Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	WC Docket No. 03-109
Lifeline and Link-Up.	)	

REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
TO REFRESH THE RECORD

Barrett C. Sheridan
Assistant Consumer Advocate
Pennsylvania Office of Consumer Advocate
555 Walnut St., Forum Pl., 5th Fl.
Harrisburg, PA 17101-1923
717-783-5048

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
614-466-8574

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
301-589-6313

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I. INTRODUCTION

There were not very many comments filed pursuant to the Federal Communications Commission's ("FCC's" or "Commission's") Public Notice requesting parties to refresh the record in this proceeding on the federal Lifeline and Link-Up programs.[1] Comments were filed by consumer advocates,[2] state utility commissions,[3] wireline carriers,[4] and a wireless carrier.[5] The comments tended to be brief, indicating that the record did not need much refreshing.[6]

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[1] DA 07-1241. The Public Notice was published in the Federal Register on July 25, 2007.

[2] National Consumer Law Center ("NCLC"), on behalf of and in conjunction with the Texas Legal Services Corporation ("TLSC"); New Jersey Public Advocate, Division of Rate Counsel ("NJDRC"). NJDRC and NCLC are members of the National Association of State Utility Consumer Advocates ("NASUCA").

[3] Iowa Utilities Board ("IUB"); People of the State of California and the California Public Utilities Commission ("CaPUC").

[4] Embarq; National Telecommunications Cooperative Association ("NTCA"); Qwest Communications International Inc. ("Qwest"); United States Telecom Association ("USTelecom").

[5] TracFone Wireless, Inc. ("TracFone").

[6] NASUCA's initial comments included discussion of two effectively new subjects where the record definitely needed to be updated. These were, first, the unfortunate outcome of the FCC-ordered recertification process, and the need to reform the process; and second, the need for the federal universal service fund to recognize the value of Community Voice Mail ("CVM") programs.

NASUCA submits these brief reply comments to respond principally to Embarq, and USTelecom, which urge the Commission not to increase the income-eligibility criterion for the Lifeline program from the current 135% of the federal poverty guideline ("FPG") to 150% of FPG. Their arguments do not overcome the information set forth in NASUCA's comments (and others) showing that the income criterion should be increased, so that more deserving families will be eligible for support for their vital telecommunications services.

NASUCA also addresses the claims of those that believe the Commission should not adopt rules regarding outreach for the Lifeline program. Eligible telecommunications carriers ("ETCs") should at the very least be required to report their Lifeline outreach activities.

II. ADOPTION OF AN INCOME BASED ELIGIBILITY CRITERION OF 150 PERCENT OF FEDERAL POVERTY GUIDELINES IS SUPPORTED BY ADVOCATES FOR THE PUBLIC INTEREST

The IUB, the CaPUC, the NJDRC, and NCLC/TLSC, like NASUCA, all filed comments urging the FCC to increase the income eligibility criterion for Lifeline and Link-Up from 135% of FPG to 150%. Only USTelecom and Embarq filed comments in opposition. As explained below, neither USTelecom nor Embarq set forth sound reasons on which to base universal service policy which is to benefit all telecommunications consumers.

As the IUB succinctly puts it "[t]his is nothing more than treating all low-income consumers in an equitable manner."[7] CaPUC notes that California's Lifeline programs allow households with income at approximately 150% or below of FPG to qualify for the

[7] IUB Comments at 1. The IUB notes that there is a strong overlap between LIHEAP eligibility based on 150% FPG or lower and Lifeline enrollment in Iowa. Id. at 1-2.

California Lifeline discount.[8] NJDRC supports the increase to 150%, at a minimum, to improve affordability of telephone service for low-income consumers.[9] It is also a matter of equity, given that New Jersey and other states have already adopted the 150% of FPG level for income eligibility.[10]

NCLC/TLSC address the needs and interests of low-income consumers in particular.[11] As NCLC/TLSC note, an income eligibility criterion for Lifeline and Link-Up is important, given that households may fit the eligibility profile for LIHEAP or public housing assistance, but not receive it due to limited availability. NCLC/TLSC support adoption of the 150% of FPG level in order to better track LIHEAP eligibility standards. NCLC/TLSC note that there is a sizeable number of households in the just below 150% of FPG range which would benefit from the change.[12] The higher income criterion would help improve telephone subscribership, given that telephone penetration rates are lower for households with less income.[13]

The comments of NASUCA, the state commissions and the low-income public interest groups address the key questions presented by the FCC in the FNPRM regarding affordability, benefits to low-income consumers, and fairness in the treatment of similarly situated households. The FCC should revise the income eligibility criterion to the higher 150% of FPG standard to assist low-income consumers and improve universal service.

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[8] CaPUC Comments at 2-3.

[9] NJDRC Comments at 2-4. NJDRC notes that 200% of FPG reflects a better measure of poverty based on the real cost of living in New Jersey. Id. at 3.

[10] Id. at 3.

[11] NCLC/TSLC Comments at 1-2.

[12] Id. at 2-3.

[13] Id. at 3-5. NCLC/TSLC express concern over the volatility in telephone penetration rates in the last 2 or so years and asks the FCC to examine the cause. Id. at 5.

III. USTELECOM AND EMBARQ OPPOSE INCREASING THE LIFELINE ELIGIBILITY CRITERION FOR REASONS CONTRARY TO UNIVERSAL SERVICE GOALS

A. INTRODUCTION

In contrast to the strong support of representatives of public utility consumers, regulators and low-income interests, USTelecom and Embarq state that there is no reason to change the income eligibility level and that no good could come from such a change. USTelecom baldly states "[t]here is no evidence that increasing the Lifeline eligibility requirements would materially improve low income consumers' access to telecommunications services."[14] Rather, USTelecom urges the FCC to **exclude** low-income consumers with income in the 135% to 150% of poverty range from qualifying for Lifeline and Link-Up based on household income to avoid strain on the Universal Service Fund mechanism ("USF").[15] Embarq states that allowing consumers to participate based on the higher income criterion does not increase Lifeline participation.[16]

The FCC should reject the comments of USTelecom and Embarq. As explained in NASUCA's comments in this proceeding, setting the income eligibility criterion at 150% of FPG will assist low-income consumers and promote universal service.

B. UNIVERSAL SERVICE PRINCIPLES SUPPORT FCC ACTION TO PRESERVE AND IMPROVE THE AFFORDABILITY OF TELEPHONE SERVICE FOR LOW-INCOME HOUSEHOLDS

Neither USTelecom nor Embarq addresses the affordability of telecommunications services for low-income households. Both entities contend that adoption of the higher income eligibility criterion will not provide benefits sufficient to

[14] USTelecom Comments at 1.

[15] Id. at 1-4.

[16] Embarq Comments at 2-4.

justify adoption of the higher income measure. Indeed, USTelecom is satisfied that no public policy change is justified because 92.3% of households with income below $20,000 have telephone service.[17] Embarq suggests that where implemented, the higher income criterion has not improved Lifeline participation.[18]

The mere fact that a household with low income has telephone service does not indicate whether that service is affordable for the household within the meaning of Section 254 of the 1996 Telecom Act.[19] Based on the comments of NASUCA, NJDRC and NCLC/TLSC, the FCC should determine that even households with the modestly higher incomes in the 135% to 150% of FPG range still lack resources to cover basic household needs such as food, shelter, and utilities including telephone service. Low-income support from the federal USF should go to help both households who do not have telephone service as well as those that suffer financial detriment in order to maintain telephone service.[20] NASUCA's position is squarely based on the concept of affordability that the FCC adopted in 1997.[21]

If a low-income household qualifies for Lifeline/Link-Up, the cost of telephone service is reduced, at a minimum, by the amount of the federal subscriber line charge ("SLC") and a $1.75 credit towards local service.[22] Lifeline customers are exempt from

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[17] USTelecom Comments at 2-3.

[18] Embarq Comments at 2.

[19] 47 U.S.C. § 254(b).

[20] NASUCA 2003 Comments at 3-13, Appendix A – Affidavit of Roger C. Colton ("Colton Affidavit") at 1-6; NASUCA 2007 Comments at 6-7.

[21] NASUCA 2007 Comments at 5-7, quoting *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997)("*1997 Universal Service Order*"); see also Colton Affidavit at 1-6.

[22] 47 C.F.R. § 54.403(a), (b) (Tier 1 and Tier 2 support).

number portability surcharges per FCC regulations.[23] Incumbent local exchange carriers waive the federal USF surcharge for Lifeline customers pursuant to FCC orders.[24] These credits make telephone service more affordable for qualifying low-income households, consistent with federal universal service policy. The FCC has allowed incumbents to increase the federal subscriber line charge based on the assumption that low-income households who qualify for Lifeline will be protected from the increase in the interstate rate.[25]

Yet USTelecom and Embarq now ask the FCC to *not* make telephone service more affordable for low-income households in the 135% to 150% FPG band who do not otherwise qualify for Lifeline based on program participation or the lower income criterion.[26] According to USTelecom, the FCC should refrain from changing the income eligibility criterion for the greater good, so as not to "waste" the money of consumers who ultimately pay to support the federal USF. This position should be rejected: The FCC should not set public policy based on such a distorted view of universal service goals.

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[23] 47 C.F.R. §§ 52.33(a)(1)(i)(C), 54.401(e).

[24] See, e.g. *In the Matter of Access Charge Reform*, Sixth Report and Order, CC Docket Nos. 96-262, et al (rel. May, 31, 2000) ("*CALLS Order*") at ¶¶ 33, 215, 218. In 2001, the FCC increased lifeline support to match the SLC, otherwise "the SLC increases we adopt today would negatively and disproportionately affect low-income subscribers by increasing the cost of basic telephone service." See also *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap ILECs and IXCs*, CC Docket Nos. 00-256, et al, Second Report and Order (2001) ("*MAG Order*") at ¶ 178. "Consistent with the restrictions on the recovery of universal service contributions by price-cap carriers, rate-of-return carriers shall not assess a separate universal service end user charge on Lifeline customers." Id., ¶ 177.

[25] See footnote 24; see also *In the Matter of Petition of AT&T for Waiver of Commission Rules to Treat Certain Local Number Portability Costs as Exogenous Costs Under Section 64.45(d)*, CC Docket No. 95-116, Order (July 10, 2006). The FCC permitted AT&T (formerly SBC) to increase the SLC to collect certain number portability costs but prohibited AT&T from recovering such costs from Lifeline customers or the federal USF. Id. at ¶ 20.

[26] USTelecom Comments at 3; Embarq Comments at 2-4.

The fact that 7.7% of households with income below $20,000 lack telephone service is not grounds for complacency as USTelecom implies. Instead, this level of phonelessness illustrates the ongoing need for Lifeline/Link-Up programs and efforts to improve enrollment and outreach. USTelecom's cursory review of telephone subscribership rates does not address the question of affordable telephone service for households which may have higher income and yet, based on household size, fall at or below 150% of FPG. As set forth in NASUCA's comments, the FCC should increase the income eligibility criterion for the benefit of the 742,000 households who fall in the 135% to 150% of FPG range and do not have telephone service.[27]

The FCC should also adopt the higher income eligibility standard in order to improve Lifeline participation rates. Embarq's position that the higher income criterion does not improve Lifeline participation is without foundation.[28] It is simply not possible, as Embarq implies, to isolate one change in the Pennsylvania Lifeline program and make inferences based on the lack of decrease in Lifeline participation. Since late 2004, Pennsylvania has adopted automatic notification of eligibility,[29] added the National School Free Lunch and income at or below 135% of FPG as eligibility criteria for the statewide Lifeline/Link-Up program and required carriers to recertify eligibility based on a statistically valid sample.[30] Although Lifeline participation had increased in Pennsylvania, the Pennsylvania Public Utility Commission noted in 2005 that "we are

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[27] NASUCA 2007 Comments at 5.

[28] Embarq Comments at 2-4.

[29] 66 Pa.C.S. § 3019(f)(5).

[30] *Re: Lifeline and Link-Up Programs*, Pa. PUC Docket No. M-00051871 (2005), Final Order. Available at www.puc.state.us/PcDocs/541213.doc

still very short of enrolling all consumers who could benefit from the Lifeline credit."[31] Pennsylvania may reevaluate the Pennsylvania Lifeline/Link-Up program if the FCC adopts the higher 150% of FPG income eligibility criterion.[32] Embarq omits all of this information from its comments. Embarq's selective view and negative inference should not be adopted as grounds to set federal Lifeline eligibility standards.

The FCC should not rely on the comments of USTelecom and Embarq, which fail to address the question of affordability of telephone service for households at or below 150% of FPG. They do not speak for the interests of ratepayers and low-income consumers. The FCC should instead heed the comments of NASUCA, state commissions and other public interest parties which support adoption of the higher income criterion to improve the affordability of telephone service for low-income consumers.[33]

C. THE COST OF OPENING LIFELINE/LINK-UP TO ADDITIONAL HOUSEHOLDS CITED BY USTELECOM IS BASED ON OUTDATED INFORMATION

According to USTelecom, the FCC should decline to increase the income eligibility criterion because to do so would impose a $200 million cost on the federal USF and not significantly increase telephone subscribership.[34] USTelecom relies on the $200 million estimate made by FCC Staff in 2004 which, according to USTelecom, has not been contradicted.[35] Clearly, USTelecom has invested little to no effort in reviewing the assumptions underlying the 2004 Staff estimate, nor the comments offered by

[31] Id. at 19.

[32] Id. at 8.

[33] The Maine Commission also supported adoption of the higher income eligibility standard in comments filed in August 2004 in this further rulemaking.

[34] USTelecom Comments at 2-3.

[35] Id. at 2.

NASUCA in response to the FNPRM in 2004. Had the FCC deemed the 2004 Staff estimate conclusive and sound support for a final policy determination on income eligibility, the FCC would not have issued the FNPRM in April 2004 for comment and sought an update of information in 2007.

As NASUCA explained in 2004, the Staff estimate of the 2005 cost to the federal USF depended on assumptions which no longer held true, even in 2004.[36] Federal and state Lifeline/Link-Up eligibility criteria have not remained static or constant since 2004, quite apart from the FCC's adoption of an income-based criterion.[37] Many state commissions have used the *Lifeline Order* as a guide, but some commissions have already adopted the higher 150% of FPG income eligibility criterion.[38] The 2005-2006 NRRI Survey of state commissions shows that lifeline program changes have been neither limited nor uniformly and rapidly adopted, which are key assumptions underlying the FCC Staff estimate of $200 million in 2005 costs to the USF.[39]

The 2004 Staff estimate of the $200 million cost of adoption of the higher income eligibility standard is simply outdated.[40] Given that some states have already adopted the income eligibility criterion of 150% of FPG for Lifeline/Link-Up, the impact of any newly-qualified Lifeline/Link-Up subscribers is already reflected in the federal USF. This fact is clearly known to USTelecom members such as Embarq, yet USTelecom

[36] NASUCA 2003 Comments at 8-12.

[37] Id.; *see Lifeline Order*, App. K "Lifeline Staff Analysis: Quantifying the effects of adding an income criterion to the Lifeline eligibility criteria" at K-13.

[38] NASUCA 2003 Comments at 8-12; NASUCA 2007 Comments at 9-10. See also Rosenberg and Liu, *State Universal Service Funding Mechanisms: Results of the NRRI's 2005-2006 Survey* (July 2006) at Table 32 ("NRRI Survey").

[39] NRRI Survey at Table 32.

[40] NASUCA 2007 Comments at 9-10; NASUCA 2003 Comments at 7-12; NASUCA 2003 Reply Comments at 1-5.

opposes adoption of the higher income criterion so as not to "waste" $200 million of consumers' money.[41]

USTelecom is concerned that the low-income portion of the USF increased from $750 million to about $820 million since 2004.[42] This growth in the low-income fund is, of course, dwarfed by the growth in the funds that go to carriers, not directly to consumers.[43] Yet low-income households continue to lack telephone service. Even with the FCC's adoption in 2004 of the National School Lunch program as a Lifeline/Link-Up eligibility criterion, the Annie E. Casey Foundation's *Kids Count* report shows that in 2005, 2,440,000 children lived in households at or below 200% of FPG that did not have telephone service.[44] As addressed in the NASUCA 2007 Comments, states have moved to make LIHEAP assistance available to more households with income at or *above* 150% of FPG in recognition of the increased burden high heating and cooling costs place on low-income household budgets.[45]

The FCC can and should take the modest step of increasing the federal Lifeline income eligibility criterion from the current 135% of FPG to 150% of FPG to improve the affordability of telephone service for low-income households which do not have telephone service or may suffer a detriment to maintain telephone service. The FCC should not treat households with similar low incomes and similar needs for affordable telephone service differently under Lifeline eligibility criteria as a way to manage the size

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[41] USTelecom Comments at 3.

[42] Id.

[43] Id.

[44] See Annie E. Casey Foundation's *Kids Count*, on line comparison of 2005 data based on U.S. Census Bureau's 2005 American Community Survey. Available through www.kidscount.org/sld/index.jsp?c=3, select "Employment and Income" indicator. This was an increase from 2,226,000 in 2004.

[45] NASUCA 2007 Comments at 7-9.

of the federal USF. Increased costs to the federal USF for Lifeline/Link-Up support is not a negative but a sign that federal universal service policy is being implemented.[46]

IV. RULES GOVERNING ADVERTISEMENT OF THE LIFELINE AND LINKUP PROGRAMS ARE NECESSARY; THOSE RULES SHOULD ENCOMPASS THE WORK OF THE FCC/NARUC/NASUCA TASKFORCE.

TracFone notes:

> the appallingly low level of participation among households who are eligible for Lifeline support under the current criteria. According to Commission data, less than thirty-four percent of the nation's Lifeline-eligible households participate in Lifeline. As low as the national participation rate may be, the participation rates in certain specific states are shockingly low….[47]

This argues for more outreach (more **effective** outreach), and a detailed review of the reasons for low (and high) Lifeline enrollments. NTCA claims that no regulation is necessary because "[c]arriers have a strong financial incentive to advertise the Lifeline/Linkup services."[48] Apparently this "strong incentive" is not very effective in producing customer enrollment.[49]

Yet TracFone does not support adoption of rules governing outreach. Instead TracFone believes that "ETCs should be held accountable for their failure to effectively promote these programs."[50] Yet it is difficult to see how ETCs should be held

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[46] Id. at 9.

[47] TracFone Comments at 4 (footnote omitted); see also NCLC/TLSC Comments at [3]. TracFone makes its statements in the context of urging the Commission to grant its low-income ETC certifications. TracFone Comments at 5. Having granted TracFone a waiver that would allow such certification (id. at 2-3), the Commission should act on TracFone's applications.

[48] NTCA Comments at 1.

[49] NASUCA and its members are understandably skeptical in this area, given the variety of local company attitudes toward their Lifeline customers.

[50] TracFone Comments at 5.

accountable to a duty that is not clearly defined. Enforcement without standards will inevitably lead to litigation and delay.[51]

Embarq says that the current "guidelines" should be maintained, and new rules are not needed.[52] Embarq does not cite to those guidelines. It appears that the only rule regarding Lifeline outreach is 47 C.F.R. § 54.405(b), which requires ETCs to "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service." Hardly an onerous requirement, and hardly one designed to maximize Lifeline enrollment.

Embarq asserts that the current state-focus on outreach should continue.[53] But that does not mean that the Commission should not adopt a minimum set of expectations for the states, in order to increase the effectiveness of this **federal** program. Similarly, Qwest states that "outreach for these government-created programs will be most effective when it done through the public agencies that already have contacts with the consumers who are eligible for these programs."[54] This is true, but that is no reason not to establish minimum standards for outreach, including advertising,[55] along with other methods, including collaboration.[56] NASUCA agrees that "the Commission should look for ways to encourage automatic enrollment … and to assist states in the development of uniform

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[51] Which is not to say that enforcement is easy even with rules.

[52] Embarq Comments at 4.

[53] Id. at 5.

[54] Qwest Comments at 1.

[55] See id.

[56] Id. at 2. Particularly if the Commission considers funding "cooperative outreach and/or Lifeline enrollment assistance at the government agency level." Id. at 5. USTelecom suggests that the Commission consider "payment of outreach expenses to carriers on a flat-rate basis or percentage basis to cover administrative and advertising costs." USTelecom Comments at 5. That also would require rules. Perhaps the Commission should explore pilot programs for both of these proposals.

program applications and outreach advertising"[57] but such programs need to have rules as their basis.

Examples of such rules are suggested by NCLC/TLSC: a requirement that ETCs provide information about Lifeline and Link-Up to residential consumers when they sign up for service; and a requirement that where the ETC does general marketing in a language other than English, "Lifeline and Link-Up notices, outreach materials and customer service representatives fluent in that language who are able to provide information on the Lifeline program" also be available.[58] Such minimum requirements would not prevent states and ETCs from making additional efforts based on the needs of local markets.

USTelecom asserts that "mandating various forms of Lifeline outreach" will not "positively impact subscriber rates among low-income consumers."[59] In the first place, as mentioned above, increasing subscribership levels among low-income consumers is not the only purpose of Lifeline; those purposes include assisting current low-income subscribers to maintain their service. Broadening the required list of Lifeline outreach efforts will increase consumers' knowledge of the program; that should result in more customers subscribing to the program. NASUCA does agree with USTelecom, however, that the rules should be flexible.[60]

NTCA seeks special exemptions for rural telephone companies.[61] Such an exemption would mean that **the customers of** rural telephone companies are less

[57] Qwest Comments at 2.

[58] NCLC/TLSC Comments at [6-7].

[59] USTelecom Comments at 1.

[60] See id. at 4.

[61] NTCA Comments at 3.

deserving of receiving information about Lifeline than their counterparts who are customers of non-rural telephone companies. That would be wrong. It should be recalled that the so-called non-rural telephone companies also serve vast expanses of rural territory. As for NTCA's claim that "[r]ural carriers usually serve vast territories"[62] this is simply untrue in most states.[63] Rules requiring outreach in addition to advertising[64] will more effectively spread the word about Lifeline and Link-Up.

In addition, even if the Commission does not adopt minimum requirements for the states, the FCC should require ETCs to report their Lifeline outreach activities and related expenditures.[65] In that way, it can be known whether the carriers and state commissions "actively promote and coordinate Lifeline outreach and advertising specific to the characteristics of the Lifeline-eligible population and the public assistance agency structure in each state."[66] This can also be a continuing source of information on best practices for Lifeline outreach.

V. CONCLUSION

The Commission should adopt NASUCA's recommendations discussed here and in the initial comments on adopting the 150% of FPG income criterion, and on adopting rules regarding outreach marketing and reporting requirements for ETCs. The Commission should also adopt NASUCA's recommendations in the initial comments on clarifying the definition of income, suspending the recertification process pending

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[62] Id.

[63] For an extreme example, one would be hard-pressed to classify the territories of any of Iowa's more than 150 rural telephone companies as "vast."

[64] Id. at 4.

[65] See NCLC/TSLC Comments at [6].

[66] Embarq Comments at 5.

improvements to that process, and considering support for CVM. These measures will improve the Lifeline and Link-Up programs, and bring the Commission and consumers nationwide closer to meeting the universal service goals of the 1996 Telecommunications Act.

Respectfully submitted,

Barrett C. Sheridan
Assistant Consumer Advocate
Pennsylvania Office of Consumer Advocate
555 Walnut St., Forum Pl., 5th Fl.
Harrisburg, PA 17101-1923
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[8] CaPUC Comments at 2-3.

[9] NJDRC Comments at 2-4. NJDRC notes that 200% of FPG reflects a better measure of poverty based on the real cost of living in New Jersey. Id. at 3.

[10] Id. at 3.

[11] NCLC/TSLC Comments at 1-2.

[12] Id. at 2-3.

[13] Id. at 3-5. NCLC/TSLC express concern over the volatility in telephone penetration rates in the last 2 or so years and asks the FCC to examine the cause. Id. at 5.

III. USTELECOM AND EMBARQ OPPOSE INCREASING THE LIFELINE ELIGIBILITY CRITERION FOR REASONS CONTRARY TO UNIVERSAL SERVICE GOALS

A. INTRODUCTION

In contrast to the strong support of representatives of public utility consumers, regulators and low-income interests, USTelecom and Embarq state that there is no reason to change the income eligibility level and that no good could come from such a change. USTelecom baldly states "[t]here is no evidence that increasing the Lifeline eligibility requirements would materially improve low income consumers' access to telecommunications services."[14] Rather, USTelecom urges the FCC to **exclude** low-income consumers with income in the 135% to 150% of poverty range from qualifying for Lifeline and Link-Up based on household income to avoid strain on the Universal Service Fund mechanism ("USF").[15] Embarq states that allowing consumers to participate based on the higher income criterion does not increase Lifeline participation.[16]

The FCC should reject the comments of USTelecom and Embarq. As explained in NASUCA's comments in this proceeding, setting the income eligibility criterion at 150% of FPG will assist low-income consumers and promote universal service.

B. UNIVERSAL SERVICE PRINCIPLES SUPPORT FCC ACTION TO PRESERVE AND IMPROVE THE AFFORDABILITY OF TELEPHONE SERVICE FOR LOW-INCOME HOUSEHOLDS

Neither USTelecom nor Embarq addresses the affordability of telecommunications services for low-income households. Both entities contend that adoption of the higher income eligibility criterion will not provide benefits sufficient to

[14] USTelecom Comments at 1.

[15] Id. at 1-4.

[16] Embarq Comments at 2-4.

justify adoption of the higher income measure. Indeed, USTelecom is satisfied that no public policy change is justified because 92.3% of households with income below $20,000 have telephone service.[17] Embarq suggests that where implemented, the higher income criterion has not improved Lifeline participation.[18]

The mere fact that a household with low income has telephone service does not indicate whether that service is affordable for the household within the meaning of Section 254 of the 1996 Telecom Act.[19] Based on the comments of NASUCA, NJDRC and NCLC/TLSC, the FCC should determine that even households with the modestly higher incomes in the 135% to 150% of FPG range still lack resources to cover basic household needs such as food, shelter, and utilities including telephone service. Low-income support from the federal USF should go to help both households who do not have telephone service as well as those that suffer financial detriment in order to maintain telephone service.[20] NASUCA's position is squarely based on the concept of affordability that the FCC adopted in 1997.[21]

If a low-income household qualifies for Lifeline/Link-Up, the cost of telephone service is reduced, at a minimum, by the amount of the federal subscriber line charge ("SLC") and a $1.75 credit towards local service.[22] Lifeline customers are exempt from

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[17] USTelecom Comments at 2-3.

[18] Embarq Comments at 2.

[19] 47 U.S.C. § 254(b).

[20] NASUCA 2003 Comments at 3-13, Appendix A – Affidavit of Roger C. Colton ("Colton Affidavit") at 1-6; NASUCA 2007 Comments at 6-7.

[21] NASUCA 2007 Comments at 5-7, quoting *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997)("*1997 Universal Service Order*"); see also Colton Affidavit at 1-6.

[22] 47 C.F.R. § 54.403(a), (b) (Tier 1 and Tier 2 support).

number portability surcharges per FCC regulations.[23] Incumbent local exchange carriers waive the federal USF surcharge for Lifeline customers pursuant to FCC orders.[24] These credits make telephone service more affordable for qualifying low-income households, consistent with federal universal service policy. The FCC has allowed incumbents to increase the federal subscriber line charge based on the assumption that low-income households who qualify for Lifeline will be protected from the increase in the interstate rate.[25]

Yet USTelecom and Embarq now ask the FCC to *not* make telephone service more affordable for low-income households in the 135% to 150% FPG band who do not otherwise qualify for Lifeline based on program participation or the lower income criterion.[26] According to USTelecom, the FCC should refrain from changing the income eligibility criterion for the greater good, so as not to "waste" the money of consumers who ultimately pay to support the federal USF. This position should be rejected: The FCC should not set public policy based on such a distorted view of universal service goals.

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[23] 47 C.F.R. §§ 52.33(a)(1)(i)(C), 54.401(e).

[24] See, e.g. *In the Matter of Access Charge Reform*, Sixth Report and Order, CC Docket Nos. 96-262, et al (rel. May, 31, 2000) ("*CALLS Order*") at ¶¶ 33, 215, 218. In 2001, the FCC increased lifeline support to match the SLC, otherwise "the SLC increases we adopt today would negatively and disproportionately affect low-income subscribers by increasing the cost of basic telephone service." See also *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap ILECs and IXCs*, CC Docket Nos. 00-256, et al, Second Report and Order (2001) ("*MAG Order*") at ¶ 178. "Consistent with the restrictions on the recovery of universal service contributions by price-cap carriers, rate-of-return carriers shall not assess a separate universal service end user charge on Lifeline customers." Id., ¶ 177.

[25] See footnote 24; see also *In the Matter of Petition of AT&T for Waiver of Commission Rules to Treat Certain Local Number Portability Costs as Exogenous Costs Under Section 64.45(d)*, CC Docket No. 95-116, Order (July 10, 2006). The FCC permitted AT&T (formerly SBC) to increase the SLC to collect certain number portability costs but prohibited AT&T from recovering such costs from Lifeline customers or the federal USF. Id. at ¶ 20.

[26] USTelecom Comments at 3; Embarq Comments at 2-4.

The fact that 7.7% of households with income below $20,000 lack telephone service is not grounds for complacency as USTelecom implies. Instead, this level of phonelessness illustrates the ongoing need for Lifeline/Link-Up programs and efforts to improve enrollment and outreach. USTelecom's cursory review of telephone subscribership rates does not address the question of affordable telephone service for households which may have higher income and yet, based on household size, fall at or below 150% of FPG. As set forth in NASUCA's comments, the FCC should increase the income eligibility criterion for the benefit of the 742,000 households who fall in the 135% to 150% of FPG range and do not have telephone service.[27]

The FCC should also adopt the higher income eligibility standard in order to improve Lifeline participation rates. Embarq's position that the higher income criterion does not improve Lifeline participation is without foundation.[28] It is simply not possible, as Embarq implies, to isolate one change in the Pennsylvania Lifeline program and make inferences based on the lack of decrease in Lifeline participation. Since late 2004, Pennsylvania has adopted automatic notification of eligibility,[29] added the National School Free Lunch and income at or below 135% of FPG as eligibility criteria for the statewide Lifeline/Link-Up program and required carriers to recertify eligibility based on a statistically valid sample.[30] Although Lifeline participation had increased in Pennsylvania, the Pennsylvania Public Utility Commission noted in 2005 that "we are

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[27] NASUCA 2007 Comments at 5.

[28] Embarq Comments at 2-4.

[29] 66 Pa.C.S. § 3019(f)(5).

[30] *Re: Lifeline and Link-Up Programs*, Pa. PUC Docket No. M-00051871 (2005), Final Order. Available at www.puc.state.us/PcDocs/541213.doc

still very short of enrolling all consumers who could benefit from the Lifeline credit."[31] Pennsylvania may reevaluate the Pennsylvania Lifeline/Link-Up program if the FCC adopts the higher 150% of FPG income eligibility criterion.[32] Embarq omits all of this information from its comments. Embarq's selective view and negative inference should not be adopted as grounds to set federal Lifeline eligibility standards.

The FCC should not rely on the comments of USTelecom and Embarq, which fail to address the question of affordability of telephone service for households at or below 150% of FPG. They do not speak for the interests of ratepayers and low-income consumers. The FCC should instead heed the comments of NASUCA, state commissions and other public interest parties which support adoption of the higher income criterion to improve the affordability of telephone service for low-income consumers.[33]

C. THE COST OF OPENING LIFELINE/LINK-UP TO ADDITIONAL HOUSEHOLDS CITED BY USTELECOM IS BASED ON OUTDATED INFORMATION

According to USTelecom, the FCC should decline to increase the income eligibility criterion because to do so would impose a $200 million cost on the federal USF and not significantly increase telephone subscribership.[34] USTelecom relies on the $200 million estimate made by FCC Staff in 2004 which, according to USTelecom, has not been contradicted.[35] Clearly, USTelecom has invested little to no effort in reviewing the assumptions underlying the 2004 Staff estimate, nor the comments offered by

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[31] Id. at 19.

[32] Id. at 8.

[33] The Maine Commission also supported adoption of the higher income eligibility standard in comments filed in August 2004 in this further rulemaking.

[34] USTelecom Comments at 2-3.

[35] Id. at 2.

NASUCA in response to the FNPRM in 2004. Had the FCC deemed the 2004 Staff estimate conclusive and sound support for a final policy determination on income eligibility, the FCC would not have issued the FNPRM in April 2004 for comment and sought an update of information in 2007.

As NASUCA explained in 2004, the Staff estimate of the 2005 cost to the federal USF depended on assumptions which no longer held true, even in 2004.[36] Federal and state Lifeline/Link-Up eligibility criteria have not remained static or constant since 2004, quite apart from the FCC's adoption of an income-based criterion.[37] Many state commissions have used the *Lifeline Order* as a guide, but some commissions have already adopted the higher 150% of FPG income eligibility criterion.[38] The 2005-2006 NRRI Survey of state commissions shows that lifeline program changes have been neither limited nor uniformly and rapidly adopted, which are key assumptions underlying the FCC Staff estimate of $200 million in 2005 costs to the USF.[39]

The 2004 Staff estimate of the $200 million cost of adoption of the higher income eligibility standard is simply outdated.[40] Given that some states have already adopted the income eligibility criterion of 150% of FPG for Lifeline/Link-Up, the impact of any newly-qualified Lifeline/Link-Up subscribers is already reflected in the federal USF. This fact is clearly known to USTelecom members such as Embarq, yet USTelecom

[36] NASUCA 2003 Comments at 8-12.

[37] Id.; *see Lifeline Order*, App. K "Lifeline Staff Analysis: Quantifying the effects of adding an income criterion to the Lifeline eligibility criteria" at K-13.

[38] NASUCA 2003 Comments at 8-12; NASUCA 2007 Comments at 9-10. See also Rosenberg and Liu, *State Universal Service Funding Mechanisms: Results of the NRRI's 2005-2006 Survey* (July 2006) at Table 32 ("NRRI Survey").

[39] NRRI Survey at Table 32.

[40] NASUCA 2007 Comments at 9-10; NASUCA 2003 Comments at 7-12; NASUCA 2003 Reply Comments at 1-5.

opposes adoption of the higher income criterion so as not to "waste" $200 million of consumers' money.[41]

USTelecom is concerned that the low-income portion of the USF increased from $750 million to about $820 million since 2004.[42] This growth in the low-income fund is, of course, dwarfed by the growth in the funds that go to carriers, not directly to consumers.[43] Yet low-income households continue to lack telephone service. Even with the FCC's adoption in 2004 of the National School Lunch program as a Lifeline/Link-Up eligibility criterion, the Annie E. Casey Foundation's *Kids Count* report shows that in 2005, 2,440,000 children lived in households at or below 200% of FPG that did not have telephone service.[44] As addressed in the NASUCA 2007 Comments, states have moved to make LIHEAP assistance available to more households with income at or *above* 150% of FPG in recognition of the increased burden high heating and cooling costs place on low-income household budgets.[45]

The FCC can and should take the modest step of increasing the federal Lifeline income eligibility criterion from the current 135% of FPG to 150% of FPG to improve the affordability of telephone service for low-income households which do not have telephone service or may suffer a detriment to maintain telephone service. The FCC should not treat households with similar low incomes and similar needs for affordable telephone service differently under Lifeline eligibility criteria as a way to manage the size

[41] USTelecom Comments at 3.

[42] Id.

[43] Id.

[44] See Annie E. Casey Foundation's *Kids Count*, on line comparison of 2005 data based on U.S. Census Bureau's 2005 American Community Survey. Available through www.kidscount.org/sld/index.jsp?c=3, select "Employment and Income" indicator. This was an increase from 2,226,000 in 2004.

[45] NASUCA 2007 Comments at 7-9.

of the federal USF. Increased costs to the federal USF for Lifeline/Link-Up support is not a negative but a sign that federal universal service policy is being implemented.[46]

IV. RULES GOVERNING ADVERTISEMENT OF THE LIFELINE AND LINKUP PROGRAMS ARE NECESSARY; THOSE RULES SHOULD ENCOMPASS THE WORK OF THE FCC/NARUC/NASUCA TASKFORCE.

TracFone notes:

> the appallingly low level of participation among households who are eligible for Lifeline support under the current criteria. According to Commission data, less than thirty-four percent of the nation's Lifeline-eligible households participate in Lifeline. As low as the national participation rate may be, the participation rates in certain specific states are shockingly low….[47]

This argues for more outreach (more **effective** outreach), and a detailed review of the reasons for low (and high) Lifeline enrollments. NTCA claims that no regulation is necessary because "[c]arriers have a strong financial incentive to advertise the Lifeline/Linkup services."[48] Apparently this "strong incentive" is not very effective in producing customer enrollment.[49]

Yet TracFone does not support adoption of rules governing outreach. Instead TracFone believes that "ETCs should be held accountable for their failure to effectively promote these programs."[50] Yet it is difficult to see how ETCs should be held

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[46] Id. at 9.

[47] TracFone Comments at 4 (footnote omitted); see also NCLC/TLSC Comments at [3]. TracFone makes its statements in the context of urging the Commission to grant its low-income ETC certifications. TracFone Comments at 5. Having granted TracFone a waiver that would allow such certification (id. at 2-3), the Commission should act on TracFone's applications.

[48] NTCA Comments at 1.

[49] NASUCA and its members are understandably skeptical in this area, given the variety of local company attitudes toward their Lifeline customers.

[50] TracFone Comments at 5.

accountable to a duty that is not clearly defined. Enforcement without standards will inevitably lead to litigation and delay.[51]

Embarq says that the current "guidelines" should be maintained, and new rules are not needed.[52] Embarq does not cite to those guidelines. It appears that the only rule regarding Lifeline outreach is 47 C.F.R. § 54.405(b), which requires ETCs to "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service." Hardly an onerous requirement, and hardly one designed to maximize Lifeline enrollment.

Embarq asserts that the current state-focus on outreach should continue.[53] But that does not mean that the Commission should not adopt a minimum set of expectations for the states, in order to increase the effectiveness of this **federal** program. Similarly, Qwest states that "outreach for these government-created programs will be most effective when it done through the public agencies that already have contacts with the consumers who are eligible for these programs."[54] This is true, but that is no reason not to establish minimum standards for outreach, including advertising,[55] along with other methods, including collaboration.[56] NASUCA agrees that "the Commission should look for ways to encourage automatic enrollment … and to assist states in the development of uniform

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[51] Which is not to say that enforcement is easy even with rules.

[52] Embarq Comments at 4.

[53] Id. at 5.

[54] Qwest Comments at 1.

[55] See id.

[56] Id. at 2. Particularly if the Commission considers funding "cooperative outreach and/or Lifeline enrollment assistance at the government agency level." Id. at 5. USTelecom suggests that the Commission consider "payment of outreach expenses to carriers on a flat-rate basis or percentage basis to cover administrative and advertising costs." USTelecom Comments at 5. That also would require rules. Perhaps the Commission should explore pilot programs for both of these proposals.

program applications and outreach advertising"[57] but such programs need to have rules as their basis.

Examples of such rules are suggested by NCLC/TLSC: a requirement that ETCs provide information about Lifeline and Link-Up to residential consumers when they sign up for service; and a requirement that where the ETC does general marketing in a language other than English, "Lifeline and Link-Up notices, outreach materials and customer service representatives fluent in that language who are able to provide information on the Lifeline program" also be available.[58] Such minimum requirements would not prevent states and ETCs from making additional efforts based on the needs of local markets.

USTelecom asserts that "mandating various forms of Lifeline outreach" will not "positively impact subscriber rates among low-income consumers."[59] In the first place, as mentioned above, increasing subscribership levels among low-income consumers is not the only purpose of Lifeline; those purposes include assisting current low-income subscribers to maintain their service. Broadening the required list of Lifeline outreach efforts will increase consumers' knowledge of the program; that should result in more customers subscribing to the program. NASUCA does agree with USTelecom, however, that the rules should be flexible.[60]

NTCA seeks special exemptions for rural telephone companies.[61] Such an exemption would mean that **the customers of** rural telephone companies are less

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[57] Qwest Comments at 2.

[58] NCLC/TLSC Comments at [6-7].

[59] USTelecom Comments at 1.

[60] See id. at 4.

[61] NTCA Comments at 3.

deserving of receiving information about Lifeline than their counterparts who are customers of non-rural telephone companies. That would be wrong. It should be recalled that the so-called non-rural telephone companies also serve vast expanses of rural territory. As for NTCA's claim that "[r]ural carriers usually serve vast territories"[62] this is simply untrue in most states.[63] Rules requiring outreach in addition to advertising[64] will more effectively spread the word about Lifeline and Link-Up.

In addition, even if the Commission does not adopt minimum requirements for the states, the FCC should require ETCs to report their Lifeline outreach activities and related expenditures.[65] In that way, it can be known whether the carriers and state commissions "actively promote and coordinate Lifeline outreach and advertising specific to the characteristics of the Lifeline-eligible population and the public assistance agency structure in each state."[66] This can also be a continuing source of information on best practices for Lifeline outreach.

V. CONCLUSION

The Commission should adopt NASUCA's recommendations discussed here and in the initial comments on adopting the 150% of FPG income criterion, and on adopting rules regarding outreach marketing and reporting requirements for ETCs. The Commission should also adopt NASUCA's recommendations in the initial comments on clarifying the definition of income, suspending the recertification process pending

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[62] Id.

[63] For an extreme example, one would be hard-pressed to classify the territories of any of Iowa's more than 150 rural telephone companies as "vast."

[64] Id. at 4.

[65] See NCLC/TSLC Comments at [6].

[66] Embarq Comments at 5.

improvements to that process, and considering support for CVM. These measures will improve the Lifeline and Link-Up programs, and bring the Commission and consumers nationwide closer to meeting the universal service goals of the 1996 Telecommunications Act.

Respectfully submitted,

Barrett C. Sheridan
Assistant Consumer Advocate
Pennsylvania Office of Consumer Advocate
555 Walnut St., Forum Pl., 5th Fl.
Harrisburg, PA 17101-1923
717-783-5048

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
614-466-8574

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
301-589-6313