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

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

COMMENTS OF GENERAL COMMUNICATION, INC.

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I. INTRODUCTION AND SUMMARY

General Communication, Inc. ("GCI") submits these comments in response to the Notice of Proposed Rulemaking released by the Commission as part of its effort to reform and modernize the low-income universal service program ("Low Income Program").[1] The Low Income Program has been profoundly beneficial in the Alaskan communities that GCI serves. Telephone penetration rates among Alaska's most disadvantaged populations have soared since Alaska joined the FCC's Low Income Program seventeen years ago. GCI is committed to making affordable service available to disadvantaged Alaskans who remain unserved, particularly in the uniquely challenging environments in remote areas of the state. GCI therefore intends to continue working in partnership with the FCC (and with its Alaskan counterpart, the Regulatory Commission of Alaska) to ensure that the Low Income Program is reformed in a manner that best serves the goal of true universal service—for landline telephony, wireless service, and for broadband as well.

While GCI offers strong support for reform and modernization, several of the Commission's specific proposals require recalibration in order to ensure that the reformed Low Income Program continues to provide affordable access to qualifying consumers as the Communications Act requires. The principles underlying the Commission's three proposed performance goals are the right ones; they will help ensure that America's most vulnerable populations will have access to critical communications services. That said, GCI urges the Commission to reorient the goals to emphasize equally the twin priorities of availability and affordability. Prioritizing either over the other will, by definition, fail to satisfy the statutory

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[1] *Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link-Up,* Notice of Proposed Rulemaking, FCC 11-32, 26 FCC Rcd. 2770 (2011) ("Lifeline NPRM").

mandate and policy goals underlying the Low Income Program. Alaska's low-income residents have benefited greatly from the Low Income Program since its inception, and redirecting the three proposed goals toward these twin priorities will ensure that qualifying Alaskans are able to participate in the program (including broadband components) in the future.

GCI also supports the FCC's efforts to reduce fraud, waste, and abuse in the Low Income Program but cautions that those efforts must be tailored to avoid undermining the program and harming the people it was designed to serve. In this regard, GCI concurs with the Commission that individual qualifying subscribers should be forbidden from subscribing to more than one Lifeline service simultaneously, and the FCC's rules should clearly reflect that prohibition. GCI believes this one-per-qualifying-adult limitation best serves low-income consumers while achieving the goals of the Low Income Program, and that it should be adopted in place of the one-per-residential-address limitation the FCC has proposed.

Considering that the telecommunications landscape has been transformed in recent years by wireless technologies, the proposed one-per-residential-address limitation harkens back to a bygone era when a telephone was a fixed appliance and everyone in a residence knew where to find it. Today, people tend to carry their handsets with them wherever they are. The wireline "home" phone is fast going the way of the carrier pigeon, replaced by a fully mobile handset that serves as an increasingly flexible personal communications device. That means that a wireless handset can be used to make an emergency call from a broken-down snow machine ten miles from home, but it also means that the handset is ten miles from home and therefore completely useless to others who may be back at the residence if the wireless handset is the household's only phone. A one-per-address limitation thus entirely fails to promote service availability or affordability for anyone other than the first resident at an address to obtain a Lifeline subsidy.

A one-per-qualifying-adult limitation, by contrast, would rationally promote the objectives of the Lifeline program, and it would avoid the administrative quagmire that would come from attempting to catalog all the varying types of living arrangements that may or may not fit within a backwards-looking one-per-residential-address rule. If the Commission elects to adopt a one-per-residential-address rule notwithstanding its administrative complexity and the harm it would cause to qualifying consumers, it should institute a blanket exemption for residents of Tribal Lands[2] or, at the very least, define a one-per-residence rule to mean that only a single Lifeline subscription is available to the members of a nuclear family living in the same residence.

The creation and implementation of a database of Low Income Program subscribers is a particularly well-conceived aspect of this regulatory reform. A database would enable the FCC, the Universal Service Administrative Company ("USAC"), and Eligible Telecommunications Carriers ("ETCs") to more effectively eliminate duplicate accounts. More specifically it would enable ETCs to ascertain whether an applicant for Low Income Program service already subscribes with another ETC (which no ETC could currently know).

GCI agrees with the proposal to prohibit Lifeline reimbursement for subscribers who neither use nor pay for their Lifeline subscriptions, but the FCC's proposed rule should be modified to reflect important differences between pre-paid and post-paid services. In particular, GCI recommends that the Commission impose a 120-day <u>no-pay</u> policy for post-paid subscribers, and a 120-day <u>no-use</u> policy for so-called "prepaid" subscribers. One hundred twenty days, rather than the 60 days proposed by the Commission, is more appropriate to

[2] GCI uses the term "Tribal Lands" as it is used in the CETC Cap Order. *See In the Matter of High-Cost Universal Service Support*, *Federal-State Joint Board on Universal Service*, Order, WC Docket No. 05-337, CC Docket No. 96-45, 24 FCC Rcd. 3369 (rel. Mar. 5, 2009).

seasonal and migratory work, particularly in Alaska, which can take a Lifeline subscriber out of the Lifeline provider's service area for more than two months at a time.

The proposal to simply cap the size of the Low Income Program, however, would violate the Communications Act and result in counterproductive public policy. A cap would be particularly devastating for qualifying consumers in Tribal Lands, and it would violate the letter and spirit of the Communications Act regardless of how broadly it is applied. In particular, a cap would either shrink the discount that ETCs pass on to consumers (which, of course, would put Low Income Program service out of reach for the neediest, in direct contravention of the statute and underlying policy goals) or it would require ETCs themselves to absorb more of the cost of the full discount (resulting in a statutorily prohibited implicit subsidy). Because this proposal would either deny service to the consumers who need it most (and can afford it least) or violate Section 254(e), the FCC should decline to adopt it.

Finally, GCI generally supports many of the FCC's proposals related to program administration, although it strongly opposes any verification system that would require ETCs to conduct an eligibility census of all subscribers. Requiring census-based verifications would place an extreme administrative strain on ETCs and generate system-wide expenses that could reach hundreds of millions of dollars. There is no conceivable benefit that comes close to outweighing these costs, and the FCC should therefore refrain from any such requirement.

II. BACKGROUND

Alaska is a unique state and a Lifeline success story. Separated by vast distances from the Lower 48, Alaska is the country's most remote state and the least densely populated, with a population density of just 1.2 persons per square mile. The state has a highly diverse and challenged population, large segments of which are underprivileged. In January 2011, the unemployment rate exceeded 10 percent throughout much of Alaska, and it reached nearly 30 percent in some areas in the state.[3] Among Alaska Natives, the unemployment rate is higher still. The 2000 U.S. Census found that fewer than 60 percent of Alaska Natives were employed.[4]

When assessing proposed reforms to the Low Income Program and their impact on qualifying consumers in Alaska, it is important to recognize that, due to the extremely rural nature of the state and limited village government functions, many Alaskan residents lack traditional street addresses and instead use physical reference points like "white house with red roof by river." This is especially true outside of the limited areas of the state connected by highway, railway and pipeline systems, where many communities are accessible only by air, boat or snow machine. Because of the remoteness of these communities and the absence of street addresses and standard mail service, in many cases, residents share postal delivery boxes among multiple individuals and families.

The population centers in these off-road regions are tiny, with larger regional hubs like Barrow and Nome boasting populations of only about 4,000 and 3,500, respectively. Hundreds of Alaskan villages have fewer than 1,000 residents, and many have fewer than 100. Many isolated villages, such as Kupreanof, Kasaan, Bettles, and False Pass, have fewer than 50 residents apiece.[5] In total, 32 percent of Alaskans live in rural communities that are highly dispersed, not connected to any road system, and with ingress and egress limited to air and,

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[3] *See* State of Alaska, Department of Labor and Workforce Development, February 2011 Unemployment Rate Not Seasonally Adjusted Map, 2011, *available at* http://labor.alaska.gov/research/uimap/map.pdf.

[4] *See* American FactFinder, U.S. Census Bureau, *available at* http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml (presenting sortable employment and population data).

[5] *See* State of Alaska, Alaska Community Database Custom Data Queries, *available at* http://www.commerce.state.ak.us/dca/commdb/CF_CUSTM.htm (aggregating population figures for each Alaskan city).

depending on the season, waterways or ice transportation.[6] Moreover, populations in rural Alaska fluctuate seasonally. In rural communities with fish processing facilities, such as Dillingham, King Salmon, and St. Paul, the population can increase dramatically during the summer fishing season, as fishing boats dock to unload their catch and as workers migrate for temporary work in canneries. In smaller villages, the majority of the population may move to "fish camps" for the summer subsistence fishery.

The lack of roads is paralleled by a lack of other infrastructure. In these off-road areas, there is no extensive power grid. Outside of the Alaska Railbelt, which essentially runs from Homer, south of Anchorage, up to Fairbanks, electric power is not distributed through an interconnected grid.[7] Rather, each community generates its own electricity, primarily with diesel generators that burn fuel that can cost up to $7 per gallon.[8] Recently, electric utilities have begun adding wind turbines to the diesel generation systems, more as a way of slowing price increases rather than providing price reductions. There are a small number of communities in rural Alaska that use hydroelectric or other renewable resource, but they are atypical. As a result, power in these isolated areas can be extremely expensive. In many of these rural

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6 *See State Fact Sheets: Alaska*, United States Department of Agriculture, Economic Research Service, *available at* http://www.ers.usda.gov/statefacts/ak.htm.

7 *See New Energy for Alaska*, Alaska Power Association (Mar. 2004), *available at* http://www.alaskapower.org/docs/New-Energy-For-Alaska.pdf.

8 S*ee Statistical Report of the Power Cost Equalization Program: Fiscal Year 2009*, Alaska Energy Authority, Statement of Executive Director Steve Haagenson (Mar. 2010), *available at* http://www.akenergyauthority.org/PDF%20files/FY09%20PCE%20Statistical%20Report.pdf.

communities, residential consumers pay approximately $0.25 per kilowatt hour,[9] while the national average for commercial retail electricity is about $0.11 per kilowatt hour.[10]

For low-income Alaskans, many of whom live in the remote communities described above, the Low Income Program has been transformative. The program allows connections (particularly wireless connections) for the people who need them most, when they need them most, where they need them most. For the Alaskan populations that the Low Income Program serves, subscribing to Lifeline increases safety, generates employment opportunities, and improves lives.

Data compiled by the FCC show that in 1994, when Alaska began providing Lifeline support, only 72 percent of Alaskan households with annual incomes of less than $20,732 (2009 dollars, and less than the Federal Poverty Guidelines for a family of three) subscribed to telephone service.[11] In 2009, the last year for which the FCC has published state data, the penetration rate for this segment of the population had grown to 91.9 percent.[12] (The trajectory of this increase is reflected in Figure 1, below.) These statistics are encouraging on their own, yet they tell only part of the story. Many Alaskans with somewhat higher incomes can qualify for Low Income Program service, and the FCC's data suggest that they have benefitted as well. Among households with annual income less than $41,464 (2009 dollars), only 78.1 percent

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9 *See Table of Residential Rates*, Alaska Village Electric Cooperative (Dec. 2010), *available at* http://avec.securesites.net/residential_rates.php. The applicable rate is for usage of up to 500 kWh.

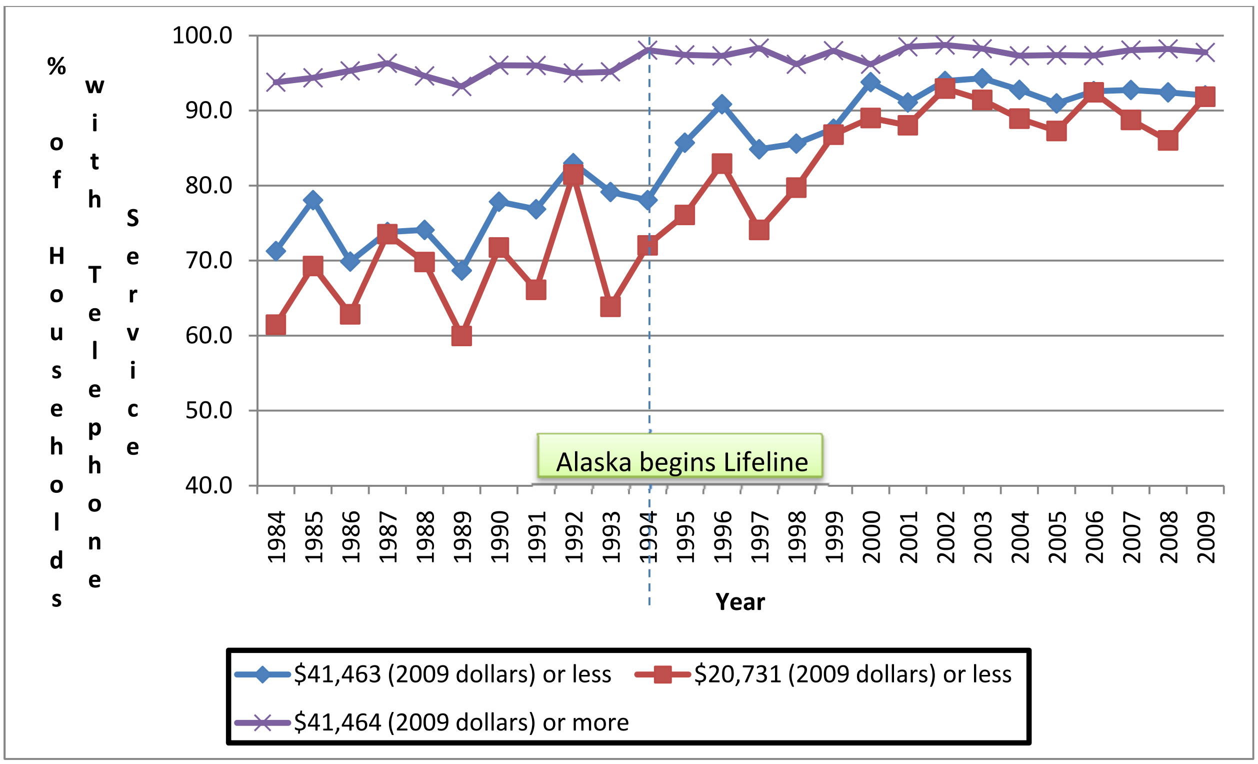
10 *See Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, by State*, U.S. Energy Information Administration (Mar. 2011), *available at* http://www.eia.doe.gov/cneaf/electricity/epm/table5_6_a.html.

11 *See Telephone Penetration by Income by State* at 11, Federal Communications Commission (May 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-297986A1.pdf. The FCC data measure income in 1984 dollars. $10,000 in 1984 dollars equates to $20,732 in 2009 dollars.

12 *See id.* at 12.

subscribed to telephone service in 1994, but by 2009 the penetration rate had reached 92.0 percent.[13] The Commission's introduction of Tribal Lands Lifeline support in 2000 has also demonstrably improved telephone subscribership in Alaska. From 1994 to 1999, households with annual income less than $41,464 (2009 dollars) averaged 85.4 percent subscribership. From 2000 to 2009, with Tribal Lands Lifeline support in effect, subscribership among the same group of households averaged 92.7 percent.

Figure 1
Alaska Telephone Penetration by Household Income



While wireless service is particularly valuable in Alaska, wireless Lifeline service has only recently become available to much of rural Alaska, meaning that many qualifying consumers in remote locations still stand to benefit from increased availability. As the

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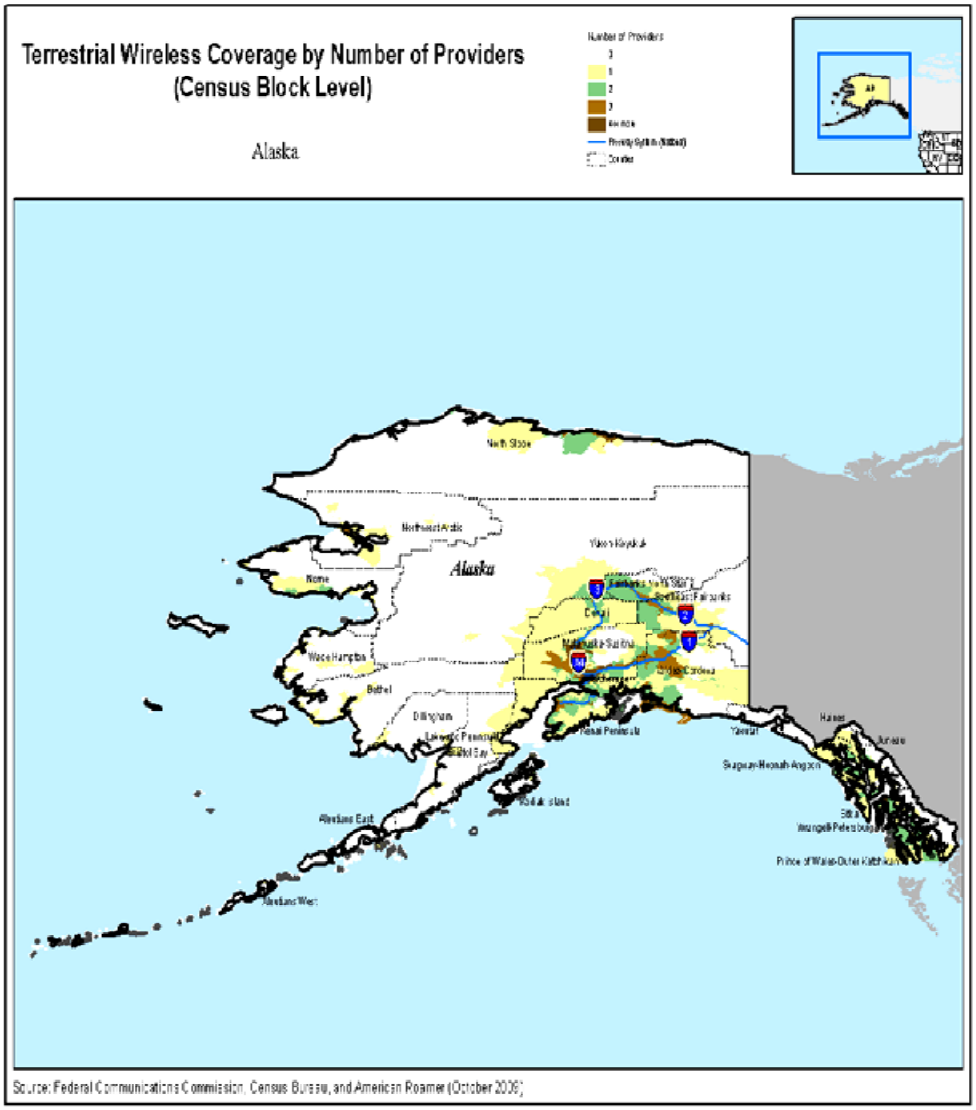
13 *See id.* (figures result from data calculations relying on data available in Excel format at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/pntris09.zip).

Commission's 2010 CMRS Competition Report showed, much of rural Alaska was unserved by any wireless carrier as recently as 2009.[14]

Figure 2
Alaska Terrestrial Wireless Coverage 2009



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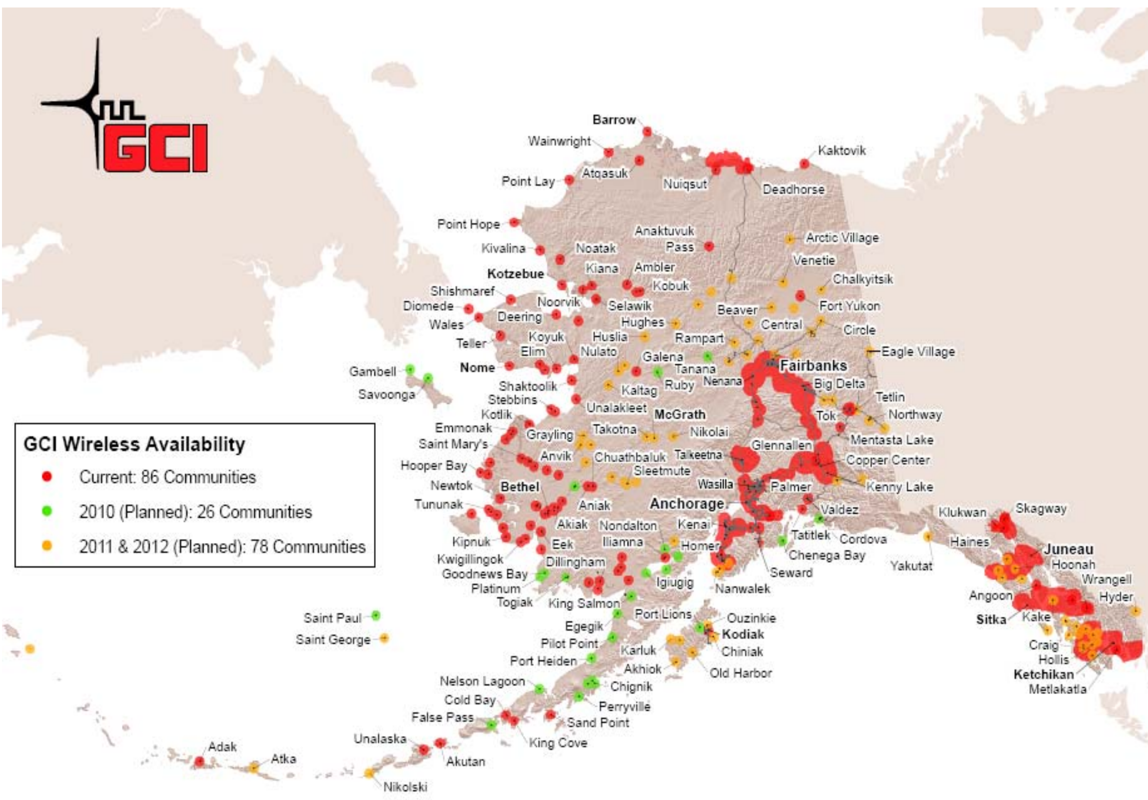
[14] *In the Matter of In the Matter of Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd. 11407, 11668 (rel. May 20, 2010).

GCI has been working hard to provide wireless service throughout the rural areas of Alaska, launching service in 2009 in 37 villages that previously lacked digital wireless service in 2009, and in another 22 villages in 2010. When GCI completes its planned digital wireless deployment in 2012, it will have greatly expanded wireless coverage across rural Alaska. GCI's expanded coverage areas, coupled with GCI's discounted service offerings supported by the Low Income Program, ensure that low-income consumers who face the challenges and extremes of rural Alaska are able to communicate as seamlessly as their counterparts in urban locations.

Figure 3
GCI Wireless Service Availability



In sum, Lifeline has proven to be a particularly powerful force for safety, opportunity, and connectivity in Alaska because the Alaskan environment is unusually harsh, the distances between points are unusually great, and the population is unusually migratory as people follow seasonal employment opportunities in different parts of the state. Wireless Lifeline in particular gives qualifying consumers the ability to call 911, potential employers, or families, despite the great distances and seasonal migrations. It allows people to call home or 911 from a broken snow machine in the middle of a remote ice field, from a commercial fishing boat in the harbor, from a cannery, from a dormitory of cannery workers, or from other remote points. With the expansion of wireless service in rural Alaska, residents of these communities can increasingly make calls not just from fixed points but from wherever they might be.

Figure 4
Summoning Help in Rural Alaska

For low income consumers in Alaska, GCI offers two different types of wireless Lifeline plans depending on the location of service. In the rural communities that depend on satellite transport to receive service, GCI offers a "rural" wireless Lifeline Plan to the consumer for $1 per month (plus taxes and relevant surcharges) that allows for unlimited local calling in the consumer's community plus 500 airtime minutes of statewide calling. Subject to some exceptions, in the communities that depend on terrestrial transport to receive service, GCI generally offers an "urban" Lifeline Plan for $1 per month (plus taxes and relevant surcharges) that allows unlimited statewide calling on GCI's CDMA network. GCI is also an ETC for wireline local exchange service in 10 ILEC study areas. In these areas, GCI offers the low-income consumer basic residential local exchange service for $1 per month (plus taxes and relevant surcharges).

III. THE PROPOSED PROGRAM PERFORMANCE GOALS WILL HELP ENSURE THAT AMERICA'S MOST VULNERABLE POPULATIONS WILL HAVE ACCESS TO AFFORDABLE COMMUNICATIONS SERVICES.

The Commission proposes three program performance goals and related performance measures for the Low Income Program: (1) "to preserve and advance the availability of voice service for low-income Americans;"[15] (2) "to ensure that low-income consumers can access supported services at just, reasonable, and affordable rates;"[16] and (3) "to ensure that [the Commission's] universal service policies provide Lifeline/Link Up support that is sufficient but not excessive to achieve [the Commission's] goals."[17] As explained in greater detail below, these are entirely appropriate and well-considered objectives because, if achieved, they will ensure that the Low Income Program continues providing life-saving and opportunity-promoting service for America's most needy populations, particularly in the remote and extreme Tribal Lands that GCI serves.

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[15] Lifeline NPRM ¶ 34.

[16] Lifeline NPRM ¶ 36.

[17] Lifeline NPRM ¶ 37.

A. Preserving and Advancing the Availability of Voice Service for Low-Income Americans is An Appropriate Performance Goal.

The Commission's first performance goal—"preserv[ing] and advanc[ing] the availability of voice service for low-income Americans"—should be one of the driving forces behind the Low Income Program.[18] Access is elemental: without access, a low-income American cannot have service.

The details of the first proposed performance goal require refinement, however. The Commission proposes to define "availability" of voice service for purposes of Lifeline and Link Up to mean that "low-income households" have access to that service.[19] The focus on availability to "households" is at odds with the statutory requirement of availability to low-income consumers in general, and it is inconsistent with the second proposed performance goal's objective to ensure that "low-income consumers" (not merely some members of their households) have access to supported services at "just, reasonable and affordable rates."[20] To ensure consistency with the program's statutory underpinnings and with the second goal, the first performance goal should focus on the availability of voice service to "low-income consumers."

The Commission's statement that it has historically measured telephone penetration as a "proxy for availability" suggests some analytical confusion.[21] Telephone penetration is not a proxy for availability alone, but rather a proxy for availability and affordability together. It measures not just whether phone service is available, but rather the extent to which Lifeline consumers have actually committed the funds necessary to acquire telephone service. Whether examined as "availability" or as a combination of "availability" and "affordability," however, the

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18 Lifeline NPRM ¶ 34.

19 Lifeline NPRM ¶ 34.

20 Lifeline NPRM ¶ 36.

21 Lifeline NPRM ¶ 35.

goal should be to eliminate the difference in the voice service subscribership rates between low-income consumers and other consumers.[22]

B. Ensuring that Low-Income Consumers Can Access Supported Services at Just, Reasonable, and Affordable Rates is An Appropriate Goal.

The Commission's second proposed performance goal—"ensur[ing] that low-income consumers can access supported services at just, reasonable, and affordable rates"[23] —is also well-conceived, as Lifeline can only benefit the population it is designed to serve if it is truly affordable. The Commission is certainly correct in observing that affordability has both an absolute and a relative dimension, and that the Commission must consider both in determining whether Low Income Program service is in fact affordable for low-income Americans.

Subscription rates are a reasonable proxy, in the first instance, for *absolute* affordability. As the Commission's subscribership surveys show, household income affects telephone subscription rates: as household incomes rise, telephone subscribership also increases.[24] Accepting this standard, it is impossible to conclude that telephone service for low-income Americans is truly affordable if subscription percentage rates remain lower than those of their more affluent neighbors. In this regard, the FCC's Low Income Program has achieved an admirable measure of affordability for low-income Alaskans; as discussed above, telephone subscribership has increased substantially since Alaska initiated Lifeline service in 1994.

With respect to relative affordability, however, the FCC threatens to mis-analyze affordability by focusing on the share of income underprivileged consumers spend on telephone

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22 *See* Lifeline NPRM ¶ 34.

23 Lifeline NPRM ¶ 36.

24 *Telephone Subscribership in the United States* at 12, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (rel. Aug. 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301241A1.pdf.

service. The FCC proposes to undertake this analysis by comparing the percentage of low-income household income spent on voice service to the percentage of household income spent on voice service for the next highest income range, presumably to ascertain whether the percentage of total income that low-income households devote to telephone service exceeds the same percentage in the next highest income range.[25] This approach fails to take into account that disadvantaged members of the population have no alternative but to spend a larger share of their income on absolute necessities such as food and housing.[26] A percentage analysis also fails to account for the fact that fuel in particular will necessarily eat up a much larger percentage of income among rural low-income populations than among urban ones. In Alaska, for instance, fuel costs are a distinctly painful hardship for the poor. Low-income Alaskans face the triple-impact of higher per-gallon fuel costs, much greater distances, and heavier dependence on diesel fuel for heat than Lifeline subscribers in the lower 48. They often simply cannot afford to devote any meaningful percentage of their income to communications, regardless of what consumers in the next highest income range may be able to afford. Comparing percentages of total household income devoted to communications would therefore be misleading.

This is not to say that Low Income Program service should be free. Requiring consumers to pay some nominal amount for Lifeline service ensures that subscribers place some value on the service and deters waste, fraud and abuse on the part of consumers and providers. Although not foolproof, requiring consumers to pay a periodic fee (even one dollar per month) can help prevent fraud and ensure that there is an actual *bona fide* Lifeline customer behind an account.

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[25] Lifeline NPRM ¶ 36.

[26] *See* Castner and Mabli, *Low Income Housing Spending Patterns and Measures of Poverty* (Apr. 2010), *available at* http://www.fns.usda.gov/ora/menu/Published/snap/FILES/Participation/SpendingPatterns.pdf .

For instance, the current requirement – applicable only to Tier 4 – that the customer pay at least one dollar per month could be extended to all Lifeline customers.

C. Ensuring Support that Is Sufficient but Not Excessive Is an Appropriate Goal.

The Commission's third proposed performance goal—ensuring that "support that is sufficient but not excessive to achieve our goals"[27]—is also well conceived, but the Commission should avoid imposing inflexible standards and thresholds. For example, the Commission proposes "establish[ing] as a performance measure keeping erroneous payments in the program below a specified level, for instance by reducing levels of ineligible recipients to a specified percentage."[28] The goal is appropriate, but the related performance measure suggested in the NPRM is not.

The FCC's proposed performance measure suggests that the FCC could conclude that funding is excessive if the number or percentage of ineligible subscribers surpasses a certain threshold—even though the ETCs that provide Lifeline service have no choice when it comes to providing service to consumers who self-certify their eligibility and also cannot tell if individual consumers subscribe to Lifeline from more than one provider. To remedy this, the FCC should reorient the proposed performance measure to focus on the percentage of individual Lifeline subscribers with more than one Lifeline service from the same company prior to the development of the Lifeline database, and from multiple companies, after the Lifeline database is available. This would more accurately measure preventable subscriptions by non-qualifying consumers.

Denying reimbursement based on a rigid ineligibility threshold ignores the reality of providing Low Income Program service. ETCs are required by law to provide service to anyone

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27 Lifeline NPRM ¶ 37.

28 Lifeline NPRM ¶ 39.

who self-certifies eligibility,[29] but currently they have no means of verifying eligibility beyond the self-certification (and, in the case of income-based applicants, reviewing income documentation). Imposing an "ineligibility threshold" would punish ETCs for doing what the law requires them to do—providing Lifeline service to those who self-certify eligibility.

Inflexible performance measures would also add another burdensome wrinkle to a government social-service program that already puts significant strains on the private-sector carriers obligated to implement it. As discussed below, provisions like this, which would convert Lifeline into a partially unfunded mandate, also constitute an unlawful implicit rather than explicit subsidy, in which an ETCs' general resources are diverted to implementation of the subsidy program without universal service reimbursement. Courts have held unequivocally that the FCC cannot "maintain any implicit subsidies."[30]

In sum, each of the three proposed performance goals is appropriate. Of the three, the first two should be read in tandem, since availability and affordability are the twin requirements of truly universal Lifeline service, and they should take priority over the third in the event of conflicting policy interests.[31]

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29 The FCC's regulations require ETCs to "[m]ake available Lifeline service … to qualifying low-income consumers." 47 C.F.R. § 54.405(a). In states that do not mandate Lifeline support, a consumer can qualify for Lifeline service if the consumer certifies under penalty of perjury that he or she receives benefits from one of several enumerated assistance programs. *See* 47 C.F.R. § 54.409(d)(1).

30 *Comsat Corp. v. FCC*, 250 F.3d 931, 939 (5th Cir. 2001).

31 Lifeline NPRM ¶ 42 (seeking comment on how the Commission should prioritize among competing goals).

D. Adopting A Performance Goal of Advancing the Availability of Broadband Would Help Satisfy a Critical Need in Low-Income Communities, Particularly in Tribal Lands Like Alaska.

Apart from the three core performance goals discussed above, the Commission proposes adopting an additional performance goal of advancing the availability of broadband service to low-income households.[32] This is a particularly wise and forward-thinking approach to Lifeline. Just as including wireless service among covered Low Income Program services has greatly improved communications capabilities for low-income consumers across Alaska, including broadband service in the Low Income Program would help ensure that the neediest Americans are not left out of the advances (and corresponding opportunities) that broadband already delivers to higher-income consumers. As broadband becomes an increasingly essential communications tool, it becomes increasingly important to ensure that low-income consumers are able to take advantage of its offerings to the same degree as more privileged Americans. Indeed, Section 254(b)(3) mandates this result, providing that "low-income consumers . . . should have access to . . . information services . . . that are reasonably comparable to those services provided in urban areas."

The case for including broadband services in the Low Income Program is particularly strong in Tribal Lands like Alaska. Applications that depend on broadband connectivity—such as Internet access, medical data transmission, video telephony, and others—can provide a vital means of information sharing and connectivity for the unusually isolated communities of Alaska. Most Alaskan communities do not yet have access to broadband services (as defined by the National Broadband Plan's minimum threshold of 4 Mbps download and 1 Mbps upload), but

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[32] Lifeline NPRM ¶ 43.

including broadband within covered Low Income Program services could greatly expand broadband penetration.

As the FCC has recognized, one objective of the National Broadband Plan is that "every household in America have access to affordable broadband service offering actual download (*i.e.*, to the customer) speeds of at least 4 Mbps and actual upload (*i.e.*, from the customer) speeds of at least 1 Mbps."[33] While the Broadband Plan's standard includes an affordability component, the NTIA and FCC have released data demonstrating that connectivity at these speeds is not available in much of Alaska at any price. Indeed, the agencies' National Broadband Map reveals that, in stark contrast to the Lower 48, broadband connectivity (terrestrial mobile wireless) is simply unavailable in huge swaths of Alaska.

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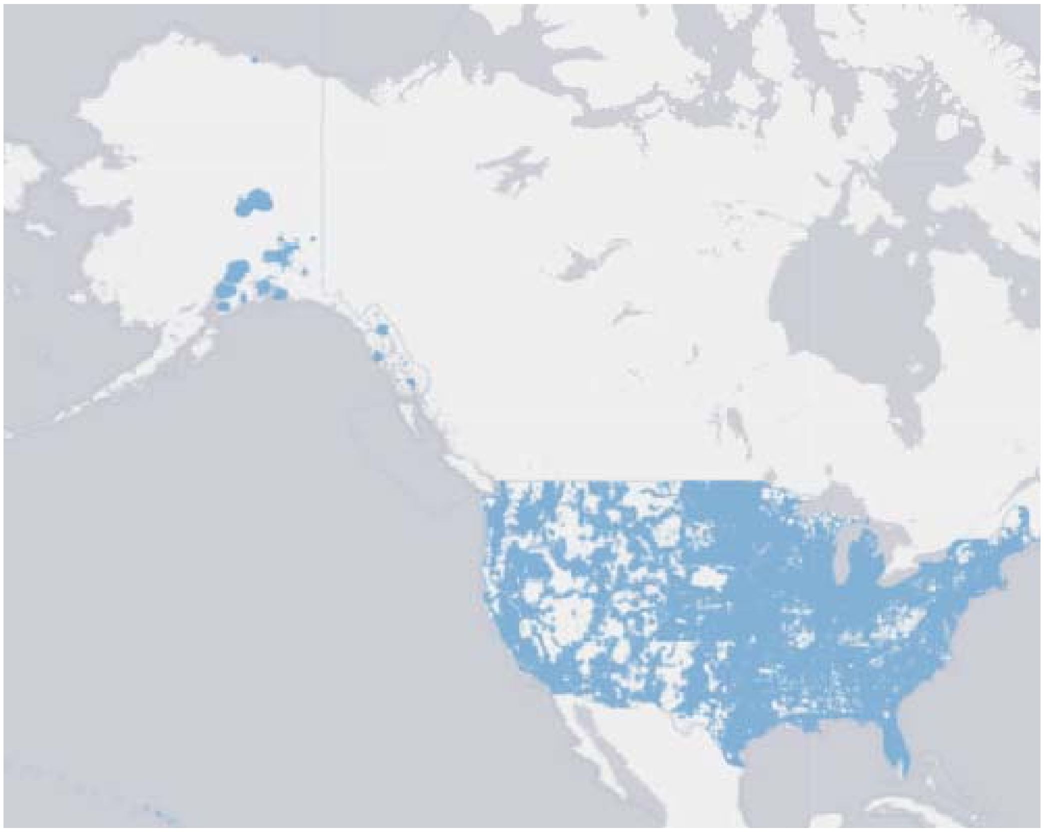
33 *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as amended by the Broadband Data Improvement Act: A National Broadband Plan for Our Future*, Sixth Broadband Deployment Report, GN Docket Nos. 09-137 & 09-51, ¶ 5 (rel. July 20, 2010).

Figure 5
Broadband Availability in Alaska and the Lower 48



Source: NTIA / FCC National Broadband Map, *available at* www.broadbandmap.gov.[34]

As this map makes clear, low-income Alaskans in rural areas are falling desperately far behind their higher-income counterparts in urban areas and in the Lower 48 with respect to broadband. This connectivity gap poses a particular threat to low-income Alaskans who, because of lower broadband penetration throughout the state, face the prospect of a long-term lag relative to consumers in the Lower 48 in terms of educational and economic opportunity, access to health care, and access to basic government information and services. Adopting a

[34] "For information to be included on the National Broadband Map, the technology must provide a two-way data transmission (to and from the Internet) with advertised speeds of at least 768 kilobits per second (Kbps) downstream and at least 200 Kbps upstream to end users." http://www.broadbandmap.gov/classroom.

performance goal that treats broadband service as a covered Low Income Program service would help mitigate this inequity.

To assess whether this goal is being achieved, however, the FCC must look not just to whether broadband service is simply available in Alaskan communities, as the NTIA/FCC map does. Instead, the FCC must analyze whether it is available at rates that make it affordable to these low-income consumers, as measured by the percentage of the low-income population that actually subscribes to broadband service relative to the percentage of the population as a whole that subscribes.

The FCC should take care that broadband is not defined in such a way that the Lifeline subsidy is unable to provide sufficient discounts to make the service affordable, or in a way that precludes any offering of supported broadband service. In Alaska, the limited bandwidth available to areas served by a "middle-mile" satellite link makes 4 Mbps download speeds and 1 Mbps upload speeds unachievable absent substantial investment in terrestrial middle mile facilities.[35] If those speeds were defined as a minimum for supported Lifeline broadband service, no Lifeline-supported broadband service at all would be available in those areas. To ensure that broadband deployment supported by the Low Income Program does not face insurmountable obstacles in unique environments like Alaska, the FCC should not apply the same broadband speed thresholds in hard-to-serve areas such as Tribal Lands that it may apply to regions with greater infrastructure already in place.

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[35] *See Comments of General Communication, Inc., In the Matter of Connect America Fund*, WC Docket No. 10-90, at 27 (filed Apr. 18, 2011).

IV. THE COMMISSION SHOULD TAILOR ITS PROPOSED WASTE, FRAUD, AND ABUSE REFORMS TO AVOID UNDERMINING THE PURPOSE OF THE PROGRAM AND HARMING THE POPULATION IT WAS DESIGNED TO SERVE.

The FCC should move aggressively to root out waste, fraud, and abuse; the Low Income Program's long-term viability depends on the development of systems that will eliminate ineligible Lifeline accounts from the nationwide roll of Lifeline subscribers. But the FCC should attack the problem of duplicate subscriptions by adopting a strict one-per-qualifying-adult limitation—in lieu of the counterproductive and administratively burdensome one-per-residence limitation outlined in the NPRM—and by moving forward toward developing a nationwide database of Lifeline subscribers.

A. The Commission Should Require ETCs to Collect Identifying Information from Lifeline Subscribers to Prevent Duplicate Claims.

The Commission proposes adopting rules that would "facilitate the enforcement of a one-per-residential address limitation."[36] As explained in Section V below, however, the Commission's proposed new limitation of one Lifeline subscription per residential address would contravene both the law and the policy of the Lifeline program. Instead, the Commission should adopt a clear "one-per-qualifying-adult" limitation.

Implementing a one-per-qualifying-adult limitation across multiple ETCs, each with its own roster of Lifeline subscribers, will require the creation of a database, as discussed in more detail in Section V.B. below. Populating this database with meaningful information that would enable the prevention (and, where necessary, disconnection) of duplicate accounts will require ETCs to collect and submit to USAC (or to another database manager, such as a state

[36] Lifeline NPRM ¶ 54.

commission) subscriber-specific identifying information.[37] While gathering and submitting such information will be necessary, the FCC should abide by "privacy by design" principles[38] and limit the types of data collected in order to protect consumers against identity theft and other harms in the event of an unauthorized release of information from any source.[39] Thus, for example, the Commission should identify a limited set of unique identifiers (such as drivers' license numbers, serial numbers for other state-issued photo identification, and/or the last four digits of Social Security numbers) and authorize ETCs to collect and submit such data.[40] The Commission should not, however, require collection and submission of dates of birth, complete Social Security numbers or comparable specific identifiers, as this data greatly enhances the risks of identity theft and other privacy invasions in the case of unauthorized disclosure without demonstrable benefits in preventing duplicate Lifeline enrollments.

As explained in more detail in Section V below, the FCC should promulgate a one-per-qualifying-adult limitation, which would not preclude different qualifying consumers from obtaining their own Lifeline subscriptions even if they happened to reside at the same residential address. Under such a system, addresses would be irrelevant, and there would be no need for

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[37] Lifeline NPRM ¶ 56.

[38] *See, e.g.*, *Comments Sought on Privacy Issues Raised by the Center for Democracy and Technology*, Public Notice, 25 FCC Rcd. 244, 248 (rel. Jan. 13, 2010).

[39] Lifeline NPRM ¶ 57 (seeking comment on the best way to accomplish the collection of identifying information consistent with privacy statutes). Currently, ETCs in federal default states are prohibited from retaining eligibility documents. *See Public Information Collections Approved by Office of Management and Budget*, 70 Fed. Reg. 30,110, 30,111 (May 17, 2005).

[40] ETCs will have to modify their billing and customer-service systems, and contact all of their Lifeline customers to attempt to collect the required information should the FCC implement this change. This will inevitably lead to the termination of large numbers of Lifeline subscribers (as the experience of the much smaller annual verification surveys illustrates), and it will require 12 months' advance notice to ETCs to allow them to implement it.

ETCs to submit subscriber address information to USAC (or to another database manager).[41] While such information might theoretically be used to screen for duplicate accounts held by a single individual, addresses are often unreliable because many low-income consumers (particularly in Alaska) are exceptionally migratory, as the locations of work opportunities in the state vary dramatically from season to season. Low income consumers often temporarily share housing with friends or family on a short-term basis when jobs are not available. Moreover, names are subject to error in multigenerational and extended families with shared surnames and commonly used first names. The burden and futility of requiring ETCs to continue to submit addresses to USAC would therefore outweigh any benefit.

Any system that relies on customer addresses for purposes of a database must also recognize that in some instances, particularly in areas such as rural Alaska, conventional street addresses do not exist. Many eligible consumers (especially in Alaska and other Tribal Lands) simply do not have conventional street addresses that can be recorded in a number-street-town-state-zip code database structure. For example, some addresses are simply descriptions of physical and natural reference points, such as "white house with red roof by river." Other residences have no meaningful fixed address because the physical residential structures are moved from one location to another as the seasons change. Furthermore, some Alaska residents' addresses change with frequency as they move around the state for seasonal work. For these reasons, rural and migratory Alaskans often receive mail at a Post Office box—sometimes shared among friends and family. Particularly for mobile services, addresses logged in a database are simply not a reliable means of identifying the subscriber to the service.

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41 Addresses may be relevant to other universal service programs, such as high cost, depending on the area served.

B. Rather than Codify the January 21 Letter, the Commission Should Adopt an Interim Rule on Cross-ETC Individual Subscriber Duplicates While Developing a National Database to Support a Long-Term Solution.

In the NPRM, the FCC proposes to codify guidance that the Wireline Competition Bureau provided to USAC on January 21, 2011, with respect to the treatment of consumers who have duplicate Lifeline subscriptions with more than one ETC. The FCC should refrain from adopting rules that reflect the January 21 letter and, instead, should adopt an interim rule designed to combat cross-ETC duplicates while simultaneously laying the groundwork for a national Lifeline subscriber database that would address the duplicates problem on a permanent basis.[42]

As explained in a Petition for Reconsideration filed by communications industry associations,[43] the Wireline Competition Bureau's January 21 letter does not take into account the difficulty and burden of contacting subscribers suspected of obtaining duplicative Lifeline support. Multiple efforts often are required to reach customers in rural areas because of the transient nature of low-income populations in those areas and because the challenging circumstances of Lifeline subscribers' lives (*e.g.*, lower literacy, uncertain living arrangements, higher incidence of limited or no English, and other complications of poverty and near poverty) often make them more difficult to reach than other segments of the population. GCI, for instance, has thousands of Lifeline subscribers, and making multiple efforts to contact each subscriber with indicators of a possible Lifeline subscription with another carrier would be costly and time-consuming. More fundamentally, the burden imposed on ETCs would outweigh any

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[42] *See Ex Parte of United States Telecom Association, CTIA – The Wireless Association ®, et al.*, and attachments, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109 (filed Apr. 15, 2011).

[43] *See Petition for Reconsideration of CTIA, USTA, et al.*, WC Docket No. 03-109, CC Docket No. 96-45, at 13-17 (filed Feb. 22, 2011) ("*CTIA-USTA Petition for Reconsideration*").

benefit gained from such a policy because any gains would be fleeting. ETCs currently rely on consumer self-certifications of eligibility, and they have no way of verifying whether or not a consumer already has a Lifeline subscription. Accordingly, even after purging duplicates via the process identified in the January 21 letter, there is currently nothing to prevent a Lifeline subscriber with one ETC from resubscribing to a second Lifeline service with another. Furthermore, false positives are especially likely in rural areas in Alaska, where individuals might share similar names and similar addresses.

The Commission also proposes that USAC seek recovery from ETCs if one or more individuals residing at the same address have been obtaining Lifeline support from two or more providers simultaneously.[44] This proposal would effectively punish ETCs for actions that are outside of their control. The FCC's regulations require ETCs to provide Lifeline service to consumers who self-certify their eligibility.[45] ETCs provide service to those subscribers in good faith reliance on these self-certifications. Indeed, GCI requires applicants to certify in their application materials that they do not already obtain Lifeline service from another provider and to authorize GCI to take action to terminate their existing Lifeline service if they do.

Against this backdrop, ETCs should be reimbursed for providing service where they have taken all of the steps required of them to avoid situations in which one subscriber has service from more than one ETC. The alternative—that is, a regime under which (a) ETCs are required to provide nearly free service to every eligible applicant who certifies that he or she does not have service with another provider but (b) ETCs may have their reimbursements denied after the fact due to subscriber actions beyond their control—would be arbitrary and capricious and would

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44 Lifeline NPRM ¶ 62.

45 *See* 47 C.F.R. § 54.405(a); 47 C.F.R. 54.409(d)(1).

violate Section 254(e) by mandating a subsidy without any reasonable assurance of actually receiving support for providing the service.

As an interim solution, GCI supports the proposal that a group of industry representatives (including GCI) presented to the Commission earlier this month.[46] In particular, the Commission should consider establishing a rule precluding any individual qualifying for low income consumer benefits from simultaneously receiving more than one Lifeline supported service and providing a mechanism, to be applied on an interim basis in selected states, for de-enrolling an individual consumer who is simultaneously receiving Lifeline supported service from more than one ETC. This interim solution would reduce the number of individual qualified Lifeline subscribers who are simultaneously receiving Lifeline-supported service from multiple ETCs, while still providing low-income consumers with the opportunity to choose their. When considering interim solutions, however, the Commission must recognize that ETCs that have customers who are simultaneously receiving Lifeline services from multiple ETCs today have no means of verifying whether any Lifeline customer is already receiving Lifeline service from another ETC.

In the long term, the FCC should work with a third party (either USAC or another entity) to establish a national database of Lifeline subscribers or a system of interconnected state databases that would identify every active Lifeline subscriber in the country. This database would allow USAC (or another third party) and ETCs to identify subscribers who already have Lifeline service before activating duplicate accounts. The database should contain enough

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[46] Letter from John Nakahata, Counsel to General Communication Inc., to Marlene H. Dortch, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109 (filed Apr. 1, 2011); *Ex Parte of United States Telecom Association, CTIA – The Wireless Association ®*, *et al.*, and attachments, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109 (filed Apr. 15, 2011).

information about each ETC's subscribers to prevent duplicate subscriptions (*e.g.,* subscriber name, year of birth, and last four digits of Social Security number). Under this proposed system, ETCs must be able to access the database (on a "read only" basis) for at least two reasons. First, to prevent duplicate subscriptions, they must be able to access the database to ascertain whether any particular applicant for Lifeline service already receives Lifeline service from another ETC (although the identity of the other ETC should be masked). Second, they must be able to review their own Lifeline subscriber lists as reflected in the database in order to assess whether it accurately reflects their own records listing Lifeline subscribers. This would enable ETCs to inform USAC of variances between the lists and resolve discrepancies. Indeed, a national database of this kind appears to be the only way to systematically prevent duplicates from occurring or recurring because no ETC currently has access to other ETCs' Lifeline customer lists.

C. The FCC Should Address Partial Months Using a Snapshot Approach Rather than an Administratively Burdensome and Unnecessary *Pro Rata* Approach, and it Should Consider Other Ways to Simplify This Overly Complex System.

The Commission proposes adopting a rule requiring ETCs to report on a *pro rata* basis on Form 497 when claiming reimbursement for Lifeline customers who have received service for less than a full month.[47] GCI recognizes the source of the Commission's concern but believes that database snapshot approach would achieve the same end more reliably and much more efficiently.

With respect to filed line counts, the FCC should continue to permit ETCs to report line counts on Form 497 by relying on a snapshot of active subscribers as of the last day of the month, rather than reporting partial months. Under ordinary operations, this straightforward

[47] Lifeline NPRM ¶ 67.

approach would eliminate the need for partial month reporting because customer activations and terminations occur throughout the month. By relying on a snapshot of active subscribers on the last day of the month, the ETC will forego any partial month reimbursement for a subscriber who terminated at any point during the month prior to the last day. On the other hand, it will receive full-month reimbursement for a subscriber who activates at any point during the month prior to the last day. The Commission has cited no information suggesting that the pattern of customer subscriptions and terminations is anything other than random over the course of a month, or any data indicating that the partial-month under-reimbursements (for midmonth terminations) and over-reimbursements (for midmonth activations) would not offset each other over time. In the absence of such data, requiring every ETC to implement partial month reporting on form 497 cannot be justified pursuant to the Paperwork Reduction Act.[48] Accordingly, the end-of-month snapshot provides an equitable, straightforward, reliable and easy-to-administer solution that avoids the complexity that partial month reporting on Form 497 would require.

While reforming the reimbursement system, the FCC should also simplify the process for amending past filings. The current system—under which ETCs must re-file a complete Form 497 for any past month subject to amendment—is burdensome and unnecessarily document intensive. Instead, the FCC should implement a simpler "true up" mechanism for adjusting past submissions that would be processed as a component of the reimbursement for the current period. In particular, GCI proposes that the FCC add a new section to the Form 497, with which ETCs could explain necessary adjustments to past filings and the number of lines at issue *without* requiring them to resubmit those past filings in their entirety. The adjustments reported in this

[48] 44 U.S.C. § 3501 *et seq*.

manner would be included with the reimbursement for the current period or offset against them, as appropriate.

D. The Commission's Proposals Regarding Link Up are Appropriate.

GCI supports the FCC's proposal to define "customary charge for commencing telecommunications service" as the ordinary initiation charge that an ETC routinely imposes on all customers within a state.[49] This reflects GCI's current approach and the spirit of the Link Up rules, and the definition should therefore be codified as proposed. Likewise, the rules should provide that activation charges that are waived, reduced, or eliminated when activation is accompanied by purchase of additional products, services, or minutes are not customary charges eligible for universal service support.[50]

E. The FCC Should Implement a "No-Use" Limitation Only for Lifeline Subscribers Who Are Not Subject to Required Monthly Payments for Service.

The Commission proposes prohibiting ETCs from seeking reimbursement for any Lifeline customer who does not use his or her service for sixty consecutive days.[51] The FCC's concern regarding periods of non-use is understandable, but the FCC's concern (and any cure) related to non-usage should be directed at prepaid wireless subscribers, as they are the pool of subscribers for whom extended periods of non-use may actually indicate waste, fraud and abuse.

Many subscribers to "prepaid" Lifeline wireless services actually pay nothing at all for their service—no activation fee, no monthly fee, no surcharges or taxes. For these subscribers, there is no objective means of ascertaining whether they should still be viewed as active "subscribers" apart from their usage patterns.

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[49] Lifeline NPRM ¶ 73.

[50] Lifeline NPRM ¶ 74.

[51] Lifeline NPRM ¶ 82.

The circumstances are entirely different for subscribers to post-paid Lifeline wireless service, like GCI's customers, who must make monthly payments to keep their service active. The ongoing periodic payment requirement justifies treating post-paid subscribers differently from prepaid (or, more accurately, "no pay") subscribers. Post-paid subscriptions simply do not present the same risk of phantom accounts that can be detected only by non-usage. Even if there is no usage for some amount of time, the fact that a post-paid subscriber continues to pay suggests strongly that the subscriber still wants and values the service, perhaps for use in emergencies or for other infrequent communications needs. ETCs should be compensated for making Lifeline service available to such subscribers.

Moreover, the FCC's no-usage proposal would create an administrative burden that would be exceedingly difficult for many ETCs to manage. In particular, the FCC proposes that ETCs continue to provide active service to "no use" customers, but that ETCs may not seek reimbursement for them after sixty days of no use, unless and until they start using service again.[52] Implementing this requirement would require GCI (and perhaps other ETCs as well) to overhaul its billing and data systems to track usage in a manner that would, after sixty days of non-usage, remove subscribers from the Form 497 line count of active Lifeline subscribers but without actually suspending Lifeline service.

This evident mismatch—that is, a requirement to continue making service available to non-using subscribers without any right to reimbursement—would also amount to another prohibited implicit subsidy. The rule, in short, would require ETCs to make fully discounted Lifeline service available—that is, keep the 10-digit telephone number active, be prepared to accept and route any communications to or from the subscriber, and ensure that all Lifeline

52 Lifeline NPRM ¶¶ 82-83.

service requirements are available to the caller—but deny the ETC any reimbursement for doing so. This would result in an unfunded mandate—and an implicit subsidy—that violates the statutory requirement that all universal service support must be explicit. Section 254(e) provides that universal service support "should be explicit."[53] Assessing this statutory provision, the Fifth Circuit has held unequivocally that "the plain language of § 254(e) does not permit the FCC to maintain *any* implicit subsidies for universal service support."[54] The no-usage proposal would run afoul of this prohibition, and the FCC should therefore decline to adopt it.

As an alternative (or additional) option, the FCC should consider adopting a "no-use" rule for prepaid subscribers and a "no-pay" rule for post-paid subscribers. Under the no-pay rule, the FCC would require suspension of service—and removal from the ETC's line count—if a subscriber fails to pay the Lifeline portion of his or her bill within a designated number of days after the charge was placed on the account. For post-paid subscribers—who by definition must make periodic payments to keep service active—a "no pay" rule is simply a more accurate indicator of a subscriber's status.

One hundred twenty days is a more appropriate time period for purposes of both a "no-use" rule (for prepaid subscribers) and a "no-pay" rule (for post-paid subscribers) than the sixty days suggested in the NPRM. A 120-day rule recognizes that Universal Service Fund cannot support subscribers who fail to use or pay for their service for indefinite periods, but it also reflects the challenges faced by many qualifying consumers, particularly in Tribal Lands. Sixty days, as the FCC has proposed for a "no-use" rule, is simply too short for subscribers in Alaska, where seasonal migrations and work opportunities—in unconnected areas—can in some cases

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53 47 U.S.C. § 254(e).

54 *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999) ("*TOPUC I*"); *see also Comsat Corp. v. FCC*, 250 F.3d 931, 939 (5th Cir. 2001) (same).

interrupt usage and payment patterns for two or three months at a time. Furthermore, a 120-day time period takes into account the fact that some Lifeline subscribers use the service only for emergencies—one of the primary purposes of the program—which might not occur every two months.

F. The FCC Should Require ETCs to De-Enroll Non-Responsive Subscribers with Duplicate Accounts, Subscribers Who Violate the "No-Use" or "No-Pay" Rule, and Subscribers Who Fail to Respond to the Annual Verification.

The Commission proposes requiring ETCs to de-enroll Lifeline customers or households in three circumstances: (1) when the subscriber is receiving duplicate support and fails to select one ETC in the allotted time after being notified of a duplicate claim; (2) when the subscriber does not use his or her Lifeline service for the required period and fails to confirm continued desire to maintain the service; or (3) when a subscribers does not respond to the annual eligibility verification survey.[55] Each of these proposals is appropriate with modification.

With respect to the first de-enrollment category—subscribers with duplicate accounts—the rule should focus only on whether individual subscribers have more than one account, not on whether more than one eligible consumer subscribes at a given residential address.[56] Prior to the development of a national database(s), the FCC should adopt the interim "duplicates" rule proposed by CTIA, USTA and GCI and other Lifeline providers.[57] After a database is operational, the FCC should implement a duplicates rule that allows for a response period. The rule should require that the response period begins when notice is sent to the subscriber who appears to have duplicate accounts and to the ETCs that appear to serve the subscriber. The

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55 Lifeline NPRM ¶ 93.

56 *See infra* § V.B.

57 *Ex Parte of United States Telecom Association, CTIA – The Wireless Association ®, et al.*, and attachments, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109 (filed Apr. 15, 2011).

notice should alert the subscriber (and the ETCs) that failure to select one ETC before the end of the response period can result in termination of one service (and cessation of Lifeline support to the carrier at that point). During the response period, the subscriber will have an opportunity to select one ETC to provide service, and the ETCs will have an opportunity to reach out to subscribers and to investigate whether apparent duplicate accounts are in fact duplicates.[58] The rule should not require de-enrollment if either (a) the subscriber responds during the response period and selects one ETC to continue providing service, or (b) the ETCs that appear to be providing duplicate service to the subscriber determine during the response period that there are not, in fact, duplicate accounts. (The latter situation will occur if, for instance, when the accounts are not in fact held by the same individual despite similar names and addresses.)

With respect to the second de-enrollment category—subscribers with extended periods of non-usage—the FCC should apply different rules for prepaid subscribers and post-paid subscribers, as explained in section IV.E above. In both cases, the rule should require de-enrollment only after 120 days.

Finally, GCI agrees that ETCs should de-enroll subscribers who fail to respond to the annual verification survey. The rule should require ETCs to send a notice to all of the subscribers included in the survey sample warning them that failure to respond within sixty days will result in service termination. If a subscriber fails to respond to the survey within sixty days, the rule should require de-enrollment.

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58 *See supra* § IV.B. (discussing the need for response period as part of an interim rule).

V. THERE IS NO RULE CURRENTLY LIMITING LIFELINE TO ONE SUBSCRIPTION PER HOUSEHOLD, AND THE FCC SHOULD DECLINE TO ADOPT ONE NOW, AT LEAST IN TRIBAL AREAS.

The Commission proposes to adopt a rule imposing a one-per-residential-address limitation on Low Income Program services, and it asserts that this rule would reflect an existing (but uncodified) one-per-residential address policy.[59] In fact, however, the FCC has never adopted any such requirement, and it should decline to do so in this proceeding. A one-per-residential-address limitation would ignore the wireless transformation that has swept across the industry and, as a result, deprive many qualifying consumers of service in direct contravention of the statute. A one-per-residential-address limitation would also generate endless administrative complexity, as the Commission would have to continuously assess whether to create exceptions for certain living arrangements, and ETCs and the Commission would continuously struggle to ascertain when and where such exceptions apply.

Rather than adopt a backwards-looking rule harkening to the fixed-telephony era, the Commission should instead adopt a one-per-qualifying-adult rule, which would achieve the statutory directive, reflect the facts of modern telephony, and also avoid an administrative quagmire. In the event the FCC elects to impose a one-per-residential-address notwithstanding the substantive and administrative problems it would create, the FCC should at least exempt subscribers who live in Tribal Lands.

A. There is no Rule Currently Limiting Lifeline to One Subscription per Household.

There is no rule that limits Lifeline to one subscription per household.[60] Nothing in the federal regulation detailing consumer eligibility requirements limits Lifeline service to one

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59 Lifeline NPRM ¶¶ 106-125.

60 *See, e.g., CTIA-USTA Petition for Reconsideration* at 12-13.

subscription per residence, nor do any of the other regulations governing the Low Income Program.[61]

Furthermore, the Commission has never adopted a one-per-residence limitation in any decision-making portion of an FCC order. In the NPRM, the FCC suggests that a one-per-residence requirement is already in place, and for support it cites paragraph 4 of the *2004 Lifeline and Link Up Order* and paragraph 341 of the *1997 Universal Service Order*.[62] But neither of these sources supports the FCC's assertion that the requirement exists today. Paragraph 4 of the *2004 Lifeline and Link Up Order* does nothing more than refer back to paragraph 341 of the *1997 Universal Service Order*.[63] Paragraph 341, in turn, is part of a background section in which the Commission described the regulatory regime for Lifeline that existed *prior* to implementation of the Telecommunications Act of 1996 ("1996 Act").[64] Indeed, the Commission supported its background discussion in paragraph 341 by citing to a then-existing regulation that imposed a one-per-residence limitation on qualifying subscribers.[65] But that regulation was removed from the code more than thirteen years ago. The very same *1997 Universal Service Order* to which the FCC now cites amended the former residence-related restriction so that it sunset on December 31, 1997—when the new post-1996 Act Lifeline regulations took effect.[66] Moreover, the elimination of that one-per-residence regulation made sense as a policy matter as the post-

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61 *See* 47 C.F.R. § 54.409; 47 C.F.R. Part 54, Subpart E.

62 Lifeline NPRM ¶ 103 (citing *Lifeline and Link Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, 19 FCC Rcd, 8302, 8306, ¶ 4 (2004) ("*2004 Lifeline and Link Up Order*"); *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8957 ¶ 341 ("*1997 Universal Service Order*").

63 *2004 Lifeline and Link Up Order* ¶ 4.

64 *1997 Universal Service Order* ¶ 341.

65 *1997 Universal Service Order* ¶ 341 n.851 (citing to 47 C.F.R. § 69.104(k) (1996)).

66 *1997 Universal Service Order*, App. I, ¶ 14; *see also* 47 C.F.R. § 69.104(k) (1997).

1996 Act regulations ushered in the area of wireless telephony and envisioned a world in which there could be multiple providers of universal service in the same area. In short, the support the FCC offers in the NPRM shows that a one-per-residence rule was in effect until the end of 1997 and that the FCC affirmatively eliminated the rule in the very order the FCC now cites—not that any such requirement exists today.

Moreover, even if paragraph 341 of the *1997 Universal Service Order* did describe a requirement that continued to have effect after December 31, 2007 (which it plainly does not), it is far from clear that the pronouncement would bar more than one subscription per residence, as opposed to one subscription per eligible subscriber. The pertinent sentence in paragraph 341 (which, again, was describing the Lifeline program as it existed before the 1996 Act) stated that "qualifying subscribers may receive [Lifeline] assistance for a single telephone line in their principal residence."[67] Fairly read, the plain language of this passage focuses on the individual, limiting each qualifying subscriber to one line located in his or her primary residence. It does not address the possibility that more than one qualifying subscriber may live at the same residence, however, and therefore it does not (as the Lifeline NPRM infers) preclude more than one qualifying subscriber from receiving Lifeline support even if they live at the same address.

The Low Income Program is designed to make sure that telecommunications services are available and affordable for qualifying adults who would otherwise be unlikely to have any telephone service at all. Imposing a one-per-residence requirement in the wireless era would subvert this underlying purpose as it would effectively bar many qualified low-income consumers from obtaining discounted telephone service (and the ability to dial 911), even though they do not have meaningful access to any other telephones. This would violate the requirements

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[67] *1997 Universal Service Order*, ¶ 341.

of Section 254(b)(3)—which directs that service be available to "low-income consumers" without limitation—and it would undermine the "availability" and "affordability" performance goals that the FCC proposes to adopt.

Most saliently, it would be deeply counterproductive public policy. A one-per-residence requirement in the wireless era would, by design, eliminate Lifeline support for many if not most individuals in a household. After the fortunate first applicant at an address obtained his subsidized service, no one else at the address would be eligible. When that first applicant was anywhere other than at the residence, others would have no access to the service. It would not matter whether the other adults were part of the same economic unit, or managed their finances separately, whether they might be extended or multigenerational families, or whether they might be wholly unrelated adult individuals simply sharing an address. Indeed, a one-per-postal address limitation would even bar multiple families residing in separate apartments or buildings, but sharing the same postal address, from receiving more than one Lifeline supported service among all families.

The proposed limitation would also disproportionately disadvantage the homeless and near homeless. These most desperate of the poor, who clearly are most in need of Lifeline support, often have tenuous and shifting connections to physical addresses. There are soup kitchens and other support organizations that serve as mail drops for multiple homeless people. Homeless and semi-homeless people sometimes move among friends and relations, obtaining warmth and a roof from night to night on a casual and impermanent basis. A one-per-address rule would thus not only threaten the homeless themselves but punish their benefactors, often other marginalized, low-income people, for assisting them.

Furthermore, the proposal to attempt to draw exclusions from a one-per-postal address prohibition based on local zoning (residential versus business) is wholly impractical.[68] Trying to check all Lifeline addresses against local zoning maps – if zoning even exists – would make it even harder and more complex to actually enroll a Lifeline consumer. ETCs would have to build specialized databases to reflect local zoning, and then would have to keep up with all the locally adopted zoning changes and variances.

The impact would be felt particularly, though certainly not uniquely, in Alaska. When the first applicant migrated to seasonal work at a fish camp, a cannery, or aboard a fishing vessel, all other eligible low-income residents of the household would be deprived of even borrowed access to the service. Anyone other than the first applicant would have no access to 911 when travelling—or even at home when the first applicant happens to be elsewhere. And this would be true regardless of whether that first applicant was a spouse, grandmother, cousin, long-time roommate, or a mere acquaintance sharing lodging. Otherwise entirely eligible disadvantaged people would thus be deprived of the safety and communications benefits Lifeline is designed to encourage, without regard to need or equity.

As the foregoing discussion demonstrates, there is no current regulation or other requirement imposing a one-per-residence limitation on Lifeline service. Accordingly, any such rule that the FCC adopts as a result of this proceeding can have prospective effect only.[69] As explained below, however, the Commission should instead adopt a clear and easily administered one-per-qualifying adult limitation. A one-per-residence rule, by contrast, would have

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68 Lifeline NPRM ¶¶ 117-18.

69 *See* 5 U.S.C. § 551(4) (defining "rule" as "the whole or a part of an agency statement of general or particular applicability and future effect").

deleterious consequences for Lifeline subscribers (particularly in tribal areas), and it would generate a thicket of administrative challenges for the Commission and for ETCs.

B. The FCC Should Adopt a One-Per-Qualifying Adult Limitation, At Least in Tribal Lands.

The FCC should adopt a rule that clearly limits each qualifying consumer to a single Lifeline subscription without any address-based limitation. Even if the Commission declines to adopt such a rule nationwide, it should adopt it for tribal areas because of the particularly punitive consequences and administrative complexities an address-based limitation would have if applied in those regions. As explained below, a one-per-qualifying adult limitation would best serve the statutory purpose underlying the Lifeline program, enhance public safety at a time when nearly 25 percent of homes have only wireless telephones,[70] and promote administrative simplicity.

1. <u>A One-Per-Qualifying Adult Limitation Best Promotes the Objectives of the Low Income Program.</u>

The current Low Income Program reflects the directives of the 1996 Act, which provides that "low-income consumers . . . should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas."[71] The statute focuses clearly on providing access to individual consumers—not households or residences—and nothing in the statutory text suggests that Low Income Program service should be denied to otherwise eligible consumers simply because another adult with the same residential address has Lifeline service.

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70 *See* Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, *Wireless Substitution: State-level Estimates From the National Health Interview Survey* (2011), *available at* http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf.

71 47 U.S.C. § 254(b)(3).

A one-per-residence requirement may have been appropriate in the wireline era. In the days when a telephone was hardwired into a home, it was reasonable to limit Lifeline to one subscription per residence because, in most cases, all residents would have the same ability to locate and use the hardwired telephone. The situation is obviously much different in the wireless environment that exists today, as the NPRM recognizes.[72] In stark contrast to the fixed-telephones of the past, individuals now typically carry their wireless handsets with them wherever they go. Moreover, many households no longer have a traditional wireline connection and instead have only a wireless phone. In Alaska, the percentage of adults living in wireless-only households rose from just over 10% in January 2007 to nearly 20% in June 2010.[73] Wireless substitution is also disproportionately higher in low-income households.[74] This transformation makes Lifeline even more valuable for people who have access to it because it means they have access to emergency service and can engage in other critical communications even when they are not at home. The corollary to this benefit, however, is the fact that there is no longer any meaningful nexus between a handset and any particular residence. Since people carry their wireless phones with them, a one-per-residence rule would mean that other Lifeline-eligible consumers who share a residence with a Lifeline subscriber may not have *any* access to a phone when the subscriber goes to work, the store, school, church, or anywhere else.

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[72] Lifeline NPRM ¶ 110.

[73] *See* Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, *Wireless Substitution: State-level Estimates From the National Health Interview Survey* (2011), *available at* http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf.

[74] Stephen J. Blumberg, Ph.D., and Julian V. Luke, *Coverage Bias in Traditional Telephone Surveys of Low-Income and Young Adults*, Public Opinion Quarterly 71(5):734–49 (2007).

2. A One-Per-Qualifying Adult Rule Is Administratively Simple.

The FCC notes that it "seek[s] to adopt a rule that provides a bright line that is easy for USAC and ETCs to administer."[75] A one-per-residence rule would fail to meet that objective, as the NPRM itself acknowledges.[76] Since there is a nearly limitless array of "atypical" housing arrangements that arguably do not fit within a traditional definition of "residence," the FCC and USAC will need to develop (and continually refine) a nearly limitless array of exceptions and alternative procedures that apply to non-traditional living arrangements. Moreover, the FCC and USAC will need to develop a mechanism for determining whether any particular subscriber fits within any of the exceptions. ETCs will face the burdensome task of applying the rule exceptions in qualifying circumstances and monitoring all of their subscribers to determine whether their residential characteristics have changed.

As a practical matter, these may be impossible tasks considering that living arrangements are fluid and constantly changing, particularly among the population that Lifeline is designed to serve. Among other atypical living arrangements, a one-per-household rule would need to include appropriate exceptions for homeless shelters; halfway houses; multigenerational residences; residences occupied by more than one family (or, if the Commission adopts the "postal address" definition, multiple families sharing a postal address); group homes or other residences shared by separate independent adults (such as an apartment shared by adult roommates); dormitories (such as for seasonal workers); migrant camps; and single-room occupancies and other hotels.

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75 Lifeline NPRM ¶ 106.

76 *See, e.g.*, Lifeline NPRM ¶¶ 111-125 (seeking comment on some of the implementation problems presented by one-per-residence rule).

The FCC and USAC will also need to consider how to implement a one-per-residence requirement for residences that lack traditional addresses. For instance, many residences in rural Alaskan communities lack any traditional street address. Instead, they are described by reference to geographic landmarks. In some rural villages, houses are impermanent, as the population moves their physical homes seasonally to reflect changes to river flows and other environmental features that change with the seasons. Residences like these create an administrative roadblock for a one-per-residence rule because there is no effective way to search a database or list of subscribers to determine whether someone else in the same residence already receives Lifeline service.

In short, a one-per-residence limitation would disserve Lifeline's policy and statutory foundations, and it would produce a thicket of implementation challenges. The FCC should reject it. Instead, it should establish a one-per-qualifying-adult rule, as that would account for the way individuals use the telephone in the wireless era and therefore advance the statutory objectives underlying the Lifeline program.

In the event the FCC decides to adopt a one-per-residence rule notwithstanding the problems described above, it should exempt Tribal Lands. The policy and practical challenges associated with a one-per-residence rule are particularly acute in tribal regions—where individuals and populations are unusually migratory, nontraditional housing arrangements abound, and traditional street addresses are relatively scarce. At the very least, in the event the FCC adopts a one-per-residence requirement even in Tribal Lands, it should clarify that the rule means that only one Lifeline subscription may be provided to any one nuclear family (defined as subscriber, spouse or partner, and minor children) living at the same physical address. A "nuclear family" approach to the one-per-residence rule would allow a separate Lifeline account for someone who happens to live at the same address but who is not a member of the same nuclear family as the existing Lifeline subscriber. It is important to recognize, however, that if the Commission adopts a one-per-"nuclear family" prohibition, whether or not individuals are in the same "nuclear family" can only be enforced by requiring Lifeline applicants to certify that they are not in the same "nuclear family" as other Lifeline recipients. The Commission should not require ETCs to inquire or investigate whether two Lifeline recipients are, in fact, part of the same nuclear family if they have so certified; it would be far too intrusive on the personal privacy of low-income Americans to mandate detailed inquiry into personal relationships.

VI. CAPPING THE SIZE OF THE LIFELINE PROGRAM WOULD VIOLATE THE LAW AND DEVASTATE THE VULNERABLE POPULATION THAT LIFELINE WAS DESIGNED TO ASSIST.

The FCC proposes capping the size of the Lifeline program.[77] GCI strenuously opposes this proposal, at a minimum as applied to tribal areas, because it would instantly put telecommunications service out of reach for many low-income consumers. This would directly contravene the requirement in Section 254(b)(3) that "low-income consumers . . . should have access to . . . telecommunications . . . that are reasonably comparable to those services provided in urban areas."[78] As a practical matter, capping reimbursements would mean that USAC would provide ETCs with smaller and smaller reimbursements per subscriber (assuming the aggregate nationwide subscriber count continues to grow). This, in turn, would mean that ETCs would have to make a corresponding reduction to the discounts they provide to subscribers which, of course, would leave subscribers paying more of the cost out of pocket. This would make even discounted service unaffordable for many of those who need it most.

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77 Lifeline NPRM ¶¶ 145-146.

78 47 U.S.C. 254(b)(3).

The FCC may mean to propose that ETCs should not reduce the discount provided to subscribers and instead that the ETCs themselves must absorb the cost of reduced reimbursements. If so, then the FCC's proposal violates the statute's command that universal service support must be "explicit."[79] Courts have been very clear that the Commission can neither "permit" nor "maintain" an implicit subsidy.[80] In effect, this rule would impose an unfunded social service mandate—and a requirement to fund an implicit subsidy—on private companies that are obliged to provide this service by virtue of their status as ETCs. Indeed, the proposed rule would make ETC status less desirable and could lead carriers to reconsider whether it makes sense as a business matter to maintain their ETC status and continue providing service to all of the populations the universal service program serves.

VII. SEVERAL OF THE FCC'S PROPOSALS FOR IMPROVING PROGRAM ADMINISTRATION ARE APPROPRIATE WITH REFINEMENT, BUT ANNUAL VERIFICATION OF ALL SUBSCRIBERS AND ELIMINATION OF THE SELF-CERTIFICATION PROCESS WOULD NOT ADVANCE PROGRAM GOALS.

A. Program Eligibility Criteria

The FCC appropriately proposes to amend the rules to require all states to utilize, at a minimum, the program criteria currently utilized by federal default states.[81] The FCC's proposal to allow states to maintain existing state-specific eligibility criteria that supplement the federal criteria is also prudent.[82] The Regulatory Commission of Alaska has taken this approach—that is, it started with the list of qualifying programs on the federal list and then it added several comparable Alaska-specific programs. The approach appears to have worked well in Alaska,

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79 *See* 47 U.S.C. § 254(e).

80 *See TOPUC I*, 183 F.3d at 425; *Comsat*, 250 F.3d at 939.

81 Lifeline NPRM ¶ 154.

82 Lifeline NPRM ¶ 154.

most notably because it has permitted the state to include criteria that are unique to Alaska (*e.g.*, eligibility based on state social assistance programs for low-income individuals).

B. Income Eligibility Criteria

GCI does not object to the current household income threshold for Low Income Program eligibility (currently 135 percent of the threshold set in the Federal Poverty Guidelines),[83] but, because GCI believes the Commission should institute a one-per-qualifying adult rule, GCI believes that the inquiry should be whether an individual adult's *family* income exceeds the threshold. This approach takes into account the fact that there are numerous situations in which adults living together in one physical residence have no expectation of access to the others' income, such as roommates, homeless shelters, single-room occupancies, or group homes. In such situations, counting the combined income of all persons who live in a single physical residence – even when one has no claim upon or expectation of support from another – would paradoxically deny Lifeline support to qualified low-income individuals based on housing arrangements compelled by that very lack of income.

In addition, GCI believes that another component of the income-eligibility rules requires clarification. In particular, the rules applicable to federal default states provide that an applicant attempting to qualify for Low Income Program service on the basis of household income must present either (a) documentation of income that covers a full year or (b) at least "three consecutive months worth of the same types of document within that calendar year."[84] The reference to "that calendar year" in the second alternative can be read to create an arbitrary and

[83] Lifeline NPRM ¶ 157.

[84] 47 C.F.R. § 54.410(a)(2). Alaskan regulations impose a comparable but slightly different requirement under which an applicant must present documentation of income that covers either (a) a full year or (b) "at least three consecutive months in the current calendar year." 3 AAC § 54.390(f).

apparently unintended obstacle for many applicants. There is no rational reason to assess Lifeline eligibility differently during the first three months of any year, yet the current wording arguably makes it impossible to satisfy the second alternative during the first quarter because three months would not have elapsed in "that calendar year." For this reason, GCI believes that it is appropriate to interpret the rule to require documentation from within the previous 12 months, rather than within the current calendar year, and it proposes that the FCC clarify that this is the interpretation it intends or modify the rule accordingly.

C. Required Subscriber Certifications

ETCs should be required to obtain a certification when initially enrolling a subscriber in Lifeline that the subscriber will receive only one Lifeline service. Similarly, ETCs should also be required to obtain from subscribers sampled during the annual verification process a certification that they receive only one Lifeline service.[85] Both of these measures would help eliminate duplicate Lifeline accounts held by a single individual.

For the same reason, the FCC should adopt a rule requiring all ETCs to use certification forms that explain in clear and simple terms that the federal benefit is available for only one line per adult (<u>not</u> per residence, for the reasons GCI explains above) and that consumers are not permitted to receive benefits from multiple providers.[86] In addition, the Commission should require certification forms to expressly warn subscribers that violating the one-per-qualifying adult requirement or including any false information on the form constitutes a violation of the Commission's rules and may constitute a federal crime. These requirements reflect the current reality (which may change following the development of a national database) that only the subscribers themselves can ascertain whether they have more than one Lifeline account with

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[85] Lifeline NPRM ¶ 167.

[86] Lifeline NPRM ¶ 168.

multiple ETCs. Accordingly, it is appropriate that subscribers should understand that they are liable for any consequences of any false statements they make on their applications.

D. Eliminating the Self-Certification System

GCI also opposes the FCC's proposal to eliminate the self-certification process and require all consumers to present documents to establish their eligibility.[87] This proposal would harm the population that Lifeline is designed to serve. The individuals eligible for Lifeline are, generally speaking, more vulnerable and in some respects more marginalized than the population as whole. Their record-keeping practices are in many cases less effective than those in the population as a whole. Denying service to someone who neglects to save the appropriate documents or bring them along during a journey to town to visit a store (which is often a significant journey in Alaska) would effectively punish many subscribers based on the very circumstances that that qualify them for Lifeline in the first place.

If the FCC adopts this proposal notwithstanding the fact that it would deprive service for many qualifying individuals, it must provide much clearer guidance to ETCs on the specific types of documentation that qualify a subscriber for service. Many of the programs that can qualify a Lifeline subscriber in federal default states and in Alaska are somewhat obscure, and ETC personnel struggle to identify valid qualifying documentation associated with them.[88] As a result, a rule requiring ETCs to review documentation proving program participation should take effect only after the FCC and the applicable state regulators have provided each ETC with sample copies of qualifying program documents so that the ETCs are able to determine whether a particular applicant is eligible.

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[87] Lifeline NPRM ¶ 170.

[88] *See* 47 C.F.R. § 54.409 (b), (c); 3 AAC 53.390(b)(2).

E. Census Approach to Annual Verification and Enforcement of Duplicates Rules

The FCC's proposal to require ETCs to conduct a full annual Lifeline subscriber census to verify compliance with a one-per-residence rule (or a one-per-qualifying adult rule) and/or to test eligibility would eliminate service for thousands of qualified active subscribers and also generate enormous administrative complexity and expense.[89] Confirming compliance with restrictions on duplicate accounts is best accomplished through the development of a Lifeline database. Prior to the implementation of a database, compliance should be confirmed via the interim rule described in Section IV.B above. The rules should continue to require ETCs to verify eligibility via a statistically valid survey.

Annually confirming every subscriber's eligibility or compliance with an anti-duplicates rule would be a logistical quagmire that would succeed only in depriving qualifying subscribers of service. By design, Lifeline serves a marginal population that tends to respond to inquiries at a relatively low rate. Indeed, the existing annual verification process (which currently targets only a sample of subscribers) reveals low response rates across America. USAC documents entitled "Overview of Verification Process and Results (covering 2005)," "Overview of Verification and Certification Process and Results (covering 2006)," and "Summary of 2007 Verification and Certification Processes and Results," acquired via a Freedom of Information Act request, reveal that, nationwide, the non-response rate during the annual verification process in federal default states was over 21 percent in 2005, over 30 percent in 2006, and over 17 percent in 2007. Given that illiteracy, minimal writing ability, and lack of the ability to read or speak English are common contributors to low-income status and are frequently paired with

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[89] Lifeline NPRM ¶¶ 169, 185.

discomfort dealing with official institutions (including utilities), it is not surprising that response rates are low.

Because many low-income subscribers simply will not respond, for example, because they have temporarily moved for seasonal work, a rule that requires an annual confirmation of every subscriber's eligibility and compliance with duplicates rules, and the de-enrollment of non-responders, would effectively eliminate service for thousands of qualifying subscribers. In short, a census-based approach would result in qualifying subscribers losing service simply because in many cases they are vulnerable members of society who are unlikely to respond in a timely manner—that is, because they are precisely the type of person Lifeline is supposed to help. The natural and foreseeable result of this proposal is large numbers of eligible subscribers losing service simply because they have difficulty responding in a timely manner.

Apart from the harm that such a rule would inflict on thousands of qualifying subscribers, the process of sending a certification form to every subscriber, following up on non-responses, assessing the results, and investigating inconsistencies would impose an enormous cost on ETCs. Considering the destructive result that this process would produce for subscribers, the cost is completely unjustified. Moreover, the Universal Service Fund would have to support these substantially increased administrative costs,[90] diverting yet more funding away from direct universal service support.[91]

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[90] *See TOPUC I*, 183 F.3d at 425.

[91] While it is impossible to predict how much this administrative undertaking would cost, the 2010 U.S. census provides some instructive data. According to the Government Accounting Office, the 2010 Census cost approximately $13 billion to administer, *see* GAO Report to Congressional Requesters, 2010 Census, at 2 (2010), *available at* www.gao.gov/new.items/d11193.pdf, and it tallied approximately 308.7 million people. *See* U.S. Census Bureau, *available at* www.census.gov. That breaks down to an administration cost of approximately $42 per person.

GCI also opposes the adoption of any "annual verification ineligibility threshold" that would trigger a proceeding to determine whether an ETC's right to participate in the Low Income Program should be revoked.[92] As explained above, ETCs are required by law to provide service to consumers who provide information showing they meet the eligibility requirements. ETCs have no control over whether an applicant provides faulty documentation or otherwise falsifies his application, and they typically have no ability to determine when that has happened. For an ETC that operates in good faith and fulfills its obligation to provide service, imposing an "annual verification ineligibility threshold" would amount to punishing the ETC for the actions of consumers.

F. The Creation of a Lifeline Database

The creation of a national Lifeline database or a national interconnected system of state databases would result in sweeping efficiency gains for the FCC and for ETCs, as explained in Section IV.C above.[93] A database would enable ETCs to check for duplicate accounts in real time at the time of activation. If the database can be integrated with data provided by appropriate social service agencies, the database could also allow ETCs to affirmatively confirm every subscriber's eligibility prior to activating their service.

USAC's 2010 Annual Report states that 10.5 million people subscribe to Lifeline. *See 2010 Annual Report*, Universal Service Administrative Company, at 12 (2011), *available at* http://www.universalservice.org/_res/documents/about/pdf/usac-annual-report-2010.pdf. Thus, if the difficult-to-reach Lifeline population could in fact be reached for the same cost, the verification process that the FCC proposes could cost $441 million every year. But the data from the existing annual verification surveys indicates that the disadvantaged Lifeline population is *harder* to reach than the average American, so the true cost of this proposal may be even higher.

92 Lifeline NPRM ¶ 187.

93 Lifeline NPRM ¶ 207.

G. Electronic Signatures

The FCC should enact the proposal to "allow consumers to electronically sign the 'penalty of perjury' requirements of section 54.409(d) and 54.410 of the Commission's rules," provided that ETCs retain electronic versions of the certification forms.[94] As the FCC acknowledges in the NPRM, federal statutes require that electronic signatures have the same legal effect as written signatures,[95] and they should therefore be acceptable in the context of the Low Income Program.

VIII. CONSUMER OUTREACH AND MARKETING

There is no need to codify the Commission's marketing guidelines.[96] The guidelines are useful and effective in their current form—that is, as illustrative guidelines, not binding requirements—particularly since they allow ETCs flexibility in reaching the various unique populations that may qualify for service.

IX. MODERNIZING THE PROGRAM

A. The Current Lifeline Program

The FCC should require that Lifeline discounts should be available for bundled calling plans, including plans that provide broadband service.[97] This requirement must reflect some operational necessities related to service bundles that include services that are not themselves subject to Lifeline support. First, the rule must allow ETCs to run credit checks on applicants for service bundles that include non-Lifeline components, as the ETCs will be relying on the

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94 Lifeline NPRM ¶ 224.

95 Lifeline NPRM ¶ 224 (citing Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001-7004, and Government Paperwork Elimination Act, 44 U.S.C. §§ 3501-20).

96 Lifeline NPRM ¶¶ 227-230.

97 Lifeline NPRM ¶ 258.

applicants to pay out of pocket for those components of the bundle. Second, the rule must clarify how ETCs should allocate partial payments they receive from Lifeline subscribers whose services include non-Lifeline components bundled together with Lifeline services. GCI proposes that any payment received (a) must first be allocated to past due charges applicable only to Lifeline components and (b) may not be allocated to future Lifeline charges that have not yet been incurred. Third, an ETC must be permitted to terminate service on non-Lifeline components of a service bundle due to non-payment, even if the subscriber is current in his or her payments covering the Lifeline components of the bundle. Fourth, when non-Lifeline services are terminated, the subscriber should be treated as a Lifeline-only customer.

B. The Transition to Broadband

GCI strongly supports extending the reach of Lifeline to provide support for broadband, especially in Tribal Lands.[98] Including broadband among the services supported by the Low Income Program will ensure that the neediest Americans can take advantage of broadband's offerings and opportunities to the same degree as higher-income consumers. GCI submits that Section 254(b)(3) requires the inclusion of broadband, as it expressly references "information services" among the services that should be available to low-income consumers. GCI's views on the including broadband service in the Lifeline program are presented in more detail in Section III.D above.

X. CONCLUSION

GCI reiterates its strong support for the reform and modernization effort that the Commission is undertaking. As explained above, GCI endorses many of the FCC's proposed performance goals and rules, although several critical modifications are necessary. In particular,

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98 Lifeline NPRM ¶ 275.

the FCC should adopt a one-per-qualifying-adult rule in place of a one-per-residence rule, it should develop a national database of Lifeline subscribers (or an interconnected system of state databases), and it should decline to adopt any rules that would require ETCs to confirm every subscribers' eligibility and compliance on an annual basis.

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