

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

In the Matter of

Lifeline and Link Up Reform and
Modernization

Federal-State Joint Board on Universal
Service

Lifeline and Link Up

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WC Docket No. 11-42

CC Docket No. 96-45

WC Docket No. 03-109

**REPLY COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL**

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EXECUTIVE SUMMARY

The primary goal of the current Lifeline and Link Up programs is to make *affordable* telephone service available to low income households. To that end, the Federal Communications Commission (“Commission”) should collect data that enables it to evaluate its progress towards that goal as well as the goal of providing affordable broadband service to low income households. The New Jersey Division of Rate Counsel (“Rate Counsel”) supports the elimination of waste and inefficiencies in the Lifeline and Link Up programs and in *all* universal service programs, but it is poor public policy to target the program that most directly impacts those with the fewest resources.

Rate Counsel is not persuaded by the merits of a cap for the Lifeline and Link Up program. Consumer participation in the Lifeline program is slightly more than one-third, and today’s consumers (as well as those who are eligible but have not yet become participants) should not be penalized for this historically low program participation rate. There is a “disconnect” between the goal of improving outreach to increase program participation, adding supported services, and the contrary goal of capping funds. Many of the reform proposals that the Commission has examined as part of this proceeding will address waste and inefficiency and should make a cap unnecessary. Rate Counsel urges the Commission to examine proposals carefully and ensure that any changes do not jeopardize the success of a program that seemingly has bolstered connection to the public telecommunications network by those least able to afford

service. New Jersey low-income households increased their penetration rate from 83.2% in 1984 to 92.1% in March 2009.¹

The Lifeline and Link Up programs could be further improved by the adoption of uniform income and eligibility standards that serve as floors which the states can enhance. Uniform rules would reduce consumer confusion and recognize that all consumers across all states contribute to the fund. Rate Counsel also supports proposals for coordinated enrollment as one of the most effective tools to expand program participation. Finally, while social service agencies may be the best positioned to assist potential Lifeline and Link Up recipients, eligible telecommunications carriers (“ETCs”) also have outreach responsibilities and should be required to adhere to strict guidelines with respect to marketing. Consumer confusion about program rules may lead to an unnecessarily bloated program, which, in turn, puts the program at risk.

Rate Counsel supports the proposed measures to overcome the persistent income-based barrier to broadband adoption. Rate Counsel has supported expanding the Lifeline and Link Up programs to include broadband service for many years. Low-income households are at serious risk of being left behind as the nation increasingly relies on broadband access to the Internet for all aspects of life. States should partner with the Commission to achieve ubiquitous affordable broadband service for all consumers, including low-income households, and should, therefore, provide matching funds, assist with the development of any pilot programs, and assist in identifying the agencies and organizations best suited to overcome income-based barriers to broadband adoption. The FCC must reclassify broadband service as a telecommunications

¹ / Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Penetration by Income by State (Data through March 2009)*, rel. May 2010, at Table 3. The statewide penetration in New Jersey for households of all incomes in March 2009 was 95.1%. *Id.*

service in order to expand Lifeline and Link Up definitions and to pursue its broadband agenda. Absent such a reclassification, the FCC's policy and decisions are vulnerable to legal challenge.

A persistent gap in broadband adoption between high income and low income households must be addressed. Households with incomes above \$75,000 have a 93% broadband adoption rate in comparison with a 40% adoption rate by households with incomes below \$20,000.² Rate Counsel stated more than five years ago: "The existing universal service program likely requires expansion to promote broadband deployment to all households. Absent such regulatory intervention, the United States may become a two-tiered society of disparate access to and use of broadband."³ Broadband access to the Internet is no longer a luxury, but is a necessity.

Rate Counsel commends the FCC for conditioning its approval of recent mergers (the merger of CenturyLink, Inc ("CenturyLink") and Qwest Communications ("Qwest") and the merger of Comcast Corporation ("Comcast") and NBC Universal, Inc. ("NBC")) on, among other things, the applicants' commitment to deploy subsidized broadband services and computers to low-income households. Rate Counsel is hopeful that the FCC will take timely steps to ensure that *all* low-income consumers, regardless of whether they happen to reside in the Comcast or CenturyLink footprints, are able to obtain affordable broadband service. If broadband service is not affordable, it cannot be considered available. Furthermore, if it is important for Comcast's and CenturyLink's low-income consumers to have access to subsidized broadband services and

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, rel. March 4, 2011 ("NPRM").

³ / *In the Matter of Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Rate Counsel Initial Comments, January 17, 2006, at 7 (emphasis in original).

computers, it is clearly equally important for all other consumers throughout the country to have access to affordable broadband services.

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**REPLY COMMENTS OF
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I. INTRODUCTION

The New Jersey Division of Rate Counsel (“Rate Counsel”) hereby replies to the comments of other parties⁴ filed in response to Sections III, VI, and VII (Subsections A and C),

⁴/ Rate Counsel reviewed and responds to a limited number in these comments, including those of the following parties: Leap Wireless International, Inc. and Cricket Communications, Inc. (“Cricket”); The Leadership Conference on Civil and Human Rights (“Leadership Conference”) whose members include American Civil Liberties Union, Asian American Justice Center, Communications Workers of America, National Urban League, NAACP, National Coalition on Black Civic Participation, National Consumer Law Center, on behalf of its low-income clients, National Disability Rights Network, National Hispanic Media Coalition, National Organization for Women Foundation, United Church of Christ, Office of Communication, Inc.; National Association of State Utility Consumer Advocates (“NASUCA”); Verizon and Verizon Wireless; New York Public Service Commission (“New York PSC”); Sprint Nextel Corporation (“Sprint”); CenturyLink; CTIA – The Wireless Association (“CTIA”); Massachusetts Department of Telecommunications and Cable (“Massachusetts DTC”); Benton Foundation, The Center for Rural Strategies, Public Knowledge, and The United Church of Christ (“Benton et al”); AT&T; Cox Communications, Inc. (“Cox”); Indiana Family and Social Services Administration (“Indiana FSSA”); Nebraska Public Service Commission (“Nebraska PSC”); United States Telecom Association (“USTelecom”); The Public Service Commission of the District of Columbia (“DC PSC”); COMPTTEL; Public Service Commission of the State of Missouri (“Missouri PSC”).

VIII, and IX of the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) seeking input on proposals to “comprehensively reform and modernize” the Lifeline and Link Up programs.⁵ Rate Counsel urges the Commission to examine proposals carefully and ensure that any changes do not jeopardize the success of a program that seemingly has bolstered connection to the public telecommunications network by those least able to afford service. New Jersey low-income households increased their penetration rate from 83.2% in 1984 to 92.1% in March 2009.⁶ Measured across all households, the penetration rate in New Jersey fell slightly from 96.2% to 95.4% from March to July 2010.⁷

II. PROGRAM GOALS AND PERFORMANCE MEASUREMENT

The primary goal of the Lifeline and Link Up programs is to make affordable telephone service available to low income households.⁸ The Commission sought comment on three

⁵ / *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*, rel. March 4, 2011 (“NPRM”). Reply comments on the topics raised in the remaining sections were filed May 10, 2011.

⁶ / Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Penetration by Income by State (Data through March 2009)*, rel. May 2010, at Table 3. The statewide penetration in New Jersey for households of all incomes in March 2009 was 95.1%. *Id.*

⁷ / Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Subscription in the United States (Data through July 2010)*, rel. May 2011, at Table 4. Nationwide, the penetration rate was 96% as of July 2010. The Lifeline/Link Up Programs are essential to address the income-based gap in penetration which the FCC’s data clearly demonstrates (for example, the penetration for the highest income bracket is 99.0% and the penetration rate for the lowest income bracket is 89.5% as of July 2010). *Id.*

⁸ / *NPRM*, at para. 30.

specific goals (and performance measures related to those goals) for the Lifeline and Link Up programs.⁹ The proposed goals are:

- “To preserve and advance the availability of voice service for low-income Americans”;¹⁰
- “To ensure that low-income consumers can access supported services at just, reasonable, and affordable rates”;¹¹ and
- “To ensure that [the FCC’s] universal service policies provide Lifeline/Link Up support that is sufficient but not excessive to achieve our goals.”¹²

Many commenters did not address the specifics related to these goals. However the comments that did address the performance goals merit special consideration. Rate Counsel agrees with the National Association of State Utility Consumer Advocates (“NASUCA”) that the goal of voice service availability is not very relevant for measuring the performance of the Lifeline program.¹³

Voice service is universally available and the ability of low-income households to subscribe to telephone service is not informed by whether or not telephone service is simply available. NASUCA supports the adoption of a subscribership goal (comparing subscribership rate of low-income households with other households) but finds the 96.9% goal¹⁴ “problematic” and asks

⁹ / *Id.*, at para. 33.

¹⁰ / *Id.*, at para. 34.

¹¹ / *Id.*, at para. 36.

¹² / *Id.*, at para. 37.

¹³ / NASUCA, at 3.

¹⁴ / Rate Counsel expressed nominal support for the 96.9% benchmark as a bare minimum. However, it would be far better to adopt a moving target of the mean of all non-low-income households, which Rate Counsel also supported in initial comments. Rate Counsel, at 3. As noted in initial, it was unclear whether FCC intended the target to move over time. For example, the latest data show that as of July 2010, the penetration rate for households with incomes between \$35,000 and \$39,000 was 97.7%. Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Subscribership in the United States (Data through July 2010)*, rel. May 2011, at Table 4.

why the goal should be to simply raise subscribership rates to the next highest income level. Rate Counsel reaffirms that It would be entirely appropriate for the FCC, in evaluating the success of the Lifeline/Link Up Programs, to compare the subscribership rate of low-income households with the mean and median subscribership rates for all non-low-income households”¹⁵ Rate Counsel also supports NASUCA’s proposal that the FCC modify its measurement of subscribership to determine the percentage of households with income less than 150% of federal poverty guidelines that subscribe to telephone service.¹⁶

Verizon and Verizon Wireless contend that the Commission’s first objective (comparing low-income to non-low-income subscribership rates) is “misguided and potentially costly.”¹⁷ Verizon and Verizon Wireless state that “virtually everyone who wants phone service – regardless of income – is now connected” and cite a 94% subscription rate for those earning less than \$15,000 per year.¹⁸ Verizon and Verizon Wireless do not explain, however, why such an objective is costly as compared to any other program goal. Furthermore, Verizon and Verizon Wireless’ assertion that the Lifeline program goals have already been met (*i.e.*, everyone who wants telephone service has telephone service) should be rejected.¹⁹ What Verizon and Verizon Wireless fail to recognize is that household budgets are fungible. Telephone service is so crucial that low-income families may need to forgo other needs to maintain telephone service. This fact

¹⁵ / Rate Counsel, at 4.

¹⁶ / NASUCA, at 5. Federal poverty guidelines establish income levels based on the number of people in the household while the FCC’s subscribership data simply shows income per household with no differentiation between household sizes. *Id.* See, also, Rate Counsel’s discussion of this issue at 3.

¹⁷ / Verizon and Verizon Wireless, at 14.

¹⁸ / Of course, this subscription rate drops further for income categories below \$15,000.

¹⁹ / Verizon and Verizon Wireless, at 14.

is explicitly recognized in the Commission’s second goal in which the Commission proposes to ensure access by low-income households to supported services at just, reasonable, and affordable rates.²⁰ The Commission states:

Comparing subscribership or adoption rates among low-income households to nationwide subscribership and adoption rates may be useful in evaluating whether supported services are available to low-income households and affordable in absolute terms, but those comparisons may not be dispositive in evaluating whether low-income households can afford those services in relative terms.²¹

Rate Counsel supports the Commission’s proposal to compare the percentage of income spent on voice service with the percentage other households spend on voice service as stated in initial comments.²² However, Rate Counsel recommends that the FCC should include a comparison of the percentage of income spent on voice service by low-income households to *all* non-low-income households (*i.e.* not just those in the next highest income bracket). The Commission should also compare the percentage of income spent on the sum of voice and broadband services.²³

In reference to the Commission’s proposed goal that the Lifeline fund be “sufficient but not excessive,”²⁴ Rate Counsel concurs with NASUCA’s statement that it is “puzzled” by the Commission’s concern that Lifeline funding might be “excessive”:

In view of the “woeful under-subscription” in Lifeline by eligible low-income customers that NASUCA has noted, it is difficult to imagine a Lifeline fund that would be excessive.²⁵

²⁰ / *NPRM*, at para. 36.

²¹ / *Id.*

²² / Rate Counsel, at 5.

²³ / *Id.*

²⁴ / *NPRM*, at para. 37.

²⁵ / NASUCA, at 6 (cite omitted).

Similarly, Rate Counsel suggested that the participation rate is unacceptable and that, therefore, capping the program should be off the table.²⁶ Rate Counsel submits the arguments that the fund is excessive when the participation rate is so low and when the program is compared to other universal service programs are misplaced. This issue is discussed in more detail below in relation to the FCC's proposed cap of the Lifeline program fund.

Rate Counsel continues to support the adoption of a broadband-specific measure that compares the subscribership levels of low-income households to non-low-income households.²⁷ Others agree.²⁸ The Commission should recognize, as NASUCA has, that broadband subscribership may be an even larger problem than broadband deployment.²⁹ Rate Counsel has been a long-time advocate of the FCC's promotion of *affordable* broadband service. If broadband service is not affordable, it cannot be considered available. NASUCA is correct that the Commission's long range broadband goals should include several targets, not one.³⁰ The Commission should further refine these goals based on broadband pilot results, but as Rate Counsel stated in initial comments, it would be unfortunate if the pursuit of a pilot (which, by definition, only benefits a subset of the population) ended up stalling national progress toward affordable broadband service for *all* low-income consumers.

Finally, the Commission should consider Cricket's contention that the goals should be modified to "reflect the Commission's recognition of the benefits of mobility, as distinct from

²⁶ / Rate Counsel, at 20.

²⁷ / *Id.*, at 6-7.

²⁸ / See, e.g., Massachusetts DTC, at 2 and NASUCA, at 8.

²⁹ / NASUCA, at 8.

³⁰ / *Id.*, at 9.

those derived from connectivity generally (i.e., through wireline technologies).”³¹ To that end, Cricket recommends that the Commission compare and track wireless adoption rates of low-income consumers as compared to wireless adoption rates of higher-income consumers.³² Rate Counsel agrees with Cricket that any goals that the Commission adopts are only useful if they are measured and utilized appropriately.³³

III. CONTROLLING THE SIZE OF THE LOW-INCOME FUND

The low-income programs are supported by consumers and, therefore, the burden of an excessive universal service fund impacts consumers directly. Despite, this, the Commission should view the size of the low-income program in context. The Lifeline and LinkUp programs provide tangible benefits to consumers. If the participation rates were at an acceptable level, then capping the fund might make sense. However, the Commission needs to analyze the cause of the low participation rate and take steps to reduce barriers to enrollment before considering a cap.³⁴ Rate Counsel, thus, continues to oppose a cap of the Lifeline/LinkUp program funds at 2010 levels.³⁵

Other commenters express similar sentiments. Benton et al. also proposes that “there is no reason that the current ratio of funding for high cost areas and Lifeline is appropriate, merely because these are the levels of expenditure in 2010.”³⁶ Rate Counsel agrees with Cricket’s assessment that “Low-Income programs stand in sharp contrast to High-Cost programs, for which the effect on end-user rates and penetration is unclear.”³⁷

³¹ / Cricket, at 3.

³² / *Id.*

³³ / *Id.*

³⁴ / Rate Counsel, at 18-19.

³⁵ / *Id.*, at 19.

³⁶ / Benton et al., at 3.

³⁷ / Cricket, at 13-14.

A review of initial comments lead to the inescapable conclusion that a cap is premature and ill-advised: the various proposed reforms should address waste and inefficiency without requiring a cap; the addition of broadband will fundamentally change the needs of the low-income fund; and it is unclear how a cap would work in practice.

Verizon and Verizon Wireless contend that the Commission could meet program goals by setting a “reasonable budget” for the Lifeline fund yet they provide no specifics on the level of a more “reasonable” budget.³⁸ Verizon and Verizon Wireless also contend that poverty rates have not grown as fast as the low-income fund, and that, therefore, income eligibility should not be increased.³⁹ This analysis fails to recognize that a large portion of the growth in the fund is a direct result of duplicate claims.

There is widespread agreement that the Commission should allow the proposed reforms that it adopts as part of this rulemaking to take effect before it even considers a cap on the low-income program.⁴⁰ For example, CenturyLink posits that duplicate claims may be the major source of program growth and states: “Capping the fund without specifically addressing program abuses would only serve to perpetuate illegitimate support and potentially deny support to compliant low-income consumers with legitimate need for the support.”⁴¹

Furthermore, placing a cap on the universal service program that directly impacts consumers fundamentally contradicts the goals of Lifeline. For example, Cricket describes a

³⁸ / Verizon and Verizon Wireless, at 13.

³⁹ / *Id.*, at 14.

⁴⁰ / *See, e.g.*, CenturyLink, at 15; USTelecom, at 21; New York PSC, at 3; Benton et al, at 3; Cricket, at 15; AT&T, at 32; Nebraska PSC, at 10; CTIA, at 24; COMPTTEL, at 17; Sprint, at 13.

⁴¹ / CenturyLink, at 15.

Lifeline program cap as “antithetical to the objectives” of Lifeline and Section 254 of the Act.⁴²

Rate Counsel agrees with NASUCA’s assessment:

The Commission has spent over a decade talking about, but doing little or nothing to eliminate waste, fraud and abuse by reforming the high cost fund that benefits ETCs. The high-cost fund and the Lifeline program are entirely different programs that are aimed at different mandates embodied in the Act. CETC support from the high-cost fund was capped in order to provide time to deal with reform of a system that is “broken” and often direct public funding to the wrong places at the wrong time and to the wrong people. Thus the cap was needed, to save the fund from excess. The low-income fund, conversely, is “threatened” because it has finally become successful in providing communications services to low-income American that they need and prefer.⁴³

Nebraska PSC states: “The establishment of a fund cap may arbitrarily deny Lifeline benefits to qualified consumers contrary to the purpose of the program.”⁴⁴ CTIA states that the impact of a cap will be “felt directly by low income Americans.”⁴⁵

If the Commission, despite these numerous and well-placed objections, decides to consider a cap on the Lifeline program, it is crucial that the Commission determine, in advance, how such a cap would work. For example, Benton et al. raise important questions about how the FCC would implement the cap: “It would be inappropriate to offer service to the first individuals to apply for it during a funding year – it would lead to a lack of predictability for recipients and administrative nightmares for carriers and administrators. Such a system could well lead to individuals who are eligible cycling on and off the program as money runs out.”⁴⁶ Similarly, the Nebraska PSC urges the Commission not to reduce the benefit amount in a given month if more

⁴² / Cricket, at i.

⁴³ / NASUCA, at 19.

⁴⁴ / Nebraska PSC, at 9.

⁴⁵ / CTIA, at 24.

⁴⁶ / Benton et al., at 3.

households participate, for example.⁴⁷ The Missouri PSC, while not fundamentally opposed to a cap, asserts that the proposal would be premature without the Commission outlining exactly how that cap would work.⁴⁸ Rate Counsel opposes a cap, but agrees that the Commission would need to provide a more detailed implementation proposal and description of how such a cap would work in practice before a cap can even be considered.

The Commission's cap proposal is also difficult to reconcile with its simultaneous proposal to expand Lifeline to include support for broadband.⁴⁹ Rate Counsel concurs with Benton et al. that it does not make much sense to set arbitrary caps, and instead, the Commission should set goals and figure out what it will cost to reach those goals.⁵⁰

IV. PROGRAM ADMINISTRATION

Eligibility Criteria

The Commission should heed the Joint Board's recommendation to adopt uniform income and eligibility standards.⁵¹ Rate Counsel supports the adoption of the federal default program criteria as a floor and rules that allow states to adopt criteria that are "more permissive."⁵² A review of the comments indicates that there is support for this approach from

⁴⁷ / Nebraska PSC, at 10.

⁴⁸ / Missouri PSC, at 12.

⁴⁹ / See, e.g., Cox, at 9 and USTelecom, at 21.

⁵⁰ / Benton et al., at 3.

⁵¹ / *NPRM*, at para. 153.

⁵² / Rate Counsel, at 20-21, citing *NPRM*, at para. 154.

ETCs (who favor nationwide criteria) and consumer groups.⁵³ However, state commissions and social service agencies have expressed concerns about the cost of implementation, which should not be taken lightly particularly in light of the difficult budgetary circumstances that states find themselves in, however temporary.

The Nebraska PSC, however, opposes minimum criteria, and suggests that states should be allowed to establish their own criteria.⁵⁴ The Commission should address Nebraska PSC's concern about the "burdensome process of income verification."⁵⁵ However, Rate Counsel agrees with NASUCA that universal criteria are appropriate because, ultimately, Lifeline is a federal program and all consumers from all states contribute to it.⁵⁶ Some states do support the ability to set more permissive criteria. The DC PSC wants to ensure that states can have "more permissive" criteria, because, for example, some states have higher costs of living.⁵⁷

CTIA suggests that uniform eligibility rules would facilitate national advertising.⁵⁸ Rate Counsel agrees that uniform rules would reduce consumer confusion. The Commission should consider whether the savings that providers may experience as a result of uniform criteria would more than offset any additional outreach requirements.

⁵³ / See, e.g., Leadership Conference, at 6-7; Benton et al, at 5; Cricket, at 11; NASUCA, at 21; USTelecom, at 5; COMPTTEL, at 19; CenturyLink, at 16; CTIA, at 18. Verizon and Verizon Wireless express support as long as the changes don't "result in unwarranted increases in the size of the eligibility pool." Verizon and Verizon Wireless, at 7. Verizon and Verizon Wireless do not describe why an increase in the size of the pool would be "unwarranted."

⁵⁴ / Nebraska PSC, at 11.

⁵⁵ / *Id.*, at 12. The Nebraska PSC does not undertake its own income verification but relies upon participation in other low-income programs. *Id.*

⁵⁶ / NASUCA, at 21.

⁵⁷ / DC PSC, at 4. See, also, New York PSC, at 9.

⁵⁸ / CTIA, at 18.

Coordinated Enrollment between agencies

Coordinated enrollment is a fundamental tool for efforts to increase the Lifeline participation rates.⁵⁹ For example, Benton et al. support a “mandatory transition plan” to coordinated enrollment stating: “This single change will do more to improve participation rate than just about any other change the Commission could make.”⁶⁰ As noted by Benton et al., many states are already developing single federal benefits program “portals.” Rate Counsel supports coordinated enrollment as one tool for increasing Lifeline participation.⁶¹

Some states have found success with coordinated enrollment and even use automatic enrollment. The Commission should ensure that any actions it takes in this proceeding do not limit the ability of states to continue and/or expand their coordinated and automatic enrollment programs.⁶² The Indiana Family and Social Services Administration (“FSSA”) contends that “a mandated coordinated enrollment would impose an undue administrative and financial burden on state agencies.”⁶³ The Indiana FSSA also questions the FCC’s legal authority to impose coordinated enrollment and opposes such a requirement. Indiana FSSA suggests that such a mandate would “drastically” change the way they administer their assistance programs yet indicates that they already administer federal programs such as TANF, Food Stamps, and Medicaid. The problem appears to be that the FSSA estimates that database updates to include

⁵⁹ / Many commenters agree. *See, e.g.*, CenturyLink, at 20; New York PSC, at 10-11; DC PSC, at 6; Benton et al., at 5; Leadership Conference, at 5-6.

⁶⁰ / Benton et al., at 5.

⁶¹ / *Id.*

⁶² / DC PSC, at 6; New York PSC, at 10-11.

⁶³ / Indiana FSSA, at 1.

Lifeline would be costly.⁶⁴ The Missouri PSC raises similar concerns.⁶⁵ The Commission should consider whether the Universal Service Fund can assist the state with some of the costs of initial implementation.⁶⁶

V. CONSUMER OUTREACH AND MARKETING

As discussed in initial comments, Rate Counsel supports measures to increase and to enhance consumer outreach for Lifeline and Link Up Programs.⁶⁷ As noted by the Commission, only 36% of eligible consumers actually relied upon Lifeline service in 2009.⁶⁸ Although state social agencies may be best positioned to assist with outreach and marketing, their resources likely are limited and therefore the cost of outreach and marketing should be borne by carriers.⁶⁹

While heartily endorsing uniform minimum eligibility and verification requirements discussed above, many ETCs oppose uniform requirements for outreach and marketing. Cricket, for example, claims that “the appropriateness of various outreach methods will vary across communities and user groups, such that the Commission should not dictate any ‘one-size-fits-all’ solution.”⁷⁰ Cricket further contends that reasonable outreach requirements for large ETCs may be “unreasonably burdensome” if imposed on small ETCs.⁷¹ Cricket recommends that the

⁶⁴ / *Id.*, at 2.

⁶⁵ / Missouri PSC, at 17.

⁶⁶ / *NPRM*, at para. 204.

⁶⁷ / Rate Counsel, at 22-23.

⁶⁸ / *NPRM*, at para. 204.

⁶⁹ / *Id.*, at paras. 232-233.

⁷⁰ / Cricket, at 12 (footnote omitted).

⁷¹ / *Id.*, at 13.

Commission leave it up to ETCs to determine how to fulfill their statutory obligations.⁷² Sprint would have the Commission “allow competitive market forces to determine consumer outreach and marketing efforts and minimum service requirements”⁷³ as would Cox.⁷⁴ These proposals fail to recognize that ETCs have responsibilities, including outreach.

Verizon and Verizon Wireless argue that since subscribership rates are high “it makes no sense” to adopt additional outreach measures and create costs for ETCs.⁷⁵ Verizon and Verizon Wireless claim that ETCs are not well suited to conduct outreach programs.⁷⁶ Although Rate Counsel agrees with Verizon and Verizon Wireless that social service organizations are the best suited and have relationships with low-income households that can be leveraged, this shouldn’t let ETCs off the hook.

Rate Counsel also disagrees with USTelecom’s assertion that: “Outreach by government obviates the need to impose marketing guidelines on Lifeline providers.”⁷⁷ Regardless of the outreach requirements that the Commission ultimately adopts, the Commission should require ETCs to provide accurate and clear details about the service they are marketing to low-income consumers. Sprint would support a Commission rule that requires Lifeline ETCs to “reference” Lifeline in marketing materials (*i.e.*, indicate that a particular service is a Lifeline USF program).⁷⁸ While CenturyLink agrees that Lifeline-supported products should be identified as

⁷² / *Id.*

⁷³ / Sprint, at 2. See, also, CTIA, at 16.

⁷⁴ / Cox, at 7.

⁷⁵ / Verizon and Verizon Wireless, at 15.

⁷⁶ / *Id.*

⁷⁷ / USTelecom, at 10.

⁷⁸ / Sprint, at 14.

such, it argues that ETCs should not be required to include “clear and prominent language” explaining the one-per-household rule in its marketing and advertising, because ETCs “need flexibility.”⁷⁹ This requirement is necessary to help address the problem of duplicate claims.⁸⁰

The Leadership Conference recommends that the FCC establish incentives for states to improve outreach efforts and efficiency in the administration of programs.⁸¹ Benton et al. support set-asides for non-profits to provide outreach⁸² and identify a source of funding which may have merit: financial penalties for carriers and administrators who in engage in fraud or who do not meet goals with respect to outreach.⁸³

Missouri PSC supports guidelines for ETCs, that require clear identification of company name; that the marketed product is a part of the Lifeline and Link Up program; and that prohibit misleading.⁸⁴ The Commission should adopt these guidelines as a bare minimum. NASUCA supports the Joint Board Recommendation that ETCs advertise throughout their service area, but notes that outreach “lends itself to state regulatory oversight.”⁸⁵ Rate Counsel supports NASUCA’s proposal that the Commission establish guidelines, but that states implement the standards as a part of ETC certification role.⁸⁶

⁷⁹ / CenturyLink, at 23.

⁸⁰ / *Id.*, at Attachment 1.

⁸¹ / Leadership Conference, at 7.

⁸² / Benton et al., at 5.

⁸³ / *Id.*, at 10.

⁸⁴ / Missouri PSC, at 19.

⁸⁵ / NASUCA, at 26.

⁸⁶ / *Id.*

VI. MODERNIZING THE FUND

Eligible Voice Services and Support for Bundled Services

Currently, ETCs are reimbursed only for discounts provided on the price of monthly basic local service.⁸⁷ The Commission asks how it should define basic voice telephony for the purposes of the Lifeline program observing that many flat rate offerings now do not distinguish between local, toll and long distance.⁸⁸ Rate Counsel recommended in initial comments that the Commission retain the existing definition, but allow Lifeline participants to apply their discounts to bundled offerings.⁸⁹ Consumer use of Lifeline funds for bundled services will result in the most economic use of resources.⁹⁰ The FCC should prohibit carriers from limiting the use of Lifeline to basic, unbundled packages, and require providers to apply the Lifeline subsidies to bundles; low-income consumers should not be penalized for the use of Lifeline discounts.⁹¹ Many commenters agree.⁹² New York PSC observes that allowing Lifeline customers to apply discounts to bundles simply puts wireline consumers on par with wireless consumers who can already obtain bundled services.⁹³

Verizon and Verizon Wireless contend that allowing consumers to apply their Lifeline benefit to bundled services will expand the Lifeline program unnecessarily because many bundle

⁸⁷ / *NPRM*, at para. 240.

⁸⁸ / *NPRM*, at para. 242.

⁸⁹ / Rate Counsel, at 24.

⁹⁰ / *Id.*, at 24 citing *NPRM*, at para. 258.

⁹¹ / *NPRM*, at para. 259.

⁹² / Cricket, at 15; NASUCA, at 29; Leadership Conference, at 3; New York PSC, at 6; AT&T, at 10; Massachusetts DTC, at 11.

⁹³ / New York PSC, at 6.

buyers will be consumers that had not previously utilized Lifeline but instead opted for bundles without Lifeline support.⁹⁴ Verizon and Verizon Wireless further express the concern that consumers may not be able to pay their entire bill if Lifeline recipients can now buy bundles and that ETCs will have to offer “new” bundles and recode their systems.⁹⁵ These objections should be dismissed by the Commission. Telecommunications providers offer new services frequently. It is hard to believe that applying Lifeline discounts to bundles will be an insurmountable obstacle for ETCs. Verizon itself has proposed an entirely new portable benefits method for Lifeline for which it seemingly does not have the same concerns expressed here.⁹⁶ The Commission should consider NASUCA’s proposal that the FCC direct states to study whether Lifeline customers with bundles are disconnected more often than Lifeline customers without bundles and what action should be taken to ensure that consumers are able to maintain a connection to the public switched telephone network.⁹⁷

“The Transition to Broadband”

Rate Counsel discussed its support for the expansion of Lifeline and LinkUp for broadband in detail in initial comments⁹⁸ and will not repeat that discussion here. Rate Counsel believes a cohesive national policy to subsidize broadband adoption for low-income households should replace the fragmented approach that now exists.”⁹⁹

⁹⁴ / Verizon and Verizon Wireless, at 16.

⁹⁵ / *Id.*, at 16-17.

⁹⁶ / Verizon and Verizon Wireless, at 4.

⁹⁷ / NASUCA, at 30.

⁹⁸ / *See* Rate Counsel, at 24-29.

⁹⁹ / *Id.*, at 28. However, in its comments, CenturyLink contends that it already has its own low-income broadband program (as a commitment made to obtain approval of its merger with Qwest) and therefore suggests that it should not have to be part of any FCC pilot program. CenturyLink, at 24. CenturyLink appears willing to share

AT&T states:

. . . 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. 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.¹⁰⁰

The Commission should consider whether Lifeline support for broadband services needs to follow the mold of the current voice program. Certainly, AT&T's objection above implies that in order to be an ETC, the Commission would require the ETC to provide broadband throughout its service territory. Such an approach might not be realistic at this time and Lifeline support for broadband should not threaten the availability of ETCs that provide voice service. There are numerous programs designed to address the cost of broadband deployment and the Commission should reject AT&T's assertion that the Lifeline program should be one of those programs. Furthermore, opening up the ETC designation for broadband would allow non-traditional groups to service low-income consumers as well. Rate Counsel agrees with Benton et al. that the Commission should think creatively about the pilot program and not simply rely on current ETCs to provide service.¹⁰¹ Rate Counsel agrees that: "Utilizing community groups,

data. However, CenturyLink's commitments are predicated on consumers having a minimum contract term of one year. *In the Matter of Applications file by Qwest Communications International Inc. and CenturyTel. Inc. d/b/a CenturyLink for Consent to Transfer Control*, FCC WC Docket No. 10-110, *Memorandum Opinion and Order*, rel. March 18, 2011, at Appendix C, Section II. The commitments were made as part of a merger deal and should in no way exempt CenturyLink from any requirements that the FCC adopts for telecommunications providers in general.

¹⁰⁰ / AT&T, at 21 (cite omitted).

¹⁰¹ / Benton et al., at 6.

community institutions (schools and libraries), and other non-profit or for-profit groups could open up new and sustainable broadband adoption options.”¹⁰²

Rate Counsel is not alone in its support to include broadband as a supported service. The DC PSC provides evidence that broadband adoption within DC varies significantly between higher income and low-income neighborhoods and suggests that Lifeline support would “assist in bridging this digital divide to provide more education and employments opportunities and access to governmental services to low income residents in the District of Columbia.”¹⁰³ Massachusetts DTC “fully supports” revising the definition to include broadband.¹⁰⁴

The Leadership Conference describes lack of broadband access as a “structural barrier” to portions of the population sharing in economic recovery, cites the FCC’s own findings in the National Broadband Plan and states:

This access [to broadband] is critically important for success in the job market, especially in a competitive job market where [as of] March 2011, unemployment was 8.8 percent, black unemployment was 15.5 percent and Latino unemployment was 11.3 percent. Broadband plays a critically important role in all parts of the jobs pipeline – covering job readiness that includes obtaining skills necessary for a job, job placement that includes successfully applying for a job, and job progression that includes retraining for advancing through a job. For example, qualifications in science, technology, engineering and math are vital for gaining entry to sectors where there is greatest job growth. Gaining those qualifications is almost impossible without access to broadband.¹⁰⁵

Rate Counsel supports the four guiding principles for a Lifeline broadband program put forth by Cox: (1) the program should focus on consumers; (2) the program should not offer inferior

¹⁰² / *Id.*, at 7.

¹⁰³ / DC PSC, at 7.

¹⁰⁴ / Massachusetts DTC, at 11.

¹⁰⁵ / Leadership Conference, at 2.

speed service to Lifeline consumers; (3) the program should focus on eliminating affordability barriers; and (4) the program should “be large enough to have a real and appreciable effect on broadband adoption.”¹⁰⁶

Rate Counsel disagrees with commenters recommending that the Commission defer its decision regarding the inclusion of broadband in the Lifeline definition until after it examines results from the pilot program.¹⁰⁷ As stated in initial comments, while Rate Counsel certainly has been supportive of pilot programs in the past and agrees that pilot programs can be used to evaluate strategies and for data collection, such programs should not serve to delay the entire process.

If the FCC implements a pilot program, Rate Counsel then concurs with Leadership Conference’s recommended “strict timeline” for the pilots, with a launch four months after an Order in this proceeding and a one-year timeline for implementation and evaluation. This includes a “target date of a restructured Lifeline program by the end of 2013.”¹⁰⁸ Leadership Conference proposes “rigorous efficiency and evaluation” of the pilots and that the Commission “break down silos” by drawing from the experiences of states and localities with BTOP funds (among others) into consideration.¹⁰⁹

Numerous comments stress the importance of the pilot program for generating data. Rate Counsel agrees with Benton et al. that the Commission should structure any pilot program in

¹⁰⁶ / Cox, at 10.

¹⁰⁷ / See, e.g., New York PSC, at 5-6; Cricket, at 17. The Massachusetts DTC also supports changing the definition without first implementing a pilot program. Massachusetts DTC, at 11-12.

¹⁰⁸ / Leadership Conference, at 3.

¹⁰⁹ / Leadership Conference, at 3.

order to maximize the data that it can collect.¹¹⁰ The pilot programs should have data collection as their top priority. Otherwise, the delay between this proceeding and a comprehensive program to support the adoption of broadband by low-income households will be further delayed and policy makers will simply have additional anecdotal evidence, but no data upon which to base such a program.

VII. CONCLUSION

Rate Counsel urges the Commission to adopt the recommendations set forth in these reply comments as well as in Rate Counsel's comments submitted previously in this proceeding.

Respectfully submitted,

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¹¹⁰ / Benton et al., at 7. *See, also*, Cricket, at 17 and USTelecom, at 22-23.