Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
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	)	
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 AT&T

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I. INTRODUCTION AND BACKGROUND

After too many years of neglect under prior Commissions, this Commission has rightfully recognized the flaws in the current low-income rules and has demonstrated an appropriate urgency in addressing those flaws, which have, among other things, enabled consumers – eligible and ineligible alike – to obtain duplicative Lifeline-supported services from multiple providers (i.e., consumer obtains one Lifeline benefit from a local exchange carrier and one Lifeline benefit from a prepaid wireless carrier). The current rules provide little defense against such waste, fraud, and abuse. Absent significant change to these rules and administrative processes, the fund itself simply could not withstand the stress of expanding Lifeline-supported service to include broadband. For that reason, AT&T proposed fundamental changes to the low-income program over the past several years.[1] At the time, some of our proposals, like a national Lifeline consumer database, seemed radical to some, and regulators and many in the industry viewed our proposals with skepticism. Today, with the low-income fund at $1.3 billion and growing, and agreement among policymakers that consumers with low-incomes should have access to broadband,[2] many parties view these proposals as necessary, common sense reforms that are long overdue.

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[1] *See, e.g.*, Comments of AT&T Inc., *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, WC Docket 05-337, CC Docket No. 96-45, at 25-27 (filed Apr. 17, 2008); Comments of AT&T Inc., *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, WC Docket No. 05-337, 03-109, 06-122, CC Docket No. 96-45, 99-200, 96-98, 01-92, 99-68, 04-36, at 53-54 (filed Nov. 26, 2008); Comments of AT&T, Inc., *A National Broadband Plan for Our Future, NBP Public Notice #19*, GN Docket Nos. 09-51, 09-47, 09-137, at 29-30 (filed Dec. 7, 2009).

[2] *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, Notice of Proposed Rulemaking, FCC 11-32, ¶¶ 3, 10 (rel. March 4, 2011) (*NPRM*).

By its *NPRM*, the Commission has significantly advanced the debate. It is inconceivable that any commenter will suggest mere incremental reform to the Commission's Lifeline and Link-Up rules in response to the bold proposals put forward by the Commission. Instead, following in the Commission's wake, commenters can be expected to support sweeping changes to this program. What is also clear from the *NPRM* is that reform cannot wait. The Commission has until November to act on the Joint Board's Lifeline recommendations[3] but it would be a mistake to wait that long to issue final rules and thus commence the process of establishing a national database. Such a database will enable Lifeline providers to validate whether a consumer is eligible for Lifeline-supported service and whether that consumer is receiving such service from some other provider. Under today's rules, too many consumers are receiving duplicative Lifeline supported services from multiple providers. AT&T supports immediate Commission action to address this problem and, along with others in the industry, has proposed an interim process designed to quickly identify and eliminate this duplicative support.[4] This industry proposal, however, is merely a stop-gap measure until the Commission-established database and

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[3] *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Recommended Decision, 25 FCC Rcd 15598 (Jt. Bd. 2010).

[4] Last Friday, AT&T and nine other service providers and trade associations filed a proposal that the Commission could adopt on an interim basis to curb the number of individuals who are simultaneously obtaining Lifeline-supported services from multiple providers. *See* Joint Industry Letter to Marlene Dortch, FCC, WC Docket Nos. 11-42 & 03-109, CC Docket No. 96-45 (filed April 15, 2011). In addition to recommending a process to de-enroll a consumer from one of the multiple Lifeline benefits that the consumer is simultaneously receiving, the Joint Industry Proposal would enable the Commission to collect data about multiple consumers obtaining Lifeline-supported services at the same postal address. This proposal is designed to be implemented quickly, prior to the completion of the instant *NPRM* and would replace the unworkable proposal set forth in the Wireline Competition Bureau's January 21, 2011 guidance letter to USAC. Letter from Sharon Gillett, FCC, to Richard Belden, USAC, DA 11-110 (WCB, Jan. 21, 2011), *pet. for recon. pending*. For the reasons provided in the Joint Petition for Reconsideration, *Petition for Reconsideration of the Wireline Competition Bureau's January 21, 2011 Letter to the Universal Service Administrative Company*, CC Docket No. 96-45, WC Docket No. 03-109 (filed Feb. 22, 2011), which we do not repeat here, the Commission should reject its proposal to codify the process in the January 21 Letter. *NPRM* at ¶ 58.

duplicate resolution process is functioning. The savings that the Commission can achieve by eliminating such duplicative support could be spent toward the database and, possibly, broadband pilots, which will enable the Commission to collect meaningful data about how to increase broadband adoption among persons with low incomes.

As forward-thinking as the *NPRM* is, some of the Commission's proposals are underdeveloped and others are simply unnecessary if the Commission enacts the Lifeline modernization reforms that we propose. In these comments, we discuss our proposed reforms first and then explain why a number of the Commission's proposals, including its most controversial – the so-called "one-per-residence" rule – are unnecessary if the Commission agrees with our recommendations. Finally, we discuss several of the Commission's proposed "immediate reforms," explaining that some have merit while others should be rejected or deferred until after the Commission implements its national eligibility database.

Summary of AT&T's Lifeline and Link-Up Modernization Proposal. There are a number of distinct components to our Lifeline modernization proposal that will work together to make the low-income program more effective by making the program more consistent nationwide and thus easier for consumers to understand, protecting consumers' private information by shifting eligibility determination to an authorized public entity, expanding the pool of Lifeline providers, and ensuring that providers are reimbursed solely for actual customers served. Briefly, the Commission should: delink Lifeline participation from the section 214(e) eligible telecommunications carrier (ETC) designation process, which will expand the pool of providers of the Lifeline-supported service (i.e., voice and, eventually, broadband); implement a national database to ensure that only eligible consumers are obtaining Lifeline-supported service and from only one provider; eliminate the current tiered discount regime in favor of a single fixed dollar discount; and permit all qualifying consumers to obtain one Lifeline-supported service, regardless of whether they live at a U.S. Postal Service address where another qualified individual is receiving the Lifeline benefit.

Most importantly, AT&T's Lifeline modernization proposal will provide important consumer benefits. For the first time and through a simple process, consumers will be able to obtain Lifeline-supported service from any service provider, thereby broadening their service options (as long as the consumer's selected plan includes the Lifeline-supported service as a component). In this way, low-income consumers can finally enjoy the price advantages that other consumers have experienced for years. The new discount – a fixed dollar amount (e.g., $10) is easily understood and will be the same across all providers.[5] Additionally, to obtain the Lifeline benefits, consumers will not have to share private information with a service provider or be subjected to differing and often confusing variations in how providers have interpreted and implemented Commission eligibility rules.

Our proposal also offers an effective means to halt the widespread waste, fraud, and abuse that plagues the current system. The Commission will replace ineffective consumer self-certifications with a national database that will enable Lifeline providers to simply validate a consumer's eligibility and determine whether that consumer is obtaining Lifeline-supported service from another provider. Lifeline providers will be able to make these determinations without sharing customer information with their competitors or viewing customer-specific personally sensitive information. In addition to eliminating duplicative Lifeline service, which we define as one person receiving Lifeline-supported services from multiple ETCs, USAC will

[5] Contrast this with today's four-tiered support mechanism where the amounts may differ by service provider and geography.

be able to calculate a provider's Lifeline and Link-Up reimbursement with precision. No longer will it have to rely on ETC-reported line counts to calculate a provider's low-income reimbursement.

Additionally, the Commission finally can be more confident that consumers are actually eligible for the Lifeline benefit because the states – which, very often, if not always, have firsthand knowledge about a consumer's participation in a qualifying public assistance program and are best positioned to review a consumer's income information – would be the ones determining whether a consumer is eligible and providing that information to the national database. Similarly, there will finally be a process in place to de-enroll consumers once they lose their eligibility, thus dispensing with today's ineffective honor system[6]: States will know as soon as there is a change in the consumer's eligibility status because of their need to know when that consumer no longer qualifies for participation in a public assistance program.

Auditing a provider's compliance with the Commission's Lifeline rules will also be simpler and more effective than under today's rules, primarily because we are confident the new rules will be clearer and more relevant to the way services are offered, but also because the requirement to interface with the national database provides a consistent control point that is more conducive to standard auditing methods. Finally, by clarifying the rules and rationalizing administrative processes, our proposal will facilitate the expansion of the low-income program to all service providers. The costs and risks associated with complying with today's complex (and, occasionally, uncodified) rules have kept many providers from participating in today's Lifeline program.

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[6] 47 C.F.R. §54.409(d)(3) (consumer will notify carrier if that consumer is no longer eligible).

II. AT&T's Lifeline Modernization Proposal.

A. The Commission Should Expand the Low-Income Program to Include Any Service Provider That Offers the Lifeline Supported Service (on a Stand-Alone Basis or as Part of a Service Bundle).

Under the Commission's existing rules, only telecommunications carriers that obtain designation as an ETC may participate in the Lifeline program. Such carriers are reimbursed for providing a voice service that meets certain criteria and provides certain functions, many, if not most, of which are relevant only to legacy services provided over circuit-switched networks.[7] While these requirements may have made sense in a monopoly wireline world, they have no applicability to the myriad of competing providers offering a multitude of services over alternative platforms. The Commission's rules thus unnecessarily deny low-income Americans the benefits of competition and choice that are the hallmark of today's hyper-competitive communications marketplace, and perpetuate and even widen the digital divide.

To remedy this situation, the Commission should, as AT&T previously has proposed, overhaul its Lifeline support mechanism to expand participation in the program by providers offering alternatives to traditional wireline services, and enable low-income consumers finally to benefit from the rapidly evolving and expanding array of available communications services. It also should simplify, and thus reduce, the costs of participating in the program by establishing a flat, fixed dollar discount amount that could be applied to the retail price of any qualifying service, and thus would be fully portable to the service provider of a consumer's choice.

In order to increase participation in the Lifeline program, and expand consumer choice for low-income Americans, the Commission should amend its rules to delink Lifeline

[7] *See* 47 C.F.R. §§ 54.401(a)(3), 54.101(a).

participation from the section 214(e) ETC designation process.[8] Instead, the Commission should permit an eligible consumer to obtain Lifeline-supported service from any service provider that offers a voice service (either on a stand-alone basis or as part of a bundled package of services) that meets certain minimal criteria (such as access to emergency services via 911 dialing and access to Telecommunications Relay Service via 711 dialing). Doing so would expand the base of providers to include entities that, to date, have been either unwilling to offer Lifeline service (because of the many non-Lifeline-related obligations applicable to ETCs) or unable to qualify under the Commission's (and/or the applicable state's) eligibility rules. Broadening the pool of providers obviously would redound to the benefit of low-income consumers, who will finally be able to participate fully, just like other consumers of communications service, in this competitive marketplace. By increasing the number of provider options, the Commission will correspondingly increase the number of service options and price points available to low-income consumers. Thus, under the new rules, a Lifeline Provider should not have to become an ETC, but rather could be an interconnected VoIP provider (facilities-based or over-the-top), a mobile wireless provider (prepaid or postpaid), a reseller,[9] a cable company or a local exchange carrier that provides a Lifeline-supported service – that is, one that includes a voice component, such as an interconnected VoIP or circuit-switched voice service.

[8] *See* 47 C.F.R. § 54.405 ("All eligible telecommunications carriers shall: (a) Make available Lifeline service . . . to qualifying low-income consumers").

[9] Enabling non-ETC resellers to participate directly in the program will eliminate the need for the underlying provider to obtain certifications of their resellers' compliance with all Commission requirements applicable to its low-income program. 47 C.F.R. § 54.417(a). Instead, these resellers will certify directly to USAC (and/or the Commission) that they will comply with all applicable federal requirements.

The Commission has ample authority under section 254(j) of the Telecommunications Act of 1996 (1996 Act) to establish a "Lifeline Provider" category of universal service providers outside of the section 214 ETC framework. Section 254(j) provides that "[n]othing in [section 254] shall affect the collection, distribution, or administration of the Lifeline Assistance Program . . . ." The Commission established its low-income program in 1985,[10] eleven years before the 1996 Act, which added sections 214 and 254 (and the requirement in section 254(e) that only ETCs are eligible to receive federal universal service support) to the Communications Act of 1934. In one of the clearer subsections of section 254, Congress obviously gave the Commission the flexibility to permit non-ETCs to participate in its low-income programs (i.e., "[n]othing in this section shall affect the . . . *distribution* . . . of the Lifeline Assistance Program" (emphasis added)). In 1997, the Commission agreed that it had this authority, concluding that Congress intended to give the Commission "*permission* to leave the Lifeline program in place without modification, despite Lifeline's inconsistency with other portions of the 1996 Act"[11] and "[w]e believe that we have the authority under sections 1, 4(i), 201, 205, and 254 to extend Lifeline to include carriers other than eligible telecommunications carriers."[12] It is time for the Commission to exercise its authority again under Title I to enable eligible consumers to obtain Lifeline-supported service, which may eventually include broadband service, from any provider. The

[10] *See Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 329 (1997) (*Universal Service First Report and Order*) (providing an overview of the existing low-income programs).

[11] *Id.* at ¶ 332 (emphasis in original).

[12] *Id.* at ¶ 369. Later in that paragraph, the Commission stated that, "in deciding which carriers may participate in Lifeline, we note that section 254(e) allows universal service support to be provided only to carriers deemed eligible pursuant to section 214(e)." *Id.* Such a narrow reading flies in the face of Congress's clear directive in section 254(j) that "[*n*]*othing* in this section shall affect the collection, distribution, and administration of the Lifeline Assistance Program." Moreover, later in the same order, the Commission reached the exact opposite conclusion. In its discussion of E-rate providers, the Commission found that non-telecommunications carriers providing eligible schools and libraries with non-telecommunications services could receive universal service support. *Id.* at ¶¶ 589-90.

Commission could also rely on its authority in section 254 when it establishes "Lifeline Providers."[13]

As part of this reform, the Commission should establish streamlined procedures for service providers to participate in the program and obtain reimbursement for providing Lifeline benefits to consumers. In particular, it should simply require a provider to register as a Lifeline Provider and obtain a service provider identification number (SPIN) from USAC so that USAC could reimburse it for having provided Lifeline benefits to consumers, in much the same way a service provider obtains a SPIN to participate in the E-rate program today. When a new Lifeline Provider registers to obtain a SPIN, it also should be required to file a certification, signed by a senior executive with authority over the relevant parts of the business and made under penalty of perjury, that it will comply with all federal low-income program requirements. Providers that already have SPINs and are currently providing Lifeline service should simply be required to submit such a certification within 30 days of the effective date of the Commission's new Lifeline rules.[14]

The Commission also must minimize a Lifeline Provider's costs of participating in the low-income program. Specifically, it should make clear that Lifeline Providers are not required to upgrade or construct new facilities in order to provide service to a requesting consumer nor are they required to create special Lifeline-supported service offerings. Instead, the Lifeline Provider should be permitted to treat low-income consumers the same as any other customer,

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[13] 47 U.S.C. §§ 254(b), (j). In addition, the Commission could rely on section 706, 47 U.S.C. § 1302(a) (providing that the Commission "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans").

[14] Entities that have SPINs but that are not ETCs would file this certification within a certain number of days (e.g., 10) of becoming a Lifeline Provider.

with the exception, of course, that it would provide the consumer with a discount, for which it would obtain direct reimbursement from USAC.[15] And, similar to the Commission's bundling proposal,[16] so long as the consumer-selected offering includes the Lifeline-supported service (e.g., voice or eventually broadband), that consumer should have the freedom to select any plan that best fits his/her needs. Moreover, insofar as the states should be responsible for determining consumer eligibility for Lifeline support, having the states provide eligible consumers information about the program would be far more effective than any advertising by a Lifeline Provider. Thus, there would be little, if any, need for Lifeline Providers to advertise "Lifeline."

The Commission also should eliminate its current tiered discount structure for Lifeline. Under the current program, there are four different levels – or tiers – of Lifeline support available to eligible consumers. The first tier discount is an amount equal to the ILEC's subscriber line charge (SLC), which is capped at $6.50 under the current rules. Tiers 2 and 3, which add $1.75 each in federal support, were added by the Commission to increase both consumer and state participation (the latter tier requires a state or an ETC match). Tier 4 provides an additional discount to residents of Tribal lands of up to $25/month; however, ETCs must charge Tier 4-eligible consumers at least $1/month.[17] These tiers are confusing for consumers, and very cumbersome and costly for ETCs to administer. Instead, the Commission should establish a flat, fixed dollar discount that could be applied to the retail price of a Lifeline-

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[15] At its choosing, the Lifeline Provider could provide free service to the Lifeline customer, as several Lifeline ETCs that are prepaid wireless carriers do today, though the per subscriber fixed dollar amount that it receives from USAC in reimbursements will be the same as it is for Lifeline Providers that provide service for a fee.

[16] *NPRM* at ¶ 258.

[17] 47 C.F.R. § 54.403(a).

eligible service (that is, a service that included a voice component). A flat discount would be far easier for customers to understand because it would be consistent across all providers and across the country. Under today's complicated tiered structure, consumers could receive a different benefit amount even if they just move ten miles down the road. A flat dollar discount would simplify implementation by Lifeline Providers – reducing costs and encouraging broader participation in the program and thus would enhance consumer choice.

Finally, the Commission should not impose minimum service requirements (such as a minimum number of monthly minutes or a minimum number of free long-distance calls) on Lifeline Providers.[18] As the Commission rightly notes, imposing such service requirements would increase a provider's costs, thereby deterring participation in its low-income program. Such a requirement also would paternalistically deny low-income consumers the ability to determine for themselves which Lifeline Provider and which service plan makes the most sense for their particular circumstances.

B. The Commission Should Establish A National Database.

AT&T strongly encourages the Commission to establish a national Lifeline consumer database, administered by a third-party, such as USAC, that would be used to verify a consumer's eligibility for Lifeline benefits. Under this proposal, the database administrator would provide a block of personal identification numbers (PINs) to the entity that each state has designated to manage Lifeline eligibility.[19] That state entity would determine whether a particular customer is eligible for Lifeline support, and, if so, assign a distinct PIN to that

[18] *NPRM* at ¶ 253.

[19] We do believe, however, that states should be afforded maximum flexibility to implement this proposal, which ultimately may not be designating just one entity to manage Lifeline eligibility.

customer, updating the database accordingly. Lifeline providers would access the database to determine whether a consumer is eligible for Lifeline, and (if so) to identify itself as that consumer's Lifeline Provider, thereby preventing the problem of duplicate support that plagues the existing program.

States' Database Role. A state (through its designated state entity or other state-approved entities, such as social services agencies) should be responsible for determining whether a particular consumer is eligible for Lifeline support (based on either participation in a certain public assistance program or household income).[20] One of the most significant but also most common sense changes we propose is that the Commission should take Lifeline Providers out of the role of determining whether consumers are eligible for the Lifeline program, as existing Lifeline providers currently are required to do. Instead, states should be given the job of determining whether consumers are eligible for Lifeline benefits. Requiring service providers to be the gatekeepers between consumers and a major federal assistance benefit is entirely inappropriate. This has always been the case, but it has become even more irresponsible and indefensible given the entry of competitive service providers and resellers all of whom may have different methods and motives when interpreting the Commission's eligibility rules.

Once a state has determined that a consumer is eligible, the state would assign to that requesting consumer a unique Lifeline PIN from a block of numbers provided to the state by the database administrator, and would "activate" the PIN in the national database. While the exact mechanism will be determined by the design of the database, by "activating" the PIN, the state would be responsible for ensuring that information such as the consumer's name, address (if one

[20] We anticipate that many, if not most, consumers will obtain their PINs from the state at the same time that the state determines that the consumer is eligible for one of the qualifying public assistance programs, like the Low-Income Home Energy Assistance Program (LIHEAP).

was available), date of birth, and last four digits of the consumer's social security number is either entered into the database or otherwise provided to the database administrator. If the state later determines that the consumer is no longer eligible for the public assistance program that was the basis for the consumer's Lifeline eligibility, the state would "deactivate" the PIN in the database. That would be the extent of the state's involvement in the database.

Lifeline Providers' Database Role. To receive the Lifeline benefit, a consumer would provide the PIN assigned to her by the state to the provider of the consumer's choice. The provider would access the database through a secure web site to determine whether the PIN had been activated in that consumer's name and was available for use. If the PIN is active and available, the provider would update the database to identify itself as the Lifeline Provider for that customer (by entering its SPIN) and begin providing the Lifeline discounts to the consumer. If the provider finds that the PIN is already in use, that would mean that the consumer is already receiving Lifeline discounts from another provider (the identity of which would not be available to other providers), and the PIN could not be used to obtain discounts from any other provider. This validation process thus would eliminate the problem of consumers obtaining duplicative Lifeline-supported services from multiple ETCs.

As noted above, if a state determines that a consumer no longer qualifies for Lifeline and "deactivates" that consumer's PIN, that action should trigger an automatic notification by the database administrator to the Lifeline Provider to cease providing Lifeline discounts. This simple and efficient process would ensure that that Lifeline support does not continue going to ineligible consumers, thus reducing waste, fraud, and abuse in the program. If a Lifeline Provider ignored the notice and continued to provide discounted service to that de-enrolled consumer, it would not be reimbursed because USAC would only reimburse Lifeline Providers for “active” PINs. Alternatively, if the consumer contacted his/her Lifeline Provider to terminate service, the Lifeline Provider would be required to update the database to change the “in use” status of the PIN back to unused, enabling the consumer to obtain Lifeline-supported service from another provider if he/she wishes. If a Lifeline Provider fails to release a former subscriber’s PIN so that the consumer can obtain Lifeline-supported service from another provider, the consumer would quickly discover this (and could take appropriate action) because the consumer would not be able to obtain Lifeline service from the consumer’s desired provider.

Database Administrator’s Role. In addition to creating and allocating PINs among the states, sending automatic notices to Lifeline Providers when subscribers are no longer eligible to receive Lifeline-supported service, and other administrative duties that may become necessary, the database administrator should be responsible for entering into the database the same consumer-specific information as the states (i.e., consumer’s name, address, date of birth, last four digits of the consumer’s social security number) for existing Lifeline subscribers that are eligible for Lifeline-supported service. If the Commission does not designate USAC to be the database administrator, then the database administrator also should be responsible for sending to USAC a file each month detailing how much each Lifeline Provider should be reimbursed for the prior month. One of the primary benefits of the national database proposal is that USAC will no longer need to process monthly line count filings to complete the reimbursement process. Instead, the database administrator would calculate the Lifeline Provider’s monthly reimbursement amount based on the number of consumers identified in the database as subscribing to the Lifeline Provider for some period of time during that month. The database could be designed to determine the reimbursement based on the actual day the service provider associated its SPIN information in the database with an eligible consumer thus automatically effectuating "partial month reporting" that has vexed carriers, USAC, and the Commission for several years.[21]

C. Every Individual Who Independently Qualifies For Lifeline Is Eligible To Receive It.

In the *NPRM*, the Commission proposes to adopt a "one-per-residential address" requirement in section 54.408 of its rules in order to minimize waste, fraud and abuse in the Lifeline program.[22] It asserts that the proposed rule is "consistent with [its] existing single-line-per residence requirement,"[23] which it claims was intended to target support where it is needed most and maximize the number of Americans with access to the telephone network.[24] It expresses concern that some ETCs may be providing Lifeline services to more than one consumer at any particular residence in violation of this purported requirement, and asks whether codifying this requirement would aid in the administration of the requirement by providing a bright line that could be determined by reference to external sources.[25]

As AT&T and others have explained in prior Commission's filings, there is no "single-line per residence" requirement under the existing Lifeline rules. The Commission itself acknowledges that it has not codified any such requirement, but appears to rely on statements made in two Commission orders that "eligible consumers receive universal service low-income

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[21] *See NPRM* at ¶¶ 65-67. Given that the database will automatically resolve this issue, we urge the Commission not to attempt to implement any interim solution. We discuss this issue, *infra*, at Section III.A.

[22] *NPRM* at ¶ 106.

[23] *Id.* at ¶ 107 .

[24] *Id.* at ¶ 103.

[25] *Id.* at ¶ 107 ("some ETCs dispute the validity of the single-line-per residence limitation, which raises concern that they are not adhering to an existing requirement. . . .").

support for 'a single line in their principal residence'" to support its assertion that it has adopted such a requirement.[26] But those orders do not purport to establish any such requirement. Nor, for that matter, do the statements on which the Commission relies (when read in their entirety and context) even suggest that there is any such limitation. To the contrary, the language cited states: "Lifeline provides low-income consumers with discounts of up to $10.00 off of the monthly cost of telephone service for a single telephone line in their principal residence."[27] This statement plainly does not state or even imply that support is limited to one line per residence; rather, it states that support is limited to one line *per consumer* at the consumer's principal residence. Moreover, the language at issue is merely a description of the support provided under the Lifeline program in the *background* sections of two orders, and does not purport to establish any program rule or requirement. In short, nothing in the Commission's rules and orders – including those cited by the Commission in the *NPRM* – limits Lifeline support only to a single telephone line per residence, rather than a single line per qualifying consumer at that consumer's principal residence.

Insofar as there is no current rule requiring ETCs to limit Lifeline-supported service to one line per residence, the only question for this proceeding is whether the Commission *should* implement such a rule now? Plainly, the answer to that question is no.

Adopting such a blunt rule clearly would cause providers to deny otherwise eligible consumers access to (and de-enroll existing qualifying subscribers from) this important public

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[26] *Id.* at ¶ 103, citing *Universal Service First Report and Order* at ¶ 341; *Lifeline and Link-Up Report and Order and FNPRM*, 19 FCC Rcd 8302, ¶ 4 (2004).

[27] *Lifeline and Link-Up Report and Order and FNPRM* at ¶ 4.

assistance benefit, which the Commission itself has characterized as "critical" to its mission.[28] A "one-per-residence" rule facilely assumes that only one household resides at any given residential address. It thus ignores complex living arrangements and thus does not create a "bright line" rule at all.[29] For example, while the Commission acknowledges that there are "residences" that lack a unique U.S. Postal Service address, and that eligible consumers may reside at "commercially zoned buildings," not "residences," it offers no hint as to how its supposedly bright line rule would apply in these situation.[30] The Commission further acknowledges that many residents of Tribal lands lack a unique U.S. Postal Service address, and thus asks whether it should adopt a "special" definition of residence on Tribal lands to ensure that its rules do not deny consumers and households living on Tribal lands Lifeline discounts they desperately need.[31] The Commission fails to explain how or why such a special definition could be justified insofar as there are likely to be many identical living arrangements (group house of unrelated Native Americans) just off a Reservation. If the Commission exempts Tribal lands from its proposed rule, Lifeline Providers could provide the Lifeline benefit to multiple individuals (who could be non-Tribal members) at the same address on a Reservation but would have to deny similar benefits to otherwise qualifying individuals (all of whom might be Tribal members) simply because they happen to live a quarter mile off of a Reservation. The economic circumstances that give rise to the low telephone penetration rates on Tribal lands[32] are no less

[28] *NPRM* at ¶1 ("Lifeline and Link Up are a critical part of the Commission's universal service mission").

[29] *Id.* at ¶ 106 (describing its one-per-residence rule as a "bright line" that could be determined by external sources).

[30] *Id.* at ¶¶ 113-18 (requesting comment on how to address, if at all, these situations).

[31] *Id.* at ¶¶ 119-20.

[32] *Id.* at ¶ 120.

difficult for the residents of a group house that is located right off a Reservation. Plainly, there is no policy justification for treating these situations differently.

Among the many problems with the proposed one-per-residence rule, AT&T is concerned that it will put providers in the position of having to divulge personal information about another individual – possibly or probably unrelated – who resides at the same U.S. Postal Service address. If the Commission adopts its rule, which it should not, a provider may have to inform a qualifying consumer that it cannot provide that consumer with Lifeline-supported service because another individual at the same address is already receiving a Lifeline benefit. By this action, the provider has essentially revealed the income status of another individual. There are logistical problems with the Commission's proposal, too. As the low-income program is currently administered (i.e., no database of eligible customers), service providers have no ability to determine whether another resident at a particular address is obtaining Lifeline supported service from another provider. Thus, unless or until the Commission implements a national database, its proposed rule will be unenforceable.[33] Additionally, ETCs' billing records may not list all subscribers' addresses in their entirety. For example, when signing up for service, a customer at an apartment complex may have erroneously omitted her unit number from her billing/service address. While the address supplied might be adequate to send a bill to that customer each month, it could lead her service provider to deny Lifeline service to other qualified consumers at the complex based on the "one-per-residence" rule.

[33] Of course, ETCs could add language to their customer self-certification forms requiring the customer to certify that, to the best of his/her knowledge, no other person at the same U.S. Postal Service address is receiving Lifeline-supported service; however, ETCs have no ability to verify such a statement.

Rather than adopting a "one-per-residence" rule, the Commission should adopt a "one-per-qualifying-individual" rule. Such a rule is unlikely to significantly increase the number of Lifeline subscribers (and thus the size of the fund), particularly post-implementation of the national database. Because most of the public assistance programs on which consumers rely to qualify for Lifeline support are based on "household" or "family," as defined by the specific program, such a rule would largely preserve the *status quo*. If an individual's name is on the documentation for LIHEAP or Medicaid then he should be eligible under that name for Lifeline. Any family members who do not separately qualify for LIHEAP, for example, would not be eligible for Lifeline.

D. After It Completes the Reforms Discussed Above And Obtains Experience Through Discrete Pilot Projects, The Commission Should Expand The Lifeline-Supported Services To Include Broadband.

For years the public policy debate over broadband was focused primarily on solving the supply side of the broadband equation: getting broadband access to all Americans. On the demand side of the equation, while broadband usage continues to grow, over 30 percent of Americans who have access to broadband today are not subscribing to it.[34] American households do not subscribe to broadband for a variety of reasons: some do not see the relevance of broadband to their lives; some lack basic digital skills; and some find the service too expensive. Broadband adoption rates among certain demographic groups – particularly minorities and low-income users – are well below the national average.[35]

[34] NTIA Digital Nation, Expanding Internet Usage, at 2 (Feb. 2011) (reporting that as of October 2010, 68.2% of U.S. households use high-speed broadband access, up from 63.5% one year earlier).

[35] *See NPRM* at ¶ 266; NTIA Digital Nation at 2 (noting that the adoption rates for White and Asian non-Hispanics exceed the adoption rates for Black non-Hispanics and Hispanics by 18 percentage points or more).

As a result, policymakers are increasingly focusing on the public policy objective of closing the broadband adoption gap, particularly in low-income communities. In 2009, the American Recovery and Reinvestment Act established a goal of enabling maximum utilization of broadband infrastructure and set aside $250 million in funding for sustainable adoption programs. Over this past year NTIA distributed this grant money to variety of profit and not-for-profit entities to implement programs designed to increase broadband adoption. The Commission has a role, too (as do other agencies, which we discuss below). The Commission can amend its rules to permit an eligible low-income consumer to obtain a Lifeline discount on the consumer's broadband service. However, as the Commission itself seems to recognize, it should not rush to amend its rules in this manner because the existing Lifeline rules and administrative infrastructure – and the fund itself – cannot withstand the stress of adding broadband as a Lifeline-supported service.

The Commission must complete the reforms described above before the Commission could consider amending its rules to make broadband a Lifeline-supported service. This is particularly true for our Lifeline Provider proposal. In order to ensure that low-income consumers have ubiquitous access to broadband, the Commission cannot continue to rely on the traditionally defined ETCs as the only providers that may participate in the low-income program. That is because there will be geographic areas of an ETC's service area where it does not offer broadband today, and it may never in the future because it is uneconomic to do so and because another provider, that is not an ETC (e.g., a cable company), is already providing broadband service there. In this circumstance, because the non-ETC is already providing broadband service, the ETC is unlikely to receive Connect America Fund (CAF) high-cost support to deploy the infrastructure (or make the upgrades) necessary for *it* to provide broadband service in that area. Under the current rules, the non-ETC cable company cannot participate in the Commission's low-income program. Thus, if a low-income consumer resides in an area that receives broadband service only from the non-ETC cable company, that consumer could never obtain broadband as a Lifeline-supported service.

The Commission's response to this predicament (i.e., broadband is being provided where a low-income consumer lives, just not by the ETC) cannot be, if broadband becomes a Lifeline-supported service, the ETC is required to provide it. As we explained earlier this week in our CAF/Intercarrier Compensation Reform NPRM comments,[36] if the Commission were to require providers to deploy broadband without vastly expanding the size of the fund, it would contravene section 254(b)(5), which requires "*sufficient* Federal and State mechanisms to preserve and advance universal service," and section 254(e), which provides that "any [universal service] support should be … *sufficient* to achieve the purposes of this section."[37] Thus, the Commission cannot add broadband to the list of Lifeline-supported services or otherwise require a provider to deploy broadband without also ensuring that there is sufficient funding to support such a mandate.[38] Sufficient Lifeline funding in this context would not mean simply reimbursing an ETC for discounting a Lifeline consumer's broadband service but would also mean compensating the provider for deploying or upgrading facilities in order to furnish that Lifeline consumer with service. While some may consider this a logical consequence of making

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[36] Comments of AT&T, *Connect America Fund, et al.*, WC Docket Nos. 10-90 *et al.* (filed April 18, 2011) (AT&T CAF/IC Reform Comments).

[37] 47 U.S.C. §§ 254(b)(5), (e) (emphasis added).

[38] *See also* AT&T CAF/IC Reform Comments at 125-28 (explaining that requiring providers to deploy broadband services in uneconomic areas without just compensation would effect a physical and a regulatory taking).

broadband a Lifeline-supported service and compelling existing ETCs to provide it where they do not already offer broadband, it is an astoundingly inefficient and expensive response and would very likely conflict with the Commission's CAF rules.[39] The Commission can avoid these statutory and Constitutional land mines by adopting our Lifeline Provider proposal, which, in the example described above, would allow the low-income consumer to obtain broadband as a Lifeline-supported service from the cable provider, among others.

The Commission's proposal to test various pilot projects to determine how to most efficiently increase broadband adoption by consumers with low-incomes makes sense. As it develops these pilots, the Commission should be guided by its Rural Health Care Pilot Program experience. However laudable its purpose, that pilot program was unveiled too quickly and has suffered significant growing pains.[40] Consequently, it would be prudent for the Commission to adopt its proposal to test a series of projects that use different approaches.[41] At the conclusion of the pilot, the Commission would evaluate which projects were the most cost-effective and

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[39] Expanding the fund in this manner to address one statutory principle (section 254(b)(5)) is likely to cause the Commission to run afoul of section 254(b)(1), which requires quality services to be available at affordable rates. Several courts have expressed concern that focusing too much on ensuring that "the USF is 'sufficient' for purposes of § 254(b)(5)" could make the fund "so large it actually makes telecommunications services less 'affordable,' in contravention of § 254(b)(1)." *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009).

[40] There, many program participants are requesting more funding years after applying for and being selected to receive an applicant-defined amount of support; seeking more time to complete certain milestones; and requesting that the Commission extend the life of the pilot program. In the past few months alone, participants have sought over $100 million in additional funding. Moreover, after having already extended the three-year program by an additional year, over a dozen participants have asked the Commission to extend the pilot program yet again. *See, e.g.*, *Requests for Extension of the June 30, 2011 Deadline for Funding Commitments Under The Universal Service Rural Health Care Pilot Program,* DA 11-172 (WCB, rel. Jan. 28, 2011).

[41] *NPRM* at ¶ 280.

efficient in increasing broadband adoption among this target population and it should use the lessons learned from the pilot to inform its future policy decisions.

As the Commission itself recognized in the National Broadband Plan, there are many reasons why people who have access to broadband do not subscribe. There is no single solution to the issue and it will require a multi-faceted, creative approach to make a difference. To make real progress, policymakers, industry, and others in our national community should consider other options, or combination of options, that do not involve universal service support.[42] One such proposal would be for the federal government to fund discounts for broadband provided to qualifying low-income consumers like other public assistance programs – through general revenues. The LIHEAP, for example, is funded largely through appropriations from the US Treasury and is administered by the Department of Health and Human Services. States apply for LIHEAP block grants and then distribute support to eligible households, either directly or through local governments or non-profits. Another approach would be to encourage public-private partnerships to establish pilot programs to help low-income households obtain access to both affordable broadband service and digital literacy training. Government agencies can further encourage broadband adoption by this target population by going paperless when delivering information and services.[43] To date, private sector involvement in these adoption/digital literacy partnerships has typically involved telecommunications providers and facilities-based interconnected VoIP providers. These partnerships will be enhanced, however, if other entities

[42] For example, in a speech last month, Blair Levin shared some intriguing and multi-dimensional ideas about how policymakers can promote broadband adoption among consumers who have low incomes. *See* Blair Levin, Aspen Institute: Speech to The Joint Center on Political and Economic Studies, *My Mistake; Our Opportunity* (March 2, 2011), *available at* http://www.jointcenter.org/publications1/Speech_to_Joint_Center_30111_1.pdf) (Levin Speech).

[43] *See generally* Levin Speech.

who benefit from robust broadband usage, such as those who engage in digital commerce or equipment manufacturers, are also actively encouraged to participate.

III. The Commission's Proposed "Immediate Reforms."

A. Until The National Database Is Established, The Commission Should Continue Permissive Partial Month Reporting.

As we explained above, post-implementation of a national database, there will be no need for a provider to submit monthly Lifeline and Link-Up line counts in order for USAC to accurately reimburse it. Instead, the database will automatically track the number of each Lifeline Provider's Lifeline and Link-Up subscribers. And for Lifeline, it will track the number of service days each subscriber received Lifeline-supported service based on when a subscriber's PIN was "activated" or "deactivated." The database thus renders moot the Commission's proposal to require ETCs to seek partial month reimbursement for subscribers who received Lifeline service for less than a month, which is one of the Commission's proposed "immediate reforms to eliminate waste, fraud, and abuse."[44]

In the *NPRM*, the Commission proposes to "codify the rule that all ETCs must report partial or pro rata dollars when claiming reimbursement for Lifeline customers who receive service for less than a month."[45] The Commission thus appears to take the position that it already has adopted a rule requiring ETCs to report partial or pro rata dollars when seeking reimbursement for Lifeline customers receiving service for less than a month. But, the Commission cites no support for this position. Nor can it. Nothing in the Commission's rules

[44] *NPRM* at ¶ 46.

[45] *Id.* at ¶ 67.

and orders expressly or even implicitly imposes such a requirement. Even the plain language of FCC Form 497 (and its instructions), which ETCs use to report the number of Lifeline customers they serve to obtain reimbursement for Lifeline discounts, *permits*, but does not require, ETCs to seek partial month reimbursement.[46]

Moreover, the history of that form confirms that the Commission has not adopted such a requirement. Specifically, in 2004, the Bureau released a public notice to announce changes to the FCC Form 497, which included requiring ETCs to report the number of Lifeline subscribers receiving federal support for part of the month and the number of service days those subscribers received support.[47] That revised form was supposed to take effect about one month later. But, in response to the Bureau's announcement, many carriers, including representatives of SBC and BellSouth (both, now AT&T), met with Bureau staff to express opposition to this new requirement because of their inability to track and calculate pro-rata support attributable to subscribers who obtain Lifeline service for only part of a month. In response to these ETCs' concerns about the revisions, the Commission delayed, and later suspended indefinitely, adoption of the new form.[48] Plainly, if the Commission had adopted a rule requiring partial month

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[46] "Check box to the right if **partials** or **pro rata amounts** are used. Indicate dollar amount, if applicable, on line 9." FCC Form 497 (July 2008 Edition) (emphasis in original). As AT&T and others have explained previously, if partial month reporting were a requirement, there would be no reason to have a check box; instead, the Commission would have directed ETCs to use this Line just like Lines 5-8. Similarly, the instructions state, "*If* claiming partial or pro-rata dollars, check the box on line 9." Instructions for Lifeline and Link Up Worksheet (July 2008 Edition), at 4 (emphasis added). Again, the Commission would have chosen different language or stricken that phrase altogether if it had required ETCs to seek partial month reimbursement.

[47] *See Wireline Competition Bureau Announces Effective Date of Revised Form 497 Used to File Low Income Claims with USAC,* WC Docket No. 03-109, Public Notice, DA 04-3016 (2004).

[48] *Wireline Competition Bureau Announces Delayed Effective Date for Revised Form 497 Used for Low-Income Universal Service Support*, WC Docket No. 03-109, Public Notice, DA 04-3188 (2004); *Wireline Competition Bureau Announces Delayed Effective Date for Revised Form 497 Used for Low-Income*

reporting, the Commission would not have scrapped the Bureau's proposal to amend the form to expressly require partial month reporting.

Consistent with the Commission's Lifeline and Link Up Worksheet (i.e., the FCC Form 497), several of AT&T's ILECs have opted not to use this line of the form. Instead, these ETCs report all of their Lifeline subscribers using Lines 5-8. As we have explained in prior filings, these carriers count the number of Lifeline subscribers they have in their billing system at the end of each month. If a subscriber discontinued service prior to the end of the month, these ILECs would not include that subscriber in their line counts despite having provided that subscriber with discounted service. Similarly, if a subscriber begins service before the end of the month, these ILECs would include that customer in their line counts despite not having provided that subscriber with discounted service for the entire month. USAC auditors disagreed that the usage of Line 9 is elective, asserting that ETCs are required to seek partial month reimbursement, and issued a finding of non-compliance of the Commission's low-income rules against five of AT&T's ILECs and three of Qwest's (now CenturyLink's) ILECs. We have appealed this issue on our ILECs' behalf on three separate occasions, explaining why USAC is incorrect that seeking partial month reimbursement is mandatory.[49] We do not repeat all of those arguments here; instead, we incorporate those filings by reference.

Universal Service Support Until Further Notice, WC Docket No. 03-109, Public Notice, DA 05-604 (2005).

[49] Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, WC Docket No. 03-109 (filed Jan. 7, 2008); Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, WC Docket No. 03-109 (filed Aug. 18, 2008); Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, WC Docket No. 03-109 (filed April 14, 2009). We note that every commenter supported our appeals.

Because the Commission never has imposed a mandatory partial month reporting requirement, it must apply any rule requiring ETCs to report partial month subscribers only prospectively. But we believe it inadvisable for the Commission to adopt such a rule even on a prospective basis. First, this rule will be unnecessary if the Commission establishes national database. Second, the reason many ETCs have opted not to request partial month reimbursement is because of their inability to track and calculate pro-rata support attributable to subscribers who obtain Lifeline service for only part of the month in any mechanized fashion. Through this rulemaking, the Commission should be trying to eliminate the unnecessary administrative costs of participating in the low-income program and not increase those costs, which this proposed rule would do.

Third, it is unclear what savings, if any, the Commission will generate by adopting such a rule. As AT&T and other ETCs that do not seek partial month reimbursement have explained, their reporting practices are neutral in their effect on the fund. Indeed, for ETCs like AT&T's ILECs that are steadily losing access lines (including Lifeline lines), this practice is likely to result in *less*, not more, reimbursement to the ETC than it was entitled. However, these ETCs have determined that the costs of modifying their billing systems outweigh forgone Lifeline reimbursement. If the Commission is determined to go forward with its proposal, it should consider allowing certain ETCs to opt out if the ETC can demonstrate that its numbers of Lifeline subscribers are decreasing on average, not increasing. If such ETCs record their numbers of Lifeline customers at the end of each month, they simply cannot profit by choosing not to report partial month subscribers. The Commission will be hard-pressed to justify requiring these providers to change their reporting practices for what could be just a matter of months (i.e., until the database is implemented), particularly since these ETCs may require several months to implement necessary billing changes.

B. The Commission's Link-Up And Toll Limitation Service Proposals Are Reasonable And, With Some Clarifications, Should Be Adopted.

Based on information provided in the *NPRM*, it appears that some ETCs are seeking substantial, perhaps, unjustified, amounts in toll limitation service (TLS) and Link-Up reimbursements. For example, the Commission notes that some ETCs are obtaining as much as $36/month per Lifeline customer for TLS.[50] By contrast, AT&T's ILEC ETCs seek a fraction of that per Lifeline customer in TLS reimbursement. Similarly, it appears that some ETCs obtain disproportionately high Link-Up reimbursement amounts compared to their Lifeline reimbursements. AT&T's ILECs receive on average about 4 percent of their low-income reimbursements in Link-Up support. AT&T Alabama, for example, receives about 2 percent of its low-income reimbursements in Link-Up support, with almost all of its low-income support coming from Lifeline reimbursements. Based on USAC's data, other ETCs operating in that state, however, receive almost half (and, in some instances, more than half) of their low-income reimbursements in Link-Up support.[51] While some might attempt to attribute the wide disparity to AT&T's ILECs being the established Lifeline provider (i.e., more subscribers are signing up for Lifeline service from AT&T's competitors), a cursory review of USAC's first data filings made in 1998 (pre-Lifeline competition) show that AT&T's ILECs were not obtaining Link-Up support as a total percentage of their low-income reimbursements anywhere close to the levels of

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[50] *NPRM* at ¶ 70 & n.121.

[51] *See* USAC 2Q 2011 Filing, Appendices at LI04 (Quarterly Low-Income Support Disbursement Amounts by Company for 4Q 2010), *available at* http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx.

some of today's ETCs.[52] Thus, the Commission is right to be skeptical of the Link-Up reimbursement amounts that some ETCs are obtaining.

Link-Up. To address potential waste, fraud, and abuse in the Commission's Link-Up program, the Commission has proposed modifying its rules to define a "customary charge for commencing a telecommunications service," for which reimbursement is appropriate, as "the ordinary charge an ETC routinely imposes on all customers within a state to initiate service. Such a charge is limited to an actual charge assessed on all customers to initiate service with that ETC."[53] The Commission proposes to disallow ETCs from obtaining Link-Up reimbursement when the carriers' service initiation charges are imposed on Lifeline and/or Link-Up customers only or when the carriers waive, reduce or eliminate these charges with the purchase of additional products, services or minutes.[54] AT&T supports these limitations.[55] As the Commission notes in its *NPRM*, AT&T's ILECs provide Lifeline-supported service in a few states that require us to waive the non-reimbursed portion of our service activation fee, which our ILECs call a line connection charge, for Lifeline customers.[56] Such state requirements should not preclude us from receiving Link-Up reimbursement and, based on the Commission's

[52] *See, e.g.*, USAC 4Q 1998 Filing, Appendix 6 (March – May 1998 Low Income Fund Control Report), *available at* http://www.usac.org/about/governance/fcc-filings/1998/Q4/FCC%20Filing-Fourth%20Quarter%201998.pdf. For example, AT&T Alabama received approximately 2 percent of its low-income reimbursements from Link-Up support between March through May 1998.

[53] *NPRM*, App. A, § 54.400(e).

[54] *Id.*

[55] The Commission should define the term "routine" in its order adopting final rules (e.g., "routine" means more than 50 percent of the time). Otherwise, we anticipate disputes between service providers and USAC's auditors about whether the service provider's service activation fee is "routinely" imposed on customers.

[56] *See NPRM* at ¶ 74 (citing Comments of AT&T, *TracFone Wireless, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-197, CC Docket No. 96-45, at 3 (filed Dec. 23, 2010)).

proposed definition of "customary charge for commencing telecommunications service," we believe that we would be permitted to continue obtaining Link-Up reimbursements in these circumstances. First, AT&T's ILECs "routinely" impose line connection charges on new *non-Lifeline* customers and, in the situation described above, AT&T's ILECs are not waiving, reducing or eliminating these charges for Lifeline customers due to the "purchase of additional products, services, or minutes." Instead, our ILECs are reducing their line connection charges in some states because of a regulatory compulsion to do so. If the Commission believes that its proposed rule is ambiguous in this regard, then it should expressly permit Lifeline Providers that are required by a state to waive, reduce or eliminate their service activation fee to obtain Link-Up reimbursement.

The Commission describes several scenarios in which ETCs may be inappropriately obtaining Link-Up reimbursement. Instead of adopting new rules to prohibit such conduct, the Commission should take enforcement action against such carriers because this conduct plainly violates the Commission's existing low-income rules. For example, the Commission requests comment on whether it should adopt a rule that "prohibits resellers from imposing a connection charge on consumers when the underlying wholesale provider has not assessed a similar connection charge on the reseller."[57] In such a scenario, the reseller is clearly fabricating a charge in order to obtain Link-Up reimbursements because the reseller incurs *no* connection-related costs when its customer begins service. Similarly, it appears that some carriers may impose higher service activation charges on Lifeline customers than on non-Lifeline customers, a practice that is designed to maximize the carrier's Link-Up reimbursements. The Commission should conclude that this practice also violates the Commission's existing rules because such a

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[57] *Id.* at ¶ 76.

charge is not "customary." A customary charge is one that applies regardless of the income status of the customer.

Toll limitation service. The Commission proposes to eliminate ETC reimbursement for providing free TLS to Lifeline customers. If the Commission eliminates TLS reimbursement, it must, of course, eliminate an ETC's obligation to provide TLS to Lifeline customers at no charge. Federal low-income support clearly would not be "sufficient" if the Commission compelled providers to waive certain charges for eligible customers but then denied them reimbursement for having complied with the Commission's rules.[58] As long as the Commission's decision complies with the statute (i.e., the Commission eliminates both TLS reimbursement *and* the obligation to provide free or discounted TLS to Lifeline subscribers), AT&T has no objection to this Commission proposal.

If the Commission decides to continue reimbursing ETCs for their incremental costs in providing TLS to Lifeline customers, it is clear that the Commission needs to rein in the per subscriber amounts sought by some ETCs in TLS reimbursements. Given the inflated reimbursement amounts obtained by some ETCs, an aggressive cap is warranted (e.g., no more than $1/month per subscriber). If an ETC asserts that its incremental costs are higher than that cap, then it should have to produce supporting documentation for Commission review and approval.

[58] 47 U.S.C. §254(b)(5) (requiring federal universal service support mechanisms to be "specific, predictable and sufficient").

C. It Is Premature For the Commission To Cap the Size Of The Low-Income Program.

The Commission requests comment on whether and how it should cap the size of the low-income program, asking, for example, whether it should make funding available on a first-come, first-served basis or whether it should reduce monthly benefits "to ensure that all eligible households that seek to participate in the program can do so."[59] The Commission should table further consideration of such proposals until after it has adopted and implemented the reforms discussed above (namely, a national database). The unnaturally rapid growth in the fund is likely a result of the introduction of competition into the Lifeline space without adequate rules and procedures in place to prevent, detect or resolve duplicates. At that time, the Commission will be able to evaluate whether to adjust the size of the fixed dollar discount, for example, to account for an increase (or decrease) in Lifeline participation. This would be a far more appropriate means to balance the universal service principles in section 254(b) than the proposals noted above, each of which is inconsistent with section 254(b)(5)'s requirement that the federal universal service support mechanisms be "specific, predictable and sufficient." Turning away Lifeline-eligible customers, for example, demonstrates that the capped fund size is insufficient and changing the amount of a Lifeline subscriber's discount every quarter, depending on the demand for Lifeline-supported service, is far from predictable.

[59] *NPRM* at ¶ 50.

IV. CONCLUSION

For the reasons provided above, we urge the Commission to adopt our Lifeline and Link-Up modernization proposal.

Respectfully Submitted,

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