eliminate the burden of collecting household applications to determine eligibility for school meals, relying instead on information from other means-tested programs such as the SNAP.[514] This undoubtedly includes households that are not low-income, but still qualify for NSLP.[515] Allowing Lifeline eligibility based on NSLP's CEP method could result in large numbers of non-low-income households qualifying for the Lifeline program and would greatly undermine the targeting of support to the low-income households. Given the extremely low number of Lifeline participants that use NSLP to establish Lifeline eligibility, coupled with the high overlap between NSLP and SNAP, the balance of factors supports removing NSLP as a qualifying Lifeline program.

195. We also have administrative concerns with using LIHEAP and TANF in the Lifeline program. Providers and state commissions have experienced difficulty in developing long-term, technology-based solutions for these federal eligibility programs.[516] The majority of providers and state commissions choose only to provide database eligibility verification for a select group of programs, often SNAP, Medicaid, and SSI,[517] due to the lack of centralized administration of many federal assistance programs, the wide varieties of documentation, differing technologies, and complications presented by controlling regulations.[518] We intend to foster a centralized, technology-driven solution to eligibility determination, certification, and verification and the federal eligibility programs need to enable a database eligibility solution.

196. By using SNAP, Medicaid, SSI, FPHA, and the VA Pension benefit as eligibility avenues for Lifeline, the Commission will modernize the program while remaining committed to providing support to low-income consumers. Millions of low-income households remain eligible under the streamlined eligibility criteria while allowing the Commission to reduce the administrative burden to consumers, providers, and itself. Currently, LIHEAP eligibility accounts for only 1.23 percent of Lifeline

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[510] *Id.*

[511] *See* USDA FNS Comments at 8; Michigan PSC Comments at 2.

[512] USDA FNS Comments at 7.

[513] *See* CBPP, *Community Eligibility Database: Schools that can Adopt Community Eligibility for 2015-2016* (Aug. 19, 2015), http://www.cbpp.org/research/food-assistance/community-eligibility-database-schools-that-can-adopt-community-eligibility. "Identified student[s]" are students that qualify without application due to participation in low-income assistance programs like SNAP, or students that are considered at risk of *hunger* due to a codified list of factors that includes being homeless, or in foster care. *Id.*

[514] *See* USDA FNS, *School Meals Community Eligibility Provision* (Sept. 30, 2015), http://www.fns.usda.gov/school-meals/community-eligibility-provision.

[515] USDA FNS Comments at 8.

[516] Texas PUC Comments at 2; California PUC Comments at 20; Illinois UTAC Comments at 5; Florida PSC Comments at 5; Michigan PSC Comments at 7-8; *USAC RFI Summary* at 3-5.

[517] Texas PUC Comments at 2; California PUC Comments at 20; Illinois UTAC Comments at 5; Florida PSC Comments at 5; Michigan PSC Comments at 7-8; *USAC RFI Summary* at 3-5. *See* NARUC *Ex Parte*, at 1-5, Attach. The survey shows, of the 42 responding states, all include the default federal assistance programs.

[518] Texas PUC Comments at 2; California PUC Comments at 20; Illinois UTAC Comments at 5; Florida PSC Comments at 5; Michigan PSC Comments at 7-8; *USAC RFI Summary* at 3-5.

participants.[519] TANF accounts for only 1.20 percent.[520] The retained programs account for 80 percent of all participants and enable 80 percent of all eligible low-income consumers to qualify with SNAP, Medicaid, SSI, or FPHA.[521] The retained programs will allow the Commission to develop a long-term technological solution to determining and verifying Lifeline eligibility.

4. Independent Income-Based Eligibility

197. We next maintain our rules regarding income-based eligibility as an avenue to access Lifeline support.[522] In doing so, we acknowledge that maintaining independent income verification allows low-income households to qualify for the program without being required to receive assistance from another program. However, we amend the Lifeline definition of income to align with the Internal Revenue Service's ("IRS") definition of gross income to provide a clearer standard for eligibility determinations. By focusing independent income verification efforts by carriers and the National Verifier on checking readily available income verification sources and requiring consumer certification, we will reduce the potential for waste, fraud, and abuse of the program resulting from underreporting income.

198. *Background.* In 2005, the Commission enabled low-income households to participate in Lifeline by demonstrating their household income was at or below 135 percent of the Federal Poverty Guideline ("FPG").[523] The Commission hoped to increase enrollment in the program, recognizing that one in five consumers below 135 percent of the FPG likely did not subscribe to phone service.[524] By granting eligibility through proof of household income, the Commission estimated that Lifeline could gain approximately 1.17 million to 1.29 million subscribers.[525] The Commission was also concerned with potential waste, fraud, and abuse and, at the same time, enacted verification rules that required a subscriber to demonstrate household income by tax return, employer income statement, or other like means in addition to self-certification by the consumer.[526]

199. In the *2015 Lifeline FNPRM*, the Commission sought comment on whether low-income consumers should be able to continue to qualify for Lifeline support based on household income.[527] We recognized that, under the current program, less than four percent of Lifeline subscribers demonstrate eligibility based on income level[528] and we questioned whether we could better target the neediest consumers given the relatively low number of consumers using income as their qualifying method.[529]

200. *Discussion*. While a limited number of participants demonstrate eligibility through verifying their income, the eligibility avenue remains an important and independent access route into the

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[519] *See* USAC, *Lifeline Program: Subscribers by Eligibility Program*, http://www.usac.org/_res/documents/about/pdf/quarterly-stats/LI/Subscribers-by-Eligibility-Program.pdf (last visited Apr. 7, 2016).

[520] *Id.*

[521] *Id.*; *2015 Lifeline FNPRM*, 30 FCC Rcd at 7860, para. 111; CBPP Comments at 40.

[522] 47 CFR § 54.409(a).

[523] *2004 Lifeline Order*, 19 FCC Rcd at 8308-09, para. 10.

[524] *Id.*

[525] *Id.*

[526] *Id.* at 8319-22, paras. 28-32.

[527] 47 CFR § 54.409(a)(3).

[528] *See generally* CPS 2014 March Supplement.

[529] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7861, para. 114.

program. Currently, three percent of Lifeline subscribers qualify by demonstrating household income.[530] However, independent income-eligibility remains the only stand-alone avenue for access into the program. By ensuring low-income consumers can independently qualify for the Lifeline program, qualifying subscribers will not be denied access into the Lifeline program simply for not seeking other forms of assistance.

201. Maintaining income-eligibility requires a focused approach to verifying the low-income consumer's complete household income. Income verification has typically been more onerous for both the consumer and Lifeline provider than establishing eligibility through another program. Under the current definition of income,[531] verifying income requires a provider to review documentation that demonstrates the household's income.[532] Income includes all forms derived by all members of a household, including payments normally deductible from taxable income, like child support.[533] While verifying income with the IRS can give a baseline,[534] the Lifeline provider must look to all sources of income within the household and sources that would be excluded from taxable income to ensure compliance with Commission rules. Thus, income verification is highly susceptible to intentional or unintentional underreporting of income. Commenters agree with this concern, noting the difficulty in ensuring that a produced tax return accurately represents income[535] and that "virtually no Lifeline applicants present their tax returns to demonstrate eligibility" especially given the ease of demonstrating program eligibility.[536] The consumer must present the household's income including "salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, lottery winnings, and the like."[537] The only exceptions are for student financial aid, military housing and cost-of-living allowances, and irregular income from occasional small jobs.[538] Additionally, the consumer must certify they have presented all income for themselves and their household.[539]

202. We also amend the definition of income in section 54.400(f) of our Lifeline rules to align with the Internal Revenue Service's (IRS) definition of gross income. This revised definition of income simplifies what a subscriber must demonstrate for income-based eligibility. Gross income, as defined by

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[530] *See* USAC, *Lifeline Program: Subscribers by Eligibility Program*, http://www.usac.org/_res/documents/about/pdf/quarterly-stats/LI/Subscribers-by-Eligibility-Program.pdf (last visited Jan. 27, 2016).

[531] *See* 47 CFR § 54.400(f).

[532] *See* 47 CFR § 54.410(b)(1)(i)(B) Acceptable documentation is: (1) The prior year's state, federal, or Tribal tax return; (2) current income statement from an employer or paycheck stub; (3) a Social Security statement of benefits; (4) a Veterans Administration statement of benefits; (5) a retirement/pension statement of benefits; (6) an Unemployment/Workers' Compensation statement of benefit; (7) federal or Tribal notice letter of participation in General Assistance; or (8) a divorce decree, child support award, or other official document containing income information.

[533] *See* 47 CFR §54.400(f); *c.f.* 26 U.S.C. § 71 (excluding child support from income).

[534] IRS, *Income Verification Express Service* (Sept. 14, 2015), https://www.irs.gov/Individuals/Income-Verification-Express-Service. For example, the IRS provides a system normally used by mortgage lenders to verify income of individuals with the individual's signed consent.

[535] Wisconsin PSC Comments at 2-4.

[536] COMPTEL Comments at 18.

[537] 47 CFR §54.400(f)

[538] *Id.*

[539] 47 CFR §54.410(d)(3).

the tax code,[540] includes all income for whatever source derived unless specifically excluded.[541] By relying on a definition of income that subscribers use every year, we will greatly reduce instances of intentional or unintentional underreporting of income and will reduce the burden on the qualifying low-income consumer by eliminating the need for them to make additional income calculations.[542] Further, tax information and employment information can readily be determined electronically through the IRS or third-party services.[543] Aligning the Lifeline definition of income to mirror the tax definition of gross income, enables electronic verification by utilizing already reported information to a single source where previously this was not possible due to the expansive definition of income.[544]

203. Continuing to allow income-based eligibility is also essential for Lifeline households in United States Territories. Due to the unique combination of high poverty rates[545] and non-uniform federal assistance programs in the United States Territories, the United States Territories rely on income-based eligibility. Lifeline serves low-income consumers in all states as well as the Territories[546] of the United States.[547] However, the Territories do not have full access to the default federal eligibility programs for several reasons.[548] For the United States Territories, the USDA offers Nutrition Assistance Block Grants

[540] 26 USC §61.

[541] *See* Part III of Title 26, 26 USC §101 *et. seq*. (detailing items specifically excluded from gross income).

[542] *See* 26 USC §101 *et. seq*. (specifically excluding SSI payments, pension payments for Public Safety Officers, Veteran's Benefits, gifts/inheritances, child support, and workers' compensation, all of which were previously included in the Lifeline definition of income).

[543] *See* IRS, *Income Verification Express Service* (Sept. 14, 2015) https://www.irs.gov/Individuals/Income-Verification-Express-Service; Equifax, *The Work Number*, https://www.theworknumber.com/SocialServices/ (last visited Mar. 23, 2016) (Equifax provides independent employment and income verification service through The Work Number, which is employed by many government and social service agencies).

[544] The Commission stresses the importance of verifying a complete household income picture when income eligibility is used. The Commission's rules have and continue to require that a consumer establish income for both themselves and for the rest of the household. This may require a low-income consumer to provide additional documentation or information for other individuals in the consumer's household to verify household income. These documents often contain additional sensitive and personally identifying information, and carriers must continue to protect this information in compliance with current Lifeline document retention and protection policies. 47 CFR §54.410(b)(1)(ii); *see 2015 Lifeline FNPRM*, 30 FCC Rcd at 7895-97, paras. 233-37 (requiring ETCs retaining eligibility documents to use "just and reasonable" means to protect the consumer's personal information including "firewalls and boundary protections; protective naming conventions; user authentication requirements; and usage restrictions, to protect the confidentiality of consumers' proprietary personal information retained for this or other allowable purposes").

[545] For the United States Territories currently receiving Lifeline support, the average poverty rate of the population is: Puerto Rico – 45.4 percent; U.S. Virgin Islands – 23.3 percent; American Samoa – 57.8 percent; Guam – 22.9 percent; Northern Mariana Islands – 31.4 percent. U.S. Census Bureau, 2012 and 2013 American Community Surveys and 2012 and 2013 Puerto Rico Community Surveys, at 3, https://www.census.gov/content/dam/Census/library/publications/2014/acs/acsbr13-01.pdf (Sept. 2014); USVI, Comprehensive Economic Development Strategy 2015, at 23, (Dec. 2014) http://www.usviber.org/CEDS%20Plan%202015.pdf; U.S. Census Bureau, 2010 Census Data for Island Areas, at American Samoa, Guam, Northern Mariana Islands Table 1-17, (Sept. 19, 2013), http://www2.census.gov/census_2010/10-Island_Areas_Detailed_Cross_Tabulations/. By comparison, the poverty rate for the United States is 14.8 percent. U.S. Census Bureau, *Poverty*, https://www.census.gov/hhes/www/poverty/about/overview/ (last visited Feb. 3, 2016).

[546] United States Territories include all areas currently controlled by the United States and specifically the territories of the Commonwealth of Puerto Rico, American Samoa, the Commonwealth of Northern Mariana Islands, the United States Virgin Islands, and Guam.

[547] 47 CFR § 54.404 (requiring ETCs to offer Lifeline within their service footprint).

[548] 47 CFR § 54.409(a).

(NABG) in lieu of operating SNAP in these areas.[549] The same is true for Medicaid, which is operated similarly to block grants with an annual funding cap.[550] Moreover, besides the Northern Mariana Islands, SSI is not available for individuals in the United States Territories.[551]

204. Puerto Rico's Telecommunications Regulatory Board ("TRBPR") cautions against limiting program eligibility to only federal assistance programs.[552] The differing administration and eligibility criteria for SNAP, Medicaid, and SSI requires income-verification remain in Puerto Rico and other United States Territories. For example, the income levels for the Nutrition Assistance Program for Puerto Rico ("PAN") range between 23.9 percent and 35.3 percent of FPG, which is substantially lower than SNAP.[553] As a result, participation in PAN is 30 percent lower than if the default federal eligibility existed.[554] Given the unequal treatment of Puerto Rico in federal assistance programs, TRBPR recommends retaining income verification.[555] Retaining income-based eligibility prevents "qualification gaps" between low-income consumers in states and those in the Territories.[556] We continue to allow income-based eligibility for households with annual incomes of less than 135 percent of the FPG.

5. Tribal-specific Eligibility Criteria

205. After careful consideration, we maintain the current set of Tribal-specific eligibility programs.[557] The Commission embraced these Tribal assistance programs to encourage adoption among low-income residents on Tribal lands.[558] We agree with commenters and find that the disproportionately low adoption of telecommunication services on Tribal lands, especially those in remote and underserved areas, makes clear that there is much more progress to be made in increasing penetration and adoption of Lifeline services.[559]

206. *Background*. Tribal lands historically have had less access to telecommunications services than any other segment of the population.[560] The Commission recognizes its historic federal trust

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[549] USDA, *Nutrition Assistance Block Grants*, http://www.fns.usda.gov/sites/default/files/NABGP_Quick_Facts.pdf (last visited Feb. 3, 2016).

[550] Asian & Pacific Islander American Health Forum, *Implementation of the Affordable Care Act: Opportunities and Challenges in the U.S. Pacific Territories*, https://cnmicap.files.wordpress.com/2013/09/2014-03-20_implementation-of-the-aca-and-the-u-s-pacific-territories_factsheet.pdf (last visited Feb. 3, 2016); CMS, *Programs for people in U.S. Territories*, https://www.medicare.gov/your-medicare-costs/help-paying-costs/territories/program-in-us-territories.html (last visited Feb. 3, 2016).

[551] Social Security, A Guide to Supplemental Security Income for Groups and Organizations, SSA Publication No. 05-11015, at 20, https://www.socialsecurity.gov/pubs/EN-05-11015.pdf (January 2015).

[552] TRBPR Comments at 13-14.

[553] *Id*. at 15; *cf.* USDA FNS, Broad-Based Categorical Eligibility (2015) http://www.fns.usda.gov/sites/default/files/snap/BBCE.pdf (showing the income being a minimum of 130 percent of the FPG).

[554] TRBPR Comments at 22.

[555] *Id.* at 25.

[556] *Id.*

[557] 47 CFR § 54.409(b).

[558] *2012 Lifeline Reform Order*, 27 FCC Rcd at 6724, para. 154.

[559] ARC Comments at 14; Boomerang Comments at 20-21; NTTA Reply at 5-6; Smith Bagley Comments at 27-28, 32-33.

[560] *Improving Communications Services for Native Nations*, Notice of Inquiry, 26 FCC Rcd 2672, 2673-83, paras. 1-19 (2011) (*Native Nations NOI*); *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17868, para. 636; *2000 Tribal Order*, 15 FCC Rcd at 12214-15, para. 8; Letter from David. A. Furia, Counsel, Smith Bagley, Inc., to Marlene H. Dortch Secretary, FCC, WC Docket No. 11-42 (filed Apr. 23, 2014). *See 2016 Broadband Progress*

(continued….)

relationship with federally recognized Tribal Nations and it has a longstanding policy of promoting Tribal self-sufficiency and economic development while helping to ensure that Tribal Nations and their members obtain access to communications services.[561] Given the difficulties many Tribal consumers face in gaining access to basic services by living on often remote and underserved Tribal lands, we recognize the important role of universal service support in helping to provide telecommunications services to the residents of Tribal lands.[562]

207. In the *Lifeline Reform Order*, the Commission took specific steps to make Lifeline more inclusive for consumers living on Tribal lands. The Commission noted that consumers on Tribal lands did not qualify for Lifeline support because many Tribal members chose to participate in the Food Distribution Program on Indian Reservations ("FDPIR") rather than SNAP. The Commission added FDPIR as a qualifying program because both SNAP and FDPIR have similar income-based eligibility criteria[563] and that members of more than 200 Tribes, especially Tribal elders, currently receive benefits under FDPIR.[564]

208. In the *2015 Lifeline FNPRM*, in the context of exploring the idea of streamlining eligibility for the program, we also sought comment on whether to remove eligibility based on federal Tribal assistance programs and the effect removing those programs would have on low-income subscribers and the Lifeline program. Specifically, we asked about continuing to use FDPIR and, more broadly, about overlap between Tribal-specific assistance programs and the other federal assistance programs used in the Lifeline program.[565]

209. *Discussion*. Low-income consumers living on Tribal lands and receiving Bureau of Indian Affairs general assistance ("BIA general assistance"), Tribally administered Temporary Assistance for Needy Families ("TTANF"), Head Start (only those households meeting its income qualifying standard), or FDPIR remain eligible for Lifeline.[566] BIA general assistance, TTANF, and Head Start were added in 2000 to encourage enrollment of low-income Tribal households because the programs were specifically targeted to Tribal members, and the addition of these programs helped remedy the barrier to Tribal participation in Lifeline caused by the other federal assistance program criteria.[567] Additionally, the programs are means-tested and target household incomes similar to the other federal assistance programs.[568]

210. The retention of these Tribal programs as Lifeline qualifying programs allows continued access to a specifically underserved group of potential subscribers. The Commission has noted previously that consumers living on Tribal lands have limited access to advanced telecommunications technologies.[569] We recognize that retaining the programs may add additional complications to developing a uniform set of eligibility criteria to enable a long-term technological solution to eligibility

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Report, 31 FCC Rcd at 731-32, para. 79 (concluding that people living in rural areas and on Tribal lands remain persistently behind their urban counterparts in terms of broadband adoption and deployment).

[561] *Native Nations NOI*, 26 FCC Rcd at 2676-78, paras. 5, 7.

[562] *2000 Tribal Order*, 15 FCC Rcd at 12211-15, paras. 1-11.

[563] *2012 Lifeline Reform Order*, 27 FCC Rcd at 6724, para. 154.

[564] *Id.* at 6724, para. 154.

[565] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7860, para. 113.

[566] 47 CFR § 54.409(b).

[567] *2000 Tribal Order*, 15 FCC Rcd at 12246, para. 69.

[568] *Id.* at 12244-45, para. 68.

[569] *See supra* note 560.

determinations. However, we find that continuing to support low-income consumers living on Tribal lands through these Tribal-specific eligibility programs outweighs the limited administrative difficulties.

211. We make clear that our determination here to retain Tribal-specific eligibility programs does not prejudge a decision on any of the other Tribal-related or other outstanding issues for which the Commission sought comment in the *2015 Lifeline FNPRM* and prior Commission-level notices in these proceedings.[570] For example, we are not at this time modifying the enhanced support amount or deciding whether to restrict Lifeline and/or Link Up support to certain carriers operating on Tribal lands or carriers serving certain portions of Tribal lands.[571] These and other issues for which the Commission has sought comment and which are not addressed in this order, remain open for consideration in a future proceeding more comprehensively focused on advancing broadband deployment on Tribal lands.[572]

6. State-Specific Eligibility Criteria

212. We amend our rules to remove state-specified eligibility criteria for Lifeline support.[573] While the Commission has traditionally allowed states to establish eligibility for the federal program, we ultimately conclude that Lifeline eligibility needs to be updated to allow for more efficient administration that enables comprehensive eligibility verification to continue to prevent waste, fraud, and abuse.[574]

213. *Background*. In the *2015 Lifeline FNPRM*, the Commission sought comment on removing eligibility based on state-established criteria.[575] The Commission's rules allow eligibility for federal Lifeline assistance based on qualification for state Lifeline support by any low-income consumer. A limited amount of consumers participate through criteria specifically designated by the state.[576] The Commission adopted the state Lifeline eligibility criteria as a pathway into federal Lifeline assistance in 1997.[577] Following the Joint Board recommendation, the Commission found that the state Lifeline criteria was narrowly targeted to low-income individuals and flexible enough to meet the needs of individual states.[578] However, the Commission noted that stricter federal requirements for verification of

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[570] *See, e.g.*, *2015 Lifeline FNPRM*, 30 FCC Rcd at 7827-7891, paras. 14-223 (seeking comment on, among other things, issues related to enhanced Lifeline and Link Up support and as well as non-Tribal matters); *2012 Lifeline Order*, 27 FCC Rcd at 6822-6857, paras. 299-506 (seeking comment on various matters, including how and whether to define "own facilities" for the purpose of section 214 of the Act).

[571] *See 2015 Lifeline FNRPM* at 7874-7877, paras. 163-177 (seeking comment on, among other things, limiting enhanced support to carriers with "facilities" and/or carriers serving low density areas on Tribal lands).

[572] We note that the Commission recently sought comment on adopting rules to increase support to rate-of-return carriers in areas that include Tribal lands. *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 16-33, paras. 368-382 (rel., Mar. 30, 2016). The Commission will address related issues in both proceedings to the extent that it deems appropriate.

[573] 47 CFR § 54.409(a).

[574] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7861, para. 114.

[575] *Id.*

[576] USAC, *Lifeline Program: Subscribers by Eligibility Program*, http://www.usac.org/_res/documents/about/pdf/quarterly-stats/LI/Subscribers-by-Eligibility-Program.pdf (last visited Feb. 3, 2016). Specifically, only 2.52 percent of the program enrolls in state-specific assistance programs, while 11.92 percent of current Lifeline subscribers qualify through a state program that relies on the federal default criteria. This includes SNAP, Medicaid, and SSI. Additionally, California's top five public assistance programs do not include specific state assistance programs. California PUC Comments at 21.

[577] *Universal Service First Report and Order*, 12 FCC Rcd at 8973-77, para. 373-78.

[578] *Id.* at 8973, para. 373.

eligibility was not necessary at that time, and reserved the right to require verification to ensure sustainability and predictability of the program.[579]

214. A minority of state commissions caution against limiting Lifeline eligibility programs.[580] Commenters argue that states are best positioned to develop eligibility criteria considering the individual state's resources, local conditions, laws, and budgetary limits.[581] Commenters caution that lack of participation in a federal assistance program should not automatically disqualify a household from Lifeline eligibility.[582] In contrast, some state commissions argue for limiting the number of eligibility programs.[583] Commenters argue that real-time confirmation of eligibility should be a principal concern when considering eligibility programs.[584] Further, commenters argue that consistent eligibility rules from state to state simplify the program for consumers and carriers alike[585] and that, by eliminating inconsistent state regulation, the National Verifier and USAC will face reduced administrative burdens by not having to customize activities based on the state.[586]

215. *Discussion*. We find that the benefits to the federal Lifeline program of removing state-specific eligibility criteria outweigh concerns presented by the states that object to this action. It is important to note that the changes to eligibility only apply to the federal Lifeline program.[587] Thus, a state maintaining its own Lifeline fund will still be free to adopt any eligibility requirements it deems necessary. We make this change to simplify the administration of the Lifeline program. Lifeline currently allows for unique eligibility criteria depending on the state in which the consumer resides.[588] This approach complicates administration at a federal level. Allowing the states to continue to develop tailored rules for federal Lifeline assistance would eliminate many of the efficiencies the Commission gains by modernizing the eligibility criteria. Streamlining the default federal eligibility criteria allows the Commission to transition the program to modern approaches for eligibility determinations, verification, and annual recertification. The selected list of federal assistance programs allows for a technology-based system by leveraging existing databases. Further, the programs are tailored to allow the Commission to reach needed data sharing agreements with the stakeholders in an efficient manner and state-specific eligibility criteria would minimize or eliminate the efficiencies the Commission is working to achieve.

216. The size, scope, and technology of the Lifeline program has changed drastically from 1997 when the Commission allowed state Lifeline eligibility to grant eligibility in federal Lifeline. The program has grown from 5.1 million households in 1997 to 13.1 million currently.[589] Disbursements have

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[579] *Id.* at 8976, para. 377.

[580] California PUC Comments at 17-21; Michigan PUC Comments at 12.

[581] California PUC Comments at 17.

[582] Michigan PUC Comments at 12.

[583] New York PSC Comments at 5-6 (opposing any inclusion of geographic community eligibility which NSLP is currently endorsing); Florida PSC Comments at 6 (supporting limiting eligibility programs to SNAP, Medicaid, and TANF); *See* USTelecom *Ex Parte* at 2-3.

[584] Florida PSC Comments at 6.

[585] USTelecom *Ex Parte* at 3.

[586] *Id.*

[587] 47 CFR § 54.409.

[588] The Commission received comments from multiple State Commissions detailing that state's Lifeline program and the administration differences from the default federal program. *See* Texas PUC Comments at 2; California PUC Comments at 20; Illinois UTAC Comments at 5; Florida PSC Comments at 5; Michigan PSC Comments at 7-8.

[589] *2015 Universal Service Monitoring Report* at 23, Table 2.1; USAC, *Lifeline Program: Subscribers by State or Jurisdiction-January 2015 to December 2015*,

(continued….)

grown from $422 million in 1997 to $1.5 billion in 2015.[590] In this Order, we have instituted sweeping changes to the Lifeline program regarding verification of federal Lifeline eligibility on a national level. These require us to revisit the initial decision in 1997 to allow states to determine if eligibility verification was needed.[591] Instituting a National Verifier requires specifically targeted federal assistance programs that have demonstrated use by current low-income consumers within the federal Lifeline program. State eligibility often relies on federal Lifeline eligibility programs, proving the criteria redundant in the majority of cases.[592] In fact, the state-specific assistance programs only account for 2.52 percent of total Lifeline participation.[593] The administrative burden to verify each individual program for a National Verifier is not supported by the limited adoption of state-specific eligibility programs.

E. Increasing Competition for Lifeline Consumers

217. We recognize that in order to truly modernize the Lifeline marketplace, it is incumbent on the Commission to examine and reform three key aspects of providers' participation in the Lifeline program. Specifically, we must update providers' processes for entering the Lifeline program, providers' obligations as Lifeline providers, and providers' responsibilities when they may seek to exit the program. These three aspects of being a Lifeline provider—entry, service obligations, and exit—are crucial to providers' decisions about whether to participate in the program at all, and they are accordingly fundamental pieces of a revitalized Lifeline program. We expect that our actions today will encourage market entry and increase competition among Lifeline providers, which will result in better services for eligible consumers to choose from and more efficient usage of universal service funds.

218. In this section, we continue to require Lifeline providers to be designated as ETCs, but we take several steps to modernize the processes and obligations necessary to obtain and maintain ETC status. We first establish our authority to designate Lifeline Broadband Provider (LBP) ETCs and create a designation process for such Lifeline Broadband Providers. This action preserves states' authority to designate ETCs to receive Lifeline reimbursement for qualifying voice and/or broadband services, while adding to that structure the option for carriers to seek designation as Lifeline Broadband Providers through the FCC.

219. We next establish reformed service and relinquishment obligations for different categories of ETCs. For Lifeline Broadband Providers, we establish a streamlined relinquishment process that gives providers greater certainty while retaining the Commission's ability to protect consumers. For Lifeline-only ETCs, those carriers that have received limited designations to participate only in the Lifeline program, we establish that such ETCs are eligible to receive support for broadband service but may choose to only offer supported voice service instead. For ETCs that are designated to receive high-cost support (High-Cost/Lifeline ETCs), we establish that such ETCs are also eligible to receive support for broadband service and forbear from requiring such High-Cost/Lifeline ETCs to offer Lifeline-supported broadband service, except in areas where the ETC commercially offers broadband pursuant to its high-cost obligations. We also establish conditional forbearance from existing ETCs' Lifeline voice obligations where certain objective competitive criteria are met.

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http://www.usac.org/about/tools/fcc/filings/2016/Q2/LI08%20Lifeline%20Subscribers%20by%20State%20or%20Jurisdiction%20-%20January%202015%20through%20December%202015.xlsx (last visited Feb. 2, 2016).

[590] *2015 Universal Service Monitoring Report* at 23, Table 2.2.

[591] *Universal Service First Report and Order*, 12 FCC Rcd at 8975, para. 376.

[592] *See NARUC Ex Parte* at 1-5, Attach. The survey shows all 42 responding states include the default federal assistance programs. In fact, only 15 states add additional eligibility criteria. *Id.*

[593] *See* USAC, Lifeline Program: Subscribers by Eligibility Program, http://www.usac.org/_res/documents/about/pdf/quarterly-stats/LI/Subscribers-by-Eligibility-Program.pdf (last visited Jan. 27, 2016).

220. These reforms balance low-income consumers' reliance on existing service providers while encouraging new market entry in the Lifeline program and creating a level playing field for existing and new providers. We expect that these reforms will unleash increased competition in the Lifeline marketplace, providing more choice and better service for the consumers benefitting from the program.

1. Creating a Lifeline Broadband Provider Designation

221. As part of our comprehensive modernization and reform of the Lifeline program, we must address the barriers potential Lifeline providers face when attempting to enter the program and the burdens existing providers shoulder while participating in the program. Through a number of actions, in this section we modernize carriers' process for entering the Lifeline program to become LBPs, their obligations within the program, and the process for relinquishing their participation in the program. We also take certain steps to streamline the LBP designation process to encourage broader provider participation in the Lifeline program with the expectation that increased participation will create competition in the Lifeline market that will ultimately redound to the benefit of Lifeline-eligible consumers.

222. First, we decide that the Lifeline program will continue to be limited to providers that are ETCs. However, to ease the burden of becoming an LBP providing BIAS to eligible consumers, we improve the designation process, clarify LBP obligations, and modernize the relinquishment process to better reflect the modern competitive Lifeline market. We establish our authority to designate such ETCs pursuant to our responsibility under section 214(e)(6) and take steps to streamline the LBP designation process to encourage greater nationwide participation in the program.

a. Lifeline Participation Limited to ETCs

223. We first maintain the existing, statutorily compelled paradigm for providing Lifeline service and continue to require Lifeline providers be designated as ETCs. At this time, we decline to extend Lifeline participation to non-ETCs. We find that continuing to require providers to be ETCs to receive reimbursement through the Lifeline program will protect consumers and facilitate continuing efforts to prevent waste, fraud, and abuse. As discussed below, however, we also take steps later in this section to streamline the ETC designation process and ETC service obligations to increase provider participation in the Lifeline program.[594]

224. In the *2015 Lifeline FNPRM*, the Commission sought comment on various means to increase competition among carriers serving Lifeline-eligible households.[595] Among other potential ways to increase competition, the Commission asked for comment on a process for providers to participate in Lifeline that is separate from the ETC designation process required to receive high cost universal service support to encourage broader participation.[596] The Commission also sought comment on re-visiting the Commission's 1997 decision not to provide Lifeline support to non-ETCs to encourage broader participation in the market, and its authority to provide Lifeline support to non-ETCs.[597]

225. In response to the *2015 Lifeline FNPRM*, several commenters urged the Commission to eliminate the requirement that recipients of Lifeline support be ETCs through statutory interpretation or forbearance under section 10 of the Act, arguing that such a change would increase provider participation in the Lifeline program.[598] Some commenters reasoned that eliminating the ETC requirement would

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[594] *See infra* sections III.E.1.c (Lifeline Broadband Provider ETC Designation Process), III.E.2 (Lifeline Obligations for Eligible Telecommunications Carriers).

[595] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7866-69, paras. 132-41.

[596] *See id.* at 7866-69, paras. 132, 136-41.

[597] *See id.* at 7868, para. 137.

[598] *See* American Cable Association Comments at 10-12 (ACA); AT&T Comments at 27-33; AT&T Reply at 11; Charter Communications, Inc. Comments at 2, 5 (Charter); Comcast Comments at 9-10; Council of Chief State

(continued….)

enable more community-based organizations to participate in the Lifeline program.[599] Other commenters urged the Commission to retain the ETC requirement, arguing that the ETC requirement is necessary to prevent waste, fraud, and abuse in the program.[600] Commenters opposing the elimination of the ETC requirement also argued that the Communications Act requires providers participating in the Lifeline program to be ETCs.[601]

226. Regarding the Commission's authority to permit non-ETC providers to receive Lifeline funds, AT&T argues that section 254(j) and section 254(e) of the Act permit the Commission to expand Lifeline participation to non-ETCs.[602] Public Knowledge argues that the Commission's decisions in the *2004 Report and Order* and *TracFone Forbearance Order* are inconsistent with the *Universal Service First Report and Order* on the issue of the Commission's authority to permit non-ETCs to participate in the Lifeline program.[603] Public Knowledge also argues that the Commission's prior orders failed to state

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School Officers Comments at 5; Intergovernmental Advisory Committee to the FCC Comments at 2; Internet Innovation Alliance Comments at 19-21; National Association of Telecommunications Officers and Advisors and the National League of Cities Comments at 5; National Cable & Telecommunications Association Comments at 1-2 (NCTA); National Housing Alliance Comments at 6; United States Telecom Association Comments at 5-6 (USTelecom); Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-7 (filed Jan. 19, 2016); Letter from Phillip Berenbroick, Counsel, Government Affairs, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2-3 (filed Jan. 14, 2016).

[599] *See* Axiom Technologies Reply at 1-2; Council of Large Housing Authorities Comments at 4; Kajeet, Inc. Reply at 3 (arguing for schools to be able to use the Lifeline reimbursement to purchase mobile broadband connection under certain circumstances); Educational Broadband Service Agency LLC d/b/a Mobile Beacon Comments 7; National Digital Inclusion Alliance Comments at 13-18; Schools, Health & Libraries Broadband Coalition Comments at 6-7.

[600] *See* California PUC Comments at 33-38; Indiana Utility Regulatory Commission Comments at 7-8. *See also* Budget Reply at 15; Commnet Comments at 5; CTIA Comments at 12-14; GCI. Reply at 20; Navajo Tribal Utility Authority Comments at 3; Pennsylvania PUC Comments at 30-32; Ohio PUC Reply at 3; Smith Bagley, Inc. Comments at 21; TracFone Comments at 44-45; TracFone Reply at 25-26; WTA—Advocates for Rural Broadband Reply at 13-14; Letter from David E. Screven, Assistant Counsel, Pennsylvania Public Utility Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-4 (filed Feb. 22, 2016); Letter from Catherine J.K. Sandoval, Commissioner, California Public Utilities Commission, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Feb. 22, 2016).

[601] *See* Joint Commenters Comments at 60-61; Massachusetts Department of Telecommunications and Cable Comments at 2; TracFone Comments at 44-45; TracFone Reply at 25-26; Letter from James Bradford Ramsay, General Counsel, NARUC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3-4 (filed Feb. 18, 2016); Letter from David E. Screven, Assistant Counsel, Pennsylvania Public Utility Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-2 (filed Feb. 22, 2016).

[602] *See* Letter from Anisa Latif, AT&T, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 4 (filed Dec. 21, 2015).

[603] *See* Letter from Phillip Berenbroick, Counsel, Government Affairs, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Dec. 22, 2015); *see also TracFone Forbearance Order*, 20 FCC Rcd at 15096-97, para. 3 ("The Act provides that only an ETC shall be eligible for universal service support. To be eligible for ETC designation, a carrier must meet certain statutory requirements including offering service over its own facilities or a combination of its own facilities and resale of another carrier's service. Only ETCs may receive high-cost and low-income support. The low-income support mechanism of the universal service fund consists of the Lifeline and Link-Up programs."); *Universal Service First Report and Order*, 12 FCC Rcd at 8971-72, paras. 369-70) ("We agree with the Joint Board that we should decline to establish rules that would provide Lifeline/Link-Up support directly to carriers that are not ETCs. Contrary to AT&T's assertion, establishing such rules would be inconsistent with section 254(e), which states that only ETCs may receive universal service support. Extending Lifeline/Link-Up universal service support to carriers that do not satisfy the requirements for designation as an ETC could also serve as a disincentive for other carriers to comply with their ETC obligations.").

that the Commission was departing from its prior interpretation of section 254, so the Commission's controlling interpretation of section 254 continues to be that expressed in the *Universal Service First Report and Order*.[604] Some commenters also argue that the Commission may permit non-ETCs to participate in the Lifeline program by amending its rules or by forbearing from rules that currently prevent non-ETCs from participating in the Lifeline program.[605]

227. We agree with the commenters who assert that the Commission should continue to limit reimbursement through the Lifeline program to ETCs, but we take significant action to address the concerns that animate suggestions that we provide support to non-ETCs. Requiring participating Lifeline providers to be ETCs facilitates Commission and state-level efforts to prevent waste, fraud, and abuse in the program, and serves the public interest by helping the Commission and state commissions ensure that consumers are protected as providers enter and leave the program. For federally-designated ETCs, in implementing section 214(e)(6) of the Act, the Commission's rules state that common carriers must meet certain requirements to obtain an ETC designation, including certification to the relevant service requirements for its support, demonstrating the ability to function in emergency situations, satisfying consumer protection and service quality standards, and demonstrating financial and technical capability to provide Lifeline service (for Lifeline-only ETCs).[606] For state designations, states that retain the relevant designating authority also ensure that carriers have the financial and technical means to offer service, including 911 and E911, and have committed to consumer protection and service quality standards.[607] These structures that protect consumers and ensure carriers meet service quality standards ensure that the services supported by the Lifeline program serve the Commission's goals of achieving "[q]uality services" offered at "just, reasonable, and affordable rates."[608] Considering the protections and standards already built into the ETC designation framework, we find that working within an updated ETC framework is a more sound approach to modernizing how carriers enter and exit the Lifeline program than creating entirely new registration processes and requirements for Lifeline providers.

228. We share commenters' concerns that requiring providers to obtain ETC designation could limit provider participation in the Lifeline program,[609] but we address this concern by the targeted steps we take in this Order to streamline the ETC designation process, reduce compliance burdens, and implement a National Verifier.[610] We are confident that these changes will encourage provider

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[604] *See* Letter from Phillip Berenbroick, Counsel, Government Affairs, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 4 (filed Dec. 22, 2015).

[605] *See* Letter from Phillip Berenbroick, Counsel, Government Affairs, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3-4 (filed Dec. 22, 2015) (further arguing that permitting non-ETCs to provide Lifeline-supported services could create incentives for carriers to provide BIAS to unserved and underserved areas); Letter from Anisa Latif, AT&T, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 4 (filed Dec. 21, 2015).

[606] *See* 47 CFR § 54.202(a).

[607] *See, e.g.*, Letter from Catherine J.K. Sandoval, Commissioner, California Public Utilities Commission, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 & Attachment (filed Feb. 22, 2016).

[608] 47 U.S.C. § 254(b)(1).

[609] *See* American Cable Association Comments at 10-12; AT&T Comments at 27-33; AT&T Reply at 11; Charter Comments at 2, 5; Comcast Comments at 9-10; Council of Chief State School Officers Comments at 5; Intergovernmental Advisory Committee to the FCC Comments at 2; Internet Innovation Alliance Comments at 19-21; National Association of Telecommunications Officers and Advisors and the National League of Cities Comments at 5; NCTA Comments at 1-2; National Housing Alliance Comments at 6; USTelecom Comments at 5-6.

[610] For example, if a non-traditional provider like a school, library, or other anchor institution wishes to provide Lifeline-supported BIAS and can meet the streamlined requirements to enter the program and offer service as a Lifeline Broadband Provider, such a provider could seek designation to participate in Lifeline just as any other qualifying provider may. *See* Letter from John Windhausen, Jr., Executive Director, SHLB Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-2 (filed Mar. 11, 2016).

participation through reduced administrative burdens. Finally, because we decide not to permit non-ETCs to receive reimbursement through the Lifeline program at this time, we need not decide the Commission's authority to do otherwise. We next revisit the Commission's authority to designate ETCs offering BIAS in the Lifeline program under section 214(e).

b. Jurisdiction to Designate Under Section 214(e)(6)

229. Having established that providers must become ETCs to receive reimbursement through the Lifeline program, we now turn to the issue of when the Commission retains authority to designate ETCs for the purpose of offering BIAS in the Lifeline program. In addition to including BIAS as a supported service in the Lifeline program, we must also determine who may provide that service. We establish the Commission's jurisdiction to designate broadband Internet access service providers as ETCs solely for the purpose of receiving reimbursement through the Lifeline program for providing BIAS to eligible low-income subscribers. We interpret section 214(e) to permit carriers to obtain ETC designations specific to particular mechanisms of the overall universal service fund.[611] We also find that state designations for this new LBP ETC designation would thwart federal universal service goals and broadband competition, and accordingly preempt such designations.[612]

230. To provide guidance regarding our authority to designate LBPs under section 214(e)(6), we clarify that a carrier need only provide some service or services—not necessarily the supported service—that constitute "telephone exchange service and exchange access" to qualify for designation by the Commission.[613] Even though we anticipate that many providers will be able to meet the requirement of "providing telephone exchange service and exchange access," we also grant forbearance from the provisions of section 214(e)(6) that require carriers to provide telephone exchange service and exchange access in order to seek designation as an ETC by the Commission under that section.[614]

231. Accordingly, LBPs will be designated by the Commission under the authority granted to it in section 214(e)(6) of the Act.[615] We find that these measures enable the Commission to efficiently designate LBPs and unlock the Lifeline program to new innovative service providers and robust broadband offerings for the benefit of our Nation's low-income consumers.

(i) Carriers Not Subject to the Jurisdiction of a State Commission

232. To facilitate the Lifeline program's goal of promoting competition and facilitating new services for eligible low-income consumers, we preempt states from exercising authority to designate Lifeline-only broadband ETCs for the purpose of receiving Lifeline reimbursement for providing BIAS to low-income consumers.[616] Accordingly, section 214(e)(6) grants to the Commission the responsibility to

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[611] *See infra* paras. 239-248.

[612] *See infra* paras. 249-258.

[613] *See infra* paras. 260-265

[614] *See infra* paras. 266-273.

[615] *See* 47 U.S.C. § 214(e)(6). We note that, in certain circumstances, we also have authority under section 214(e)(3). *See* 47 U.S.C. § 214(e)(3).

[616] Some commenters assert that although the Commission has concluded that broadband Internet access service is interstate for regulatory purposes, at least some states still could have sufficient jurisdiction to perform an ETC designation. *See, e.g.*, Pennsylvania PUC Comments at 28 ("Although such services have been declared as interstate telecommunications services under the FCC's *Open Internet Order*, nothing in the Act prohibits the states from exercising their lawful ETC designation and subsequent monitoring roles."). This question is moot insofar as we preempt any state jurisdiction to perform ETC designations specifically for Lifeline broadband purposes, and thus we need not, and do not, address the scope or contours of any state authority regarding broadband Internet access service. *Cf. National Association of Regulatory Utility Commissioners Petition for Clarification or Declaratory Ruling That No FCC Order or Rule Limits State Authority to Collect Broadband Data*, Memorandum Opinion and

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resolve carriers' requests for designation as an ETC for the purposes of receiving such Lifeline broadband support.[617]

233. *Background*. In the *2015 Lifeline FNPRM*, the Commission sought comment on ways to "facilitate broader participation in the Lifeline program and encourage more competition" among Lifeline providers.[618] Among other proposals to accomplish those goals, the Commission inquired about procedural changes that could encourage more provider participation in the Lifeline program. The Commission asked about "state or federal regulatory barriers that make it difficult for companies to participate and remain in the Lifeline program," and asked how to address such barriers.[619] The Commission sought comment on its authority to streamline the Commission ETC designation process to increase market entry into the Lifeline space and best promote the universal service goals of section 254(b).[620] The Commission also noted that section 214(e)(2) assigns primary responsibility for designating ETCs to the states,[621] but inquired about the "benefits and drawbacks to a uniform, streamlined approach at both the state and federal levels."[622] In considering creating a new Lifeline approval process for broadband providers, the FNPRM also sought comment on "the federal-state role in creating a new designation process" and the "pros and cons of creating a national designation versus a state-by-state approach."[623]

234. Additionally, the Commission's *2012 Lifeline Reform Order* sought comment on a preemption approach proposed by commenters that would result in states lacking jurisdiction to perform ETC designations and those designations instead being made by the Commission under section 214(e)(6). The *2012 Lifeline Reform Order* noted that, in response to questions on a related proposal from AT&T,[624] "a number of parties supported the idea of simplifying the process for carriers to participate in the Lifeline program," and after expressly discussing one proposal, sought "to further develop the record on these proposals and concrete steps that we could take to simplify carrier participation in the program, while protecting against waste, fraud and abuse."[625] Among the examples of "parties support[ing] the idea of simplifying the process for carriers to participate in the Lifeline program,"[626] the Commission cited

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Order, 25 FCC Rcd 5051 (2010) (performing a conflict preemption analysis and concluding that states had not been preempted by the Commission from collecting broadband data without opining on authority to do so under any particular state's law).

[617] *See* 47 U.S.C. § 214(e)(6). Further, we need not establish the Commission's jurisdiction to designate Tribally-owned and operated ETCs seeking to serve within the external boundaries of their Reservation, as that jurisdiction has already been established. *See Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, 26 FCC Rcd 9160, 9168, para. 21 (2011) (defining the "community" as the population of the Standing Rock Sioux Reservation, designating Standing Rock Telecommunications Inc.'s service area to be the entire Reservation, and not requiring the assent of any state commission).

[618] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7862, para. 121. More broadly, the Commission sought comment on modernizing the Lifeline program to support broadband Internet access service. *See id.* at 7828-37, paras. 17-33.

[619] *See id.* at 7864-65, para. 127.

[620] *See id.* at 7863, paras. 122-23.

[621] *See id.* at 7863, para. 124 & n.254.

[622] *See id.* at 7863, para. 124.

[623] *See id.* at 7869, para. 140.

[624] *See* Letter from Jamie M. Tan, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 03-109, GN Docket Nos. 09-51, 09-47, 09-137 (filed Dec. 22, 2009).

[625] *2012 Lifeline Reform Order*, 27 FCC Rcd at 6856-57, para. 504.

[626] *Id.* at 6856, para. 504.

comments filed by ViaSat that argued, among other things, that the FCC should designate satellite providers as ETCs on a nationwide basis under section 214(e)(6), stating further that "federal law and policy preempt state regulation where such regulation would 'stand[] as an obstacle to the accomplishment and execution of the full objectives' of federal policy, and any assertion of state jurisdiction over satellite broadband services necessarily would conflict with federal policy, and thus be subject to preemption."[627]

235. The Commission received a variety of responses on the topic of streamlining the ETC designation process. Many commenters supported streamlining the ETC designation process, indicating that the current ETC designation process is unnecessarily burdensome and hinders competition in the Lifeline market.[628] The American Cable Association, for example, argued that "[t]he ETC designation process is so burdensome that it presents a substantial barrier to participation."[629] Axiom Technologies argued that it "would be pleased to offer low-cost Lifeline services to our citizens" but "[a]cquiring [an ETC] designation creates a huge barrier for small carriers like us."[630] Even from a larger provider's standpoint, Comcast agrees that "requiring providers to undertake the regulatory burdens of full-blown ETC designation proceedings may be 'an impediment to broader [provider] participation in the Lifeline program.'"[631] The Competitive Carriers Association Reply noted that the Commission could balance the goals of facilitating market entry and curbing waste, fraud, and abuse by "eliminating overlapping state and federal requirements, minimizing additional certification reporting requirements, and streamlining de-enrollment procedures—while retaining existing substantive standards for ETC designation."[632] Additionally, Consumer Action explained that "there could be less incentive to pick and choose states if

[627] ViaSat, Inc. Comments, CC Docket No. 96-45, WC Docket Nos. 11-42, 03-109, at 8-9 (filed Apr. 21, 2011) (internal citations omitted) (citing *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004)).

[628] *See* Coalition *Ex Parte* at 1 ("creating. . . a broadband Lifeline program is incompatible with the current process of approving authorized providers"); Letter from Amina N. Fazlullah, Director of Policy, Benton Foundation, et al., to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Mar. 4, 2016); ACA Comments at 10-12; California ETF Comments at 44; Letter from Jordan B. Goldstein, Vice President, Regulatory Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, at 1-2 (filed Nov. 17, 2015); Commnet Comments at 5; CCA Reply at 14 ("At the same time, the Commission correctly suggests that many entities—including wireless providers—are deterred from seeking ETC status due to the burdensome nature of the process. As a general matter, CCA supports efforts to streamline the ETC designation process."); COMPTEL Comments at 19-20 (supporting streamlining the ETC designation process in coordination with the states, so all jurisdictions use a uniform set of criteria, forms, and requirements); Cox Comments at 3, 8-10; ITTA Comments at 17; National Association of Telecommunications Officers and Advisors and the National League of Cities Comments at 5; National Cable & Telecommunications Association (NCTA) Comments at 4-5; Navajo Tribal Utility Authority Comments at 3; Public Knowledge et al. Comments at 27-28 (also arguing that the Commission has broad authority to streamline its own processes under section 214(e)); Illinois Comments at 9 (but cautioning that a streamlined ETC designation process "must ensure that the designated carrier has the financial and technical capability to provide quality service and the ability and commitment to comply with all applicable rules and laws."); Letter from Matthew A. Brill, Counsel for Time Warner Cable, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1 (filed Nov. 24, 2015); T-Mobile Reply at 8-9; TracFone Comments at 45-46; USTelecom Comments at 2 (arguing that ETC designation serves as a barrier to entry to the Lifeline program).

[629] ACA Comments at 8.

[630] Axiom Technologies Reply at 2.

[631] Comcast Comments at 9-10.

[632] CCA Reply at 14.

the approval system were streamlined to cover the entire footprint of a company as opposed to state-by-state ETC approvals."[633]

236. Some commenters also pointed out that the existing ETC designation process can vary widely between states.[634] TracFone Wireless argued that it "disserves the public interest for State commissions to defer action on such applications for prolonged periods, thereby delaying the availability of *federally-funded* Lifeline service options to the States' neediest households."[635] Similarly, Cox Communications argues that "[o]btaining ETC status requires securing approvals from multiple states whose requirements often vary, which creates a significant barrier to market entry. For these reasons, the Commission believes that many cable companies and wireless providers are unwilling to become Lifeline ETCs and some have relinquished their designations altogether."[636] Cox therefore urged the Commission to establish a "standardized and streamlined ETC designation process" explaining that "[u]niform, national requirements for obtaining Lifeline ETC status will make it easier for carriers to qualify as ETCs, both because they will better know what they have to do before they apply, and because fewer resources will need to be devoted to the application process."[637] Similarly, the Benton Foundation explained that the Commission could encourage more provider participation in the program by creating a national ETC designation process,[638] and the Telecommunications Regulatory Board of Puerto Rico "strongly support[ed]" a Lifeline Broadband Provider registration process that would streamline the ETC process for entities that only wish to provide broadband service in the Lifeline program.[639]

237. Other commenters argued that the current ETC designation process is not generally lengthy, complicated, or onerous.[640] WTA, for example, argues that by requiring a provider to demonstrate that it is not a "fly-by-night fabrication," can provide reliable service, and will comply with applicable regulations, the current ETC designation process is an important element in preventing waste, fraud, and abuse in the Lifeline program.[641] We find, however, that the ETC designation process can continue to serve these goals even if broadband providers are designated through a separate federal designation process. Some commenters cautioned the Commission to limit the extent to which it

[633] Letter from Cleo Manuel Stamatos, Public Affairs Consultant for Consumer Action, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Feb. 18, 2016).

[634] *See* TracFone Comments at 45 (noting that some states designation processes have involved discovery by state commission staff, intervenors, and formal evidentiary hearings, and remained pending for several years); Letter from Phillip Berenbroick, Counsel, Government Affairs, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Jan. 14, 2016) (noting that providers encounter "the difficulties in customizing generic billing software and practices on a state-by-state basis to comply with the different state requirements for 214(e).").

[635] TracFone Comments at 45 (emphasis in original).

[636] Cox Comments at 8.

[637] Cox Comments at 8, 10.

[638] Letter from Amina N. Fazlullah, Director of Policy, Benton Foundation, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Mar. 4, 2016).

[639] Letter from Javier Rúa Jovet, Chairman, Telecommunications Regulatory Board of Puerto Rico, to Tom Wheeler, Chairman, FCC, et al., WC Docket No. 11-42 et al., at 5 (filed Mar. 21, 2016).

[640] *See* WTA—Advocates for Rural Broadband Comments at 14.

[641] *See id. See also* Letter from Michael Romano, Senior Vice President—Policy, NTCA—The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Mar. 7, 2016) (opposing streamlining that would "fail[] to fully consider support recipients' qualifications, experience or commitment to universal service.").

streamlines the designation process or creates a separate registration process for Lifeline providers, because of the unique characteristics of the Lifeline market.[642]

238. Regarding states' role in the ETC designation process, some commenters encouraged the Commission to preempt state conditions on ETC designations that are unduly burdensome on providers or duplicative.[643] In contrast, the National Association of Regulatory Utility Commissioners (NARUC) argued that any steps to create a federal designation process or other Lifeline provider approval process that would "bypass" state commissions would be contrary to the statute and to sound policy.[644] Similarly, the Michigan Public Service Commission argued that the Commission should not remove or limit an individual state's authority to designate ETCs,[645] the Pennsylvania Public Utility Commission opposed any action by the Commission to coordinate or preempt the state ETC designation process,[646] and the Public Utility Division of the Oklahoma Corporation Commission argued that any streamlining of the designation process should not prevent states from imposing their own conditions on ETC designation.[647] Other commenters noted that the Commission also has a number of compliance plans and petitions for ETC designation pending resolution.[648] For example, NARUC argued that this demonstrates that the Commission is "ill-equipped to handle all possible" ETC designations.[649]

239. *Discussion*. Taking into consideration the comments we have received in the record on this issue, we now create a unified, streamlined FCC ETC designation process for providers seeking to receive reimbursement for providing BIAS. First, we find that it is reasonable to interpret section 214(e) as permitting the Commission to tailor the ETC designation process and ETC obligations to the particular element of the USF from which the provider is receiving funds. Next, we find that the Commission has authority to preempt states from designating LBPs and, in this limited circumstance, we preempt states from exercising any authority to designate providers as LBPs.

240. *Commission authority to designate where states lack jurisdiction.* Section 214(e)(6) establishes the Commission's authority to designate a common carrier "that is not subject to the jurisdiction of a State commission" as an ETC.[650] The circumstances in which a carrier is "not subject to the jurisdiction of a State commission" under section 214(e)(6) is ambiguous regarding whether the carrier must be entirely outside the state commission's jurisdiction or only outside the state commission's jurisdiction with respect to a particular service supported by universal service mechanisms, even if subject to state commission jurisdiction in other respects. As previously interpreted by the FCC, the

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[642] *See* Indiana Utility Regulatory Commission Comments at 3, 5-8 (more careful scrutiny is necessary when a carrier is "seeking access to public funds and dealing with sensitive information from low-income consumers"); Massachusetts Department of Telecommunications and Cable Comments at 2-4; NARUC Comments at 11; NASUCA Comments at 24-27. *See also* National Tribal Telecommunications Association Comments at 10-11 (urging the Commission to require providers seeking to provide Lifeline service in a Tribal area to first obtain permission from Tribal authorities); Ohio PUC Reply at 3.

[643] *See* Joint Commenters Comments at 55-57; Joint Commenters Reply at 16-19.

[644] *See* Letter from James Bradford Ramsay, General Counsel, NARUC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Feb. 18, 2016).

[645] *See* Michigan PSC Comments at 12-13; Letter from Sally A. Talberg, Chairman, Michigan Public Service Commission, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-2 (filed Feb. 8, 2016). *See also* NARUC Comments at 11 (arguing that the ETC designation process should be left to state commissions to administer for their respective states).

[646] *See* Pennsylvania PUC Comments at 24-25.

[647] *See* Oklahoma PUD Comments at 10.

[648] *See* NARUC Comments at 11 & n.26; Pennsylvania PUC Comments at 29-30.

[649] NARUC Comments at 11 & n.26.

[650] *See* 47 U.S.C. § 214(e)(6).

jurisdictional inquiry under section 214(e)(6) "should include, *but not be limited to*, whether a state commission lacks jurisdiction over the particular service or geographic area."[651]

241. We interpret the inquiry as to whether a carrier is "subject to the jurisdiction of a State commission" under section 214(e)(6) in light of the merits analysis required for designating a carrier as an ETC under either section 214(e)(2) or (e)(6). In particular, the state (under section 214(e)(2)) or the Commission (under section 214(e)(6)) must find that the carrier seeking designation as an ETC will comply with the service obligations in section 214(e)(1).[652] In relevant part, section 214(e)(1) requires ETCs to "offer the services that are supported by Federal universal service support mechanisms under section 254(c)" at least in part using their own facilities "throughout the service area for which the designation is received."[653]

242. To the extent that the Commission previously interpreted section 214(e)(6) to only apply if the relevant state commission had no authority over any of the services offered by the carrier—or any of the services supported by the federal universal service support mechanisms[654]—we now revise that interpretation to more closely match the services supported by federal universal service support mechanisms. In a 2014 Order, the Commission adopted an interpretation of section 254(c)(1) that enables it to define universal service(s) under section 254(c)(1) that differs among different rules (e.g., among different universal service mechanisms).[655] The Commission also has granted carriers forbearance from the 'own facilities' requirement in section 214(e)(1) to enable pure resellers to be designated as ETCs, conditioned on them only obtaining Lifeline universal service support.[656] Building on this, we conclude

[651] *2000 Tribal Order*, 15 FCC Rcd at 12260-61, para. 105 (2000) (emphasis added).

[652] 47 U.S.C. § 214(e)(2), (e)(6).

[653] 47 U.S.C. § 214(e)(1).

[654] As originally implemented, ETC designations were not specific to a particular supported service or a particular universal service support mechanism, and thus, as interpreted and implemented by the Commission, ETCs' service obligations under section 214(e)(1) encompassed the duty to offer all the supported services designated under section 254(c)(1). *See, e.g.*, *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 n.5 (1997) (*Section 214(e)(6) Procedures Public Notice*) ("To meet the requirements of section 214(e)(1) of the Act, a carrier must offer all of the services designated for support by the Commission pursuant to section 254(c). The Commission has designated the following services for support: single-party service; voice grade access to the public switched network; Dual Tone Multifrequency (DTMF) signalling [sic] or its functional equivalent; access to emergency services including in some circumstances, access to 911 and Enhanced 911; access to operator services; access to interexchange service; access to directory assistance; and toll limitation service for qualifying low-income consumers.") (citations omitted). Congress initially provided only for state ETC designations under section 214(e) while simultaneously recognizing in section 214(e)(3) that universal services could include interstate services. *See* 47 U.S.C. § 214(e)(3) ("If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) of this title to an unserved community or any portion thereof that requests such service, the Commission, *with respect to interstate services* or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.") (emphasis added).

[655] *E-rate Modernization Order*, 29 FCC Rcd at 8897, para. 72 ("As we focus E-rate support on high-speed broadband, we recognize that we will ultimately reach a point where E-rate no longer supports voice service, which we have defined as the 254(c)(1) supported service for purposes of the High Cost (Connect America Fund) and Lifeline programs. But nothing in section 254(c)(1) or elsewhere bars the Commission from establishing different supported services for different elements of the overall Universal Service Fund.") (footnotes omitted).

[656] *See, e.g.*, *2012 Lifeline Reform Order*, 27 FCC Rcd at 6813-14, para. 369 (explaining that "[s]ince 2005, the Commission has granted forbearance eleven times to carriers seeking to participate in the Lifeline program without using their own facilities to provide service," and going on to grant conditional blanket forbearance).

that regardless of the scope of ETC designations granted historically, section 214(e) permits carriers to seek, and obtain, ETC designations specific to particular elements of the overall universal service fund. When they do so, we further conclude that the ETC's service obligations under section 214(e)(1) mirror the scope of universal service(s) defined under section 254(c)(1) for specific purposes of that element of the overall universal service fund (if there is a definition specific to that element). In other words, the Commission interprets "the services that are supported by Federal universal service support mechanisms under section 254(c)" to mean only those services within the definition of universal service—as stated in the Commission's rules and orders implementing section 254(c)—for purposes of the specific mechanism or mechanisms for which the relevant carrier is designated an ETC.

243. Further, interpreting the relevant scope of state jurisdiction under section 214(e)(6) against the backdrop of the above interpretation and implementation of sections 254(c)(1) and 214(e)(1), the relevant state jurisdiction would be jurisdiction specific to that scope of services defined as universal service for purposes of the specific mechanism or mechanisms for which the carrier is seeking designation as an ETC.[657] Insofar as there is a specific mechanism or program within the overall universal service fund that, for instance, only has broadband Internet access as the supported service, a carrier that has obtained designation as an ETC just in that narrow context would bear service obligations that mirror that program's supported services, absent any other forbearance, waiver, or clarification by the Commission. Alternatively, carriers would remain free to seek broader ETC designations that would involve designation by the state commission.

244. We interpret section 214(e)(1)'s service obligation, which applies to "the services that are supported by Federal universal service support mechanisms under section 254(c),"[658] to be limited to the services that are supported by the relevant Federal universal service support mechanisms under section 254(c). Such an interpretation makes sense against the backdrop of the Commission's 2014 interpretation of section 254(c)(1) in the *E-rate Modernization Order*.[659] Insofar as the defined universal service(s) can differ among different elements of the overall universal service program, it makes logical sense for ETC designations and the associated service obligations to be able to be tailored to match—*i.e.*, to be able to designate carriers as ETCs for purposes of specific elements of the overall universal service fund and for their service obligations to match the supported services as defined for that purpose.

245. Section 214(e)(1)(A)'s reference to "mechanisms," rather than a "mechanism," does not prevent this interpretation because we interpret section 214(e)(1)(A) to be drafted broadly enough to encompass the obligations of an ETC participating in multiple universal service mechanisms without demanding that the ETC provide services that are supported by universal service mechanisms in which that ETC does not participate. To interpret section 214(e)(1)(A) otherwise would point to the conclusion that whenever the Commission exercised its authority to designate additional services for support in programs for schools, libraries, and health care providers, section 214(e)(1)(A) would require ETCs participating in the Lifeline or High-Cost programs to also offer those additional services as services "supported by Federal universal service support mechanisms under 254(c)." Section 254(c)(3)'s specific reference to particular mechanisms within the overall universal service fund counsel against such a conclusion, and so we interpret section 214(e)(1)(A) inclusion of "mechanisms" to simply mean that, to the extent that an ETC participates in multiple universal service mechanisms, its service obligations include the services supported by all of the relevant mechanisms.

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[657] Section 254(c) also preserves the Joint Board's authority to recommend "modifications in the definition of the services that are supported by Federal universal service support mechanisms," 47 U.S.C. § 254(c)(2), and enables the Commission to "designate additional services for such support mechanisms for schools, libraries, and health care providers" under section 254(h)." 47 U.S.C. § 254(c)(3).

[658] 47 U.S.C. § 214(e)(1)(A).

[659] *See E-rate Modernization Order*, 29 FCC Rcd at 8897, para. 72.

246. Section 254(e) bolsters this interpretation by both requiring that, in general, recipients of federal universal service support must be ETCs designated under section 214(e) and simultaneously limiting ETCs to using the support they receive "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[660] At a high level, then, section 254(e) supports the view that ETC designations (which generally are required for support)—and the associated service obligations under section 214(e)(1)—should be tailored to the particular services "for which the support is intended."

247. We find further support for this interpretation in section 214(e)(3). That provision expressly recognizes the possibility of carriers being designated ETCs with respect to either interstate or intrastate services, rather than more generally.[661] In addition to supporting the general concept that ETC designations need not encompass all possible supported services, it also lends support to the view that section 214(e)(1) service obligations can be specific to particular services. Section 214(e)(1) applies, by its terms, to ETCs designated under section 214(e)(3), as well as those designated under (e)(2) or (e)(6). Interpreting section 214(e)(1) only to impose service obligations associated with the particular mechanism or mechanisms for which a carrier is designated an ETC seems most consistent with the dual FCC and state roles established under section 214(e)(3). Where both interstate and intrastate services are supported services, the FCC identifies the carrier best positioned to provide the interstate services and the relevant state commission identifies the carrier best positioned to provide the intrastate services. It is consistent with this framework for the carrier designated for interstate services by the FCC only to be obligated to provide those services under section 214(e)(1). By the same token, it is consistent with this framework for the carrier designated for intrastate services by the state commission only to be obligated to provide those services under section 214(e)(1). A contrary reading of section 214(e)(1) would mean that the carrier designated an ETC by the FCC for interstate services also would have to provide the intrastate services even where the state commission identified a different carrier as best positioned to provide those services (and vice versa). Section 214(e)(3) appears designed to ensure that there is one ETC providing each supported service in areas that otherwise would have none, however.[662] But if any single ETC designated under section 214(e)(3) would have to provide all the supported services—both interstate and intrastate—the requirement for separate designations by the FCC (for interstate services) and the state commission (for intrastate services) would make little sense, since either one of those carriers individually would have to provide all the supported services.

248. Finally, as an implementation matter, we find that this interpretation counsels in favor of creating a separate element of the overall universal service fund to support BIAS for eligible low-income households in the Lifeline program. As a separate subset of the Lifeline mechanism in the overall universal service fund, supporting BIAS for low-income consumers, this separate element of the Lifeline program will help the Commission designate carriers seeking to become ETCs only in the specific context of Lifeline-supported BIAS.[663]

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[660] 47 U.S.C. § 254(e).

[661] 47 U.S.C. § 214(e)(3).

[662] *See, e.g.*, S. Conf. Rep. 104-230 ("If no common carrier will provide universal service to a community or portion of a community that requests such service, new section 214(e)(3) makes explicit the implicit authority of the Commission, with respect to interstate services, and a State, with respect to intrastate services, to order a common carrier to provide such service. If more than one common carrier provides service in an area and none of those carriers will provide service to a community or portion thereof, this provision gives the Commission or a State the authority to decide which common carrier is best suited to provide service.").

[663] This could be seen as roughly analogous to the current Rural Health Care mechanism, which includes a separate Telecommunications Program and Healthcare Connect Fund program. *See* 47 CFR §§ 54.603-54.625 (Telecommunications Program); 54.630-54.649 (Healthcare Connect Fund).

249. *Preempting state designations for Lifeline Broadband Provider ETCs.* We next find that state designations for LBPs thwart federal universal service goals and broadband competition, and accordingly we preempt such designations.[664] In the absence of state jurisdiction to designate providers as LBPs providing BIAS through the Lifeline program, the Commission has authority to designate such ETCs under section 214(e)(6).

250. A robust and successful Lifeline broadband program will serve the purposes of section 254(b) by enabling the Commission to utilize universal service funds to give eligible low-income households affordable access to advanced telecommunications services.[665] The success of that modernized program, however, depends on participation from providers to give eligible low-income households a choice between quality services. Many providers that may be interested in competing for Lifeline broadband funds are not currently designated as ETCs,[666] and in particular larger providers with infrastructure and market offerings that span multiple states must be afforded a reasonable, clear pathway into the Lifeline broadband program.

251. Preempting the states from designating Lifeline Broadband Providers and permitting carriers to seek designation from the Commission for multiple states at once would serve the universal service principles of section 254(b) by increasing low-income consumers' access to advanced telecommunications and information services at affordable rates.[667] With respect to carriers seeking ETC designation in order to participate in a reformed Lifeline program as LBPs, we find that participation by such ETCs will advance the objectives of section 254, but potential Lifeline providers would be deterred by a requirement to undergo ETC designation proceedings before dozens of state commissions and the Commission in order to launch a nationwide Lifeline broadband offering.[668] As commenters have explained, a provider currently seeking ETC designation from multiple state commissions will likely face designation procedures and time frames that vary widely, lasting anywhere from a few months to several

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[664] In accordance with this preemption, we also amend section 54.201 of the Commission's rules to clarify that a state commission shall not designate a common carrier as a Lifeline Broadband Provider. *See* 47 CFR § 54.201(j).

[665] *See* 47 U.S.C. § 254(b).

[666] *See, e.g.*, Axiom Technologies Reply at 2.

[667] In *TOPUC v. FCC*, the Fifth Circuit found that section 254 was not such an unambiguous grant of FCC authority over intrastate matters to overcome the restriction on Commission authority in section 2(b) of the Act. *TOPUC*, 183 F.3d 393, 447-48 (5th Cir. 1999). *See also* 47 U.S.C. § 152(b) (expect as provided in specified provisions, "nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, . . ."). However, since here the preempted state actions have detrimental effects on the FCC's implementation of section 254 as it relates to interstate services, we find this situation is distinguishable from the facts the court faced in *TOPUC*. *See, e.g.*, *NARUC v. FCC*, 880 F.2d 422, 429 (D.C. Cir. 1989) ("the *only* limit that the Supreme Court has recognized on a state's authority over intrastate telephone service occurs when the state's exercise of that authority negates the exercise by the FCC of its own lawful authority over interstate communication") (emphasis in original). Similarly, although section 601(c)(1) of the 1996 Act provides that "[t]his Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments," Pub. L. 104-104, § 601(c)(1), 110 Stat. 56 (1996), that does not alter the normal application of conflict preemption. *See, e.g.*, *Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 869 (2000) ("the saving clause (like the express pre-emption provision) does *not* bar the ordinary working of conflict pre-emption principles"). *See also, e.g.*, *In re FCC 11-161*, 753 F.3d 1015, 1120 (10th Cir. 2014) (observing that "§ 601(c)(1) does not limit Congress's actual delegation of authority to the FCC" and citing similar precedent from other circuits).

[668] *See supra* para. 236; *see also* Letter from Jennifer K. McKee, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1 (filed Mar. 17, 2016) (supporting a national process for becoming a Lifeline Broadband Provider to reduce barriers to entry in the program); Joint Commenters Comments at 55-57; Joint Commenters Reply at 16-19.

years.[669] The state designation process may involve simply responding to staff's information requests or may include formal evidentiary hearings.[670] Additionally, even if the state and federal ETC designation processes were entirely uniform, we are persuaded that even just the burden of seeking designation from multiple states and the Commission is sufficient to discourage broadband service providers from entering the Lifeline program to introduce nationwide or similarly large-scale broadband offerings, because such a requirement means that a provider that has calculated that it needs to achieve a nationwide scale to justify introducing a Lifeline offering will be faced with potentially years of uncertainty while it pursues the necessary designations.[671] We therefore find that state designation of LBPs conflicts with our implementation of the universal service goals of section 254(b) in the Lifeline broadband rules adopted in this Order.[672]

252. We find that the Commission should not similarly preempt state ETC designations for providers seeking Lifeline-only ETC designations to provide voice service, nor for providers seeking broader ETC designations that are not Lifeline-only and include high-cost funding. Today, multiple providers already serve the Lifeline voice market,[673] and the states' traditional role in designating voice ETCs argues in favor of preserving the existing de-centralized structure for designating ETCs other than LBPs.[674] We also note that section 706 of the Telecommunications Act directs us to focus our efforts on

[669] *See* TracFone Wireless Comments at 45.

[670] *See* TracFone Wireless Comments at 45.

[671] *See* AT&T Comments at 27 ("Existing eligibility requirements and ongoing obligations associated with being an ETC discourage, and in some cases outright prevent, a wide range of service providers from participating in the Lifeline program."); *id*., 27-28 ("Modifying the rules to encourage voluntary Lifeline participation by the broadest possible range of providers, including cable broadband providers, fixed wireless broadband providers, over-the-top interconnected VoIP providers, as well as fixed and mobile facilities-based providers that elect to provide voice services, will ensure that eligible consumers finally will have available the broadest possible array of competitive choices that other consumers take for granted."); Comcast Comments at 9-10; NCTA Comments at 4-5. Moreover, consistent with comments discussed previously in this paragraph and those above, see *supra* paras. 235-236, we find that it will better facilitate competitive participation by LBPs to allow them to seek a single approval to participate based on whatever geography or geographies makes such participation viable from a marketplace standpoint, rather than potentially being required to pursue ETC designations from multiple different regulators where the business viability of their participation depends on their entry in areas within more than a single state. The interest in having competing LBPs simultaneously providing Lifeline broadband service further distinguishes our actions here from our approach to ongoing support in the high-cost universal service context, *see, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17780, para. 319 (in the high-cost universal service context "we choose not to subsidize competition through universal service in areas that are challenging for even one provider to serve"), and further leads us to reject arguments that we should follow the same approach to ETC designation employed in the high-cost context. *See, e.g.*, Dissenting Statement of Commissioner Ajit Pai at 14; Dissenting Statement of Commissioner Michael O'Rielly at 5.

[672] Under the Supremacy Clause, U.S. Const. art. VI, cl. 2, federal law preempts any conflicting state laws or regulatory actions that would prohibit a private party from complying with federal law or that "stand[] as an obstacle to the accomplishment and execution" of federal objectives. *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995) (internal quotation marks omitted); *Hillsborough County, Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985) (noting that "state laws can be pre-empted by federal regulations"). Because state ETC designations specifically for LBPs would conflict with our rules implementing section 254, such authority also is not preserved by section 254(f). *See* 47 U.S.C. § 254(f) ("A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. . . . A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.").

[673] *See, e.g.*, Sprint Comments at 5-11.

removing barriers to investment in "advanced telecommunications services."[675] We therefore focus our streamlining efforts on broadband services within the Lifeline program.

253. Additionally, the Commission has previously found that section 706 of the 1996 Act authorizes preemption, and that conclusion is applicable to our current efforts to modernize the Lifeline program to support BIAS.[676] "In light of Congress's delegation of authority to the Commission to 'encourage' and 'accelerate' the deployment of broadband to all Americans, we interpret sections 706(a) and (b) to give us authority to preempt state laws that stand as barriers to broadband infrastructure investment or as barriers to competition."[677] Section 706(a) grants the Commission authority to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[678] Indeed, section 706(a) specifically states that the Commission "shall" encourage such deployment, using a variety of tools including "measures that promote competition in the local telecommunications market" and "other regulating methods that remove barriers to infrastructure investment."[679] We find that our preemption authority falls within these categories listed by section 706(a),[680] and the Commission therefore has authority to preempt state laws that conflict with section 706(a) by preventing market entry and competition in the Lifeline program.

254. Additionally, the Commission's *2016 Broadband Progress Report* found that "advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion."[681] Accordingly, under section 706(b), we are mandated by Congress to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."[682] Here, we find that requiring prospective Lifeline Broadband Providers to seek separate designations before many states and the Commission constitutes a barrier to investment and competition in the Lifeline market. The greater carrier participation in Lifeline that would be fostered by preemption of state conditions unrelated to compliance with the Lifeline rules on relevant ETC designations would encourage the deployment of advanced telecommunications capability, such as BIAS. We also find that preempting these state conditions on ETC designations would "promot[e] competition in the telecommunications market" insofar as such state

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[674] *See also* Letter from Matthew F. Wood, Policy Director, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 2 (filed Feb. 26, 2016). While we find that state designation authority may enable reimbursement for broadband service through the Lifeline program, we agree that the states' designation authority is more properly limited to the existing ETC designation processes and not to new Lifeline Broadband Provider designations.

[675] *See* 47 U.S.C. § 1302.

[676] *City of Wilson, North Carolina Petition for Preemption of North Carolina General Statute Sections 160A-340 et seq.; The Electric Power Board of Chattanooga, Tennessee Petition for Preemption of a Portion of Tennessee Code Annotated Section 7-52-601*, Memorandum Opinion and Order, 30 FCC Rcd 2408, 2466-69, paras. 140-45 (2015) (*Muni Broadband Order*).

[677] *Id*. at 2467, para. 142.

[678] 47 U.S.C. § 1302(a); *Verizon v. FCC*, 740 F.3d 623, 638 (D.C. Cir. 2014). *See also Ad Hoc Telecomm. Users Comm. v. FCC*, 572 F.3d 903, 906-07 (D.C. Cir. 2009) ("[T]he general and generous phrasing of § 706 means that the FCC possesses significant, albeit not unfettered, authority and discretion to settle on the best regulatory or deregulatory approach to broadband.").

[679] 47 U.S.C. § 1302(a).

[680] *See Muni Broadband Order*, 30 FCC Rcd at 2468, para. 144.

[681] *2016 Broadband Progress Report*, 31 FCC Rcd at 700, para. 1.

[682] 47 U.S.C. § 1302(b).

conditions otherwise would deter participation in the marketplace for Lifeline-supported broadband Internet access service.[683]

255. More broadly, as the Commission has previously found, broadband Internet access service is jurisdictionally interstate for regulatory purposes.[684] Although section 214(e)(2) authorizes states to perform ETC designations and, under the *TOPUC* decision, does not itself preclude state conditions on such designations, there are indications in the Fifth Circuit's decision that it anticipated that those conditions would involve intrastate services subject to states' historical state law authority.[685] Further, although the Commission has recognized state jurisdiction to collect data regarding BIAS, that is materially different from the imposition of substantive obligations on broadband Internet access service.[686]

256. In addition to declaring that states are preempted from exercising authority to designate Lifeline Broadband Providers, we adopt a legislative rule consistent with that outcome. As described above, the ETC designation process is an important tool to protect consumers and prevent waste, fraud, and abuse in the Lifeline program, but should not become a barrier that discourages legitimate carrier participation and inhibits universal access to advanced communications services. Accordingly, for the reasons discussed above, the Commission revises section 54.201 of its rules to prohibit state commissions from designating Lifeline Broadband Providers.

257. Some commenters have argued that the Commission should not preempt or limit states' roles in ETC designations.[687] To that end, we note that in this Order we do not preempt states' authority to designate ETCs for Lifeline voice service, nor to grant broader ETC designations that are not Lifeline-

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[683] *See* 47 U.S.C. § 1302(b).

[684] *Open Internet Order*, 30 FCC Rcd at 5803, para. 431.

[685] *TOPUC v. FCC*, 183 F.3d at 418 ("The plain language of the statute speaks to the question of *how many* carriers a state commission may designate, but nothing in the subsection prohibits states from imposing their own eligibility requirements. This reading makes sense in light of the states' historical role in ensuring service quality standards for local service.") (footnote omitted); *id*. at 418 n.32 (In support of its conclusion that section 214(e)(2) does not preclude state conditions on ETC designation, the court observed that "§ 152(b) of the Act instructs us to construe the Act to avoid giving the FCC jurisdiction over 'charges, classifications, practices, services, facilities, or regulations for and in connection with intrastate communications services. . . . '"). We note in this regard that we do not suggest that section 214(e) itself is an affirmative grant of authority to states to perform ETC designations—otherwise section 214(e)(6) would be surplusage because section 214(e) would itself supply the state jurisdiction—but merely that section 214(e) allows states generally to perform ETC designations to the extent they can exercise state law authority to do so. Section 214(e) is silent as to the presence or absence of state law authority, including as to preemption of any otherwise-existing state law authority to perform ETC designations based on conflicts with federal policy, including the policy objectives identified in section 254 of the Act and section 706 of the 1996 Act and the Commission's implementing rules. Thus, with respect to the question of whether federal policy conflicts with any otherwise-existing state law authority for states to designate ETCs for the specific purpose of being Lifeline broadband providers, we do not find section 214(e) to be a more specific provision than sections 254 and 706 that should preclude the sort of conflict preemption that otherwise normally would apply. *See, e.g.*, Dissenting Statement of Commissioner Ajit Pai at 13-14 (objecting to preemption on 'specific governs the general' grounds). In any case, regardless of whether or how section 214(e) could be viewed as a grant of authority, it is not inherently more specific as to the totality of circumstances relevant here—namely, ETC designation in the specific context of Lifeline broadband providers.

[686] *National Association of Regulatory Utility Commissioners Petition for Clarification or Declaratory Ruling That No FCC Order or Rule Limits State Authority to Collect Broadband Data*, Memorandum Opinion and Order, 25 FCC Rcd 5051 (2010).

[687] Michigan PSC Comments at 12-13; NARUC Comments at 11 (arguing that the ETC designation process should be left to state commissions to administer for their respective states); Pennsylvania PUC Comments at 24-25; Oklahoma PUD Comments at 10.

only and include support from the USF High-Cost Program.[688] For those areas in which states have traditionally held a role and which more often involve jurisdictionally intrastate services, our preemption here does not change states' responsibility to designate ETCs.[689] Additionally, although some commenters argue that section 214(e) implicitly preserves any state authority relevant to ETC designations,[690] the interrelationship between section 214(e) and section 254—*i.e.*, the purpose of a section 214(e) ETC designation is to implement universal service support mechanisms under section 254—supports our present preemption of state designations of LBPs as conflicting with the goals of section 254.

258. Some commenters suggest the FCC is ill-equipped to assume the responsibility of designating broadband providers for the Lifeline program.[691] In response, we expect our reforms to the federal ETC designation process for Lifeline Broadband Providers to prevent petitions from pending longer than is necessary to ensure the continued integrity of the program and protection of consumers.[692] Other commenters argued that the current ETC designation process is not generally lengthy or onerous, and is an important tool in combatting waste, fraud, and abuse in the Lifeline program.[693] We find, however, that a centralized LBP designation process can further streamline the burdens of seeking designation while continuing to prevent waste, fraud, and abuse in the program.[694] Similar to the state measures to prevent fraud that NARUC discusses, Commission rules require annual reporting, annual

[688] We also note that, to the extent that state commissions have declined to designate carriers as ETCs over concerns about those carriers' 911 services, this Order does not prevent states from inquiring into such issues for carriers offering voice service seeking a non-Lifeline Broadband Provider ETC designation. *Contra* Letter from James Bradford Ramsay, General Counsel, NARUC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 5 (filed Feb. 18, 2016); Letter from Catherine J.K. Sandoval, Commissioner, California Public Utilities Commission, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Feb. 22, 2016). This Order also does not prevent states from creating and implementing their own programs to support broadband adoption among low-income consumers. *Contra* Letter from James Bradford Ramsay, General Counsel, NARUC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 6 (filed Feb. 18, 2016) (arguing that removing states' ETC designation role will result in fewer state matching programs).

[689] States will therefore continue to be in a position to evaluate issues like a non-LBP ETC's ability to meet ETC service and facilities requirements. *See* Letter from Catherine J.K. Sandoval, Commissioner, California Public Utilities Commission, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Feb. 22, 2016). We find that the Commission is capable of determining whether common carriers seeking designation as an LBP will be able to fulfill those requirements, as detailed below. *See infra* section III.E.2 (Lifeline Obligations for Eligible Telecommunications Carriers). We recognize that section 254(i) contemplates that "the Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable." 47 U.S.C. § 254(i). We do not here preempt any otherwise permissible efforts, consistent with state law, to provide state support. *Contra* Letter from David E. Screven, Assistant Counsel, Pennsylvania Public Utility Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-2 (filed Feb. 22, 2016).

[690] *See, e.g.*, NARUC Comments at 11; Letter from James Bradford Ramsay, General Counsel, NARUC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2-3 (filed Feb. 18, 2016).

[691] *See* NARUC Comments at 11 & n.26; Pennsylvania PUC Comments at 29-30.

[692] *See infra* paras. 277-285 (discussing ETC designation process reforms).

[693] *See* WTA—Advocates for Rural Broadband Comments at 14; Letter from James Bradford Ramsay, General Counsel, NARUC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 5 (filed Feb. 18, 2016).

[694] *See* Letter from Javier Rúa Jovet, Chairman, Telecommunications Regulatory Board of Puerto Rico, to Tom Wheeler, Chairman, FCC, et al., WC Docket No. 11-42 et al., at 5 (filed Mar. 21, 2016) ("The Commission can—and should—require that registered Lifeline broadband providers meet certain financial and operational conditions, maintain compliance plans, and be subject to audit.").

certifications, and audits for Lifeline providers,[695] the Commission may deny an ETC designation petition if the provider does not meet the relevant requirements,[696] and the Commission's Enforcement Bureau is equipped to investigate and take action against providers that violate the Lifeline program's rules.[697] Some commenters cautioned the Commission to limit the extent to which it streamlines or centralizes the designation process, because of the unique characteristics of the Lifeline market.[698] We note that our preemption and forbearance actions in this Order are tailored to ensure a more competitive, effective program without sacrificing the integrity of the program or the Commission's authority to act in cases of waste, fraud, or abuse.

(ii) Carriers Providing Telephone Exchange Service and Exchange Access

259. Having established our authority to designate where state commissions lack jurisdiction under section 214(e)(6), we next turn to the question of what types of carriers are eligible for designation by the Commission under 214(e)(6).

260. *Guidance regarding section 214(e)(6).* Under section 214(e)(6) of the Act, in order to seek designation as an ETC by the Commission, a provider must be "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."[699] We explain above why carriers seeking ETC designation specifically as LBPs are "not subject to the jurisdiction of a State commission" within the meaning of that section. We further clarify that a carrier need only provide some service or services—not necessarily the supported service—that

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[695] *See* 47 CFR § 54.416 (requiring annual certifications from ETCs); 47 CFR § 54.420 (establishing independent audit requirements for Lifeline providers); 47 CFR § 54.422 (establishing annual reporting requirements for ETC that receive low-income support).

[696] *See Telecommunications Carriers Eligible for Universal Service Support*, Order, 29 FCC Rcd 14427 (WCB 2014) (declining to approve the compliance plan of Conexions, LLC for failure to demonstrate it will provide Lifeline service in compliance with the Commission's rules to prevent waste, fraud, and abuse in the Lifeline program).

[697] *See* FCC Enforcement Advisory, Lifeline Providers are Liable if Their Agents or Representatives Violate the FCC's Lifeline Program Rules, 28 FCC Rcd 9022 (EB, 2013); *Assist Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14456 (2013); *Cintex Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17124 (2013); *Easy Telephone Services d/b/a Easy Wireless*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14433 (2013); *Global Connection Inc. of America d/b/a Stand Up Wireless*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17116 (2013); *Icon Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14445 (2013); *Telrite Corporation d/b/a Life Wireless*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17108 (2013); *TracFone Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14478 (2013); *UTPhone, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14467 (2013). The Commission also will continue to work closely with state commissions to detect and address potential violations, even where the state lacks jurisdiction by virtue of state law. We also note that our action here does not eliminate states' ability to police the providers who are operating in their state. This item provides the Commission the ability to designate LBPs, but does not preclude the states—who retain ETC designation and regulatory authority to the extent granted by state law—from overseeing the Lifeline providers in their jurisdictions. We thus conclude that the authority retained by states to protect consumers notwithstanding the preemption in this Order mitigates any impact of preempting states from exercising authority to designate LBPs or revoke such designations.

[698] *See* Indiana Utility Regulatory Commission Comments at 3, 5-8 (more careful scrutiny is necessary when a carrier is "seeking access to public funds and dealing with sensitive information from low-income consumers"); Massachusetts Department of Telecommunications and Cable Comments at 2-4; NARUC Comments at 11; NASUCA Comments at 24-27. *See also* National Tribal Telecommunications Association Comments at 10-11 (urging the Commission to require providers seeking to provide Lifeline service in a Tribal area to first obtain permission from Tribal authorities); Ohio PUC Reply at 3.

[699] 47 U.S.C. § 214(e)(6).

qualify as telephone exchange service and exchange access in order to seek a designation from the Commission under section 214(e)(6).[700]

261. The text of section 214(e)(6) does not require that the relevant supported service or services for which the carrier is being designated an ETC must constitute telephone exchange service and exchange access.[701] Nor is there any requirement in section 254(c)(1) that services must be telephone exchange service or exchange access—let alone both—in order to be included in the definition of universal service.[702] Insofar as supported services need not be telephone exchange service and/or exchange access, we decline to interpret section 214(e)(6) to impose such a requirement on carriers seeking Commission designation under that section where the text does not itself require it.[703] Thus, a carrier providing any service or services that constitute telephone exchange service and exchange access in the area for which it is seeking designation as an ETC may seek designation from the Commission where, as here, such carriers are not subject to state ETC designation jurisdiction within the meaning of section 214(e)(6).

262. We make clear that in considering whether a carrier is providing telephone exchange service and exchange access for purposes of section 214(e)(6), we look beyond the corporate entity that itself is seeking designation as a Lifeline Broadband ETC, and also consider affiliates of that entity. This approach is consistent with the Commission's interpretation of section 214(e)(1), under which the "requirement that an ETC offer the supported services through 'its own facilities or a combination of its own facilities and resale of another carrier's service' would be satisfied when service is provided by any

[700] We note that the Commission recently declined to address whether broadband Internet access service could constitute telephone exchange service and/or exchange access, nor do we address that issue here. *See Open Internet Order*, 30 FCC Rcd at 5850-50, para. 513 & n.575; *id*. at 5867-68, para. 542 (explaining that the Commission was declining to issue declaratory rulings addressing such classification questions for a variety of reasons, including that doing so could require the Commission to "resolve potentially complex and/or disputed interpretations and applications of the Act and Commission rules that could create precedent with unanticipated consequences for other services beyond the scope of this proceeding,").

[701] *See* 47 U.S.C. § 214(e)(6) ("the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of [section 214(e)(1)] as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. . . . ")

[702] *See* 47 U.S.C. § 254(c)(1) ("Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services- (A) are essential to education, public health, or public safety; (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (C) are being deployed in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience, and necessity.").

[703] Interpreting section 214(e)(6) to mean that the telephone exchange service and exchange access requirement be met by the supported service would lead to anomalous results. As an illustrative example, if the Commission were to establish a universal service program with telephone toll service as the supported service under section 254(c), it would be impossible for a provider seeking designation as an ETC to provide telephone exchange service and exchange access as the supported service if that were needed to meet the criteria of section 214(e)(6). *See* 47 U.S.C. § 153(20) (defining "exchange access" and making clear that "telephone exchange service," "exchange access," and "telephone toll service" are distinct categories). If such a carrier also were not subject to the designation authority of a state commission, it would be left with no entity—state commission or this Commission—that could designate it as an ETC, which is at odds with the intent of section 214(e)(6). *See, e.g.*, *Section 214(e)(6) Procedures Public Notice*, 12 FCC Rcd at 22947 & n.4 (discussing that section 214(e)(6) was addressed to make clear how common carriers not subject to the jurisdiction of a state commission would be designated).

affiliate within the holding company structure."[704] If the duties of an ETC can be satisfied through an affiliate, we find no reason why the Commission, to find section 214(e)(6) triggered, should have to adopt a stricter interpretation of what entity must provide telephone exchange service and exchange access. This is particularly true because, as explained below, the telephone exchange service and exchange access criteria in section 214(e)(6) does not bear directly on the carrier's qualifications or responsibilities as an ETC in providing supported services.[705] Further, section 214(e) was codified as part of section 214, and prior to the 1996 Act, certain references to "carriers" in section 214 were interpreted to extend beyond just the relevant corporate entity itself.[706] This further bolsters our interpretation of section 214(e)(6). Thus, we expect that many carriers likely already provide some telephone exchange and exchange access services, whether through the entity providing broadband Internet access service or an affiliate. For example, such services have included traditional telephone service[707] and commercial mobile radio services (CMRS),[708] which many carriers already provide today.[709]

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[704] *Dec. 2014 CAF Order*, 29 FCC Rcd at 15668, para. 62 & n.143.

[705] *See infra* para. 270.

[706] *See, e.g.*, *Blanket Section 214 Authorization for Provision by a Telephone Common Carrier of Lines for its Cable Television and other Non-Common Carrier Services Outside its Telephone Service Area*, Report and Order, 98 FCC 2d 354, 354, para. 1 (1984) ("Broadly interpreted, this section [214] requires common carriers and their affiliates to obtain Commission authorization prior to construction, acquisition, or operation of any line."); *Gen. Tel. Co. of the Southwest v. U.S.*, 449 F.2d 846, 854 (5th Cir. 1971) ("[T]he petitioners would have us hold that where an affiliate of a common carrier proposes to operate such a [channel] facility, certification cannot be required since § 214 applies only to carriers, and CATV companies, affiliated or otherwise, are not carriers. Although this reasoning is persuasive, we cannot agree. . . . Under [the circumstances at issue] the activities of the non-common carrier affiliates may be imputed to the common carrier parent."). Thus, although the 1996 Act codified a definition of "affiliate" in section 3 of the Act distinct from the definition of "common carrier" there, that does not, by implication, undercut our interpretation of section 214 because the 1996 "Act and the amendments made by [the 1996] Act shall not be construed to modify, impair, or supersede Federal . . . law unless expressly so provided in such Act or amendments." 1996 Act, § 601(c). Indeed, Commission rules implementing section 214(a) make clear that their use of the term "carrier" includes affiliates within the meaning of section 3(1) of the Act. 47 CFR § 63.03(a)(3).

[707] *See, e.g.*, *Petition For Declaratory Ruling That AT&T's Phone-To-Phone IP Telephony Services Are Exempt From Access Charges*, Order, 19 FCC Rcd 7457, 7469-70 para. 19 (2004) ("The Commission is sensitive to the concern that disparate treatment of voice services that both use IP technology and interconnect with the PSTN could have competitive implications. We note that all telecommunications services are subject to our existing rules regarding intercarrier compensation" for interstate exchange access); *Offshore Telephone Company*, Memorandum Opinion and Order, 3 FCC Rcd 4137, 4142, para. 41 (1988) ("Traditionally, local exchange carriers serve communities that include business and residential users. They offer, first of all, a local calling capability that permits a community of interconnected customers to make calls to one another over a switched network.").

[708] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 et al.*, First Report and Order, 11 FCC Rcd 15499, 15517, para. 34 (1996) ("The Commission concludes that many CMRS providers (specifically cellular, broadband PCS and covered specialized mobile radio (SMR) providers) offer telephone exchange service and exchange access, ...").

[709] We recognize that we have not generally classified VoIP as a telecommunications service or information service, but we nonetheless have recognized that providers might elect to offer interconnected VoIP as a telecommunications service. *IP-Enabled Services; E911 Requirements For IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, para. 38 & n.128 (2005) (recognizing that an interconnected VoIP provider can obtain the rights available to "telecommunications carriers" under Title II of the Act if it voluntarily "holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements"). *See also USF/ICC Transformation FNPRM*, 27 FCC Rcd at 18143-44, para. 1389 ("We note in this regard that some providers of facilities-based retail VoIP services state that they are providing those services on a common carrier basis, and expect that those services would include the provision of 'telephone exchange service' and/or 'exchange access' to the same extent as comparable services provided using TDM or other transmission

(continued….)

263. Furthermore, we interpret the requirement that a carrier seeking designation under section 214(e)(6) be "providing" telephone exchange service and exchange access in a broad and flexible manner. The Commission in other contexts has interpreted the term "providing" as more inclusive than the offering of the relevant service.[710] Thus, we conclude that it is sufficient for purposes of section 214(e)(6) that a carrier is making available telephone exchange service and exchange access, whether or not it actually has customers for those services at the time of the ETC designation.

264. In addition, in contrast to section 214(e)(1)(A), which requires ETCs to provide supported services at least in part over their own facilities, there is no analogous "facilities" requirement in section 214(e)(6) as to any non-supported services relied on by the carrier for its provision of telephone exchange service and exchange access to trigger that section. Thus, we interpret section 214(e)(6) as enabling a carrier to satisfy the "telephone exchange service and exchange access" criteria through pure resale of services that satisfy those definitions.

265. The text of section 214(e)(6) also does not require the carrier to be providing telephone exchange service and exchange access for any particular period of time before or after the Commission invokes its section 214(e)(6) designation authority. So we further conclude that the relevant requirement of section 214(e)(6) can be met by a service or services introduced by the carrier in order to meet the section 214(e)(6) criteria. We note as well that carriers subject to dominant carrier regulation likely otherwise already are providing services that constitute telephone exchange service and exchange access (and, indeed, likely already are designated as ETCs in relevant respects), so any carriers needing to introduce a new service to satisfy the telephone exchange service and exchange access criteria of section 214(e)(6) are likely to be nondominant. Thus, they generally are subject to comparatively fewer, if any, *ex ante* constraints on the rates and terms of their offerings.

266. *'Telephone exchange service and exchange access' forbearance.* Even though we anticipate that many providers readily will be able to meet the requirement of "providing telephone exchange service and exchange access" and can seek Commission ETC designation as LBPs under

(Continued from previous page)
protocols.") (footnote omitted). Insofar as a carrier elected to offer VoIP on a common carrier basis, we do not see a reason based on the record here why such service would not also be classified as telephone exchange service and exchange access to the same extent as traditional voice telephone service. We further note that in highlighting the seemingly more straightforward case where VoIP is offered as a telecommunications service, we are not prejudging the question of whether, even if not a telecommunications service, particular VoIP services could constitute telephone exchange service and exchange access, which remains open regarding those scenarios, as well. *See, e.g., USF/ICC Transformation FNPRM*, 27 FCC Rcd at 18141-42, para. 1387 ("Under the reasoning of prior Commission decisions, we do not believe that a retail service must be classified as a 'telecommunications service' for the provider carrying that traffic (whether the provider of the retail service or a third party) to be offering 'telephone exchange service' or 'exchange access.' With specific respect to VoIP, we note that some providers contend that the classification of their retail VoIP service is irrelevant to determining whether 'telephone exchange service' and/or 'exchange access' is being provided as an input to that service. We seek comment on these issues.") (footnotes omitted).

[710] *See, e.g., Universal Service Contribution Methodology et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-39, para. 40 (2006) ("Congress did not define the term 'provide' or 'provider,' [in section 254(d)] but the structure of the Act informs us that 'provide' is a different and more inclusive term than 'offer.'"). Citing Black's Law Dictionary, the Commission noted definitions of "provide" meaning "'[t]o make, procure, or furnish for future use, prepare. To supply; to afford; to contribute." *Id*. at 7538-39, para. 40 & n.141 (quoting *Black's Law Dictionary* 1244 (6th ed. 1990) and also citing *American Heritage Dictionary of the English Language* 1411 (4th ed. 2000) (defining "provide" as, inter alia, "[t]o furnish; supply: and "[t]o make available; afford"); *Merriam Webster's Collegiate Dictionary* 940 (10th ed. 1996) (defining "provide" as, inter alia, "to supply or make available").). We conclude that interpreting "providing" in this context to mean that the carrier is making available telephone exchange service and exchange access, whether or not it currently has customers, fits within that range of possible definitions that the Commission has cited previously in informing its interpretation of similar language.

section 214(e)(6), some providers could be deterred from seeking such designation—and thereby participating in the Lifeline broadband program—because of uncertainty whether they satisfy that criteria. Although we also have authority to designate ETCs under section 214(e)(3)—which does not require providers to be providing telephone exchange service and exchange access—that authority does not enable us to designate additional LBPs in an area where a carrier already present will provide the supported Lifeline broadband Internet access service. Thus, while an important backstop, that section 214(e)(3) designation authority does not necessarily enable us to have the type of competitive environment for Lifeline broadband Internet access service that we conclude will most effectively advance our statutory objectives.

267. As a result, pursuant to our authority under section 10 of the Act, we grant certain forbearance from applying the provision of section 214(e)(6) requiring carriers to be providing telephone exchange service and exchange access.[711] In particular, we forbear from applying that provision to carriers seeking designation from the Commission as an LBP that do not otherwise provide a service or services already classified by the Commission as telephone exchange service and exchange access. We conclude that doing so will help maximize the potential for the widest possible participation by broadband Internet access service providers in a manner targeted to our policy objectives in this proceeding.

268. In pertinent part, section 10 directs the Commission to "forbear from applying . . . any provision of [the Act] to a telecommunications carrier or . . . class of telecommunications carriers . . . , in any or some of its or their geographic markets, if the Commission determines that" three criteria are met.[712] Namely, such forbearance is authorized if "the Commission determines that- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest."[713] The basic forbearance framework is discussed in greater detail below.[714]

269. We find that our forbearance from applying the requirement that carriers be "providing telephone exchange service and exchange access" in the section 214(e)(6) designation process is a reasonable exercise of our section 10 authority for several reasons. First, although not unambiguous, the practical impact of that provision in section 214(e)(6) persuades us that it imposes an obligation on carriers—namely, carriers must provide telephone exchange service and exchange access in order to obtain an ETC designation from the Commission under that section. The Commission in the past has recognized that Congress intended section 10 to sweep broadly,[715] and has looked to the real-world

[711] 47 U.S.C. § 160(a).

[712] *Id*.

[713] *Id*. § 160(a)(1)-(3).

[714] *See infra* section III.E.2.a (Forbearance Standard).

[715] *Cf. Petition For Declaratory Ruling To Clarify 47 U.S.C. § 572 In The Context of Transactions Between Competitive Local Exchange Carriers and Cable Operators; Conditional Petition For Forbearance From Section 652 of the Communications Act For Transactions Between Competitive Local Exchange Carriers and Cable Operators*, Memorandum Opinion and Order, 27 FCC Rcd 11532, 11543, para. 22 (2012) (*Section 652 Forbearance Order*) (interpreting the use of "any" in referring to regulations and provisions of the Act that the Commission can forbear from applying to telecommunications carriers or telecommunications services as revealing Congress' broad intent that the forbearance authority). Although the focus in that proceeding was on whether a provision in Title VI could be subject to forbearance under section 10, the reasoning likewise persuades us more generally to adopt a broad—though not unlimited—view of the Commission's forbearance under section 10.

consequences of a provision to inform its interpretation and application of section 10 to that provision.[716] We do the same here, and conclude under section 10 that the Commission has authority to forbear from applying that provision to carriers that want an LBP designation from the Commission but do not provide a service or services that clearly meet the "telephone exchange service and exchange access" requirement and thus can designate those carriers as LBPs if the remaining section 214(e)(6) criteria are met.[717]

270. Second, we conclude that this grant of forbearance readily satisfies the section 10(a)(1)-(3) criteria. In particular, we find that applying that provision is not necessary to ensure just, reasonable, and not unjustly or unreasonably discriminatory rates and practices under section 10(a)(1) nor to protect consumers under section 10(a)(2). The text of section 214(e)(6) does not illuminate the purpose served by the requirement that carriers seeking ETC designations from the Commission under section 214(e)(6) be providing telephone exchange service and exchange access. As explained above, because supported services need not be telephone exchange service or exchange access service (let alone both), there is no inherent nexus between a carrier's provision of telephone exchange service and exchange access and its ability to satisfy the requirements for ETC designation under section 214(e)(1).[718] Nor is there any inherent nexus between a carrier's provision of those services and the public interest analysis under section 214(e)(6).[719] Thus, nothing in the text of section 214(e)(6) demonstrates that the "providing telephone exchange service and exchange access" provision is intended to, or is likely to, have any practical effect on carriers' rates and practices for purposes of section 10(a)(1) or on the protection of consumers under section 10(a)(2).

271. Nor do we find in the context specifically at issue here that our application of the "providing telephone exchange service and exchange access" provision is necessary under the section 10(a)(1) and (a)(2) criteria. To the contrary, we conclude that forbearance from applying that provision better advances the objective of just and reasonable rates and practices and protection of consumers, by promoting competition among Lifeline broadband Internet access service providers. If we continued to apply that provision in full, given the concerns expressed about the deterrent effect of the historical ETC

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[716] *See, e.g.*, *Section 652 Forbearance Order*, 27 FCC Rcd at 11542-43, paras. 23-24 (discussing why section 652, although potentially read as governing only the conduct of cable operators, nonetheless is properly understood as a provision that applies to telecommunications carriers within the meaning of section 10, in part by considering the real-world effects of the provision).

[717] We explained above why a carrier seeking designation specifically as an LBP is not subject to the jurisdiction of a state commission for purposes of section 214(e)(6), and beyond the requirement of providing "telephone exchange service and exchange access" from which we forbear here, the carrier still must "meet[] the requirements of" section 214(e)(1) and be designated as an ETC "for a service area designated by the Commission consistent with applicable Federal and State law," so long as the designation is in the public interest. 47 U.S.C. § 214(e)(6).

[718] *See* 47 U.S.C. § 214(e)(6) (Commission authorized to designate certain carriers as ETCs if they, among other things, "meet[] the requirements of paragraph (1)"—*i.e.*, section 214(e)(1)).

[719] *See* 47 U.S.C. § 214(e)(6) (". . . Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest."). It is possible that the inclusion of that requirement simply reflects Congress' possible focus on local providers at the time of section 214(e)(6)'s enactment as the most obvious practical beneficiaries of section 214(e)(6). *See, e.g.*, 143 Cong. Rec. S12568-01 (Nov. 13, 1997) (statements by Senator McCain noting the particular issue of Tribal carriers, including Tribal incumbent LECs, not subject to state jurisdiction); 143 Cong. Rec. H10807-02 (Nov. 13, 1997) (statements by Congressman Bliley and Congressman Tauzin that this legislation is needed to avoid local telephone rate increases in certain areas where carriers are not subject to state commission jurisdiction). The foregoing citations reflect the views of individual members of Congress, however, and do not directly address the language at issue in section 214(e)(6), and thus ultimately do not clarify this question.

designation process in other respects,[720] we expect that carriers otherwise willing to participate in the Lifeline broadband program will be deterred at least incrementally from seeking an LBP designation from the Commission under section 214(e)(6) if they do not otherwise provide a service or services already clearly classified by the Commission as telephone exchange service and exchange access.[721] Providers might be less willing to undertake the effort of seeking an LBP designation in the face of uncertainty regarding whether they meet the threshold obligation of providing telephone exchange service and exchange access.

272. Granting forbearance from the specified provision of section 214(e)(6) for carriers seeking designation as an LBP that do not otherwise provide a service or services already classified by the Commission as telephone exchange service and exchange access eliminates uncertainty that otherwise risk deterring those providers' participation. This is likely to promote competition for Lifeline broadband Internet access services, and the Commission previously has found that competition helps ensure just and reasonable rates.[722] Moreover, we anticipate that the availability of competing LBPs will better protect consumers receiving the benefits of that increased competition. We further observe that our evaluation of what is necessary to ensure just and reasonable and not unjustly or unreasonably discriminatory rates under section 10(a)(1) and what is necessary to protect consumers under section 10(a)(2) is guided by the Commission's responsibilities under section 254 of the Act and section 706 of the 1996 Act. As we explain elsewhere, we are modernizing our Lifeline efforts to support broadband Internet access service given its importance to consumers, and ensuring the widest possible participation in the Lifeline broadband program is an important element of those reforms.[723]

273. These same considerations likewise persuade us that forbearance is in the public interest under section 10(a)(3). Indeed, section 10(b) directs the Commission, as part of the section 10(a)(3) analysis, to consider whether forbearance will promote competitive market conditions and, if "forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest."[724] As explained above, we anticipate that the specified forbearance from applying the "providing telephone exchange service and exchange access" provision in section 214(e)(6) will promote competition among providers of Lifeline broadband Internet access services. Based on that, coupled with the forgoing analysis, we conclude that forbearance is in the public interest under section 10(a)(3).

c. Lifeline Broadband Provider ETC Designation Process

274. We next turn from the Commission's authority to designate Lifeline Broadband Provider ETCs and take steps to modernize the process by which carriers can obtain such designation. We take additional steps to decrease the burdens of obtaining and maintaining Lifeline Broadband Provider ETC status, while still protecting consumers. We therefore take action to streamline the process by which we will designate Lifeline Broadband Providers to encourage broader participation in the program.

(i) Background

275. In the *2015 Lifeline FNPRM*, we sought comment on the conclusion that the Commission has substantial flexibility under section 214 to adopt a more streamlined ETC designation process for

[720] *See supra* section III.E.1.b(i) **(**Carriers Not Subject to the Jurisdiction of a State Commission).

[721] Section 10 permits the Commission to evaluate forbearance assuming *arguendo* that it applies. *See, e.g.*, *Open Internet Order*, 30 FCC Rcd at 5867, para. 542 & n.1681.

[722] *See, e.g.*, *2015 USTelecom Forbearance Order*, FCC 15-166, para. 60 (weighing the anticipated role of competition in constraining rates and practices as part of the overall section 10 analysis).

[723] *See, e.g.*, *supra* section III.E.1.a (Lifeline Participation Limited to ETCs), *infra* section III.E.1.c (Lifeline Broadband Provider ETC Designation Process).

[724] 47 U.S.C. § 160(b).

federal default states and asked whether the Commission can simplify or eliminate certain designation requirements while protecting consumers and the Fund.[725] The Commission sought comment on other ways to ease market entry for Lifeline providers and inquired about regulatory and economic barriers for companies to participate in the Lifeline program.[726] The Commission also sought comment on creating a Lifeline approval process separate from the ETC designation process for non-ETCs to participate in the Lifeline program and implementing a "deemed-granted" approach to streamlined approval for Lifeline providers.[727] The Commission asked about the federal-state role in any new designation process for Lifeline providers, and inquired specifically about the advantages and disadvantages of a national versus state-by-state approach, or some combination thereof.[728] Additionally, the Commission inquired about the transition for any changes made to the ETC designation process, and asked how it could best minimize burdens while guarding against waste, fraud, and abuse.[729]

276. As discussed above, the Commission received a variety of responses on the topic of streamlining the ETC designation process.[730] Many commenters supported streamlining the ETC designation process.[731] Public Knowledge noted that providers seeking designation under section 214(e) "now encounter lengthy delays due to budget cuts at the state public utility commissions."[732] Commenters also urged the Commission to streamline the ETC designation process by considering ETC designation petitions more quickly.[733] WTA—Advocates for Rural Broadband recommended that the Commission establish a six-month "shot clock," after which petitions for designation as an ETC would be deemed granted.[734] Other commenters, however, cautioned the Commission to limit the extent to which it streamlines the designation process or creates a separate registration process for Lifeline providers,

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[725] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7863, paras. 122-23. *See also supra* paras. 232-233; *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*).

[726] *See id.* at 7864-65, para. 127.

[727] *See id.* at 7866-69, paras. 132-41.

[728] *See id.* at 7869, para. 140.

[729] *See id.* at 7869, para. 141.

[730] *See supra* paras. 234-237 (discussing certain carriers not subject to the jurisdiction of a state commission).

[731] *See* ACA Comments at 8-9; California ETF Comments at 44; Letter from Jordan B. Goldstein, Vice President, Regulatory Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, at 1-2 (filed Nov. 17, 2015); Commnet Comments at 5; CCA Reply at 14; COMPTEL Comments at 19-20 (supporting streamlining the ETC designation process in coordination with the states, so all jurisdictions use a uniform set of criteria, forms, and requirements); Cox Communications Comments at 3, 8-10; ITTA Comments at 17; National Association of Telecommunications Officers and Advisors and the National League of Cities Comments at 5; NCTA Comments at 4-5; Navajo Tribal Utility Authority Comments at 3; Public Knowledge et al. Comments at 27-28 (also arguing that the Commission has broad authority to streamline its own processes under section 214(e)); Illinois Comments at 9 (but cautioning that a streamlined ETC designation process "must ensure that the designated carrier has the financial and technical capability to provide quality service and the ability and commitment to comply with all applicable rules and laws."); Letter from Matthew A. Brill, Counsel for Time Warner Cable, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1 (filed Nov. 24, 2015); T-Mobile Reply at 8-9; TracFone Wireless Comments at 45-46.

[732] Letter from Phillip Berenbroick, Counsel, Government Affairs, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Jan. 14, 2016).

[733] *See* Joint Commenters Comments at 52-54; Joint Commenters Reply at 16-19; Intergovernmental Advisory Committee to the FCC Recommendation at 2 (filed Nov. 18, 2015); T-Mobile Reply at 8-9; WTA—Advocates for Rural Broadband Reply at 13-14.

[734] *See* WTA—Advocates for Rural Broadband Comments at 15-16 (referencing the Commission's inquiry about a rule that such petitions must be acted upon within a certain amount of time) (citing *2000 Tribal Order*, 15 FCC Rcd at 12208, para. 9).

because of the unique characteristics of the Lifeline market.[735] Other providers urged the Commission to entirely replace the ETC designation process with a process determining registered Lifeline providers, often as part of a proposal to de-link ETC designation and Lifeline service obligations.[736]

(ii) Streamlined Lifeline Broadband Provider Designation Process

277. In this section, we create a streamlined ETC designation process for carriers seeking designation as Lifeline Broadband Providers, solely for the purpose of receiving Lifeline support for broadband service. We expect that this streamlined process will facilitate market entry and allow new competition to enter the Lifeline market while continuing to protect consumers and the Fund.[737]

278. A broadband provider's petition for ETC designation as a Lifeline Broadband Provider for the limited purpose of receiving Lifeline support for BIAS will be subject to expedited review and will be deemed granted within 60 days of the submission of a completed filing provided that the provider meets certain criteria demonstrating that it is financially stable and experienced in providing broadband services, unless the Commission notifies the applicant that the grant will not be automatically effective. First, as of the date of the filing, the carrier must serve at least 1,000 non-Lifeline customers with voice telephone and/or BIAS service. Second, the carrier must have offered broadband services to the public for at least the two years preceding the filing, without interruption. For purposes of this rule, emergency service outages do not constitute an "interruption" because the purpose of this rule is to gauge whether a provider has maintained a substantial presence in the broadband services market. Service quality concerns, if any, will be duly considered by the Commission in evaluating the provider's petition but do not determine whether the provider qualifies the above-described streamlined treatment. We delegate to the Bureau the responsibility for implementing this process and the authority to clarify how carriers may establish that they meet the criteria set out in this framework.

279. Additionally, as part of our efforts to encourage broadband service on Tribal lands, we will apply the above-described expedited review process to petitions for designation as a Lifeline Broadband Provider submitted by Tribally-owned and -controlled facilities-based providers that provide service on Tribal lands, regardless of whether they meet the above-discussed prior service or existing customer criteria. To qualify as a Tribally-owned and -controlled, facilities-based provider, the provider must be greater than 50 percent owned and actually controlled by one or more federally-recognized Tribal Nation(s) or Tribal consortia.

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[735] *See* Indiana Utility Regulatory Commission Comments at 3, 5-8 (more careful scrutiny is necessary when a carrier is "seeking access to public funds and dealing with sensitive information from low-income consumers"); Massachusetts Department of Telecommunications and Cable Comments at 2-4; NARUC Comments at 11; NASUCA Comments at 24-27. *See also* National Tribal Telecommunications Association Comments at 10-11 (urging the Commission to require providers seeking to provide Lifeline service in on Tribal lands to first obtain permission from Tribal authorities); Ohio PUC Reply at 3; Letter from Michael Romano, Senior Vice President—Policy, NTCA—The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Mar. 7, 2016) (arguing that "fast passes" for providers seeking ETC designation could fail to take into account providers' qualifications, experience, or commitment to universal service).

[736] *See* AT&T Comments at 27-33; Comcast Comments at 10-11.

[737] Contrary to some commenters' claims, we expect that increasing provider participation will increase competition among providers in the Lifeline program and incentivize providers to offer better quality services. *See* Letter from Dallas Harris, Policy Fellow, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Mar. 8, 2016) ("Allowing more providers to offer Lifeline-supported services will increase competition and consumer choice, which will improve the quality of services available to Lifeline subscribers, drive down the cost of service, and increase the value derived from every universal service dollar."); *contra* Letter from Michael Romano, Senior Vice President—Policy, NTCA—The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Mar. 7, 2016) (arguing that streamlining the ETC designation process could "lead to a race to the bottom" in service quality and consumer protection).

280. Once a provider has obtained designation as an LBP, that provider may expand their LBP service area designation by submitting a letter to the Commission identifying the service areas in which the LBP plans to offer Lifeline-supported service and a certification that there has been no material change to the information submitted in the petition for which the LBP received designation as an LBP. Such a request shall be deemed granted five business days after it is submitted to the Commission, unless the Bureau notifies the applicant that the grant will not be automatically effective. We therefore amend section 54.202 of the Commission's rules to reflect these changes.[738] We expect that this process will empower LBPs to rapidly expand Lifeline-supported broadband service offerings to new areas, while retaining the Commission's ability to protect consumers and the Fund.

281. We want to facilitate a robust competitive marketplace for Lifeline customers and therefore encourage providers, including nontraditional providers, that do not meet the streamlined criteria to submit a request to be an LBP. All such petitions will be reviewed thoroughly and not automatically deemed granted after a set time, but the Bureau shall act on such petitions within six months of the submission of a completed filing. Accordingly, we update section 54.202 of the Commission's rules to reflect these targeted changes to the Commission's designation process for the purpose of designating Lifeline Broadband Provider ETCs.[739] Our revisions to section 54.202 of the Commission's rules, as discussed in this section, will become effective upon announcement of OMB approval under the PRA, at which point providers may begin submitting petitions for ETC designation as a Lifeline Broadband Provider.

282. A provider seeking designation as an LBP should submit the following information in its filing. First, the provider must certify that it will comply with the service requirements applicable to the support that it receives, including any applicable minimum service standards.[740] Second, the provider must demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.[741] Third, the provider must demonstrate that it will satisfy applicable consumer protection and service quality standards.[742] Fourth, the carrier must demonstrate that it is financially and technically capable of providing the Lifeline service, which could be satisfied in a number of ways, including showing compliance with subpart E of Part 54 of the Commission's rules.[743]

283. Section 54.202(a) of the Commission's rules currently requires common carriers seeking designation as an ETC solely for the purpose of receiving Lifeline support to "submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers."[744] We now revise this rule to also require such ETCs, including LBPs, to submit

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[738] *See* 47 CFR § 54.202(e).

[739] *See* 47 CFR § 54.202. Providers seeking designation as an LBP that are not facilities-based are not required to obtain Commission approval of a compliance plan prior to receiving designation as an LBP. We find that the designation process for LBPs is distinct from the process set out for Lifeline-only ETCs in the *2012 Lifeline Reform Order*, and LBP designation criteria are sufficient to prevent waste, fraud, and abuse in the program, so a separate obligation to obtain approval for a compliance plan is not necessary. *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6813-17, paras. 368-81.

[740] *See* 47 CFR § 54.202(a)(1)(i).

[741] *See* 47 CFR § 54.202(a)(2).

[742] *See* 47 CFR § 54.202(a)(3). A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. *Id.*

[743] *See* 47 CFR § 54.202(a)(4).

[744] *See* 47 CFR § 54.202(a)(5).

information describing the terms and conditions of any broadband Internet access service plans offered to Lifeline subscribers at the time of designation. Such information should include details regarding the speeds offered, data usage allotments, additional charges for particular uses, if any, and rates for each such plan. While this information should be filed at the time of LBP designation, providers need not refile or notify the Commission of changes to their plans so long as they certify compliance with the applicable minimum standards. Providing this snapshot of Lifeline offerings will allow the Commission to better understand and evaluate whether prospective ETCs, including prospective LBPs, are seeking to launch service offerings that comply with the Lifeline program's rules.[745]

284. We find that this process for prospective LBPs protects the integrity of the Lifeline program and guards against waste, fraud, and abuse, while facilitating market entry and encouraging competition. All LBPs, regardless of whether they qualify for streamlined treatment, must meet the requirements for designation as a Lifeline-only ETC established in section 214(e) of the Act and section 54.201 and 54.202 of the Commission's rules.[746] The Commission will examine all petitions for designation as an LBP to ensure that petitioning carriers meet the requirements in the Act and the Commission's implementing rules. The Commission will use its authority to deny petitions, remove ble and affordable rates,"┐ we believe that the Lifeline program should directly Additionally, LBPs must comply with the Lifeline program rules and will be subject to auditing and enforcement in accordance with the Commission's rules.[747]

285. We are also mindful of the many existing Lifeline providers designated by states and the FCC that intend to offer standalone broadband to Lifeline consumers. We note that, as set out below, Lifeline-only ETCs may receive Lifeline support for BIAS provided to eligible low-income consumers but existing ETCs also retain the option to avail themselves of forbearance from the obligation to offer broadband.[748] Lifeline-only ETCs will thus be able to receive support for BIAS through Lifeline without re-submitting a petition for ETC designation as a Lifeline Broadband Provider.[749]

d. Preserving a State Role in Lifeline

286. Nothing in this Order preempts states' ability to develop and manage their own state Lifeline programs. Nor does the creation of the LBP designation disturb states' current processes for designating non-LBP ETCs, where they retain jurisdiction. In these ways, states will continue to play an important role in the administration of state Lifeline programs and traditional non-LBP ETC designations, where state law grants them authority to do so.

287. We recognize that a number of states have put in place state Lifeline programs that provide state-funded subsidies to low-income consumers for communications services. We applaud these state programs for devoting resources designed to help close the affordability gap for communications services.[750] Nothing in this Order preempts states' ability to create or administer such state-based Lifeline

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[745] *See, e.g.*, 47 CFR § 54.408 (establishing minimum service standards for Lifeline providers).

[746] *See* 47 U.S.C. § 214(e)(1), (e)(6); 47 CFR §§ 54.201, 54.202. We note that the requirement to submit a five-year plan describing proposed improvements or upgrades to the provider's network does not apply to providers seeking designation solely for the purpose of receiving support through the Lifeline program, including LBPs. *See* 47 CFR § 54.202(a)(1)(ii).

[747] *See* 47 CFR § 54.400 *et seq.*

[748] *See infra* paras. 298-307.

[749] *See* Letter from L. Charles Keller, Counsel to Cox Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1 (filed Nov. 20, 2015) (arguing that existing ETCs should not be required to file new designation petitions after new designations may be adopted).

[750] *See* Letter from Travis Kavulla, President, NARUC, et al., to Tom Wheeler, Chairman, FCC, et al., WC Docket No. 11-42 et al., at 4 n.14 (filed Mar. 21, 2016) (noting that "Vermont provides the greater of $7 or 50 percent of the basic service charge, California provides a $13.50 subsidy, Connecticut offers $10.42, the District of Columbia

(continued….)

programs that include state funding for Lifeline support to support voice service, BIAS, or both.[751] States that do maintain state Lifeline programs may therefore enact their own rules for the administration of those programs. For example, a state may deem consumers eligible to participate in that state's Lifeline program based on the consumer's participation in another state-based program, even if that eligibility program does not make the consumer eligible for federal Lifeline support.

288. Additionally, we make clear that states retain the ability to designate Lifeline-only ETCs and ETCs that are not Lifeline-only, to the extent that state law grants them authority to do so. For the reasons discussed above, our preemption in this Order with regard to LBPs does not impact states' authority to designate other categories of ETCs, even if those ETCs receive designations from states that are broad enough to encompass Lifeline support for BIAS.[752] As a result, to the extent a provider wants to receive state Lifeline funds in addition to federal Lifeline support, the provider must seek approval and (to the extent required by a state for receipt of state funding) ETC designation from the relevant state commission and comply with any applicable state laws. To the extent a provider only seeks the federal LBP, however, providers are not required to seek approval or designation from the states.

289. We anticipate that preserving the roles that states have traditionally played in Lifeline will benefit low-income consumers by enabling states to offer their own support for services provided to low-income households and encouraging competition from non-LBP ETCs that have traditionally been designated by states.

2. Lifeline Obligations for Eligible Telecommunications Carriers

290. In this section, we turn to the issue of what ETC service obligations are appropriate and best suited for a successful modernized Lifeline program. We consider the substantive obligations placed on ETCs through the Act and the Commission's rules, and streamline certain of those obligations through targeted forbearance and other regulatory tools to encourage broader participation and more robust competition among providers in the Lifeline market. We find that such actions will further modernize the Lifeline program to encourage market entry by providers offering BIAS while still protecting consumers and ensuring the services Lifeline subscribers receive are of high quality.

291. In the *2015 Lifeline FNPRM*, we sought comment on ways to increase competition and encourage market entry in the Lifeline program.[753] Within that inquiry, we sought comment on whether certain requirements related to ETC designation were "overly burdensome" and could be simplified or eliminated while protecting consumers and the Fund.[754] We also inquired about permitting ETCs to opt-out of providing Lifeline supported service in certain circumstances, and we sought comment on the many other requirements new Lifeline providers must meet to participate in the program.[755] We asked whether

(Continued from previous page)
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."); Letter from James Bradford Ramsay, General Counsel, NARUC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 4 (filed Mar. 21, 2016) ("For example, in California, where there is a $13.20 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.").

[751] *See* Letter from Javier Rúa Jovet, Chairman, Telecommunications Regulatory Board of Puerto Rico, to Tom Wheeler, Chairman, FCC, et al., WC Docket No. 11-42 et al., at 5 (filed Mar. 21, 2016) ("The Board does not believe that a Lifeline broadband registration process will undermine the Puerto Rico state Lifeline program.").

[752] *See supra* para. 252.

[753] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7862-69, paras. 121-41.

[754] *See id.* at 7863, para. 123.

[755] *See id.* at 7864, paras. 125, 127.

there are specific state or federal regulatory barriers that make it difficult for carriers to enter or remain in the Lifeline program, and how the Commission can address them.[756]

a. Forbearance Standard

292. Section 10 of the Act provides that the Commission "shall" forbear from applying any regulation or provision of the Communications Act to telecommunications carriers or telecommunications services if the Commission determines that: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.[757]

293. In evaluating whether a rule is "necessary" under the first two prongs of the three-part section 10 forbearance test, the Commission considers whether a current need exists for a rule.[758] In particular, the current need analysis assists in interpreting the word "necessary" in sections 10(a)(1) and 10(a)(2). For those portions of our forbearance analysis that require us to assess whether a rule is necessary, the D.C. Circuit concluded that "it is reasonable to construe 'necessary' as referring to the existence of a strong connection between what the agency has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation."[759] Section 10(a)(3) requires the Commission to consider whether forbearance is consistent with the public interest, an inquiry that also may include other considerations.[760] Forbearance is warranted under section 10(a) only if all three of the forbearance criteria are satisfied.[761] The Commission has found that nothing in the language of section 10

[756] *See id.* at 7864-65, para. 127.

[757] *See* 47 U.S.C. § 160(a). "In making the determination under subsection (a)(3) [that forbearance is in the public interest,] the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." *Id.* § 160(b). In addition, "[a] State commission may not continue to apply or enforce any provision" from which the Commission has granted forbearance under section 10. 47 U.S.C. § 160(e).

[758] *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order, 23 FCC Rcd 7302, 7314, para. 20 (2008) (*AT&T Cost Assignment Forbearance Order*) (concluding that a rule is not "necessary" under section 10(a)(1) where there is not a current need); *Cellular Telecomms. & Internet Ass'n v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003) (interpreting the term "necessary" in the context of section 10(a)(2)); *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7657, para. 58.

[759] *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314, para. 20 (citing *Cellular Telecomms. & Internet Ass'n v. FCC*, 330 F.3d at 512 (evaluating the Commission's interpretation of section 10(a)(2) under *Chevron* step 2, *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984) (stating that the meaning of "necessary" in section 10 is not plain from the statutory language, and that the Commission's interpretation of the term is reasonable)).

[760] *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations that Inhibit Deployment of Next-Generation Networks et al.*, Memorandum Opinion and Order, FCC 15-166, para. 8 (rel. Dec. 28, 2015) (*2015 USTelecom Forbearance Order*).

[761] *Cellular Telecomms. & Internet Ass'n v. FCC*, 330 F.3d at 509 (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).

precludes the Commission from proceeding on a basis other than the competitiveness of a market where warranted.[762]

294. Also relevant to our analysis, section 706 of the 1996 Act "explicitly directs the FCC to 'utiliz[e]' forbearance to 'encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.'"[763] In its most recent *Broadband Progress Report*, the Commission found "that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion."[764] This finding, in turn, triggers a duty under section 706 for the Commission to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."[765] Within the statutory framework that Congress established, the Commission "possesses significant, albeit not unfettered, authority and discretion to settle on the best regulatory or deregulatory approach to broadband."[766]

295. Section 10(b) directs the Commission to consider whether forbearance will promote competitive market conditions as part of its public interest analysis under section 10(a)(3).[767] However, we recognize that section 10 does not compel us to treat a competitive analysis as determinative when we reasonably find, based on the record, that other considerations are more relevant to our statutory analysis.[768] We make our decision as to each category of ETC requirements as they relate to the provision of Lifeline-supported services based on the information we deem most relevant to the analysis prescribed from section 10(a).

b. Forbearance Regarding the Lifeline Broadband Service Obligation

296. In streamlining Lifeline ETC obligations for participating carriers,[769] we first turn to the broadband service obligations of various categories of ETCs. In this section we use targeted forbearance from certain ETC obligations to encourage market entry and competition while continuing to protect consumers and the Fund.

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[762] *Open Internet Order*, 30 FCC Rcd at 5807-08, para. 439 & n.1306 (also finding that forbearance was supported based on considerations to be found common nationwide and rejecting the suggestion that more geographically granular data or information or an otherwise more nuanced analysis are needed with respect to some or all of the forbearance granted in that order), *pets. for review pending sub nom USTA v. FCC*, No. 15-1063 (D.C. Cir. filed May 22, 2015).

[763] *EarthLink v. FCC*, 462 F.3d 1, 8-9 (D.C. Cir. 2006) (alteration in original).

[764] *2016 Broadband Progress Report*, 31 FCC Rcd at 700-01, para. 1.

[765] *Id.* at 702, para. 6 (quoting 47 U.S.C. § 1302(b)).

[766] *Ad Hoc Telecommunications Users Committee v. FCC*, 572 F.3d 903, 906-07 (D.C. Cir. 2009). *See generally Open Internet Order*, 30 FCC Rcd at 5806, para. 437.

[767] 47 U.S.C. § 160(b).

[768] *See* 47 U.S.C. § 160; *see also Open Internet Order*, 30 FCC Rcd at 5808, para. 439 & n.1306 ("Section 10(b) does direct the Commission to consider whether forbearance will promote competitive market conditions as part of the public interest analysis under section 10(a)(3). . . . However, while a finding that forbearance will promote competitive market conditions may provide sufficient grounds to find forbearance in the public interest under section 10(a)(3), . . . nothing in the text of section 10 makes such a finding a necessary prerequisite for forbearance where the Commission can make the required findings under section 10(a) for other reasons." (internal citations omitted)).

[769] *See* Letter from Amina N. Fazlullah, Director of Policy, Benton Foundation, et al., to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Mar. 4, 2016) (noting that the Commission could encourage greater provider participation in the Lifeline program by "forbearing from certain requirements in the statute and rules regarding ETC eligibility and obligations").

297. For Lifeline-only ETCs, we establish that such ETCs are eligible to receive Lifeline support for broadband service but may choose to only offer a supported voice service instead. For other ETCs that are not Lifeline-only, we establish that such ETCs are also eligible to receive Lifeline support for broadband service and forbear from requiring such ETCs to offer Lifeline-supported broadband service, except in areas where the ETC commercially offers broadband pursuant to its high-cost obligations. For Lifeline Broadband Providers, we establish a streamlined relinquishment process that gives providers greater certainty while retaining the Commission's ability to protect consumers.

(i) Lifeline-Only ETCs

298. For Lifeline-only ETCs, we interpret such carriers' ETC designations as broad enough to make them eligible for Lifeline broadband support.[770] Lifeline-only ETCs may therefore receive support for Lifeline-discounted BIAS provided to eligible low-income subscribers within their designated service areas without receiving federal designation as Lifeline Broadband Providers. However, we forbear from Lifeline-only ETCs' obligations to offer BIAS to permit such ETCs to solely offer voice if they so choose.[771] To the extent that Lifeline-only ETCs elect to also offer BIAS to eligible subscribers, they may receive reimbursement for such service through the Lifeline program.

299. *Eligibility to receive Lifeline broadband support*. We find that Lifeline-only ETC designations, such as exist today, are broad enough to make Lifeline-only ETCs eligible to receive reimbursement through the Lifeline program for offering discounted BIAS to eligible low-income subscribers. This is consistent with past Commission precedent. For example, when the Commission simplified the core functionalities of the supported services for universal service support mechanisms in the overarching concept of "voice telephony service," it clarified that such a change was intended to promote technological neutrality and that many of the previously-enumerated supported services would still be offered as a function of voice telephony.[772] Accordingly, providers that obtained ETC designation for the limited purpose of receiving Lifeline support, even after the *USF/ICC Transformation Order*, received designation for a number of different functionalities encompassed within "voice telephony."[773] Now, as we add BIAS as a supported service in this Order, we find that Lifeline-only ETCs' designations, which were broad enough to encompass the nine supported services before the *USF/ICC Transformation Order* and broad enough to encompass multiple functionalities within the concept of "voice telephony," are similarly broad enough to include the addition of a supported service for purposes of offering Lifeline-supported BIAS.[774]

300. *Obligation to offer all supported services.* Based on our consideration of the relevant statutory framework and the record before us, we now conclude that it is in the public interest to forbear, pursuant to section 10 of the Act, from requiring existing Lifeline-only ETCs to offer Lifeline-supported

[770] *See also infra* section III.E.2.b(iii) (New Lifeline Broadband Providers).

[771] We note that when the Lifeline discount no longer applies to voice-only offerings, *see supra* section III.B.1 (Supported Modes of Service), paras. 52-64 (discussing the phase-out of voice-only support), a Lifeline-only ETC that does not choose to offer Lifeline-discounted fixed voice service will have the option of seeking relinquishment of its statutory obligation to offer supported voice telephony service under section 214(e)(4) of the Act and continuing to receive Lifeline support for its BIAS offerings. *See* 47 U.S.C. § 214(e)(4). Alternatively, a Lifeline-only ETC may obtain an ETC designation as a Lifeline Broadband Provider, *see supra* section III.E.1.c(ii) (Streamlined Lifeline Broadband Provider Designation Process), seek relinquishment of its existing Lifeline-only ETC designation, and operate solely as a federally-designated LBP.

[772] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17691-94, paras. 76-83.

[773] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17692, para. 77.

[774] *See* Letter from Jennifer K. McKee, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1 (filed Mar. 17, 2016) ("[A]llowing existing ETCs to receive Lifeline support for broadband without requiring them to undergo a new or additional designation process will help to ensure that eligible low-income subscribers can benefit from the subsidy as soon as possible.").

broadband Internet access service. As a result of this forbearance, existing Lifeline-only ETCs will be able to continue to offer voice service, consistent with the Lifeline program's rules. At the same time, Lifeline-only ETCs remain eligible for Lifeline broadband support to the extent that they elect to provide that service. ETCs that seek to avail themselves of this forbearance and therefore offer only voice service must file a notification with the Commission that they are availing themselves of this relief.

301. To facilitate program administration, we require any ETC that plans to not offer a Lifeline-discounted BIAS offering under the reforms in this Order to notify the Commission that it is availing itself of the forbearance relief granted in this section. Such notification must be filed by the later of 60 days after announcement of OMB approval of this requirement under the PRA or 30 days after receiving designation as a Lifeline-only ETC. This notification requirement, as a condition to our grant of forbearance, is a critical element of our actions today. To ensure that the Commission is well informed about the state of the marketplace of Lifeline providers offering voice-only versus Lifeline BIAS, we must impose this notification requirement prior to ETCs availing themselves of this forbearance.

302. We find that enforcement of this requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with this class of telecommunications carrier and telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.[775] We also find that enforcement of this requirement is not necessary for the protection of consumers and that the above-described forbearance is consistent with the public interest.[776]

303. We find that it is not necessary to impose an obligation to offer Lifeline-supported BIAS within the Lifeline marketplace for Lifeline-only ETCs and that they should be permitted, but not required, to offer Lifeline-discounted BIAS when such ETCs give notice to the Commission of their intent to limit offerings to voice service. This forbearance will not alter the Commission's authority over Lifeline-only ETCs' charges, practices, and classifications in providing Lifeline-supported voice service, nor will it allow such ETCs to unjustly or unreasonably discriminate in their voice offerings. Lifeline-only ETCs will continue to comply with all existing regulations to protect consumers and will, in many instances, face more competition within the marketplace from other Lifeline providers offering either or both voice and Lifeline-supported BIAS service offerings. Existing regulations and competition will also help keep Lifeline-only ETCs' rates and other terms and conditions of service just and reasonable and not unjustly or unreasonably discriminatory. As a result, the obligation to offer BIAS for Lifeline-only ETCs is not necessary to protect consumers. The Commission has recognized that granting forbearance relief in light of other still-applicable regulatory requirements is reasonable and appropriate while both retaining necessary safeguards and reducing costs.[777]

304. Preserving this option for Lifeline-only ETCs is also consistent with concerns raised by commenters. In response to the Commission's inquiries about including broadband as a supported service in the Lifeline program and setting minimum service levels for voice and broadband services, several providers responded that the Commission should preserve providers' ability to offer a voice-only service option.[778] For example, Sprint argued that "the provision of Lifeline broadband service should be voluntary, not mandatory," noting that some existing Lifeline carriers may not be able to offer broadband service because of the nature of their existing resale agreements with their underlying providers.[779]

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[775] *See* 47 U.S.C. § 160(a)(1).

[776] *See* 47 U.S.C. § 160(a)(2), (a)(3).

[777] *See 2015 USTelecom Forbearance Order*, FCC 15-166, para. 17; *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7668, 7672, 7675-76, 7678-79, 7691-93, 7705, paras. 86-87, 98, 104-08, 113-15, 142-48, 175.

[778] *See* Joint Commenters Comments at 4-5; GVNW Consulting, Inc. Comments at 5-6.

[779] Sprint Comments at 12-15.

305. We also agree with commenters that permitting Lifeline-only ETCs offering voice service to participate in Lifeline even if they do not offer BIAS will give eligible low-income customers more Lifeline-discounted options in the market.[780] We expect that permitting Lifeline-only ETCs offering voice service to participate in Lifeline even if they do not offer BIAS will give eligible low-income customers more Lifeline-discounted options in the market.[781] Accordingly, this forbearance, while not preventing existing or future Lifeline-only ETCs from offering discounted BIAS, will permit those ETCs to continue to offer a discounted standalone voice option if they so choose, which will preserve additional options for consumers in addition to new BIAS options that we expect will enter the Lifeline market. This increase in competition will, in turn, lead to higher quality service offerings at lower prices for eligible low-income subscribers.[782]

306. We find this forbearance is not necessary for the protection of consumers so long as Lifeline-only ETCs are required to notify the Commission of their intent to avail themselves of this forbearance. To ensure that the Commission stays informed of the Lifeline marketplace and knows the number of providers offering voice versus Lifeline-supported BIAS, it is critical that the Commission is able to stay informed of the Lifeline market and consumer options. This notification requirement will give the Commission critical information in understanding and evaluating the Lifeline market to determine how well its regulatory structure provides incentives for participation in the Lifeline program.

307. Forbearance from this requirement is consistent with the public interest.[783] Forbearance from the requirement that a Lifeline-only ETC offer Lifeline-supported BIAS allows service providers to continue serving the existing voice market while permitting those ETCs (to the extent they have not elected to avail themselves of forbearance) to also easily introduce new Lifeline-discounted BIAS offerings.[784] These additional options will promote competitive market conditions by providing low-income consumers with more Lifeline-discounted offerings and a diversity of providers to serve them. With more providers in the Lifeline marketplace, this will open the Lifeline program to innovative new service offerings that will better meet the needs of eligible subscribers and further modernize the program by encouraging BIAS offerings for Lifeline subscribers.

308. As an additional benefit, this forbearance will serve the Lifeline program's purpose of ensuring affordable access to high-quality telecommunications services to eligible low-income households. As detailed above, we recognize that many consumers rely on voice service as their primary form of communication.[785] This forbearance will allow service providers that do not intend to offer BIAS, to continue to serving consumers this supported service. As noted by commenters, certain providers

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[780] *See id.* This decision is consistent with the Commission's decision to transition Lifeline funding away from voice service as a standalone option. *See supra* section III.B.1 (Supported Modes of Service). While Lifeline-only ETCs are able to receive reimbursement for voice service, they may choose to focus on that service, but when voice service as a standalone option is no longer eligible for reimbursement through the Lifeline program, those ETCs must choose another supported service to offer or seek to relinquish their ETC status under section 214(e)(4).

[781] *See* Sprint Comments at 12-15.

[782] *See also* Letter from Phillip Berenbroick, Counsel, Government Affairs, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 4 (filed Dec. 22, 2015) (arguing that permitting more providers to participate in the Lifeline program will increase competition and give consumers more choice).

[783] *See* 47 U.S.C. § 160(a)(3).

[784] As discussed above, this forbearance also provides ETCs with greater options to continue serving eligible low-income consumers during the transition to the point where voice will no longer be supported by the Lifeline program. *See supra* para. 275.

[785] *See supra* section III.B.1 (Supported Modes of Service).

might be required to exit the market given their limitations in offering BIAS.[786] Those providers that avail themselves of this forbearance will have the option of continuing to offer voice service.

(ii) ETCs That Are Not Lifeline-Only

309. For ETCs offering voice service that are not Lifeline-only, we interpret such carriers' ETC designations as broad enough to make them eligible for Lifeline broadband support.[787] Such ETCs may therefore receive support for Lifeline-discounted BIAS provided to eligible low-income subscribers within their designated service areas.[788] However, we forbear from these ETCs' obligation to offer Lifeline BIAS to permit such ETCs to solely offer voice in the Lifeline program, provided such ETCs file a notification with the Commission that they are availing themselves of this relief. This forbearance, however, does not apply to areas where ETCs commercially offer broadband that meets the Lifeline minimum service standards pursuant to their high-cost USF obligations, in which case they remain subject to the Lifeline broadband service obligation.[789] To the extent that these ETCs elect to also offer BIAS to eligible subscribers even when not required, they may receive reimbursement for such service through the Lifeline program.

310. *Eligibility to receive Lifeline broadband support*. We find that the ETC designations of ETCs that are not Lifeline-only are broad enough to make those ETCs eligible to receive reimbursement through the Lifeline program for offering discounted BIAS to eligible low-income subscribers. As discussed above, this is consistent with past Commission precedent of including multiple functionalities even as it updated the definition of services supported by universal service support mechanisms.[790]

311. *Obligation to offer all supported services.* Based on our consideration of the relevant statutory framework and the record before us, we now conclude that it is in the public interest to forbear, pursuant to section 10 of the Act, from requiring existing ETCs that are not Lifeline-only to offer Lifeline-supported BIAS in areas where they do not commercially offer such service or do not receive high-cost support.[791] Accordingly, ETCs that are not Lifeline-only will be able to continue to offer voice-only service, consistent with the Lifeline program's rules. At the same time, such ETCs remain eligible for Lifeline broadband support to the extent that they elect to provide that service. This forbearance does not extend to areas where existing ETCs commercially offer BIAS pursuant to their high-cost USF obligations and such service meets the Lifeline program's minimum service requirements, in which case ETCs remain subject to the Lifeline broadband service obligation. Those ETCs receiving frozen high-cost support—whether incumbent providers or competitive ETCs—are not required to offer Lifeline-supported broadband services in their designated service areas.[792] Given that the frozen support program

[786] *See* Sprint Comments at 12-15.

[787] *See supra* section III.E.2.b(i) (Lifeline Obligations for ETCs- Lifeline-Only ETCs).

[788] *See supra* section III.E.1.c(ii) (Streamlined Lifeline Broadband Provider Designation Process).

[789] As detailed in section III.A.2.a. (Broadband as a Supported Service), we also require carriers receiving high-cost support to provide Lifeline-supported broadband services in areas where they receive high-cost support and are already offering broadband services at the minimum service levels set forth in section III.B.2 (Minimum Service Standards).

[790] *See supra* para. 299.

[791] *See* Letter from Melissa E. Newman, CenturyLink, to Marlene H Dortch, Secretary, FCC, WC Docket No. 11-42, at 1 (filed Mar. 22, 2016) (arguing that the Commission should not require ETCs to offer broadband services in all areas).

[792] *See* 47 CFR §§ 54.312(a); 54.313(c)(4) (requirements for incumbent LECs receiving Phase I frozen support); 47 CFR § 54.307 (frozen support for competitive ETCs).

is an interim program that is due to be eliminated, we agree with commenters that frozen support recipients should not be required to implement new processes to offer BIAS as a supported service.[793]

312. In the areas subject to forbearance, existing ETCs remain eligible for Lifeline broadband support to the extent that they elect to provide that service. As a result of this forbearance, ETCs that are not Lifeline-only will only be required to offer Lifeline BIAS in those areas where the ETC commercially offers qualifying BIAS pursuant to the ETC's obligations under the high-cost rules. ETCs that seek to avail themselves of this forbearance must file a notification with the FCC that they are availing themselves of this relief and to identify those areas by Census block where they intend to avail themselves of this forbearance relief.

313. To facilitate program administration, we require any ETC that plans to not offer a Lifeline-discounted BIAS offering under the reforms in this Order to notify the Commission that it is availing itself of the forbearance relief granted in this section and to identify those areas by Census block where they intend to avail themselves of this forbearance relief. Such notification must be filed by the later of 60 days after announcement of OMB approval of this Order under the PRA or 30 days after receiving designation as an ETC. This notification requirement, as a condition to our grant of forbearance, is a critical element of this grant of forbearance. To ensure that the Commission is well informed about the state of the marketplace of Lifeline providers offering voice-only service versus Lifeline BIAS, we must impose this notification requirement prior to ETCs availing themselves of this forbearance.

314. We find that enforcement of this requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with this class of telecommunications carrier and telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.[794] We also find that enforcement of this requirement is not necessary for the protection of consumers and that the above-described forbearance is consistent with the public interest.[795]

315. With the exception discussed below, we find that this forbearance meets the criteria set out in section 10(a) of the Act for much the same reasons that led us to grant forbearance to Lifeline-only ETCs in the prior section.[796] This forbearance will not alter the Commission's authority over the charges and practices of ETCs, nor will it allow ETCs to unjustly or unreasonably discriminate in offering their Lifeline-supported services. The Commission has recognized that granting forbearance relief in light of other still-applicable regulatory requirements is reasonable and appropriate while both retaining necessary safeguards and reducing costs.[797]

316. Forbearance from this requirement is consistent with the public interest.[798] We find that such forbearance will create a level playing field as between Lifeline-only ETCs and ETCs that are not Lifeline-only where the latter are not commercially offering qualifying broadband service pursuant to their high-cost obligations. Similar to our analysis with Lifeline-only ETCs, this forbearance serves the public interest because it permits ETCs to focus their Lifeline offerings on the voice market where they are not able to offer qualifying Lifeline-discounted BIAS, while still permitting such ETCs to easily introduce Lifeline-discounted BIAS offerings if they so choose. We find that this forbearance will give

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[793] *See* Letter from Alan Buzacott, Executive Director, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1-2 (filed Mar. 24, 2016).

[794] *See* 47 U.S.C. § 160(a)(1).

[795] *See* 47 U.S.C. § 160(a)(2), (a)(3).

[796] *See supra* section III.E.2.b(i) (Lifeline-Only ETCs).

[797] *See 2015 USTelecom Forbearance Order*, FCC 15-166, para. 17; *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7668, 7672, 7675-76, 7678-79, 7691-93, 7705, paras. 86-87, 98, 104-08. 113-15, 142-48, 175.

[798] *See* 47 U.S.C. § 160(a)(3).

eligible low-income consumers more Lifeline-discounted choices in the market, and will lead to higher quality service offerings at lower prices.[799]

317. *Areas where ETCs commercially offers BIAS pursuant to high-cost obligations.* As discussed above, after the enactment of the 1996 Act, incumbent LECs' designated service areas as ETCs were defined as wherever they offered voice telephony service in a state, including Census blocks where the incumbent LECs do not currently receive high-cost support or are not obligated to offer broadband at 10/1 Mbps or greater speeds pursuant to Commission rules.[800] Some ETCs are concerned that program changes would require them to provide Lifeline-supported broadband in Census blocks where the provider is not obligated to offer broadband services or does not receive high-cost support.[801] To address these concerns, we first clarify, here and in section III.A, Modernizing Lifeline to Support Broadband, that ETCs receiving high-cost support are not required to offer Lifeline-supported BIAS in Census blocks where the ETC does not commercially offer a broadband service that meets the minimum service standards of the Lifeline program pursuant to its high-cost obligations.[802] Accordingly, we retain the obligation to offer the Lifeline discount on all qualifying services in areas where an ETC receives high-cost support, has deployed a network capable of delivering service that meets the Lifeline program's minimum service standards, and commercially offers such service pursuant to its high-cost obligations.[803]

318. In areas where the provider receives high-cost support but has not yet deployed a broadband network consistent with the provider's high-cost service obligations, the obligation to provide Lifeline-supported BIAS begins only when the provider has deployed a high-cost supported broadband network to that area and makes its BIAS commercially available.[804] For example, a rate-of-return carrier must provide Lifeline-supported BIAS if it deploys a network providing a minimum of 10/1 Mbps upon reasonable request from a qualified low-income consumer in satisfaction of its high-cost obligations.[805] Or, as another example, a price cap carrier that accepted Connect America Phase II model-based support, must provide Lifeline-supported BIAS in an area where that price cap carrier has already deployed broadband facilities capable of providing the minimum service levels set forth above[806] and is commercially offering service. However, an authorized rural broadband experiment bidder is not required to provide Lifeline-supported BIAS until it has deployed broadband-capable facilities to the location of a qualified low-income consumer in satisfaction of its high-cost deployment obligations.

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[799] *See* Letter from Phillip Berenbroick, Counsel, Government Affairs, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 4 (filed Dec. 22, 2015) (arguing that permitting more providers to participate in the Lifeline program will increase competition and give consumers more choice); Sprint Comments at 12-15.

[800] *See supra* paras. 22-24.

[801] *See* AT&T Comments at 5-6, Appx. A at 1-10 (filed Sept. 9, 2015); Letter from Micah M. Caldwell, Vice President, Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Nov. 10, 2015); ITTA Comments at 18-19; ITTA Reply at 8 n.30; United States Telecom Association Comments at 3-6; Verizon Comments at 7-8.

[802] *See supra* paras. 34-35.

[803] *See generally* 47 CFR Part 54, Subparts D, K, L, M. This obligation does not apply to ETCs receiving frozen high-cost support.

[804] For example, we recognize that many high-cost recipients receiving CAF Phase II support have not deployed broadband capable networks in all of the Census blocks where they receive high-cost support, but are required to do so pursuant to deadlines set forth in the Commission's high-cost rules. *See* 47 CFR § 54.310(c) (setting forth deployment obligations for Connect America Phase II recipients).

[805] In the event speeds of 10/1 Mbps are not available, such providers are required to offer Lifeline-supported BIAS if speeds at 4 Mbps/1 or above are commercially available. *See supra* section III.B.2 (Minimum Service Standards).

[806] *See supra* section III.B.2 (Minimum Service Standards).

319. We adopt these requirements to ensure that all consumers living in high-cost areas, including low-income consumers, have the meaningful option of subscribing to BIAS once it is commercially available. In particular, we conclude that the areas where non-Lifeline only ETCs have high-cost broadband deployment obligations provide a reasonable, administrative proxy for the areas where low-income consumers would be at greatest risk of having no Lifeline broadband service available if its provision were exclusively voluntary for all providers.[807] In ensuring that such areas have at least one provider of Lifeline broadband service, we find it most appropriate to rely on the providers that already both have broadband obligations as to those areas by virtue of the receipt of high-cost universal service support—thereby coordinating our efforts across universal service programs—and that do, in fact, make such service commercially available. Thus, in contrast to our conclusions regarding the Lifeline broadband service obligations for existing ETCs in other contexts, here we find forbearance from the Lifeline broadband service obligation would not be in the public interest.

(iii) New Lifeline Broadband Providers

320. For providers that receive ETC designation as Lifeline Broadband Providers, such a designation makes them eligible for Lifeline broadband support, with the accompanying obligation to offer Lifeline broadband service.[808] In this section, we establish a streamlined LBP relinquishment process to further reduce the perceived risk of entering the Lifeline broadband market.

321. In implementing the ETC relinquishment process for LBPs, we establish the streamlined relinquishment procedures described below, except for relinquishments by LBPs also receiving high-cost universal service support.[809] We find that a streamlined relinquishment process will encourage new providers to enter the Lifeline market by giving them clarity as to how they may responsibly exit that market, while fulfilling the Commission's responsibility to protect consumers, ensure that subscribers will continue to be served, and ensure that subscribers are given sufficient notice.[810] We therefore revise section 54.205 of the Commission's rules to create a streamlined relinquishment process for LBPs.[811] Under this process, an LBP's advance notice of its intent to relinquish its designation pursuant to section 214(e)(4) shall be deemed granted by the Commission 60 days after the notice is filed, unless the Bureau notifies the LBP that the relinquishment will not be automatically effective. Consistent with Congressional directives, the Commission will issue such a notification that the relinquishment will not be automatically effective if an automatic grant would violate any of the criteria listed in section 214(e)(4).[812]

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[807] *See, e.g.*, *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33, paras. 29-31 (rel. Mar. 30, 2016) (targeting rate-of-return carriers' broadband deployment obligations to areas identified by a model as high-cost and where support is available); *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, paras. 103-04 (discussing high-cost public interest obligations requiring broadband deployment targeted to areas unserved by unsubsidized competitors).

[808] *See* 47 U.S.C. § 214(e)(1).

[809] We note that this relinquishment process will only apply to LBPs designated under section 214(e)(6) of the Act. *See* 47 U.S.C. § 214(e)(4), (e)(6).

[810] *See also* Small Carriers Coalition Comments at 9 (urging the Commission to adopt a streamlined relinquishment process and encourage state commissions to do the same); Letter from Matthew F. Wood, Policy Director, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Feb. 26, 2016) ("In order to encourage broadband providers to enter the Lifeline program, it is important to consider how they may exit the program too; but it is equally important to prevent exiting carriers from leaving Lifeline-eligible consumers stranded without access to vital telecommunications services.").

[811] *See* 47 CFR § 54.205.

[812] *See* 47 U.S.C. § 214(e)(4) ("Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, [the Commission] shall require the remaining eligible telecommunications carrier or

(continued….)

322. We expect that a streamlined ETC relinquishment process for LBPs will reduce the perceived risk for broadband providers to enter the Lifeline market. This will encourage providers to offer Lifeline-supported broadband services and increase competition, which will, in turn, lead to greater choices among affordable, higher quality service offerings for eligible low-income subscribers. Pursuant to the new LBP relinquishment procedures, the Commission will notify the relevant LBP if its relinquishment will not be automatically effective in cases where, for example, customers may need more time to transition to a new carrier.[813] As a result, the Commission will still have the authority and responsibility to at least temporarily prevent a relinquishment that would harm consumers until an appropriate solution can be found.

323. We find that a streamlined relinquishment process for LBPs will serve the Lifeline program's purpose of ensuring affordable access to high-quality advanced telecommunications services to eligible low-income households. By giving providers greater flexibility and encouraging investment in the Lifeline market, this streamlined process will open the Lifeline program to innovative new service offerings that will better meet the needs of eligible subscribers and further modernize the program by encouraging BIAS offerings for Lifeline subscribers.

c. Forbearance Regarding the Lifeline Voice Service Obligation

324. Having described the tailored broadband service obligations of various categories of ETCs in the previous section, we next turn to the Lifeline voice service obligations. As to Lifeline-only ETCs, which historically participated specifically in order to provide Lifeline voice service, we do not alter the preexisting voice service obligation. Regarding existing ETCs that are not Lifeline-only, we deny the broadest requests for unconditional forbearance from the Lifeline voice obligation, but find it justified to grant certain conditional forbearance designed to promote broadband policy goals while protecting Lifeline consumers. We further make clear that entities newly designated as ETCs specifically for Lifeline broadband purposes do not have any Lifeline voice obligation under our interpretation of section 214(e).

(i) Lifeline-Only ETCs

325. We decline to forbear from existing Lifeline-only ETCs' obligations to offer Lifeline-discounted voice service. Lifeline-only ETCs were designated as ETCs for the specific purpose of providing Lifeline voice service.[814] The proposals for forbearance or other relief from Lifeline voice service obligations also have focused on ETCs that are not Lifeline-only, as we discuss below.[815] We thus find no basis in the record here to conclude that existing Lifeline-only ETCs are similarly situated to the

(Continued from previous page)
carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The [Commission] shall establish a time, not to exceed one year after the [Commission] approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.").

[813] *See* 47 U.S.C. § 214(e)(4).

[814] At the time existing Lifeline-only ETCs were designated, the only service for which they could receive support was voice service supported by the Lifeline mechanism, including the multiple functionalities that are encompassed within voice telephony service. *See, e.g.*, *Connect America Fund et al*., Fourth Order on Reconsideration, 27 FCC Rcd 8814, 8821-22, paras. 19-20 (2012) (explaining that a Lifeline-only ETC designation does not enable a carrier to receive high-cost support, and noting distinctions between such carriers and those that have received ETC designations that encompass the ability to receive high-cost support); *Connect America Fund et al*., Order on Reconsideration, 26 FCC Rcd 17633, 17633-35, paras. 2-4 (2011) (confirming the scope of supported voice services).

[815] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7864, paras. 125-26 (discussing arguments for relief from Lifeline voice service obligations, and citing the advocacy of entities that are designated ETCs for both high-cost and Lifeline purposes).

ETCs for which we grant some relief from otherwise-applicable Lifeline voice service obligations in the section below. As a result, existing Lifeline-only ETCs remain subject to Lifeline voice service obligations unless or until they relinquish their designations or otherwise seek—and justify—relief. Of course, consistent with the Lifeline reforms adopted in this Order, Lifeline-only ETCs not only can receive support for providing voice telephony to qualifying low-income subscribers, but alternatively when they provide Lifeline broadband Internet access service (with or without voice).[816] Given our phase-out of Lifeline support for voice-only service for many providers, we recognize that such ETCs might well take steps in response, such as relinquishing their Lifeline voice ETC designations, thereby eliminating any obligation under section 214(e)(1) and our implementing rules to provide the supported Lifeline voice telephony service.[817] Consistent with our interpretation and implementation of sections 214(e) and 254, however, we emphasize that ETCs have the option to seek relinquishment of only their Lifeline voice ETC designation, leaving them still eligible to receive Lifeline broadband support.[818]

(ii) ETCs That Are Not Lifeline-Only

326. *Conditional forbearance for existing ETCs' Lifeline voice obligation.* On several occasions, including in the *2015 Lifeline FNPRM*, the Commission has sought comment on the question of whether, or under what circumstances, carriers that currently are designated as ETCs for purposes of receiving both high-cost and Lifeline voice support should get relief from Lifeline voice service obligations (referred to here for convenience as High-Cost/Lifeline ETCs).[819] Primarily, such requests for relief have come from, or focused most extensively on, incumbent LECs that obtained ETC designations following the 1996 Act.[820] In the *2015 USTelecom Forbearance Order*, the Commission declined to grant forbearance from such obligations on the record there,[821] observing among other things that the record in this Lifeline rulemaking proceeding might persuade the Commission to reach a different result.[822] We likewise decline to grant the broadest forbearance from Lifeline voice obligations under the record here. In connection with the reforms otherwise being adopted, however, we are persuaded to grant forbearance from Lifeline voice service obligations targeted to areas where certain conditions are met.

327. Although the Commission stated in the *2015 USTelecom Forbearance Order* that the record in this Lifeline rulemaking proceeding might persuade the Commission to reach a different result regarding forbearance from Lifeline voice service obligations, the record here does not convince us to grant the broadest requests for forbearance.[823] In particular, we find persuasive here the Commission's reasoning in the *2015 USTelecom Forbearance Order* regarding the possibility of broadly forbearing from Lifeline voice service obligations for High-Cost/Lifeline ETCs.[824]

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[816] *See supra* section III.B.1 (Supported Modes of Service).

[817] *See id*.

[818] *See infra* para. 334.

[819] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7864, paras. 125-26.

[820] Existing High-Cost/Lifeline ETCs can include carriers other than price cap carriers or incumbent LECs, and we do not find evidence or arguments in the record here warranting a materially different analysis in the context of competitive ETCs that are not Lifeline-only ETCs. Consequently, our analysis below does not differentiate among such High-Cost/Lifeline ETCs.

[821] *See generally 2015 USTelecom Forbearance Order*, FCC 15-166, paras. 101-36.

[822] *Id*. at para. 134.

[823] *Id*. at para. 134.

[824] The *2015 USTelecom Forbearance Order* also involved requests for other forbearance from ETC designations and obligations beyond the scope of this Lifeline rulemaking proceeding. We thus focus here on the analysis in the *2015 USTelecom Forbearance Order* insofar as it was relevant to the evaluation of possible forbearance from ETCs' Lifeline service obligations.

328. With respect to the section 10(a)(2) consumer protection inquiry, the Commission, informed by the consumer protection goals in section 214(e)(4), found insufficient evidence to persuade it that the Lifeline voice service obligation for High-Cost/Lifeline ETCs was unnecessary to protect consumers.[825] As a threshold matter, the Commission was not persuaded that the geographic areas subject to potential forbearance were subject to the sort of marketplace conditions that would give it comfort with a less detailed analysis of the sort previously used when granting certain relief from high-cost service obligations in the *December 2014 CAF Order*.[826] Nor was the Commission persuaded that other consumer protection interests, such as broadband policy interests, "would be controlling or even instructive in the Commission's analysis."[827] As a result, the Commission concluded that it needed to consider detailed evidence of the ability of consumers to be served in the absence of the relevant ETC service obligation—evidence that it found lacking on the record there.

329. In this proceeding, we likewise find it necessary to evaluate forbearance based on detailed marketplace evidence as to forbearance from Lifeline voice service obligations other than the conditional forbearance we grant below. For one, we cannot take sufficient comfort in the marketplace conditions to justify evaluating unconditional forbearance from Lifeline voice service obligations via the less detailed analysis used in the *December 2014 CAF Order*. As to the geographic areas not within the scope of the high-cost voice forbearance in the *December 2014 CAF Order*, we reach that conclusion, like we did in the *2015 USTelecom Forbearance Order*, because these areas are not low-cost or served by an unsubsidized provider.[828] As to the geographic areas that were subject to high-cost voice forbearance in the *December 2014 CAF Order*, we conclude that a different approach is warranted for low-income consumers. As the Commission explained in the *2015 USTelecom Forbearance Order*, "[l]ow-income consumers may lack the resources to take advantage of alternative service options from non-Lifeline providers," and thus "we find it appropriate to evaluate marketplace conditions for low-income customers in a more focused manner, even in areas where we might naturally expect at least some level of competitive provision of service generally."[829]

330. Likewise, outside the context of the conditional forbearance we grant below, we do not find other consumer protection interests sufficient to counsel in favor of a less detailed marketplace analysis in granting forbearance. Absent a condition like that imposed on the forbearance we adopt below, we do not find a basis to expect that forbearance from Lifeline voice service obligations necessarily will advance our broadband policy goals.[830] We thus reject speculative assertions that unconditioned forbearance will promote broadband policy sufficient to warrant forbearance in-and-of themselves or justify a less detailed marketplace analysis to evaluate forbearance.[831]

331. Having concluded that a detailed evaluation of the sort described in the *2015 USTelecom Forbearance Order* is needed to evaluate unconditional forbearance from the Lifeline voice obligation for High-Cost/Lifeline ETCs, we likewise find the record insufficient to justify forbearance on that basis.[832]

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[825] *See, e.g.*, *2015 USTelecom Forbearance Order*, FCC 15-166, paras. 111-21, 136.

[826] *Id*. at para. 112.

[827] *Id*. at paras. 112, 131.

[828] *Id*. at para. 114.

[829] *Id*. at para. 118.

[830] *See 2015 USTelecom Forbearance Order*, FCC 15-166, para. 131 (finding a "lack of persuasive evidence that forbearance will meaningfully advance section 706's objectives").

[831] *See, e.g.*, *2015 USTelecom Forbearance Order*, FCC 15-166, para. 131 n.418 (including illustrative cites).

[832] Given our identified need for detailed marketplace information to evaluate possible broad, unconditional forbearance from the Lifeline voice service obligation, we likewise reject high-level claims that Lifeline reforms are likely to increase competition and obviate the need for Lifeline voice service obligations. *See, e.g.*, Letter from Linda Hood, General Attorney and Associate General Counsel, AT&T, to Marlene H. Dortch, Secretary, FCC, WC

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In particular, the Commission found the evidence insufficient to grant forbearance from Lifeline voice obligations (among other ETC obligations) in the *2015 USTelecom Forbearance Order*.[833] Although the Commission observed that additional evidence adduced in the record here might warrant a different conclusion, the record does not reveal any additional marketplace evidence that would warrant a grant of forbearance under such a detailed marketplace analysis.[834] Nor does the record include evidence regarding particular bright-line triggers or thresholds regarding numbers or types of providers that the Commission might rely on to grant forbearance where that number and type of provider is present.[835]

332. Our conclusions regarding unconditional forbearance from Lifeline voice obligations in this proceeding under section 10(a)(1) likewise are in accord with the Commission's section 10(a)(1) analysis in the *2015 USTelecom Forbearance Order*.[836] Particularly against the backdrop of our conclusions above that a detailed marketplace evaluation is needed to assess the effects of unconditional forbearance from Lifeline voice obligations, we agree that neither the limited evidence regarding the marketplace conditions nor the regulatory protections cited in granting certain high-cost voice forbearance in the *December 2014 CAF Order* would be sufficient to justify forbearance under section 10(a)(1) here.[837] Indeed, as the Commission emphasized in the *2015 USTelecom Forbearance Order*, "in all census blocks, low-income consumers could be at particular risk if there are gaps in coverage within the area where the price cap carrier previously offered Lifeline service."[838] We thus likewise find that unconditional forbearance from Lifeline voice service obligations is not warranted for High-Cost/Lifeline ETCs under section 10(a)(1).

333. We likewise find on the record here that unconditional forbearance from the Lifeline voice obligation for High-Cost/Lifeline ETCs would not be in the public interest under section 10(a)(3). In large part, this conclusion flows from the same considerations underlying our findings above that sections 10(a)(2) and 10(a)(1) are not satisfied as to such forbearance. Further, insofar as commenters premise arguments for forbearance on the costs of complying with Lifeline rules, we note that we streamline those requirements in various ways here (in addition to certain conditional forbearance from Lifeline voice service obligations that we do grant below).[839] We also find applicable here the

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Docket No. 11-42 at 5 (filed Jan. 20, 2016) (AT&T Jan. 20, 2016 *Ex Parte* Letter). Although we design our reforms in a manner intended to advance that objective, particularly in the case of the Lifeline broadband program, that does not constitute the sort of detailed market place evidence we have concluded is needed.

[833] *See generally 2015 USTelecom Forbearance Order*, FCC 15-166, paras. 101-36.

[834] *See id*. at para. 134. The Commission also noted "the interplay between broader Lifeline reforms and the request to forbear from Lifeline obligations," *id*., and as explained below we find for other reasons in this proceeding that certain conditional forbearance is, in fact, warranted, as discussed below.

[835] Comments in this regard involve general requests. *See, e.g.*, ITTA Reply at 8 n.30 (filed Sept. 30, 2015) ("Should the Commission decline to allow ILECs to opt out of the Lifeline program generally, however, it should consider providing ILECs the ability to withdraw from the program in certain circumstances, such as where there is sufficient competition among Lifeline providers. . . .").

[836] *Id*. at paras. 122-24, 136.

[837] *Id*. at paras. 122-23

[838] *Id*. at para. 124.

[839] *See, e.g.*, AT&T Comments at 5-6 (filed Aug. 31, 2015); Small Carriers Coalition Comments at 3 (filed Aug. 31, 2015); Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 at 5 (filed Sept. 15, 2014). We also are not persuaded that the risk of forfeitures counsels in favor of forbearance. *See, e.g.*, Small Carriers Coalition Comments at 3 (filed Aug. 31, 2015) (citing, among other things, "the risk of substantial forfeitures" in addition to compliance and administrative costs as making "continued participation in Lifeline cost-prohibitive for many carriers, particularly small carriers"). Our reforms adopted in this Order with respect to the verification process should reduce providers' risks from forfeitures associated with violations related to prior requirements in that regard. Even apart from that, we do not find it
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Commission's analysis rejecting forbearance from, among other things, Lifeline voice service obligations under section 10(a)(3) in the *2015 USTelecom Forbearance Order*.[840] We note in particular, as explained above, that we are unpersuaded by speculative arguments that unconditional forbearance will promote broadband policy goals. We thus conclude that unconditional forbearance from the Lifeline voice service obligation for High-Cost/Lifeline ETCs is not in the public interest under section 10(a)(3).

334. Some commenters argue that for competitive neutrality or other reasons, existing ETCs with broad designations should be allowed to choose whether or not to provide Lifeline voice service, or that participation in Lifeline should be de-linked from participation in high-cost.[841] We are not persuaded that such arguments are sufficient to justify forbearance from Lifeline voice service obligations. In particular, we are not persuaded that such concerns are sufficient to overcome our identified need for detailed marketplace information to evaluate unconditional forbearance from the Lifeline voice service obligation. Further, as the Commission observed in the *2015 USTelecom Forbearance Order*, the section 214(e)(4) relinquishment process remains available to ETCs.[842] Indeed, as we explain above, we interpret section 214(e) to accommodate ETC designations specific to particular universal service mechanisms or programs. Insofar as ETC designations can be obtained on a mechanism- or program-specific basis, we likewise find it reasonable to interpret section 214(e)(4) as allowing ETC designations to be relinquished on a mechanism- or program-specific basis.[843] Thus, a High-Cost/Lifeline ETC would, for instance, be free to seek to relinquish just its ETC designation for Lifeline purposes without relinquishing its designation for high-cost purposes. We thus find no basis to depart from our conclusion above that unconditional forbearance is not warranted on the record here.

335. *Conditional forbearance.* Although we reject arguments for broader or different forbearance from Lifeline voice service obligations under the theories described above, we do find the section 10(a) criteria met to grant conditional forbearance from the Lifeline voice obligation under a different theory for existing ETCs with designations enabling receipt of both high-cost support and Lifeline voice support.[844] In particular, for such ETCs we grant forbearance from the obligation to offer

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appropriate to give weight to such arguments here, in the abstract. Under section 503(b)(2)(E) of the Act, any specific forfeiture ultimately imposed by the Commission "shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." 47 U.S.C. § 503(b)(2)(E). The Commission more effectively can consider the potential effect of a given forfeiture or forfeitures on continued Lifeline participation under that statutory framework in conjunction with all other relevant circumstances before it on a case-by-case basis to the extent warranted.

[840] *Id*. at paras. 125-33, 136.

[841] *See, e.g.*, AT&T Jan. 20, 2016 *Ex Parte* Letter at 5; USTelecom Refresh PN Comments at 3 (filed Sept. 9, 2015); AT&T Comments, WC Docket No. 11-42 et al., CC Docket No. 96-45, at 19 (filed Apr. 2, 2012).

[842] *See, e.g.*, *2015 USTelecom Forbearance Order*, FCC 15-166, paras. 125, 126 & n.407, 130. *See also, e.g.*, NASUCA Refresh PN Reply at 7 (filed Sept. 24, 2015) ("An ETC's compliance with the Section 214(e)(4) process protects the public interest by allowing the state that granted the original ETC designation, or the FCC in the absence of state jurisdiction, to ensure that the ETC's obligations that would be relinquished are taken up by a replacement ETC."). *Cf.* Small Carriers Coalition Comments at 9-10 (filed Aug. 31, 2015) (proposing a procedural mechanism for de-linking Lifeline obligations for high-cost ETCs through the use of the relinquishment process).

[843] Given the Commission's authority to interpret the Act, our interpretation of section 214(e) governs all application of that provision, whether by the Commission or by a state. *See, e.g.*, 47 U.S.C. §§ 154(i), 201(b), 303(r).

[844] By its terms, section 214(e)(1), in pertinent part, imposes service obligations on telecommunications carriers—namely, ETCs. *See generally* 47 U.S.C. § 214(e)(1). Failure to meet any applicable service obligations subjects carriers to potential enforcement by the Commission. *See, e.g.*, 47 U.S.C. §§ 208, 503. Thus, we conclude that the section 214(e)(1) service obligations represent provisions of the Act that the FCC can forbear from applying to a telecommunications carrier or class of telecommunications carriers where it finds the section 10(a) criteria met, as we do in various respects in this Order, and as we have done in the past. *See, e.g.*, *Dec. 2014 CAF Order*, 29 FCC
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and advertise Lifeline voice service where the following conditions are met: (a) 51percent of Lifeline subscribers in a county are obtaining BIAS; (b) there are at least three other providers of Lifeline BIAS that each serve at least five percent of the Lifeline broadband subscribers in that county; and (c) the ETC does not actually receive federal high-cost universal service support.[845] Notably, this condition allows us to reach a different conclusion than we do above regarding the impact of forbearance on our broadband policy goals. Because we conclude that this condition is likely to result in forbearance that promotes our broadband policy goals, our decision is resolved based on higher-level weighing and balancing of facts and policy considerations,[846] rather than following a detailed marketplace evaluation as described in the *2015 USTelecom Forbearance Order* and in our analysis of unconditional forbearance above.[847] This forbearance from the obligation to offer Lifeline voice service under section 214(e)(1)(A) and our implementing rules also does not encompass the High-Cost/Lifeline ETC's existing Lifeline voice service subscribers served at the time the condition is met, further ensuring that consumers are adequately protected.

336. We conclude that such conditional forbearance is, on net, in the public interest under section 10(a)(3) because it strikes the right balance between creating additional incentives for providers to promote the deployment and availability of broadband networks and services while adequately protecting the interests of low-income voice service users. In particular, it is clear from the record that a number of carriers that historically have provided Lifeline voice telephony service—particularly incumbent LECs—no longer wish to do so, at least not to the full extent they did so in the past.[848] When existing High-Cost/Lifeline ETCs were designated, the designations broadly encompassed both high-cost and Lifeline voice mechanisms by default, consistent with the Commission's policy intent at the time—which we now depart from in certain respects, as described in this Order—and without the type of more nuanced designations that are feasible under our current interpretation and implementation of sections 214(e) and 254.[849] These ETCs also commonly provide both voice telephony service and BIAS (among other

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Rcd at 15663-71, paras. 50-70. We thus reject arguments suggesting that the Commission cannot grant ETCs relief from those obligations. *See, e.g.*, Letter from James Bradford Ramsay, NARUC General Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 at 4 (filed Feb. 18, 2016). We also note that an additional consequence of such forbearance is that states are precluded from applying the forborne-from provisions. 47 U.S.C. § 160(e).

[845] 47 U.S.C. § 214(e)(1). The condition on forbearance is described in greater detail below. *See infra* paras. 354-360.

[846] As noted above, the D.C. Circuit has held that within the statutory framework that Congress established the Commission "possesses significant, albeit not unfettered, authority and discretion to settle on the best regulatory or deregulatory approach to broadband." *Ad Hoc Telecommunications Users Committee v. FCC*, 572 F.3d 903, 906-07 (D.C. Cir. 2009). *See also, e.g.*, *2015 USTelecom Forbearance Order*, FCC 15-166, para. 12 & n.376 (noting how broadband policy considerations under section 706 of the 1996 Act can inform the analysis under all prongs of section 10(a)).

[847] *See 2015 USTelecom Forbearance Order*, FCC 15-166, paras. 101-36; *supra* paras. 327-334.

[848] *See, e.g.*, *2015 Lifeline FNPRM*, 30 FCC Rcd at 7863, paras. 125-26 (discussing arguments seeking relief from Lifeline voice service obligations).

[849] *See, e.g.*, *Federal-State Joint Board on Universal Service et al.*, Report and Order, 12 FCC Rcd at 8961, para. 347 ("We concur with the Joint Board's conclusion and reasoning that, to increase subscribership among low-income consumers, we should modify the Lifeline program so that qualifying low-income consumers can receive Lifeline service from all eligible telecommunications carriers. Our determination arises from a concern that, in certain regions of the nation, carriers may not offer Lifeline service unless compelled to do so. In requiring all eligible telecommunications carriers to offer Lifeline service to qualifying low-income consumers, we make Lifeline part of our universal service support mechanisms.") (footnote omitted). *See also, e.g.*, AT&T Jan. 20, 2016 *Ex Parte* Letter at 5.

services),[850] and it is our predictive judgment that providing relief from Lifeline voice service requirements based on an area reaching a defined level of Lifeline broadband subscribership and competition will give these providers strengthened incentives to take steps to promote subscribership, whether for their own broadband Internet access service offerings in particular or for broadband Internet access service offerings more generally.

337. Creating additional incentives for providers to promote broadband subscribership advances section 254's goals of access to, and affordability of, advanced telecommunications services.[851] The increased demand for, and usage of, broadband Internet access service that will be fostered by the broadband providers' efforts also will further section 706 of the 1996 Act.[852] We also are persuaded that forbearance from Lifeline voice service obligations also at least incrementally is likely to free up service provider funds for broadband investment, while conditioning such forbearance on an area reaching a defined level of broadband penetration helps better ensure—in a way that unconditional forbearance does not—that such service provider funds are, in fact, used to promote broadband deployment and subscribership.

338. We recognize that the Commission has in the past identified the public interest benefits of promoting affordable voice service for low-income consumers, but we expect that any effect on such consumers from the conditional forbearance is likely to be limited, and outweighed by the anticipated broadband policy benefits. For one, we conclude elsewhere in this item that the need for such Lifeline-subsidized voice service is substantially reduced, leading us to phase out support for standalone voice service more generally.[853] Moreover, as we explain there, we fully expect increasingly lower-priced voice service to continue to be available even absent a Lifeline benefit for standalone voice service, for example as part of packages or bundles of services including broadband Internet access service, which will remain subject to Lifeline support, and which this Lifeline voice forbearance does not affect. We thus conclude that the conditional forbearance we grant is unlikely to harm that set of consumers, nor, as to that group of consumers, is conditional forbearance likely to be in any tension with the principle in section 254(b) to preserve and promote affordable service.[854]

339. At the same time, we also recognize that our policy judgment about how best to transition the Lifeline program to become more broadband-focused envisions a continuing role for some Lifeline voice support, more so in the near term, but potentially even to some degree over the longer term. Based on the record, we cannot readily quantify the anticipated broadband policy benefits from this conditional forbearance, nor can we readily quantify any countervailing effects of forbearance on any low-income consumers who would prefer the Lifeline voice service offerings that otherwise would be available under

[850] Indeed, the provision of broadband Internet access service now is a public interest obligation associated with the receipt of high-cost universal service support. *See, e.g., Dec. 2014 CAF Order*, 29 FCC Rcd at 15648-56, paras. 13-29.

[851] 47 U.S.C. § 254(b)(1)-(3).

[852] The Commission, for example, conducts its section 706(b) inquiry regarding deployment and availability of advanced telecommunications capability under section 706 by considering factors such as such as price, quality, and adoption by consumers, as well as physical network. *2016 Broadband Progress Report*, 31 FCC Rcd at 741-42, para. 95 & n.273.

[853] *See supra* section III.B.1 (Supported Modes of Service). Although we provide a multi-year phase-out for Lifeline support for stand-alone mobile voice generally, the potential for this Lifeline voice forbearance to grant relief from Lifeline voice service obligations on a more rapid timeframe is offset as to these consumers by the benefits in promoting our broadband policy goals.

[854] 47 U.S.C. § 254(b).

our Lifeline rules if the Lifeline voice service obligation remained.[855] Nonetheless, we are persuaded that the public interest, on net, counsels in favor of forbearance for several reasons.

340. First, our conditional forbearance does not grant relief from the Lifeline voice service obligation as to those Lifeline subscribers that the High-Cost/Lifeline ETC serves at the time the forbearance condition is met. Those subscribers effectively are grandfathered to avoid possible disruption that otherwise might occur when forbearance newly applies in the area they live. We anticipate that this, in and of itself, is likely to protect the interests of many, if not most, Lifeline subscribers who prefer the legacy Lifeline voice service offerings, and whose interests we recognize in our broader Lifeline policy decisions. At the same time, the High-Cost/Lifeline ETCs have a discrete, well-defined remaining Lifeline voice service obligation, and can provide such subscribers incentives to transition to new service offerings to enable the ETCs to take full advantage of the Lifeline voice service forbearance.

341. Second, if the Commission were to deny conditional forbearance from Lifeline voice service obligations as to the remaining consumers—those who are not subject to the grandfathering described above—we expect that providers would need to retain much, if not all, of their infrastructure used to serve Lifeline voice subscribers just to potentially serve that narrower segment of overall Lifeline subscribers, not knowing if or when such subscribers might seek service. The High-Cost/Lifeline ETCs thus would continue incurring costs that they otherwise could direct to broadband investment.[856] Insofar as the benefit of forbearance to providers thus would be substantially reduced, we conclude that this likewise would materially dampen—and in some cases, entirely eliminate—what otherwise would be increased incentives by those providers to spur greater broadband penetration.

342. Third, conditional forbearance from the Lifeline voice service obligation for High-Cost/Lifeline ETCs does not preclude carriers from electing to provide the supported Lifeline voice service and from receiving universal service support for doing so. Rather, it simply eliminates that mandatory obligation for them to do so under section 214(e)(1) and our implementing rules. Further, as the Commission observed in the *December 2014 CAF Order*, additional protections come from the service discontinuance process under section 214(a) and the authority under section 214(e)(3) to require a carrier to provide the supported service in a community or portion thereof requesting that service if no carrier will do so.[857] Moreover, this forbearance from the Lifeline voice service obligation does not alter

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[855] In particular, although we cannot precisely quantify the anticipated benefits of conditional forbearance in terms of broadband deployment and availability, *see, e.g.*, NASUCA Refresh PN Reply at 9 (filed Sept. 24, 2015), the record also does not enable a price quantification of any costs of conditional forbearance. We thus weigh these considerations in the best manner feasible given the record and our associated policy judgment as described in the text. We note that the context of our forbearance decision here is different from that of a section 10(c) petition, where the petitioner bears the burden of proof. *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act, as Amended*, 24 FCC Rcd 9543, 9554–55, para. 20 (2009). Rather, our forbearance decision is conducted under the general reasoned decision making requirements of the APA. *See, e.g.*, *Open Internet Order*, 30 FCC Rcd at 5806-07, para. 438.

[856] By this we mean not only physical network infrastructure, but also other infrastructure like that required for billing and other administrative functions associated with providing Lifeline voice service. *See, e.g.*, JSI et al., Petition for Reconsideration Reply at 4 n.8 (filed Sept. 28, 2015); Letter from Anisa A. Latif, Director, Federal Regulatory, AT&T to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-42 at 2-3 & n.3 (filed Dec. 21, 2015).

[857] *See, e.g.*, *Dec. 2014 CAF Order*, 29 FCC Rcd at 15666-67, 15668-69, paras. 58, 60, 63-65. At the same time, we do not expect these regulatory backstops to materially diminish the incentives for existing High-Cost/Lifeline ETCs to promote deployment and availability of broadband Internet access in order to obtain the conditional forbearance. The Commission has considerable discretion in how it makes a section 214(a) public interest finding, and as that process enables us to guard against unreasonable levels of customer hardship, we also recognize our interest in creating incentives for promoting broadband policy goals. *See, e.g.*, *FCC v. RCA Commc'ns, Inc.*, 346 U.S. 86, 90-91 (1953) (ruling that the Commission has considerable discretion in deciding how to make its section 214 public interest finding); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, 85 FCC 2d 1, 49 (1980) ("[W]e have retained the right to delay

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the regulatory framework established in this order for Lifeline broadband service. ETCs providing Lifeline broadband service are likely to have incentives to seek to attract customers to their Lifeline broadband offerings and to maximize the utilization of their networks. Providing attractive voice service offerings to subscribers of their Lifeline broadband service is one way to help achieve that. Such offerings will provide further alternatives for low-income consumers.[858]

343. Fourth, we expect that the actions broadband providers take to promote broadband penetration in an effort to gain relief from Lifeline voice service obligations are likely to benefit low-income consumers, as well as the public more generally. In particular, we expect that providers seeking to trigger the conditional forbearance we grant are likely to undertake a variety of efforts, ranging from reducing the price and/or increasing the capabilities of a service at a given price point for retail broadband Internet access service offerings, making available attractive wholesale broadband Internet access service offerings, or undertaking other efforts such as digital literacy training or other measures to overcome barriers to broadband adoption.[859] As broadband Internet access service becomes ever more important for all consumers, such efforts are likely to benefit many of the same consumers who currently might desire the otherwise-available Lifeline voice service offerings. In this scenario, then, the effects of conditional

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grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result."). In particular, the Commission traditionally considers a number of factors in assessing section 214(a) discontinuance applications, including (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations. *Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service through Physical Collocation*, Order, 18 FCC Rcd 22737, 22742, para. 8 (2003). As observed in the prior paragraph, for instance, we recognize that a financial impact on the carrier of continuing to provide service could arise from the need to retain much, if not all, of their infrastructure used to serve Lifeline voice subscribers to serve what might be a relatively small segment of potential subscribers. *See supra* para. 341. Likewise, under section 214(e)(3) the relevant regulatory authorities identify the carrier or carriers that are best able to provide service to the relevant community or portion thereof, which need not be the carrier or carriers that availed themselves of this conditional forbearance. Insofar as our analysis is informed in part by the section 214(e)(4) relinquishment mechanism (while not formally bound by it), these protections also give us comfort that we can guard against the unlikely scenario where no voice service at all ultimately would be available in a manner sufficient for purposes of the overall weighing of policy considerations and conclusions that conditional forbearance is not contrary to the interests of consumers and that conditional forbearance is in the public interest in this context. *See, e.g.*, Ma. DTE Comments at 5 (filed Aug. 31, 2015) (expressing concern about a possible lack of continuity of service).

[858] Thus, although some commenters express concern about whether such alternatives will be sufficiently affordable, we find reason to believe that providers are likely to have incentives to make available affordable offerings. *See, e.g.*, Letter from Matthew F. Wood, Policy Director, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 at 3 (filed Feb. 26, 2016) (expressing concern that even discounted fixed broadband options that include voice capability might not be affordable or at least some subscribers). Moreover, our forbearance decision does not rest solely on this ground, but relies on it as part of a wider range of considerations, including our tailoring of the scope of forbearance to effectively grandfather an ETC's existing voice Lifeline subscribers, as described above, which will protect many of the relevant subscribers.

[859] *See, e.g.*, *2016 Broadband Progress Report*, 31 FCC Rcd at 757-58, paras. 136-38 (describing various public and private sector initiatives); *2015 Broadband Progress Report*, 30 FCC Rcd at 1457-59, paras. 146-50 (discussing certain factors bearing on availability and adoption). *See also, e.g.*, Letter from Amina Fazlullah, Director of Policy, Benton Foundation to Marlene H. Dortch, Secretary, FCC WC Docket No. 11-42, Attachs. (filed Dec. 23, 2015) (attaching documents describing ways to promote availability and subscribership of broadband Internet access service through measures such as digital literacy training and providing discounted broadband Internet access service and associated equipment); Letter from Jordan B. Goldstein, Vice President, Regulatory Affairs, Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-42 at 1-2 (filed Dec. 21, 2015) (advocating that the Commission "promote the development of comprehensive broadband adoption programs" and discussing examples).

forbearance on such consumers inherently are themselves mixed, with benefits to those consumers coupled with, at most, some potential risks for those consumers.

344. Finally, we also expect that the efforts providers undertake to trigger the conditions necessary for Lifeline voice forbearance are likely to promote competitive market conditions for broadband Internet access service. As indicated above, we anticipate that by making available this conditional forbearance, providers will have incentives to take steps such as reducing the price and/or increasing the capabilities of their broadband Internet access service at a given price point to spur adoption of their own broadband Internet access service. Facilities-based providers with a voice obligation may also seek to offer attractive wholesale data prices, for example, so other Lifeline providers can also increase broadband penetration. Where there are alternative broadband Internet access service providers to the existing ETCs, such actions are likely to promote competition. Under section 10(b), the Commission is directed, in making the section 10(a)(3) public interest evaluation, to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions."[860] "If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest."[861] Our finding that forbearance is likely to promote competitive market conditions reinforces the remainder of our analysis above, which persuades us that the conditional forbearance we adopt is in the public interest.

345. We are unpersuaded by claims that forbearance would be contrary to the public interest insofar as it might reduce the number of Lifeline voice service providers and/or competition for Lifeline voice service customers.[862] Although competition for Lifeline service can have benefits, that must be evaluated in the context of other policy considerations. As we explain above, we are modernizing our Lifeline efforts to support broadband Internet access service given its importance to consumers and consistent with the Commission's responsibilities under section 254 of the Act and section 706 of the 1996 Act.[863] At the same time, we find an at least somewhat diminished need for Lifeline-supported voice service where the relevant conditions are met.[864] Moreover, we grandfather existing Lifeline voice service customers obtaining service at the time forbearance newly applies in a given county, providing protection for the customers at greatest potential risk of disruption. In this context, and for the reasons described above, we conclude that the conditional forbearance we grant properly weighs our various universal service objectives and our broader broadband policy goals, and that such forbearance is in the public interest.

346. We also reject arguments suggesting that the Act requires the Commission to prioritize competition in the provision of Lifeline-subsidized service over all other considerations.[865] Although section 214(e)(2) anticipates multiple ETCs, at least in some areas, ETC designation deals only with the eligibility for support, and does not actually guarantee the receipt of support—and, consequently, does not guarantee that all ETCs will provide services discounted through the receipt of universal service

[860] 47 U.S.C. § 160(b).

[861] *Id*.

[862] *See, e.g.*, Pennsylvania PUC Comments at 27 (filed Aug. 31, 2015); Michigan PSC Comments at 13 (filed Aug. 18, 2015); NASUCA Refresh PN Reply at 10 (filed Sept. 24, 2015).

[863] *See supra* section III.A (Modernizing Lifeline to Support Broadband).

[864] *See supra* section III.B.1 (Supported Modes of Service) (discussing phase-out of support for voice-only service).

[865] *See, e.g.*, Pennsylvania PUC Comments at 26 (filed Aug. 31, 2015) ("Section 214(e)(2) of the Act provides for the designation of more than one carrier as an ETC. . . . Clearly, Congress envisioned several ETCs, at least in urban areas, offering competitively provided universal service and established a framework for competition in all areas of telecommunications, including universal service.").

funding.[866] We therefore conclude that in evaluating forbearance from the Lifeline voice service obligation, section 214(e) does not require us to prioritize having a greater number of providers over the other policy considerations relevant in this context under section 254 of the Act and section 706 of the 1996 Act.

347. We also disagree that any diminution in competition or loss of options for voice service from conditional forbearance from the Lifeline voice obligation for High-Cost/Lifeline ETCs necessarily will leave only inferior or less desirable service offerings so as to render conditional forbearance contrary to the public interest.[867] As we explain above, the extent to which the loss of competition or of particular service offerings is, in fact, likely to occur is itself speculative, particularly against the backdrop of other Lifeline reforms adopted in this Order. Moreover, any comparison of different service offerings involves some trade-offs, and we are not persuaded that the examples in the record demonstrate that a particular offering is inherently superior for all customers.[868] We thus find no basis to depart from our section 10(a)(3) determination above that conditional forbearance is in the public interest.

348. Nor does our conditional forbearance from the Lifeline voice service obligation in section 214(e)(1) and our implementing rules interfere with state interests in a manner that cuts against forbearance. Forbearance from these requirements under federal law does not alter regulatory obligations imposed under state law authority,[869] and we thus reject arguments against forbearance on those grounds.[870] Further, some commenters express concern that the providers required to offer voice service subsidized by state low-income support programs might no longer be providing federal Lifeline-supported voice service as a result of forbearance.[871] Rather than trying to craft federal universal service policy to mirror the variations and nuances of state-adopted universal service programs, however, we conclude instead that it best serves the public interest and our statutory responsibilities to adopt the same conditional forbearance that is available in all areas of the nation where the conditions are met. States remain free, consistent with section 254(f), to adopt their own universal service policies not inconsistent with those of the Commission, including, to the extent that they deem it warranted, modifying their own state low-income support programs to make funding available to a wider range of providers or to increase state support levels.

349. The forgoing analysis also persuades us that retaining the Lifeline voice service obligation in areas where the Lifeline broadband subscribership and competition condition is met is not necessary for the protection of consumers under section 10(a)(2). For the reasons described in the paragraphs above, we conclude that consumers as a whole are likely to benefit more from our conditional forbearance than from retaining the Lifeline voice service obligation. Even as to low-income consumers who desire the Lifeline voice service offerings that otherwise would remain available under our rules, the result of forbearance appears to be at most mixed, and under these circumstances, particularly as guided by policies of section 706 of the 1996 Act, we conclude that the Lifeline voice requirement is not

[866] *See, e.g.*, *2015 USTelecom Forbearance Order*, FCC 15-166, para. 139.

[867] *See, e.g.*, NASUCA Refresh PN Reply at 11-12 (filed Sept. 24, 2015).

[868] *See, e.g.*, *id*. (alleging differences in the included level of usage and in continuity of service ease for Lifeline subscribers once they no longer qualify for Lifeline). We also find it speculative whether, or to what extent, historical differences cited in the record are material to our analysis here and are likely to persist in the future, given our Lifeline reforms.

[869] *See, e.g.*, *Dec. 2014 CAF Order*, 29 FCC Rcd at 15669-70, para. 67.

[870] *See, e.g.*, NASUCA Refresh PN Reply at 8-9 (filed Sept. 24, 2015).

[871] Ca. PUC Comments at 33-34 (filed Sept. 24, 2015).

necessary to protect consumers under section 10(a)(2) where the Lifeline broadband subscribership and competition condition is met.[872]

350. We also conclude that the Lifeline voice service obligation is not necessary to ensure just, reasonable, and not unjustly or unreasonably discriminatory rates and practices under section 10(a)(1). As relevant to section 10(a)(1), commenters' arguments appear to center on the effect of forbearance from the Lifeline voice service obligation on rates.[873] Thus, we focus our section 10(a)(1) analysis here by considering whether the conditional forbearance we grant from the Lifeline voice service obligation for High-Cost/Lifeline ETCs would have a negative effect on the justness and reasonableness of rates. Because we are dealing with obligations relating to supported services under section 254, our interpretation of what is "just" and "reasonable" for purposes of section 10(a)(1) is informed by section 254. Notably, under section 254(b)(1) and 254(i), the question of whether rates are "just" and "reasonable" is distinct from whether they are "affordable."[874] Given the relevant overlay of section 254 here, in this context we therefore consider under section 10(a)(1) only whether the Lifeline voice service obligation is necessary to ensure just and reasonable and not unjustly or unreasonably discriminatory rates distinct from the question of affordability (which we fully consider in our analysis under other prongs above).[875]

351. On the record here, we are not persuaded that the Lifeline voice service obligation is necessary to ensure just and reasonable rates or rates that are not unjustly or unreasonably discriminatory where the conditions on forbearance are met. Some of these areas will remain served by ETCs with high-cost voice service obligations, requiring them to offer and advertise voice telephony service throughout their designated service area. We find no basis in the record here to conclude that the rates charged for voice telephony services in these areas are likely to be unjust, unreasonable, or unjustly or unreasonably

[872] *See Open Internet Order*, 30 FCC Rcd at 5840-41, para. 496 (discussing the Commission's discretion in interpreting ambiguous terms in sections 10(a)(1) and (a)(2) and how that can be informed in appropriate instances by the goals of section 706).

[873] *See, e.g.*, NASUCA Refresh PN Reply at 10 (filed Sept. 24, 2015). Although NASUCA also expresses concerns about the relative trade-offs in the terms and conditions of services under historical offerings compared to those that might exist post-forbearance, those arguments are framed in terms of public interest and/or consumer protection considerations, and we address them as such above. In particular, while these comments allege relative benefits of the nature of some offerings relative to others, they do not claim that any of them fall short of what is just, reasonable, and not unjustly or unreasonably discriminatory in an absolute sense.

[874] 47 U.S.C. § 254(b)(1) ("Quality services should be available at just, reasonable, and affordable rates."); 47 U.S.C. § 254(i) ("The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.").

[875] In particular, we consider possible effects on affordability of the services within the definition of universal service for Lifeline purposes under our public interest and consumer protection analyses above. We note that in the *2015 Lifeline FNPRM*, the Commission granted forbearance from the ILECs' section 251(c) resale obligation as it relates to Lifeline service, citing in its section 10(a)(1) analysis the fact that "low-income consumers will still be able to receive Lifeline-supported services from both wireless and wireline providers." *2015 Lifeline FNPRM*, 30 FCC Rcd at 7902, para. 253. The fact that such a finding could be *sufficient* to demonstrate that section 10(a)(1) is satisfied does not imply such a finding is *necessary* to demonstrate that section 10(a)(1) is satisfied in the Lifeline context, particularly given the overlay of section 254(b)(1) and 254(i) as discussed above. Moreover, we also reject arguments that granting such forbearance undercuts the section 251(c) Lifeline resale forbearance previously granted, given our analysis here that conditional forbearance from the Lifeline voice service obligation is warranted under the section 10(a) criteria without any presumption of a particular level of marketplace participation of Lifeline ETCs. *See, e.g.*, NASUCA Refresh PN Reply at 10 (filed Sept. 24, 2015). For these reasons, as well as those stated in the text, in the context of our section 10(a)(1) analysis here we reject arguments suggesting that affordability is an element of the justness and reasonableness of rates. *See, e.g.*, Letter from AARP, WC Docket No. 11-42, at 1 (filed Feb. 22, 2016).

discriminatory as relevant to our section 10(a)(1) inquiry here if we forbear from the Lifeline voice service obligation where the relevant conditions are met.

352. As to the remaining areas, the Commission granted forbearance from high-cost voice service obligations only after concluding that competition and other regulatory protections were adequate to, among other things, ensure just and reasonable and not unjustly or unreasonably discriminatory rates.[876] We find no basis on the record here to reach a different conclusion regarding forbearance from the Lifeline voice service obligation in these areas under section 10(a)(1), insofar as the relevant conditions on forbearance are satisfied.

353. As an overlay to the forgoing analysis regarding voice telephony service rates, we note that in evaluating forbearance from applying Lifeline voice service obligations to a class of telecommunications carriers (carriers that are ETCs for both high-cost and legacy Lifeline voice purposes), section 10(a)(1) speaks to the justness and reasonableness of rates (and practices) by those telecommunications carriers generally. Although we consider whether forbearance from the Lifeline voice service obligation will affect the justness and reasonableness of rates for voice telephony service, we also consider the effect of forbearance on these ETCs' broadband Internet access service. As described above, we anticipate that the potential to achieve conditional forbearance will spur ETCs to take actions that spur competition in the marketplace for broadband Internet access service.[877] The Commission previously has recognized that competition helps ensure just and reasonable rates.[878] As part of our section 10(a)(1) analysis, we thus include the predictive judgment that, in the context of broadband Internet access service, forbearance is likely to have some effect in promoting or enhancing just and reasonable rates. Under the totality of the analysis above, we therefore find that the Lifeline voice service obligation is not necessary to ensure just, reasonable, and not unjustly and unreasonably discriminatory rates and practices under section 10(a)(1).

354. *Details of the forbearance condition.* We adopt a condition on forbearance from the Lifeline voice service obligation for High-Cost/Lifeline ETCs that we conclude is intended to create incentives for those carriers to promote broadband Internet access service subscribership and competition, targeted in this context to low-income consumers. To this end, forbearance from the Lifeline voice service obligation is granted where the following conditions are met: (a) 51 percent of Lifeline subscribers in a county are obtaining Lifeline broadband Internet access service; (b) there are at least three other providers of Lifeline BIAS that each serve at least five percent of the Lifeline broadband subscribers in that county; and (c) the ETC does not actually receive federal high-cost universal service support.[879] As explained earlier in this section, a number of High-Cost/Lifeline ETCs have argued that application of the Lifeline voice obligation to them is unnecessary given other alternative voice options, and that such regulatory relief would free up resources to enable the advancement of broadband policy goals.[880] The condition on forbearance that we adopt today enables us to ensure—in a way that those providers' proposals themselves did not—that regulatory relief from such ETCs' Lifeline voice service obligations genuinely will advance our broadband policy goals.[881] We further expect that the resulting broadband

[876] *Dec. 2014 CAF Order*, 29 FCC Rcd at 15666, paras. 56-58.

[877] *See supra* paras. 343-344.

[878] *See, e.g.*, *2015 USTelecom Forbearance Order*, FCC 15-166, para. 60 (weighing the anticipated role of competition in constraining rates and practices as part of the overall section 10 analysis).

[879] Because we find forbearance warranted where these readily-identifiable triggers are met, we reject concerns that forbearance from the Lifeline voice obligation would raise administrability concerns that counsel against such relief. *See, e.g.*, Pennsylvania PUC Comments at 27 (filed Aug. 31, 2015).

[880] *See supra* para. 330.

[881] *See supra* paras. 343-344.

marketplace not only will advance our broadband policies but will itself foster additional affordable options for voice service, as well.[882]

355. We adopt the first two elements of our forbearance condition to advance our policy goals of creating incentives to promote broadband Internet access service subscribership and competition, particularly for low-income consumers, but recognize that we are engaged in a line-drawing exercise that cannot be resolved by available data.[883] Regarding our subscribership criteria, we find that a requirement that a county have at least 51 percent of Lifeline subscribers that are subscribing to Lifeline broadband Internet access service establishes a threshold demonstrating that a meaningful portion of Lifeline subscribers are taking advantage of our new Lifeline broadband program.[884] At the same time, we recognize that, because the Lifeline broadband program is newly-established, setting the threshold too high could result in diminished or delayed incentives by High-Cost/Lifeline ETCs to encourage such subscribership and competition if the threshold was viewed as unattainable in any reasonable timeframe. We believe the threshold we adopt appropriately balances these considerations.

356. Our competition criteria likewise seeks to balance our goal of promoting a meaningful level of competition for Lifeline broadband Internet access service subscribers, with the realities that this is a new program.[885] A requirement that a county have at least three other providers of Lifeline BIAS besides the High-Cost/Lifeline ETC that would avail itself of our forbearance, with each of those other Lifeline broadband providers serving at least five percent of the Lifeline broadband subscribers in the county demonstrates some level of competition.[886] It also is our predictive judgment that, even though the

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[882] *See supra* para. 342.

[883] *See, e.g.*, *Cassell v. FCC*, 154 F.3d 478, 485 (D.C. Cir. 1998) (to demonstrate abuse of discretion, a petitioner must show that "lines drawn ... are patently unreasonable, having no relationship to the underlying regulatory problem.") (internal quotations omitted).

[884] As we explain elsewhere, given the increasing importance of broadband Internet access service, today we are modernizing our universal service policies for low-income subscribers to reflect that increased importance, and taking this step to further promote broadband Internet access service subscribership by low-income consumers helps advance those overall goals. *See supra* section III.A (Modernizing Lifeline to Support Broadband) (describing the importance of broadband Internet access service, the role of universal service support for modern communications services for low-income consumers, and how the reforms adopted in this Order advance our statutory responsibilities).

[885] As explained earlier in this section, we conclude that it advances our universal service policy implementation of section 254 of the Act to promote competition for Lifeline broadband services. *See generally* section III.B (Characteristics of Lifeline Support). Competition among broadband Internet access service providers also advances the objectives of section 706 of the 1996 Act. 47 U.S.C. § 1302(a), (b).

[886] The Commission has previously acknowledged that competition between even two providers theoretically can result in meaningful competition in some circumstances, *see, e.g.*, *Petition of Qwest Corporation For Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8637, para. 30 (2010), but by adopting a materially higher threshold for the number of competitors we avoid such questions. By requiring that each of the other providers need only serve 5 percent of the Lifeline broadband Internet access service subscribers, we are persuaded that that this threshold remains realistically attainable, while guarding against the possibility of counting purely *de minimis* providers in identifying the counties where forbearance applies. *Cf. Inquiry Concerning the Deployment of Advanced Telecommunications Capability To All Americans In A Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant To Section 706 of the Telecommunications Act Of 1996, As Amended By the Broadband Data Improvement Act*, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, 8026, para. 31 (2011) (evaluating whether broadband is deployed in an area based on subscribership data, including evaluations based on alternative approaches using one percent, five percent, or 25 percent subscribership thresholds as *de minimis*); *GTE Telecom Incorporated Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.01 of the Commission's Rules and Regulations for International Resale Switched Service and Facilities-based Service to Various Countries*, Order, Authorization and Certificate, 12 FCC Rcd 15939, 15946-47, para. 13 & n.26 (IB, 1996) (finding GTE's market share on the U.S.-Canada route to be *de minimis*, noting

(continued….)

Lifeline broadband program is new, and some providers thus will need to seek Lifeline broadband ETC designations before competing for those subscribers, this threshold is likely to be realistically attainable in many circumstances.[887]

357. The subscribership and competition thresholds we adopt also have the advantage of being calculations we can make based on NLAD, state administrator, or National Verifier data. Those data will be readily available to the Commission, making these calculations readily administrable. In the interim period of time before the National Verifier is in place, we direct USAC to obtain and have systems for regularly updating the relevant data from the NLAD or from the states that have opted-out of the NLAD by December 1, 2016.[888] In addition, because the NLAD or National Verifier data (as well as the state data) are, in the first instance, used to guard against improper universal service support disbursements, there already is a strong incentive to ensure that they are as accurate and up-to-date as possible. We also direct USAC, in coordination with the Bureau, to collect as part of its administrative function the information necessary to determine whether Lifeline consumers are receiving Lifeline-supported BIAS either on a standalone basis or as part of a bundle so that the necessary determinations called for can be made.

358. We further conclude that evaluating whether the condition is met at the county level strikes a reasonable balance in this context. Smaller geographic areas could have more widely variable numbers of Lifeline subscribers, leading to anomalous results under our subscribership and competition thresholds that do not accurately capture the policies we are seeking to advance.[889] On the other hand, larger geographies could encompass sufficiently significant areas outside a given High-Cost/Lifeline ETC's service territory as to render it much more difficult for that ETC to promote Lifeline broadband subscribership and competition to a sufficient degree to qualify for the forbearance from the Lifeline

(Continued from previous page)
among other things that even if certain assumptions were made "GTE Telecom would still account for less than 5 percent of revenue billed to customers in 1995"). We emphasize that in this context we seek to identify readily-administrable bright-line thresholds that establish meaningful thresholds while balancing the need to set them at feasibly attainable levels to ensure appropriate incentives for High-Cost Lifeline/ETCs to pursue steps that result in regulatory relief. We therefore caution that the particular thresholds we adopt here do not necessarily reflect how the Commission will evaluate competition in any other context.

[887] We note in this regard that we take other steps in this Order to facilitate competition for Lifeline broadband services. *See generally* section III.B (Characteristics of Lifeline Support).

[888] One of the requirements for any state that opted-out of the NLAD was that it ensure that the Commission and USAC would have access to records as needed for oversight purposes. *Wireline Competition Bureau Clarifies Minimum Requirements For States Seeking To Opt Out Of National Lifeline Accountability Database*, Public Notice, 27 FCC Rcd 12321, 12322 (WCB 2012).

[889] For example, as of the end of 2015, USAC estimates that there were approximately 13.1 million subscribers participating in Lifeline. *See* USAC, *Lifeline Program: Subscribers by State or Jurisdiction-January 2015 to December 2015*, http://www.usac.org/about/tools/fcc/filings/2016/Q2/LI08%20Lifeline%20Subscribers%20by%20State%20or%20Jurisdiction%20-%20January%202015%20through%20December%202015.xlsx (last visited Apr. 7, 2016). As of the 2010 decennial census, there are 73,676 census tracts excluding those delineated specifically to cover large bodies of water. Ind. Anal. Div., Wir. Comp. Bur., FCC, *Internet Access Services: Status as of December 31, 2013*, at 80, https://apps.fcc.gov/edocs_public/attachmatch/DOC-329973A1.pdf (Oct. 2014). Thus, on average, there are approximately 172 Lifeline subscribers per census tract. In practice, however, we anticipate that there is likely to be sufficient variability from census tract-to-census tract and that some tracts could have only an extremely small number of Lifeline subscribers. Use of census tracts as the geography could, in those cases, mean that the subscribership threshold is met based on only an extremely small number of Lifeline broadband Internet access subscribers and/or that it might be very difficult for three additional providers to offer Lifeline service in that tract and each have at least five percent share of Lifeline broadband subscribers. These problems would be exacerbated by using even smaller geographic areas for purposes of the condition.

voice service obligation.[890] The less realistically attainable the condition appears, the less the provider will have incentives to take the broadband-promoting actions we seek to advance in an effort to realize forbearance. Other geographies, such as study areas or service areas, can vary considerably provider-to-provider and we are not persuaded that using such geographic areas for applying our condition would result in similarly-situated providers being treated similarly.[891] Although we have not identified any single, ideal geographic area to rely on for purposes of our condition, we conclude that calculations at the county level provide a reasonable middle ground relative to larger, smaller, or even more variable alternatives.[892]

359. In a county where the first two criteria of our forbearance condition are met, our forbearance from the Lifeline voice service obligation is further conditioned on the High-Cost/Lifeline ETC not actually receiving federal high-cost universal service support. Thus, for any county where the first two criteria of our forbearance condition are met, our conditional forbearance from the Lifeline voice obligation only applies in those areas within the county where the High-Cost/Lifeline ETC is not, in fact, receiving federal high-cost universal service support. In areas where the ETC does receive federal high-cost universal service support, the public, through the federal universal service fund, is making an ongoing investment in the ETC's provision of voice telephony service and in the underlying broadband-capable network used to offer that service.[893] In that context, we are persuaded that there is an ongoing, overriding policy interest that such networks and services—already being supported by universal service support, with the associated high-cost voice service obligation—continue to be available to advance our low-income voice policy goals, as well. By contrast, where there is no such ongoing federal high-cost universal service investment, we are persuaded that the potential to advance our broadband policy goals tips the balance in favor of forbearance for all the reasons described in this section above.[894]

360. To effectuate this condition on forbearance, we direct USAC, one year after the effective date of this Order and annually thereafter, to submit data to the Bureau to enable the identification of counties where the subscribership and competition criteria are met. After review, within thirty days of the receipt of these data from USAC, we direct the Bureau to issue a Public Notice announcing the counties where the subscribership and competition criteria of our forbearance condition are met. Sixty days after the release of that Public Notice, forbearance from the Lifeline voice service obligation will apply to each High-Cost/Lifeline ETC in the identified counties insofar as each ETC is not receiving high-cost support. This forbearance will continue to apply in each county identified in the Public Notice—subject to the high-cost support condition—until sixty days after the next year's Public Notice. At that time, the list of counties identified in the next year's public notice will govern, including any additions of newly-qualifying counties or the elimination of counties that no longer meet the criteria (and thus no longer fall within the scope of the conditional forbearance).

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[890] Many ILEC study areas are far smaller than a state, for example. *See* FCC, *Study Area Boundary Data as of August 15, 2014*, http://apps.fcc.gov/wcb/sabdata/.

[891] *See id*.

[892] Counties fall within the range of geographies that the Commission reports in the context of its broadband progress reports, for example. *See, e.g., 2016 Broadband Progress Report*, 31 FCC Rcd at 761-62, App. C, paras. 5, 6 (noting that adoption and deployment data are reported at the census tract, county, state, and national levels).

[893] *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17684, 17685-86, paras. 62, 64.

[894] In the context of the overall balancing of policy interests with respect to the conditional forbearance we grant, we thus reject arguments that high-cost ETCs should perpetually have Lifeline voice service obligations throughout their entire designated service areas. *See, e.g.*, Mo. PSC Comments at 7 (filed Aug. 31, 2015) (arguing that high-cost support recipients necessarily should be required to provide Lifeline service).

(iii) Lifeline Broadband Provider ETCs

361. As explained above, we interpret section 214(e)(1) to impose service obligations on ETCs that mirror the service defined as supported under section 254(c) in the context of the specific universal service rules, mechanisms, or programs for which they were designated.[895] Consequently, providers that obtain an ETC designation as an LBP receive a designation that is specific to the Lifeline broadband program and will only have section 214(e)(1) service obligations for BIAS. Thus, by default, providers do not have any Lifeline voice service obligations as a result of their designation specifically as an LBP.[896]

d. Obligation to Advertise the Availability of and Charges for Lifeline Service

362. In addition to the actions described above, we further encourage competition and market entry in the Lifeline program by interpreting ETCs' obligation to advertise the availability of Lifeline services and the charges thereof for purposes of receiving reimbursement from the Lifeline program.[897] We find that interpreting ETCs' obligations under section 214(e)(1)(B) will provide clarity and reduce burdens on providers, making it easier to enter and remain in the Lifeline program.

363. Under section 214(e)(1)(B) of the Act, an ETC must, among other requirements, "advertise the availability of such services and the charges therefor using media of general distribution."[898] The requirement to advertise the availability and price of service on "media of general distribution" creates ambiguity that, added with other obligations for ETCs, can discourage providers from seeking designation and entering the Lifeline program. This ultimately harms Lifeline-eligible consumers, who are left with few choices among discounted services. However, as Free Press and New America's Open Technology Institute have argued, we acknowledge that the requirement to advertise the availability and price of service need not necessarily be overly burdensome if implemented properly.[899]

364. We therefore find that, while the requirement to advertise the availability and price of service is a useful one, the Commission can reduce the perhaps unintended burden of this provision on carriers by interpreting the phrase "media of general distribution" to provide further clarity. Under section 214(e)(1)(B), "media of general distribution" is any media reasonably calculated to reach the general public or, for an LBP, the specific audience that makes up the demographic for a particular service offering. For example, for an LBP partnering with a school to offer Lifeline-discounted BIAS to that school's community, "media of general distribution" may include flyers, newspaper advertisements, or local television advertisements in that school's geographic area. For a Lifeline-only broadband ETC offering a service designed with eligible low-income subscribers with hearing disabilities, "media of general distribution" may include web advertisements reasonably calculated to reach the relevant community, mail, email, or other text-based methods of advertising.

365. Combined with our other actions in this Order to encourage provider participation in the Lifeline program and create a robust, competitive market for Lifeline subscribers, we expect that our

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[895] *See supra* section III.E.1 (Creating a Lifeline Broadband Provider Designation).

[896] *See also* Letter from Javier Rúa Jovet, Chairman, Telecommunications Regulatory Board of Puerto Rico, to Tom Wheeler, Chairman, FCC, et al., WC Docket No. 11-42, at 5 (filed Mar. 21, 2016) (arguing that a voice telephone service requirement "would likely have the effect of shutting [new broadband providers] out of the program entirely, and would represent a significant missed opportunity. It simply makes no sense to require an entity that wishes to offer a Lifeline broadband service to be a regulated, voice telecommunications carrier.").

[897] 47 U.S.C. § 214(e)(1)(B).

[898] 47 U.S.C. § 214(e)(1)(B).

[899] *See* Letter from Matthew F. Wood, Policy Director, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 2 (filed Feb. 26, 2016).

interpretation of the requirement of section 214(e)(1)(B) will give clarity to participating providers and remove one more potential source of uncertainty to encourage providers to enter the program.

F. Lifeline Service Innovation

366. To fully obtain the benefits of a modernized Lifeline program, the Commission and others must encourage and facilitate the meaningful access and adoption to quality advanced telecommunications services among low-income households. We recognize that in order to access and adopt advanced telecommunications services, households will require devices that enable them to bridge the digital divide. We therefore require Lifeline providers that provide both supported mobile broadband service and devices to their consumers to provide devices that are Wi-Fi enabled, and we also require the same providers to offer the choice to Lifeline customers of devices that are equipped with hotspot functionality. We also require fixed broadband Lifeline providers that provide devices to their customers to provide devices that are Wi-Fi enabled. The requirement to provide Wi-Fi-enabled devices does not apply to devices provided to consumers prior to the effective date of the requirement. Additionally, we direct the Consumer and Governmental Affairs Bureau (CGB) to develop a comprehensive plan for the Commission to better understand the non-price barriers to digital inclusion and to propose how the Commission can facilitate efforts to address those barriers.

1. Bridging the "Homework Gap" and "Digital Divide" with Wi-Fi and Hotspot-Enabled Devices

367. In recognition of the need for students, job applicants, and others to access the Internet on multiple platforms and in various ways, we now require Lifeline providers that provide supported broadband service and devices to their consumers to provide devices that are Wi-Fi enabled, and to offer devices that are equipped with hotspot functionality. We adopt these requirements because Wi-Fi enabled phones are essential tools to help individuals stay connected, and because the hotspot requirement will help to ensure that households without fixed Internet access will be able to share their access to the Internet among multiple members if so desired.

368. *Background*. Building upon our recent modernization of the E-rate program (more formally known as the schools and libraries universal service support mechanism), where we took major steps to close the Wi-Fi gap within schools and libraries,[900] we recognize the valuable role that the Lifeline program can play in the lives of elementary and secondary students living in low-income households beyond the school day. Lifeline can help to extend broadband access beyond the school walls and the school day to ensure that low-income students do not become digitally disconnected once they leave the school building. Lifeline can help to ensure that low-income students have access to the resources needed to complete their research and homework assignments, and compete in the digital age.

369. There is an increasing number of teachers who are integrating technology, such as tablets, laptops, and smartphones with Internet connectivity, when assigning homework and research projects to their students.[901] Homework assignments utilizing the Internet provide students with additional problems and concepts, such as in the areas of math and spelling, to practice specific skills through fun and interactive learning environments, and generally allow students to receive instant feedback regarding the completion of online tasks.[902] Many homework assignments also require students to integrate technology

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[900] *See E-rate Modernization Order*, 29 FCC Rcd 8870; *Second E-rate Modernization Order*, 29 FCC Rcd 15538 (2014).

[901] *See, e.g.*, H. Brunner, Equal Internet Access is a K-12 Must-Have (Jan. 29, 2103), http://www.edweek.org/ew/articles/2013/01/30/19brunner.h32.html# (last visited Mar. 30, 2015).

[902] The Commission previously explored the merits and challenges of off-premises connectivity services for mobile learning devices as part of its Learning On-The-Go (LOTG) Pilot Program (also known as the E-rate Deployed Ubiquitously (EDU2011) under the E-rate program (more formally known as the schools and libraries universal service support program). *See Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, Sixth Report and Order, 25 FCC Rcd 18762 (2010) (*E-rate Sixth Report and Order*). As part

(continued….)

when creating their own content, such as developing reports, designing PowerPoint presentations, or manipulating data. Online assignments and assessments also provide for immediate feedback from instructors, allowing teachers to better direct their focus when teaching and assessing individual student needs within their classroom.[903] Thus, the lack of access to technology and the Internet outside of the classroom makes it difficult and sometimes impossible for students to complete their homework assignments and projects, resulting in student academic unpreparedness as well as decreased academic performance and classroom engagement in school.[904] As a result, student access to the Internet has become a necessity, not a luxury.[905] Not only does access to the Internet connect students to very large amounts of information, but specifically, for low-income students, it also has the ability to change their social structure by allowing them to become empowered and engaged.[906]

370. Unfortunately, many low-income students do not have access to the Internet at home. In 2013, about 95 percent of the households with incomes of $150,000 or more reported connecting to the Internet, compared to about 48 percent of the households making less than $25,000.[907] Out of approximately 29 million households with school-age children (ages six to 17), approximately 31 percent of those households with incomes below $50,000 do not have a high-speed connection at home.[908] Computer ownership and Internet use strongly correlate with a household's income; the higher the

(Continued from previous page)
of the LOTG Pilot Program final reports, project participants described various benefits of wireless broadband access at home. *See, e.g*., City School District of New Rochelle EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (where, among other things, the school district utilized eBooks and various online simulated classrooms to engage students); Riverside Unified School District EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (the school district utilized Khan Academy for Math in order to meet students' individual needs).

[903] *See, e.g.,* City School District of New Rochelle EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (noting that with online access, teachers could provide timelier feedback which increased student completion of homework to 98 percent); Sioux City Community Schools EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) and Piedmont School District EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (using virtual chat-rooms, email, and online "office hours" for students to communicate with teachers and other students to seek help or assistance with specific assignments).

[904] *See, e.g.,* Piedmont City School District EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (noting increased participation rates and increased completion of assignments within their districts. With 24/7 access, students were able to post assignments online and finish missed work at home).

[905] *See* H. Brunner, *Equal Internet Access is a K-12 Must-Have* (Jan. 29, 2103), http://www.edweek.org/ew/articles/2013/01/30/19brunner.h32.html# (last visited Mar. 30, 2015).

[906] *See* T. Barseghian, *For Low-Income Kids, Access to Devices Could be the Equalizer* (Mar. 13, 2013), http://ww2.kqed.org/mindshift/2013/03/13/for-low-income-kids-access-to-devices-could-be-the-equalizer/ (last visited Mar. 30, 2015).

[907] *See* T. File, *Computer and Internet Use in the United States,* Population Characteristics, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, at 5-6 (May 2013), http://www.census.gov/prod/2013pubs/p20-569.pdf (May 2013 Census Report) (last visited Mar. 30, 2015). *See also* Economics and Statistics Administration and National Telecommunications Information Association (NTIA), *Exploring the Digital Nation: Computer and Internet Use at Home*, at 11-12 (2011) (Digital Nation, Nov. 2011), http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_computer_and_Internet_use_at_home_11092011.pdf (NTIA Report) (last visited Mar. 30, 2015) (showing that 93 percent of households with incomes of over $100,000 subscribe to broadband service; whereas, only 43 percent of households that have less than $25,000 subscribe to a broadband service).

[908] *See* J. Horrigan, *The Numbers Behind the Broadband 'Homework Gap'* (Apr. 20, 2015), http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/ (last visited Apr. 23, 2015) (noting that this low-income group (those households whose incomes fall below $50,000) makes up 40 percent of all families with school-age children in the United States).

household income, the more likely it is for the household to subscribe to broadband service.[909] Thus, while low-income students may be connected to the Internet while at school, they become digitally disconnected immediately upon exiting the school building. As stated in the National Broadband Plan, "[o]nline educational systems are rapidly taking learning outside the classroom, creating a potential situation where students with access to broadband at home will have an even greater advantage over those students who can only access these resources at their public schools and libraries."[910] This lack of access to technology and broadband in low-income households has created a "homework gap" between low-income students and the rest of the student population.[911]

371. The "homework gap" not only puts low-income students at a disadvantage,[912] but also puts a drain on limited library and after-school resources. Many students who do not have access to the Internet at home head to the library in order to utilize the library's broadband service to complete assigned homework.[913] Further, some schools have had to extend their school day to help students with their homework or partner with after-school programs to ensure that students' have the ability and

[909] *See* T. File and C. Ryan, *Computer and Internet Use in the United States: 2013*, American Community Survey Reports, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, at 3-4 (November 2014), http://www.census.gov/history/pdf/2013computeruse.pdf (November 2014 Census Report) (last visited Mar. 30, 2015). *See also* Economics and Statistics Administration and National Telecommunications Information Association (NTIA), *Exploring the Digital Nation: Computer and Internet Use at Home*, at 11-12 (2011) (Digital Nation, Nov. 2011), http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_computer_and_Internet_use_at_home_11092011.pdf (NTIA Report) (last visited Mar. 30, 2015).

[910] *See* Federal Communications Commission, Connecting America: The National Broadband Plan, at 254 (rel. Mar. 16, 2010) (National Broadband Plan or NBP), https://apps.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (last visited Mar. 30, 2015).

[911] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7952, Statement of Commissioner Jessica Rosenworcel (". . . 42 percent of students say they received a lower grade on an assignment because they didn't have access to the Internet or a computer.").

[912] A number of the LOTG Pilot program project participants found that their students' district, state, standardized, and even classroom scores increased as a result of off-premises wireless connectivity. *See, e.g*, Haralson County Schools EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (showing a trend towards improved high school student performance in the areas of Math and graduation rates, and in the areas of critical thinking and communication/collaboration); Aurora Public Schools EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) and Onslow County Schools EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (noting that the district curriculum and state content standards were met as result of the pilot program); San Diego Unified School District EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (stating that their Academic Performance Index scores increased by a gain of 43, the highest growth for any middle school in the district). In the classroom, Riverside Unified School District noted a four percent increase in Math scores and a five percent increase in Language Arts scores. *See* Riverside Unified School District EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013). Michigan Technical Academy also reported gains in Math and Reading, as well as a near 20 percent increase in homework completion. *See* Michigan Technical academy EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013). Sioux City Community Schools reported that its standardized test scores improved, especially in the area of English Language Arts. *See* Sioux City Community Schools EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013). *See also* Clay Hill Elementary (noting that 58 percent of their students increased in Science performance); City School District of New Rochelle, EDU2011 Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (showing growth in Grade 5 and Grade 8 English Language Arts assessments).

[913] *See, e.g.*, J. Sami, *Community Effort Provides Students With MiFi Devices*, http://www.forsythnews.com/archives/20822/ (posted Nov. 4, 2013) (noting that of the roughly 40,500 students in the school district, approximately 7,000 students do not have Internet access at home and, in order to complete their homework, must rely on public libraries and businesses that offer free Wi-Fi).

resources needed to complete their assignments.[914] Limited access to the Internet fails to provide students the flexibility needed to complete school assignments amongst other various after school activities and responsibilities, and does not sufficiently address their long-term educational needs. As technology continues to evolve and teachers continue to integrate technology into their teaching by supplementing their in-class projects and instruction with projects and assignments necessitating Internet access, the "homework gap" will continue to widen as many school-age children in low-income households with a lack of technology at home and no Internet access struggle to complete assigned homework and projects.[915]

372. Fortunately, various initiatives have improved broadband access to underserved groups, some of which contain low-income student populations. For example, Mobile Beacon's Internet Inclusion Initiative, in partnership with EveryoneOn,[916] provides students who do not have Internet access at home with unlimited 4G access and low-cost computers in order to put them on the path to digital opportunity and learning.[917] Comcast's Internet Essentials program provides qualifying low-income households with affordable access to high-speed service from their homes.[918] Additionally, in conjunction with the Knight Foundation, the New York Public Library (NYPL) has implemented a pilot program to expand its efforts to bridge the digital divide by allowing the public to borrow portable Wi-Fi hotspot devices for up to one year (students can borrow the devices for the school year).[919] NYPL hopes to eventually provide 10,000 hotspots to people involved in their education programs.[920] The Chicago Public Library (CPL) also has implemented a pilot program to provide members of underserved communities in three locations access to both portable Wi-Fi and laptop computers.[921] During the course of the two year pilot program, CPL plans to make 300–500 MiFi hotspots available in several library locations in areas with less than 50 percent broadband adoption rates.[922]

373. These innovative approaches to improving broadband access for low-income students and other groups are to be applauded and they highlight the fact that there are numerous paths to connectivity for low-income individuals. However, while these initiatives are working toward closing the "digital divide" and addressing the "homework gap" by expanding broadband access to underserved populations, there is much more that can be done. We encourage Lifeline providers to continue to push the envelope in search of better ways to deliver broadband to their subscribers. As discussed further below, we also encourage Lifeline providers to work with schools, libraries, and other community institutions to provide information about their Lifeline offerings, and to provide contact information for Lifeline subscribers as

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[914] *See, e.g.*, Mobile Beacon, Case Studies, Anchorage School District (story of a graduating senior taking seven classes during the school day and one more online in order to graduate with her class who stayed at school most days to use a computer), http://www.mobilebeacon.org/anchorage-school-district/ (last visited Mar. 30, 2015).

[915] While the "homework gap" primarily affects students, we emphasize that bridging the digital divide will benefit all segments of the population. *See* para. 382 (discussing the importance of outreach to and digital literacy training for seniors).

[916] *See* EveryoneOn, http://everyoneon.org/ (last visited Mar. 30, 2015).

[917] *See* Mobile Beacon, Internet Inclusion Initiative, http://www.mobilebeacon.org/services-devices/i3-programs/ (last visited Mar. 30, 2015).

[918] *See* Comcast's Internet Essentials Program, https://www.Internetessentials.com/ (last visited Mar. 30, 2015).

[919] *See* Knight Foundation, Knight News Challenge, Check out the Internet, http://www.knightfoundation.org/grants/201499901/ (last visited Mar. 30, 2015).

[920] *Id.*

[921] J. Mckenzie, *Libraries Hope to help Close the Digital Divide by Lending WiFi Hotspots* (June 27, 2014), http://techpresident.com/news/25155/chicago-and-new-york-public-libraries-hope-help-close-digital-divide-lending-wifi (last visited Mar. 30, 2015).

[922] *Id.*

part of their outreach.[923] An ideal Lifeline program is one that evolves, and Lifeline providers are uniquely situated to infuse the program with new, innovative products and services to best serve the low-income community both now and in the future.

374. *Discussion*. In the *2015 Lifeline FNPRM*, the Commission recognized the need for forward-thinking, innovative solutions to address the "digital divide" and the "homework gap," and emphasized that it was vital for low-income consumers to "have access to broadband-capable devices that provide the ability to send and receive critical information, as well as broadband service with sufficient capacity, security, and reliability to be dependable in times of need."[924] In its comments, TracFone emphasized a similar point, and stated that "Lifeline providers offering no charge Lifeline services can – and should be – required to provide such Wi-Fi enabled devices."[925] The Commission also observed in the *2015 Lifeline FNPRM* that unlicensed spectrum enables capabilities like Wi-Fi hotspots, and sought comment on how unlicensed wireless technology could be employed for the greater benefit of low-income consumers.[926] We conclude that Lifeline providers who make devices available with or without charge for use with a Lifeline-supported fixed or mobile broadband service must ensure that all such devices are Wi-Fi enabled.[927] Lifeline providers who make devices available with or without charge for use with a Lifeline-supported mobile broadband service must also offer devices that are capable of being used as a hotspot.[928] By conditioning support for Lifeline services in this way, we seek to increase the value of the supported connection so that Lifeline consumers can regularly and reliably access the Internet.

375. As explained in more detail in the paragraphs that follow, this condition on support under the Lifeline broadband mechanism for providers that make devices available to Lifeline subscribers promotes Lifeline subscribers' access to advanced services and the affordability of those services. Importantly, the condition guards against the risk that the Lifeline subscribers and their households would be hindered in their ability to avail themselves of options for using the Internet that are less expensive than purchasing additional usage or additional services as could be necessitated if Lifeline providers only provided devices that lack the capabilities required under this condition. Adopting this condition on the Lifeline broadband support mechanism advances the objectives in sections 254(b) and (i) of the Act, as well as our responsibilities under section 706 of the 1996 Act.[929] The Commission has invoked sections 254(b) of the Act and section 706 of the 1996 Act to place conditions on the receipt of universal service

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[923] *See* Education and Libraries Networks Coalition Comments at 2 (EdLiNC Comments) (suggesting that Lifeline providers be required to provide such information to subscribers. While we do not institute such a requirement, we encourage providers to engage in the type of outreach that EdLiNC suggests.).

[924] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7835, para. 29.

[925] TracFone Reply at 8. *See also, e.g.*, Telscape Communications and Sage Telecom Communications Comments at 9 (While advocating that a household be eligible for both voice and broadband support simultaneously, further arguing that broadband support should be for "Lifeline supported broadband service that allows the connection of multiple devices to a mobile hotspot (for school, web browsing, etc.)."); Joint Commenters Comments at 22 n.54 ("For some consumers, the homework gap may be better bridged by a Wi-Fi enabled mobile phone that can serve as a hotspot (an in-home broadband connection does not close the gap for a child who needs to do homework at places other than home).").

[926] *2015 Lifeline* FNPRM, 30 FCC Rcd at 7865-66, paras. 129-30.

[927] This requirement does not apply to devices provided to consumers prior to the date that the new requirement goes into effect.

[928] We note that while we decline to support devices as discussed *supra* in para. 125, these requirements are only conditions for receiving support *if* the Lifeline provider chooses to provide devices for the purpose of extending the connectivity supported by Lifeline. Lifeline providers retain the flexibility to decide whether to provide devices in general and if so, what amount to charge, if any, for a device.

[929] 47 U.S.C. §§ 254(b)(1), 254(b)(2), 254(i), 1302.

support in the past,[930] and courts likewise have affirmed conditions on the receipt of universal service support in other ways.[931] Greater availability of devices with the capabilities we require under our condition also provides greater incentives for the public to fund advanced services to schools and libraries, including those in low-income areas, given that a larger proportion of the students or patrons can avail themselves of the opportunities made available, thereby advancing additional objectives of section 254 of the Act and section 706 of the 1996 Act.[932] We discuss the specific elements of our condition on Lifeline broadband funding in greater detail below.

376. *Wi-Fi Enabled*. Wi-Fi enabled devices help many of the most vulnerable members of society stay connected. Many public buildings, such as schools and libraries, offer public Wi-Fi access and a Lifeline consumer with a Wi-Fi enabled device will be able to take advantage of public Wi-Fi networks and look for jobs, check email, or make a doctor's appointment, all without using any mobile data. This ensures consistent Internet access even when a Lifeline consumer is away from home, and it allows the consumer to save money and avoid going over any data caps, and it also helps to bridge the homework gap, as students with Wi-Fi enabled devices can utilize public Internet networks to complete their assignment. As we noted in the *2015 Lifeline FNPRM*, in some communities students must go to local restaurants to use Wi-Fi to study.[933] While this situation is far from ideal, it highlights the vital importance of Wi-Fi enabled devices as a complement to a consumer's primary broadband service, because without these devices many students would be unable to access the Internet outside of the classroom at all. Additionally, a "substantial majority"[934] of American consumers already own Wi-Fi enabled smartphones, as 88 percent of new phone purchases, and 77 percent of total mobile phones, are Wi-Fi enabled smartphones. Furthermore, Wi-Fi enabled routers and modems for use with fixed broadband service also increase the value of the connection by allowing simultaneous use of multiple devices of varying types.

377. *Hotspot Functionality*. Next, we adopt a phased-in requirement that recognizes the importance of devices with hotspot functionality to help connect households to the Internet. Many of the most economically vulnerable members of society do not have fixed Internet access, and rely solely on mobile devices. A recent report indicates that 7 percent of Americans are "smartphone dependent," meaning that a smartphone provides their only access to the Internet.[935] In households without fixed broadband, using a smartphone or other device as a mobile hotspot can help to partially alleviate this

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[930] *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17684-91, 17695, paras. 61-73, 87. *See also* Letter from John Windhausen, Jr., Executive Director, SHLB Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 at 2 (filed Mar. 24, 2016) (arguing that such action is "legally sustainable under the 10th Circuit Court of Appeals decision in 2014 upholding the FCC's Connect America Fund reform decisions" and discussing the principles of section 254(b)).

[931] *See, e.g.*, *U.S. v. Am. Libraries Ass'n*, 539 U.S. 194, 211-13 (2003) (upholding the requirement that public libraries use Internet filters as a condition on receipt of federal universal service subsidies); *In re FCC 11-161*, 753 F.3d 1015, 1044 (10th Cir. 2014) (affirming the FCC's authority to "condition[] USF funding on recipients' agreement to provide broadband internet access services"); *Qwest Commc'ns Int'l., Inc. v. FCC*, 398 F.3d 1222, 1238 (10th Cir. 2005) (affirming the FCC's authority to condition universal service support on state commission certification that local telephone rates are "reasonably comparable"); *Tex. Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 444 (5th Cir. 1999) (affirming the FCC's authority to condition federal universal service support on state-established discount rates for intrastate services provided to schools, libraries, and rural health care providers).

[932] 47 U.S.C. §§ 254(b)(6), 254(h)(2)(A), 1302. For these reasons, we reject the bare assertions of some commenters that we lack authority in this regard. *See, e.g.*, Letter from John J. Heitmann *et al.*, counsel for Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 at 5 (filed Mar. 21, 2016); Sprint Mar. 21 *Ex Parte*, at 2.

[933] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7830, para. 20.

[934] 47 U.S.C. §254(c)(1)(B).

[935] Pew Study on Smartphone Use, *supra* note 25, at 2.

limitation and permit others in that household to access the Internet. The Commission previously stated that tethering can provide mobile broadband consumers "access to the same applications and functionalities as consumers served through fixed connections."[936] A typical American household has 2.3 smartphones, along with additional devices capable of accessing the Internet.[937] In a household with Wi-Fi enabled devices and no fixed Internet connection, a tethered connection can help to ensure Internet access for multiple family members. A student can do research for a homework assignment at the same time her parents send emails or apply for jobs. This assists in bridging the homework gap for those students, helping make them competitive academically and better preparing them for the challenges of the 21st Century. A hotspot enabled device also helps bridge the digital divide, and efficiently maximizes the value of a single mobile broadband connection. Devices with hotspot functionality are also becoming increasingly ubiquitous,[938] and in order for a consumer to utilize the benefits of mobile broadband, the consumer should have to the choice of a device that provides access to hotspot functionality. Because devices that are equipped with hotspot functionality are valuable tools to keep individuals and families connected to the Internet, we conclude that Lifeline providers who provide devices to their consumers should include devices with this capability among other offerings.[939] In addition, because of the importance of tethering to bridging the "digital divide," providers may not impose an additional cost on tethering service for tethering that does not exceed the relevant minimum service standard for mobile broadband data usage allowance.[940]

378. To ensure that the market can adjust and reflect the evolution of available devices while also ensuring that consumers have affordable choices, we adopt a phase in transition for this requirement. Beginning in December 1, 2016, we require that providers of broadband Lifeline service that make devices available include at least one device that has hotspot capability. Building on that, fifteen percent of the devices a provider makes available from December 1, 2017 to November 30, 2018 shall be hotspot enabled. Twenty percent of the devices a provider makes available from December 1, 2018 to November 30, 2019, shall be hotspot enabled. Twenty-five percent of the devices a provider makes available from December 1, 2019 to November 30, 2020 shall be hotspot enabled. Thirty-five percent of the devices a provider makes available from December 1, 2020 to November 30, 2021 shall be hotspot enabled. Forty-five percent of the devices a provider makes available from December 1, 2021 to November 30, 2022 shall be hotspot enabled. Fifty-five percent of the devices a provider makes available from December 1, 2022 to November 30, 2023 shall be hotspot enabled. Sixty-five percent of the devices a provider makes available from December 1, 2023 to November 30, 2024 shall be hotspot enabled. Seventy-five percent of the devices a provider makes available beginning December 1, 2024 onward shall be hotspot enabled. We believe that this approach ensures that consumers have robust choices – both with and without hotspot functionality. Accordingly, we amend section 54.422(b) of our rules to require carriers to certify their compliance with these requirements on our Form 481.

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[936] *Connect America Fund*, 29 FCC Rcd 7051, 7106, para. 156 (2014).

[937] *See supra* para. 94 & note 271.

[938] *Eighteenth Mobile Competition Report*, 30 FCC Rcd at 14604, para. 139 & n. 414.

[939] We clarify that this does not require Lifeline providers offering broadband service to necessarily provide a device. Furthermore, this requirement does not prevent a subscriber using a device not provided by the Lifeline provider of the supported service. Rather, to the extent the Lifeline provider, its affiliate(s), or business partner make devices available to the Lifeline subscriber, such devices must be Wi-Fi-enabled, and hotspot-enabled devices must be offered if the Lifeline provider is to receive Lifeline support.

[940] As an example, if the applicable minimum service standard for mobile broadband data usage allowance is 2 GB, a provider may not impose a tethering-specific fee or surcharge for tethering if the 2 GB data usage allowance has not been reached. Providers may charge consumers who choose to purchase data above the minimum data usage allowance.

2. Importance of Digital Inclusion

379. In this section, we direct the Consumer and Governmental Affairs Bureau (CGB) to develop a comprehensive plan for the Commission to better understand the non-price barriers to digital inclusion and to propose how the Commission can facilitate efforts to address those barriers. This plan should address promoting digital inclusion generally and also as it particularly relates to the new Lifeline program established in this Order. CGB should specifically work with other bureaus and offices, as well as USAC, to ensure all Lifeline stakeholders' views are incorporated into this effort. We direct CGB to submit this plan to the Commission within six months of the effective date of the order. Through this effort, we initiate an ongoing campaign to build the Commission's digital literacy capacity and to keep us apprised and abreast of the state of digital inclusion across the country.

380. Lowering non-price barriers to digital inclusion is an important component of increasing the availability of broadband service for low-income consumers. As explained above, the key purpose of our actions in this order is to increase the affordability of broadband service, which remains the chief impediment to broadband adoption among low-income consumers. We nonetheless recognize, and concur with, the findings of other governmental and private researchers that there are multiple barriers to digital inclusion among low-income consumers.[941] Notably, lack of digital literacy and perceived relevance are significant non-price barriers.[942] All of these barriers are interrelated. Recent studies confirm that consumers may consider broadband service to be relevant if other barriers, such as digital literacy and price are overcome.[943] The fact that a consumer may not be able to afford broadband service may also reduce the relevance of broadband service to that consumer. Many low-income consumers that are online may not be able to take advantage of all that the Internet has to offer. By one estimate, approximately 36 million Americans don't use the Internet at all and approximately 70 million Americans have low digital skills.[944] Based on the foregoing, we believe that low-cost broadband coupled with

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[941] Digital inclusion includes but reaches beyond broadband adoption and affordability. *See* Institute of Museum and Library Services, Digital Inclusion Survey, What is Digital Inclusion*?* http://digitalinclusion.umd.edu/content/what-digital-inclusion (last visited Jan. 13, 2015) ("Importantly, 'digital inclusion' has been articulated specifically to address issues of opportunity, access, knowledge, and skill at the level of policy. Whereas discussion around the digital divide tends to focus on the access available to individuals, digital inclusion is meant to signal a focus on a practical, policy-driven approach that addresses the needs of communities as a whole.").

[942] *See, e.g.*, EveryoneOn Comments at 2 (noting that while cost remains "the primary barrier to broadband adoption for low income and minority Americans…access to digital literacy training and content is key to meaningful use…"); Connected Nation Comments at 3 ("Broadband adoption research consistently finds that there are many barriers to adoption, including perceived relevance, cost, a lack of digital skills and availability…with the cost barrier being particularly important."); The Honorable Delaine Eastin Comments at 1 ("Research shows that there are 3 primary barriers to broadband adoption: (1) Cost; (2) Relevance; and (3) Digital Literacy."); CETF Comments at 1.

[943] *See* Michael Haight and Anabel Quan-Haase, Digital Inclusion Project: Findings and Implications, A Canadian Perspective, at 3 (Dec. 2015), https://www.benton.org/initiatives/digital-inclusion-project ("For many non-users, the relevance of the Internet is not dependent on the relevance of the Internet itself, but rather it is often linked to external factors, mainly cost, confidence, and a lack of digital literacy.").

[944] Digital Readiness at 7; NDIA Comments at 5 ("Ready access to broadband services for the vast majority of Americans at all income groups except the poorest has not, by itself, prepared all those connected people to function effectively online."). It is also important to note that digital skills can increase over time through ready access to the Internet. *See* John B. Horrigan, Deepening Ties, Comcast Internet Essentials Customers Show Broader and Deeper Ties to the Internet Over Time – Especially Among Those Who had Digital Literacy Skills Training at 3 (Jan. 2015), http://corporate.comcast.com/images/comcast-ie-report-2-horrigan.pdf (Deepening Ties) ("Respondents used the Internet more frequently and confidently after an additional eight months' experience with home broadband access through [Internet Essentials]."). However, digital literacy training can have a positive impact on digital skills independent of the effect of using the Internet over time. *See id*. at 13.

strategic, effective digital inclusion efforts will significantly impact the lives of millions of consumers across the Nation, particularly those with lower incomes and in key demographic groups, such as seniors, veterans, persons with disabilities, rural communities, and those living on Tribal lands, many of which may also have an increased need for access to educational, public health and /or public safety services.[945] Accordingly, we find that the public interest would be served by building upon earlier efforts by the Commission and others to study and monitor the impact of digital inclusion efforts.[946]

381. We recognize the important role consumer groups, community and philanthropic organizations, local government, and industry stakeholders play in assisting consumers in overcoming the non-price barriers to digital inclusion. Therefore, CGB's plan should include proposals for engagement of these groups to explore strategies for promoting increased broadband adoption as well as increased digital literacy of low-income and other consumers.[947] In its plan, CGB should explore how to connect efforts to increase the availability of affordable service and equipment, digital literacy training, and relevance programming to make digital inclusion a reality in light of the modernized regulatory framework.

382. In addition, we encourage Lifeline providers to work with schools, libraries, community centers and other organizations such as food banks and senior citizen centers that serve low-income consumers to increase broadband adoption and address non-price barriers to adoption. Providers should make available contact information for Lifeline subscribers as part of their outreach. CGB's plans should further this objective. Broadband can be a critical tool for seniors to realize many economic and health gains as well as increased socialization, but seniors lag behind other demographic groups in terms of adoption and digital inclusion.[948] Education and awareness programs targeting seniors can be effective in overcoming these barriers and increasing broadband adoption among low-income seniors.[949]

383. CGB's plan should propose how it will convene stakeholders, including both Lifeline and non-Lifeline broadband providers, community and philanthropic organizations, local governments, and anchor institutions to explore how digital inclusion efforts can be tailored to local conditions by trusted community-based partners to maximize their effect. Digital inclusion organizations have found that the most successful training is provided through a trusted, community-based partner that provides the social

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[945] *See* Letter of Jordan B. Goldstein, Vice President, Regulatory Affairs, Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 at 1 (filed Nov. 17, 2015) (Comcast Nov. 17 *Ex Parte*) ("[T]he real key to economic and personal empowerment through broadband adoption comes when you combine Internet access with formal training and education. For example, the study found that those who received formal digital literacy training were 15 points more likely to use the Internet to look for a job.").

[946] *See, e.g.*, Broadband Pilot Report; NTIA Broadband Adoption Toolkit, http://www2.ntia.doc.gov/files/toolkit_042913.pdf; Colin Rhinesmith, Digital Inclusion and Meaningful Broadband Adoption Initiatives (Jan. 4, 2016), https://www.benton.org/sites/default/files/broadbandinclusion.pdf (Digital Inclusion); ASR Analytics, National Telecommunications and Information Administration, Broadband Technology Opportunities Program Evaluation Study (Sept. 4, 2014), https://www.ntia.doc.gov/files/ntia/publications/asr_final_report.pdf (NTIA BTOP Report); John B. Horrigan, The Essentials of Connectivity, Comcast's Internet Essentials Program and a Playbook for Expanding Broadband Adoption and Use in America (Mar., 2014), http://corporate.comcast.com/images/Final_IE_Research_Full_Paper.pdf (Essentials of Connectivity).

[947] *See* Comcast November 17 *Ex Parte* at 2 (arguing that the Commission has a role to play in promoting digital literacy and relevance training); Public Knowledge Reply at 11 (arguing that the Commission should work with community organizations to address non-price barriers to adoption); NDIA Comments at 7 (urging the Commission to convene digital inclusion practitioners and relevant agencies to discuss issues related to digital inclusion).

[948] *See* Aaron Smith, Older Adults and Technology Use, at 1-4 (Apr. 3, 2014), http://www.pewinternet.org/files/2014/04/PIP_Seniors-and-Tech-Use_040314.pdf

[949] *See* Benton Foundation, Federal Funding Fosters Senior Digital Learning, https://www.benton.org/blog/federal-funding-fosters-senior-digital-learning (last visited, Mar. 30, 2016).

support necessary for increasing broadband access.[950] Moreover, local social and demographic conditions may make one solution work in one place while another approach is more appropriate elsewhere.[951] Based on their experience, many digital inclusion organizations have moved from classes to one-on-one training to improve outcomes.[952] One-on-one training can be the most effective in part because it helps lower the barrier of perceived relevance; each consumer learns how the Internet can assist them accomplish tasks of particular importance to them.[953] CGB's plan should address how digital inclusion organizations can share their experience in tailoring digital inclusion efforts to local conditions.

384. In addition, CGB's plan should address information and studies available from digital inclusion experts regarding best practices for increasing the digital skills of those already online and how those best practices can be spread throughout the digital inclusion community. Digital literacy efforts can increase the digital inclusion of those who already have access to the Internet to be fully "digitally ready."[954] Schools, libraries, and community organizations across the country have already begun developing digital learning curriculums that have enabled low-income populations to more meaningfully engage with all the Internet has to offer.[955] Some of the same community-based, grass-roots approaches to increasing digital inclusion for those who do not have access may also be useful in closing the digital readiness gap among those that already have access to broadband.[956] As with programs promoting digital inclusion generally, a "one-size-fits all" solution to increasing digital skills may not be the most efficient or effective approach. CGB's plan should propose how to facilitate communication among these organizations regarding how to tailor digital inclusion efforts to deepen the value of broadband to those already online.

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[950] *See* NDIA Comments at 4 ("We have learned through experience broadband adoption is most effectively increased by community driven efforts that combine [broadband access] and locally trusted training and support."); *id*. at 8 (arguing that the NTIA's BTOP projects "taught us broadband awareness programs are most successful when constructed in cooperation with locally trusted community-based organization."); Digital Inclusion at 24 (noting that "meaningful broadband adoption…assumes that digital inclusion activities are offered to low-income residents without a broader ecology of support. This support includes connections with other local institutions, such as schools, healthcare providers, libraries, local government departments and agencies, as well as other community-based organizations and ISPs."); Delaine Eastin Comments at 1 ("[I]t takes a 'trusted messenger' to reach offline households."); Essentials of Connectivity at 2 ("Social networks are an important ingredient to broadband adoption and engaged use."); *id.* at 6 ("Trusted community organizations such as libraries, schools, non-profits and governments should create spaces where new broadband users can find the "social effect" that hastens the path to engaged online use…"); Letter of Rachelle Chong, Counsel, California Emerging Technology Fund, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (emphasizing the importance of "hyper local partners").

[951] *See* Comcast November 17 *Ex Parte* at 2 (noting that its experience indicates that "different populations may need customized solutions designed to address their specific needs…").

[952] *See* Digital Inclusion at 19.

[953] NTIA BTOP Report at 51 (concluding that "patrons receiving training, especially training in digital literacy, responded best to tailored courses that addressed specific tasks and goals, rather than general curricula about broadband technology."); Essentials of Connectivity at 6-7.

[954] *See* Deepening Ties at 14 ("[T]hose who took advantage of formal training were significantly more likely to use the Internet to look for jobs and report high levels of confort with computers."); NDIA Comments at 5 ("[G]iving a low-income family access to cheap Internet services is significantly more likely to result in meaningful use of that service if accompanied by formal training in basic skills to enable that use.").

[955] *See* ALA Comments at 18; Allied Media, Detroit Community Technology Project, (last visited Feb. 18, 2016), https://www.alliedmedia.org/dctp.

[956] Digital Readiness at 9.

3. Lifeline Service Stability

385. To further incentivize investment in high-qualify Lifeline service offerings, we implement Lifeline benefit port freezes—of 12 months for data services and 60 days for voice services—that will give providers greater certainty when planning new or updated Lifeline offerings. Providers may not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who used the Lifeline benefit to enroll in a qualifying Lifeline-supported BIAS offering with another Lifeline provider within the previous 12 months. Providers also may not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who used the Lifeline benefit to enroll in a qualifying Lifeline-supported voice telephony service offering with another Lifeline provider within the previous 60 days. These port freeze rules for both BIAS and voice service will be subject to certain conditions to ensure Lifeline consumers are sufficiently protected.

386. *Background.* In the *2015 Lifeline FNPRM*, the Commission sought comment on ways to ease market entry and enhance competition and innovation in the market.[957] The Commission asked commenters about ways to facilitate broader participation in the Lifeline program with more robust offerings and ways to create more efficiency in the eligibility determination process.[958] Finally, the Commission sought comment on creating a National Verifier and asked what role the National Verifier should play in the subscriber enrollment process.[959]

387. Currently, Lifeline providers may enroll eligible consumers in Lifeline-supported services and begin receiving reimbursement for those services,[960] but the National Lifeline Accountability Database ("NLAD")[961] will deny a Lifeline provider's request to transfer that subscriber's benefit to a new Lifeline provider if a subscriber has enrolled or has had their Lifeline benefit transferred within the past 60 days.[962] As a result, eligible low-income subscribers may apply their Lifeline discount to a different Lifeline provider as frequently as once every 60 days. In areas where there are many Lifeline providers, eligible subscribers churning often reduces the incentive for Lifeline providers to participate in the program.

388. Commenters have urged the Commission to "facilitate market forces to increase the value of the services received by participants."[963] Several providers urged the Commission to "promote mutually advantageous customer-carrier relationships to incentivize carriers to maximize value delivered to consumers" by implementing a 12-month benefit port freeze, while permitting subscribers to switch between approved Lifeline providers at any time through a verified process.[964] The providers argue that

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[957] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7862, 7865-66, paras. 121, 127.

[958] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7861-62, paras. 116, 121.

[959] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7846, 7848, paras. 65, 70.

[960] *See* 47 CFR § 54.410 (requiring ETCs to fulfill certain subscriber eligibility determination and certification requirements "when a prospective subscriber seeks to qualify for Lifeline" to receive reimbursement through the Lifeline program).

[961] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6734, para. 179. The FCC implemented the NLAD as a national database to enforce the one benefit per household rule. NLAD verifies that a subscriber's address is not duplicative of another subscriber's address.

[962] *See* USAC, *Benefit Transfers*, http://www.usac.org/li/tools/nlad/benefit-transfers.aspx (last visited Feb. 17, 2016).

[963] *See, e.g.*, Letter from Blair Levin to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Sept. 10, 2015).

[964] *See* Letter from David A. LaFuria, Counsel, Smith Bagley, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 14 (filed Dec. 7, 2015); Joint Commenters Comments at 16; *see also* Joint Commenters Reply at 22-24; Telscape Communications and Sage Telecom Communications Comments at 15-16 (supporting the

(continued….)

permitting Lifeline subscribers to move their Lifeline benefit to a new carrier once every 12 months will incentivize service providers to "make more significant investments in devices and services, so that low-income consumers can benefit from the up-front advantages of longer term carrier relationships."[965] The providers further specified that such a benefit transfer freeze should apply regardless of whether the subscriber is in a state that opted out of the NLAD.[966] In contrast, the FCC Consumer Advisory Committee, while not discussing a port freeze specifically, urged the Commission to "enable Lifeline consumers to change service providers and technology platforms at their discretion" to promote competition and consumer choice in the Lifeline program.[967]

389. *Twelve-month benefit port freeze for Lifeline-supported broadband service.* To facilitate market entry for Lifeline-supported BIAS offerings, provide additional consumer benefits, and encourage competition, we now establish that providers may not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who used the Lifeline benefit to enroll in a qualifying Lifeline-supported BIAS offering with another Lifeline provider within the previous 12 months, except in circumstances explained below.[968] We find that allowing broadband providers the security of a longer term relationship with subscribers will incentivize greater up-front investments from providers. Those investments in broadband-capable devices and broadband services should improve the quality of new offers for subscribers and further spur competition among providers to offer more innovative services. While we acknowledge that this rule will decrease Lifeline providers' incentive to compete for customers that have recently signed up with another Lifeline provider,[969] we find that Lifeline-eligible consumers will nonetheless benefit more from a Lifeline market in which a benefit port freeze gives providers stronger incentive to vigorously compete for eligible customers through better broadband service offerings and outreach.[970]

390. Except in circumstances described below, providers may not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who used the Lifeline benefit to enroll with another Lifeline provider for qualifying Lifeline-supported BIAS service within the previous 12 months. For a subscriber to continue receiving the Lifeline benefit after the subscriber has received Lifeline-supported service from a provider for 12 months, the subscriber must be recertified as eligible, at which point the subscriber may choose to receive Lifeline-supported service from the same Lifeline provider month-to-month, being recertified every 12 months. If, however, the subscriber switches to a different Lifeline provider after the initial 12-month period, a new initial 12-month period

(Continued from previous page)
proposal to extend a benefit port freeze to 12 months and "urg[ing] the Commission to explore additional ways to provide stability and certainty to providers that offer advanced equipment to subscribers.").

[965] Joint Commenters Comments at 17.

[966] *See* Joint Commenters Reply at 23.

[967] FCC Consumer Advisory Committee, Recommendation Regarding Modernization of the Lifeline Program, WC Docket No. 11-42 et al., at 2 (filed Feb. 19, 2016).

[968] *See infra* paras. 393-394. For the purposes of this section, the use of the term "transfer" is meant to include any mechanism to move a subscriber from one carrier to another, and the 12-month period will be measured from the subscriber's service initiation date. As a function of the 12-month port freeze, USAC will determine the best method and practices to handle carrier de-enrollments to prevent improper practices by carriers to circumvent the port freeze.

[969] *See* FCC Consumer Advisory Committee, Recommendation Regarding Modernization of the Lifeline Program, WC Docket No. 11-42 et al., at 2 (filed Feb. 19, 2016).

[970] Similarly, we expect that the consumer benefits and service improvements resulting from increased competition in the Lifeline program will outweigh any potential consumer harms that could result from a provider knowing that a customer could not transfer her Lifeline benefit to a different provider before the end of the port freeze. Any such harms would also be mitigated by the exceptions we establish below to protect consumers in the program.

will begin with the new Lifeline provider.[971] Lifeline disbursements will be made by USAC to the Lifeline provider each month, as in the current program, and we expect this eligibility modification to encourage Lifeline providers to offer more robust services in light of the additional customer certainty this rule change provides.

391. A provider that enrolls Lifeline-eligible subscribers cannot materially change the initial terms or conditions of that service offering without the consent of the subscriber until the end of the 12 months, except to increase the offering's speeds or usage allowances. Changes that lower the quality or speed of service, lower the offering's usage allowance, or increase the service's price are presumptively material changes to the terms or conditions of service, even if such changes are made in response to an amendment to the Commission's rules or a change to the Lifeline program's minimum service standards. If a subscriber cancels service or is de-enrolled for non-usage, the Lifeline provider cannot continue to receive reimbursement for that subscriber, nor can the subscriber re-enroll in the program with another provider until the end of the initial 12-month period. Where permitted by the terms and conditions of the service offering, a Lifeline subscriber at any time may move their Lifeline benefit to a different qualifying Lifeline service offered by the same provider, whether broadband, voice, or a bundled offering so long as the service is eligible for support by the Lifeline program. However, if the subscriber switches to another plan offered by the Lifeline provider that offers Lifeline qualifying voice telephony service but not Lifeline qualifying BIAS, the subscriber's 12-month port freeze will end immediately and the subscriber will instead be subject to a 60-day benefit port freeze.

392. *Sixty-day benefit port freeze for Lifeline-supported voice telephony service.* A Lifeline provider also may not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who used the Lifeline benefit to enroll in a qualifying Lifeline-supported voice telephony service offering with another Lifeline provider within the previous 60 days, except in circumstances explained below.[972] We find that, for the reasons described above, a benefit port freeze will encourage provider investment and high-quality service offerings in voice telephony service as well as BIAS.[973] However, since the service and device costs associated with standalone voice telephony service are generally lower than costs for comparable broadband offerings,[974] the benefit port freeze for Lifeline-supported offerings that do not meet the program's minimum service standards for BIAS need not be a full 12 months. Instead, we find that the existing 60-day period administered by USAC is sufficient to encourage investment and quality offerings for voice services, and we accordingly codify that period in our rules.

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[971] If the subscriber opts to continue receiving service from her current Lifeline provider at the end of the initial 12-month period, that provider may not temporarily "terminate" the subscriber's service for purposes of obtaining a second 12-month port freeze immediately following the first. Additionally, as part of the transfer of the subscriber's benefit, the new Lifeline provider will follow the same subscriber enrollment rules for a new subscriber, such as verifying eligibility and beginning a new 12-month recertification cycle.

[972] For the purposes of the 60-day port freeze, the period will begin to run from the subscriber's service initiation date.

[973] *See supra* paras. 389-390.

[974] *See* Letter from John J. Heitmann, Counsel, Lifeline Connection Coalition, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al, at 5 (filed Mar. 21, 2016) (discussing the additional recoupment time needed for Wi-Fi-enabled devices and hotspot-enabled devices); Lifeline Joint Commenters Comments at 6 (describing ETCs' transition from "feature phones" to more advanced "smartphones"), 72 ("At a minimum, the Commission should adopt reforms consistent with these comments to provide the regulatory environment needed to justify service provider investments in smartphones or late model feature phones for Lifeline subscribers."); Sprint Comments at 20 (arguing that offering free smartphones or other broadband-capable devices poses new problems because "the devices are too costly, and the Lifeline revenue stream is too uncertain, to make this financially feasible.").

393. *Exceptions to the BIAS and voice telephony Lifeline benefit port freezes.* In certain circumstances, however, an eligible low-income subscriber may transfer their Lifeline benefit to another provider prior to completion of the 12-month period. A subscriber may transfer their Lifeline benefit to another provider prior to completion of the 12-month period if:

- the subscriber moves their residential address;
- the provider ceases operations or otherwise fails to provide service;
- the provider has imposed late fees for non-payment related to the supported service(s) greater than or equal to the monthly end-user charge for service; or
- the provider is found to be in violation of the Commission's rules during the benefit year and the subscriber is impacted by such violation.

394. In any of the above circumstances, Lifeline subscribers may cancel service and receive a new Lifeline-supported service with another provider until the end of the *original* 12-month period. In these circumstances, the subscriber is not required to re-verify eligibility until the end of the original 12-month period. In such cases, we direct USAC to implement a process for facilitating the necessary sharing of information between the Lifeline providers so the subscriber's benefit can be transferred to the new provider in accordance with Commission rules. We also direct USAC to make necessary modifications to the NLAD for enforcing these rules and to incorporate such functionality into the National Verifier. We also require states that have opted-out of the NLAD, in coordination with USAC, to update their systems and processes to implement this rule. We insert section 54.411 of our rules to establish when and under what circumstances a subscriber may transfer his or her Lifeline benefit to a new provider. Our addition of section 54.411 of the Commission's rules, as discussed in this section, will become effective 60 days after announcement in the Federal Register of OMB approval of the subject information collection requirements or December 1, 2016, whichever is later.

G. Managing Program Finances

395. In the *2015 Lifeline FNPRM*, we sought comment on establishing a budget for the Lifeline program, and determining an appropriate budget amount.[975] While many commenters supported instituting a budget,[976] some worried that a budget would lead to eligible consumers being denied Lifeline support[977] or being placed on waiting lists.[978] Still others argued that sufficient data to set a budget for the program is not available and the Commission should decline to adopt a budget at this time.[979] We conclude that a budget mechanism, implemented as described below, will ensure the financial stability of the Lifeline program and guarantee access to all eligible consumers, and we revise section 54.423 the rules.[980] Given the significant changes we adopt today, we find it prudent to apply this budget to the Lifeline program at this time rather than wait until after implementation of the changes. In so doing, we must balance the need to ensure that the Lifeline program continues to reduce the contribution burden on the nation's ratepayers, will continue to support service to eligible consumers, and will provide information to the Commission as it monitors the Lifeline program's growth following such significant programmatic changes.

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[975] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7843, paras. 55-56.

[976] ITTA Comments at 2; Florida PSC Comments at 5; NATOA Comments at 3.

[977] Communications Workers of America Comments at 6.

[978] The Leadership Conference on Civil and Human Rights Comments at 3; Hilary Shelton Comments at 2 (NAACP Comments).

[979] Pennsylvania PUC Comments at 16.

[980] *See* Appx. A.

396. *Background*. In 2005, the Commission forbore from the requirement that ETCs be facilities-based.[981] In 2008, the Commission first allowed a non-facilities-based ETC to receive Lifeline support.[982] These actions led to significant growth in the program. In 2005, Lifeline expenditures totaled $753 million.[983] In 2010, that amount had increased to $1.3 billion,[984] and by 2012, it had increased to more than $2.1 billion.[985] In its *2011 Lifeline NPRM*,[986] the Commission took note of these rapidly escalating costs. Although the Commission emphasized that fund growth was not indicative of waste, fraud, and abuse,[987] because the program increased when eligible consumers signed up, the Commission chose to propose a budget as a way of managing future costs.[988]

397. Ultimately, the Commission concluded that the program changes adopted in the *2012 Lifeline Reform Order* would significantly reduce Lifeline's expenditures.[989] Additionally, the Commission concluded that it was appropriate to see what impact the significant changes made in the *2012 Lifeline Reform Order* would have on the program's size before imposing a budget.[990]

398. Since 2012, the reforms adopted in the *2012 Lifeline Reform Order* have successfully reduced waste, fraud, and abuse, and annual spending has fallen by $600 million, with total estimated savings of more than $2.75 billion through 2014, based on projections of how much would have been spent without the reforms of the *2012 Lifeline Reform Order*.[991] All of these improvements have occurred without a budget, as efficient program administration has led to significant savings.[992] Despite these improvements, we conclude that the substantial changes being made to the program warrant a budget. Implementing a budget will also put Lifeline in line with all other Universal Service programs, all of which have a budget. This budget mechanism will improve program administration and will not lead to eligible consumers being denied service.

399. We are mindful of the numerous commenters who worry that instituting a budget on Lifeline will lead to eligible consumers being denied service.[993] As noted in the *2015 Lifeline FNPRM*, we realize that setting the budget at Lifeline's current expenditure level could foreclose eligible households from subscribing in the future.[994] Additionally, we stated that we wanted to make sure that households would not be removed from Lifeline in the middle of the year.[995] As explained in more detail

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[981] *TracFone Forbearance Order*, 20 FCC Rcd 15095.

[982] *TracFone ETC Designation Order*, 23 FCC Rcd 6206.

[983] Universal Service Administrative Company, Quarterly Administrative Filings for 2005, Fourth Quarter (4Q), Appendices at 13 (Aug. 2, 2005) (USAC 4Q 2005 Filing), https://www.usac.org/about/tools/fcc/filings/2005/Q4/FCC%204Q2005%20Quarterly%20Demand%20Filing%20-%20Final.pdf.

[984] *2011 Lifeline NPRM*, 26 FCC Rcd at 2773, para. 3.

[985] *2015 Universal Service Monitoring Report* at 24, Table 2.2.

[986] *Id*.

[987] *2011 Lifeline NPRM*, 26 FCC Rcd at 2818, para. 144.

[988] *2011 Lifeline NPRM*, 26 FCC Rcd at 2818, para. 145.

[989] *2012 Lifeline Reform Order*, 27 FCC Rcd at 6809-10, para. 359.

[990] *2012 Lifeline Reform Order*, 27 FCC Rcd at 6809-10, para. 359.

[991] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7821, para. 3.

[992] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7843, para. 55.

[993] Consumer Action Comments at 4.

[994] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7843, para. 57.

[995] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7844, para. 58.

below, we adopt a budget mechanism which will allow for certainty in planning the future of the Lifeline program, and which will ensure that eligible households are able to obtain Lifeline service.

400. *Initial Budget Amount.* We adopt an initial annual budget of $2.25 billion based on our projections of how the program will be updated once BIAS is a supported service. This budget will apply for the calendar year beginning January 1, 2017. We arrive at this level by considering current participation rates, possible growth of the program as we seek to raise awareness of its benefits, and the safeguards already in place to reduce waste, fraud, and abuse.

401. Currently, approximately 13.1 million households are enrolled in Lifeline,[996] and USAC estimates a 32 percent participation rate.[997]As occurred after the last major expansion of Lifeline,[998] we can expect program participation to increase. We note, however, that the Commission has instituted many significant safeguards against waste, fraud, and abuse in the last five years and that some measures we adopt in this item today – such as the imposition of new minimum service standards that may result in higher subscriber out-of-pocket costs versus today's program – may depress demand for Lifeline services in the near term. For the purpose of establishing a budget for this program, we prepare for participation in the program to increase. A $2.25 billion budget would allow over 20 million households to participate in the program with basic support for an entire year before the budget is reached.[999] We believe this budget establishes a ceiling with appropriate room for organic growth in the modernized, accountable Lifeline program we adopt today.[1000]

402. *Reporting on Budget.* While we believe this budget level will provide ample room for new households to enroll in the program, we must also monitor the program and account for the reasons for growth in the program in order to make adjustments, if necessary. We therefore direct the Bureau to issue a report to the Commission by July 31 of the following year if total Lifeline disbursements exceeded 90 percent of the budget in the previous calendar year. For example, if in calendar year 2017, when the budget is set at $2.25 billion, the total disbursements for 2017 exceeded $2.025 billion, then by July 31, 2018 the Bureau would be required to issue such a report. This report should offer an evaluation of program disbursements, including the causes of program growth, an evaluation of the different services and technologies supported by Lifeline, disbursement amounts by state or other geographic areas, and any other information relevant to the Commission's necessary oversight of the Lifeline program. The report should also make recommendations about what should be done, for example, including making adjustments to the minimum service standards, changing the support levels, altering other requirements, or modifying the budget amount. We expect the full Commission will take appropriate action to address the Lifeline budget within six months of receiving the report.

403. *Indexing the Budget for Inflation*. The budget amount will be indexed to inflation in accordance with the Consumer Price Index for all items from the Department of Labor, Bureau of Labor Statistics.[1001] The budget for the next calendar year beginning January 1 shall be announced in a Public Notice on or before July 31 of each year.

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[996] *See* USAC, *Lifeline Program: Subscribers by State or Jurisdiction-January 2015 to December 2015*, http://www.usac.org/about/tools/fcc/filings/2016/Q2/LI08%20Lifeline%20Subscribers%20by%20State%20or%20Jurisdiction%20-%20January%202015%20through%20December%202015.xlsx (last visited Feb. 2, 2016).

[997] Universal Service Administrative Company, USAC Data on the federal Universal Service Lifeline Program at 5 (2016), http://apps.fcc.gov/ecfs/document/view?id=60001517799.

[998] *TracFone Forbearance Order*, 20 FCC Rcd 15095.

[999] 20,270,270*$9.25*12= $2,250,000,000.

[1000] While some Lifeline subscribers will receive enhanced tribal support, it is difficult to forecast the number well in light of other changes that we make to the program.

[1001] *Bureau of Labor Statistics, Department of Labor, Consumer Price Index, All Urban Consumers, U.S. City Average, Not Seasonally Adjusted,* Series CUUR0000SA0.

H. Efficient Program Administration

1. Program Evaluation

404. In this section, we clarify our goals and goal measurements to better align them with the modernized Lifeline program. We also direct the Bureau, working with USAC, to conduct a program evaluation of the newly reformed program so that the Commission and the public may have better information about the operation and effectiveness of the program.

405. *Background*. In the *2012 Lifeline Reform Order*, the Commission established three goals for the Lifeline Program: (1) ensuring the availability of voice service for low-income Americans; (2) ensuring the availability of broadband service for low income Americans; and (3) minimizing the contribution burden on consumers and businesses.[1002] When establishing these goals in 2012, the Commission determined that the availability of voice and broadband service should be measured by the narrowing of the gap between voice and broadband penetration (the percentage of households with service) of low income households and the "next highest" income group.[1003] The data to measure progress towards program goals became available in 2015, and the Commission published these measurements in its *2015 Universal Service Monitoring Report*.[1004] The Commission also found that voice affordability was a key component of availability because a service is not available if it is not affordable.[1005] In its 2015 report on the Lifeline program, the GAO examined whether the program was meeting its stated goals and whether the Commission could determine the effect of the program on progress towards those goals.[1006] In its report, the GAO acknowledged that the Commission included affordability as a component of the goals of voice and broadband availability, but argued that it did not explicitly measure the effect of the program on affordability.[1007]

406. In the *2015 Lifeline FNPRM*, we sought comment on whether to initiate an evaluation of the Lifeline program to more clearly quantify the causal relationship between the Lifeline benefit and achievement of its goals.[1008] We also asked for comment on whether to change or modify the program goals.[1009] While we received limited comment on these issues, there was general support to more closely examine the effects of the program, particularly on the affordability of voice and broadband service.[1010]

[1002] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6670-6680, paras. 24-50.

[1003] The lowest income group has income at or below 135 percent of the Federal Poverty Guidelines while the "next highest" group has incomes above 135 percent and at or below 200 percent of the Federal Poverty Guidelines. *See 2015 Universal Service Monitoring Report* at 56.

[1004] *See id.*

[1005] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6671, para. 28; *id*. at 6671, para. 28 & n. 79 (noting that affordability is a component of the goal of availability).

[1006] *See generally*, FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program, GAO-15-335, at (Mar. 2015) (GAO March 2015 Report).

[1007] *See id*. at 14-15.

[1008] The Commission sought comment on these issues in part as a response to the 2015 GAO report urging the Commission to conduct a Lifeline program evaluation. *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6725, para. 157; GAO March 2015 Report at 13. As described by the GAO, a program evaluation goes beyond examining whether program goals and measures are being met and looks to "isolate the causal impacts of program from other external economic or environmental conditions in order to assess a program's effectiveness." GAO, Designing Evaluations, 2012 Revision, GAO 12-208(G), at 3 (Jan. 2012) (Designing Evaluations).

[1009] *See 2012 Lifeline Reform Order* 27 FCC Rcd at 6725, para. 157.

[1010] *See, e.g.*, Adtran Comments at 15 (supporting yearly tracking to determine whether the "digital divide" is being closed, and a more detailed evaluation every three years to determine the efficacy of Lifeline); EveryoneOn Comments at 4-5 (arguing the FCC should specify quantified goals for broadband adoption based upon addressable

(continued….)

407. *Discussion*. This order creates a revitalized broadband-centered Lifeline program. In light of these changes, we revise our program goals and call for evaluating the efficacy and efficiency of our newly revamped program in reaching its goals.

408. First, we explicitly include affordability of voice and broadband service as a component of our first and second program goals and separately measure progress towards that goal component. We clarify that the Lifeline program includes as its goal ensuring the affordability of voice and broadband service.[1011] We will measure progress toward this component of our first two goals by measuring the extent to which voice and broadband service expenditures exceed two percent of low income consumers' disposable household income as compared to the next highest income group.[1012] We direct the Bureau to implement the details of this measurement, examine the available data, and publish the results in the annual Universal Service Monitoring Report.

409. Second, we begin a thorough, long-term process of evaluating the newly revitalized Lifeline program. Within 12 months of Federal Register publication of this Order, we direct USAC to begin a procurement process for an outside, independent, third-party evaluator to complete a program evaluation of the Lifeline program's design, function, and administration. The evaluation should be consistent with current GAO guidance on program evaluations.[1013] If appropriate, the evaluation should discuss ways in which resources and data from other agencies can be helpful in evaluating the program.[1014] The outside evaluator must complete the evaluation and USAC must submit the findings to

(Continued from previous page)
populations of eligible non-adopters); Free Press Comments at 32-39 (arguing that because telecommunications services are essential, success should not be measured by the number of people who would drop service without the subsidy); Joint Commenters Comments at 73-75 (asserting that the Commission focus on broadband accessibility and affordability of voice and broadband service); Michigan PSC Comments at 14 (stating that the Commission should hire an outside evaluator, and the evaluation should examine voice penetration, program costs and benefits, and how effective modernizing the program to include broadband will be).

[1011] *See supra* section III.B.1. (Supported Modes of Service); *see also* Letter of John Windhausen Jr., Executive Director, SHLB Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 at 2 (filed Jan. 8, 2016) (arguing for the establishment of Lifeline benchmarks to measure affordability).

[1012] This approach is similar to the approach taken in other measures of affordability. We note that the United Nations set a goal for developing countries that, by 2015 "entry level" broadband Internet access should account for no more than five percent of disposable income. The most recent data from 2014 indicates that for the poorest 20 percent of U.S. households, a fixed broadband connection constitutes 2.47 percent of monthly disposable income while a 500MB month mobile broadband plan is 4.94 percent of disposable income. *See* International Telecoms Union, Measuring Information Society Report (2014), http://www.itu.int/en/ITU-D/Statistics/Documents/publications/mis2014/MIS2014_without_Annex_4.pdf. We adopt the two percent level as a clear yardstick for charting changes, not as an inherently meaningful level.

[1013] The GAO periodically issues reports on the methodology of program evaluations and technical guides to performing them. The previously cited Designing Evaluations provides guidance on the key logic of preparing program evaluations and also incorporates changes in program evaluation and performance measures required by the GPRA Modernization Act of 2010, codified at 5 U.S.C. § 306 and 31 U.S.C. §§ 1115-6. *See* Designing Evaluations at 1.

[1014] *See id.* at 21 (discussing the benefits of incorporating data and studies already performed into the program evaluation); NCLC et al. Comments at 8-9 (arguing that the FCC should collect more data on consumer choices and whether Lifeline is being integrated into other adoption programs); John Mayo, Olga Ukhaneva, and Scott Wallsten Comments at 2-3 (arguing that the FCC should work with the CDC to include questions on existing surveys to determine who is participating); CBPP Comments at 1 (arguing for incorporating a system to identify error rates similar to SNAP); Professor David Super Comments at 14-15 (same). We note that the Bureau of Labor statistics already collects expenditure data for income group and spending category, including telecommunications. *See* Bureau of Labor Statistics, Income Before Taxes Annual Expenditure Means, Shares, Standard Errors and Coefficients of Variation, Consumer Expenditure Survey, http://www.bls.gov/cex/2014/combined/income.pdf (last visited Dec. 10, 2015).

the Commission by December 31, 2020 so that the evaluation can be incorporated, as appropriate, into the State of the Lifeline Marketplace Report, due June 30, 2021. The Commission will make the final evaluation publicly available to the extent not otherwise precluded by law. We believe that an extended period until completion of the final report is necessary to evaluate whether the newly revised Lifeline program is operating efficiently and effectively in fulfillment of its goals.[1015]

410. Our direction here is consistent with prior direction given to USAC to undertake reviews of the extent to which our universal service rules, as implemented, are advancing relevant program goals. Because a key element of this forthcoming review will involve the evaluation of whether the implementation of the modified Lifeline rules is achieving our program goals, we follow a similar approach here. We also note that the efficacy of the legacy voice program has already been studied in depth by third parties, and therefore find that limited USF funds should be better spent designing and implementing, as soon as possible to enable a full analysis of a revamped program, an evaluation of the Lifeline program, which includes analysis of its effectiveness in meeting its newly revised goals.[1016]

2. Non-Usage Reforms

411. We next provide additional flexibility for those Lifeline subscribers and service providers who must demonstrate that the subscriber has used the service within the established time frame, while still maintaining fiscal responsibility.[1017] In the *2012 Lifeline Reform Order*, as a measure intended to reduce waste in the program, the Commission introduced a requirement that a Lifeline service provider who did not assess and collect from its subscribers a charge (*e.g.*, a pre-paid provider) could not receive support for subscribers who had either not initiated service, or who had not used the service for a consecutive 60-day period. In this way, service providers would only receive support for eligible low-income subscribers who actually use the service.[1018] The Commission established ways in which a subscriber could establish "usage" for purposes of the rule.[1019]

412. In the *2015 Lifeline FNPRM*, we proposed to amend section 54.407(c)(2) of our rules to allow the sending of a text message by a subscriber to constitute "usage."[1020] We recognized that, while text messaging was not a supported service, it is widely used by wireless consumers for their basic communications needs.[1021] Moreover, there was an indication that there is increasing reliance on text messaging by individuals who are deaf, hard of hearing, or have difficulty with speech.[1022] We also asked whether it was appropriate to base a subscriber's intention to use a supported service on that subscriber's use of a non-supported service.[1023] The *2015 Lifeline FNPRM* also sought comment on the conclusion not

[1015] Designing Evaluations at 15 ("Outcome evaluations assess the extent to which a program achieves its outcome oriented objectives or other important outcomes. Naturally, if the program has not had sufficient time to get its operations in place, then it is unlikely to have produced the desired benefits…In agreeing on an evaluation question, it is also important to consider whether sufficient time will have passed to observe longer-term outcomes.").

[1016] *See* March 2015 GAO Report at 15 (FCC officials noted that two academic studies have assessed the program, including the impact of the Lifeline program on household decisions to subscribe to telephone service). *See also* John Mayo et al., Comments at 6-7 (arguing that the program should set goals and evaluation tools at the beginning).

[1017] *See* 47 CFR § 54.407(c)(2); *2012 Lifeline Reform Order*, 27 FCC Rcd at 6768-6771, paras. 257-263.

[1018] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6768-69, para. 257.

[1019] *See* 47 CFR § 54.407(c)(2).

[1020] *2015 Lifeline FNPRM* at 7870, para. 146.

[1021] *Id.*, para. 145.

[1022] *See* TracFone Petition for Rulemaking and for Interim Relief at 5 (filed Oct. 1, 2014) (TracFone Texting Petition).

[1023] *See 2015 Lifeline FNPRM* at 7870, para. 146.

to allow the receipt of text messages to qualify as usage.[1024] Finally, the *2015 Lifeline FNPRM* proposed to reduce the non-usage interval from 60 to 30 days, as part of our ongoing efforts to reduce waste and inefficiency in the Lifeline program.[1025]

413. All those who commented on whether to allow the sending of text messages to constitute usage for purposes of section 54.407(c)(2) of our rules supported this broadening of our requirements.[1026] Many commenters stated that for many of today's wireless consumers, including Lifeline subscribers, text messaging is the prevalent means of communication.[1027] Sprint, for example, stated that a significant percentage of Assurance Wireless customers used their Lifeline handset for text messaging even when they did not have any voice usage.[1028] Several commenters also highlighted that texting is the primary means by which many people with disabilities communicate.[1029]

414. Based on our review of the record and the communications landscape overall, we conclude that it is appropriate to allow the sending of a text message by the subscriber to qualify as "usage" for purposes of section 54.407(c)(2).[1030] Our decision is based on the reality that many consumers today view texting, voice, and broadband as interchangeable means of communication and often use text messages as the sole or primary means of communication.[1031] Many Lifeline subscribers may assume that using any of the services available from the device provided by their Lifeline service provider will qualify as usage, and it seems unnecessarily burdensome to require them to distinguish among the services to ensure compliance with the program's usage requirement. While TracFone continues to urge the Commission to allow both the sending and receipt of texts to qualify as "usage,"[1032] we conclude, consistent with the *2015 Lifeline FNPRM*, that only the sending of texts from the subscriber's device will qualify as sufficient indication of usage.[1033] We will, therefore, modify section 54.407(c)(2) of our rules to reflect the inclusion of outbound texts as a means for establishing "usage." In addition, given this Order's inclusion of BIAS as a supported service, we also make certain modifications to sections 54.407(c)(2)(i) and (ii) of our rules to account for the inclusion of broadband service as a supported service.

[1024] *Id.*

[1025] *Id.* at 7884-85, paras. 198-199.

[1026] *See, e.g.*, NAD Comments at 9-10; Amerihealth Caritas Comments at 2; Benton Foundation Comments at 49-51; Public Knowledge Reply at 11-12; Smith Bagley, Inc. Comments at 27-28; California PUC Comments at 43; California ETF Comments at 46-47; Sprint Comments at 29-30; T-Mobile Comments at 7-8; Joint Commenters Comments at 62-68; COMPTEL Comments at 27-28; Budget Reply at 12-13; TracFone Comments at 47-49; TracFone Reply at 27-29.

[1027] *See, e.g.*, Public Knowledge Comments at 11; T-Mobile Reply at 7; and COMPTEL Comments at 27.

[1028] *See* Sprint Comments at 29.

[1029] *See, e.g.*, Benton Foundation Comments at 49; NAD Comments at 9 (noting that often deaf and hard of hearing consumers may rely solely on text messaging).

[1030] This determination should not be confused with any decision regarding the regulatory status of texting service. *See Wireless Telecommunications Bureau Seeks Comment Regarding Petition Seeking Declaratory Ruling Clarifying the Regulatory Status of Mobile Messaging Services*, Public Notice, 30 FCC Rcd 10973 (WTB 2015). Likewise, we make no decisions at this time regarding whether text messaging qualifies as a Lifeline-supported service.

[1031] *See, e.g.*, Budget Comments at 13; Smith Bagley Comments at 27; Benton Foundation Comments at 49-51; Public Knowledge Reply at 11-12.

[1032] *See* TracFone Comments at 48-49.

[1033] *See, e.g.*, Benton Foundation Comments at 49 (noting that the "receipt of text messages should not qualify as usage, as the subscriber cannot control whether others send texts.").

415. Broadening the list of services that can be used to demonstrate "usage" for purposes of section 54.407(c)(2) of our rules should greatly ease consumers' ability to show their desire to retain Lifeline service. Consequently, we find it appropriate at this time to shorten the non-usage period from 60 to 30 days, along with a corresponding reduction in the time allotted for service providers to notify their subscribers of possible termination from 30 to 15 days. Under this scheme, Lifeline service providers must notify subscribers of possible termination on the 30th day and terminate service if, during the subsequent 15 days, the subscriber has not used the service. In this way, the subscriber will have a total of 45 days in which to demonstrate "usage." In making this determination, we are mindful of the concerns raised by commenters such as Sprint who assert that decreasing the time period may lead to a higher number of de-enrollments.[1034] We note, however, that such assessments are based on a scenario in which the Commission did not permit texting, one of the most prevalent means of wireless communications, to be used as a basis for demonstrating usage. Moreover, we expect that Lifeline service providers will educate their subscribers about the usage requirements and de-enrollment that will result from non-usage. Hence, we will modify section 54.405(e)(3) of our rules to reflect the change in the non-usage interval. Finally, we emphasize that only if a carrier bills on a monthly basis and collects or makes a good faith effort to collect any money owned within a reasonable amount of time will the carrier not be subject to the non-usage requirements. Carriers that fail to take such steps and do not de-enroll subscribers pursuant to the non-usage requirements may be subject to enforcement action or withholding of support.

3. Rolling Recertification

416. In the *2015 Lifeline FNPRM*, we also sought comment on whether we should make any changes to the recertification process as we modernize the administration of the Lifeline program.[1035] We find that requiring Lifeline customers' eligibility to be recertified every 12 months, as measured from the subscriber's service initiation date, will result in administrative efficiencies and avoid imposing undue burdens on providers, USAC, or the National Verifier. Previously, Lifeline providers were required to annually recertify all subscribers except in states where the state Lifeline administrator or other state agency is responsible for recertification."[1036] Recertification was considered complete when a carrier had, by December 31, de-enrolled all subscribers who did not respond to recertification efforts.[1037]

417. We find that, particularly as the National Verifier is launched in multiple states, annually recertifying subscribers on a rolling basis, based on the subscriber's service initiation date, will prevent the entity responsible for recertification from processing recertification and potential de-enrollment procedures for all subscribers at the same time. This will make the recertification process more manageable and result in a recertification process that reflects the amount of time the subscriber has actually been enrolled in the Lifeline program. We also expect that this change will enable providers and the National Verifier to respond to any customers who need assistance in the recertification process without being overwhelmed by customer service requests.[1038]

418. Prior to the implementation of the National Verifier in a state, to prevent the enrollment of ineligible customers, we require providers to conduct an initial eligibility determination for every enrolling customer, regardless of whether that customer had previously received Lifeline-discounted service from another provider. That provider must then recertify the customer's eligibility 12 months

[1034] *See* Sprint Comments at 30.

[1035] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7851-52, para. 86.

[1036] *See* 47 CFR § 54.410(f)(1).

[1037] *See* 47 CFR § 54.405(e)(4); *Recertify Subscribers (FCC Form 555)*, Universal Service Administrative Company (last visited Feb. 5, 2016), http://www.usac.org/li/program-requirements/recertify-subscribers/.

[1038] *See, e.g.*, New York PSC Comments at 6 (describing difficulties subscribers may encounter in the recertification process and suggesting proposals to facilitate recertification for eligible subscribers).

after the subscriber's service initiation date with that provider. However, after the National Verifier has been implemented in a state, the National Verifier's eligibility records for a subscriber will permit the National Verifier to only recertify the subscriber's eligibility every 12 months after the subscriber's first initiation of a Lifeline-discounted service. Thus, even if a subscriber changes Lifeline providers during the course of the year, the National Verifier will only need to recertify eligibility 12 months after the subscriber's first service initiation date, and every 12 months thereafter. We therefore revise section 54.410(f) of our rules to reflect this change. The rules establishing and related to rolling recertification will be effective for all enrollments made beginning the later of January 1, 2017 or upon PRA approval. Subscribers enrolled on or after such date will be subject to recertification requirements at the end of the 12-month period that begins with their service initiation date.[1039] For subscribers enrolled prior to January 1, 2017, recertification for 2016 will be conducted in accordance with current Lifeline practices and require recertification by December 31, 2016.[1040] Additionally for subscribers enrolled prior to January 1, 2017, rolling recertification will begin July 1, 2017. Beginning July 1, 2017, all subscribers enrolled prior to January 1, 2017 will need to be recertified on a rolling basis based on the subscriber's service initiation date.[1041]

419. We also revise section 54.410(f) to clarify that the entity responsible for recertifying subscribers must first query the appropriate state or federal database to determinate on-going eligibility prior to using other means to recertify subscribers. In the *2012 Lifeline Reform Order*, the Commission specifically required "in instances where ongoing eligibility [could] not be determined through access to a qualifying database either by the ETC or the state," service providers could then recertify subscribers using other methods, including in person, in writing, by phone, by text message, by email or otherwise through the Internet to confirm continued eligibility."[1042] The revised recertification rules reflect the Commission's determination.

420. Further, we revise section 54.405(e)(4) to require a subscriber be given 60 days to respond to recertification efforts, and consistent with our other de-enrollment rules, non-responsive subscribers will be de-enrolled within five days following the expiration of the 60-day response window.[1043] We take this step to ease the recertification burden for providers and the National Verifier.[1044] Expanding the recertification period will allow batching of daily subscriber recertification deadlines into more manageable weekly or monthly groupings.

[1039] Subscribers already enrolled prior to January 1, 2017 will be subject to rolling recertification based on their current service initiation date. We direct USAC to communicate with carriers and consumers as necessary to provide information on each subscriber's relevant date.

[1040] *See* 47 CFR § 54.405(e)(4); *Recertify Subscribers (FCC Form 555)*, Universal Service Administrative Company (last visited Feb. 5, 2016), http://www.usac.org/li/program-requirements/recertify-subscribers/.

[1041] We recognize that in this interim period subscribers will be recertified in a period ranging from six months to 18 months from the subscriber's last recertification. This interim period is required to effectively transition the program to rolling recertification. The period from January 1, 2017 to July 1, 2017 is meant to provide the appropriate transition for ETCs and subscribers, while preventing immediate recertification of subscribers with service initiation dates during those six months. Additionally, the transition to rolling recertification for existing subscribers needs to begin promptly to maintain program integrity and guard against improper payments.

[1042] *2012 Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 133.

[1043] *See* 47 CFR § 54.405(e)(4).

[1044] *See* Letter from John Heitmann, Counsel for Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, FCC WC Docket No. 11-42 *et al.*, at 3-5 (filed March 24, 2016) (Lifeline Connects Coalition March 24 *Ex Parte*) (stating that extending the recertification period to 60 days will decrease the burden on providers, a potential National Verifier, and subscribers, alike. Particularly, recertification conducted by mail that often requires multiple forms to be exchanged to ensure valid recertification forms are received. As many as 70% of mailings required multiple forms due to the return of invalid certifications.).

421. Finally, we revise section 54.405(e)(1) to require de-enrollment within five business days after the expiration of the subscriber's time to demonstrate eligibility. In so doing, we add consistency to the various provisions in section 54.405 related to de-enrollment due to ineligibility. We also adopt section 54.405(e)(5) to require service providers to de-enroll a subscriber who has requested de-enrollment within two business days after making such a request. We take this action to ensure that subscriber de-enrollment requests are resolved in a timely manner.

4. Publishing Lifeline Subscriber Counts

422. *Background*. In the *2015 Lifeline FNPRM*, the Commission proposed publically disclosing Lifeline subscriber counts through USAC's online disbursement tool.[1045] USAC currently publishes authorized disbursement amounts made to providers for each study area code (SAC)[1046] that is based on information obtained from the FCC Form 497. Lifeline providers must submit a Form 497 monthly or quarterly that reports the number of subscribers served by the provider in the previous month or quarter. USAC currently does not make available publicly subscriber counts.[1047]

423. *Discussion*. We direct USAC before December 1, 2016 to modify its online Lifeline tool to make available to the public information about the Lifeline program, such as the total number of subscribers for which a provider seeks support for each SAC, including how many subscribers are receiving enhanced Tribal support. Although the public can already derive the Lifeline subscriber counts by referencing information from USAC's website and Quarterly Reports, relatively simple changes to USAC's systems can make this and other information about the Lifeline program far easier to access. Moreover, having USAC directly publish subscriber counts increases transparency and continues to promote accountability in the program. USAC shall also make available information about the number of subscribers receiving support for each of the supported services. Commenters also agree that publishing the amount of subscribers served by providers will increase transparency.[1048]

424. We direct USAC to work with the Bureau and OMD to formulate a plan for making available additional Lifeline information consistent with the Commission's historical commitment to transparency as well as taking into consideration any valid concerns about divulging non-public information. USAC should consider how other useful information can be made publically available, such as by using the National Verifier. In addition, we direct USAC to consider new ways in which states or other government entities may be given increased access to the National Verifier or NLAD for the purposes of better program administration. Before giving such access, USAC should obtain approval from the Bureau.

5. Audits

425. In this section, we adopt our proposal to revise section 54.420 of our rules requiring all Lifeline providers to undergo an audit within their first year of receiving Lifeline disbursements.[1049]

[1045] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7885, para. 200-02.

[1046] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7885, para. 200-02. *See e.g.*, USAC Quarterly Reports, http://www.universalservice.org/about/tools/fcc/filings/2012/q1.aspx (last visited Nov. 30, 2015) (providing number of non-Tribal and Tribal subscribers by state or jurisdiction, disbursement amounts by ETC and state or jurisdiction, which also breaks out Tribal and non-Tribal for prior months).

[1047] *See generally* USAC Funding Disbursement Tool, http://www.usac.org/li/tools/disbursements/default.aspx (last visited Nov. 30, 2015).

[1048] *See* City of Seattle Comments at 2; Joint Commenters Comments at 90-93; Michigan PSC Comments at 16; Oklahoma PUD Comments at 15; NNTRC Comments at 10.

[1049] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7890, para. 216.

Adopting the revised section 54.420 will allow the Commission flexibility to determine the appropriate and most cost effective time to audit entities that are new providers in the Lifeline program.[1050]

426. *Background*. Currently, the Lifeline rules require all first-year Lifeline providers to be audited.[1051] The Commission adopted this rule in the *2012 Lifeline Reform Order* for the purposes of improving compliance with program rules and directed USAC to conduct a limited audit of these new service providers.[1052] The Commission declined to set thresholds on the characteristics of first-year service providers to be audited. For example, the Commission did not state that first-year providers with a certain number of subscribers served or a certain amount of total disbursement would be audited.[1053] After auditing all first-year Lifeline providers for three years, we have found that in many cases, the costs and burdens on the Commission, USAC and service providers outweigh the benefits of conducting audits at the conclusion of the provider's first year.[1054] In the *2015 Lifeline FNPRM*, we, therefore, sought comment on revising the rule.[1055] The majority of commenters on this issue supported our proposal and agreed with the Commission that the rules should permit flexibility to account for practical considerations in determining the appropriate time to audit a new service provider.[1056]

427. *Discussion*. We now modify our rule to delegate to OMD, in its role overseeing the USF audit programs, to work with USAC to identify those audits of first-year Lifeline providers that will be conducted within the one-year deadline and those that will be audited after the one-year deadline.[1057] Given the three years of experience auditing these carriers, we have found that many new providers have not yet had a sufficient number of subscribers to draw conclusions regarding compliance with the program rules.[1058] To be clear, this approach is a strengthening of the audit process because it will allow USAC to more efficiently direct audit resources to audit providers that have a higher risk of non-compliance and/or receive a larger percentage of the total Lifeline program disbursements, rather than being required to conduct audits that may be of little practical value. Further, we do not expect such audit flexibility to result in these entities not being audited, and we delegate to OMD, working with USAC, to determine the most cost-effective time to audit an entity when it has sufficient data to conduct a meaningful audit, to provide OMD with recommendations on which first-year service providers would be cost effective to audit after their first year, and which service providers should be audited after their first year. We direct USAC to provide all first-year service providers notice within 30 days of their one-year deadline regarding whether the audit will or will not be conducted.

428. We also believe that the overall audit program should include a check on whether the service was provided and whether the service provided met the standards articulated in this Order. We delegate to OMD working with USAC to include such performance auditing in its overall audit plan. We view our audit program as a key factor in promoting program integrity and direct USAC working with OMD to continue to improve and focus the overall program on providers for whom the risk of non-compliance is high and whose non-compliance would have a large impact on the overall fund.

[1050] *See* Appendix A.

[1051] *See* 47 CFR § 54.420(b).

[1052] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6781-82, paras. 288-90.

[1053] *See id*. at 6782, para. 290.

[1054] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7890, para. 269 (waiving the requirement for two providers where the providers only had one subscriber).

[1055] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7890, para. 216.

[1056] *See, e.g.*, Michigan PSC Comments at 17 (arguing that first year audits are not practical and OMD should decide); Genter comments (citing burdens of audits).

[1057] *See* Appendix A.

[1058] *See supra* note 1054 (waiving the requirement for two providers).

6. Universal Consumer Certification, Recertification, and Household Worksheet Forms

429. In this section we delegate to the Bureau to create uniform, standardized Lifeline forms approved by the Office of Management and Budget (OMB) for all subscribers receiving a federal Lifeline benefit,[1059] if it believes that doing so will aid program administration.

430. *Background*. Currently in the Lifeline program, Lifeline providers must, in accordance with section 54.410 of the Lifeline rules, provide specific information to potential subscribers and obtain information and certifications from prospective and current subscribers.[1060] To comply with these requirements, many Lifeline providers have created their own forms.[1061] Through the audit and enforcement processes, the Commission has found that Lifeline forms vary tremendously from provider to provider and contain many deficiencies and inconsistencies.[1062] To date, the Commission has recovered Lifeline support from providers who have failed to include and obtain every requirement of section 54.410 in their forms.[1063] Some Lifeline providers have argued that subscribers often have difficulty understanding forms which include the requirements of section 54.410 verbatim, and that the forms should be comprehensible to the intended audience.[1064]

431. In the *2015 Lifeline FNPRM*, in light of the challenges, we proposed to adopt uniform, easily understood forms for the Lifeline program.[1065] Specifically, we proposed to revise the certification, recertification, and one-per-household forms and posted the revised forms on USAC's website.[1066] In response, the majority of commenters supported our proposal and concluded that universal, standardized forms would improve overall compliance and reduce waste, fraud, and abuse.[1067] Commenters also proposed ideas for improving the forms to increase comprehensibility.[1068] One commenter opposed our efforts to standardize the forms, raising concerns that a "one-size fits all" approach would be inflexible and unable to respond to the needs of states.[1069]

432. *Discussion*. In this Order, we delegate to the Bureau to propose to OMB Lifeline forms for certification, recertification and the one-per-household requirement, if it believes that doing so will aid program administration.[1070] We revise section 54.410 to reflect the use of certification and recertification

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[1059] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7885-86, paras. 203-206.

[1060] *See* 47 CFR § 54.410.

[1061] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6709, para. 111.

[1062] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7886, para. 205.

[1063] *See, e.g.*, Federal Communications Commission, Agency Financial Report Fiscal Year 2015, at 87.

[1064] *See* GAO March 2015 Report at 28.

[1065] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7886, para. 205.

[1066] *See* USAC, FCCForComment, http://www.usac.org/li/FCCForComment/ (last visited Feb. 17, 2016).

[1067] *See, e, g*., GCI Comments at 25-26 (supporting the concept of uniform forms, but noting that updates may be needed to the one-per-household form); AT&T Comments at 36; Joint Commenters at 93-94; Michigan PUC Comments (noting challenges based on differences in eligibility requirements between states); Oklahoma PUD at 15-16; Verizon Comments at 5; the Leadership Conference on Civil and Human Rights Comments at 2. *Compare* Alaska Rural Coalition Reply at 16-17 (supporting the permissive use of standardized forms and not the mandatory use in the instance that carriers have created compliant forms).

[1068] *See, e.g.*, CBPP comments at 46-47.

[1069] *See* California PUC Comments at 49.

[1070] We also delegate to the Bureau the ability to phase out and/or combine forms as needed. With implementation of the National Verifier, many forms may need to be adjusted, phased-out, or combined.

forms, and one-per-household worksheets for the Lifeline program, if such forms are implemented.[1071] We believe that the enormous benefits to the program, such as increased understanding and compliance by both subscribers and providers, outweigh any concerns with the standardized approach.[1072] If the Bureau moves forward on uniform forms, it may use the forms that we sought comment on, displayed on USAC's website, as such forms contain the information on eligibility and certification, the one-per-household requirement, the obligations of the subscriber, that should be included at a minimum on these Lifeline forms. We will continue to require that subscribers sign the forms under penalty of perjury, regardless of whether they are forms created by the service providers or by the Bureau. However, we expect that if the Bureau adopts forms, any such forms will explain the meaning and import of those terms to the subscriber and the consequences of providing false and misleading information. We expect that the above-mentioned concepts will be contained in any Bureau form and we delegate to the Bureau the ability to create wording and formatting that is easily understood by the consumer and improves program compliance, if it chooses to adopt such forms. We also delegate to the Bureau to amend the forms as necessary as changes in the program are made, such as the deployment of the National Verifier.[1073] Recognizing that there may continue to be relevant program differences across states and territories, we direct the Bureau to account for such differences in any standardized forms, as necessary. In this way, we seek to be responsive to some concerns that a uniform approach may not fit every situation. We expect that, if the Bureau creates standardized forms, the forms will be responsive to evolving program needs and that the Bureau can and should propose changes to OMB as needed.

I. Delegation to the Bureau

433. Given the complexities associated with modifying existing rules as well as other reforms adopted in this Order, we delegate authority to the Wireline Competition Bureau to make any further rule revisions as necessary to ensure the reforms adopted in this Order are reflected in the rules. This includes correcting any conflicts between the rules and this Order. If any such rule changes are warranted, the Bureau shall be responsible for such change, but in no event shall such change create new or different policy than that articulated by this Order. We note that any entity that disagrees with a rule change made on delegated authority will have the opportunity to file an Application for Review by the full Commission.[1074]

IV. FURTHER REPORT AND ORDER

434. In the *Map Implementation Order*, released on February 2, 2016, the Wireline Competition Bureau (Bureau) granted a request for extension of time for the implementation of the Oklahoma Historical Map until June 8, 2016, in order to complete the consultation process with Tribal leaders and allow providers time to implement the map and appropriately notify customers.[1075] In the *Map Implementation Order*, the Bureau specifically emphasized the need to further discuss the status of the Cherokee Outlet,[1076] and whether it should remain as a "former reservation in Oklahoma" for purposes

[1071] Our revisions to the rule recognize that certification and recertification forms and one-per-household worksheets are used by entities enrolling subscribers. Currently, such forms are developed by service providers and must include the items required by section 54.410 and the *2012 Lifeline FNPRM*.

[1072] While we propose federal forms by this Order, states are free to require subscribers to complete additional state forms to assist with state programs.

[1073] Once deployed, we direct the National Verifier to adapt the OMB-approved forms to the methods available to consumers to contact the National Verifier, such as paper and electronic versions.

[1074] *See* 47 U.S.C. § 155(c)(1).

[1075] *Lifeline and Link Up Reform and Modernization*, Order, 31 FCC Rcd 895 (WCB 2016) (*Map Implementation Order*).

[1076] *Id*. at 3.

of the Lifeline Program.[1077] The Bureau also released a shapefile containing the boundaries of the Cherokee Outlet in order to give potentially affected parties advance notice of any potential changes. After completing consultations, and upon recommendation from the Bureau as required by the *2015 Lifeline FNPRM*, [1078] we are convinced that the Cherokee Outlet, due to its long history of usage by the Cherokee Nation, is properly defined as a "former reservation in Oklahoma" for our purposes of defining areas eligible for enhanced Lifeline support. Accordingly, residents of the Cherokee Outlet will remain eligible for enhanced Tribal support.[1079] The Oklahoma Historical Map will become effective on June 8, 2016.

V. ORDER ON RECONSIDERATION

435. In this section, we grant petitions filed by GCI, USTelecom, TracFone and Sprint asking that we reconsider three rules, adopted in the *2012 Lifeline Reform Order*, related to the reporting of temporary addresses.[1080] These rules were put in place to ensure that the often mobile Lifeline population can obtain service while protecting the fund against waste, fraud and abuse from duplicative support. However, based on our experience, we find that the burden of these rules outweighs any countervailing benefit. Existing measures, including the robust identify verification and checks for duplicative support already built into the NLAD that do not rely on the temporary address rules, as well as the actions we take in this order, including the establishment of the National Verifier, provide adequate protections against waste and abuse in the absence of the temporary address rules. While Lifeline providers may still enroll eligible subscribers using a temporary address, those subscribers will no longer be required to certify to the temporary address every 90 days and those providers will no longer be required recertify the temporary address every 90 days.[1081]

436. *Background*. In the *2012 Lifeline Reform Order*, the Commission adopted several rules regarding temporary address reporting to take into account the "inherent difficulties in serving and verifying…highly mobile population" and "assist ETCs in more easily confirming such consumer's continued eligibility for the program."[1082] Specifically, section 54.410(d)(3)(v) requires that any subscriber providing a temporary address certify that they will be required to verify their temporary address every 90 days.[1083] Section 54.410(g) requires providers to recertify, every 90 days, the residential address of each of its subscribers who have provided a temporary address as part of the subscriber's initial certification or annual recertification.[1084] Finally, a portion of section 54.405(e)(4) requires that providers

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[1077] 47 CFR § 54.400(e).

[1078] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7907, para. 266.

[1079] *2015 Lifeline FNPRM*, 30 FCC Rcd at 7906, para. 264.

[1080] *See*, GCI, Petition for Reconsideration, WC Docket No. 11-42 et al., at 3-6 (filed Apr. 2, 2012) (GCI Petition); Sprint Nextel, Petition for Reconsideration, WC Docket No. 11-42 et al., at 2-5; TracFone, Petition for Reconsideration and Clarification, WC Docket No. 11-42 et al., 22-25 (filed Apr. 2, 2012); USTelecom, Petition for Reconsideration and Clarification, WC Docket No. 11-42 et al., 2-4 (filed Apr. 2, 2012); Letter of Norina T. Moy, Sprint, to Nicholas Frazier, Office of Management and Budget, OMB Control Number 3060-0819 (filed Apr. 5, 2012) ("Sprint has estimated that it alone could incur $800,000 in recurring costs, plus approximately $350,000 in one-time systems development costs, to comply with the "temporary address" rule). We note that requirements in 54.410(g) and 54.405(e)(4) never received PRA approval because the Commission withdrew its request for approval. *See* Notice of OMB Action, OMB Control Number 3060-0819 (Apr. 13, 2012); *Lifeline and Link Up et al*., Public Notice, 27 FCC Rcd 4875 (WCB, 2012).

[1081] We note that this temporary address recertification process is separate from subscriber recertification of program or income eligibility. *See* 47 CFR § 54.410(f) (describing annual recertification process).

[1082] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6696-7, para. 89.

[1083] *See* 47 CFR § 54.410(d)(3)(v).

[1084] *See* 47 CFR § 54.410(g).

must de-enroll subscribers who rely on a temporary address and fail to respond to the 90 day recertification attempt.[1085] Petitions for reconsideration of these requirements were filed by a number of parties.[1086]

437. *Discussion*. On reconsideration, we now eliminate sections 54.410(g) and 54.410(d)(3)(v) and the portion of section 54.405(e)(4) related to temporary addresses. As explained by the parties seeking reconsideration of this rule, we conclude that these rules impose a burden on providers without a significant benefit. While these rules were put in place to prevent possible waste, fraud and abuse from customers representing a "small portion of an ETC's Lifeline subscriber base,"[1087] experience has shown that, in fact, the other subscriber data (*e.g*. address at time of application, name, last four digits of social security number and date of birth) collected by USAC has been sufficient to verify subscriber's identity and check for duplicative support. Additional protections put in place in this order, including the establishment of a National Verifier, further reduce the need for these rules.[1088] As explained elsewhere in this order, we conclude that the elimination of unnecessary and burdensome requirements will increase the incentive and likelihood of additional providers entering the Lifeline marketplace.[1089] We therefore conclude that elimination of these rules is in the public interest. We will, however, continue to require subscribers to indicate on their certification forms whether the address is permanent or temporary.[1090] We find that this requirement assists the Commission and USAC by providing important demographic information about the Lifeline subscriber-base.[1091]

VI. SEVERABILITY

438. All of the Lifeline rules that are adopted in this Order are designed to work in unison to make telecommunications services more affordable to low-income households and to strengthen the efficiency and integrity of the program's administration. However, each of the separate Lifeline reforms we undertake in this Order serve a particular function toward those goals. Therefore, it is our intent that each of the rules adopted herein shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall remain in full force and effect.

VII. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

439. As required by the Regulatory Flexibility Act of 1980 (RFA),[1092] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Third Report and Order, Further Report and Order, and Order on Reconsideration. The FRFA is set forth in Appendix B.

[1085] *See* 47 CFR § 54.405(e)(4).

[1086] *See supra* note 1080.

[1087] *See 2012 Lifeline Reform* Order, 27 FCC Rcd at 6697, para. 89 & n.239.

[1088] *See, e.g.*, GCI Petition at 5 (arguing that temporary address re-verification is clearly needed to detect duplicative support and asserting that it could be better detected by "comparing name, date of birth and last four digits of the Social Security number - information the FCC also requires ETCs to collect.").

[1089] *See, e.g., supra* section III.E. (Increasing Competition for Lifeline Consumers).

[1090] *See* 47 CFR § 54.410(d)(2)(iii).

[1091] USAC data indicate that, as of March 2016, almost six percent (or approximately 700,000) of Lifeline subscribers in the NLAD) have temporary addresses, underscoring the critical benefit that Lifeline provides to the most vulnerable Americans.

[1092] *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996.

B. Paperwork Reduction Act Analysis

440. This Third Report and Order, Further Report and Order, and Order on Reconsideration contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,[1093] the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

C. Congressional Review Act

441. The Commission will include a copy of this Third Report and Order, Further Report and Order, and Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act.[1094]

VIII. ORDERING CLAUSES

442. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 1302, this Third Report and Order, Further Report and Order, and Order on Reconsideration IS ADOPTED effective thirty (30) days after the publication of this Third Report and Order, Further Report and Order, and Order on Reconsideration in the Federal Register, except to the extent provided herein and expressly addressed below.

443. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 1302, Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments to sections 54.201, 54.400, and 54.423 shall be effective (30) days after the publication of this Third Report and Order, Further Report and Order, and Order on Reconsideration in the Federal Register.

444. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 1302, Part 54 of the Commission's rules, 47 CFR Part 54, that the rule amendments to sections 54.202(a)(6), (d), (e) and 54.205(c) are subject to the PRA and will become effective immediately upon announcement in the Federal Register of OMB approval of the subject information collection requirements.

445. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 1302, Part 54 of the Commission's rules, 47 CFR Part 54, that the rule amendments to sections 54.101(a)-(e), 54.401(a)(2)-(c), (f), 54.403(a), 54.405(e)(1), (e)(3)-(e)(5), 54.407(a), (c)(2), (d), 54.408, 54.409(a)(2), 54.410(b)-(e), (g)-(i), 54.411, 54.416(a)(3), 54.420(b), and 54.422(b)(3) are subject to the PRA and will become effective 60 days after announcement in the Federal Register of OMB approval of the subject information collection requirements or December 1, 2016, whichever is later.

[1093] *See* 44 U.S.C. § 3506(c)(4).

[1094] *See* 5 U.S.C. § 801(a)(1)(A).

446. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 1302, Part 54 of the Commission's rules, 47 CFR Part 54, that the rule amendment to section 54.410(f) is subject to the PRA and will become effective 60 days after announcement in the Federal Register of OMB approval of the subject information collection requirements or January 1, 2017, whichever is later.

447. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-5 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155 and 254, and section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petitions for Reconsideration filed by GCI on April 2, 2012, Sprint Nextel on April 2, 2012, and the Petitions for Reconsideration and Clarification filed by TracFone on April 2, 2012 and USTelecom on April 2, 2012 ARE GRANTED.

448. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Third Report and Order, Further Report and Order and Order on Reconsideration to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

449. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Third Report and Order, Further Report and Order, and Order on Reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

AUTHORITY: Section 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.101 to revise paragraphs (a) and (b) and to add paragraphs (a)(1), (a)(2), (c), and (d) to read as follows:

§ 54.101 Supported services for rural, insular and high cost areas.

(a) Services designated for support. Voice Telephony services and broadband service shall be supported by federal universal service support mechanisms.

(1) Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

(2) Eligible broadband Internet access services must provide the capability to transmit data to and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

(b) An eligible telecommunications carrier eligible to receive high-cost support must offer voice telephony service as set forth in paragraph (a)(1) of this section in order to receive federal universal service support.

(c) An eligible telecommunications carrier subject to a high-cost public interest obligation to offer broadband Internet access services and not receiving Phase I frozen high-cost support must offer broadband services as set forth in paragraph (a)(2) of this section within the areas where it receives high-cost support consistent with the obligations set forth in Part 54 of this chapter, and subparts D, K, L and M of this part.

(d) Any ETC must comply with Subpart E.

3. Amend § 54.201 to add paragraph (j) to read as follows:

§ 54.201 Definition of eligible telecommunications carriers, generally.

* * * * *

(j) A state commission shall not designate a common carrier as a Lifeline Broadband Provider eligible telecommunications carrier.

4. Amend § 54.202 to add paragraph (a)(6), paragraphs (d)(1) through (3), and paragraph (e) to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) * * *

* * * * *

(6) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, submit information describing the terms and conditions of any broadband Internet access service plans offered to Lifeline subscribers, including details on the speeds offered, data usage allotments, additional charges for particular uses, if any, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

* * * * *

(d) A common carrier seeking designation as a Lifeline Broadband Provider eligible telecommunications carrier must meet the requirements of paragraph (a) of this section. The Commission should process such petitions for designation as follows:

(1) If the petitioning common carrier has offered broadband Internet access service to the public for at least two years before the date of the filing and serves at least 1,000 non-Lifeline customers with voice telephony and/or broadband Internet access service as of the date of the filing, the common carrier's petition for designation as a Lifeline Broadband Provider eligible telecommunications carrier shall be deemed granted within 60 days of the submission of a completed filing unless the Commission notifies the common carrier that the grant will not be automatically effective.

(2) If the petitioning common carrier provides service on Tribal lands and is a facilities-based provider more than 50 percent owned by one or more federally recognized Tribal Nations or Tribal consortia and actually controlled by one or more federally recognized Tribal Nations or Tribal consortia, the common carrier's petition for designation as a Lifeline Broadband Provider eligible telecommunications carrier shall be deemed granted within 60 days of the submission of a completed filing unless the Commission notifies the common carrier that the grant will not be automatically effective.

(3) If the petitioning common carrier does not qualify under subparagraphs (1) or (2) of this paragraph, the common carrier's petition for designation as a Lifeline Broadband Provider eligible telecommunications carrier shall be acted upon within six months of the submission of a completed filing.

(e) A provider designated as a Lifeline Broadband Provider may obtain designation as an LBP in additional service areas by submitting to the Commission a request identifying the service areas in which the LBP plans to offer Lifeline-supported service and a certification that there has been no material change to the information submitted in the petition for which the LBP received designation as an LBP.

Such a request shall be deemed granted five business days after it is submitted to the Commission, unless the Commission notifies the applicant that the grant will not be automatically effective.

5. Amend § 54.205 by to add paragraph (c) to read as follows:

§ 54.205 Relinquishment of universal service.

* * * * *

(c) In the case of a Lifeline Broadband Provider eligible telecommunications carrier, a Lifeline Broadband Provider's notice of relinquishment shall be deemed granted by the Commission 60 days after the notice is filed, unless the Commission notifies the Lifeline Broadband Provider that the relinquishment will not be automatically effective. This paragraph shall not apply to Lifeline Broadband Providers that also receive high-cost universal service support.

6. Amend § 54.400 by to revise paragraphs (f) and (j) and to add paragraphs (l), (m), (n) and (o) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(f) Income. "Income" means gross income as defined under section 61 of the Internal Revenue Code, 26 USC § 61, for all members of the household. This means all income actually received by all members of the household from whatever source derived, unless specifically excluded by the Internal Revenue Code, Part III of Title 26, 26 USC §101 *et. seq*.

* * * * *

(j) Qualifying assistance program. A "qualifying assistance program" means any of the federal or Tribal assistance programs the participation in which, pursuant to § 54.409(a) or (b), qualifies a consumer for Lifeline service, including Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; Veterans and Survivors Pension Benefit; Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families (Tribal TANF); Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR).

* * * * *

(l) Broadband Internet access service. Broadband Internet access service is defined as a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

(m) Voice telephony service. Voice telephony service is defined as voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

(n) Supported Services. Voice Telephony services and broadband Internet access services are supported services for the Lifeline program.

(o) National Lifeline Eligibility Verifier. The "National Lifeline Eligibility Verifier" or "National Verifier" is an electronic and manual system with associated functions, processes, policies and procedures, to facilitate the determination of consumer eligibility for the Lifeline program, as directed by the Commission.

7. Amend § 54.401 to revise paragraph (a)(2), paragraph (b), and paragraph (c) and to add paragraphs (b)(1) through (4), and paragraph (f) to read as follows:

§ 54.401 Lifeline Defined.

(a) * * *

(2) That provides qualifying low-income consumers with voice telephony service or broadband Internet access service as defined in § 54.400. Toll limitation service does not need to be offered for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of the service. If an eligible telecommunications carrier charges Lifeline subscribers a fee for toll calls that is in addition to the per month or per billing cycle price of the subscribers' Lifeline service, the carrier must offer toll limitation service at no charge to its subscribers as part of its Lifeline service offering.

(b) Eligible telecommunications carriers may allow qualifying low-income consumers to apply Lifeline discounts to any residential service plan with the minimum service levels set forth in § 54.408 that includes fixed or mobile voice telephony service, broadband Internet access service, or a bundle of broadband Internet access service and fixed or mobile voice telephony service; and plans that include optional calling features such as, but not limited to, caller identification, call waiting, voicemail, and three-way calling.

(1) Eligible telecommunications carriers may permit qualifying low-income consumers to apply their Lifeline discount to family shared data plans.

(2) Eligible telecommunications carriers may allow qualifying low-income consumers to apply Lifeline discounts to any residential service plan that includes voice telephony service without qualifying broadband Internet access service prior to December 1, 2021.

(3) Beginning December 1, 2016, eligible telecommunications carriers must provide the minimum service levels for each offering of mobile voice service as defined in § 54.408.

(4) Beginning December 1, 2021, eligible telecommunications carriers must provide the minimum service levels for broadband Internet access service in every Lifeline offering.

(c) Eligible telecommunications carriers may not collect a service deposit in order to initiate Lifeline for voice-only service plans that:

(1) * * *

* * * * *

(f) Eligible telecommunications carriers may aggregate eligible subscribers' benefits to provide a collective service to a group of subscribers, provided that each qualifying low-income consumer

subscribed to the collective service receives residential service that meets the requirements of paragraph (a) of this section and section 54.408.

8. Amend § 54.403 to revise paragraph (a)(1), to redesignate paragraph (a)(2) as paragraph (a)(3), to add new paragraph (a)(2), and to remove and reserve paragraphs (b)(2) and (c) to read as follows:

§ 54.403 Lifeline support amount.

(a) The federal Lifeline support amount for all eligible telecommunications carriers shall equal:

(1) Basic support amount. Federal Lifeline support in the amount of $9.25 per month will be made available to an eligible telecommunications carrier providing Lifeline service to a qualifying low-income consumer, except as provided in paragraph (a)(2) of this section, if that carrier certifies to the Administrator that it will pass through the full amount of support to the qualifying low-income consumer and that it has received any non-federal regulatory approvals necessary to implement the rate reduction.

(2) For a Lifeline provider offering either standalone voice service, subject to the minimum service standards set forth in section 54.408 of the Rules, or voice service with broadband below the minimum standards set forth in section 54.408 of the Rules, the support levels will be as follows:

(i) Until December 1, 2019, the support amount will be $9.25 per month.

(ii) From December 1, 2019 until November 30, 2020, the support amount will be $7.25 per month.

(iii) From December 1, 2020 until November 30, 2021, the support amount will be $5.25 per month.

(iv) On December 1, 2021, standalone voice service, or voice service not bundled with broadband which meets the minimum standards set forth in section 54.408, will not be eligible for Lifeline support unless the Commission has previously determined otherwise.

(v) Notwithstanding paragraph (a)(2)(iv) of this section, on December 1, 2021, the support amount for standalone voice service, or voice service not bundled with broadband which meets the minimum standards set forth in section 54.408, provided by a provider that is the only Lifeline provider in a Census block will be the support amount specified in paragraph (a)(2)(iii) of this section.

(3) Tribal lands support amount. Additional federal Lifeline support of up to $25 per month will be made available to an eligible telecommunications carrier providing Lifeline service to an eligible resident of Tribal lands, as defined in § 54.400(e). to the extent that the eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tribal lands support amount to the qualifying eligible resident of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(b) * * *

(1) * * *

(2) [Removed and Reserved]

(c) [Removed and Reserved]

9. Amend § 54.405 to revise paragraphs (e)(1), (e)(3), and (e)(4) and to add paragraph (e)(5) to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

* * * * *

(e) De-enrollment.

(1) De-enrollment generally. If an eligible telecommunications carrier has a reasonable basis to believe that a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under § 54.409, the carrier must notify the subscriber of impending termination of his or her Lifeline service. Notification of impending termination must be sent in writing separate from the subscriber's monthly bill, if one is provided, and must be written in clear, easily understood language. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination that requires, at a minimum, written notification of impending termination, must comply with the applicable state requirements. The carrier must allow a subscriber 30 days following the date of the impending termination letter required to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the carrier consistent with applicable annual re-certification requirements, as described in § 54.410(f). An eligible telecommunications carrier must de-enroll any subscriber who fails to demonstrate eligibility within five business days after the expiration of the subscriber's time to respond. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination must comply with the applicable state requirements.

* * * * *

(3) De-enrollment for non-usage. Notwithstanding paragraph (e)(1) of this section, if a Lifeline subscriber fails to use, as "usage" is defined in § 54.407(c)(2), for 30 consecutive days a Lifeline service that does not require the eligible telecommunications carrier to assess or collect a monthly fee from its subscribers, an eligible telecommunications carrier must provide the subscriber 15 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 15-day notice period will result in service termination for non-usage under this paragraph. Eligible telecommunications carriers shall report to the Commission annually the number of subscribers de-enrolled for non-usage under this paragraph. This de-enrollment information must be reported by month and must be submitted to the Commission at the time an eligible telecommunications carrier submits its annual certification report pursuant to § 54.416.

(4) De-enrollment for failure to re-certify. Notwithstanding paragraph (e)(1) of this section, an eligible telecommunications carrier must de-enroll a Lifeline subscriber who does not respond to the carrier's attempts to obtain re-certification of the subscriber's continued eligibility as required by §54.410(f); or who fails to provide the annual one-per-household re-certifications as required by §54.410(f). Prior to de-enrolling a subscriber under this paragraph, the eligible telecommunications carrier must notify the subscriber in writing separate from the subscriber's monthly bill, if one is provided, using clear, easily understood language, that failure to respond to the re-certification request will trigger de-enrollment. A subscriber must be given 60 days to respond to recertification efforts. If a subscriber does not respond to the carrier's notice of impending de-enrollment, the carrier must de-enroll the subscriber from Lifeline within five business days after the expiration of the subscriber's time to respond to the re-certification efforts.

(5) De-enrollment requested by subscriber. If an eligible telecommunications carrier receives a request from a subscriber to de-enroll, it must de-enroll the subscriber within two business days after the request.

10. Amend § 54.407 to revise paragraph (a), paragraphs (c)(2), (c)(2)(i) and (c)(2)(ii), and paragraph (d), and to add paragraph (c)(2)(v) and paragraphs (d)(1) and (d)(2), to read as follows:

§ 54.407 Reimbursement for offering Lifeline.

(a) Universal service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers it serves directly as of the first day of the month. After the National Verifier is deployed in a state, reimbursement shall be provided to an eligible telecommunications carrier based on the number of actual qualifying low-income customers it serves directly as of the first day of the month found in the National Verifier.

* * * * *

(c) * * *

(1) * * *

(2) After service activation, an eligible telecommunications carrier shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 30 days, or who have cured their non-usage as provided for in § 54.405(e)(3). Any of these activities, if undertaken by the subscriber, will establish "usage" of the Lifeline service:

(i) Completion of an outbound call or usage of data;

(ii) Purchase of minutes or data from the eligible telecommunications carrier to add to the subscriber's service plan;

(iii) * * *

(iv) * * *

(v) Sending a text message.

(d) In order to receive universal service support reimbursement, an officer of each eligible telecommunications carrier must certify, as part of each request for reimbursement, that:

(1) The eligible telecommunications carrier is in compliance with all of the rules in this subpart; and

(2) The eligible telecommunications carrier has obtained valid certification and recertification forms to the extent required under this subpart for each of the subscribers for whom it is seeking reimbursement

* * * * *

11. Add § 54.408 to subpart E to read as follows:

§ 54.408 Minimum Service Standards

(a) As used in this subpart, with the following exception of paragraph (a)(2) of this section, a minimum service standard is

(1) The level of service which an eligible telecommunications carrier must provide to an end user in order to receive the Lifeline support amount.

(2) The minimum service standard for mobile broadband speed, as described in paragraph (b)(2)(1) of this section, is the level of service which an eligible telecommunications carrier must both advertise and provide to an end user.

(b) Minimum service standards for Lifeline supported services will take effect on December 1, 2016. The minimum service standards set forth below are subject to the conditions in section 54.401. The initial minimum service standards, as set forth below, will be subject to the updating mechanisms described in paragraph (c) of this section.

(1) Fixed broadband will have minimum service standards for speed and data usage allowance, subject to the exceptions in paragraph (d) of this section.

(i) The minimum service standard for fixed broadband speed will be 10 Megabits per second downstream/1 Megabit per second upstream.

(ii) The minimum service standard for fixed broadband data usage allowance will be 150 gigabytes per month.

(2) Mobile broadband will have minimum service standards for speed and data usage allowance.

(i) The minimum service standard for mobile broadband speed will be 3G.

(ii) The minimum service standard for mobile broadband data usage allowance will be:

(A) from December 1, 2016 until November 30, 2017, 500 megabytes per month;

(B) from December 1, 2017, until November 30, 2018, 1 gigabyte per month;

(C) from December 1, 2018 until November 30, 2019, 2 gigabytes per month; and

(D) On and after December 1, 2019, the minimum standard will be calculated using the mechanism set forth in section 54.408(c)(2)(ii)(A)-(D). If the data listed in section 54.408(c)(2)(ii)(A)-(D) do not meet the criteria set forth in 54.408(c)(2)(iii), then the updating mechanism in 54.408(c)(2)(iii) will be used instead.

(3) The minimum service standard for mobile voice service will be:

(i) from December 1, 2016, until November 30, 2017, 500 minutes;

(ii) from December 1, 2017, until November 30, 2018, 750 minutes; and

(iii) on and after December 1, 2018, the minimum standard will be 1000 minutes.

(c) Minimum service standards will be updated using the following mechanisms:

(1) Fixed broadband will have minimum service standards for speed and data usage allowance. The standards will updated as follows:

(i) The standard for fixed broadband speed will be updated on an annual basis. The standard will be set at the 30th percentile, rounded up to the nearest Megabit-per-second integer, of subscribed fixed broadband downstream and upstream speeds. The 30th percentile will be determined by analyzing FCC Form 477 Data. The new standard will be published in a Public Notice issued by the Wireline Competition Bureau on or before July 31, which will give the new minimum standard for the upcoming year. In the event that the Bureau does not release a Public Notice, or the data are older than 18 months, the minimum standard will be the greater of:

(A) The current minimum standard; OR

(B) The Connect America Fund minimum speed standard for rate-of-return fixed broadband providers, as set forth in 47 CFR 54.308(a).

(ii) The standard for fixed broadband data usage allowance will be updated on an annual basis. The new standard will be published in a Public Notice issued by the Wireline Competition Bureau on or before July 31, which will give the new minimum standard for the upcoming year. The updated standard will be the greater of

(A) An amount the Wireline Competition Bureau deems appropriate, based on what a substantial majority of American consumers already subscribe to, after analyzing Urban Rate Survey data and other relevant data. Or;

(B) The minimum standard for data usage allowance for rate-of-return fixed broadband providers set in the Connect America Fund.

(2) Mobile broadband will have minimum service standards for speed and capacity. The standards will be updated as follows:

(i) The standard for mobile broadband speed will be updated when, after analyzing relevant data, including the FCC Form 477 data, the Wireline Competition Bureau determines such an adjustment is necessary. If the standard for mobile broadband speed is updated, the new standard will be published in a Public Notice issued by the Wireline Competition Bureau.

(ii) The standard for mobile broadband capacity will be updated on an annual basis. The standard will be determined by:

(A) dividing the total number of mobile-cellular subscriptions in the United States, as reported in the *Mobile Competition Report* by the total number of American households, as determined by the U.S. Census Bureau, in order to determine the number of mobile-cellular subscriptions per American household. This number will be rounded to the hundredths place and then multiplied by;

(B) the percentage of Americans who own a smartphone, according to the Commission's annual *Mobile Competition Report*. This number will be rounded to the hundredths place and then multiplied by;

(C) the average data used per mobile smartphone subscriber, as reported by the Commission in its annual *Mobile Competition Report*. This number will be rounded to the hundredths place and then multiplied by;

(D) seventy (70) percent. The result will then be rounded up to the nearest 250 MB interval to provide the new monthly minimum service standard for the mobile broadband data usage allowance.

(iii) If the Wireline Competition Bureau does not release a Public Notice giving new minimum standards for mobile broadband capacity on or before July 31, or if the necessary data needed to calculate the new minimum standard are older than 18 months, the data usage allowance will be updated by multiplying the current data usage allowance by the percentage of the year-over-year change in average mobile data usage per smartphone user, as reported in the *Mobile Competition Report*. That amount will be rounded up to the nearest 250 MB.

(d) Exception for Certain Fixed Broadband Providers. Subject to the following limitations, the Lifeline discount may be applied for fixed broadband service that does not meet the minimum standards set forth in paragraph (b)(1) of this section. If the provider, in a given area:

(i) does not offer any fixed broadband service that meets our minimum service standards set forth in paragraph (b)(1) of this section; but

(ii) offers a fixed broadband service of at least 4 Mbps downstream/1 Mbps upstream in that given area; then,

(iii) in that given area, a fixed broadband provider may receive Lifeline funds for the purchase of its highest performing generally available residential offering, lexicographically ranked by:

(i) Download bandwidth;

(ii) Upload bandwidth; and

(iii) Usage allowance.

(iv) A fixed broadband provider claiming Lifeline support under this section will certify its compliance with this section's requirements and will be subject to the Commission's audit authority.

(e) Except as provided in paragraph (d) of this section, eligible telecommunications carriers shall not apply the Lifeline discount to offerings that do not meet the minimum service standards.

(f) Equipment Requirement.

(1) Any fixed or mobile broadband provider, which provides devices to its consumers, must ensure that all such devices provided to a consumer are Wi-Fi enabled.

(2) A provider may not institute an additional or separate tethering charge for any mobile data usage that is below the minimum service standard set forth in section 54.408(b)(2).

(3) Any mobile broadband provider which provides devices to its consumers must offer at least one device that is capable of being used as a hotspot. This requirement will change as follows:

(i) From December 1, 2017 to November 30, 2018, a provider that offers devices must ensure that at least 15 percent of such devices are capable of being used as a hotspot.

(ii) From December 1, 2018 to November 30, 2019, a provider that offers devices must ensure that at least 20 percent of such devices are capable of being used as a hotspot.

(iii) From December 1, 2019 to November 30, 2020, a provider that offers devices must ensure that at least 25 percent of such devices are capable of being used as a hotspot.

(iv) From December 1, 2020 to November 30, 2021, a provider that offers devices must ensure that at least 35 percent of such devices are capable of being used as a hotspot.

(v) From December 1, 2021 to November 30, 2022, a provider that offers devices must ensure that at least 45 percent of such devices are capable of being used as a hotspot.

(vi) From December 1, 2022 to November 30, 2023, a provider that offers devices must ensure that at least 55 percent of such devices are capable of being used as a hotspot.

(vii) From December 1, 2023 to November 30, 2024, a provider that offers devices must ensure that at least 65 percent of such devices are capable of being used as a hotspot.

(viii) On December 1, 2024, a provider that offers devices must ensure that at least 75 percent of such devices are capable of being used as a hotspot.

12. Amend §54.409 to revise paragraph (a)(2) and to remove paragraph (a)(3) to read as follows:

§54.409 Consumer qualification for Lifeline.

(a) * * *

(1) * * *

(2) The consumer, one or more of the consumer's dependents, or the consumer's household must receive benefits from one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; or Veterans and Survivors Pension Benefit.

(3) [Removed]

* * * * *

13. Amend § 54.410 to revise paragraphs (b)(1), (b)(1)(i)(B), (b)(1)(ii), (b)(2), and (b)(2)(i), paragraphs (c)(1), (c)(1)(ii), (c)(2), and (c)(2)(i), paragraphs (d), (d)(1), (d)(2), and (d)(3), paragraph (e), paragraphs (f)(1), (f)(2)(ii), (f)(2)(iii), (f)(3), (f)(3)(ii), (f)(3)(iii), (f)(4), and (f)(5), and paragraph (g), to add paragraphs (d)(2)(ix), (f)(2)(iv), and (h), to remove paragraph (d)(3)(v), and to redesignate paragraphs (d)(3)(vi) through (d)(3)(ix) as paragraphs (d)(3)(v) through (d)(3)(viii) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(b) Initial income-based eligibility determination.

(1) Except where the National Verifier, state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline using the income-based eligibility criteria provided for in § 54.409(a)(1) an eligible telecommunications carrier:

(i) * * *

(A) * * *

(B) If an eligible telecommunications carrier cannot determine a prospective subscriber's income-based eligibility by accessing income databases, the eligible telecommunications carrier must review documentation that establishes that the prospective subscriber meets the income-eligibility criteria set forth in § 54.409(a)(1). Acceptable documentation of income eligibility includes the prior year's state, federal, or Tribal tax return; current income statement from an employer or paycheck stub; a Social Security statement of benefits; a Veterans Administration statement of benefits; a retirement/pension statement of benefits; an Unemployment/Workers' Compensation statement of benefit; federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information. If the prospective subscriber presents documentation of income that does not cover a full year, such as current pay stubs, the prospective subscriber must present the same type of documentation covering three consecutive months within the previous twelve months.

(ii) Must securely retain copies of documentation demonstrating a prospective subscriber's income-based eligibility for Lifeline consistent with § 54.417, except to the extent such documentation is retained by National Verifier.

(2) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for the initial determination of a subscriber's eligibility, an eligible telecommunications carrier must not seek reimbursement for providing Lifeline service to a subscriber, based on that subscriber's income eligibility, unless the carrier has received from the National Verifier, state Lifeline administrator, or other state agency:

(i) Notice that the prospective subscriber meets the income-eligibility criteria set forth in § 54.409(a)(1); and

(ii) * * *

(iii) * * *

(c) Initial program-based eligibility determination.

(1) Except in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for the initial determination of a subscriber's program-based eligibility, when a prospective subscriber seeks to qualify for Lifeline service using the program-based criteria set forth in § 54.409(a)(2) or (b), an eligible telecommunications carrier:

(i) * * *

* * * * *

(ii) Must securely retain copies of the documentation demonstrating a subscriber's program-based eligibility for Lifeline, consistent with § 54.417, except to the extent such documentation is retained by the National Verifier.

(2) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline service using the program-based eligibility criteria provided in § 54.409(a)(2) or (b), an eligible telecommunications carrier must not seek reimbursement for providing Lifeline to a subscriber unless the carrier has received from the National Verifier, state Lifeline administrator or other state agency:

(i) Notice that the subscriber meets the program-based eligibility criteria set forth in § 54.409(a)(2) or (b); and

* * * * *

(d) Eligibility Certification Form. Eligible telecommunications carriers and state Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber's eligibility for Lifeline must provide prospective subscribers Lifeline certification forms that provide the following information in clear, easily understood language. If a Federal eligibility certification form is available, entities enrolling subscribers must use such form to enroll a qualifying low-income consumer into the Lifeline program.

(1) The form provided by the entity enrolling subscribers must provide the following information:

* * * * *

(2) The form provided by the entity enrolling subscribers must require each prospective subscriber to provide the following information:

* * * * *

(3) The form provided by the entity enrolling subscribers shall require each prospective subscriber to initial his or her acknowledgement of each of the following certifications individually and under penalty of perjury:

(i) * * *

* * * * *

(iv) * * *

(v) [Removed]

(vi) [Redesignated as § 54.410(d)(3)(v)]

(vii) [Redesignated as § 54.410(d)(3)(vi)]

(viii)[Redesignated as § 54.410(d)(3)(vii)]

(ix) [Redesignated as § 54.410(d)(3)(viii)]

(e) The National Verifier, state Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber's eligibility for Lifeline must provide each eligible telecommunications carrier with a copy of each of the certification forms collected by the National Verifier, state Lifeline administrator or other state agency for that carrier's subscribers.

(f) Annual eligibility re-certification process.

(1) All eligible telecommunications carriers must re-certify all subscribers 12 months after the subscriber's service initiation date and every 12 months thereafter, except for subscribers in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for the annual re-certification of subscribers' Lifeline eligibility.

(2) * * *

(i) * * *

(ii) Querying the appropriate income databases, confirming that the subscriber continues to meet the income-based eligibility requirements for Lifeline, and documenting the results of that review.

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more state databases containing information regarding enrollment in qualifying assistance programs, then the National Verifier, state Lifeline administrator, or state agency may obtain a signed certification from the subscriber on a form that meets the certification requirements in paragraph (d) of this section. If a Federal eligibility recertification form is available, entities enrolling subscribers must use such form to re-certify a qualifying low-income consumer.

(iv) In states in which the National Verifier has been implemented, the eligible telecommunications carrier cannot re-certify subscribers not found in the National Verifier by obtaining a certification form from the subscriber.

(3) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for re-certification of a subscriber's Lifeline eligibility, the National Verifier, state Lifeline administrator, or state agency must confirm a subscriber's current eligibility to receive a Lifeline service by:

(i) * * *

(ii) Querying the appropriate income databases, confirming that the subscriber continues to meet the income-based eligibility requirements for Lifeline, and documenting the results of that review.

(iii) If the subscriber's eligibility for Lifeline cannot be determined by accessing one or more databases containing information regarding enrollment in qualifying assistance programs, then the National Verifier, state Lifeline administrator, or state agency may obtain a signed certification from the subscriber on a form that meets the certification requirements in paragraph (d) of this section. If a Federal eligibility recertification form is available, entities enrolling subscribers must use such form to recertify a qualifying low-income consumer.

(4) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for re-certification or subscribers' Lifeline eligibility, the National Verifier, state Lifeline administrator, or other state agency must provide to each eligible telecommunications carrier the results of its annual re-certification efforts with respect to that eligible telecommunications carrier's subscribers.

(5) If an eligible telecommunications carrier is unable to re-certify a subscriber or has been notified by the National Verifier, a state Lifeline administrator, or other state agency's inability to re-certify a subscriber, the eligible telecommunications carrier must comply with the de-enrollment requirements provided for in § 54.405(e)(4).

(g) One-Per-Household Worksheet. The prospective subscriber will complete a form certifying compliance with the one-per-household rule upon initial enrollment. Such form will provide an explanation of the one-per-household rule; include a check box that the applicant can mark to indicate that he or she lives at an address occupied by multiple households; a space for the applicant to certify that he or she shares an address with other adults who do not contribute income to the applicant's household and share in the household's expenses or benefit from the applicant's income; and the penalty for consumer's failure to make the required one-per-household certification, i.e. de-enrollment. At re-certification, if there are changes to the subscriber's household that would prevent the subscriber from accurately

certifying to § 54.410(d)(3)(vi), then the subscriber must complete a new One-Per-Household Worksheet. If a Federal One Per Household Form is available, entities enrolling subscribers must use such form.

(h) National Verifier Transition. As the National Verifier is implemented in a state, the above referenced and revised obligations with respect to the National Verifier and eligible telecommunications carriers will also take effect.

14. Add § 54.411 to subpart E to read as follows:

§ 54.411 Lifeline benefit portability.

(a) A provider shall not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who has used the Lifeline benefit to enroll in a qualifying Lifeline-supported broadband Internet access service offering with another Lifeline provider within the previous 12 months.

(b) A provider shall not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who has used the Lifeline benefit to enroll in a qualifying Lifeline-supported voice telephony service offering with another Lifeline provider within the previous 60 days.

(c) Notwithstanding paragraphs (a) and (b) of this section, a provider may seek and receive reimbursement through the Lifeline program for service provided to a subscriber prior to the completion of the 12-month period described in paragraph (a) of this section or the 60-day period described in paragraph (b) of this section if:

(1) the subscriber moves their residential address;

(2) the subscriber's current provider ceases operations or otherwise fails to provide service;

(3) the provider has imposed late fees for non-payment greater than or equal to the monthly end-user charge for the supported service; or

(4) the subscriber's current provider is found to be in violation of the Commission's rules during the 12-month period and the subscriber is impacted by such violation.

(d) If a subscriber transfers his or her Lifeline benefit pursuant to section (c), the subscriber's Lifeline benefit will apply to the newly selected service until the end of the original 12-month period. In these circumstances, the subscriber is not required to re-certify eligibility until the end of the original 12-month period. The subscriber's original provider must provide the subscriber's eligibility records to either the subscriber's new provider or the subscriber to comply with the 12-month service period.

15. Amend §54.416 to add paragraph (a)(3) to read as follows:

§ 54.416 Annual certifications by eligible telecommunications carriers.

(a) * * *

(3) An officer of the eligible telecommunications carrier must certify that the carrier is in compliance with the minimum service levels set forth in § 54.408. Eligible telecommunications carriers must make this certification annually to the Administrator as part of the carrier's submission of re-certification data pursuant to this section.

* * * * *

16. Amend § 54.420 to revise paragraph (b) to read as follows:

§ 54.420 Low income program audits.

* * * * *

(b) Audit requirements for new eligible telecommunications carriers. After a company is designated for the first time in any state or territory, the Administrator will audit that new eligible telecommunications carrier to assess its overall compliance with the rules in this subpart and the company's internal controls regarding these regulatory requirements. This audit should be conducted within the carrier's first twelve months of seeking federal low-income Universal Service Fund support, unless otherwise determined by the Office of Managing Director.

17. Amend § 54.422 to revise paragraph (b)(3) to read as follows:

§ 54.422 Annual reporting for eligible telecommunications carriers that receive low-income support.

* * * * *

(b) * * *

(3) Certification of compliance with applicable minimum service standards, as set forth in § 54.408, service quality standards, and consumer protection rules;

* * * * *

18. Add § 54.423 to subpart E to read as follows:

§ 54.423 Budget.

(a) Amount of the annual budget. The initial annual budget on federal universal support for the Lifeline program shall be $2.25 billion.

(1) Inflation increase. In funding year 2016 and subsequent funding years, the $2.25 billion funding cap on federal universal service support for Lifeline shall be automatically increased annually to take into account increases in the rate of inflation as calculated in paragraph (a)(2) of this section.

(2) Increase calculation. To measure increases in the rate of inflation for the purposes of paragraph (a) of this section, the Commission shall use the Consumer Price Index for all items from the Department of Labor, Bureau of Labor Statistics. To compute the annual increase as required by this paragraph (a), the percentage increase in the Consumer Price Index from the previous year will be used. For instance, the annual increase in the Consumer Price Index from 2015 to 2016 would be used for the 2017 funding year. The increase shall be rounded to the nearest 0.1 percent by rounding 0.05 percent and above to the next higher 0.1 percent and otherwise rounding to the next lower 0.1 percent. This percentage increase shall be added to the amount of the annual funding cap from the previous funding year. If the yearly average Consumer Price Index decreases or stays the same, the annual funding cap shall remain the same as the previous year.

(3) The Wireline Competition Bureau shall issue a public notice on or before July 31 containing the results of the calculations described in §54.403(a)(2) and setting the budget for the upcoming year beginning on January 1.

(b) If spending in the Lifeline program meets or exceeds 90 percent of the Lifeline budget in a calendar year, the Wireline Competition Bureau shall prepare a report evaluating program disbursements and describing the reasons for the program's growth along with any other information relevant to the operation of the Lifeline program. The Bureau shall submit the report to the Commission by July 31st of the following year.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Lifeline Second FNPRM* in WC Docket Nos. 11-42, 09-197, 10-90.[2] The Commission sought written public comment on the proposals in the *Lifeline Second FNPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Final Rules

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.[3] The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T.[4] On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.[5] Since the 2012 *Lifeline Reform Order*, the Commission has aggressively addressed waste, fraud and abuse in the Lifeline program and improved program administration and accountability.[6] In this Third Report and Order, Further Report and Order, and Order on Reconsideration (Order), we recognize the importance of broadband access in today's world. Those who have access use the Internet to, among other things, connect with family, work, and friends, stay abreast of the news, monitor important civic activities, research issues, stay in contact with healthcare providers. However, not all American can access the Internet and enjoy the benefits of broadband access in today's society. In this Order, we therefore take measures to reform the Lifeline program to become part of the solution to the Nation's broadband affordability challenge by focusing the Lifeline program on broadband and encouraging broadband providers to offer supported broadband services that meet specific Commission established standards. We also take steps to improve the management and design of the Lifeline program by streamlining program rules and eliminating outdated obligations with the goal of providing incentives for broadband providers to participate and increasing meaningful broadband offerings to Lifeline subscribers.

3. Specifically, in this Order, to create a competitive Lifeline broadband program, we take a variety of actions to encourage more Lifeline providers to deliver supported broadband services. Most significantly, we allow support for robust, standalone fixed and mobile broadband services to ensure meaningful levels of connectivity. At the same time, we transition the Lifeline program from primarily supporting voice services to targeting support at modern broadband services. Additionally, to encourage

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

[2] *Lifeline and Link Up Reform and Modernization et al*., Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7929-40, paras. 1-40 (2015) (*2015 Lifeline FNPRM*).

[3] *See* 47 U.S.C. § 254 *passim*.

[4] *See MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985) (*MTS and WATS Market Structure Report and Order*).

[5] *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9006-9008, paras. 431-434 (1997) (*Universal Service First Report and Order*).

[6] *See Lifeline and Link Up Reform and Modernization et al*., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*2012 Lifeline Reform Order*); 2015 *Lifeline FNPRM*; 47 U.S.C. § 254 (b)(1),(3). *See also* 47 U.S.C. § 151.

entry of new Lifeline providers to supply broadband, we create a streamlined Lifeline Broadband Provider designation process, and modernize the obligations of broadband providers by reinterpreting parts of the statute and granting providers forbearance from parts of the statute in order to ensure just and reasonable rates and the protection of consumers.

4. Additionally, in order to ensure that the Lifeline program is designed to operate in an efficient, and highly accountable manner with the reorientation of the Lifeline program to broadband, we take a number of additional actions in this Order to reform the program. Most significantly, we set minimum service standards for broadband and mobile services to ensure those services meet the needs of consumers; create a National Lifeline Eligibility Verifier (National Verifier) to transfer the responsibility of making eligibility determinations away from Lifeline providers and remove the opportunities for Lifeline providers to inappropriately enroll subscribers; streamline the criteria for Lifeline program qualification in recognition of the way the vast majority of Lifeline subscribers gain entry to the program; require Lifeline providers to make available Wi-Fi enabled devices and hotspot capable devices when providing devices for use with Lifeline-supported service; and adopt a budget for the Lifeline program to bring the Lifeline program in to alignment with the other three universal service fund programs, each of which operates within a budget, and to ensure that the program is designed to operate in an efficient, highly accountable manner. We also take several other measures to improve the efficient administration and accountability of the Lifeline program, such as establishing an annual eligibility process, imposing a port freeze on Lifeline services, revising the audit procedures, and creating standardized Lifeline forms. We believe that these new rules and reforms, taken together, will greatly expand the reach of the Lifeline program to all consumers and further increase utilization of the Lifeline program.

B. Summary of Significant Issues Raised by Public Comments to the IRFA

5. We received one comment specifically addressing the IRFA from the Small Carriers Coalition (Coalition).[7] In the 2015 *Lifeline Second FNPRM*, in order to increase eligible telecommunications carrier (ETC) accountability and compliance with the Lifeline rules, we proposed a requirement that all company employees and third-party agents interfacing with customers receive sufficient training on the Lifeline rules, and that such persons receive training annually.[8] The Coalition notes that the Commission's analysis of the compliance burden of this requirement on small entities was insufficient.[9] Specifically, the Coalition asserts that, while the burden of executing a certification that appropriate training has been received may be minor, the burden of arranging and paying for such training, and requiring employees and agents to undergo such training, is much higher.[10] The Coalition asserts that the burden of arranging and paying for such training was not addressed as well as the burden of requiring a 24-hour customer service call center requirement for the sole purpose of de-enrolling Lifeline customers.[11] The Coalition recommends that the training requirement be eliminated, or, if retained for small carriers, reduced such that only one supervisory employee be required to undergo training.[12] The Coalition asserts that, by tailoring this requirement, it would more closely align the burden of training with the limited public interest benefit of requiring training for carriers with few Lifeline

[7] *See* Small Carriers Coalition Comments at 5-6.

[8] *See 2015 Lifeline FNPRM*, 30 FCC Rcd at 7888-89, paras. 210-214.

[9] *See* Small Carriers Coalition Comments at 5-6.

[10] *Id*. at 6.

[11] *Id*.

[12] *Id*.

customers.[13] The Coalition also recommends that the 24-hour customer service requirement not be applied to small carriers, because such requirement dwarfs the potential public interest benefit.[14]

6. In this Order, we do not adopt this proposal as a final rule. We recognize the additional compliance burden and cost imposed upon small entities of this requirement. As an alternative measure to increase eligible telecommunications carrier (ETC) accountability and compliance with the Lifeline rules, in this Order, we have established the National Verifier with its primary function being to verify customer eligibility for Lifeline support.[15] The National Verifier will also perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline program, such as, but not limited to, enabling access by authorized users, providing support payments to providers, and conducting recertification of subscribers, to add to the efficient administration of the Lifeline program.[16] Additionally, we have streamlined eligibility for Lifeline support to increase efficiency and improve the program for consumers, Lifeline providers, and other participants.[17] By relying on highly accountable programs that demonstrate limited eligibility fraud, we will reduce the potential of waste, fraud, and abuse occurring due to eligibility errors.[18] These alternative measures therefore will help ensure compliance with the Commission's rules and reduce the potential risk for error when interfacing with customers while at the same time limiting any additional burden upon small businesses.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.[19]

8. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Final May Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[20] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[21] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[22] A small business

[13] *Id.*

[14] *Id.*

[15] *See* Order at paras. 126-166.

[16] *Id* at paras. 167-216.

[17] *Id.* at paras. 157-205.

[18] *Id.* at para. 172.

[19] 5 U.S.C. Sec. 604(a)(3).

[20] 5 U.S.C. § 603(b)(3).

[21] 5 U.S.C. § 601(6).

[22] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[23] Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.[24] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[25]

10. ***Small Entities, Small Organizations, Small Governmental Jurisdictions.*** Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. [26]As of 2014, according to the SBA, there were 28.2 million small businesses in the U.S., which represented 99.7 percent of all businesses in the United States.[27] Additionally, a "small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field".[28] Nationwide, as of 2007, there were approximately 1,621,215 small organizations.[29] Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand".[30] Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.[31] We estimate that, of this total, as many as 89,327 entities may qualify as "small governmental jurisdictions".[32] Thus, we estimate that most local governmental jurisdictions are small.

1. Wireline Providers

11. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[33] Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[34]

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[23] *See* 15 U.S.C. § 632.

[24] *See* SBA, Office of Advocacy, "Frequently Asked Questions," http://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf (last visited Mar. 8, 2016).

[25] 5 U.S.C. § 601(4).

[26] *See* 5 U.S.C. 601(3)-(6).

[27] *See* SBA, Office of Advocacy, "Frequently Asked Questions:, available at http://web.sba.gov/faqs/faqindex.cfm?areaID=24 (last viewed March 2014)

[28] 5 U.S.C. § 601(4).

[29] Independent Sector, The New Nonprofit Almanac and Desk Reference (2010).

[30] 5 U.S.C. § 601(5).

[31] *See* SBA, Office of Advocacy, "Frequently Asked Questions", http://www.sba.gov/sites/default/files.FAQ_March 2014 _0pdf (figures are from 2011).

[32] The 2011 Census data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local organizations were small, in 2011 we note that there were a total of 729 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. *See* http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk. If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 89,327 are small.

[33] 13 CFR § 121.201, NAICS code 517110.

[34] *See Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[35] Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.[36]

12. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate category for this service is the category Wired Telecommunications Carriers. Under the category of Wired Telecommunications Carriers, such a business is small if it has 1,500 or fewer employees.[37] Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.[38] According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[39] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[40] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[41] In addition, 72 carriers have reported that they are Other Local Service Providers,[42]seventy of which have 1,500 or fewer employees and two have more than 1,500 employees.[43] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

13. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate category for Interexchange Carriers is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[44] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard,

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[35] *See id*.

[36] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited Mar. 8, 2016).

[37] 13 CFR § 121.201, NAICS code 517110.

[38] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited Mar. 8, 2016).

[39] *See Trends in Telephone Service* at Table 5.3.

[40] *See id*.

[41] *Id*.

[42] *See id*.

[43] *See id*.

[44] 13 CFR § 121.201, NAICS code 517110.

the majority of these Interexchange carriers can be considered small entities.[45] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[46] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[47] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

14. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate category for Operator Service Providers is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[48] Under that size standard, such a business is small if it has 1,500 or fewer employees.[49] Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of the total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more.[50] Thus under this category and the associated small business size standard, the majority of these interexchange carriers can be considered small entities.[51] According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees.[52] Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

15. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[53] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[54] Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported

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[45] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited Mar. 8, 2016).

[46] *See Trends in Telephone Service* at Table 5.3.

[47] *See id*.

[48] 13 CFR § 121.201, NAICS code 517110.

[49] *Id*.

[50] *See Wired Telecommunications Data*.

[51] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited Mar. 8, 2016).

[52] *Trends in Telephone Service* at Table 5.3.

[53] 13 CFR § 121.201, NAICS code 517911.

[54] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited Mar. 8, 2016).

that they are engaged in the provision of local resale services.[55] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[56] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

16. *Toll Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[57] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[58] Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data,[59] 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

17. *Pre-paid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for pre-paid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[60] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[61] Thus under this category and the associated small business size standard, the majority of these pre-paid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of pre-paid calling cards.[62] Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.[63] Consequently, the Commission estimates that the majority of pre-paid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

18. *800 and 800-Like Service Subscribers*.[64] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate category for these services is the category Telecommunications Resellers. Under that category and corresponding size standard, such a business is small if it has 1,500 or fewer

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[55] *See Trends in Telephone Service* at Table 5.3.

[56] *Id*.

[57] 13 CFR § 121.201, NAICS code 517911.

[58] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited Mar. 8, 2016).

[59] *See Trends in Telephone Service* at Table 5.3.

[60] 13 CFR § 121.201, NAICS code 517911.

[61] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited Mar. 8, 2016).

[62] *See Trends in Telephone Service* at Table 5.3.

[63] *See id*.

[64] We include all toll-free number subscribers in this category, including those for 888 numbers.

employees.[65] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[66] Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.[67] According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers. We do not believe 800 and 800-Like Service Subscribers will be affected by our proposed rules, however we choose to include this category and seek comment on whether there will be an effect on small entities within this category.

2. Wireless Carriers and Service Providers

19. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.[68] The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees.[69] For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year.[70] Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.[71] Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless

[65] 13 CFR § 121.201, NAICS code 517911.

[66] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited Mar. 8, 2016).

[67] *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

[68] U.S. Census Bureau, http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search (last visited Mar. 8, 2016).

[69] 13 CFR § 121.201, NAICS code 517210.

[70] U.S. Census Bureau, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210" (issued Nov. 2010).

[71] *See* U.S. Census Bureau, American Factfinder, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table (last visited Mar. 8, 2016). Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "100 employees or more." *Id.*

telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.[72]

20. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[73] The SBA has approved these definitions.[74] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

21. *Satellite Telecommunications Providers*. Two economic census categories address the satellite industry. The first category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules.[75] The second has a size standard of $32.5 million or less in annual receipts.[76]

22. The category of *Satellite Telecommunications* "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[77] Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.[78] Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[79] Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

23. The second category, i.e. "All Other Telecommunications" comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in

[72] *Id*.

[73] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[74] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

[75] 13 CFR § 121.201, NAICS code 517410.

[76] 13 CFR § 121.201, NAICS code 517919.

[77] U.S. Census Bureau, 2007 NAICS Definitions, Satellite Telecommunications, http://www.census.gov/naics/2007/def/ND517410.HTM (last visited Mar. 8, 2016).

[78] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ4: Receipts Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517210 in the left column for "Satellite Telecommunications") (last visited Mar. 8, 2016).

[79] *Id*.

this industry."[80]The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with gross annual receipts of $ 32.5 million or less.[81] For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.[82] Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49, 999,999.[83] Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

24. *Common Carrier Paging.* As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).[84]

25. In addition, in the Paging *Second Report and Order*, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[85] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[86] The SBA has approved this definition.[87] An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.[88] Fifty-seven companies claiming small business status won 440 licenses.[89] A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[90] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[91]

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[80] U.S. Census Bureau, 2007 NAICS Definitions, All Other Telecommunications, http://www.census.gov/naics/2007/def/ND517919.HTM (last visited Mar. 8, 2016).

[81] *See* 13 CFR § 121.201, NAICS code 517919.

[82] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ4: Receipts Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517919 in the left column for "All Other Telecommunications") (last visited Mar. 8, 2016).

[83] *Id*.

[84] *See supra* para. 16; U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)", http://www.census.gov/naics/2007/def/ND517210.HTM#N517210 (last visited Mar. 8, 2016).

[85] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems et al.*, WT Docket No. 96-18 et al., Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732, 2811-12, paras. 178-81 (1997) (*Paging Second Report and Order*); *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems et al.*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085-88, paras. 98-107 (1999).

[86] *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

[87] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (dated Dec. 2, 1998).

[88] *See 929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[89] *See id.*

[90] *See Lower and Upper Paging Bands Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2001).

[91] *See Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number

(continued….)

26. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 291 carriers reported that they were engaged in the provision of "paging and messaging" services.[92] Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees.[93] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

27. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[94] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[95] According to the 2010 Trends Report, 413 carriers reported that they were engaged in wireless telephony.[96] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[97] We have estimated that 261 of these are small under the SBA small business size standard.

3. Internet Service Providers

28. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,[98] which has an SBA small business size standard of 1,500 or fewer employees.[99] The latter are within the category of All Other Telecommunications,[100] which has a size standard of annual receipts of $32.5 million or less.[101]

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

29. A number of our rule changes will result in additional reporting, recordkeeping, or compliance requirements for small entities. For all of those rule changes, we have determined that the benefit the rule change will bring for the Lifeline program outweighs the burden of the increased requirement/s. Other rule changes decrease reporting, recordkeeping, or compliance requirements for small entities. We have noted the applicable rule changes below impacting small entities.

(Continued from previous page)
of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[92] *2010 Trends Report* at Table 5.3, page 5-5.

[93] *Id*.

[94] 13 CFR § 121.201, NAICS code 517210.

[95] *Id*.

[96] *2010 Trends Report* at Table 5.3, page 5-5.

[97] *Id*.

[98] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers", http://www.census.gov/naics/2007/def/ND517110.HTM#N5171100 (last visited Mar. 8, 2016).

[99] 13 CFR § 121.201, NAICS code 517110 (updated for inflation in 2008).

[100] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications", http://www.census.gov/naics/2007/def/ND517919.HTM#N517919. (last visited Mar. 8, 2016).

[101] *See supra* para. 25; 13 CFR § 121.201, NAICS code 517919 (updated for inflation in 2008).

1. Increase in Projected Reporting, Recordkeeping and Other Compliance Requirements

30. *Compliance burdens.* All of the rules we implement impose some compliance burdens on small entities by requiring them to become familiar with the new rules to comply with them. For several of the new rules, such as the new budget and the revised audit procedures, the burden of becoming familiar with the new rule in order to comply with it is the only additional burden the rule imposes.

31. *Broadband as a Supported Service*. Expanding the Lifeline program to support broadband Internet access service (BIAS) at a discounted rate by Lifeline providers will increase recordkeeping and compliance burdens for small entities since they will now be required to revise their business plans and make any necessary IT changes to account for the delivery of broadband services and the gradual reduction in monthly support for voice-only service. Additionally, small entities seeking designation as a Lifeline Broadband Provider will also be subject to additional reporting and compliance requirements, such as submitting information describing the terms and conditions of any BIAS plans offered to Lifeline subscribers. However, the benefit of providing a robust, affordable broadband service offering to low-income consumers who may not otherwise be able to afford and utilize the service outweighs any additional recordkeeping or compliance obligations upon small businesses. Moreover, an overwhelming majority of commenters support the inclusion of broadband in the Lifeline program as broadband access is of critical importance for consumers of all incomes.

32. *Minimum Service Standards.* Requiring broadband providers claiming Lifeline support to certify compliance with the minimum service standards and making them subject to the Commission's audit authority increases recordkeeping, reporting, and compliance requirements for those fixed broadband providers claiming Lifeline support. These certification and compliance requirements are necessary, however, in order to ensure that Lifeline customers obtain the type of robust service which is essential to participate in today's society. Additionally, these standards ensure that service offerings will be affordable for small entities.

33. *Wi-Fi Enabled Devices*. Requiring Lifeline providers who make devices available with or without charge for use with a Lifeline-supported fixed or mobile broadband service to ensure that all such devices are Wi-Fi enabled, and requiring Lifeline providers who make devices available with or without charge for use with a Lifeline-supported mobile broadband service to also offer devices that are capable of being used as a hotspot, will increase the compliance and reporting burdens upon small businesses. This requirement will require businesses to offer certain products that they may not have otherwise provided to consumers and certify to such compliance consistent with our rules. Conditioning support for Lifeline services in this way, however, will increase the value of the supported connection so that Lifeline consumers can regularly and reliably access the Internet. Additionally, in order to reduce the immediate burden upon small businesses, we have provided for a transition period for complying with this requirement.

34. *De-enrollment*. In revising our rules regarding de-enrollment to add consistency and clarity, we now require de-enrollment within five business days after the expiration of the subscriber's time to demonstrate eligibility. This change may increase the compliance burden on small entities where previously their systems did not have to track the timeframe for de-enrollment. This burden, however, is outweighed by the benefit this rule change will bring to the Lifeline program by ensuring that subscriber de-enrollment requests are resolved on a timely basis.

2. Decrease in Projected Reporting, Recordkeeping and Other Compliance Requirements

35. *Annual Recertification.* Requiring Lifeline providers to annually recertify all subscribers on a rolling basis, based on the subscriber's date of enrollments, decreases the burden of the recordkeeping requirement for small businesses by eliminating the need to process recertification and potential de-enrollment procedures for all subscribers at the same time. Thus, making the recertification process more manageable for small businesses and enable providers (and the National Verifier) to

respond to any customers who need assistance in the recertification process without being overwhelmed by customer service requests.

36. *Eliminating the Reporting of Temporary Addresses*. Eliminating certain sections of the Commission's rules related to requiring service providers to recertify the temporary addresses of their subscribers will reduce reporting and recordkeeping burden upon small entities. The elimination of these unnecessary and burdensome requirements should also increase the incentive and likelihood of additional small businesses entering the Lifeline marketplace.

37. *National Lifeline Eligibility Verifier*. The establishment of a National Verifier to make eligibility determinations and perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline Program will lessen the recordkeeping and compliance burden on small entities by relieving them of the obligation to conduct eligibility determinations. Further, the establishment of the National Verifier will, among other things, help to not only lower costs to the Fund but also to Lifeline providers, including small businesses, through increasing administrative efficiencies.

38. *Streamlining Lifeline Eligibility*. Streamlining eligibility for Lifeline support by eliminating certain programs from the default federal assistance eligibility and removing income-based eligibility and state-specified eligibility criteria as avenues to access Lifeline support will reduce the recordkeeping burden upon small entities to make eligibility determinations, and increase efficiency and improve the Lifeline program for not only consumers but also providers.

39. *Program Audits.* Allowing the Office of Managing Director (OMD) to determine if a Lifeline provider should be audited within the first year of receiving Lifeline benefits in the state in which it was granted ETC status, rather than requiring all first-year Lifeline providers to undergo an audit within the first year of receiving Lifeline benefits, will minimize the burden on a substantial number of small entities within the first year of receiving Lifeline benefits to respond to requests for information as part of an audit. This requirement, while reducing the number of audits conducted within the first year of receiving Lifeline benefits, nonetheless, is essential in promoting program integrity and ensuring compliance with the Commission's rules.

40. *Universal FCC Forms*. The implementation of standardized FCC Forms that all ETCs, where applicable, must use in order to certify a consumers' eligibility for Lifeline benefits and the one-per-household requirements should decrease recordkeeping and compliance burdens upon small entities by having the Commission develop Lifeline forms for the use by providers and subscribers. Ultimately, this standardized approach will increase overall compliance with the Commission's rules and facilitate administration of the Lifeline program.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

41. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[102]

42. This rulemaking could impose minimal additional burdens on small entities. We considered alternatives to the rulemaking changes that increase projected reporting, recordkeeping and other compliance requirements for small entities.

[102] 5 U.S.C. § 603(c)(1)-(c)(4).

1. Alternatives Permitted

43. *Lifeline Obligations for ETCs (Lifeline Voice Service Obligation)*. We grant a conditional forbearance from the Lifeline voice service obligation for existing ETCs that are not Lifeline-only ETCs.

44. *Lifeline Obligations for ETCs (Lifeline Broadband Service Obligation)*. We also grant a forbearance to Lifeline-only ETCs from the requirement to offer BIAS to allow such ETCS to solely offer voice service. Further, we grant a forbearance to ETCs that are not Lifeline-only from the requirement to offer Lifeline-BIAS to allow such ETCs to solely offer voice service in the Lifeline program.

45. While the above forbearances could have a significant impact on small entities insofar as it would make this conditional forbearance theoretically available to many small entities (all rate-of-return incumbent local exchange carriers (ILECs), for instance), it would be a benefit to small entities, not a burden. However, it is unclear how many small entities (vs. large entities like price cap ILECs) actually will take advantage of the forbearances provided.

2. Alternatives Considered and Rejected

46. *Minimum service standards (Fixed Broadband)*. The best source of subscriber data to obtain minimum service standards for fixed broadband is the FCC Form 477. Although there were other proposed methods provided by commenters, such as specific numeric thresholds and existing Commission testing mechanisms, providers are already required to report extensively on their offerings on the FCC Form 477 twice a year; therefore, it is the less burdensome method to acquire data to set and regularly update the minimum service standards for fixed broadband speeds.

47. *Minimum service standards (Mobile Broadband)*. The best source of data to set and update minimum service standards for mobile broadband data usage is data set forth in the Commission's annual *Mobile Competition Report*. Although a commenter proposed a method utilizing a numeric threshold, this report is updated annually with mobile subscriber data; therefore, it is the less burdensome method to calculate and regularly update the mobile data usage level for mobile broadband standards.

48. **Report to Congress:** The Commission will send a copy of this Third Report and Order, Further Report and Order, and Order on Reconsideration, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA.[103] In addition, the Commission will send a copy of this Third Report and Order, Further Report and Order, and Order on Reconsideration, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Third Report and Order, Further Report and Order, and Order on Reconsideration, and the FRFA (or summaries thereof) will also be published in the Federal Register.[104]

[103] *See* 5 U.S.C. § 801(a)(1)(A).

[104] *See* 5 U.S.C. § 604(b).

STATEMENT OF
CHAIRMAN TOM WHEELER

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90.

Universal access to affordable communications is a bedrock principle on which the FCC has stood since its creation in 1934. For more than 30 years, the Lifeline program has been one important way the agency sought to achieve this worthy goal by helping low-income consumers afford phone service. Today, we take the next major step in fostering the FCC's commitment to universal service by modernizing Lifeline to support broadband and refocusing the program to meet the 21st century's communications challenges.

By dramatically improving Lifeline's management and design, and putting the program on sound fiscal footing moving forward, we will help low-income Americans all across our nation connect to the Internet and the opportunities of the broadband revolution.

Internet access has become essential for full participation in our modern economy and our society, but 64.5 million Americans are missing out on the opportunities made possible by the most powerful and pervasive platform in history.

The FCC has a Congressional mandate to ensure "consumers in all regions of the country, including low-income consumers . . . should have access to . . . advanced telecommunications services." With affordability still the largest single barrier to broadband adoption in low-income households, modernizing Lifeline is a key part of upholding our statutory obligations.

Lifeline was established by the FCC in 1985 to help low-income Americans afford access to vital communications, which, in those days, was a telephone call. Over a span of three decades, the program has helped tens of millions of Americans afford basic phone service. At a time when our economy and lives are increasingly moving online, it doesn't make sense for Lifeline to focus only on 20th century narrowband voice service.

That's why, last June, the Commission initiated a proceeding to recast Lifeline for the broadband era.

This reform effort was driven by two equally important goals: (1) modernizing the program to help connect low-income Americans to the Internet; and (2) reforming program management to ensure the fiscal integrity of the program going forward.

In modernizing the program, we were guided by the principles of competition and choice. Reforms are designed to encourage more providers to participate in the program so that competition in the marketplace can increase the value of the subsidy and provide choices for consumers.

The Order allows qualifying low-income consumers to apply the $9.25 per month support to stand-alone mobile or fixed broadband service as well as bundled voice and data service packages. It also ensures that low-income consumers are not relegated to second class service and have choices that allow them to get the most value for the subsidy. It sets minimum service standards to ensure supported services meet modern needs. These benchmarks will be transitioned in over time to avoid undue disruption for existing lifeline providers and consumers.

The Order also retains long-term support for voice service as part of a mobile voice and data bundle. At the same time, the Order anticipates technological advances in the convergence of mobile voice and data. And, as such, sets a 5 and one half year transition for requiring voice to be provided as part of a data bundle. To ensure voice remains affordable, it requires a mid-2021 program review and report by the FCC's Wireline Competition Bureau to assess the state of the Lifeline marketplace and propose recommendations to the Commission prior to the completion of the transition.

To encourage participation by broadband providers and thereby increase availability and consumer choice, the Order provides streamlined, nationwide entry to the Lifeline program for broadband providers. This is an additional, centralized option for those providers who seek a one-stop-shop lifeline broadband designation. States can still have their own Lifeline subsidy, and providers will still need to get permission from the state to receive that subsidy. Today's Order also modernizes rules to improve program flexibility, reduce burdens, and incentivize participation by providers.

This Order gets to the heart of the historic issues that have undermined this program's efficiency, so we get more bang for our Lifeline buck. Reforms initiated by Chairman Genachowski and Acting Chairwoman Clyburn have already reduced annual Lifeline spending by more than 20 percent by eliminating more than $1 billion in duplicate payment.

Building on these reforms, the Order addresses remaining vulnerabilities to curb waste, fraud, and abuse. It establishes a National Eligibility Verifier as neutral third-party entity that removes the opportunity for providers to enroll ineligible subscribers. It refines the list of federal programs that may be used to validate Lifeline eligibility to those that support electronic validation, are most accountable, and best identify people needing support. It increases transparency by making program data publicly available and understandable, including subscriber counts by provider and uniform disclosure of annual subscriber recertification data.

To minimize impact on ratepayers, the Order establishes, for the first time, a Lifeline budget mechanism. It sets budget of $2.25 billion, indexed to inflation. This is a ceiling sufficient to allow for increased participation generated by support for broadband service. The FCC's Wireline Competition Bureau will be required to notify the Commission when spending reaches 90 percent of the budget and to prepare an analysis of the causes of spending growth, followed by full Commission action within 6 months. This mechanism will ensure that the Commission has the notice and comprehensive information it needs to determine the reasons for growth in the program and to promptly make any necessary changes to the program to keep in on sound financial footing.

By making the program more efficient, the reforms contained in this Order will make Lifeline more effective at making broadband more affordable for low-income consumers.

Thank you to the staff from across the Commission who have worked on this item, in particular Jon Wilkins, Chief of the Wireless Telecommunications Bureau and Matt DelNero, Chief of the Wireline Competition Bureau and a Wireline team led by Trent Harkrader and Jay Schwarz. Thank you also to those like Senator Booker, Congresswoman Matsui and the civil rights and public interest groups that make up the Lifeline Coalition, who for years have worked tirelessly to ensure this program truly is a lifeline for those who rely on it. Most of all, thank you to Commission Clyburn. Without her leadership, today's reforms would not have happened.

STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90.

Just over two years ago, I expressed my desire to revamp and modernize the FCC's only means tested program, designed to address head-on the affordability gap faced by millions of economically vulnerable Americans when it comes to critical telecommunications services. My vision was well-intentioned and simple: to reform a program that for the past 30 years, has been stuck in an analog time warp, and beam that program into the 21st century, make it future-proof, competitive and loaded with choice for deserving consumers.

That simple objective is now codified in 200-plus pages, which means that there are levels of complexity that will ensure that more providers participate, and that more qualified consumers currently stuck on the wrong side of the universal opportunities divide become digitally connected.

Recently, I had an opportunity to meet Bridgid, a re-entry student from San Francisco, California. After being laid off from her job, she enrolled in a Bay Area city college to get the training she needs to be successful in the next phase of her professional journey. But as she reviewed the requirements of her program coursework, a cruel reality threatened to short-circuit her long-term goals. In order to fulfill the homework assignments for four out of five of those classes, she needs access to the internet. However, for her, broadband is currently a luxury she simply cannot afford.

Unlike many of her classmates who are able to complete their assignments, check their grades and communicate with their instructors from home or on-the-go, Bridgid has to plot, plan and scheme when it comes to getting connected. She jokingly calls herself a "Wi-Fi troll," one who constantly searches for one signal after another once the high-tech learning center and school library close at 6:00 p.m. and 6:45 p.m., respectively. Bridgid cannot afford to purchase food or drinks in the coffee shops that offer free Wi-Fi, so she often sits outside on the sidewalks to take advantage of their signal—that is until she is asked to leave. She has even been known to enter a hotel or two, sneak on the elevator, return to that hotel lobby, pretend to be a guest, and ask the front desk attendant for the hotel's Internet access code, so that she can complete her homework from the lobby. As creative or clever as Bridgid is, her methods are not always effective or safe. She has been chased off of neighborhood sidewalks, has had to repeat a class or two, and as a result of this and more, her grades have suffered. The stress of completing coursework is hard enough, but the burden of finding a connection and resorting to trolling for a Wi-Fi signal, is a sacrifice someone trying to benefit and better themselves should not be forced to make.

While her methods may seem extreme to some, her challenge is one tens of millions face each and every day – and did I mention that Bridgid is currently one of our over 12 million Lifeline customers, and that her plan is limited to voice? Just imagine what she could realize if her plan not only supported voice but data as well.

The same day I met Bridgid, I spoke with Chivona from Jackson, Mississippi, who works at an area high school, goes to college, and is the mother of two children. She spends too many evenings in the local McDonald's, not because she believes that the menu offerings would satisfy the nutritional needs of her family, but because once she leaves work and once the community library closes, she has a difficult choice to make. Does she take her tired and hungry children home, does she neglect completing her schoolwork, and fall further behind in her studies, or does this Lifeline qualified single mom take advantage of the only connection truly available at that hour, which is inside a fast food lobby?

Ladies like Chivona and Bridgid, along with those men, children, seniors and veterans stuck on the wrong side of the communications divide . . . are why the importance of this day should be clear. They struggle to make ends meet, feed their families, and better themselves educationally, professionally and medically. Their goal is not to forever qualify for Lifeline, but to take advantage of a fully reformed

program that could be the bridge for them to better themselves and have increased opportunities. FCC frequent fliers look at $9.25 per month as the price they do not think twice about paying when they order a number #2 combo at the airport, but for those who qualify for Lifeline, $9.25 a month per household could make the difference between access to broadband or staying in digital darkness.

In creating this program over 30 years ago, the FCC found that "[a]ccess to telephone service has become crucial, to full participation in our society and economy, which are increasingly depending upon the rapid exchange of information. In many cases, particularly for the elderly, poor, and disabled, the telephone is truly a lifeline to the outside world . . . Our responsibilities under the Communications Act require us to take steps . . . to prevent degradation of universal service and the division of our society . . . into information 'haves' and 'have nots.'"[1] Technologies may change, but the role that communications services play in bringing communities together and bridging divides, remains just as vital as it was in 1985.

While years overdue, I am proud to support today's unveiling of a 21st century program, with more oversight and protections against waste, fraud and abuse, than any of our other universal service programs. When I outlined my vision for Lifeline reform at the American Enterprise Institute (AEI) almost 18 months ago, I spoke of a dignified program that streamlines provider participation to promote more choice, mandates a neutral third-party verifier to determine program eligibility, and creates minimum standards that would prevent second-class or inferior service.

Consumers who are currently low-income should have choices comparable to what I have, in terms of service options and price ranges, and they should never be made to feel ashamed or carry a stigma if they qualify for the Lifeline program.

And, while I have been steadfast in my commitment for minimum standards, I made clear from the start that I was open to making course corrections and receiving feedback. I heard loud and clear that the transition to minimum standards for mobile voice was too much too soon, so I worked with the Chairman to extend the transition to a more gradual glide path and treat mobile and fixed voice the same.

While I would have created a different path for provider participation that delinked the ETC from the program as has been done with E-rate and rural healthcare, more choice and more options will benefit everyone. I hope, despite a different legal approach, that the path today achieves these same goals.

And yes, I heard loud and clear, concerns from our state partners, and worked to balance those concerns, by ensuring that states that include funding for their own Lifeline program will not be preempted, and any provider that wants state Lifeline funding must go through the respective state's process.

But, one of the reforms of which I am most proud, is that we will eradicate the incentives for waste, fraud and abuse that have existed since support was expanded to prepaid wireless services resellers. The agency and, most notably, this administration deserve a lot of credit for the 2012 bipartisan reforms to Lifeline that short-circuited longstanding loopholes, and have saved consumers over $2.75 billion. Today, we take further steps to close those remaining vulnerabilities, which ensures that universal service funding only flows if (1) a provider uses a neutral third party verifier which determines whether each customer is eligible, (2) the database confirms that no one in the household already has service, and (3) minimum standards are met. With these reforms in place, I challenge anyone to find incentives for "waste, fraud and abuse." In fact, this item will make Lifeline the best managed of all our universal service programs, because we have moved from sound bites to real reform, a template and an effort that I hope will be followed as we further reform our other programs.

[1] MTS and WATS Market Structure, CC Docket 78-72; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No 80-286, 50 FR 939 at 941, para 9 (1985).

Finally, I must address the elephant in the room – the delay in the meeting and rumors surrounding a proposed cap on the Lifeline program. I have been consistent in saying that a cap should not be imposed and to be honest and completely transparent, I continue to hold that view. However, I have also been steadfast in my desire to reach consensus and seek compromise whenever possible, and I remain vocal in my call for fiscal responsibility for our universal service programs – all of which are capped except for Lifeline.

So, I negotiated in good faith to have a budget mechanism in place, that ensures millions of new households will have the opportunity to afford advanced telecommunications services. Upon further deliberation, I concluded that such a mechanism could not fully achieve my vision of a 21st century Lifeline program, but I applaud the deliberative process and thank Commissioners Pai and O'Rielly and their staff for engaging well, well into the night and early morning.

I must sincerely thank the Chairman for his support, commitment and patience, as we transform this critical program. Through today's action, we affirm without a doubt, that both the goals and the administration of the Lifeline Program share equal weight with the goals and objectives of our other Universal Service programs. I also want to thank the dedicated staff at the FCC including Jon Wilkins, as well as the stellar Lifeline team from the Wireline Competition Bureau led by Matt Del Nero. And I could not close without recognizing the unwavering commitment of my Wireline Adviser, Rebekah Goodheart. She left these offices just before midnight, was communicative up until at least 2 a.m. and was at her desk by 8 a.m. this morning. To Rebekah and her family, thank you for your commitment to public service and regulatory excellence. I am grateful and millions will benefit from this Order for decades to come.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90.

For over three decades, the Lifeline program has helped the neediest among us connect—connect to family, jobs, healthcare, and help when emergency strikes. These connections make us stronger. That is why, over time, the Commission updated the Lifeline program to include both wireline and wireless voice services. Today, we continue this course—by updating the Lifeline program to include broadband.

This change is overdue, because connectivity today is so much more than it was when this program got its start and most communications involved a phone cord. Today, getting connected means getting online. It is time for the Lifeline program to reflect this reality.

So I support today's decision to modernize this program and update it to include broadband. I also support this effort because it brings new accountability and internal controls to the program. We put in place minimum standards and we adopt fiscal controls. We also create a National Verifier to improve administration and take the customer eligibility process out of the hands of providers who would abuse it. In addition, we bring new transparency to the program by making information about subscriber counts publicly available to all. These are good things. This is progress.

But above all, I support today's decision because it helps narrow the cruelest part of our new digital divide—the Homework Gap.

Let me explain—and let me start by taking us for a moment to McAllen, Texas. McAllen is one of the southernmost cities in the United States. It lies in the storied Rio Grande Valley, right on the river itself. In the last century, McAllen was a community devoted to agriculture. Its fields produced cotton, alfalfa, grapes, and figs. In later years, the economy grew with oil exploration. Still later, it became a foreign trade zone, with cross-border commercial traffic making it one of the fastest growing metropolitan areas in the country.

But like so many other places, this transition to a new economy has been uneven. Jobs are harder to come by. Healthcare is a challenge and diabetes has hit the community hard. So not every household or every neighborhood has found opportunity in what is new—nor advantage in what comes next. This is painfully clear when you look at the students in this community.

Take Isabella and Tony Ruiz. Isabella is 11 and her brother Tony is 12. Every weeknight they stand on a crumbling patch of sidewalk across from the elementary school near their home. They take up residence here as night falls in order to pick up the wireless signal they need to do their homework. Over the cracked screen of their family smartphone they download math materials and review research for class.

Credit to Isabella and Tony for their tenacity. Their mother is out of work and their father brings in what income he can from washing dishes. Their family has cut back on everything. So these students, like so many others in their community, cobble together whatever connectivity they can for schoolwork. They may not know it, but standing on that cracked sidewalk in the South Texas heat, they are on the front lines of a new digital divide.

This divide did not exist when I was growing up. All I needed for homework was pencil, paper, and my brother leaving me alone.

But gone are the days. Today, as many as seven in ten teachers assign homework that requires access to broadband. But data here at the Commission show that as many as one in three households do not subscribe to broadband service, citing lack of affordability and lack of interest.

Think about those numbers. Where they overlap is what I call the Homework Gap—and according to the Pew Research Center the Homework Gap is real. Five million households out of the 29 million with school-aged children nationwide are falling into this gap.

These households falling into the Homework Gap are everywhere—all across the country.

The Homework Gap exists in McAllen, Texas, where Isabella and Tony and so many other students have to stake out space on the sidewalk just to do their schoolwork.

The Homework Gap exists in Detroit, Michigan, where seven in ten students have no way to get online at home—and where students forgo eating lunch in order to borrow laptops and rush through their nightly homework at school—the one place they have Internet access.

The Homework Gap exists in Charlotte, North Carolina, where one in five students have no broadband access at home and where teachers are wrestling with a curriculum that effectively punishes students without online resources.

The Homework Gap exists in Fairfax, Virginia—right over the river from where we sit in Washington, DC—where even in an relatively affluent suburb, nearly one in ten students do not have Internet access at home.

Across the country the math might be different, but the Homework Gap stories are the same. There was a time when broadband access was a luxury. No more. And nothing demonstrates this as clearly as with education.

The good news is that we have identified this problem—the Homework Gap—and have given it a name. And because of this—the Homework Gap is finally getting the attention it deserves. Last month, Isabella and Tony from McAllen, Texas were the subject of a front page story on the Homework Gap in *The New York Times*. It's a story that President Obama shared with millions of his followers on his Facebook and Twitter accounts.

The other good news is that today's decision includes steps designed to help close the Homework Gap. By incorporating broadband into the Lifeline program, we open the doors of digital opportunity. This simple change can help bring more broadband to low-income households with school-aged children. But significantly, we do not stop here. Our decision also modernizes Lifeline by making sure that the devices used for Lifeline broadband services are able to access Wi-Fi signals and that these devices can be turned into Wi-Fi hotspots. For a student with a computer but no way to connect at home, a hotspot can be the difference between keeping up in class and falling behind. It can be the difference between being a digital consumer and becoming a digital creator. It can help put more students on the pathway to science, technology, engineering, and math—a road that suffers today from an unacceptable lack of diversity. So it may seem small—but giving more students the tools to do digital age homework—can yield big results.

Finally, today's decision encourages providers to help make eligible families with school-aged children aware of the Lifeline program. This is good and important.

To be clear, addressing the Homework Gap will require more than the Lifeline program. It will require public and private partnerships to get high-speed services in low-income homes. It will require smarter policies with unlicensed spectrum—because Wi-Fi democratizes Internet access and putting more Wi-Fi in more places can provide more students with more opportunity to get their homework done. And if you want to see how true that is, visit Coachella Valley, California, where two weeks ago I saw an innovative Wi-Fi system on school buses that turns ride time into connected time for homework.

In closing, we have made progress today by modernizing the Lifeline program. But we still have work to do to ensure that every student, no matter who they are, or where they live has access to the digital tools they need to have a fair shot at 21st century success. Because the Homework Gap is the cruelest part of our new digital divide—but it is within our power to bridge it.

DISSENTING STATEMENT OF COMMISSIONER AJIT PAI

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90.

My approach to this proceeding has been guided by two fundamental principles. First, modernizing the Lifeline program to support affordable, high-speed Internet access for our nation's poorest families is a worthy goal. And second, we must be fiscally responsible and clean up the rampant waste, fraud, and abuse in the program so that the dollars we spend go to those families.

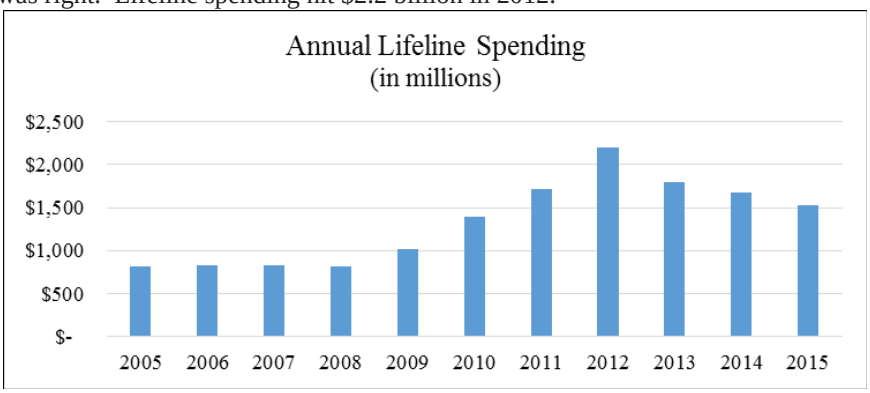
Consistent with these principles, I cannot support this *Order*. It is not fiscally responsible. It does not clean up the waste, fraud, and abuse. And it consigns Lifeline consumers to second-class broadband services for the foreseeable future. On top of this, the *Order* does not comply with federal law. For all these reasons, I dissent.

I.

Lifeline continues to be a fiscal nightmare. Before the start of the Obama Administration, Lifeline spending had held steady in a range of $820–829 million over the course of four years. Then, in 2009, free services and free phone giveaways became the norm. Unscrupulous operators devised new ways to exploit loopholes to line their pockets. Sales agents schemed with consumers (who no longer had skin in the game) to enroll them in Lifeline multiple times—even if the consumer never qualified in the first place.[1] Lifeline spending began to increase dramatically.

When spending jumped to $1.4 billion in 2010, the state members of the Federal-State Joint Board on Universal Service spotted the culprit. As the Chairman of the Oregon Public Utility Commission wrote, "several states have reported that a significant number (nearly half in some cases) of the Lifeline customers [subscribing to no-cost plans] are not eligible to receive support," and "[l]eft unchecked, the fund will easily reach $2 billion within the next two years."[2]

He was right. Lifeline spending hit $2.2 billion in 2012.



[1] *See, e.g.*, Remarks of FCC Commissioner Ajit Pai at the Citizens Against Government Waste Policy Breakfast at 2–3 (July 28, 2014) (Pai Lifeline Reform Speech) (explaining, among other things, that the "FCC identified 306 individuals, each of who had signed up for at least four Lifeline accounts"), *available at* http://go.usa.gov/cetmG.

[2] *Federal-State Joint Board on Universal Service; Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Recommended Decision, 25 FCC Rcd 15598, 15636 (Fed.-State Joint Bd. 2010) (*Joint Board Lifeline Recommended Decision*) (Statement of Chairman Ray Baum, Concurring in Part and Dissenting in Part).

And so, the FCC finally started to act to curb waste, fraud, and abuse in the *2012 Lifeline Reform Order*.[3] As a result of these reforms, we now know just how common abuse was. The year after their implementation, Lifeline claims fell $397 million. A full 29% of Lifeline subscribers had to be de-enrolled because they failed the recertification process.[4] Continued implementation has culled even more duplicate subscribers and ineligible households from the rolls. In all, it appears the Fund wasted up to $1.3 billion of taxpayer money during this Administration on Lifeline subscribers who later had to be de-enrolled.[5]

Unfortunately, systemic fraud continues. For example, in 2014, two years after the FCC's reforms, the CBS affiliate in Denver discovered multiple Lifeline providers distributing free phones "like Halloween candy" at a city intersection.[6] Sales agents knowingly signed up ineligible individuals. One even enrolled an undercover producer using someone else's food stamp card, and that producer was given a free phone on the spot. This is clearly illegal.

The Denver case is no anomaly.

Consider the case of Icon Telecom, whose owner was part of a scheme to defraud the Lifeline program out of more than $25 million.[7] Icon knowingly siphoned FCC funds for tens of thousands of phantom customers, with its rolls increasing from 2,200 to 135,000 in just over a year. Thankfully, the scheme was uncovered, and in early 2014 Icon's owner pleaded guilty to money laundering for transferring over $20 million from the company to his personal account.

Abuse of the program is still common. The "enhanced" subsidy on Tribal lands is case in point. Although the typical Lifeline subsidy is $9.25 per month, our rules give carriers serving Tribal lands an enhanced subsidy of $34.25 to facilitate the build out of infrastructure in Indian country. The problem? Tribal lands are not confined to remote regions—large cities like Reno, Nevada, and Tulsa, Oklahoma qualify too. That means carriers serving some big cities get an additional $300 per year per subscriber than carriers serving nearby rural areas where facilities are actually needed. That makes no sense.

The abuse is particularly acute in Oklahoma because the FCC treats virtually all of the state as Tribal land.[8] Of the 263,773 Oklahomans receiving Lifeline support at the end of 2015, only 793—0.3%—did not qualify for the enhanced Tribal subsidy. The $108 million in Lifeline funds bestowed upon Oklahoma in 2014 was the second highest of any state, despite the fact that Oklahoma ranks only 28th in population. Nationally, the Lifeline program spends $4.68 per person, but in Oklahoma, that spending jumps to $27.90, more than ten times the amount that neighboring Kansas receives. And if

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[3] *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 12-23, 11-42, 03-109, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012).

[4] *Wireline Competition Bureau Announces Results of the 2012 Annual Lifeline Recertification Process*, WC Docket No. 11-42, Public Notice, 28 FCC Rcd 5538, 5538, para. 2 (Wireline Comp. Bur. 2013).

[5] Had Lifeline never enrolled subscribers that had to be de-enrolled through 2015, taxpayers would have likely saved $201 million in 2011, $680 million in 2012, $281 million in 2013, and $152 million in 2014. All those figures have been calculated using the "Universal Service Fund Activity – Fund Balance" reports that the Universal Service Administrative Company (USAC) files with the FCC each quarter. *See* http://bit.ly/1TsRZ1x.

[6] CBS4 Denver, *Government's Free Phone Program Riddled with Abuse, Fraud* (Nov. 6, 2014), *available at* http://cbsloc.al/1GwXqGV.

[7] Press Release, U.S. Attorney's Office for the W. Dist. of Okla., *Icon Telecom, Its Owner, and a Former Associate Charged In $25 Million Fraud In Federal Wireless Telephone Subsidy Program* (June 4, 2014), *available at* http://go.usa.gov/3V7mP.

[8] The FCC will no longer treat Oklahoma City as Tribal lands starting June 8, 2016, but that change will not affect other large cities in Oklahoma like Tulsa. *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 31 FCC Rcd 895 (Wireline Comp. Bur. 2016).

Lifeline spending in Oklahoma were only twice the national average, American taxpayers would save $72 million a year, or 4.8% of the total cost of the program.

To top it off, independent reports suggest that Lifeline wastes an inordinate amount of taxpayer money. The nonpartisan Government Accountability Office (GAO), for example, "concluded that the Lifeline program, as currently structured, may be a rather inefficient and costly mechanism to increase telephone subscribership among low-income households."[9] A recent study by four respected, independent economists was even harsher: The program creates an "estimated $0.65 in Lifeline administrative costs for every one dollar expended by the 2015 Lifeline program in supported discounts and costs."[10] In other words, of the $1.53 billion spent on Lifeline in 2015, almost $1 billion went to cover administrative expenses, a deadweight loss to society.[11] What a waste.

So what does the Commission do to remedy these problems as it expands the Lifeline program to subsidize broadband? Practically nothing.

First, the *Order* does not adopt a meaningful budget. Since 2008, Lifeline spending has almost doubled, and the universal service tax rate on every American's phone bill has increased by 88%, rising from 9.5% to 17.9%—even as Americans' median income has stagnated. Yet Lifeline remains the *only one* of the four Universal Service Fund programs that does not have an enforceable budget.

Putting the Lifeline program on a budget is not a new or novel idea. The 2010 National Broadband Plan recommended the FCC "aim to keep the overall size of the fund close to its current size," *i.e.* $1.2 billion.[12] The *2012 Lifeline Reform Order* stated that the Commission "fully expect[ed] to have the information to determine an appropriate budget for the program" in 2013.[13] In 2014, I said that "placing a cap on Lifeline spending will prevent any future explosion in spending without direct Commission accountability."[14] At a March 2015 hearing of the Senate Committee on Commerce, Science, and Transportation, Senator Claire McCaskill asked all five Commissioners to "speak up for the record" if anyone opposed imposing a fiscal "cap" on the program—and four of the five Commissioners made no objection.[15] And in July 2015, Commissioner O'Rielly and Representative Marsha Blackburn reiterated the call to "set a spending cap for the program."[16]

Why has the budget been such a refrain from across the political spectrum? It's simple. A budget induces careful spending. This is as true for the federal government as it is for a family. With a budget the government must prioritize its spending and ensure that funds are directed where they are needed most. With a budget, the government has greater incentives to crack down on waste, fraud, and

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[9] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-335, TELECOMMUNICATIONS: FCC SHOULD EVALUATE THE EFFICIENCY AND EFFECTIVENESS OF THE LIFELINE PROGRAM at 14 (Mar. 2015) (GAO 2015 REPORT).

[10] Nicol E. Turner-Lee, Ph.D., et al., MMTC, A Lifeline to High-Speed Internet Access: An Economic Analysis of Administrative Costs and the Impact on Consumers at 11 (2016).

[11] *Id.* at 13 ("[O]ur update to the FCC's estimate of provider versus FCC reported costs of the Lifeline program yields a more realistic estimate of more than $977 million."). In addition to the administrative cost borne by carriers, the Fund paid USAC $17.1 million to administer the program in 2015.

[12] National Broadband Plan at 150.

[13] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6810, para. 359.

[14] Pai Lifeline Reform Speech at 4.

[15] CSPAN, Federal Communications Commission Oversight Hearing (Mar. 18, 2015), *available at* http://cs.pn/1BpUn41.

[16] Mike O'Rielly & Rep. Marsha Blackburn, FCC's Lifeline Program Ripe for Fraud, Abuse, *Politico* (July 12, 2015), *available at* http://politi.co/1PTWtJI.

abuse. And as we expand the program to include broadband, a budget would "prevent a repeat of the unchecked increase in spending that was seen the last time the program was expanded."[17]

There's another benefit to a real budget, one that automatically reduces payments to Lifeline carriers to stay on target.[18] It would deter carriers from abusing the program. That's because carriers are more likely to exploit the program, or turn a blind eye to fraud, when the profits from abuse are high and the costs are low. As spending nears a real budget, the FCC is likely to increase its oversight of the program, raising the risk of detection. And once spending hits the budget, the reduction in carrier payments will automatically reduce the profits from continued fraud. Faced with higher costs and lower profits, Lifeline carriers will incentives to cut down on abuse before it becomes a systemic problem.

But the *Order* doesn't contain an enforceable budget. Despite repeating the word "budget" 50 times, the *Order* does not constrain spending at all without further Commission action.[19] Instead, the *Order* contains only a reporting trigger—so that if Lifeline spending exceeds $2.025 billion in 2017 (or more in later years), a report must be drafted by July 31, 2018, and the Commission is expected to take "appropriate action" by January 31, 2019 (but none is required).[20] In other words, no matter how much is spent on Lifeline in 2016, 2017, and 2018, the *Order* does not anticipate Commission action until *2019*. That's not a budget—that's a fraud on the American taxpayer.

Second, the *Order* does not target limited Lifeline resources toward closing the digital divide. Our goal should be increasing broadband adoption—that is, helping Americans without Internet access cross the digital divide, not supporting those who have already made the leap.

Roughly one third of all households in the United States—38.9 million—are currently eligible for the Lifeline program. Of those households, 25.2 million already subscribe to broadband Internet access services.[21] If every one of these households subscribed to Lifeline, it would cost taxpayers $2.8 billion a year, dwarfing the current cost of the Lifeline program without increasing broadband adoption among low-income families one bit.

There's reason to fear that most Lifeline funds in the expanded program will flow to households that already subscribe. A recent study of the existing Lifeline program, for example, found that 87.5% of Lifeline subscribers could afford and would subscribe to telephone service even without the subsidy.[22] And that will likely be the case for broadband Lifeline subsidies. After all, households that are already online have the computers and modems needed to get a connection and already understand the value of a home Internet connection. And every dollar spent on already-connected household is one dollar less that can be spent promoting actual broadband adoption, the whole goal of the expansion.

In contrast, targeting support appropriately has the potential to save taxpayers hundreds of millions of dollars each year. After all, a budget of $1.65 billion is sufficient for every single Lifeline-qualifying household without broadband Internet access to participate in the program—and that assumes

[17] Letter from Senator Claire McCaskill to the Honorable Tom Wheeler, Chairman, FCC, et al. (Mar. 1, 2016).

[18] Say, for example, that the Commission projected spending to exceed the budget by 1%. In that case, the FCC would reduce carrier payments by 1% to keep spending in check.

[19] *Cf.* Inigo Montoya, *The Princess Bride* (Act III Communications 1987) ("You keep using that word. I do not think it means what you think it means.").

[20] *Order* at para. 402. Because the Bureau itself cannot propose new rules, presumably that "appropriate action" would be a Notice of Proposed Rulemaking, with several more months delay until final action.

[21] Universal Service Administrative Company, USAC Data on the federal Universal Service Lifeline Program at 4 (2016), http://go.usa.gov/cezUd.

[22] Olga Ukhaneva, Universal Service in a Wireless World at 18 (Nov. 17, 2015), *available at* http://bit.ly/1WcWrUQ.

that every such household chooses to subscribe through the program.[23] That's $600 million a year less than the "budget" number in the item, and $600 million that all consumers can expect to pay in universal service taxes because of the Commission's failure.

Third, the *Order* does not address the real problem of excessive Lifeline spending on Tribal lands. It is one thing to give an enhanced subsidy to those living on sparsely populated, remote Tribal lands where costs are high and communications infrastructure is lacking. It's another to give a $34.25 subsidy to the residents of cities that have advanced telecommunications infrastructure and are in the top 50 in the United States in population, like Tulsa, Oklahoma (2010 Census population: 391,906). The *Order* gives no reason whatsoever why low-income residents of Tulsa, which lies in the most densely populated county in the entire state, require higher subsidies than those in, say, Labette County—a struggling rural county right across the border in Kansas where I grew up. And I can think of none. Nor does the *Order* explain how it will combat the programmatic abuse that such a high subsidy encourages. Directing the enhanced subsidy to Tribal lands in low-density counties would dramatically reduce the incentive for fraud and save taxpayers tens of millions of dollars a year—and yet the *Order*, without explanation, takes no action.

Fourth, the *Order* does not address known loopholes that let unscrupulous carriers exploit the program. For example, a GAO report from 2011 noted that the "current version of the form used by ETCs to make reimbursement claims from the USF does not provide USAC with enough information to perform validations crucial to preventing mistakes and abuse."[24] Five years later, that form still contains almost no information that would enable a meaningful audit: A Lifeline carrier need only identify the total number of subscribers it claims as well as the total subsidy it seeks.[25] And so genuine oversight of these filings—a critical deterrent to waste, fraud, and abuse—remains exceedingly difficult.

Or take the much-hyped National Lifeline Accountability Database (NLAD). Whatever good it has done (and it does appear to have reduced duplicate fraud to some extent), the NLAD is still designed to allow carriers to bypass its safeguards. For instance, the NLAD employs a third-party independent verifier to review each Lifeline subscriber's name, date of birth, and partial Social Security number. But carriers can and do override those checks with a push of a button.[26] Postal addresses are similarly checked—and can be overridden.[27] And same-household duplicates are checked—and can be overridden.[28] Each of these carrier overrides is an opening for fraud, and yet USAC does not verify in real time that these overrides are legitimate because the FCC has not told it to do so. Instead, the honor system rules, even when there's no reason to think a carrier is being honest.

Or consider the problem of misusing eligibility documentation. Some federal programs, like the Supplemental Nutrition Assistance Program (SNAP), distribute temporary cards that lack identifying

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[23] In 2015, Lifeline spent approximately $10.03 per month per subscribers, and 13.701 million Lifeline-qualifying households did not subscribe to broadband Internet access service.

[24] GAO 2015 REPORT at 35.

[25] FCC Form 497 (April 2012 Edition), *available at* http://bit.ly/1PUDdM7.

[26] *See* USAC, National Lifeline Accountability Database, Third Party Identity Verification (TPIV) Failure Resolution, http://bit.ly/1q78MND (visited Mar. 31, 2016) (explaining how carriers can override TPIV failures).

[27] *See* USAC, National Lifeline Accountability Database, http://bit.ly/1V9UTvd (visited Mar. 31, 2016) ("Q44: Why is the subscriber's address not being accepted?" "A44: . . . [Y]ou can override an AMS error by selecting one of the available 'A' codes in the 'Resolution Error Codes' drop box in the 'Subscriber Eligibility Information' section.").

[28] *See* USAC, National Lifeline Accountability Database, http://bit.ly/1V9UTvd (visited Mar. 31, 2016) ("Q42: How do I enroll a subscriber if I receive a 'Duplicate Address' error." "A42: . . . In the 'Subscriber Eligibility Information' section on the 'Enroll Subscriber' page, select 'Yes' for 'Independent Economic Household,' enter the date in 'IEH Certification Date,' then proceed with enrollment.").

participant information on their face.[29] Without such information on the card, a carrier can use it to validate anyone as Lifeline-eligible, and start receiving a subsidy for providing service. The *Order* recognizes the problem but defers action for further study—the Washington way of saying "we're not going to do anything about it."[30]

Or consider the problem of Lifeline trafficking, where a Lifeline-qualifying individual gets a free phone and sells it to someone who does not qualify for the program. One safeguard against such abuse was a requirement to recertify subscribers who only had temporary addresses every 90 days.[31] Despite the fact that carriers easily complied with this requirement—indeed, only 6% of Lifeline subscribers have temporary addresses according to the NLAD—the *Order* eliminates the safeguard on the hope that other safeguards will be sufficient.[32]

Fifth, the *Order* cuts state commissions out of the Lifeline designation process, crippling their ability to guard against waste, fraud, and abuse.[33] That's a disaster in the making. We need more cops on the beat, not fewer. And the state commissions thus far have the best track record.

Recall that it was the state commissioners on the Federal-State Joint Board—not the FCC—that identified the growing waste, fraud, and abuse in the Lifeline program in 2010. It was the Massachusetts Department of Telecommunications and Cable that audited TracFone, which "revealed that only 51 percent of those sampled could be recertified for Lifeline eligibility."[34] It was the Florida Public Service Commission that cracked down on carriers receiving Lifeline subsidies for consumers who never used the service.[35] It was the California Public Utilities Commission that established electronic verification procedures to reduce eligibility and duplicate-subscriber fraud.[36] And it was the Oklahoma Corporation Commission that "first identified fraudulent funding requests from Icon Telecom."[37]

States are still the best cops on the beat. It is the commissions in Florida, Kansas, Kentucky, Michigan, Minnesota, Washington, and Wisconsin that have revoked the designations of Lifeline carriers for abuse.[38] It is the Michigan Public Service Commission that recertifies Lifeline carriers each year to make sure they are complying with state and federal law.[39] It is the California Public Utilities Commission that "has found inaccurate and misleading statements in FCC-approved compliance plans."[40] Perhaps that's why the National Governors Association has stated that the FCC's scheme to neuter state

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[29] *See* U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program (SNAP) (Aug. 21, 2015), *available at* http://go.usa.gov/ceSy3.

[30] *Order* at note 372.

[31] *2012 Lifeline Reform Order*, 27 FCC Rcd at 6696–97, para. 89.

[32] *Order* at para. 437 & note 1091.

[33] *Order* at paras. 249–58.

[34] *Joint Board Lifeline Recommended Decision*, 25 FCC Rcd at 15627, para. 82.

[35] *Id*.

[36] *Id*. at 15629, para. 87.

[37] Letter from Steve Russell, Markwayne Mullin, Tom Cole, Jim Bridenstine, & Frank Lucas, Members of Congress, to the Honorable Tom Wheeler, Chairman, FCC, WC Docket Nos. 11-42, 09-197 (Mar. 25, 2016).

[38] Letter from Travis Kavulla, NARUC President & Commissioner, Montana Public Service Commission, et al., to the Honorable Thomas Wheeler, Chairman, FCC, et al., WC Docket Nos. 11-42, 09-197, at 2 n.4 (Mar. 20, 2016) (96 Commissioners Letter).

[39] Letter from Sally A. Talberg, Chairman, Michigan Public Service Commission, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42, 09-197, 10-90, at 2 (Feb. 8, 2016).

[40] Letter from Catherine J.K. Sandoval, Commissioner, California Public Utilities Commission, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, Attach. at 1 (Feb. 22, 2016).

commissions "would disrupt the existing state-federal partnership and preempt states' authority to protect consumer interest."[41] And perhaps that's why 96 state commissioners from 37 separate state commissions wrote us that cutting states out will "*only* increase fraud and abuse of the Lifeline program" and "result in the provision of substandard services to Lifeline consumers."[42]

Against these critiques, the *Order* offers one retort: The FCC "will curb abuse in the program . . . by creating the National Verifier, which will transfer the responsibility of eligibility determination away from Lifeline providers."[43]

We've seen this song and dance before. In 2010, the *National Broadband Plan* recommended "a centralized database for online certification and verification, based on numerous such proposals in the record."[44] Later that year, the Federal-State Joint Board noted that a "national database could eliminate fraudulent and duplicate claims,"[45] and FCC Commissioners Mignon Clyburn and Meredith Attwell Baker both argued for moving forward with one.[46] And in the *2012 Lifeline Reform Order*, the Commission actually ordered the creation of a national eligibility database—at least for the three most popular Lifeline-qualifying programs—by the end of 2013.[47] But despite the Commission's directive, that national eligibility database still doesn't exist.

Despite the fanfare, this *Order* is more of the same. It does not establish a National Verifier. It does not establish a national eligibility database. And it does not adopt additional safeguards that will be in place once the *Order* is effective. Instead, it devotes paragraph after paragraph to describing all the decisions that still need to be decided at a later point in time (*e.g.*, how to populate the National Lifeline Eligibility Database,[48] how to determine eligibility electronically,[49] how to determine eligibility manually,[50] how to resolve disputes,[51] how to interact with Lifeline carriers and subscribers,[52] how to

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[41] NGA Urges FCC to Reject Proposal That Weakens States' Authority (Mar. 30, 2016), *available at* http://bit.ly/1oollmL.

[42] 96 Commissioners Letter at 1.

[43] *Order* at para. 7.

[44] National Broadband Plan at 173.

[45] *Joint Board Lifeline Recommended Decision*, 25 FCC Rcd at 15612, para. 38.

[46] *Id.* at 15631 (Statement of Commission Mignon L. Clyburn, Approving in Part and Concurring in Part) ("[T]he exploration of a national database that would allow for real-time eligibility and verification checks through electronic processes is promising, and I encourage interested parties to continue working on this proposal."); *id.* at 15635 (Statement of Commissioner Meredith Attwell Baker) ("One proposal in particular that merits additional study is the potential establishment of a national database for certification and verification.").

[47] *2012 Lifeline Reform Order*, 27 FCC Rcd 6753, para. 223 ("[W]e direct the Bureau and USAC to take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline.").

[48] *Order* at note 368 ("USAC may propose to the Bureau how and whether the information in the NLAD can or should be used to populate the [Lifeline Eligibility Database].").

[49] *Order* at para. 135 ("We direct USAC to seek the most cost effective and efficient means to incorporate electronic eligibility certification into the National Verifier wherever feasible.").

[50] *Order* at note 372 ("We direct USAC to propose acceptable documentation for the manual review to the Bureau.").

[51] *Order* at note 378 ("We direct USAC to propose a process for dispute resolution to the Bureau for approval for the National Verifier.").

[52] *Order* at para. 138 ("We direct USAC to work with the Bureau to develop interfaces that promote the objectives of the National Verifier and serve the needs of users in a cost-effective and efficient manner."); *Order* at note 390

(continued….)

work with state and Tribes,[53] how to process payments,[54] and even whether the National Lifeline Eligibility Database will be a database![55]). The expectation is that USAC will come up with a plan by December 1, 2016, and that the National Verifier will be fully implemented by the end of 2019.[56]

In other words, the *Order* expands the Lifeline program to broadband now, fails to target that support now, maintains enhanced incentives for fraud on urban Tribal lands now, eliminates checks against waste, fraud, and abuse now—and hopes that a National Verifier will be up and running *in three years*. Given the FCC's failure to follow through on its promises on this front for almost half a decade, I doubt this time will be different.

II.

There's another problem with the *Order*: It consigns Lifeline consumers to second-class digital status for the foreseeable future.

Just two months ago, four commissioners agreed that "advanced telecommunications capability"—that is 25 Mbps/3 Mbps fixed broadband and 4G LTE mobile broadband—"is not being deployed to all Americans in a reasonable and timely fashion,"[57] with Americans lacking access more likely to live "in counties with the lowest median household incomes . . . and the highest poverty rate."[58] Having concluded as much, the statute tells us to "take immediate action to accelerate the deployment of such capability,"[59] which the agency proposed to do in part by expanding the Lifeline program to "improv[e] access to broadband for our nation's most vulnerable populations."[60]

FCC commissioners have not been shy about how important that metric is. For instance, Chairman Tom Wheeler has said the 25 Mbps "standard recognizes how consumers actually use broadband at home today, and is 'table stakes' in 21st century communications."[61] Commissioner

(Continued from previous page)
("For example, the National Verifier *may* have an interface that is consumer-friendly and geared towards subscribers. It *may* have another interface that is geared toward providers that may allow application programming interfaces (machine-to-machine interaction)." (emphasis added)).

[53] *Order* at para. 142 ("[W]e direct USAC, as part of its development and operation of the National Verifier to consider opportunities to coordinate and partner with states. . . . Prior to initiating these Tribal or state partnerships, USAC must submit a proposed partnership plan to the Bureau indicating how it is congruent with the National Verifier and the Bureau must approve of establishing such a partnership as proposed by USAC.").

[54] *Order* at para. 143 ("We also direct USAC to propose to the Bureau and OMD improved methods of providing payment to the Lifeline providers that will reduce costs and burdens to the Fund and to Lifeline providers.").

[55] *Order* at note 386.

[56] *Order* at paras. 162, 164.

[57] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 15-191, 2016 Broadband Progress Report, 31 FCC Rcd 699, 701, para. 4 (2016) (*2016 Broadband Progress Report*).

[58] *Id.* at 739, para. 91.

[59] Telecommunication Act of 1996, § 706(b).

[60] *2016 Broadband Progress Report*, 31 FCC Rcd at 754, para. 131.

[61] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 15-191, Eleventh Broadband Progress Notice of Inquiry, 30 FCC Rcd 8823, 8854 (2015) (Statement of Chairman Tom Wheeler); *see also* Prepared Remarks of FCC Chairman Tom Wheeler at 1776 Headquarters, Washington, DC, "The Facts and Future of Broadband Competition" at 3 (Sept. 4, 2014).

Mignon Clyburn has said that broadband at speeds of 25 Mbps is necessary "to support the very technologies that promise to be both life altering and life-saving"—technologies "[w]e must ensure all consumers have access to."[62] Commissioner Jessica Rosenworcel has pushed a standard of 100 Mbps because "anything short of goals like this shortchanges our children, our future, and our digital economy."[63]

And yet, when it comes to actually delivering for America's low-income families and students, the Commission majority takes a far different tack. 10 Mbps fixed broadband is deemed sufficient for a poor family's home. 3G mobile broadband—service so slow the Commission *didn't even bother to measure it* in the *2016 Broadband Progress Report*—is all the impoverished need get. The *Order* goes out of its way to give Lifeline subscribers the opportunity to buy hotspot-enabled smartphones (for all the good that will do them over a 3G network).[64] But it doesn't do a thing to make sure that Lifeline subscribers have the option to purchase the 25 Mbps fixed and 4G LTE mobile broadband that many other Americans take for granted—and that the majority happily lectured us last year was a digital floor.

The way to ensure that Lifeline supports broadband for low-income Americans is to start supporting broadband for low-income Americans. So I implored my colleagues to increase the minimum standards. I asked that we ensure a timely transition to faster services. I requested that we at least give low-income consumers the option of directing their Lifeline subsidy to the higher-speed services. But despite high-minded rhetoric from some quarters that "we have a moral and statutory obligation to do better,"[65] my requests for equal digital opportunity were categorically rejected. For all the kerfuffle about fast lanes, the FCC has decreed that Lifeline subscribers will be stuck in the slow lane.

Making things worse, the Commission also limits the ability of Lifeline subscribers to switch carriers by adopting a "port freeze."[66] This locks each and every Lifeline customer into a one-year contract with his or her carrier—even if the service is lousy, even if a better deal comes along the next month, even if their phone breaks, and even if the subscriber never wanted a one-year contract in the first place.

What is more, the FCC says it will serve as an enforcer of these one-year lock-up contracts, giving Lifeline carriers a stranglehold on their customers that regular carriers cannot get with a real, signed contract. The Commission does this over the objection of our own Consumer Advisory Committee, which urged us to "enable Lifeline consumers to change service providers and technology platforms at their discretion."[67]

Let me put it one more way: The *Order* claims its goal is to make broadband more affordable so that low-income Americans can enjoy the digital opportunities that should be available for everyone. But the *Order* won't require carriers to offer the fixed speed available to 96% of urban Americans or the mobile speed available to 99% of all Americans. And it will force Lifeline subscribers into one-year

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[62] *Inquiry Concerning the Development of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, 1482 (2015) (Statement of Commissioner Mignon Clyburn).

[63] *2016 Broadband Progress Report*, 31 FCC Rcd at 777 (Statement of Commissioner Jessica Rosenworcel).

[64] *Order* at paras. 377–78.

[65] *2016 Broadband Progress Report*, 31 FCC Rcd at 774 (Statement of Chairman Tom Wheeler).

[66] *See Order* at paras. 385–94.

[67] FCC Consumer Advisory Committee, Recommendation Regarding Modernization of the Lifeline Program, WC Docket No. 11-42 et al., at 2 (filed Feb. 19, 2016).

contracts with carriers even if they don't want them. That will not close the digital divide and is hardly the kind of respect that low-income families and students deserve.

III.

Last but not least: Many of the *Order*'s decisions violate federal law.

Start with the Administrative Procedure Act. Hornbook law says that, before an agency can adopt rules through a notice-and-comment rulemaking, it must first propose rules—or more precisely "the terms . . . of the proposed rule" and a "reference to the legal authority under which the rule is proposed."[68] The adopted rules may be a "logical outgrowth" of the original proposal,[69] but the key question "is one of fair notice"[70]—that is, whether "persons are sufficiently alerted to likely alternatives so that they know whether their interests are at stake"[71] and whether those interested parties "should have anticipated" the adopted rule.[72]

That's a problem for the *Order*'s new one-year port freeze.[73] The *Notice* didn't propose a port freeze. It didn't seek comment on a port freeze. It didn't even *mention* a port freeze.[74] Instead, that proposal came from a coalition of wireless Lifeline carriers two months after the *Notice* was adopted.[75] But an agency "cannot bootstrap notice from a comment"; it "must *itself* provide notice of a regulatory proposal."[76]

That's also a problem for the *Order*'s Wi-Fi, hotspot, and tethering mandates.[77] The *Notice* didn't propose that Lifeline carriers distribute Wi-Fi enabled devices, it didn't seek comment on that idea, and it didn't suggest it had the legal authority to do so.[78] Nor did the *Notice* propose or seek comment on a requirement to offer hotspot-capable devices.[79] Nor did it propose or seek comment on a prohibition on

[68] 5 U.S.C. § 553(b)(2)–(3).

[69] *Crawford v. FCC*, 417 F.3d 1289, 1295 (D.C. Cir. 2005).

[70] *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007).

[71] *Time Warner Cable Inc. v. FCC*, 729 F.3d 137, 170 (2d Cir. 2013) (internal quotation marks omitted).

[72] *Northeast Maryland Waste Disposal Authority v. EPA*, 358 F.3d 936, 952 (D.C. Cir. 2004) (per curiam) (internal quotation marks omitted).

[73] *See Order* at paras. 385–94.

[74] *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, 30 FCC Rcd 7818, 7846, 7848, 7861–62, 7865–66, paras. 65, 70, 116, 121, 127 (2015) (*Notice*) (discussing several other topics, but not a port freeze); *see also Order* at para. 386 (pointing to these same paragraphs as offering notice that the Commission was proposing to adopt a port freeze).

[75] Joint Commenters Comments at 16 (seeking a one-year port freeze to reduce churn among the Lifeline subscriber base).

[76] *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983) (emphasis in original).

[77] *See Order* at paras. 374–78.

[78] *Notice*, 30 FCC Rcd at 7834–35, para. 29 (discussing public safety issues regarding Lifeline, but not a Wi-Fi mandate); *id.* at 7830–33, paras. 19–26 (discussing the "homework gap" and the need for data on Lifeline-eligible households with students, but not a Wi-Fi mandate); *id.* at 7865–66, paras. 129–30 (discussing licensed and unlicensed spectrum, but not a Wi-Fi mandate); *see also Order* at para. 374 ("Lifeline providers who make devices available with or without charge for use with a Lifeline-supported fixed or mobile broadband service must ensure that all such devices are Wi-Fi enabled.").

[79] *Order* at para. 374 ("Lifeline providers who make devices available with or without charge for use with a Lifeline-supported mobile broadband service must also offer devices that are capable of being used as a hotspot.").

tethering charges.[80] Indeed, the record is utterly barren on these issues—save for the reply comments of TracFone, which itself proposed the Wi-Fi mandate,[81] and scattered last-minute *ex parte* filings by affected carriers.[82] If the Administrative Procedure Act standard "is one of fair notice,"[83] it's fair to ask whether an agency may adopt a bevy of new mandates without any notice at all.

And that's a particular problem for the *Order*'s new, federal eligible telecommunications carriers (ETC) designation process. That new process allows the FCC, and not state commissions, to designate Lifeline broadband providers. And the *Order* justifies this process under section 214(e)(6) of the Communications Act, which gives the FCC authority to designate ETCs in "the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."[84]

The *Order* traces a 10-step path—bear with me—to reach this result. The *Order* (1) reinterprets that section to mean that ETCs need not offer all supported services,[85] (2) reinterprets that section to suggest state commissions have no authority to designate ETCs with respect to supported interstate services,[86] (3) makes Lifeline broadband support a "separate element of the Lifeline program,"[87] and (4) then preempts state commissions from designating ETCs for that separate element.[88] Next, the *Order* reinterprets the limit on FCC authority that an FCC-designated ETC must be a "common carrier providing telephone exchange service and exchange access" to mean (5) that the supported service need not be telephone exchange service or exchange access,[89] (6) that the carrier itself need not provide telephone exchange service or exchange access,[90] (7) that the carrier need not have any facilities to provide telephone exchange service or exchange access,[91] (8) that the carrier need not have any customers for telephone exchange service or exchange access,[92] and (9) that the carrier need not provide telephone exchange service or exchange access for any length of time beyond when the carrier's ETC application is pending at the Commission.[93] For good measure, the *Order* also (10) forbears from that same limit on the FCC's authority.[94]

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[80] *Order* at para. 377 ("[B]ecause of the importance of tethering to bridging the 'digital divide,' providers may not impose an additional cost on tethering service for tethering that does not exceed the relevant minimum service standard for mobile broadband data usage allowance.").

[81] TracFone Reply at 8.

[82] *Order* at note 932 (citing two *ex parte* filings on these mandates, each filed in late March 2016). The *Order* also plucks out of obscurity two comments that mention hotspots. *See Order* at note 925. No cigar—they say nothing about a mandate, which is hardly the kind of discussion one might expect if commenters knew that Wi-Fi, hotspot, and tethering mandates were on the table.

[83] *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007).

[84] 47 U.S.C. § 214(e)(6).

[85] *See Order* at paras. 242–46.

[86] *See Order* at paras. 240–42, 247.

[87] *Order* at para. 248.

[88] *See Order* at paras. 249–58.

[89] *See Order* at para. 261.

[90] *See Order* at para. 262.

[91] *See Order* at para. 264.

[92] *See Order* at para. 263.

[93] *See Order* at para. 265.

[94] *See Order* at paras. 266–73.

The *Notice* neither proposed, nor sought comment on, any of this. The *Notice* did not propose preempting state authority over ETC designations nor any of the four legal steps it takes to get there; instead it recognized that "state commissions have primary responsibility for designating ETCs."[95] The *Notice* never sought comment on reinterpreting section 214(e)(6)'s limits to give the FCC broader authority nor the five different way it does so; instead it acknowledged those limits forthrightly.[96] And the *Notice* never once suggested using forbearance to expand the FCC's authority.[97]

The *Order* responds with two defenses, both unconvincing. *First*, the *Order* tries to sew together a patchwork quilt of snippets from the *Notice*.[98] But many of these snippets come from a section of the *Notice* where the Commission sought comment on "creating a process to participate in Lifeline that is entirely separate from the ETC designation process"[99]—a proposition that the *Order* thoroughly rejects as in conflict with "the existing, statutorily compelled paradigm" of requiring Lifeline carriers to be ETCs.[100] The remainder come from a section asking how to "design a more streamlined ETC designation process for federal default states"[101] and "what measures could be adopted to encourage state commissions to adopt a similar streamlined approach."[102] In other words, the *Notice* made clear that the FCC would work with state commissions, not oust them, if the FCC stuck to the statutory framework.

Second, the *Order* attempts to locate the notice for this proposal in the comments one party filed five years ago—comments that were cited in a footnote in the *2012 Lifeline Reform Order*.[103] And the *Order* correctly explains that ViaSat discussed preemption of state regulation on page nine of its 2011 comments.[104] But the *2012 Lifeline Reform Order* did not seek comment on ViaSat's proposal. It did not mention ViaSat's proposal. And it did not even cite the relevant page of ViaSat's comments.[105] Instead, it cited different parts of ViaSat's comments as support for a different proposition on which it did seek comment—a proposition that the *Order* affirmatively rejects.[106] And unfortunately for the *Order*, this failure is fatal because, as I noted earlier, an agency "cannot bootstrap notice from a comment"; it "must *itself* provide notice of a regulatory proposal."[107]

The lack of notice is not the only legal flaw with the *Order*'s new, federal ETC designation process.

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[95] *Notice*, 30 FCC Rcd at 7880, para. 185.

[96] *Id.* at 7863, note 250; *id.* at 7880–81, para. 185.

[97] *See id.* at 7917, para. 298 (citing several provisions as authority for adopting the *Notice*, but omitting section 10 of the Communications Act, which contains the FCC's forbearance authority).

[98] *See Order* at para. 233.

[99] *Notice*, 30 FCC Rcd at 7866, para. 132; *see also id.* at 7866–69, paras. 132–41.

[100] *Order* at para. 223.

[101] *Notice*, 30 FCC Rcd at 7863, para. 122.

[102] *Id.* at 7863, para. 124.

[103] *Order* at para. 234.

[104] *Id.*; ViaSat April 22, 2011 Comments at 9 ("Notably, federal law and policy preempt state regulation where such regulation would stand[] as an obstacle to the accomplishment and execution of the full objectives of federal policy, and any assertion of state jurisdiction over satellite broadband services necessarily would conflict with federal policy, and thus be subject to preemption." (footnotes omitted)).

[105] *2012 Lifeline Reform Order*, 27 FCC Rcd at 6856, para. 504 & n.1226.

[106] *Order* at para. 223 (rejecting proposition that carriers could participate in Lifeline without being designated ETCs).

[107] *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983) (emphasis in original).

For one, Congress gave primary authority for ETC designations to the states, relegating the Commission to a subordinate role. The text of section 214 of the Act makes that clear: State commissions "shall . . . designate" ETCs (paragraph (e)(2)), whereas the FCC may only do so "[i]n the case of a common carrier providing telephone exchange service and exchange access *that is not subject to the jurisdiction of a State commission*" (paragraph (e)(6)).[108] So does section 214's legislative history. Congress did not even assign the FCC this role in the Telecommunications Act; it adopted paragraph (e)(6) a year later to resolve what Senator John McCain called an "oversight" that Tribal carriers were not subject to the jurisdiction of any state commission.[109] And our own precedent frames the section as giving "state commissions . . . the primary responsibility for the designation of eligible telecommunications carriers."[110] Where Congress itself has given prime responsibility to state commissions, not the FCC, we have no power to reverse course based on our own notions of what is the best federal policy.

In turn, nothing in the Act, its legislative history, or our precedent suggests that state commissions lose their authority to designate ETCs with respect to interstate services. Congress expressly chose to limit state authority to intrastate services only in unserved areas: "If no common carrier will provide [supported] services . . . to an unserved community . . . *the Commission, with respect to interstate services* or an area served by a common carrier to which paragraph (6) applies, or a *State commission, with respect to intrastate services*, shall determine which common carrier . . ." (paragraph (e)(3)).[111] In other words, Congress knew how to draw a jurisdictional line in section 214, but chose not to do so outside of unserved areas. And that same paragraph makes another thing clear: In unserved areas, the FCC can designate *both* a carrier with respect to interstate services *as well as* a "carrier to which paragraph (6) applies," i.e., a carrier not subject to the jurisdiction of a state commission. That parallel construction means Congress viewed the questions as separate and distinct—not one and the same. So to now draw another line around state commission jurisdiction would be to rewrite subsection 214(e), not reinterpret it.

For another, the FCC cannot rely on section 706 of the Telecommunications Act of 1996 to overcome the clear lines of section 214 of the Communications Act.[112] As I have explained elsewhere, that section confers no authority on the FCC, let alone preemption authority.[113] And it's "a commonplace of statutory construction that the specific governs the general,"[114] especially "where . . . Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific

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[108] *Compare* Communications Act § 214(e)(2) ("A State commission shall upon its own motion or upon request designate a common carrier . . . ."), *with* Communications Act § 214(e)(6) ("In the case of a common carrier providing telephone exchange service and exchange access *that is not subject to the jurisdiction of a State commission*, the Commission shall upon request designate such a common carrier . . . ." (emphasis added)).

[109] *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12257, para. 98 & n.236 (2000) (discussing the legislative history of section 214(e)(6)).

[110] *Id.* at 12255, para. 93; *see also, e.g.*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6374, para. 8 (2005); *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A) et al.*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381, 3383, para. 5 (2009); *Notice*, 30 FCC Rcd at 7880, para. 185.

[111] *See* Communications Act § 214(e)(3) (emphases added).

[112] *See Order* at paras. 253–54.

[113] *City of Wilson, North Carolina Petition for Preemption of North Carolina Statute Section 160A-340 et seq.; the Electric Power Board of Chattanooga, Tennessee Petition for Preemption of a Portion of Tennessee Code Annotated Section 7-52-601*, WC Docket Nos. 14-115, 14-116, Memorandum Opinion and Order, 30 FCC Rcd 2408, 2511–18 (2015) (Dissenting Statement of Commissioner Ajit Pai).

[114] *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992).

solutions."[115] Because section 214 specifically assigns the authority for ETC designation to state commissions and section 706 says nothing whatsoever about that authority, the former must trump the latter.[116]

For yet another, the results of the *Order*'s preemption analysis make no sense. One might think that if "states are preempted from exercising authority to designate Lifeline Broadband Providers,"[117] then state commissions would not be able to oversee, impose conditions on, or revoke the designation of Lifeline broadband ETCs. But that's not the case. States may still oversee, impose conditions, and revoke the designation of existing Lifeline ETCs—who may become Lifeline broadband ETCs without seeking FCC designation.[118] Apparently, states may still oversee even federally designated Lifeline broadband ETCs.[119] States may still designate high-cost broadband ETCs[120]—who by definition must be Lifeline broadband ETCs. And if a Lifeline broadband ETC wants to participate in a state-level Lifeline fund, the *Order* makes clear the state can require "ETC designation from the relevant state commission."[121] In other words, the *Order* preempts state designation—except when it doesn't. Such convoluted reasoning finds no support in the Act, and I cannot think of any reason to believe that such an unsteady and arbitrary framework actually makes good federal policy.

On one last point, the *Order* effectively ignores a major limit Congress placed on the FCC's ETC-designation authority: the designated carrier must be "providing telephone exchange service and exchange access."[122] In sum and substance, the *Order* says a carrier can qualify for federal designation so long as it considers reselling telephone service to someone, somewhere while its application for federal ETC designation is pending.[123] But even this Commission cannot transmogrify "providing" into "possibly considering to someday think about providing." That renders the statutory language utterly

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[115] *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2070 (2012) (internal quotation marks omitted).

[116] The *Order* responds that section 214(e) isn't more "specific" than other provisions because it is not "an affirmative grant of authority to states to perform ETC designations." *Order* at note 685. Of course it is! In section 214, Congress invented the term "ETC," defined the requirements to be an ETC, and held that states "shall . . . designate" ETCs. *See* Communications Act §§ 214(e). The grant of authority could not be clearer. *Cf.* Letter from Tom Wheeler, Chairman, FCC, to the Honorable Anna G. Eshoo, Representative, U.S. House of Representatives (Mar. 18, 2016) ("Section 629 of the Communications Act is explicit: 'The Commission *shall* . . . adopt regulations to assure the commercial availability, to consumers of multichannel video programming'" of set-top boxes (emphasis in original)). Although the *Order* suggests that reading makes section 214(e)(6) "surplusage because section 214(e) would itself supply the state jurisdiction," *Order* at note 685, it forgets that Congress cannot commandeer state actors to execute federal law, *see Printz v. United States*, 521 U.S. 898, 933 (1997), and so even with a federal grant of authority, a state can deny its own commission the jurisdiction to carry out the ETC designation process.

[117] *Order* at para. 256.

[118] *Order* at paras. 299, 310 (noting existing ETC designations, state and federal, are sufficiently broad to enable participation in Lifeline broadband program).

[119] *Order* at note 697.

[120] *Order* at para. 257.

[121] *Order* at para. 288.

[122] Communications Act § 214(e)(6).

[123] *See Order* at paras. 260–65. At one point, the *Order* points to several dictionaries to define the word "provide" and selects what appears to be the broadest meaning (to "make available") as the appropriate definition. *Order* at note 710. The *Order* fails to recognize that a carrier with no facilities, no customers, no sales, and no service is hardly making telephone exchange service and exchange access available, let alone providing it.

meaningless, a total nullity—and violates the canon that we should be "reluctant to treat statutory terms as surplusage in any setting."[124]

Recognizing this legal vulnerability, the *Order* then pivots to forbear from the requirement entirely. But the statute limits our forbearance authority to applying provisions of the Act to *carriers*, not to the FCC itself.[125] And for good reason. If the FCC could override limits on its own authority using forbearance, all the constraints Congress placed on the FCC in the Act would be meaningless. Despite much searching, I cannot find a single decision where the Commission has exercised forbearance to expand its own authority rather than to relieve a carrier from an obligation.[126] The reason is obvious: The statute does not permit it.

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The truth is, it didn't have to be this way. Despite my many concerns with the *Order*, I believed that a bipartisan compromise was possible, and I offered one to all four of my colleagues on March 25.[127]

One day before the vote, my office finalized a bipartisan compromise with Commissioner Mignon Clyburn and Commissioner Mike O'Rielly on a way to modernize the Lifeline program while staying faithful to our core principles. It was not an easy agreement to reach. Our three offices began working on a compromise on March 30. My staff worked with theirs through the night revising the *Order* in order to implement that bipartisan agreement. At 9:49 a.m. on March 31, the morning of the vote, all three offices formally agreed to a document on the official chain that memorialized the compromise.

At 10:30 a.m., when the Commission's meeting was scheduled to start, that agreement remained in place—but the Chairman delayed the meeting's start until 12:00 p.m. At noon, when Commissioner O'Rielly and I came to the Commission meeting room and were ready to vote, that agreement remained in place—and the Chairman again delayed the meeting. By the time the meeting finally began at 2:00 p.m., Commissioner Clyburn had backed out of the agreement.

Why?

It turns out that since early that morning, perhaps even late the night before, Chairman Wheeler and his staff were actively working to unwind that bipartisan compromise. Those efforts started with leaking nonpublic information to the press.[128] The Chairman's Office then encouraged lawmakers and

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[124] *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (internal brackets and quotation marks omitted).

[125] Communications Act § 10(a) ("[T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets . . . .").

[126] In response, the *Order* points to the *Section 652 Forbearance Order*, which forbore from enforcing a provision that prohibited competitive local exchange carriers from merging with cable operators. *See Order* at notes 715–16; *Petition For Declaratory Ruling To Clarify 47 U.S.C. § 572 In The Context of Transactions Between Competitive Local Exchange Carriers and Cable Operators; Conditional Petition For Forbearance From Section 652 of the Communications Act For Transactions Between Competitive Local Exchange Carriers and Cable Operators*, WC Docket No. 11-118, Memorandum Opinion and Order, 27 FCC Rcd 11532, 11542–43, para. 22–24 (2012). The relevant provision there clearly prohibited certain conduct by outside parties and the forbearance in no way expanded the FCC's jurisdiction. Accordingly, I do not see its relevance to the case at hand.

[127] That proposal consisted of a $1.75 billion budget; a mechanism to ensure the FCC stayed within that budget; reform of the "enhanced" subsidy that created incentives for waste, fraud, and abuse; and minimum, "table stakes" standards for fixed and mobile broadband service under the Lifeline program. Statement of FCC Commissioner Ajit Pai on Modernizing the Lifeline Program in a Fiscally Responsible Way (Mar. 29, 2016), *available at* http://go.usa.gov/cHbk4.

[128] Margaret Harding McGill, FCC delays meeting for last-minute Lifeline negotiations, *Politico Pro Technology Whiteboard* (Mar. 31, 2016 10:47 a.m.) ("The FCC delayed its monthly meeting this morning to vote on the revamp of the Lifeline phone subsidy program to also support broadband after a Democratic commissioner reached a last-

(continued….)

stakeholders, from the usual gaggle of left-wing, Washington special interests to former FCC Commissioners, to blast the deal before the votes could be cast—indeed, before they even knew what the deal was.[129]

It is one thing to refuse to work toward bipartisan compromise—a trait that, for some reason, the Chairman wears with a badge of honor that distinguishes him from everyone else, Republican and Democrat alike, who has ever held that seat. It is quite another thing to launch a political campaign to force a Democratic FCC Commissioner to renege on a bipartisan compromise on her signature issue.

I have spent the vast majority of my career in public service. I have worked as a staffer on the Senate Judiciary Committee on controversial issues like immigration with Democrats like Barack Obama. I have worked as a staffer at the Justice Department on controversial issues like reauthorization of the Patriot Act with Democrats like Dianne Feinstein. I have worked as a staffer and now as a Commissioner at the FCC with Democrats on many more controversial issues. The common thread of my work for many years has been to find common ground—because I believe common ground exists and it just takes work to find it.

And so it gives me no pleasure to state the obvious: This agency in this proceeding represented the worst of government. A bipartisan agreement that would have delivered digital opportunity to millions of Americans was thrown away and even a Democratic commissioner was bulldozed simply because the Chairman could get away with it.

The Commission's failure to clean up the waste, fraud, and abuse in the Lifeline program puts the entire enterprise in jeopardy. It will take a future agency, one whose members work in good faith and believe in good policy, to decide what comes next.

I dissent.

(Continued from previous page)
minute deal with Republicans on a program budget"). I look forward to seeing the Chairman's written authorization for his office's disclosure of this nonpublic information, as required under our rules. 47 C.F.R. § 19.735-203.

[129] *See*, *e.g.*, Notice of Ex Parte by Office of Commissioner Clyburn, WC Docket No. 11-42 et al. (Mar. 31, 2016), *available at* http://go.usa.gov/cHjCk (describing calls that "morning and early afternoon" with the offices of Representatives Nancy Pelosi, Mike Doyle, Anna Eshoo, Doris Matsui, and Jerry McNerney and Senators Richard Blumenthal, Cory Booker, Claire McCaskill, and Chris Murphy); Letter from Representatives G.K. Butterfield, Doris Matsui, Frank Pallone, Jr., Anna G. Eshoo, Michael F. Doyle, Yvette D. Clarke, Bobby L. Rush, Jerry McNerney, and Ben Ray Lujan, to the Honorable Tom Wheeler, Chairman, FCC (Mar. 31, 2016) ("We write to express concerns that the Commission is considering establishing a hard cap on the Lifeline program, We urge the Commission to reject a cap when it votes at the Agenda meeting today.").

DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90.

For over a year, I argued that there is a viable path to reform the Lifeline program in a way that garners bipartisan support at the Commission. The program would shift to include support for broadband service, but in the context of a firm budget and with additional measures to protect against waste, fraud and abuse.

Unfortunately, my office was shut out of the process to discuss and develop the policy decisions contained in the order. Requests for information about the item were denied until just prior to circulation. Once again, outside parties knew more about the terms than we did. And when we finally did receive the order, after press briefings were well underway, it was so slanted we assumed there was no interest in coming to consensus.

Then an unexpected ray of hope appeared. After months of asking the majority to discuss the budget, a Commissioner came to me the day before the Commission meeting to offer a compromise on the issue; one that was tough for me to accept but ultimately seemed to balance our differing concerns. For all the many process flaws that led us to where we were, I approached the table in good faith with the belief that I could trust the word of a Commissioner. We worked together to come to agreement and had finally reached an accord the morning of the Commission meeting. I think it is fair to say that everyone involved felt that they had moved considerably from their original positions in the spirit of collaboration and compromise. Now it seems even that basic foundation has gone out the windows of the Eighth Floor. What has happened will do irreparable harm to our ability to engage going forward.

The most disappointing part of watching the budget deal reversal was that it was attacked for all the wrong reasons. Contrary to the panicked claims that ensued when news of a deal was reported by press, a budget would not have harmed the program or recipients that depend on the subsidy for service. It could be accommodated while achieving the stated goal of shifting the program to broadband. It could reach *all eligible households that lack sufficient broadband* while staying within reasonable fiscal limits. It could help mitigate lingering concerns about waste, fraud, and abuse in the program. In other words, it could have put the program back on firmer footing, making it less likely to be challenged in the future.

Data from the FCC's universal service fund Administrator, USAC, proved it could be done. The filing noted that there are 13.701 million Lifeline eligible households with insufficient broadband.[1] That includes, for example, Lifeline-eligible households with school-aged children that the Commission wants to ensure are connected. Therefore, if the Commission wanted to shift the program to broadband and target those that need it, including key subgroups, that would seem to be the appropriate population.

Notably, in 2014, when Lifeline cost $1.6 billion, there were 13.447 million Lifeline subscribers.[2] Therefore, even if all eligible households with insufficient broadband enrolled in the revised Lifeline program, the cost would be just slightly more than before. Of course, enrollment is likely to be much lower. It has hovered at 32 percent.[3] So there would have been plenty of room within a $1.6 billion

[1] Letter from Michelle Garber, USAC to Ryan Palmer, FCC, WC Docket No. 11-42 (filed Feb. 24, 2016) (USAC Lifeline Letter).

[2] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report, CC Docket No. 96-45 et al., at Tables 2.1, 2.2 (December 2015), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0316/DOC-337019A1.pdf.

[3] *See* USAC Lifeline Letter.

budget to accommodate all eligible households that actually want to enroll in the program, and even factoring in enrollment growth due to the increased outreach contemplated in the item.

I was even willing to go as high a $2 billion—a significant concession and more than could be justified on the data alone—in order to obtain a long-overdue and fiscally responsible cap on the program. However, the majority was averse to set a firm budget at any level, even though all other universal service programs operate within a cap or budget. There is no reason to treat this program differently, especially since two of my Democratic colleagues worked extensively to establish a budget cap for Rate of Return carriers as part of Commission reforms just enacted last week.

Notably, there are entire communities that have no access to broadband because it is uneconomic to deploy networks even with a high-cost subsidy. There are no opportunities for low-income residents to receive discounted service because nobody has service. Period. But so called "consumer" groups say nothing. They have not participated in the high-cost program reform efforts during the more than two years that I have been at the Commission. The Remote Areas Fund is several years overdue but nobody seems to care about those consumers.

In contrast, if there's the slightest chance that a person might not receive a Lifeline discount at some undefined future point in time, it is suddenly a source of grave concern and every alarm bell must be rung throughout town. What seems to be lost in the angst is that even if the Commission sets a cap, it always reserves the right to vote to increase it later should a future Commission decide it is warranted. This is the safety valve that some groups erroneously claim would be missing. Indeed, the Commission recently increased the cap on the E-rate program, proving that this can be done and that a cap does not impair the Commission's flexibility to respond to changed circumstances. What it does do, however, is provide accountability because the Commission would need to affirmatively consider and explain why more money is needed. So outrage over a cap really seems to boil down to outrage over accountability.

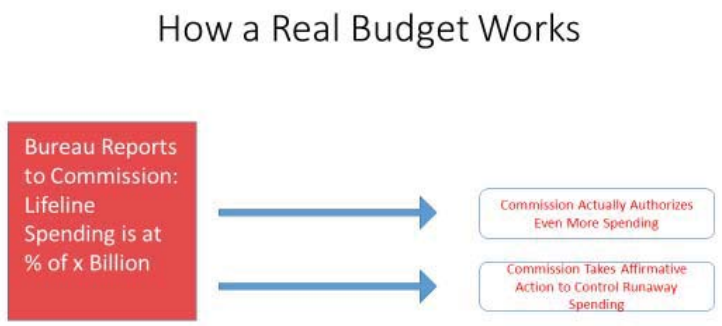
At the same time, there has been a misrepresentation of the functions of the program and its overall treatment by the Commission. Contrary to the misguided arguments by some people about social safety nets and their desire to treat it like an entitlement program, the Lifeline program is not one. As I have stated before, the Commission retains full right to limit or end the program without any legal claim by those currently eligible. We don't need a change in the law or blessing from the courts. This simple fact should serve as a reminder to those who express outrage to my Democratic colleagues that the Commission dare consider an overall cap to bring fiscal sanity to a program woefully in need of one. If balancing the recipient benefits with the actual costs on those paying for the program is out of the question, than I shudder to think about whether they believe any limitation or budget is ever appropriate for any federal program. How can Lifeline not have a budget but NIH spending rightfully does? Why is there a Defense budget today in times of war and crisis in almost every part of the world?

Instead of a budget, the order creates a phony "budget mechanism" and sets an initial spending goal of $2.25 billion. That's a 50 percent increase over 2015 spending, with no analysis as to why that's the right number. My proposal to set a cap at $1.6 billion is grounded in real data. The Commission's decision to set an illusory "budget" at $2.25 billion, by contrast, is completely arbitrary.

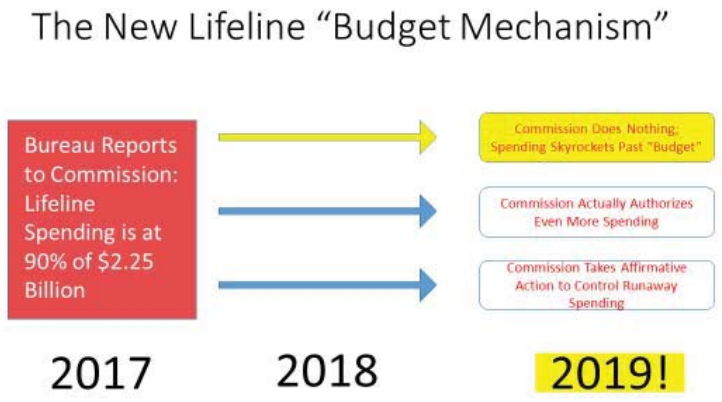
The order notes that it would accommodate more households—over 20 million—but there's no explanation as to why that's the right number, other than the fact that it conveniently matches the 20 million figure set forth in the Administration's ConnectALL fact sheet, to which the Commission is not beholden. If the majority's theory is that everyone currently "eligible" ought to be able to participate, whether they need the subsidy or not, then it is acknowledging 20 million is only half the distance to the nearly 39 million that are currently eligible. In other words, they concede not everyone eligible would be covered under their grandiose expansion formulation.

Or perhaps that's why the "budget mechanism" is not actually a "budget". Reaching the full participation level would require over $5 billion a year. That would increase fees on consumers' phone bills from approximately 18 percent to over 26 percent. So the FCC needed a path to be able to get to $5 billion while appearing to care about the size of the program. Enter the fake "budget mechanism."

To illustrate the difference between a "budget" and a "budget mechanism", I include two diagrams. First, we see a fair representation of what any reasonable person is talking about when they say the word "budget." A number is set, and once spending approaches this level you have two options. Either act affirmatively to raise the budget, or act affirmatively to control the spending and keep it within the set budget. I know that the majority also understands this concept, because that was what we agreed on prior to the meeting.



Next, we see what the item refers to as a "budget mechanism," which has been erroneously described and reported as a budget. The notable addition of the big yellow box is what transforms a budget into NOT-a-budget. When spending reaches 90 percent of the $2.25 billion target, the Bureau would issue a report on Lifeline spending and the order "expect[s]" that the Commission would take "appropriate action to address the Lifeline budget". An FCC official conceded that the earliest that the Commission could act would be early 2019. At that time, the Commission could choose to treat it as an actual budget and use one of the options already described. But critically, the yellow box offers a third option. If the Commission does absolutely nothing, spending blows right through the magic number and continues indefinitely. What does that make the magic number? A joke. Not a budget.



Of course, some have suggested that there is no need to set a hard budget now. I disagree. This is precisely the time that the Commission needs to impose fiscal and accountability measures. The program lost a great deal of trust and credibility when the Commission previously expanded it to include mobile voice without such measures and the program ballooned in size and fraud. Setting one now, at the

start of the process to shift the program to broadband, would help limit any rapid increase in the program's size and would serve as a deterrent to providers and recipients to prevent oversubscription or abuse. Moreover, by imposing a cap, the Commission would finally be able to account for overall USF spending, balance the programs appropriately, and limit the total cost to consumers who pay to support universal service. Indeed, all of the federal subsidy programs should be on a budget as a matter of good government. Therefore, regardless of what happens to the program in the near-term, the Commission should have acted now to adopt a cap or firm budget.

I am also disappointed that the majority categorically refused to consider targeting the program to low-income households that do not have sufficient broadband service.[4] In other words, the agency prefers to give away money to people who already have broadband while other hard-working Americans that sit just above the eligibility threshold pay ever higher fees to fund the program, possibly at the expense of being able to afford broadband themselves.

Even if my top requests had been accommodated, I would still have significant concerns about the order. Not surprisingly, one major concern is the legal authority for expanding the program to include broadband. The order relies on having classified broadband as a telecommunications service, in whole or in part. I disagreed with the Net Neutrality decision, and I do not condone its use here. Moreover, if that decision founders in court, this is yet another decision that will have to be reconsidered.

In addition, I have substantial misgivings about the ETC designation and forbearance analyses and processes. This section is incredibly complicated, which is likely an intentional effort to mask the unjustified disparate treatment of various types of providers. The order tries to structure participation so that only certain providers participate in the program, in some cases against their will. I find the entire exercise to be legally problematic and substantively divorced from reality.

I am very sympathetic to the desire to streamline burdens for providers, but the order absolutely mangles section 214 of the Act. To start, I do not think we have authority to completely bypass the statutorily-set state role in designating ETCs, as set forth in section 214.[5] To the extent that these provisions should be changed, Congress is the proper venue to do so. Moreover, a requirement to provide broadband could impact a provider's ability to continue to provide legacy voice service, which doesn't seem to be properly addressed in the item.

With respect to the new national Lifeline Broadband Provider designation, the Commission would have been on much firmer ground if it had taken a shot clock approach like the one we adopted for the rural broadband experiments to bring non-traditional providers into the high-cost program.

Still, since the Commission asserts in this item and others that broadband is an interstate service, there should be absolutely no debate or question that VoIP is also interstate and the appropriate action is to foreclose state regulation of the service once and for all. To suggest otherwise would bring a whole new level of doublespeak: assuming the transmission and content can be separated (which I don't concede), how could the underlying network be interstate but a VoIP app running on top of it not be the same? Such a firm declaration is long overdue and remains necessary in light of ongoing state efforts to regulate VoIP as an intrastate telecommunications service.[6]

The order also doubles down on the losing argument that preemption is authorized under section 706 as a means to remove barriers to broadband deployment. Even worse, in this instance, the supposed

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[4] As I've said before, defining eligibility such that 1/3 of all U.S. households qualify, as is the case today, shows that the program is poorly targeted to those that need it most.

[5] Oddly, the order also takes great pains to broadly interpret the statutory requirement to provide telephone exchange service and exchange access only to forbear from the requirement on the very next page.

[6] *See*, *e.g.*, MPRNews, Commerce Dept.: PUC ruling means VoIP providers must follow Minn. Law (May 10, 2015), http://www.mprnews.org/story/2015/05/10/voip-vote.

"barrier" is the *statutory process* for designating ETCs. In other words, make believe section 706 "authority" is being used to trump a real provision in the Act.

I have to wonder whether the new Lifeline Broadband Provider (LBP) designation will even pan out. Contrary to what many expected, new providers would, in fact, be required to become ETCs. That means that they would be subject to any general purpose ETC requirements, including the requirement to provide service throughout their entire territory, and could always be saddled with additional obligations.

The possibility of future obligations is not an idle concern. Take for instance Rural Broadband Experiment participants, who previously received this assurance:

> Recipients of support should offer a discounted broadband plan to low-income households, but we decline to mandate specific requirements for such plans. Rather, the experiments will be an additional learning opportunity to gather more information about the types of low-cost broadband offerings that providers receiving support to extend broadband are willing to offer to low-income households.[7]

Now we learn that recipients will be required to provide Lifeline-supported BIAS, as defined in this order, once they have deployed broadband-capable facilities to qualified low-income consumers. Surprise! I caution in advance any company jumping into the offering of Lifeline services under this new scheme.

Furthermore, while the Commission does adopt streamlined relinquishment procedures, there are critical loopholes. The Commission can take a relinquishment petition off streamlining if more time is needed to transition consumers to other carriers. And there needs to be at least one other provider able to serve the consumers. So if a new entrant serves an area that is not fully overlapped by another provider, there is no automatic relinquishment. Even in areas currently served by other providers, I imagine new entrants would want to be cautious lest they end up being the last ETC standing.

Indeed, at the same time that the Commission makes a show of opening the program to new fixed broadband providers, it does everything possible to encourage mobile providers to exit. All Lifeline-only ETCs are automatically promoted to broadband ETCs, but can choose not to provide the new service simply by filing a notification with the Commission. Of course, since standalone voice service is being phased out, the order anticipates that Lifeline-only ETCs will choose to relinquish their designation to provide Lifeline voice service.[8]

This stands in sharp contrast to Lifeline/High-Cost ETCs, who are also automatically promoted to broadband ETCs but must provide Lifeline broadband wherever they receive ongoing high-cost support. The only exception is where they have not yet deployed 10/1 service. To receive this exception, however, they are subject to a new certification process.

Moreover, the order concocts a completely arbitrary set of conditions that must be satisfied before these Lifeline/High-Cost ETCs may cease providing Lifeline voice service. In doing so, the Commission is tacitly acknowledging that it will never allow any incumbent wireline carrier to relinquish any part of its designation under the statutory process, which *requires* the FCC to permit relinquishment if there is *one* other provider in the area. Instead, the Commission will provide "conditional forbearance" where there are at least *three* other providers and additional competitive criteria are met. Additionally, providers must continue to serve existing Lifeline voice customers, meaning they can't actually exit the program.

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[7] *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8786, para. 49 & note 87 (2014).

[8] Strangely, the order "emphasize[s] that [such] ETCs have the option to seek relinquishment of only their Lifeline voice ETC designation" even though the process for opting out of Lifeline broadband is even easier for them – just a notification.

Moreover, it will take up to 15 months to become effective, and any conditional forbearance is subject to reversal in subsequent years if the areas no longer meet the requisite conditions.

The resulting mishmash of designation and relinquishment standards is needlessly complex and damages the principles of competitive and technological neutrality – all in an effort to advance a vision for the Lifeline program that seems wholly unrealistic. For example, as I noted above, the order provides an exception for fixed broadband providers that do not meet the minimum standards, but mobile broadband providers have to go through a waiver process.[9] This would include mobile broadband providers serving rural Alaska, where it can be difficult and cost prohibitive to provide even 2G service.

Additionally, while I am hopeful that a National Lifeline Eligibility Verifier will help reduce participating carriers' administrative costs, the Bureaus must keep a close eye on what could be a very expensive project for ratepayers. The cost of this undertaking does not appear to be included in the $2.25 billion spending target and, given the complexity of the tasks outlined in the order, it could easily reach tens or even hundreds of millions of dollars.

The order also asserts that the National Verifier will help reduce fraud, but its ability to do so only extends so far. I remain concerned about waste, fraud, and abuse in some of the underlying programs and would not have included them all here. For example, HUD's Federal Public Housing Assistance program was added back in at the last minute, for no apparent reason other than HUD asked nicely.

I am also troubled by waste, fraud, and abuse in the Supplemental Nutritional Assistance Program (SNAP) program. The Commission is keenly aware of how fraud in the SNAP program can taint the Lifeline program.[10] Nonetheless, the order seeks to "leverage" the SNAP program due to its "low eligibility error rate" and "high level of accountability". Yet OMB continues to identify SNAP as a "high error" program with $2.6 billion in improper payments annually.[11] While improper payments may be due to a variety of reasons, according to a GAO Report:

> [A]fter studying the cause of these errors, USDA officials stated that over 90 percent [of the improper payments] were due to verification errors. These types of errors occur when an agency fails to or is unable to verify recipient information—including earnings, income, assets, or work status—even though verifying information exists in third-party databases or other resources. Examples of verification errors include an agency not confirming a recipient's reported earnings or work status through existing databases, or the recipient failing to provide an agency with information on earnings."[12]

[9] One of the reasons given for this disparate treatment actually undercuts the justification for a permanent Mobility Fund. It states: "We find the exception is only appropriate for fixed broadband because fixed broadband is the mode for which there are still significant areas of the country in which locations do not have access to the minimum fixed broadband standards. While we acknowledge that some areas do not have mobile broadband coverage meeting the minimum standards, there are far fewer of these areas." Specifically, the order notes that "99.9% of the non-rural population lives in census blocks with mobile LTE coverage, as does 97.9% of the rural population."

[10] *See Total Call Mobile, Inc.*, File No.: EB-IHD-14-00017650, Notice of Apparent Liability, FCC 16-44 (rel. Apr. 7, 2016).

[11] Payment Accuracy, High-Error Programs (last visited April 5, 2016), https://paymentaccuracy.gov/high-priority-programs.

[12] GAO, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: Enhanced Detection Tools and Reporting Could Improve Efforts to Combat Recipient Fraud at 5 (August 2014).

In short, the Lifeline program will be providing subsidies to people on the basis that they receive SNAP even though their payments from the SNAP program may have been improper due to inadequate verification procedures. Lovely.

That does not even capture outright fraud in the program, which is not sufficiently monitored or detected at the federal or state level. According to GAO, "state agencies are responsible for addressing SNAP recipient fraud under the guidance and monitoring of [the U.S. Department of Agriculture's Food and Nutrition Service (FNS)]."[13] However, "FNS does not have consistent and reliable data on states' anti-fraud activities" and the states GAO reviewed "experienced mixed success investigating and pursuing cases to combat potential [SNAP] recipient fraud."[14] This could further impact the Lifeline program. For example, illegal trafficking in cards can result in otherwise ineligible consumers receiving SNAP benefits.[15] Those consumers could then qualify for Lifeline subsidies. No one should assume that fraud, waste and abuse will not continue to ravage the Lifeline program since it is piggybacking off of programs loaded full of illegal activities today.

Not surprisingly, I also object to the extensive delegations to the Bureau and directions to USAC. The tasks handed over to them go far beyond basic implementation and administration of the program. For example, they will oversee all aspects of the LBP designation process and the National Verifier. The order also includes the catchall delegation section that is found only in controversial items. And while I have very limited ability to influence Bureau-level decisions, I have absolutely no input when it comes to USAC. I find it very troubling that a corporation that is treated as "intra-agency" for some purposes is insulated from input and oversight by actual FCC Commissioners. How convenient.

Finally, I find it remarkable that the Commission claims to be looking out for low-income consumers, but is perfectly content to take away the true Lifeline service that has served so many when emergencies have arisen. I believe that any minimum standards must be reasonably set to generate practical and useful products and service offerings, as we need to stretch our funding to meet many needs. The Commission, however precludes support for basic mobile voice or broadband service that does not meet its vision for what a Lifeline service ought to be. Here again, the agency takes a paternalistic approach, telling recipients what they need rather than letting consumer decide whether a more affordable option would be sufficient. Some recipients might want a broadband connection to fill out a job application. But others might just want a simple voice service to use in case of an emergency—the original purpose of the program. The Commission calls such basic offerings "second class" service, but I imagine that those who will end up with no service at all might call them a Lifeline.

For all of these reasons, I dissent.

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[13] *Id.* at 1

[14] *Id.*

[15] *See, e.g.*, Department of Justice, U.S. Attorney's Office, District of Massachusetts, Worcester Woman Charged in $3.6 Million Food Stamp Fraud (Sept. 28, 2015), https://www.justice.gov/usao-ma/pr/worcester-woman-charged-36-million-food-stamp-fraud. Even FNS concedes that the rate of trafficking by retailers is 1.3 percent. USDA Food and Nutrition Service, USDA Releases New Report on Trafficking and Announces Additional Measures to Improve Integrity in the Supplemental Nutrition Assistance Program (last modified April 1, 2016), http://www.fns.usda.gov/pressrelease/2013/fns-001213. That amounts to over 900 million per year.