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

In the Matter of	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
Lifeline and Link Up	)	WC Docket No. 03-109
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Advancing Broadband Availability Through Digital Literacy Training	)	WC Docket No. 12-23

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: January 31, 2012 **Released: February 6, 2012**

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission: Chairman Genachowski issuing a statement; Commissioner Clyburn approving in part, concurring in part and issuing a statement; Commissioner McDowell approving in part, concurring in part, dissenting in part and issuing a statement.

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I. INTRODUCTION

1. In this Order, we comprehensively reform and begin to modernize the Universal Service Fund's Lifeline program (Lifeline or the program). Building on recommendations from the Federal-State Joint Board on Universal Service (Joint Board), proposals in the National Broadband Plan, input from the Government Accountability Office (GAO), and comments received in response to the Commission's

March 2011 Notice of Proposed Rulemaking,[1] the reforms adopted in this Report and Order (Order) substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund (USF or the Fund). We take these significant actions, while ensuring that eligible low-income consumers who do not have the means to pay for telephone service can maintain their current voice service through the Lifeline program and those who are not currently connected to the networks will have the opportunity to benefit from this program and the numerous opportunities and security that telephone service affords.

2. This Order is another step in the Commission's ongoing efforts to overhaul all USF programs to promote the availability of modern networks and the capability of all American consumers to access and use those networks. Consistent with previous efforts, we act here to eliminate waste and inefficiency, increase accountability, and transition the Fund from supporting standalone telephone service to broadband.[2] In June 2011, the Commission adopted the *Duplicative Program Payments Order*, which made clear that an eligible consumer may only receive one Lifeline-supported service, established procedures to detect and de-enroll subscribers receiving duplicative Lifeline-supported services, and directed the Universal Service Administrative Company (USAC) to implement a process to detect and eliminate duplicative Lifeline support—a process now completed in 12 states and expanding to other states in the near future.[3] Building on those efforts, the unprecedented reforms adopted in today's Order could save the Fund up to an estimated $2 billion over the next three years, keeping money in the pockets

[1] *Federal-State Joint Board on Universal Service et al.*, CC Dkt. No. 96-45 *et al.*, Recommended Decision, 25 FCC Rcd 15598 (Jt. Bd. 2010) (*2010 Joint Board Recommended Decision*); FEDERAL COMMUNICATIONS COMMISSION, OMNIBUS BROADBAND INITIATIVE, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2010) (NATIONAL BROADBAND PLAN), *available at* http://www.broadband.gov/plan; U.S. GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, GAO 11-11, TELECOMMUNICATIONS: IMPROVED MANAGEMENT CAN ENHANCE FCC DECISION MAKING FOR THE UNIVERSAL SERVICE FUND LOW-INCOME PROGRAM (2010) (2010 GAO REPORT); *Lifeline and Link Up Reform and Modernization et al.*,WC Dkt. No. 11-42 *et al.*, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011) (*NPRM* or *Lifeline and Link Up NPRM*). *See also infra* Appendices E & F listing comments and replies.

[2] *See Joint Statement on Broadband*, GN Dkt. No. 10-66, Joint Statement on Broadband, 25 FCC Rcd 3420 (2010). The Commission has already made important strides in this area: the Commission has modernized the E-rate program, by enabling schools and libraries to get faster Internet connections at lower cost. *Schools and Libraries Universal Service Support Mechanism et al.*, CC Dkt. No. 02-6 *et al.*, Sixth Report and Order, 25 FCC Rcd 18762 (2010) (*E-rate Sixth Report and Order*). The Commission has established a Connect America Fund (CAF) to spur the build out of broadband networks, both mobile and fixed, in areas of the country that are uneconomic to serve. *See Connect America Fund et al.*, WC Dkt. No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order and FNPRM*), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 8, 2011) (and consolidated cases). The Commission has proposed changes to the rural health care program so patients at rural clinics can benefit from broadband-enabled care, such as remote consultations with specialists anywhere in the country. *Rural Health Care Universal Service Support Mechanism*, WC Dkt. No. 02-60, Notice of Proposed Rulemaking, 25 FCC Rcd 9371 (2010) (*Rural Health Care NPRM*).

[3] *Lifeline and Link Up Reform and Modernization et al*, Report and Order, WC Dkt. No. 11-42 *et al.*, 26 FCC Rcd 9022 (2011) (*2011 Duplicative Program Payments Order*); Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to D. Scott Barash, Acting Chief Executive Officer, Universal Service Administrative Company (USAC), WC Dkt. Nos. 11-42 *et al.*, 26 FCC Rcd 9022 (Wireline Comp. Bur. Jun. 21, 2011) (*June Guidance Letter*); Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to D. Scott Barash, Acting Chief Executive Officer, Universal Service Administrative Company (USAC), WC Dkt. No. 11-42 *et al.*, DA 11-1986 (2011) (*December Guidance Letter*).

of American consumers that otherwise would have been wasted on duplicative benefits, subsidies for ineligible consumers, or fraudulent misuse of Lifeline funds.

3. These savings will reduce growth in the Fund, while providing telephone service to consumers who remain disconnected from the voice networks of the twentieth century. Moreover, by using a fraction of the savings from eliminating waste and abuse in the program to create a broadband pilot program, we explore how Lifeline can best be used to help low-income consumers access the networks of the twenty-first century by closing the broadband adoption gap. This complements the recent *USF/ICC Transformation Order and FNPRM*, which reoriented intercarrier compensation and the high-cost fund toward increasing the availability of broadband networks, as well as the recently launched *Connect to Compete* private-sector initiative to increase access to affordable broadband service for low-income consumers.

4. To make the program more accountable, the Order establishes clear goals and measures and establishes national eligibility criteria to allow low-income consumers to qualify for Lifeline based on either income or participation in certain government benefit programs. The Order adopts rules for Lifeline enrollment, including enhanced initial and annual certification requirements, and confirms the program's one-per-household requirement. The Order simplifies Lifeline reimbursement and makes it more transparent. The Commission adopts a number of reforms to eliminate waste, fraud and abuse in the program, including creating a National Lifeline Accountability Database to prevent multiple carriers from receiving support for the same subscribers; phasing out toll limitation service (TLS) support; eliminating Link Up support except for recipients on Tribal lands that are served by eligible telecommunications carriers (ETCs) that participate in both Lifeline and the high-cost program;[4] reducing the number of ineligible subscribers in the program; and imposing independent audit requirements on carriers receiving more than $5 million in annual support. These reforms are estimated to save the Fund up to $2 billion over the next three years. As part of these reforms we establish a savings target of $200 million in 2012 versus the program's status quo path in the absence of reform, create a mechanism for ensuring that target is met, and put the Commission in a position to determine the appropriate budget for Lifeline in early 2013 after monitoring the impact of today's fundamental overhaul of the program and addressing key issues in the Further Notice of Proposed Rulemaking (*FNPRM*), including the appropriate monthly support amount for the program. Using savings from the reforms, the Order establishes a Broadband Adoption Pilot Program to test and determine how Lifeline can best be used to increase broadband adoption among Lifeline-eligible consumers. We also establish an interim base of uniform support amount of $9.25 per month for non-Tribal subscribers to simplify program administration.

II. BACKGROUND

5. *Procedural History*. Ensuring the availability of communications services for low-income households has long been a partnership among, and a significant priority for, the states, the federal government, and the private sector.[5] In May 2010, the Commission sought the Joint Board's input

[4] Throughout this document, "Tribal lands" include any federally recognized Indian tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian Allotments, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, Pub. L. No. 67-34, 42 Stat. 108, *et.seq*., as amended (1921). This definition is consistent with the definition of Tribal lands recently adopted in our order establishing the Connect America Fund. *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 197. We accordingly amend the current definition of Tribal lands for purposes of the low-income program in section 54.400(e).

[5] The Commission originally established the Lifeline and Link Up programs pursuant to its general authority under sections 1, 4(i), 201, and 205 of the Communications Act of 1934. *See Federal-State Joint Board on Universal*
(continued....)

on the Commission's program rules governing eligibility, verification, and outreach.[6]

6. In its *2010 Joint Board Recommended Decision*, the Joint Board recommended that the Commission: (1) encourage automatic enrollment as a best practice for all states; (2) adopt uniform minimum verification procedures and sampling criteria that would apply to all ETCs in all states; (3) allow states to utilize different and/or additional verification procedures so long as those procedures are at least as effective in detecting waste, fraud, and abuse as the uniform federal procedures; (4) require ETCs to submit the data results of their verification sampling to the Commission, the states, and USAC and make the results available to the public; and (5) adopt mandatory outreach requirements for all ETCs that receive low-income support.[7] Additionally, the Joint Board asked the Commission to seek further comment on whether the current eligibility requirements of household income at or below 135 percent of the federal poverty guidelines should be raised to 150 percent; the costs and benefits of minimum uniform eligibility requirements; the costs and benefits of database certification and verification of eligibility; whether to expand the program to include broadband; and whether a minimum monthly rate should apply to all Lifeline subscribers.[8] The Joint Board also recommended that the Commission adopt a principle pursuant to its section 254(b)(7) authority "that universal service support should be directed where possible to networks that provide advanced services, as well as voice services."[9]

7. In March 2011, the Commission incorporated the Joint Board's recommendations in a comprehensive rulemaking to reform and modernize Lifeline.[10] In addition to the specific recommendations and issues raised by the Joint Board, the Commission sought public comment on a number of additional ways to strengthen the program, including establishing performance goals for the program, strengthening the program's audit regime, granting blanket forbearance from the Act's facilities requirement, establishing a flat rate of reimbursement, reforming TLS and Link Up support, and expanding Tribal Lifeline eligibility.[11]

8. Subsequently, the Wireline Competition Bureau (Bureau) issued a public notice in August 2011 to develop a more complete record on certain issues raised in the rulemaking proceeding, including reforming the current verification methodology to better protect against waste, fraud, and abuse; limiting the availability of Lifeline support to one discount per residential address; ensuring that only eligible costs are supported by Link Up; and determining whether and how the program could effectively

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Service, CC Dkt. No. 96-45, Report and Order, 12 FCC Rcd 8776, 8952-53, para. 329 (1997) (subsequent history omitted) (*Universal Service First Report and Order*).

[6] The Commission asked the Joint Board to recommend any changes to these aspects of the program given significant technological and marketplace changes since the current rules were adopted. Specifically, the Commission asked the Joint Board to review: (1) the combination of federal and state rules that govern which customers are eligible to receive discounts through the Lifeline and Link Up programs; (2) best practices among states for effective and efficient verification of customer eligibility, both at initial customer sign-up and periodically thereafter; (3) the appropriateness of various outreach and enrollment programs; and (4) the potential expansion of the low-income program to broadband, as recommended in the National Broadband Plan. *See Federal-State Joint Board on Universal Service et al.*, CC Dkt. No. 96-45 *et al.*, 25 FCC Rcd 5079 (2010) (*2010 Joint Board Referral Order*).

[7] *See generally 2010 Joint Board Recommended Decision.*

[8] *See id.*

[9] *Id*, at 15625, para. 75.

[10] *See generally Lifeline and Link Up NPRM.*

[11] *Id. at* 26 FCC Rcd at 2782-86, 2793-96, 2800-03, 2863-64, 2811-15, paras 28-45, 65-79, 95-102, 306-309, 126-41.

support broadband adoption by low-income households.[12]

9. The Commission adopted the additional universal service principle recommended by the Joint Board in the *USF/ICC Transformation Order and FNPRM.*[13] In addition, the Commission revised the definition of the supported service to be "voice telephony services."[14]

10. Since the release of the *NPRM*, we have made significant improvements to the administration of the program to reduce waste. As noted above, the Commission's *2011 Duplicative Program Payments Order* made clear that an eligible consumer may only receive one Lifeline-supported service,[15] established procedures to detect and de-enroll subscribers with duplicate Lifeline-supported services, and directed USAC to implement a process to detect and eliminate duplicative Lifeline support—a process completed in 12 states which will expand to cover a majority of states over the course of this year.[16] In addition, we have worked closely with the states and the Administrator, USAC, to strengthen enforcement and oversight of Lifeline.[17]

11. *History and Purpose of Low-Income Program.* Universal service has been a national objective at least since the enactment of the Communications Act of 1934, in which Congress stated its intention to "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."[18]

12. The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T. Its initial purpose was to ensure that any increase in local rates that occurred following major changes in the marketplace would not put local phone service out of reach for low-income households and result in service disconnections.[19] At the time, the Commission was concerned that the implementation of subscriber line charge (SLC) would force low-income consumers to drop voice service, which, the Commission found, had "become crucial to full participation in our society and economy[,] which are increasingly dependent upon the rapid exchange of information."[20] The program made carriers whole

[12] *Further Inquiry Into Four Issues in the Universal Service Lifeline and Link Up Reform and Modernization Proceeding*, Public Notice, WC Dkt. No. 11-42 *et al.*, 26 FCC Rcd 11098 (Wireline Comp. Bur. Aug. 5, 2011) (*Lifeline and Link Up Public Notice*).

[13] *See USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 43-45. Section 254(a)(2) of the Act requires the Commission to act on recommendations of the Federal-State Joint Board on Universal Service within one year. *See* 47 U.S.C. § 254(a)(2). In this Order, we are acting on the remaining recommendations in the *2010 Joint Board Recommended Decision.*

[14] *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 77.

[15] *2011 Duplicative Program Payments Order*, 26 FCC Rcd at 9026, para. 7 (amending sections 54.401 and 54.405 to codify the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time).

[16] *Id.* at 9030-31, paras. 15-16.

[17] *See* Letter from Chairman Julius Genachowski, Chairman, Federal Communications Commission, to State Commissioners, WC Dkt. No. 11-42 (Dec. 12, 2011).

[18] 47 U.S.C. § 151 (creating the Federal Communications Commission).

[19] *MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985) (*MTS and WATS Market Structure Report and Order*).

[20] *Id.* at 942, para. 11. ("We adopt the Joint Board's recommendation concerning measures to offset the effect of subscriber line charges on low income houses. In this regard, we agree with their conclusion that the proposed subscriber line charges should not have an adverse effect on universal service.").

after waiving the SLC for low-income consumers.[21] Link Up was established to offset the high, non-recurring charges assessed by incumbent local exchange carriers for commencing telephone service.[22]

13. In 1996, Congress codified the Commission's and the states' commitment to advancing the availability of telecommunications services to all Americans, and established principles upon which "the Commission shall base policies for the preservation and advancement of universal service."[23] Among other things, Congress articulated national goals that services should be available at "affordable" rates and that "consumers in all regions of the nation, including low-income consumers, . . . should have access to telecommunications and information services."[24] Based on recommendations of the Joint Board, the Commission revised and expanded the Lifeline program after passage of the Telecommunications Act of 1996 (1996 Act).[25] After implementation of the 1996 Act, all states participated in the program and the level of federal Lifeline/Link Up support steadily increased.[26]

14. Since the 1996 Act, the program has been administered by USAC under Commission direction, although many key attributes of the program are implemented at the state level, including consumer eligibility, ETC designations, outreach, and verification. Moreover, ETCs have been integral in the offering of the program to low-income consumers. Lifeline support is passed on to the subscriber by the ETC, which provides discounts to eligible households and receives reimbursement from the Universal Service Fund for the provision of such discounts.[27] Lifeline now provides a discount to non-Tribal subscribers averaging $9.25 per month for telephone charges, and Link Up provides a discount of up to $30 on the cost of commencing telephone service for qualifying low-income households.[28] For residents

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[21] *See id.*

[22] *See MTS and WATS Market Structure et al.*, CC Dkt. No. 78-72 *et al.*, Recommended Decision and Order, 2 FCC Rcd 2324, 2332, para. 68 (1987) (*MTS and WATS Market Structure Recommended Decision and Order*).

[23] 47 U.S.C. § 254(b).

[24] *See* 47 U.S.C. § 254(b)(1),(3); *see also* 47 U.S.C. § 151.

[25] *See Universal Service First Report and Order*, 12 FCC Rcd at 8952, paras. 326-28. The Joint Board is comprised of FCC commissioners, state utility commissioners, and a state consumer advocate representative. *See* 47 U.S.C. §§ 254(a)(1), 410(c).

[26] *See* Universal Service Administrative Company, 1Q 2012 Filing, Appendices at LI 06 (Historical Data Support Amounts Claimed by ETCs Each Month - January 1998 through June 2011), *available at* http://www.usac.org/about/governance/fcc-filings/2012/quarter-1.aspx.

[27] Carriers file FCC Forms 497 to receive reimbursement for providing support to eligible subscribers. *See* Universal Service Administrative Company, Low-Income, Step 6: Submit Lifeline and Link Up Worksheet, http://usac.org/li/telecom/step06/default.aspx (last visited Feb. 1, 2012). ETCs may file their Forms 497 on either a monthly or quarterly basis, and are reimbursed by USAC on a monthly basis. These disbursements may be based on a projection for the prior month's support. Universal Service Administrative Company, Low-Income, Step 7: Payment Process and Status, http://usac.org/li/telecom/step07/default.aspx (last visited Feb. 1, 2012). In order to promote greater accuracy in low-income program payment-processing, the Commission's Office of the Managing Director (OMD) directed USAC to propose an administrative process for disbursing low-income support to ETCs based on verified claims for reimbursement, rather than projected claims. In response, USAC developed and filed a proposed plan to disburse support to ETCs based on actual claims, rather than projections. In September 2011, the Wireline Competition Bureau sought comment on USAC's proposal. *See Inquiry into Disbursement Process for the Universal Service Low Income Program*, WC Dkt. No. 11-42 *et al.*, Public Notice, 26 FCC Rcd 13131 (Wireline Comp. Bur. 2011); Erratum (rel. Oct. 3, 2011) (*Lifeline Disbursement Public Notice*).

[28] *See* Letter from Karen Majcher, Vice President, High Cost and Low Income Division, Universal Service Administrative Company, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, (filed Jan. 10, 2012) (*USAC 2011 Support Amounts Letter*) (stating that the (continued….)

of Tribal lands, Lifeline provides an additional $25 discount on monthly telephone charges, and Link Up provides up to an additional $70 discount on the cost of commencing telephone service for low-income households.[29] These amounts may be supplemented by additional funding provided from state universal service funds in some states.

15. Evidence suggests that Lifeline has been instrumental in increasing the availability of quality voice service to low-income consumers. Indeed, many low-income consumers have stated in our record that without a Lifeline subsidy, they would be unable to afford service.[30] They have also noted the hardships they would face without access to phone service.[31] Telephone subscribership among low-income Americans has grown significantly since the Lifeline program was initiated in 1984. Eighty percent of low-income households had telephone service in 1984, compared to 95.4 percent of non-low-income households.[32] Since the inception of Lifeline, the gap between telephone penetration rates for low-income and non-low-income households has narrowed from about 12 percent in 1984 to 4 percent in 2011.[33] Moreover, states that provide higher monthly Lifeline subsidies per household exhibited greater growth in phone subscribership from 1997 to the present.[34]

16. There is also evidence that Lifeline has increased the penetration rate of voice service by keeping low-income consumers connected to the network.[35] As shown in Chart 1, the gap in penetration

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vast majority of Lifeline subscribers receive support in the $8-10 range with an average amount of $9.25 in September 2011). In addition, ETCs may be reimbursed for the incremental costs of their provision of Toll Limitation Service to eligible households. 47 C.F.R. § 54.403(c).

[29] *See* 47 C.F.R. §§ 54.403(a)(4) (Lifeline); 54.411(a)(3) (Link Up).

[30] The Commission received many letters from Lifeline subscribers, which have been placed in the record of this proceeding, expressing their need for Lifeline as their only connection to family, health care providers, and work opportunities. One disabled Lifeline subscriber in Tennessee describes her Lifeline service as exactly that – a "lifeline": "I have a 17-year old daughter with Down Syndrome. We help each other everyday [sic]. I do the thinking and she does what she can understand...[Lifeline] provides me a way to contact help if something happens and my daughter doesn't understand what we might need help for... but she does understand if I tell her 'Mommy needs the phone.' … it gives me peace of mind to know I can always call for help."

[31] *Id.*

[32] *See* FEDERAL COMMUNICATIONS COMMISSION, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, UNIVERSAL SERVICE MONITORING REPORT at text accompanying table 3.2 (2011) (2011 MONITORING REPORT) (where "low-income" is defined as households making $9,999 or less), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1229/DOC-311775A1.pdf.

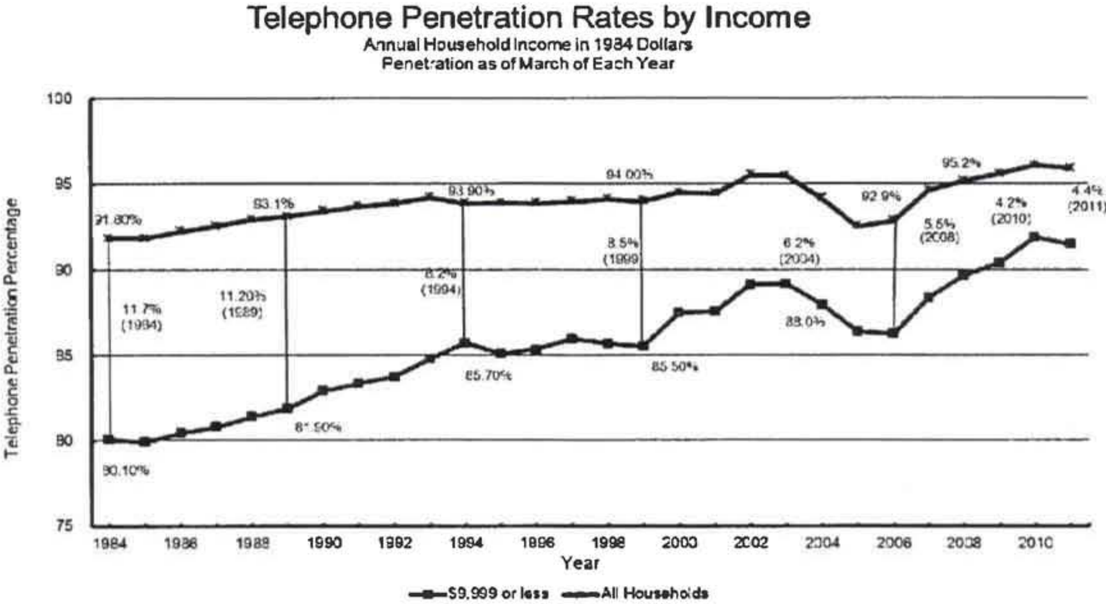
[33] The Commission's telephone subscription penetration rate is based on the Census Bureau's Current Population Survey (CPS). The specific questions asked in the CPS are: "Does this house, apartment, or mobile home have telephone service from which you can both make and receive calls? Please include cell phones, regular phones, and any other type of telephone." And, if the answer to the first question is "no," this is followed up with, "Is there a telephone elsewhere on which people in this household can be called?" If the answer to the first question is "yes," the household is counted as having a telephone "in unit." If the answer to either the first or second question is "yes," the household is counted as having a telephone "available." FEDERAL COMMUNICATIONS COMMISSION, WIRELINE COMPETITION BUREAU, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, TELEPHONE SUBSCRIBERSHIP IN THE UNITED STATES at 2 (Dec. 2011) (2011 WCB SUBSCRIBERSHIP REPORT).

[34] *See* 2011 MONITORING REPORT at Chart 3.12.

[35] *See* Letter from Matthew Brill, Counsel, Cricket, to Marlene H. Dortch, Secretary, Federal Communications Commission,WC Dkt. No. 11-42 *et al.* (filed Dec. 1, 2011) (noting that, in any given month, a substantially smaller percentage of Cricket's Lifeline subscribers deactivate their accounts—as compared to Cricket's non-Lifeline subscribers and arguing that "this disparity confirms that the Lifeline subsidy has a significant positive impact on the
(continued….)

rates between households earning less than $10,000 and all households has steadily narrowed since the inception of Lifeline. When consumers are able to only intermittently remain on the network, they are not fully connected to society and the economy because, among other things, they are unable to apply for and receive call-backs for jobs or reach important social services, health care, and public safety agencies on a constant basis. The Commission has found that the low-income program "provide[s] the best source of assistance for individuals to obtain and *retain* universal service, and, therefore, help maintain and improve telephone subscribership"[36] and fulfill our obligations under section 254 of the Act.

Chart 1[37]



17. There are substantial benefits to increasing the availability of communications services, including both voice and broadband service, for low-income Americans. As an initial matter, all consumers, not just low-income consumers, receive value from the network effects of widespread voice and broadband subscribership.[38] Moreover, voice service remains a prerequisite for full participation in our economy and society.[39] Those consumers without affordable, quality voice services are at a

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ability of Cricket's low-income subscriber base to maintain continuous access to the PSTN.") (Cricket Dec. 1 *ex parte* Letter).

[36] *Universal Service First Report and Order*, 12 FCC Rcd at 8845, para. 124 (emphasis added).

[37] 2011 MONITORING REPORT at Table 3.2 (for 1997 to 2011 data); 2011 WCB SUBSCRIBERSHIP REPORT at Table 6.14 (for 1984-1996 data). In FCC statistical reports, "low-income" is defined as those subscribers earning $9,999 or less in 1984 dollars. *See* 2011 MONITORING REPORT AT 3-12. $9,999 in 1984 dollars is equal to $21,780 in 2011 dollars. *See id.* at Table 3.3.

[38] *See* One Economy Comments at 12 ("While individuals will discover personal socioeconomic gains from adoption of broadband, a population of broadband adopters will lead to significant progress around strengthening educational outcomes, increasing innovation and entrepreneurship, reducing healthcare costs, and improving the efficiency of government services.").

[39] *See, e.g.*, Letter from Olivia Wein, National Consumer Law Center, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Aug. 26, 2011) (NCLC Aug. 26 *ex parte* Letter) (continued….)

disadvantage in accessing social and economic resources and opportunities. Voice service allows consumers to connect with public safety and health care resources.[40] As many commenters note, voice service is particularly important for low-income consumers, who often must juggle multiple jobs and interviews for new employment as well as keep in contact with social service agencies.[41] As noted by several members of Congress, "a cell phone can literally be a Lifeline for families and provide low-income families, in particular, the means to empower themselves."[42] If quality voice service is not affordable, low-income consumers may subscribe to voice service at the expense of other critical necessities, such as food and medicine, or may be unable to purchase sufficient voice service to obtain adequate access to critical employment, health care, or educational opportunities.[43] And if low-income consumers initially subscribe to phone service, but intermittently lose access because they cannot consistently pay for the service, many of the benefits for individuals and the positive externalities for the economy and society will be lost.

18. Access to affordable, robust broadband service is equally important.[44] As stated in the *USF/ICC Transformation Order and FNPRM*, "[a]ll Americans should have access to broadband that is capable of enabling the kinds of key applications [that drive broadband adoption] . . . including education (*e.g.*, distance/online learning), health care (e.g., remote health monitoring) and person-to-person communications (e.g., VoIP or online video chat with loved ones serving overseas)." Indeed, the evidence indicates that increased broadband adoption and usage increases educational and economic outcomes for low-income consumers.[45] As one commenter argues, "broadband access is a prerequisite of

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(noting that "access to phone service is a necessity in modern times."); Letter of Dr. George Korn, Rainbow/Push Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (arguing that "[w]ithout phone service, the most basic processes and activities become difficult, limiting options and possibilities for the poor and pushing them to the fringe of society.").

[40] Alaska Commission Reply Comments at 9 (noting the importance of voice service for public safety); Letter from Professor David Super, Georgetown Law, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 3-4 (filed Nov. 7, 2011) (Prof. Super Nov. 7 *ex parte* Letter); *see also MTS and WATS Market Structure Report and Order*, 50 Fed. Reg. at 941 ("Significant increases in the price of basic telephone service could isolate many of the elderly and poor by depriving them of the ability to obtain medical and police assistance or communicate with family and friends.").

[41] *See, e.g.*, NCLC Aug. 26 *ex parte* Letter at 1 (noting that "phone service is key to helping low-income consumers find work, housing, access and maintain contact with health care professionals and education providers, accessing emergency services, as well as remaining connected to support networks such as family and friends and community services.").

[42] Letter from Senators Robert Menendez, Kirsten E. Gillibrand, Sherrod Brown, and & Jeanne Shaheen, to Hon. Julius Genachowski, Chairman, Federal Communications Commission, OL Dkt. No. 11-9 (filed Sept. 13, 2011).

[43] *See generally* Prof. Super Nov. 7 *ex parte* Letter; *see also* Letter from Debra R. Berlyn, Chairperson, Federal Communications Commission Consumer Advisory Committee, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 3 (noting the importance of the low income program to "ease connections" to health care, education and potential employers).

[44] *See, e.g.*, One Economy Comments at 33; AT&T Reply Comments, Attachment (Attach.) at 1 ("access to broadband leads to improved education, better health care delivery and other societal advances.").

[45] *See, e.g.*, AT&T Reply Comments, Attach. at 1; MAG-Net Comments, Attach. A at 4 ("In some low-income areas where laptops or netbook-like devices and home broadband connections have been provided to children, and the technology was thoughtfully integrated into learning and instruction, research shows positive effects on student academic performance, engagement, and attitude.").

social and economic inclusion.'"[46] However, the latest census data indicates that there is a substantial gap in broadband adoption by income.[47] The Commission has recognized this challenge and has started to help narrow the adoption gap.[48] *Connect to Compete* is a private-sector initiative through which the largest cable companies will be offering low-cost broadband to families with school-aged children receiving free school lunches.[49] These actions, while important, are only first steps in addressing the adoption gap that low-income consumers face, and we continue to encourage and support those programs that are well underway. In this Order, we adopt an additional approach—a pilot program to explore the most effective way to modernize the Lifeline program to provide low-income consumers access to broadband service.

19. *Role of the States*. Currently, the program operates under a patchwork of state and federal requirements. Within the framework established by the 1996 Act and the *Universal Service First Report and Order*, each state administers its own program, which has provided the states the freedom to experiment and to develop new ways of making the program more effective and efficient. Although Lifeline is a federal program, its administration varies significantly among the states, including on key policies such as eligibility and verification. There is significant variation among the states in the percentage of eligible households participating in the program, which may be due to differing state eligibility and verification requirements, the extent of outreach, the process for enrolling subscribers, the number and type of ETCs in the state, support levels, and other factors.[50]

20. *Lifeline Providers & Subscribers*. The telecommunications marketplace has changed significantly over the last fifteen years, with a wide array of wireline and wireless services that compete with traditional incumbent telephone companies to provide voice service[51] When the program was first established in the 1980s, mobile phones and voice over internet protocol (VoIP) did not exist as a retail consumer product, only incumbent telephone companies provided local telephone service, and the program was designed for carriers whose rates were regulated. Today, consumers have various options for fixed or mobile voice services, many of which are not rate regulated.

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[46] MAG-Net Comments at 2.

[47] U.S. DEP'T OF COMMERCE, ECONS. & STATISTICS ADMIN. & NAT'L TELECOMM. & INFO. ADMIN., EXPLORING THE DIGITAL NATION: HOME BROADBAND INTERNET ADOPTION IN THE UNITED STATES 8, *available at* http://www.ntia.doc.gov/files/ntia/publications/esa_ntia_us_broadband_adoption_report_11082010_1.pdf (Nov. 2011) (EXPLORING THE DIGITAL NATION).

[48] *See, e.g., Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Dkt. No. 10-110, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4211, 4219, paras. 35-37 (2011); *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4333, para. 233 (2011).

[49] Press Release, Federal Communications Commission, FCC "Connect to Compete" Tackle Barriers to Broadband Adoption (Nov. 9, 2011), *available at* http://www.fcc.gov/document/fcc-and-connect-compete-broadband-fact-sheet (detailing private/non-profit partnership providing qualifying families with $9.95 monthly broadband service and reduced price equipment).

[50] *See* NATIONAL BROADBAND PLAN at 172 (*citing* Mark Burton *et al.*, *Understanding Participation in Social Programs: Why Don't Households Pick up the Lifeline?*, 7 B.E. J. ECON. ANAL. & POL'Y 57 (2007), *available at* http://faculty.msb.edu/jtm4/Papers/BEJEAP.2007.pdf; Janice A. Hauge *et al.*, *Whose Call Is It? Targeting Universal Service Programs to Low-Income Households' Telecommunications Preferences*, 33 TELECOMM. POL'Y 129, 136-38 (2009), *available at* http://warrington.ufl.edu/purc/purcdocs/papers/0805_Hauge_Whose_Call_Is.pdf).

[51] The Commission promulgated rules under the 1996 Act that enabled competitive wireless and wireline carriers to be designated as ETCs eligible to receive federal universal service support. *See Universal Service First Report and Order*, 12 FCC Rcd at 8969-73, paras. 364-72.

21. As the telecommunications industry has evolved, so too has the program. Beginning in 2005, the Commission permitted on a case-by-case basis non-facilities based providers, including prepaid wireless carriers, to obtain low-income support from the Universal Service Fund.[52] Since 2006, the program has experienced a measurable shift in support distribution. In 2010, competitive providers (the vast majority of which are mobile wireless providers) received nearly 55 percent of total program support.[53] Wireless Lifeline enrollment has greatly increased, consistent with the same trend toward wireless service in the general population. The Commission recently found that 92 percent of Americans subscribed to mobile phone service.[54] More than 30 percent of adults in the general population live in households with only wireless phones,[55] while more than 45 percent of 18-24 year olds have "cut the cord."[56] Wireless services have taken on particular importance to low-income consumers, who are more likely to reside in wireless-only households than consumers at higher income levels.[57]

22. Low-income consumers currently qualify for the program through various means, depending upon which state the consumer resides. They either can certify or demonstrate that they are enrolled in specific assistance programs or that their annual income falls below a specified percentage of the Federal Poverty Guidelines (FPG). As shown in Table 1 below, the qualifying income threshold for Lifeline varies depending on size of the household and the particular qualifying income threshold for that state. In eight states and two territories, households with income at or below 135 percent of the Federal Poverty Guidelines are eligible. In twelve states and the District of Columbia, households with income at 150 percent of the FPG are eligible. Other states, including Oregon, do not permit enrollment based on income; in these states, consumers may enroll only if they are enrolled in certain other public benefits programs.

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[52] *See Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Dkt. No. 96-45 *et al.*, WC Dkt. No. 09-197, Order, 25 FCC Rcd 8784 (2010) (*i-wireless Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petitions for Designation as an Eligible Telecommunications Carrier in the State of Alabama et al.*, WC Dkt. No. 09-197, Order, 25 FCC Rcd 17797 (2010) (*Virgin Mobile 2010 ETC Order*); *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A) et al.*, CC Dkt. No. 96-45, Order, 24 FCC Rcd 3381 (2009) (*Virgin Mobile Forbearance Order*); *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance*, CC Dkt. No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*). These carriers are not eligible to receive high-cost support.

[53] 2011 MONITORING REPORT at 2-9.

[54] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 et al.*, Fifteenth Report, WT Dkt. No. 10-133, 26 FCC Rcd 9664, para 168 (2011).

[55] *See* STEPHEN J. BLUMBERG & JULIAN V. LUKE, CENTERS FOR DISEASE CONTROL, NATIONAL CENTER FOR HEALTH STATISTICS, WIRELESS SUBSTITUTION: EARLY RELEASE OF ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY, JANUARY – JUNE 2011, at 1 (2011), *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201106.pdf.

[56] *Id.* at 2-3.

[57] *See id.* at 3 (finding that adults living in or near poverty were more likely than higher income adults to be living in wireless-only households). Furthermore, consumers today often purchase packages of services that allow them to call anywhere in the country, with no additional charge for long distance calling.

Table 1 – Federal Poverty Guidelines[58]

Persons in Family or Household	Annual Income of 135 percent FPG	Annual Income of 150 percent FPG
1	$14,702	$16,336
2	$19,859	$22,066
3	$25,016	$27,796
4	$30,173	$33,526

23. The Lifeline-eligible population has increased significantly over the past decade. Since 1999, real median household income in the U.S. has declined by 7.1 percent, while households at the bottom of the income scale have seen their income decline by 12.1 percent.[59] In 2010, 46.2 million Americans were living in poverty, defined as living at or below the benchmark established in the FPG, compared to 31.6 million in 2000.[60] As household income has declined and more carriers have offered Lifeline-supported service, the program has experienced significant growth.[61] In the absence of today's Order, which manages the size of the Fund in part by establishing a savings target, the program would provide an estimated $2.4 billion in support in 2012;[62] that compares to an inflation-adjusted $582 million it provided in 1998 when five million subscribers participated in the program.[63] The initial growth in the program after the implementation of the 1996 Act was due in large part to the expansion of the program to all fifty states and the increased level of monthly per household support compared to levels prior to the 1996 Act.[64] In 2000, the Commission began providing enhanced support to households on Tribal lands.[65] The program continued to grow between 2001 and 2004 due, in part, to increases in the federal subscriber line charge, to which Lifeline support levels have historically been tied.[66] Meanwhile, over the years, wireless companies increasingly sought ETC designations, providing additional options for and reaching more low-income consumers with Lifeline service. Since 2005, a number of pre-paid wireless providers have become Lifeline-only ETCs,[67] competing for low-income subscribers by marketing telephone

[58] Annual Update of the HHS Poverty Guidelines, 76 Fed. Reg., 3637-38 (Jan. 20, 2011).

[59] UNITED STATES CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2010, at 5 (Sept. 2011), *available at* http://www.census.gov/prod/2011pubs/p60-239.pdf.

[60] *Id.* at 62.

[61] Other factors have also contributed to growth in the program – for instance, some subscribers have received duplicate support and some may have received the subsidy even though they were not eligible.

[62] *See infra* note 956.

[63] *See* 2011 MONITORING REPORT at Table 2.1. Adjustments for inflation were calculated using the Bureau of Labor Statistics' Consumer Price Index Inflation Calendar. *See* http://www.bls.gov/data/inflation_calculator.htm (last visited Feb. 2, 2012).

[64] *See* 2010 UNIVERSAL SERVICE MONITORING REPORT at Chart 2-2.

[65] *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas,* CC Dkt. No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000) (*2000 Tribal Lifeline Order*). In 2010, $102.7 million was provided to households on Tribal lands. 2011 MONITORING REPORT at Table 2.2.

[66] Support levels grew from an inflation-adjusted $819 million in 2002 to $927 million in 2004. *See* 2010 UNIVERSAL SERVICE MONITORING REPORT at Chart 2-2.

[67] *See, e.g., TracFone Forbearance Order*, 20 FCC Rcd at 15095; *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc., Petition for Designation as an Eligible Telecommunications Carrier in New York et al.*, (continued….)

service that provides a specified number of minutes at no charge to the consumer.[68] This development has expanded choices in many states for low-income consumers, who now have greater access to mobile services than a decade ago,[69] but it has also led to significant growth in the Fund in the last several years, and has likely contributed to the increasing telephone penetration rate of consumers making less than $10,000 a year.[70] Pre-paid wireless ETCs now account for more than 40 percent of all Lifeline support.[71] Link Up support has also increased significantly–approximately 230 percent over the last three years. USAC projects that it will distribute $180 million in Link Up support to ETCs in 2012 compared to $122.9 million in Link Up disbursements in 2011 and $37.2 million in 2008.[72] It is against this backdrop that we institute the reforms below to ensure that qualifying low-income consumers can access the voice and broadband networks of this nation to fulfill Congress' goal of providing universal service, and the Commission's goal of modernizing the program, while safeguarding it from waste, fraud, and abuse and constraining the growth of the Fund to make it more efficient and effective to better serve consumers.

III. PERFORMANCE GOALS AND MEASURES

24. In the *Lifeline and Link Up NPRM*, the Commission recognized that "[c]lear performance goals and measures should enable the Commission to determine not just whether federal funding is used for intended purposes, but whether that funding is accomplishing the program's ultimate objectives."[73] The GAO previously noted in 2010 that while the Commission had adopted some performance measures for the low-income program, it had not quantified its goal of increasing telephone

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Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*); *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3381.

[68] For example, TracFone noted that the initial SafeLink Wireless offering was 68 free minutes per month until a competitor offered 200 free minutes, to which TracFone responded with its 250-minute per month offer. *See* Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attach. at 5 (filed Dec. 7, 2010) (TracFone Dec. 7 *Ex Parte* Presentation).

[69] NATIONAL BROADBAND PLAN at 173. According to some, mobile phones are becoming more essential than landline phones for low-income consumers. *See, e.g.*, Hauge *et al.*, *supra* note 50, at 2. Pre-paid wireless offerings are often preferred by low-income or unemployed/under-employed consumers because they enable consumers to better manage expenses. *See, e.g.*, Nexus TracFone Link Up Comments, at Attach. 1, 6 (Declaration of August Ankum and Olesya Denney, QSI Consulting).

[70] *See supra* Chart 1.

[71] *See* Universal Service Administrative Company, 1Q 2012 Filing, Appendices at LI04 (Quarterly Low-Income Disbursement Amounts by Company (3Q2011), *available at* http://www.usac.org/about/governance/fcc-filings/2012/quarter-1.aspx. For the first three quarters of 2011, two ETCs that operate as prepaid wireless resellers, TracFone, and Virgin Mobile, together account for 40.8% of program support as of year end 2011. *See id.*

[72] *See* Universal Service Administrative Company, 1Q Filing, Fund Size Projections for First Quarter 2012, at 19 (Nov. 2, 2011), ,*available at* http://www.usac.org/about/governance/fcc-filings/2012/Q1/1Q2012%20Quarterly%20Demand%20Filing.pdf (detailing that USAC projects total annual 2012 Link Up support to be approximately $183.48 million); *USAC 2011 Support Amounts Letter* at 3; 2011 Monitoring Report at Table 2-2.

[73] *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2783, para 32. In 2007, the Commission adopted measures to improve the efficiency and effectiveness of the program and noted that the key goal of the Lifeline program was to increase phone service subscribership among low-income households. The Commission did not, however, adopt comprehensive performance goals for the Low Income program at that time because it did not have sufficient data available to determine what those goals should be. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight et al.*, WC Dkt. No. 05-195 *et al.*, Report and Order, 22 FCC Rcd 16372, 16394-95, paras. 50-51 (2007) (*2007 Comprehensive Review Order*).

subscribership among low-income households and had not developed and implemented specific outcome-based performance goals and measures for the program.[74] In the *Lifeline and Link Up NPRM*, the Commission sought comment on program goals and measures related to ensuring low-income Americans have access to voice and broadband service while minimizing the size of the program.[75]

25. Clear performance goals and measures will enable the Commission to determine whether Lifeline is being used for its intended purpose and is accomplishing the program's objectives. We adopt the following performance goals for both voice and broadband, as well as associated measurements, reflecting our ongoing commitment to preserve and advance universal service: (1) ensure the availability of voice service for low-income Americans; (2) ensure the availability of broadband service for low-income Americans; and (3) minimize the contribution burden on consumers and businesses.

26. While we adopt separate goals for voice and broadband service today, we are mindful of the emergence of voice capability offered as an application over broadband service.[76] A significant and growing number of consumers are subscribing to broadband service in the home and for mobile devices. Some consumers also are using over-the-top voice offerings such as Skype and Google Voice, with their broadband connections for some, if not all, of their voice service needs.[77] As the market evolves towards "voice as an application" over broadband service, we believe it is appropriate for the Commission to examine in the future whether it is appropriate to retain separate goals for voice and broadband service.

A. Ensure the Availability of Voice Service for Low-Income Americans

27. *Goal.* We adopt as our first goal ensuring the availability of voice service for low-income Americans. We find that this goal helps effectuate Congress's universal service directives in sections 254(b)(1) and 254(b)(3) of the 1996 Act that quality services should be available at affordable rates and to consumers throughout the nation.[78]

28. We note that "availability" of voice service includes, but is a broader concept than, the physical deployment of voice networks. Consistent with the Commission's proposals in the *Lifeline and Link Up NPRM*, we find that voice service is only available to low-income consumers to the extent that it is affordable.[79]

29. *Measurements.* We will evaluate progress towards our first goal by measuring the extent to which low-income consumers are subscribing to voice service, based on the Census Bureau's Current

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[74] 2010 GAO REPORT at 24-26.

[75] *See Lifeline and Link Up NPRM*, at 2783, 2786, paras. 34, 43-45.

[76] *See USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 750.

[77] *See id.* at n.1320 (noting that the transition to bill and keep will result in the development and extension of a "wide range of IP calling services" including Google Voice and Skype, "a process that may ultimately result in the sale of broadband services that incorporate voice at a zero or nominal charge").

[78] 47 U.S.C. § 254(b)(1), (b)(3); *see also Lifeline and Link Up NPRM*, 26 FCC Rcd at 2780, para 29 (noting that Section 254 includes principles that "services should be available at 'just, reasonable and affordable' rates, and that consumers in all regions of the nation, including low-income consumers, should have access to telecommunications and information services that are reasonably comparable to services in urban areas at reasonably comparable rates").

[79] In the NPRM, we proposed availability and affordability as separate goals. *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2784, 2785-86, paras. 36, 42, 43. There was substantial support in the record for both concepts (*See, e.g.* Consumer Groups Comments at 13-14, GCI Comments at 13-14.) We agree with commenters that both concepts are important, but find that ensuring voice service is affordable is a component of ensuring it is available.

Population Survey (CPS) penetration data.[80] We find that subscription rates are a reasonable proxy for availability generally. Because subscription rates show the extent to which low-income consumers subscribe to voice service, they provide a reasonable indication that service is in fact available – *i.e.*,. sufficiently robust and affordable and there are sufficient networks in place – to serve those consumers.[81]

30. We therefore adopt as an outcome measure for our first goal the voice service penetration levels of low-income households.[82] Progress towards our goal of ensuring the availability of voice service to low-income consumers will be indicated by a narrowing of the difference between this outcome measure and the voice service penetration levels of non-low-income households. We conclude that comparing penetration levels for low-income households and the "next-highest income" bracket is the correct approach to evaluating the extent to which the Lifeline program is succeeding in mitigating the effects of low income as a barrier to telephone service subscription.[83]

31. There are several plausible ways of defining "low-income" and the "next-highest income" bracket. For example, "low-income" could be defined as households at 0 to 135 percent of the FPG, and the "next-highest income" bracket could be households at 135 to 175 percent of the FPG (which

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[80] We note that, under CPS's survey methodology, all consumers of voice service, including those consumers who may only subscribe to broadband along with "over the top" VoIP service, would be counted as having voice service "available." *See* 2010 WCB SUBSCRIBERSHIP STUDY.

[81] *See USF-ICC Transformation Order and FNRPM*, FCC 11-161 at para. 50 ("The first performance goal we adopt is to preserve and advance voice service.... As a performance measure for this goal, we will use the telephone penetration rate, which measures subscription to telephone service. The telephone penetration rate has historically been used by the Commission as a proxy for network deployment and, as a result, will a consistent measure of the programs' effects."). Consumers, including low-income consumers, may not subscribe to a service if it is not of sufficiently high quality and does not provide the features that they need, because consumers face transaction costs in obtaining even free Lifeline service.

[82] Some ETCs and other commenters argue that, pursuant to the Commission's first goal, the Commission should promote and measure the availability of voice service for every person, not just every household. *See* GCI Comments at 13; Cricket Comments at 2. However, because we adopt a one-per-household rule below and the census data is only available on the household level, we decline to adopt this approach.

[83] The record reflects disagreement regarding the standard the Commission should use for a comparison of penetration rates. While there is some support for the Commission's proposal in the *Lifeline and Link Up NPRM* to compare the voice penetration rates of low-income households eligible for low-income support with penetration rates of households in the next highest income group, others suggest a different approach. For example, some commenters argue for a comparison of the voice penetration rate for low-income households to the penetration rate for all other households. *Compare* GCI Reply Comments at 11-12 ("GCI and others support the FCC's proposal to establish, as an outcome measure of the first performance goal (availability), the difference between voice service subscribership rates for low-income households eligible for the Lifeline and voice subscribership rates for the households in the next higher income level") *with* Consumer Groups at 15 (arguing that the Commission should compare the penetration rate of low-income consumers *to all other* consumers). We do not adopt a comparison of the penetration rates of low-income households to all other households because we believe such a measurement would not be consistent with our goals. Penetration rates for the highest income households are significantly higher than the penetration rates of households between, for example, 135 percent and 175 percent of the poverty line. *See* 2011 MONITORING REPORT at Chart 3.2. Therefore, the average penetration rate of all households above 135 percent of the poverty line is higher than the average penetration rate for households between 135 percent and 175 percent of the poverty line. If the Commission compared and adopted as an outcome measure the equalization of the penetration rates of low-income households to all other households, the low-income penetration rate target would always be higher than penetration rate for households in the next higher income bracket. Such an outcome measure would imply that Commission favors higher telecommunications penetration for low-income consumers than for the next highest income group. No party argued explicitly for such an approach and we do not believe that it is consistent with our goal to ensure the availability of voice service for low-income Americans.

may include some Lifeline subscribers) or households at 175 percent to 200 percent of the FPG (which would be less likely to include Lifeline subscribers). We recognize that there may be trade-offs with any approach adopted. We therefore delegate authority to the Bureau to define "low-income" and the "next highest income" bracket for the purpose of comparing penetration rates that balances the goal of accurately measuring the impact of the Lifeline program with administrative feasibility.[84]

32. We decline to adopt the take rate of the program as the outcome measure for our goal of ensuring voice service availability to low-income consumers.[85] The goal of the program is to increase the availability of voice service, which we will measure through the extent to which low-income consumers subscribe to phone service. This measure is more directly relevant to this goal than the take-rate of the Lifeline program.[86]

B. Ensure the Availability of Broadband Service for Low-Income Americans

33. *Goal.* As we recently did for the high-cost fund in the *USF/ICC Transformation Order and FNPRM*, we establish an express broadband service goal for Lifeline, in addition to Lifeline's voice service goal. We adopt as our second program performance goal ensuring the availability of broadband service for low-income Americans. We find that this goal implements Congress's directives in sections 254(b)(2) and (b)(3) that all consumers, including low-income consumers, should have access to information services, and is consistent with the Recovery Act and the National Broadband Plan's recommendations.[87] There is also substantial support in the record for this goal.[88] It also implements Congress's direction in section 706 of the Telecommunications Act of 1996 that we "utiliz[e] ...

[84] We conclude that it is important to measure telephone penetration for low-income consumers on Tribal lands in light of the unique needs of those consumers and the fact that telephone penetration on Tribal lands has historically lagged telephone penetration for the nation as a whole. However, we do not adopt a separate measurement for low-income penetration on Tribal lands at this time because the necessary data is not available from the Census Bureau. For example, the current yearly Census survey sample size on Tribal lands is not sufficiently large to produce a statistically significant penetration rate for Tribal lands for low-income consumers or the "next highest" income bracket. We expect the Bureau to continue to monitor the available Tribal lands telephone penetration data. If data is sufficient to create a statistically valid estimate of low-income penetration and the "next highest" income bracket on Tribal lands becomes available, we direct the Bureau to establish a separate measurement for progress towards our first goal with respect to Tribal lands. We also direct the Bureau to publish Tribal penetration data in its statistical reports to the extent that such information is reliable and statistically significant.

[85] *See, e.g.*, IN URC Comments at 9 (arguing for the importance of increasing the take rate).

[86] Lifeline take rates may change because of exogenous factors (such as business model and marketing by Lifeline operators) that are unrelated to the design or implementation of the program. *See* Letter from Dr. George Korn, Communications Consultant, Rainbow PUSH Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (filed Sept. 23, 2011) (Rainbow PUSH Sept. 23 *ex parte* Letter) (noting that "45 million Americans are currently receiving food stamps. This equates to an increase of 64% percent since January 2008"). Take rates also increase with the size of the benefit available under the program, and Lifeline provides a relatively small benefit compared to other programs, indicating that at least some consumers will not sign up due to transaction costs. *See* Hauge *et al., supra note* 50, at 8-9.

[87] 47 U.S.C. § 254(b)(2), (b)(3); 47 U.S.C. 1305; American Recovery and Investment Act of 2009 § 6001(b)(3), 47 U.S.C. § 1305(b)(3) (noting that the purpose of the broadband technology opportunities program is to, among other things, to provide funding to organizations "to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations); *Broadband Plan* at XIII (noting a key goal of the plan is to ensure low-income Americans can afford broadband); Chapter IX (Adoption and Utilization).

[88] *See, e.g.*, NASUCA Comments at 8-10; *cf.* Consumer Groups Comments at 16; GCI Comments at 18, 21; NJ DRC Comments at 8.

regulating methods that remove barriers to infrastructure investment."[89]

34. For broadband to be "available" to a low-income consumer, a broadband network (or networks) must have been deployed to the consumer, and the broadband service offered over the network must be affordable and provide a sufficient level of robustness (e.g., bandwidth) to meet basic broadband needs. Many low-income consumers cannot subscribe to fixed or mobile broadband because it is not affordable or does not provide the features that they believe they need at a price they can afford.[90] Some low-income consumers, including some residing on Tribal lands, cannot subscribe to fixed or mobile broadband because such services are not available in their communities.[91] This understanding of the goal that we adopt today is consistent with the plain meaning of "available" and is consistent with (although distinct from) our findings in our recent *Broadband Progress Reports*, in which we have observed that an inquiry into availability requires us to examine more than strict physical deployment.[92]

35. *Measurements*. As with our first goal, as an outcome measure of the availability of broadband service to low-income consumers, we adopt the broadband penetration rate of low-income consumers, *i.e.* the extent to which low-income consumers are subscribing to broadband. Progress towards our goal of ensuring the availability of broadband service to low-income consumers will be indicated by a narrowing of the difference between this outcome measure and the broadband service penetration levels of non-low-income consumers in the "next highest income" bracket. Also consistent with our first goal, we delegate authority to the Bureau to define the "low-income" and the "next-highest income" brackets for the purpose of comparing broadband penetration rates in a way that balances accuracy with administrative feasibility.[93] We decline to adopt alternative or additional measures for this goal at this time for the same reasons discussed above with respect to voice service.[94]

[89] 47 U.S.C. § 1302(a). As discussed in paragraph 332, *infra*, we do expect federal support for low-income consumers' purchase of broadband services to remove barriers to infrastructure investment.

[90] *See, e.g.*, John Horrigan, Federal Communications Commission, Omnibus Broadband Initiative, *Broadband Adoption and Use in America* 3-7 (OBI Working Paper No. 1, 2010) (*Broadband Adoption and Use in America*), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf.

[91] *See Improving Communications Services for Native Nations*, CG Dkt. No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, 2673, para. 1 (2011) (*Native Nations NOI*).

[92] *See* 2011 *Seventh Broadband Progress Report*, 26 FCC Rcd at 8020-21, paras. 18-20.

[93] We note that NTIA, in cooperation with the Census Bureau, currently publishes information on broadband penetration by income level. *See* EXPLORING THE DIGITAL NATION, *supra* note 47. We also note that the Census Bureau, in consultation with the Commission, is developing questions regarding broadband adoption for possible inclusion in the American Community Survey starting in 2013. *See* Proposed Information Collection; Comment Request; The American Community Survey 2013 Content Changes and Internet Response Mode, 76 Fed Reg. 81474 (Dec. 28, 2011). The ACS currently collects information on income level and the Bureau, may, as necessary, analyze the broadband data sets in context with other social, housing, and economic data available from the ACS.

[94] As with telephone penetration, we conclude that it is important to measure broadband penetration for low-income consumers on Tribal lands in light of the unique needs of those consumers and the fact that broadband penetration on Tribal lands has historically lagged broadband penetration for the nation as a whole. However, we do not adopt a separate measurement for low-income broadband penetration on Tribal lands at this time because, as with telephone penetration, the necessary data is not available from the Census Bureau or NTIA. If data sufficient to create a statistically valid estimate of low-income broadband penetration and the "next highest" income bracket on Tribal lands becomes available, we direct the Bureau to establish a separate measurement for progress towards our second goal with respect to Tribal lands. We also direct the Bureau to publish Tribal broadband penetration data in its statistical reports to the extent that such information is reliable and statistically significant.

36. As with our first goal, we do not find that it is appropriate at this time to establish a minimum standard of robustness or measure the extent to which low-income consumers are purchasing broadband service which meets such a standard. This approach is consistent with the purpose of the Lifeline program, namely to offset the cost of services purchased by low-income consumers, rather than the network provider's cost to construct a network.[95] In the *USF/ICC Transformation Order and FNPRM*, the Commission adopted a speed benchmark for fixed broadband provided by CAF recipients. The purpose of the benchmark is to ensure that the fixed networks funded will be *capable* of providing a particular level of service, but carriers can offer, and consumers can purchase, a lower (or higher) level of fixed or mobile broadband service if they so choose.[96] As part of the broadband pilot program described below, we will collect information regarding affordability and the robustness of broadband available to low-income consumers. We will revisit whether standards for the robustness for service broadband for low-income households are appropriate when we have a better understanding of the factors driving broadband adoption among low-income consumers.

C. Minimize the Contribution Burden on Consumers and Businesses

37. *Goal.* We adopt as our third program performance goal minimizing the contribution burden on consumers and businesses. This goal is consistent with our longstanding recognition that our efforts to advance universal service must be balanced against the universal service contribution burden on all consumers, particularly those consumers who are just above the threshold of "low-income" that we adopt as a uniform floor for the program in this Order.[97] Indeed, as the Commission has found and the courts have recently reiterated, if the universal service burden is too high, the affordability of service will be placed in jeopardy, undermining the very purpose of the universal service program.[98]

38. Consistent with this third goal, at this time, we decline to distinguish between fixed and mobile services in our goals of ensuring the availability of voice and broadband service to low-income Americans. The Lifeline program is designed to ensure that low-income Americans remain connected to essential communications while minimizing the contribution burden on all other Americans so that the broader goals of universal service are not jeopardized. While low-income consumers may derive utility from both fixed and mobile services, we find that our combined goals are best satisfied by ensuring that Lifeline affords consumers a choice to determine which of the communications offerings is essential for them—either fixed or mobile service.[99]

39. *Measurements.* In the *Lifeline and Link Up NPRM*, the Commission sought comment on several metrics to measure progress towards increasing the efficiency of the program and the elimination

[95] *See MTS and WATS Market Structure Report and Order*, 50 Fed. Reg. at 941-42 (noting that the purpose of the Lifeline program is to offset the cost of an increased SLC on low-income consumers).

[96] *See USF/ICC Transformation Order*, FCC 11-161, at para. 94.

[97] For example, the burden of a particular contribution factor is greater on a household between 135 percent and 175 percent of the federal poverty guidelines than on a household at 300 percent of the federal poverty guidelines.

[98] *See, e.g., Vermont Pub. Serv. Bd. v. Fed. Commc'n Comm'n,* 661 F.3d 54, 65 (D.C. Cir. 2011) (finding that, in the context of section 254, "as the Commission rightly observed, it has a responsibility to be a prudent guardian of the public's resources."); *Universal Service First Report and Order*, 12 FCC Rcd at 8845-46, para. 125; *see also High-Cost Universal Service Support et al.*, CC Dkt. No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4087, para. 28 (2010) (stating that "if the universal service fund grows too large, it will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country.").

[99] We believe that the *USF/ICC Transformation Order and FNPRM* will increase the reach of fixed and mobile networks to ensure that both are physically available to consumers. Without such availability, low-income consumers would have limited choice between fixed or mobile service.

of waste.[100] We find the measures outlined below are appropriate to measure progress towards our third goal and adopt them.

40. First, the Commission sought comment on whether it should measure the burden the program places on all consumers over time by measuring the inflation-adjusted Lifeline/Link Up expenditure per American household.[101] We note that we recently adopted a similar measure with respect to the high-cost program in the *USF/ICC Transformation Order and FNPRM.*[102] We adopt the proposed measure, which will divide the total inflation-adjusted expenditures of the low-income program each year by the number of American households and express the measure as a monthly dollar figure. This calculation will rely on publicly available data and will therefore be transparent and easily verifiable. Through this measure and the similar measures adopted in the *USF/ICC Transformation Order and FNPRM*, we will be able to determine whether the overall universal service contribution burden is increasing or decreasing for the typical American household.[103]

41. Second, the Commission sought comment on whether it should monitor the extent to which the actions we take in this Order will eliminate waste, fraud, and abuse—factors that increase the burden on contributors without a countervailing benefit.[104] In the NPRM, the Commission proposed establishing an erroneous payments benchmark and focusing on keeping erroneous payments below that benchmark.[105] Commenters disagree on whether such a benchmark is appropriate.[106] We expect that the duplicates database adopted in this Order will eliminate a substantial amount of payments to ineligible and duplicative subscribers.[107] It is appropriate to measure the extent of savings from elimination of these duplicative payments. We delegate authority to the Bureau to determine the detailed design and implementation of this calculation.

42. Third, the Commission inquired whether there is a way to measure increases in the percentage of low-income voice subscribership relative to the amount of funding spent per household receiving a Lifeline subsidy.[108] Such a comparison would be an appropriate measure to determine if Lifeline funding is being used consistent with our third goal. We will make such a comparison by examining the relationship between the aggregate spending on the low-income program and changes in low-income penetration rates. We delegate to the Bureau the authority to determine the detailed design

[100] *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2785, paras. 38-41.

[101] *See id.* at 2785, para. 38.

[102] *See USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para 58.

[103] For example, in 2010, this was $0.95 per household per month. *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2785, para. 38.

[104] *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2875, para 39.

[105] *See id.*

[106] *See* GCI Comments at 16 ("The FCC's proposed performance measure suggests that the FCC should conclude that funding is excessive if the number or percentage of ineligible subscribers surpasses a certain threshold—even though the ETCs that provide Lifeline service have no choice when it comes to providing service to consumers who self-certify their eligibility and also cannot tell if individual consumers subscribe from more than one provider."); NJ DRC Comments at 16.

[107] Consumer Cellular Comments at 6 ("Most importantly, all of the Commission's goals—to maximize the value of the fund to low income consumers, to maximize the efficiency of fund administration, and to eliminate the potential for waste, fraud, and abuse—can be realized as the natural and expected consequence of expeditiously moving to implement the database described in Section VII of the NPRM.").

[108] *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2785, para 40.

and implementation of this calculation.

43. Using the adopted goals and measures, the Commission will, as required by the Government Performance and Results Act (GPRA), monitor the performance of our low-income program as we implement the changes outlined in this Order.[109] If the program is not meeting these performance goals, we will consider corrective actions. Likewise, to the extent that the adopted measures do not help us assess program performance, we will revisit them as well. We recognize that the many rule changes and reforms in this Order may affect the ongoing utility of these goals and measures. We therefore may need to adjust the goals and measurements adopted here once the Commission, consumers, ETCs, and other stakeholders have had experience with the revised rules.

IV. VOICE SERVICES ELIGIBLE FOR DISCOUNTS

44. *Background.* In 1997, pursuant to section 254 of the Act, the Commission established nine services supported by the federal universal service mechanisms, including the low-income program.[110] In light of the changes in technology and in the marketplace, the Commission sought comment in the *USF/ICC Transformation NPRM* on simplifying the core functionalities of the supported services into the overarching concept, "voice telephony service."[111] Subsequently, in the *Lifeline and Link Up NPRM*, the Commission sought comment on similarly amending the definition of "Lifeline" supported services in section 54.401 to provide support for "voice telephony service."[112]

45. In the *USF/ICC Transformation Order and FNPRM*, the Commission eliminated its former list of nine supported services and amended section 54.101(a) of its rules to specify that "voice telephony service" is supported by the federal universal service mechanisms.[113] The Commission found this to be a more technologically neutral approach that focuses on the functionality offered, and not on the specific technology used to provide the supported service, while allowing services to be provided over any technology platform.[114] In adopting the new definition of "voice telephony," the Commission eliminated certain services and functionalities from the list of supported services, consistent with its findings regarding the evolution of the marketplace.[115]

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[109] If the Commission identifies an outcome as a "priority goal," then it must review progress quarterly. Otherwise performance must only be reviewed annually. *See* 31 U.S.C. §§ 1116, 1120-1121, *as amended by* GPRA Modernization Act of 2010, Pub. L. No. 111-352 §§ 4-5 (2010). Agencies are currently working with OMB to define their priority goals, which will be published in February 2012.

[110] 47 U.S.C. § 254(c)(1); 47 C.F.R. §§ 54.101(a)(1)-(9), 54.401(a)(3). At that time, the Commission defined the supported services in functional terms to encompass voice grade access to the public switched network; local usage; dual tone multi-frequency (DTMF) signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation to qualifying low-income consumers. *See Universal Service First Report and Order*, 12 FCC Rcd 8776 at 8810, para. 61.

[111] *Connect America Fund et al.*, WC Dkt. No. 10-90 *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 4554, 4590, para. 96 (2011).

[112] *See Lifeline and Link Up NPRM,* 26 FCC Rcd at 2843, paras. 239, 243.

[113] *See USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 78.

[114] *Id.*

[115] *Id.* at para. 77 & n.114. To more clearly reflect the Commission's intent to specify the attributes of "voice telephony" in the new definition, the Commission subsequently further revised section 54.101 on its own motion to eliminate language stating that voice telephony service "include[s] certain functionalities" to eliminate the possibility that the list could be interpreted as non-exhaustive. *See Connect America Fund et al.*, WC Dkt. No. 10-90 *et al.*, Order on Reconsideration, FCC 11-189, para. 3, n. 8 (rel. Dec. 23, 2011) (*USF/ICC Transformation Order* (continued....)

46. In 2005, the Commission concluded that an applicant seeking ETC designation by the Commission must demonstrate that it offers local usage comparable to that offered by the incumbent LEC.[116] In its *2010 Joint Board Recommended Decision*, the Joint Board urged the Commission to consider prepaid wireless Lifeline issues, including the need for minimum standards of service for Lifeline recipients.[117] Additionally, the National Association of State Utility Consumer Advocates (NASUCA) adopted a resolution recommending that the Commission consider establishing minimum standards of service for pre-paid wireless Lifeline service, expressing concerns that "free" Lifeline calling plans offered by some wireless ETCs include limited usage minutes and require subscribers needing additional minutes to purchase those minutes from the carrier, and indicating that it is not evident whether such calling plans offer local usage comparable to available incumbent carriers' calling plans.[118] Accordingly, the Commission sought comment on adopting minimum standards for *all* ETCs offering Lifeline service.[119]

47. *Discussion.* We now update the definition of Lifeline to be consistent with our newly revised definition of the supported service as "voice telephony service."[120] As we recently noted in the *USF/ICC Transformation Order and FNPRM,* voice telephony may be provisioned over broadband (IP-enabled) networks.[121] By updating the definition, we allow carriers to provide service using new technologies that will result in additional options and benefits to Lifeline consumers. At this time, we do not find it necessary to require ETCs that offer service at no charge to Lifeline subscribers to adhere to additional service requirements.

48. Consistent with our recent amendment to section 54.101, eligible Lifeline telephony services therefore must provide voice grade access to the public switched telephone network or its functional equivalent; minutes of use for local service provided at no additional charge to end users;[122] access to emergency 911 and enhanced 911 service to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation at no charge to qualifying low-income consumers subject to the requirements and limitations discussed more fully

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on Reconsideration).

[116] *Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45, Report and Order, 20 FCC Rcd 6371, 6380, para. 20 (2005) (*ETC Designation Order*).

[117] *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15627, para. 80.

[118] National Association of State Utility Consumer Advocates, Resolution 2010-02, Calling for Reform of the Lifeline Program, Including Reform for Prepaid Wireless Lifeline Services, at 2-3 (June 15, 2010) (*NASUCA Resolution*).

[119] *Lifeline and Link Up NPRM,* 26 FCC Rcd at 2817, para. 253 (inquiring whether the Commission should establish national parameters for a basic Lifeline service).

[120] *See USF/ICC Transformation Order on Reconsideration*, FCC 11-189 at para. 3. In response to the *Lifeline and Link Up NPRM*, some commenters supported amending the definition of Lifeline to provide support for "voice telephony service." *See* Cricket Comments at 15-16; Florida PSC Comments at 29.

[121] *See USF/ICC Transformation Order and FNPRM,* FCC 11-161 at para. 63 (explaining how consumers are increasingly obtaining voice services over broadband networks as well as over traditional circuit switched telephone networks).

[122] We note that the Vermont Public Service Board has filed a Motion for Clarification regarding this aspect of the definition adopted in the *USF/ICC Transformation Order and FNPRM,* which will be addressed after receipt of public comment on this petition. *See* Vermont Public Service Board Motion For Clarification, WC Dkt. No. 10-90 *et al.*, at 3 (filed Dec. 28, 2012).

below.[123] As explained in the *USF/ICC Transformation Order and FNPRM,* this approach simply shifts to a technologically neutral approach by defining supported services in functional terms, ensuring that voice service can be provided over any platform.[124] Under this revised definition of Lifeline, we expect low-income consumers will receive the same quality voice service that they receive today.[125]

49. In the *USF/ICC Transformation Order and FNPRM,* the Commission noted that many providers do not distinguish between local and long distance usage, and concluded that carriers may satisfy the obligation to provide local usage via service offerings that bundle local and long distance minutes. We conclude this finding is also applicable to Lifeline service offerings.[126] We therefore conclude that it is appropriate to eliminate the "local" qualifier from the current definition of Lifeline,[127] and we amend section 54.401 of our rules as provided in Appendix A of this Order.[128] We also note that, as discussed more fully below, ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.[129] We make both of these changes in recognition of the changing way services are provided in today's marketplace.

50. While we applaud the work the states have done to require pre-paid ETCs to offer a minimum set of monthly minutes, we do not find it necessary to impose minimum federal service standards. To the extent possible, service standards should be determined by the communications marketplace.[130] Based on the record, the market is increasing the number of minutes that pre-paid

[123] *See infra* section VII.B (discussing the requirements and limitations of toll limitation service).

[124] *See USF/ICC Transformation Order and FNPRM,* FCC 11-161 at paras. 77-78.

[125] *See* Windstream *USF/ICC Transformation NPRM* Comments at 20 (urging Commission to amend the definition of supported services to focus on functionality offered, not the specific technology used to provide supported services). Some commenters, however, argue that the term "voice telephony" is too vague, and that such a modification may result in a lower standard of voice service despite the fact that many consumers already receive voice service over broadband networks. *See* Alaska Commission Reply Comments at 8-9 (arguing that redefining the currently supported services could lead to lower standards for voice services); NASUCA Comments at 26-27 (stating that the term "voice telephony" is unnecessarily vague); NJ DRC Comments at 24; *compare* AT&T *USF/ICC Transformation NPRM* Comments at 10 (noting that circuit-switched networks are rapidly yielding to packet-switched networks, which offer voice as well as other types of services as demonstrated through significant increase in VoIP subscriptions).

[126] *See* revised section 54.401(a) of the Commission rules (defining Lifeline as amended in this Order).

[127] Distinctions between local and long distance calling are becoming irrelevant in light of flat rate service offerings that do not distinguish between local and long distance calling. *Lifeline and Link Up NPRM,* 26 FCC Rcd at 2844, para. 242; FL PSC Comments at 29 (supporting amendment to replace "basic local service" with the term "voice telephony service" based on changes in the marketplace); *but see* OH PUC Comments at 23 (supporting redefining Lifeline and maintaining "local" qualifier in the new definition).

[128] *See USF/ICC Transformation Order on Reconsideration,* FCC 11-189, para. 3. Revised section 54.401(a)(3) states: "That provides voice telephony service to subscribers as provided in § 54.101(a)."

[129] *See infra* section VII.B. In the event a Lifeline-only ETC provides to subscribers a set amount of "all distance" minutes whereby the subscriber can make local or toll calls without incurring additional charges, that Lifeline-only ETC does not meet the "facilities" requirement of section 214(e)(1)(a) if the only facilities used enables a subscriber to access a call center to purchase additional minutes when the set amount of all distance minutes are exhausted. Likewise, if the subscriber must purchase additional minutes to make international calls, such facilities used by the ETC to permit the subscriber to purchase additional international minutes cannot be relied upon to meet the facilities requirement of section 214.

[130] *See* Sprint Comments at 17; *see also* TracFone Comments at 40.

wireless ETCs are offering. For example, TracFone initially provided approximately 68 minutes of airtime per month to subscribers, but due to competition from other providers, it now provides up to 250 minutes a month. As soon as another wireless ETC began offering Lifeline programs that included 200 free monthly minutes, TracFone reassessed its offerings and added a new 250 minute calling plan.[131] TracFone notes that within days of announcing its revised calling plan, competing ETCs increased their service offerings to include 250 minutes.[132] Our determination not to impose minimum federal service requirements is consistent with the *USF/ICC Transformation Order and FNPRM,* where we noted that the Commission has never prescribed a minimum amount of local access minutes, and therefore declined to do so in that Order.[133] The Commission will monitor service levels and if necessary, reassess the need to establish minimum service requirements for Lifeline providers.[134] While we do not adopt minimum service requirements for any ETCs offering Lifeline service, we expect all ETCs to continue to offer low-income subscribers innovative and sufficient service plans.

V. SUPPORT AMOUNTS FOR VOICE SERVICE

51. *Background.* In the *Lifeline & Link Up NPRM*, the Commission sought comment on whether there is a more appropriate reimbursement framework than the current four-tier system for determining federal support amounts for Lifeline.[135] The Commission asked whether it should adopt a different framework for carriers that do not charge a subscriber line charge or that do not allocate their costs between the intrastate and interstate jurisdictions.[136]

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[131] *See* TracFone Comments at 40.

[132] *See id.*

[133] *See USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 78 n.115.

[134] Given both the Commission and states' shared interest in this matter, we encourage federal and state staff to continue to share information regarding ETCs matters, including ETC service levels. Section 54.401(d) requires newly designated ETCs to provide information to USAC demonstrating that their Lifeline plan meets the requirements of the Lifeline rules prior to receiving reimbursement. We amend section 401(d) to specify more clearly that newly designated ETCs must provide information to USAC about their Lifeline service plans prior to receiving reimbursement. In the event ETCs choose to offer, as an additional option to low income consumers, the Lifeline discount to other retail service offerings, including bundles, that are available to the general public, ETCs are not required to submit the terms and conditions of each such retail service offering to the Commission or USAC, but rather may provide links to public websites outlining the terms and conditions of such plans. In addition, as set forth more fully below, *see supra* section XI.C, we require all ETCs to submit annually information regarding the terms and conditions of the Lifeline plans for voice telephony service offered specifically to qualified low income consumers through the program during the previous year, including the number of minutes provided and whether there are additional charges to the consumer for service including minutes of use and/or toll calls.

[135] *See Lifeline & Link Up NPRM*, 26 FCC Rcd at 2846, para. 248; *see* 47 C.F.R. § 54.403.

[136] *See Lifeline & Link Up NPRM*, 26 FCC Rcd at 2847, para. 249. We note that TracFone filed a petition for rulemaking and a waiver request in 2009 that raised some of these issues. In its petition for rulemaking, TracFone sought to amend the definition of Tier One Lifeline support as defined in section 54.403(a)(1). *TracFone Wireless, Inc.'s Petition for Waiver of* 47 C.F.R. § 54.403(a)(i), CC Dkt. No. 96-45, Petition (filed May 4, 2009) (*TracFone Tier One Petition*). On March 30, 2009, the Commission released a public notice seeking comment on TracFone's petition for rulemaking. Public Notice, Report No. 2885, RM-11526 (rel. March 30, 2009), http://fjallfoss.fcc.gov/ecfs/document/view?id=6520204555. TracFone requested that the Commission detach Tier One support from the SLC in effect for the ILEC and allow all ETCs to receive the maximum available ($6.50 per household) in all service areas. *TracFone Tier One Petition* at 7-10. Additionally, TracFone requested that the Commission require ETCs claiming the maximum Tier One amount because of the rule amendment to provide an additional, unreimbursed $3.50 in Lifeline benefits per month. *Id.* Two parties commented on the proceeding. YourTel, a small carrier based in Missouri and a participant in the Lifeline program, concurred with TracFone that Tier One support should be disconnected from the SLC. *See* YourTel TracFone Tier One Petition Comments at 1. (continued….)

52. Lifeline was originally implemented in 1985 to ensure that the federal Subscriber Line Charge (SLC), imposed in the aftermath of the breakup of AT&T, would not put local phone service out of reach for low-income households. Since its inception, the amount of support has been tied to the SLC, a flat monthly charge that incumbent local exchange carriers assess on their subscribers to recover some of their network costs assigned to the interstate jurisdiction. Support levels for competitive ETCs are based on the SLC of the incumbent carriers in the relevant service area.

53. Lifeline support today consists of four tiers, each of which must be passed directly from the ETC to the qualifying low-income consumer in the form of discounts off the subscriber's monthly service.[137] All ETCs receive Tier One support for each qualifying consumer, which equals the incumbent local exchange carrier's Subscriber Line Charge, capped at $6.50.[138] Tier Two support provides an additional $1.75 per month in federal support, which is available in all states and made available to the ETC if it certifies with USAC that it will pass through the full amount of support to qualifying consumers.[139] Tier Three support provides an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month in federal support, if the ETC passes through the full amount of support to the consumer.[140] Finally, Tier Four support provides eligible subscribers living on Tribal lands up to an additional $25 per month towards reducing basic local service rates.[141] In September 2011, non-Tribal Lifeline subscribers received an average monthly benefit of $9.25.[142]

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YourTel contended that the current Tier One support system is "no longer valid in today's wireline environment where niche carriers have higher costs." *Id.* The Independent Telephone & Telecommunications Alliance (ITTA) disagreed, and stated that the Tier One support "is intended to be a proxy for interstate loop costs, and relies upon the determination that the SLC represents a fair approximation of that amount." ITTA TracFone Tier One Petition Comments at 4.

[137] *See* 47 C.F.R. § 54.403; *see also Universal Service First Report and Order*, 12 FCC Rcd at 8971, para. 368. The amount the household pays for phone service depends on the price charged by the carrier for Lifeline service and the amount of federal Lifeline support that a household receives, which in turn depends in part on the state and (if applicable) Tribal land in which the household is located. Some ETCs, such as TracFone and Virgin Mobile, offer service at no charge to customers. The net result is that households pay significantly different amounts for their Lifeline-supported service dependent upon their Lifeline carrier and in which state they reside.

[138] *See* 47 C.F.R. § 54.403(a)(1). The SLC is a flat, monthly charge that incumbent local exchange carriers assess directly on end users of telecommunications service to recover a portion of their revenue assigned to the interstate jurisdiction. Not all ILECs are at the $6.50 cap and the SLC varies among ILECs. *Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3767, para. 35 n. 81 (2002). USAC, Step 1: Lifeline Support, http://usac.org/li/telecom/step01/Lifeline.aspx (last visited Feb. 2, 2012).

[139] 47 C.F.R. § 54.403(a)(2). When adopting Tier Two support in 1997, the Commission sought to increase subscribership in those states that previously did not participate in the program. *See Universal Service First Report and Order*, 12 FCC Rcd at 8962-64, paras. 350-53.

[140] 47 C.F.R. § 54.403(a)(3). When adopting Tier Three support in 1997, the Commission sought to increase subscribership and encourage states to provide matching discounts to eligible consumers. *See Universal Service First Report and Order*, 12 FCC Rcd at 8963-64, para. 353. We understand that some states do not provide matching state discounts through explicit support, but rather mandate that the carrier reduce its rates by such amounts to qualify for Tier Three support.

[141] 47 C.F.R. § 54.403(a)(4).

[142] *See USAC 2011 Support Amounts Letter*. Support ranges from a low of $4.25 per month to a high of $10.00 per month. *See id.*