

modification of the definition of services supported by the Universal Service Fund. Specifically, the *2007 Recommended Decision* states:

The Joint Board now recommends that the nation's communications goals include achieving universal availability of mobility services (defined as wireless voice), universal availability of broadband Internet services, and voice services at affordable and comparable rates for all rural and non-rural areas.<sup>180</sup>

73. On March 16, 2010, the Commission released a Joint Statement on Broadband stating that “[t]he nearly \$9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.”<sup>181</sup> In addition, the National Broadband Plan which was delivered to Congress the same day, recommended that the Commission reform the Universal Service Fund, while aiming to keep the overall size of the Fund close to current levels, to support the provision of both voice and broadband communications in areas of the nation that would be unserved without such support or that depend on universal service support for the maintenance of such service. Such proposed reform was based, in part, on the Joint Board's *2007 Recommended Decision* to expand universal service support to broadband. Indeed, the Commission recently adopted a Notice of Proposed Rulemaking to create a Mobility Fund, which will seek to help overcome cost barriers to expanding advanced mobile wireless services, a recommendation in the Joint Board's *2007 Recommended Decision* which the National Broadband Plan endorsed.<sup>182</sup> Moreover, in April, the Commission initiated a Notice of Inquiry and Notice of Proposed Rulemaking to begin to develop a detailed analytic foundation necessary for reforming the Universal Service Fund.<sup>183</sup> Below the Joint Board recommends that the Commission adopt an additional principle, pursuant to its authority under section 254(b)(7), specifically finding that universal service support should be directed where possible to networks that provide both advanced and voice services. Moreover, the Joint Board identifies specific issues the Commission should fully consider and resolve prior to reforming the Universal Service Fund.

## B. Discussion

74. *Broadband issues.* The Joint Board must start its discussion of broadband issues by pointing out the obvious: “broadband” is not currently included in the definition of either “universal service” or “Lifeline.”<sup>184</sup> The Joint Board must also recognize that, nevertheless, the National Broadband Plan recommends support for broadband, as a replacement over time for existing legacy High Cost

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23 FCC Rcd 1531 (2008).

<sup>180</sup> *2007 Recommended Decision*, 22 FCC Rcd at 20478, para. 4.

<sup>181</sup> *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, 25 FCC Rcd 3420, 3421 (2010).

<sup>182</sup> *In re Universal Service Reform Mobility Fund*, WT Docket No. 10-208; Notice of Proposed Rulemaking, FCC 10-182 (rel. Oct. 14, 2010).

<sup>183</sup> See *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010).

<sup>184</sup> 47 C.F.R. § 54.101(a); 47 C.F.R. § 54.401(a)(3).

support.<sup>185</sup> Furthermore, the National Broadband Plan included recommendations for the Commission to facilitate broadband pilot programs for low-income customers, and as noted above, the establishment of a Mobility Fund to support infrastructure for mobility services in those areas that are not currently served.<sup>186</sup> These recommendations were based, in part, upon the Joint Board's *2007 Recommended Decision* that recognized the importance of broadband and mobility services for our nation.

75. In the almost three years that have passed since the Joint Board's *2007 Recommended Decision*, the importance of broadband services to consumers and our national economy has grown. In 2009, Congress directed the Commission to develop a National Broadband Plan to ensure that every American has "access to broadband capability."<sup>187</sup> The Joint Board believes that it is appropriate for the Universal Service Fund to support networks that provide broadband service, in addition to voice service. Thus, the Joint Board proposes that the Commission adopt an additional principle of universal service, pursuant to its authority under section 254(b)(7) of the Act. The Commission should specifically find that universal service support should be directed where possible to networks that provide advanced services, as well as voice services. Such a principle is consistent with section 254(b)(3) of the Communications Act. Historically, in light of the goals of ensuring that universal service support is "specific, predictable and sufficient," universal service support for high-cost areas has been targeted to support networks that deliver basic voice services, rather than networks that provide both advanced (*i.e.*, broadband) services and voice services, consistent with other universal service support principles.<sup>188</sup> This has been the case despite Congress's clear recognition of the need to promote the continued development of the Internet,<sup>189</sup> and to accelerate deployment of advanced telecommunications capability by, among other things, removing barriers to infrastructure investment. The Joint Board believes that universal service funding should recognize the importance of advanced services as well as voice services to consumers, including low-income consumers. An additional principle that emphasizes Congress' and the commissioners' commitment to providing access to advanced services, including broadband service, would serve the public interest.

76. Although the *Referral Order* requested that the Joint Board consider whether the extension of the Lifeline program to include broadband services would alter its recommendations in this Recommended Decision, it is difficult to consider whether any of the instant recommendations should be modified prior to the appropriate consideration of the broadband services that might be included in such an extension of the low-income program. Indeed, some members of the Joint Board would have preferred a more extensive referral on these issues, and at least one commenter noted that the Joint Board should have a more extensive role in the consideration of extending the Universal Service Fund's support to broadband.<sup>190</sup> At the same time, the Joint Board recognizes the need to ensure continued support for existing voice networks.

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<sup>185</sup> See, e.g., NBP Recommendations 8.6 at 147 and 8.13 at 150.

<sup>186</sup> See, e.g., NBP Recommendations 8.6 at 148 and 8.15 at 151; see also *Wireline Competition Bureau Announces June 23, 2010 Roundtable Discussion to Explore Broadband Pilot Programs for Low-Income Consumers*, Public Notice, 25 FCC Rcd 7305 (2010).

<sup>187</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

<sup>188</sup> 47 C.F.R. §§ 254(b)(2)-(3).

<sup>189</sup> See, e.g., 47 U.S.C. §230(b).

<sup>190</sup> The PaPUC notes that the referral's narrow focus on Lifeline and the low-income program detracts from the need to have the Joint Board, a board established pursuant to federal law, comprehensively consider major issues that are related to the National Broadband Plan. PaPUC Reply Comments at 3.

77. Neither the Commission nor this Joint Board can adequately address potential changes to create a Broadband Lifeline plan without initially determining the definition of the broadband services or functionalities to be supported, sources of funding, the funding and contribution rules, and the overall approach to using low-income support to achieve universal broadband service. In fact, the Joint Board would like to emphasize that, as the Commission moves forward with considering the National Broadband Plan's recommendations on these and other universal service related issues, there are many practical issues to be considered. They include, but are not necessarily limited to:

- Conceptually, how should "broadband" eligible for federal USF Lifeline support be defined and measured, including consideration of typical (actual) versus advertised upload and download speeds;
- Technology type and technology neutral funding mechanisms;
- Price, affordability, subscribership, and penetration;
- Broadband usage, when that usage is subject to some sort of data or usage cap;
- How best to ensure availability of broadband service in unserved and/or underserved areas;
- Terms and conditions for data plans that include some form of broadband Internet access or other broadband service; and
- Once broadband is defined and a determination is made as to what to support and how to provide that support, it would still be necessary to determine whether the Lifeline discount would be applied as a percentage or a fixed dollar discount off of some currently undefined price, or some other measure.

78. Furthermore, given the lack of a definition for the term "broadband" as a supported service, and how such service would be calculated and distributed, it would be extremely difficult, if not impossible, to comply with even the Commission's *de minimis* broadband-related requests that were included in the *Referral Order*.<sup>191</sup> In fact, NASUCA points out in its comments that "it is difficult to comment on 'broadband Lifeline' because the details have not been fleshed out, adding further that reclassification is needed in order to ensure the legality of broadband Lifeline support."<sup>192</sup> The sheer number of issues relevant to defining broadband creates a great deal of uncertainty. This uncertainty is a significant issue, in and of itself, because it makes it impossible to predict the impact of adding support for broadband or the recommendations for possible changes to eligibility, verification, and outreach, or to measure the impact of such changes to the overall size of the fund. However, as the Commission moves forward on the consideration of this *Recommended Decision*, the Joint Board emphasizes that the Commission needs to consider these broadband issues, including the various cost concepts that will be relied upon by USF policymakers, in recommending appropriate expansion of existing universal service funding to include broadband services.

79. *Wireless issues.* In addition, the Joint Board and numerous commenters express concern about the impact on the Universal Service Fund of designation of prepaid wireless carriers to only offer Lifeline service.<sup>193</sup> In particular, the Joint Board supports the further examination of those Lifeline

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<sup>191</sup> 2010 *Referral Order*, 25 FCC Rcd at 5088, 5089, 5091, paras. 24, 30, 35.

<sup>192</sup> NASUCA Reply Comments at 18.

<sup>193</sup> See Consumer Groups Comments at 14-15, 27; NASUCA Comments at 3-4; NASUCA Reply Comments at 4; PaPUC Reply Comments at 7.

offerings that are offered at no cost to the subscriber. The relevant decisions to expand USF Lifeline funding to include prepaid wireless Lifeline-only carriers were made largely by the FCC in the context of various forbearance and waiver petitions and without advice or consultation from the Joint Board.<sup>194</sup> The most recent statistics for Lifeline funding show rapid Lifeline funding growth from approximately \$1.0 billion in 2009 to a projected \$1.4 billion in 2010.<sup>195</sup> Our concerns include the implications of demand for a service or product that is essentially free. When the Commission last considered the issue of free service for Lifeline customers, it was determined that the local residential rate charged to Lifeline-eligible Tribal members should not fall below a monthly minimum of \$1.00, even if the Lifeline credit exceeded the amount of their bill for local service.<sup>196</sup> The Commission should develop a record, and determine whether this requirement for a minimum monthly rate should be made applicable to all Lifeline subscribers and not just to eligible Tribal members.

80. In addition, numerous concerns have been raised regarding prepaid wireless Lifeline issues relating to certification and verification practices, and procedures and the need for minimum standards of service for Lifeline recipients that guarantee fair value for consumers who benefit from Lifeline funding.

81. Consumer Groups states, "There is an urgent need for the Commission to undertake a very detailed look at the pre-paid wireless Lifeline product and adopt basic minimum standards to ensure adequate value to the Lifeline consumers and to the ratepayers who subsidize the Universal Service Fund."<sup>197</sup> NASUCA, in its comments that are also supported by the Pennsylvania PUC,<sup>198</sup> CVM<sup>199</sup> and Consumer Groups,<sup>200</sup> points out that the Commission should have referred the issue of adoption of minimum standards for prepaid wireless Lifeline services to the Joint Board.<sup>201</sup> NASUCA adopted a resolution calling for reform of the Lifeline program in June 2010 to establish minimum standards of service for prepaid wireless Lifeline, ensuring adequate value to prepaid Lifeline wireless customers and a heightened level of scrutiny of federal default rules.<sup>202</sup>

82. In addition to concerns expressed as to minimum service standards, others noted that there were other current issues relating to certification and verification of eligibility by prepaid wireless Lifeline providers. For example, the Massachusetts DTC notes a recent audit of TracFone Lifeline

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<sup>194</sup> See, e.g., *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*); *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*) (designating TracFone as an ETC for its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia).

<sup>195</sup> See Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for Fourth Quarter 2010* (filed Aug. 2, 2010) (*4Q2010 Fund Size Projection Filing*) at 16-17.

<sup>196</sup> See 47 C.F.R. § 54.403(a)(4)(i).

<sup>197</sup> Consumer Groups Comments at 37.

<sup>198</sup> PaPUC Reply Comments at 7.

<sup>199</sup> CVM Comments at 2.

<sup>200</sup> Consumer Groups Reply Comments at 3.

<sup>201</sup> NASUCA Comments at 2.

<sup>202</sup> *Id.* at 4-5.

customers, which revealed that only 51 percent of those sampled could be recertified for Lifeline eligibility.<sup>203</sup> In the second and third quarters of 2009, 71,000 prepaid wireless customers were removed from the Florida Lifeline rolls through special verification procedures that have been implemented in Florida. Those procedures include dropping the Lifeline credit when a prepaid wireless phone fails to record any usage over a 60-day period.<sup>204</sup>

83. The Commission must consider all of these issues because they now have the potential to impact the viability of the entire fund, including achievement of our affordability mandates. It is not our intention through this recommendation to prejudge any of the concerns enumerated above since the Joint Board is clearly in support of the need for low-income support to achieve the goals of universal service. The Joint Board simply needs to express our concern and need for a thorough review as guardians of the significant federal and state dollars directed toward this purpose.

84. *Fund size.* Except for the impact of any proposed changes in eligibility that may be recommended by the Joint Board and then approved by the Commission, the issue of overall fund size is not a part of this referral. The Commission is well aware that the low-income fund grew by more than \$500 million over just the last two years -- from a level of \$822 million in 2008 to an estimated \$1.4 billion in 2010.<sup>205</sup> If this average rate of growth of 30 percent per year continues, the low-income fund will reach \$2 billion within the next two years with no major changes in the existing program, and without even considering the potential unknown impact of Lifeline support for broadband customers. Citing the recent growth in the low-income fund, Verizon asserts that there is no demonstrable need to expand the eligibility for Lifeline or implement proposals that would make the Lifeline program bigger or more complicated.<sup>206</sup>

85. Modifying the definition of supported services to include broadband could, depending on the details of implementation, have significant implications on the potential overall federal USF fund size as well as the affordability of all services—both issues having considerable impact on consumers in general and low-income consumers in particular. The increased USF fund size also has interlinked implications that would affect the overall reform of both universal service and the reform of the crucial area of intercarrier compensation. The instant Lifeline referral excludes considerations of overall fund size or funding sources. If any single body has direct responsibility for properly presenting to the Commission needed changes in Lifeline programs to achieve the proper balance with the goals of universal service and the Telecommunications Act of 1996, then it must be the Federal-State Joint Board for Universal Service that includes appropriate representation for federal, state, and consumer stakeholders.

86. Other major factors that would play a significant role in determining the size of the fund could include some or all of the following (in no particular rank order):

- Modifying eligibility requirements over time;
- Violations of the “one per household” rule;
- Automatically enrolling or otherwise significantly increasing take rates for customers

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<sup>203</sup> MDTC Comments at, Appendix A, 13-14.

<sup>204</sup> Bob Casey, Presentation to NARUC 2010 Winter Meetings at 18.

<sup>205</sup> See USAC 4Q2010 Fund Size Projection Filing at 16-17 and Appendix LI07 (Low Income Support Distributed by State in 2007 and through 1Q2010).

<sup>206</sup> Verizon Reply Comments at 5-7.

deemed eligible;

- Adding support for broadband services; and
- Increasing, or even just retaining, existing average per-state levels of support for prepaid wireless providers, while more and more states certify prepaid wireless providers as ETCs.

87. California, the largest single state recipient of Lifeline funding, submitted significant comments in this docket regarding state experiences with the issues relating to consumer eligibility. The California PUC makes note of the extensive changes in its Lifeline program in recent years, including income documentation, a third party contract awarded to NECA (now Solix, Inc.) to establish procedures to ensure efficient processing of consumer applications and subsequent verification of eligibility, establishment of an interactive enrollment and verification of eligibility website, and electronic interfaces with carriers. The California procedures resulted in a significant reduction from the prior California Lifeline expenditures that were based primarily on self-certification.<sup>207</sup>

88. While estimates of fund size impacts resulting from specific modifications of existing rules may be relatively simple to develop, the overall fund impact from all of the proposals on the table requires a global view that exceeds the four corners of the current referral.

89. NASUCA believes that the low-income fund growth demands a more fundamental re-examination that goes beyond the mere review of the eligibility, verification, and outreach mechanisms. NASUCA references its own recently adopted resolution and brings forward the following issues with the advice that the Joint Board should recommend Commission action in these areas:<sup>208</sup>

- The requirement for carriers to offer discounted basic service while permitting Lifeline customers to purchase packages and bundles, and requiring carriers to apply the full federal Lifeline discount and any applicable state Lifeline discount to basic local service and to the price of any service package containing basic local service that they offer;
- Ensuring that Lifeline customers with packages are not disconnected at a significantly greater frequency than Lifeline customers without packages;
- Requiring any forbearance petition or petition for low-income ETC designation to include a complete description of the service to be offered;
- Considering establishing minimum standards of service for prepaid wireless Lifeline service that would apply to all prepaid wireless Lifeline services, facilities-based or not, and satisfy the public interest by providing adequate value for Lifeline recipients and comply with the universal service mandates of the Act;
- Adopting a minimum standard to ensure adequate value to prepaid Lifeline wireless customers from the service (i.e., minimum number of monthly minutes, maximum price for additional minutes and maximum price for text messages, etc.);
- A continued evaluation of appropriate federal default rules for ongoing support when there is no monthly billing, carrier contributions to state funds, quality of service obligations, double billing, protection from fraud, recertification, and audits; and
- Investigating whether the Lifeline discount should no longer be taken off the retail rate, but off some measure of wholesale or forward-looking cost, especially where

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<sup>207</sup> CPUC Comments at 3-7.

<sup>208</sup> NASUCA Comments at 4-5.

the carrier's services are not price-regulated.

90. NASUCA also observes that the low-income portion of the federal USF has grown over time and that it has the potential of increasing to \$2.5 billion.<sup>209</sup> NASUCA points out that the Commission placed a state-by-state cap on the high-cost funding for competitive ETCs where a similar growth had been observed. NASUCA does not deem such an action to be appropriate for the low-income fund. Fund size issues are policy matters that the Commission must deal with up front, preferably with the advice of the Joint Board, prior to embarking on new initiatives.

91. The Joint Board asks the FCC to develop a complete record on, and act upon, all of these issues as it moves forward in the future reform of the federal universal service funding mechanisms.

#### VIII. RECOMMENDING CLAUSE

92. For the reasons discussed herein, the Federal-State Joint Board on Universal Service, pursuant to sections 254(A)(1) and 410(c) of the Communications Act of 1934 as amended, recommends that the Commission adopt the recommendations set forth herein concerning the Universal Service Fund low-income programs.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

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<sup>209</sup> NASUCA Comments at 3-4, and n. 10 (citing Billy Jack Gregg, "Determining the Potential Size of the Current USF Low-Income Fund and a Proposal to Mitigate the Impact of Adding Broadband as a Supported Service," Universal Consulting (February 2010)).

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN  
APPROVING IN PART, CONCURRING IN PART**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;  
Lifeline and Link Up, WC Docket No. 03-109*

Six months ago the Commission requested that the Federal-State Joint Board on Universal Service (the "Joint Board") make recommendations to improve the Lifeline and Link Up programs, which serve to ensure that low-income consumers can obtain and maintain telephone service at affordable rates. Without this program, many consumers would not have phone service and as a result, would be disconnected and further isolated from participating in our society. The recommendations we make today are essential for improving the program, including making it more efficient so that our universal service dollars can be stretched even further.

With respect to its eligibility and verification recommendations, the Joint Board has identified certain issues that warrant additional comment so that we can fully understand the impact of our recommendations. It is prudent for the Commission to proceed in a judicious manner, fully weighing these issues prior to modifying its eligibility and verification rules so that they are uniformly applied across the states. Nonetheless, I believe that the Commission and states must work together to minimize waste, fraud and abuse in the program, and our rules should be adjusted as necessary to ensure that only eligible consumers are participating in the program. To that end, the 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. Such a database also has the potential to allow the program to better address and serve those populations living in group housing or in homeless shelters. I believe a collaborative process by all of the interested parties, including industry, consumer advocates, and federal and state governments, could lead to a more efficient program that better serves low-income consumers.

I am pleased that this Joint Board is building upon the work of the previous Joint Board in recommending that the Commission adopt an additional universal service principle pursuant to Section 254(b)(7), which states that support from the Universal Service Fund should be directed, where possible, to networks that are providing both broadband and voice services. Broadband has become an essential service, just like telephone service. As such, it is important that the limited resources available through the Fund be used to support networks that provide both broadband and voice services. The Commission should take up this issue and adopt this new principle in its upcoming consideration of the Universal Service Fund reform proceeding.

As an essential service, all households must not only have the ability to access broadband, they also need the ability to purchase it. Yet, we know that less than half of low-income Americans have subscribed to broadband. In addition, one-third of Americans who have not purchased broadband say they have not done so due to the expense of obtaining such service. As such, I believe the Commission should address low-income consumers' ability to use their Lifeline discounts for services or packages that include voice and broadband, as recommended in the National Broadband Plan, as soon as possible.

During this proceeding, we heard some concerns from states and consumer advocates about prepaid wireless Lifeline services, and in particular, the need to consider minimum service standards in order to protect consumers. The number of competitive service offerings for Lifeline products have increased, and in general, I believe that this is a positive development for low-income consumers. Such consumers can now choose from a variety of service offerings, and they can pick the one that best fits their needs. However, I am concerned that Lifeline consumers may not have all of the information they

need to compare and choose between Lifeline offerings by various providers. Thus, the Commission should consider whether a comparative guide for Lifeline consumers would be a useful tool. We could encourage the states to offer such guides, and Lifeline providers could be encouraged to submit the description of their Lifeline products to the states for inclusion in such guides. With respect to minimum service standards for Lifeline products, the Commission must be careful not to ignore the universal service principles of technological and competitive neutrality. The Commission should review whether the current state of competition for Lifeline products is insufficient to protect consumers, and then consider whether a minimum service standard should be applied for all Lifeline products.

Collaboration has been the engine of this Joint Board. While we may not see eye to eye on every detail in the proceeding, we all agree that the Joint Board's work is critical for the Universal Service Fund's success in achieving affordable telephone service for low-income consumers. My fellow members on the Joint Board and both the federal and state staffs have worked tirelessly to complete this Recommended Decision within the timeframe originally requested by the Commission. I have been told that six months for a Recommended Decision is incredibly fast for the Joint Board. I want to express my gratitude for *everyone's* tremendous efforts to work together as a team to accomplish our mission, and to do so on time. You each have taken on the role to work on the Joint Board, in addition to your full-time jobs. I know you often did your Joint Board work at night and on weekends. Thank you for your personal sacrifices and excellent contributions to the Joint Board's recommendations.

I have enjoyed collaborating and working with State Chairman Baum and my fellow Joint Board members Commissioner Copps, Commissioner Baker, Commissioner Landis, Board Member Burke, Chairman Cawley, and Senior Assistant Attorney General ffitich. You each have uniquely contributed to this Decision. Thank you for your dedication and commitment to public service.

In particular, I want to acknowledge and thank the Joint Board's staff. Our federal and state staff leads, Irene Flannery and Kay Marinos, respectively, provided excellent leadership on the issues before us and kept us on task. In addition, our team leaders conducted outstanding work and helped guide the analysis and recommendations on their respective issues with their staff teams—Beth McCarthy and Christine Aarnes on Eligibility, Rebekah Bina and Natelle Dietrich on Verification, and Jamie Susskind and Kerri DeYoung on Outreach. In addition, we would not have been able to accomplish the task before us without the participation and contribution of each and every staff member to whom I am also grateful. They are Karl Henry, George Young, Labros Pilalis, Kathy Hagans, Denise Parrish, Earl Poucher, Peter Pescosolido, John Ridgway, Robert Haga, Vicki Helfrich, Brad Ramsay, Joel Shifman, Lori Kenyon, Jing Liu, Angie Kronenberg, Jennifer Schneider, Margaret McCarthy, Christi Shewman, Brad Gillen, Sharon Gillett, Carol Matthey, Alex Minard, Patrick Halley, Lisa Gelb, Trent Harkrader, Cindy Spiers, Robert (Beau) Finley, Kimberly Scardino, and Charles Tyler.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS  
APPROVING IN PART, CONCURRING IN PART**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;  
Lifeline and Link Up, WC Docket No. 03-109*

In today's Decision, the Joint Board takes some important steps to move us closer to our national goal of affordable access for all to the nation's communications networks by strengthening the Lifeline and Link-Up programs. On the heels of the wide-ranging and inclusive process that the FCC conducted to formulate the National Broadband Plan, I am proud to have had the opportunity to work again with this dedicated group of state and federal colleagues on the Joint Board whose hard work has produced this Decision. I particularly want to commend the leadership of the Joint Board, Joint Board Chair Mignon Clyburn and State Joint Board Chair Ray Baum, for all the effort they put into forging this document and managing the process, and all of the federal and state Commissioners whose input has been invaluable. Of course, our work would have been impossible without the long hours and excellent insight of all the federal and state staff. Collaboration and dialogue between federal and state partners in reform can and must continue as we move ahead to bring our Universal Service Fund and the intercarrier compensation system into the 21<sup>st</sup> century broadband world.

The principle of universal service – that all Americans, no matter who they are or where they live, should have access to reasonably comparable service at reasonably comparable rates – is a cornerstone of federal communications policy. The Lifeline and Link-Up programs help us meet that goal by getting and keeping low-income consumers connected. Since the FCC established the Lifeline program, telephone penetration rates for low-income households have increased from 80.1% to 89.7%. But what those statistics tell us is that millions of Americans remain without access to basic telephone service today.

I support the recommendations we make today that have the potential to increase participation in the Lifeline and Link-Up programs, in particular adopting mandatory outreach requirements for carriers participating in the programs. As I have said before, the potential of the low-income support programs is in large part linked with the success of our outreach efforts. We can build on the success that individual states have had with automatic enrollment when families sign up for other assistance programs by recommending it here as a best practice to other states. I believe that the information we could obtain by requiring all eligible carriers to submit their verification data to the Commission, USAC, and states would help us strengthen the impact of the low-income programs as well. At a time when the economic climate has left many American families in dire straits, I hope we will seriously consider raising the income eligibility criteria for consumers to 150% of the federal poverty guidelines. This could be a powerful tool as we renew our focus on the stubborn and persistent percentage of unconnected low-income Americans. I realize this raises important questions that must be addressed but the fact is our current economic distress has left many more of our citizens in need and they could benefit from this action.

We should also consider with some precision the extent to which prepaid wireless Lifeline service has helped the program achieve its mission, but I concur in part out of concern for isolating a particular technology and service plan in this Decision. I believe that those concerns raised here, especially in connection with the size of the Universal Service Fund writ large are appropriately examined in the context of comprehensive reform.

Finally, the Joint Board is once again expressing its support for broadband to be eligible for Universal Service. Since the last time the Joint Board took up this issue in 2007, the support – and need – for that change has only grown stronger. I would simply note here that the need for Universal Service support for broadband is one of many reasons I continue to urge Title II reclassification and our Decision

today does nothing to temper my support for that course of action. That said, I wholeheartedly support this renewed recommendation to add support for broadband as a Universal Service principle. As technology evolves, so too must the policies designed to help us achieve our constant goal: ensuring that all Americans, including low-income consumers, have access to services at just, reasonable, and affordable rates.

**STATEMENT OF  
COMMISSIONER MEREDITH ATTWELL BAKER**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;  
Lifeline and Link Up, WC Docket No. 03-109*

The Lifeline and Link Up programs have been critical tools to providing low-income Americans with the means to afford basic telephone service and to connect to jobs, schools, and critical 911 services. I support the Joint Board's continued efforts to improve the administration and operation of these low-income programs and to ensure their long-term sustainability.

The low-income programs have almost doubled in size in the past five years from approximately \$800 million in 2005 to a projected \$1.4 billion this year. This increase is a positive indicator of the programs' success in connecting low-income households, but it is also raises important questions about the programs' overall solvency and the risk of waste, fraud, and abuse. The low-income programs lack a central enrollment, verification, and audit functionality inhibiting the ability of the FCC and states to conduct needed oversight and program management.

The Recommended Decision focuses properly on these challenges within the current system and moves towards a more uniform and standardized structure in a manner respectful of our partner states' own programs and statutory provisions. One proposal in particular that merits additional study is the potential establishment of a national database for certification and verification. The Joint Board's overall focus on operational considerations is timely: we must ensure that we have stable programs both financially and operationally before we consider adding the complexity and cost of broadband support to our universal service program.

I am grateful that the Joint Board highlighted critical questions about overall fund size and the inherent challenges of extending universal service support to broadband services. Moving forward, the Joint Board has also provided clear guidance to the Commission as to our legal ability to fund broadband within our existing statutory authority. I support the recommendation to adopt an additional universal service principle, pursuant to section 254(b)(7), to target support to networks that provide advanced and voice services. This is an important step, particularly when coupled with the Joint Board's 2007 recommendation to include broadband as a supported service. I appreciate the efforts of both federal and state staff and the willingness of my colleagues on the Joint Board to work towards a consensus approach to shape the future of these important programs.

**STATEMENT OF  
CHAIRMAN RAY BAUM  
CONCURRING IN PART, DISSENTING IN PART**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;  
Lifeline and Link Up, WC Docket No. 03-109*

In 2007, the Joint Board took a fresh look at the high-cost component of the federal universal service fund and adopted several guiding principles. Among those principles were cost control, accountability, and state participation. Today, the Joint Board is focusing needed attention on the low-income fund and I believe the same principles should be applied here.

As the high-cost fund spiraled ever higher, the Joint Board recommended, and the FCC adopted, a cap on the amount of support available to competitive providers. Today it is the low-income fund's alarming growth rate that demands attention. In the past two years, the low-income fund has increased at an annualized rate of 30%. Left unchecked, the fund will easily reach \$2 billion within the next two years. To date, much of the attention given to the low-income program has been focused on increasing participation rates. In this referral, we were asked to consider widening eligibility requirements by making all states follow federal eligibility requirements as a minimum and by expanding the qualifying income levels. Given the recent efforts to relax the low-income fund requirements, and the stated desire to transition support to broadband services, it may be time to ask whether the program has sufficiently met its goals of enabling universal service. FCC data shows that 95.7 percent of all households in the country have phone service. Among low-income households, 90.4 percent have phone service, up from 80 percent when Lifeline was first established in 1985. Even among households with income under \$5000, 88 percent have phone service available. Rather than adopting less stringent income eligibility standards or forcing states to adopt expanded eligibility requirements, we should be focusing our efforts on determining why those customers who are currently eligible for support have chosen not to seek Lifeline service, and how to remove barriers to participation for eligible customers.

The tremendous growth rate of the low-income fund can be attributed to the FCC's granting of forbearance to wireless resellers, and the designation of new ETCs for the sole purpose of obtaining low-income support funds. Several of these ETCs offer prepaid wireless Lifeline services at no cost to the low-income consumer. This business model has arguably been successful in increasing Lifeline program participation rates among eligible low-income consumers. However, several states have reported that a significant number (nearly half in some cases) of the Lifeline customers of these new participants are not eligible to receive support. Providing public support to ineligible customers represents a waste of public support funds and is unacceptable. This waste not only harms the customers who pay into the low-income fund, but potentially denies needed support for those who are truly eligible. We must ensure there is accountability for those who benefit from the low-income fund.

I am disappointed that we did not offer specific recommendations for tougher eligibility verification standards, to be implemented now, to stem the waste, fraud and abuse that appears to be occurring. Taking more comments on the subject only prolongs the period before action will be taken. Meanwhile, the waste of support funds will likely continue. We should require that eligibility be based on participation in qualifying programs, and not on the household's income alone. We must maximize the amount of support funds that go to eligible low-income consumers and make sure that those customers are receiving those services from providers on just and reasonable terms that represent an efficient use of ratepayer dollars. I urge the Commission to act quickly and implement the measures necessary to stem this tide. States have taken the lead role in investigating and addressing these problems. The FCC must do the same and be forthcoming with the data necessary to determine whether the problems lie with all carriers, or just a very few.

The third guiding principle - state participation - could yield a large part of the solution. States such as California, Florida, Oregon, and others have been on the forefront of the battle against fraud, waste and abuse and ensuring only eligible consumers receive Lifeline support. Even if a national database were to be constructed to minimize such problems, state involvement would still be key to determining individual consumers' eligibility. While such a database would significantly decrease administrative costs for the carriers, it could not be successfully implemented without the efforts and diligence of the states where the benefiting consumers reside. Furthermore, the majority of states already provide matching state funds for Lifeline customers and therefore have a vested interest in the integrity of their funds and the welfare of their state residents. A partnership between the FCC and the states is the best way to ensure the integrity of the program. In states that are willing and capable of reviewing eligibility requirements, the FCC should be willing to pay its fair share of the costs. In states that cannot provide this assistance, the FCC should take reasonable steps to protect against waste, fraud, and abuse of the program.

In short, at this juncture, the Commission should focus on how to minimize the fraud, waste, and abuse in the current system in order to free up funds for those who are eligible to receive support, and to make funds available for the transition to broadband services without increasing the current funding level for the overall universal service fund.

More particularly, I concur in the concerns raised by Commissioner Landis in his separate statement as it relates to the potential impact of the growth of the low-income portion of the fund on the amount of support available to carriers that currently serve high cost rural areas and their customers under the high cost portion of the fund, as well as the other host of issues he raises that if not handled properly could hinder support of broadband deployment in those high cost areas. I also join in Commissioner Cawley's comments concerning the need to manage the impacts on the over-all size of the fund and the need for clarity in the regulatory treatment of broadband. Finally, I join in Commissioner Burke's separate statement in its entirety, and more particularly, as it relates to the need by the FCC to avoid creating a digital divide between urban and rural America.

**STATEMENT OF  
COMMISSIONER LARRY S. LANDIS  
CONCURRING IN PART, DISSENTING IN PART**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;  
Lifeline and Link Up, WC Docket No. 03-109*

While the Recommended Decision that is issued today has much to commend it, at least two aspects of the underlying Lifeline referral need to be further addressed: The absence of a clearly defined problem with regard to existing eligibility, verification, and outreach rules and procedures; and the absence of metrics or standards for determining when we have achieved success in solving those problems.

The underlying Lifeline referral (and, hence, the Recommended Decision) did not arise in a vacuum. That referral can only be understood as an extension of, and largely integrated with, the National Broadband Plan ("NBP") and related FCC documents, despite the fact that the NBP is intended as more road map than detailed policy document. This tight integration with the NBP has several important consequences. The potential consequences for RLECs and mid-size LECs is considerable, because the NBP does not confront either their important role in meeting the goal of enhancing broadband availability or the indirect harm that some of its proposed policies could do to those companies.

Too little attention has been paid to the financial health of RLECs (and mid-size companies) and the importance of existing High Cost support. The NBP contains a number of ambitious broadband deployment proposals that will require billions of dollars in new funding, likely significantly greater than projected, as required to bridge the Broadband Availability Gap (\$23.5 billion). Acknowledgment of the need for "significantly higher [amounts of funding] than the incremental calculation indicates" was included in a staff technical paper and a footnote in the USF NOI/NPRM. Had it been placed in the body of the NPRM instead, that would have allowed for a more robust debate of both the sources and uses of universal service funding, and whether sufficient funds remain to meet the legitimate ongoing needs of providers in rural, insular and high cost areas.

Thus far we have not fully identified the source of additional funding needed if Lifeline subscribership increases substantially (e.g., due to modifications to eligibility requirements and/or expanded outreach efforts). Setting aside the NBP, the RD itself notes that it would not be unreasonable to estimate that the size of the Low Income fund could grow to at least \$2 billion in the next few years, before including any growth attributable to adding support for broadband.

The NBP contains many recommendations and promises of additional broadband deployment efforts (in particular, the new **Connect America Fund**, which includes efforts to address the Broadband Availability Gap and other deployments to non-low-income households) coupled with the new **Mobility Fund**. However, the sources of funding are not always evident. The NBP solution, in too many cases, appears to be to repurpose money currently used in support of High Cost funding.

In general, there is a strong preference in the NBP in favor of wireless technologies and great optimism regarding the benefits that wireless technologies can provide, coupled with a lack of affirmation for the benefits that RLECs' and mid-size providers' wireline broadband access networks and in many cases, cable providers are already delivering to many locations.

Based upon a review of the NBP and other FCC documents, there will likely be new and expanded demands placed on universal service funding mechanisms over the next few years. Based on sometimes conflicting recommendations in the NBP, it appears that the FCC plans to dramatically revamp

or repurpose existing High Cost Fund support. Intercarrier compensation reform efforts are likely to result in the elimination or transformation of other USF components. The FCC has yet to address how the existing support will be used in the future, or whether the shifting of USF dollars away from traditional High Cost support will be linear over time.

While it is possible that the USF transformation, USF contributions, and/or intercarrier compensation reform NPRMs may provide answers to some of those questions, the action we take today could have implications, perhaps significant, for sizeable increases in USF support for Lifeline services, without a clear understanding of how those increases would be paid for, how the need for additional support would fit in with other new demands that will be placed on the fund, or additional sources of funding.

I am authorized to state that Commissioner John Burke of Vermont joins in this separate statement as I have joined with his. I also endorse and commend for review the separate statements of my fellow state members Chairman Ray Baum and Chairman James Cawley.

**STATEMENT OF  
BOARD MEMBER JOHN D. BURKE  
APPROVING IN PART, CONCURRING IN PART**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;  
Lifeline and Link Up, WC Docket No. 03-109*

I agree in part and concur in part with the Recommended Decision; the changes to the Lifeline Program that the Joint Board recommends today should help more eligible consumers take advantage of the program, while simultaneously improving verification efforts so that the benefits are not extended to unqualified customers.

I write this concurrence to highlight one issue. The Recommended Decision proposes that the Commission take comments on whether to change the income-eligibility threshold for lifeline qualification from the existing 135% of FPG to 150%. In isolation, this change may be reasonable. However, the Lifeline Program is only one of the uses of the overall Universal Service Fund. If the fund size is not increased, any growth in the Lifeline Fund will come at the expense of other uses of the Fund, and, in particular, expansion of the fund to include broadband services.

The NBP makes clear that broadband is becoming a vital service for consumers in this country. For this reason, there is little real doubt that the broadband will be included as an eligible service under the Fund. I support this result, but as we move forward in this direction, it is essential that we do so in a way that does not create a rural Digital Divide. At this time, it is not clear how much funding will be necessary to enable ubiquitous broadband, notwithstanding the Commission's estimates in the NBP. Existing broadband deployment is not fully known. The Commission's cost estimates are also based, in part, upon a wireless solution that may or may not deliver adequate broadband services, particularly in rural, high-cost states. Moreover, as section 254(b)(3) requires, services in rural areas must be reasonably comparable to those in urban areas, as must the rates for those services; the disparity between the service levels proposed in the NBP for urban and rural areas do not appear to meet this test. Further pressure on the fund arises from the need to maintain high-cost support for existing networks in areas that do not have broadband services available.

For these reasons, I am concerned that it will be very difficult to achieve the goals of the NBP with the redirection of existing funding allocations. Raising the income eligibility provisions of the Lifeline Program from 135% of FPG to 150% may place additional pressure on a fund that is already unlikely to be large enough to achieve its needs. Although I support the Recommended Decision's conclusion that the Commission should take comment on the increase, I cannot support actually making such a change unless the Commission can simultaneously assure adequate universal service funding for ubiquitous broadband services and rate that are reasonably comparable between rural and urban areas. I am authorized to state that Commissioner Landis of Indiana joins in this separate statement as I have joined with his. I have read and applaud as thoughtful and well worth contemplating the separate statements of my fellow state members, Commissioner Cawley and Chairman Baum.

**STATEMENT OF  
CHAIRMAN JAMES H. CAWLEY  
CONCURRING IN PART, DISSENTING IN PART**

***In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;  
Lifeline and Link Up, WC Docket No. 03-109***

I am in agreement with most of the consensus recommendations that have been reached in the present deliberations and the issued Recommended Decision (R.D.) of the Joint Board. I have been particularly impressed with the dedication with which Commissioner Clyburn and the FCC staff have labored to guide our deliberations and capture them in an articulate decision.

I feel compelled, however, to address both the rationale and the approach of the referral to the Joint Board, and the alternative approaches that I believe should have been followed, recognizing that the members and staff of the FCC, like state public utility regulators and their staff members, daily face difficult policy choices and criticism as they try in good faith to do the public's business. Nothing said here diminishes my respect, personally and professionally, for them.

**The National Broadband Plan.** The Referral Order on Lifeline and Link Up made abundantly clear that the present deliberations of the Joint Board, as well as a large number of other recent and pending FCC regulatory initiatives, were based on the FCC's National Broadband Plan (NBP) that was released on March 16, 2010.<sup>210</sup> As the NBP acknowledges, the U.S. Congress "directed the FCC to develop a National Broadband Plan ensuring that every American has 'access to broadband capability'."<sup>211</sup> The NBP explicitly recommended the expansion of the "Lifeline and Link-Up programs by allowing subsidies provided to low-income Americans to be used for broadband."<sup>212</sup>

Interestingly, however, the Recovery Act directed only the preparation of a report to be submitted to designated House and Senate committees within one year of enactment of the Act, not implementation of the report, which presumably was to await further congressional direction after submission of the report.<sup>213</sup> Indeed, the section requiring the plan had as its main purpose the creation of the Broadband Technology Opportunities Program, under the direction of "[t]he Assistant Secretary of Commerce for Communications and Information (Assistant Secretary), in consultation with the Federal Communications Commission (Commission)",<sup>214</sup> to stimulate the nation's economy by means of grants to be awarded by the end of fiscal year 2010 with assurances by grantees "that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award."<sup>215</sup> It is apparent from the structure and content of Section 6001 that subsection (k)'s requirement

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<sup>210</sup> *In re Federal-State Joint Board on Universal Service Lifeline and Link Up*, (FCC Released May 4, 2010), CC Docket No. 96-45 and WC Docket No. 03-109, ¶ 1, at 1. See also FCC, *Proposed 2010 Key Broadband Action Agenda Items*, available at <http://www.broadband.gov/plan/broadband-action-agenda.html>.

<sup>211</sup> FCC, *Connecting America: The National Broadband Plan*, (Washington, DC, March 16, 2010), at 3 and n.4 citing American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 (2009) (Recovery Act).

<sup>212</sup> NBP, Executive Summary, at XIII. See also Referral Order, ¶ 12, at 6 and n.36 citing NBP at 172-173.

<sup>213</sup> Recovery Act, § 6001(k)(1)-(3).

<sup>214</sup> *Id.*, § 6001(a).

<sup>215</sup> *Id.*, § 6001(d)(2)&(3).

of a “national broadband plan,”<sup>216</sup> positioned as the eleventh subsection of thirteen and the only provision requiring action only by the FCC, was not the primary purpose of the section. Nor was the plan, unlike the grants program, apparently intended to provide an immediate stimulus to the economy, but rather as a necessary tool to provide longer term economic benefits should the decision be made to implement it.

Nevertheless, the FCC, under its existing statutory authority, has adopted an ambitious agenda of regulatory reforms based on the NBP and centered on the universal availability and adoption of affordable and technologically sufficient broadband access services. Although the NBP contemplates that these ambitious goals can be accomplished through the reforms of existing regulatory structures and mechanisms (largely through the redirection of the existing federal universal service fund (USF) resources), it acknowledges that congressional funding may also be needed in order to accelerate broadband deployment.<sup>217</sup> Furthermore, the NBP identifies the so-called “broadband availability gap” and acknowledges (despite the availability of Recovery Act funds from Section 6001’s Broadband Technology Opportunities Program) that “[o]ther government support is required to complete the task of connecting the nation to ensure that broadband reaches the highest-cost areas of the country,” and that closing the “broadband availability gap and connecting the nation will require a substantial commitment by states and the federal government alike.”<sup>218</sup>

Aside from the NBP itself, the FCC staff recognized in its September 29, 2009 presentation that the cost of any national broadband plan varies widely depending on the definition of “broadband.”<sup>219</sup> These costs range from approximately \$20 billion for 1.5 mbps to \$350 billion for 100 mbps. A proposed speed in the 1-4 mbps range could cost from \$20 to \$35 billion. It is difficult to see how the current \$9 billion federal USF can implement any of these proposed national broadband definitions, even with repurposing the entire current USF.

The magnitude of the “broadband availability gap” and the congressional directive for the NBP as a tool for possible future economic recovery measures on the broadband front raise the fundamental question of whether the FCC should have adopted its very ambitious agenda of national and universal broadband deployment and availability in the absence of a more precise congressional mandate and accompanying federal appropriations. The NBP’s contemplated redirection of the federal USF will not be sufficient to overcome the “broadband availability gap,” and the structural design of the federal USF was not intended to accomplish such a purpose. Thus, the goal of universal broadband within the United States will require a *national* funding commitment that clearly goes well beyond the existing size of the federal USF.

**Redefinition of “Universal Service.”** Consequently, a national funding commitment for the universal deployment and availability of broadband access services at the retail level is absolutely necessary because, as the R.D. demonstrates, the FCC is proceeding with a redefinition of the universal service concept supported by the federal USF in accordance with its NBP. This redefined concept of the

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<sup>216</sup> *Id.*, § 6001(k)(2).

<sup>217</sup> NBP at 151.

<sup>218</sup> NBP at 139 and NBP Exh. 8-D.

<sup>219</sup> FCC, September Commission Meeting, September 29, 2009, Slide No. 45, available at <http://reboot.fcc.gov/open-meetings/2009/september>.

supported universal service includes broadband. Under Section 254(c) of the federal Telecommunications Act of 1996, 47 U.S.C. § 254(c), recommendations regarding the redefinition of the universal service concept and the inclusion of a broadband component are both legally and substantively within the purview of the Joint Board. In its 2007 Recommended Decision, the Joint Board indicated its preference for “ubiquitous broadband access” and posited the proposition that “it should be eligible for support under Section 254, with the goal of making it available to all.”<sup>220</sup> However, the 2007 R.D. did not consider the numerous, interlinked implications of including a supported broadband access service component into a properly redefined universal service concept. Such implications, including the potential for a substantial increase in the size of the overall federal USF, need to be recognized and addressed with the FCC’s overall federal USF reforms and contemplated redirection of the USF. A timely comprehensive referral to the Joint Board during the development of the NBP or shortly after its issuance would have been appropriate.

Instead, the Joint Board was given a very narrow directive on Lifeline and Link Up issues, which are certainly pressing and important but still only a subset of supported universal service. The resulting R.D. contains a possibly broader redefinition of universal service by adopting the principle that universal service funding should recognize the importance of advanced (e.g., broadband access services) as well as voice services to consumers, including low-income consumers. I fundamentally disagree with this approach because the issues of redefinition and their implications should receive a more encompassing and detailed examination by the Joint Board. Without a more comprehensive referral, the statutorily prescribed advisory role of the Joint Board, and the justified role of the states, is marginalized. Because the issues and the implications of redefining supported universal service with an appropriate broadband access service component are inextricably linked with the contemplated reforms of the federal USF and the interstate intercarrier compensation mechanisms, the Joint Board should be materially involved through all-inclusive FCC referrals.

There may be general agreement that some abstract broadband access service component should be part of supported universal service given the economic importance of broadband. There may also be a need for a broadband Lifeline/Link Up component to eligible end-user consumers. To do that, however, there is a need to decide, designate, and live with the specific details of such a broadband access service addition. The R.D. already echoes some of these concerns within the narrow confines of the Referral Order.<sup>221</sup> These concerns are equally applicable to the overarching issues of a redefined universal service that includes broadband.

**The Role of the States.** The inclusion of an appropriate broadband access service component in a supported universal service concept in general and in Lifeline in particular raises significant issues about the appropriate role of the states. Although the R.D. recognizes the significant role that the states play in the maintenance and enhancement of universal service inclusive of Lifeline and Link Up (where this role includes appropriate bi-jurisdictional regulatory oversight and enforcement), the limitations of the Referral Order leave unanswered the questions of a future state role when and where broadband access services are involved. At present, because of past FCC decisions, the states have a very limited regulatory oversight role over the provision of retail broadband access services. However, as the R.D.

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<sup>220</sup> *In re High-Cost Universal Service Support Federal-State Joint Board on Universal Service*, (Joint Board, released November 20, 2007), WC Docket No. 05-337, CC Docket No. 96-45, ¶¶ 61-62, at 16 (2007 R.D.).

<sup>221</sup> Other concerns that touch upon the potential availability of federal USF support for Internet Protocol or IP-based services such as voice over IP (VoIP), and for broadband access capable devices and related distribution programs, may also affect related and future policy decisions at the federal and state levels.

indicates, the states will continue to play a significant oversight and enforcement role in the provision of Lifeline and Link Up services to eligible end-user consumers. The potential addition of a broadband component to Lifeline – and to supported universal service in general – creates the question of whether the states will be able to exercise their traditional roles of consumer protection and appropriate oversight and enforcement in this area given the current absence of a proper and clear regulatory mandate. For example, it is unclear if the states will be given any mandate to deal with carrier refusals to provide broadband access services to Lifeline eligible end-user consumers, or with broadband access providers who claim federal USF support for superior, but actually substandard, levels of service to Lifeline end-user consumers. As the Statement of Commissioner Baum notes, the recent growth in the low-income portion of the federal USF is a serious concern, and the inclusion of a supported broadband access service component in Lifeline and Link Up will only aggravate this concern absent appropriate bi-jurisdictional regulatory oversight and enforcement.

Potential state intervention in such operational matters may take place if a state has designated a provider of broadband access services as an eligible telecommunications carrier (ETC) under Section 214(e)(2) of the Act, 47 U.S.C. 214(e)(2). However, such state intervention may result in litigation that can easily reach the federal level for resolution in view of the proposed reclassification of broadband access facilities and services. The R.D. recommends that the FCC adopt the additional principle of universal service, pursuant to its authority under Section 254(b)(7) of the Act, 47 U.S.C. § 254(b)(7), which provides additional flexibility to the FCC in view of the parallel proceeding regarding Title II common carrier reclassification of broadband access facilities and services.<sup>222</sup> It does not, however, provide any concrete guideposts for the future role of the states in this area.

**The Title I vs. Title II Reclassification Debate.** The Title II reclassification debate is becoming increasingly intertwined with the FCC's proposals on "network neutrality." I acknowledge that there are various technical, operational, and legal aspects that cannot keep these two issue areas completely and distinctly separate. However, it appears that the increased focus on "network neutrality" not only delays finality of the Title II common carrier reclassification debate, but it also causes great levels of uncertainty and delays the resolution of other long-standing priorities, such as the reform of the federal USF and intercarrier compensation as well as the proper classification of the IP-based services. Simply put, even if the FCC commences its planned initiatives on federal USF and intercarrier compensation reform, these initiatives will proceed on a "parallel track" with the intertwined mix of "Title II" and "network neutrality" with all the uncertainty and risks of delay that this approach entails.

The lack of certainty and finality also holds the potential of adversely affecting individual state reform efforts for intrastate intercarrier compensation and state-specific USFs. For example, although the FCC wisely has not preempted the states from assessing state-specific USF contributions to interconnected VoIP providers, a federal appellate court decision has clouded this issue<sup>223</sup> and an FCC proceeding is still pending on this matter.<sup>224</sup>

Meanwhile, the state public utility commissions continue to grapple with a variety of issues that

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<sup>222</sup> *In re Framework for Broadband Internet Service*, (FCC Released June 17, 2010) Notice of Inquiry, GN Docket No. 10-127; Further Inquiry, GN Docket No. 09-191, WC Docket No. 07-52, September 1, 2010.

<sup>223</sup> *Vonage Holdings Corp. v. Nebraska Pub. Serv. Comm'n*, 564 F.3d 900 (8<sup>th</sup> Cir. 2009).

<sup>224</sup> *Petition of the Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, FCC WC Docket No. 06-122, filed July 16, 2009.

arise under the federal Telecommunications Act of 1996 and applicable state law. Increasingly, however, these state decisions are made in the absence of FCC final rulings and guidance in crucial areas of regulatory importance. For example, the lack of finality in the long-standing IP-based services proceeding continues to have implications for intercarrier compensation disputes and the legitimate function and viability of state-specific USFs. Potentially also in doubt are interconnection arrangements between competing carriers as well as between carriers and other communications services providers.

Therefore, it is imperative that the FCC conclude its Title II reclassification proceeding as soon as possible. Fundamental questions on the “common carrier” aspects of the FCC’s Title II inquiry must be answered. If the intertwined nature of “Title II” and “network neutrality” continues to delay such a decision, then the FCC should make a concerted effort to reach an immediate conclusion on the more fundamental aspects of its Title II inquiry and address the more intricate and stand-alone aspects of “network neutrality” at a later date.

I am afraid that unless there is a renewed focus, prioritization, and resolution of the fundamental aspects of the Title II proposal, any FCC initiatives on the structural reform of interstate intercarrier compensation and the federal USF will proceed in an environment of regulatory uncertainty for the FCC, the states, and many interested parties. Federal-State cooperation in the resolution of these matters is essential.

**Inclusion of Broadband and the Size of the USF.** The potential introduction of a yet undefined broadband access component in the Lifeline and Link Up supported services will create new and highly competing priorities for the existing federal USF dollars. It will also create a precedent that supports broadband for a discrete class of consumers that will be hard to deny to other consumers. The R.D. ascribes an historical focus of the High Cost Fund of the federal USF as supporting legacy networks that primarily provide traditional voice services. But it is common knowledge, especially for the rural ILEC recipients of High Cost Support, that the funds have been and continue to be utilized for the deployment of broadband networks and services. Furthermore, one of the NBP’s goals is not only to increase the availability of broadband access services in the rural areas *but also to support the continuing provision* of broadband access services in currently served areas. The continuous upgrading of broadband network facilities and services by recipients of federal USF High Cost Support is fully consistent with the stated goals of the NBP regarding national broadband deployment. Because of the continuous technological transformation of the networks that regulated landline telecommunications carriers have deployed and continue to deploy, the distinction between legacy networks that provide traditional voice services and broadband networks that provide a new and ever changing mix of services has become increasingly blurred. This development makes the contemplated redirection of federal USF High Cost Support under the NBP and other regulatory initiatives of the Commission even more challenging.

In this respect, I share the concerns expressed in the Statement of Commissioner Landis on whether and how the federal USF will be able to accommodate many and competing priorities (and overcome the “broadband availability gap”) while the FCC proceeds with its structural reform and redirection. These challenges may necessitate an unavoidable narrowing of the Commission’s focus on certain NBP tasks and final resolution of other long-standing proceedings, especially interstate intercarrier compensation reform and completion of the IP-enabled services proceeding.

**Increasing Eligibility from 135% to 150% of the Federal Poverty Guidelines.** I agree completely with the Statement of Commissioner Burke on this subject. Until the effects of including broadband as a supported service are better known, it is wiser to redouble efforts to reach presently eligible low income customers than to diminish the dollars available to them by expanding the program to include others who are somewhat better off.

In conclusion, I understand the importance of the FCC’s efforts to provide broadband in rural,

high cost areas and in lower income urban areas based upon my experience promoting that same policy in Pennsylvania. However, as a regulator from a net contributor state to the federal USF, I remain concerned about the cost to net contributor states, notwithstanding the need for a national broadband plan. Going forward, these considerations suggest a broader role for the Joint Board, which is composed of state members who remain convinced of the importance of maintaining a collegial Federal-State partnership.

**STATEMENT OF  
SENIOR ASSISTANT ATTORNEY GENERAL SIMON FITCH**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;  
Lifeline and Link Up, WC Docket No. 03-109*

The Lifeline program addressed in this Recommended Decision is a key part of the universal service framework. While 96 percent of US households currently have telecom service in the home, penetration rates for limited income households lag behind at just over 90 percent. Indeed, penetration rates are significantly below the 90 percent level in the lowest income bands. Looking only at national averages masks this gap in universality. We cannot say that we have universal service in the United States as long as these disparities exist.

Just as high cost support has been important in helping to ensure that infrastructure and service is available in rural, insular and costly-to-serve geographic areas, the Lifeline program is essential in making service affordable for unserved and underserved limited income populations throughout the country. This is especially important during this time of economic hardship for many Americans. The telephone is a true lifeline for connecting customers with job opportunities, educational options and essential medical care. Unfortunately, for a range of reasons, the Lifeline portion of USF support has not been used to its full potential. While overall, 36 percent of the eligible population takes advantage of the program, in over half the states participation rates are at or below, sometimes well below, 25 percent. The recommendations in this Recommended Decision regarding eligibility levels, verification, and outreach are intended to make the program more effective and make the best use of the funds available.

As this Recommended Decision discusses, a new challenge faced by the Lifeline program is the impact of prepaid wireless ETCs. Prepaid wireless Lifeline programs have represented the first significant improvement in utilization of the Lifeline program in many years. Penetration rates have improved significantly in some areas and these gains should not be overlooked. After all, increased availability of affordable telecommunications service is the fundamental purpose of USF low income support.

At the same time, the dramatic success of these programs has created new problems. The fund is under substantial pressure and legitimate questions have been raised by many commenters about ineligible participants, and the level of service provided by carriers in return for federal support. These are "consumer issues" as well. Because all consumers pay for Lifeline and are impacted by fund growth, both for Lifeline and the overall USF, consumers have a strong interest in making sure that eligibility standards are rigorously enforced and that ongoing verification of continued eligibility is effective. Consumers also should be confident that carriers that receive Lifeline USF support for prepaid wireless service are providing service of adequate value (e.g. minimum number of monthly minutes) and quality in return for those funds.

In the process of addressing these issues, however, it is important to remember that any major increase in participation in Lifeline, even if simply a result of better outreach, will put pressure on the fund. Moreover, increased participation in Lifeline, whether through prepaid wireless programs, addition of income eligibility, or just more awareness, is not by itself evidence of fraud, waste, and abuse. Lifeline cannot properly be viewed as "right sized" today if only one third, at most, of the people who could benefit are participating. No record was made in this proceeding of any general problems with fraud, waste, and abuse in the Lifeline program. There was anecdotal evidence of concern presented of ineligible participants benefiting from newer prepaid wireless programs. There was also evidence that states are aware of and are addressing this issue. The record before us did not establish what portion of

fund growth, if any, is due to fraud, waste, or abuse. The verification recommendations of this Recommended Decision are aimed in part at seeking additional ways to address and control problems in that area.

The control of USF fund growth is not simply a Lifeline problem, it is a USF-wide problem, as the Joint Board recognized in its 2007 Recommended Decision. Both the Joint Board Recommended Decision and the National Broadband Plan have recognized the need for reform of universal service support and movement towards that reform has now begun. There is broad agreement that the USF, as currently constructed, needs to be refocused to eliminate unneeded, duplicative, and expensive subsidy flows. The federal universal service has grown very significantly in recent years. USF surcharges have reached highs of as much as 15%. This imposes substantial burdens on telecommunications customers, and has reached the point where the size of the fund itself threatens to undermine the very goals the fund is designed to achieve by further diminishing the affordability of service. While Lifeline should not be immune from scrutiny, it would be unfair and inappropriate to now ask Lifeline eligible customers to bear the brunt of fund size concerns, when major problems have long been identified in other parts of the fund. Indeed, addressing those problems will help ensure that USF funding can be transitioned from where it is no longer necessary or appropriate, and can be properly targeted to the remaining areas of legitimate need, including the Lifeline program.

Finally, I think it is important that this RD recognizes in the "Other Issues" section that the Lifeline issues are only a part of a much larger picture. Ultimately, Lifeline issues, including Lifeline support for broadband service, will have to be resolved as a part of the overall approach to universal service policy.

**APPENDIX A  
LIST OF INITIAL COMMENTERS**

<b><u>Commenter</u></b>	<b><u>Abbreviation</u></b>
Advocates for Basic Legal Equality, Inc.,	
Community Voice Mail National Crossroads Urban Center	
Disability Rights Advocates	
The Low Income Utility Advocacy Project	
Minnesota Legal Services Advocacy Project	
The National Consumer Law Center, On Behalf of Our	
Low-Income Clients	
New Jersey Shares	
Ohio Poverty Law Center	
Pro Seniors	
Salt Lake Community Action Program	
Texas Legal Services Center	
The Utility Reform Network	
Twin Cities Community Voicemail	
AT&T Services, Inc.	Consumer Groups
Benton Foundation, et al.	AT&T
Community Voice Mail National Office	Benton
Public Service Commission of the District of Columbia	CVMN
Florida Public Service Commission	DCPSC
Leap Wireless International, Inc.	FPSC
and Cricket Communications, Inc.	Cricket
Media Action Grassroots Network	MAG-Net
Missouri Public Service Commission	MoPSC
National Association of State Utility Consumer Advocates	NASUCA
National Hispanic Media Coalition	NHMC
Nebraska Public Service Commission	NPSC
Nexus Communications, Inc.	Nexus
Public Utilities Commission of Ohio	Ohio PUC
PR Wireless, Inc.	PR Wireless
Smith Bagley, Inc.	Smith Bagley
TracFone Wireless, Inc.	TracFone
United States Telecom Association	USTelecom
Verizon and Verizon Wireless	Verizon
YourTel America, Inc.	YourTel

**APPENDIX B  
LIST OF REPLY COMMENTERS**

<u>Commenter</u>	<u>Abbreviation</u>
Advocates for Basic Legal Equality, Inc., Community Voice Mail National Crossroads Urban Center Disability Rights Advocates The Low Income Utility Advocacy Project Minnesota Legal Services Advocacy Project The National Consumer Law Center, On Behalf of Our Low-Income Clients New Jersey Shares Ohio Poverty Law Center Pro Seniors Salt Lake Community Action Program Texas Legal Services Center The Utility Reform Network Twin Cities Community Voicemail	Consumer Groups
AT&T, Inc.	AT&T
CTIA-The Wireless Association	CTIA
Consumer Advisory Committee	
GCI Communication, Inc.	GCI
Leadership Conference on Civil and Human Rights	
Massachusetts Department of Telecommunications and Cable	MDTC
National Association of State Utility Consumer Advocates	NASUCA
National Hispanic Media Coalition Media Action Grassroots Network	
Office of Communication of the United Church of Christ, Inc., Benton Foundation, and Access Humboldt	Public Interest Commenters
Nexus Communications, Inc.	Nexus
Norma J. Torres	
Pennsylvania Public Utility Commission	PaPUC
PR Wireless, Inc.	PR Wireless
Qwest Communications International Inc.	Qwest
Smith Bagley, Inc.	Smith Bagley
Sprint Nextel Corporation	Sprint
TracFone Wireless, Inc.	TracFone
Verizon and Verizon Wireless	Verizon Companies
YourTel America, Inc.	YourTel