

demonstrating that the primary reason for service termination for low-income subscribers was failure to pay long distance bills.<sup>604</sup>

227. Commission rules provide additional support to ETCs to be compensated for the “incremental” costs of providing toll limitation service to eligible low-income consumers.<sup>605</sup> The Commission’s TLS rule has not been comprehensively reexamined since it was established in 1997.

228. In the *NPRM*, the Commission proposed amending its rules to eliminate Lifeline support for the costs of providing TLS to Lifeline subscribers.<sup>606</sup> The Commission explained that the TLS rule, which was adopted more than a decade ago, may have outlived its usefulness given reductions in long-distance calling rates.<sup>607</sup>

229. *Discussion.* We conclude that the original policy rationale for requiring all ETCs to offer toll limitation service to low-income consumers no longer remains valid in light of significant changes in the communications marketplace over more than a decade. Many carriers no longer distinguish between toll and non-toll calls in how they price voice telephony. The notion of higher priced long distance or “toll” calling is increasingly irrelevant in today’s marketplace. Low-income consumers often have options for service that provide the ability to make calls for a flat price, regardless of the location of the called party. With such service plans, the need to block or limit toll calls to protect against unexpected, higher charges is necessarily moot.<sup>608</sup> Indeed, we note that today, only 5 percent of Lifeline subscribers also subscribe to TLS.<sup>609</sup>

230. We acknowledge the concern that eligible telecommunications carriers should be required to provide low-income consumers the ability to manage the cost of their monthly service plans, and to avoid higher expenditures that could prove to be devastating to a household of limited means.<sup>610</sup> Such concerns are less prevalent, however, for consumers who subscribe to service plans that offer a set amount of domestic minutes (local or toll calls) each month, which by definition provide a mechanism for the low-income household to manage monthly expenditures. We therefore clarify that we do not consider a subscriber who has a Lifeline calling plan that includes a set number of calling minutes available for either local or domestic long distance calls to have voluntarily elected to receive TLS. Therefore TLS support will not be provided to ETCs providing such plans effective with April 2012 disbursements. We maintain the requirement to offer TLS at no charge to the low-income consumer only for service plans for which the ETC charges a fee for toll calls, either domestic or international, that is in addition to the per

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ANALYSIS AND TECHNOLOGY DIVISION at 9-3 (Sept. 2010). Since then, “the distinctions between the two markets have become blurred as customers acquired the ability to select among competing carriers” for all markets. *See id.* at 9-2.

<sup>604</sup> *See Universal Service First Report and Order*, 12 FCC Rcd at 8980, 8982-83, paras. 385, 389.

<sup>605</sup> 47 C.F.R. § 54.403(c).

<sup>606</sup> *See NPRM*, 26 FCC Rcd at 2794, para. 70.

<sup>607</sup> *See id.*

<sup>608</sup> By definition, in the absence of toll calls, there is no need to limit toll calling.

<sup>609</sup> Of the current 13 million Lifeline subscribers, ETCs seek reimbursement for TLS for only 500,000 subscribers, almost all of whom are wireline subscribers.

<sup>610</sup> Some commenters argue that TLS is of great value to Lifeline subscribers. *See* COMPTEL Reply Comments at 2, n. 1 (summarizing commenters that support a continued need for TLS for subscribers).

month or per billing cycle price of the consumer's Lifeline service.<sup>611</sup> A plan that does not provide the ability to make international calls, however, would not be considered a toll limitation service.

231. Moreover, given the low subscription rate to TLS, we no longer believe that providing additional support for the provision of TLS remains necessary to protect low-income consumers from potential service disconnection for non-payment of toll charges. The funds currently provided for the incremental costs of TLS could be used in other ways to more effectively meet our universal service goals. Program participants have increasingly moved to wireless services, which do not claim TLS support.<sup>612</sup>

232. We observe that there is great variance in TLS costs claimed by ETCs seeking reimbursement, ranging from \$0 to \$36 per Lifeline subscriber per month.<sup>613</sup> Such variance strongly suggests that ETCs are taking different interpretations of our current requirement for reimbursement for "incremental costs." Moreover, we note that a number of ETCs do not seek any reimbursement for TLS costs, despite providing TLS to their subscribers,<sup>614</sup> which calls into question whether there is any significant incremental cost to providing the service.

233. In 2010, USAC disbursed \$22.5 million in TLS support – an increase from \$8.9 million in 2009.<sup>615</sup> USAC reported \$7.8 million in TLS disbursements in 2011.<sup>616</sup> Given the growth and variance in TLS support, we are concerned that there may be significant waste or abuse in claims for TLS support.

234. We conclude that we should eliminate support for TLS as an amount separate from Lifeline support, but will do so over a period of time to mitigate the potential impact of doing so. We will phase out TLS support over a period of time by capping the maximum amount of TLS support that may be claimed by an ETC, subject to our existing requirement that claimed TLS costs "shall equal the eligible telecommunications carrier's incremental cost of providing either toll blocking or toll control, whichever is selected by the particular consumer."<sup>617</sup> We establish a limit on TLS support of \$3.00 per month per

<sup>611</sup> Providing the consumer with the ability to purchase additional minutes when a set amount of minutes are exhausted does not constitute toll limitation service. 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 its only facilities are call management functionalities that track the consumer's usage and that limit the ability to make additional calls when the minutes associated with the Lifeline offering are exhausted. If the ETC transfers a subscriber to a call center to purchase additional minutes when the set amount of all distance minutes are exhausted, that is not toll limitation service. Likewise, if the subscriber must purchase additional minutes to make international calls, any 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.

<sup>612</sup> See generally *USAC 2011 Support Amounts Letter*. USAC's filing indicates that only two competitive ETCs claiming TLS are wireless providers, and they each have only two subscribers. See *id.*

<sup>613</sup> See *id.*

<sup>614</sup> See Letter from Karen Majcher, Vice President, Universal Service Administrative Company to Trent Harkrader, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, CC Dkt. No. 96-45 (filed Feb. 25, 2011).

<sup>615</sup> 2011 MONITORING REPORT at Table 2-4.

<sup>616</sup> Because a number of TLS recipients have not yet submitted claims for 4<sup>th</sup> quarter 2011 support, TLS claims for 2011 are likely to be higher. See Letter from Karen Majcher, Vice President, Universal Service Administrative Company, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Dkt. No. 11-42 (filed Jan. 30, 2012) (*USAC Jan. 30 Support Letter*). USAC notes that carriers have up to January 31, 2012 to submit claims for fourth quarter 2011 support.

<sup>617</sup> 47 C.F.R. § 54.403(c).

TLS subscriber that will be implemented April 1, 2012 through the remainder of 2012. TLS support will be reduced to \$2.00 in 2013, and will be eliminated and unavailable at the beginning of 2014.

235. The initial limit of \$3.00 per month per TLS subscriber is based on the current disbursement distribution of TLS support for the relatively few ETCs that claim such support. According to USAC data, competitive ETCs, which serve roughly two-thirds of TLS subscribers, do so at an average cost to the Fund of \$3.67 per subscriber per month.<sup>618</sup> In contrast, incumbent LECs provide TLS at a much lower cost, at an average cost to the Fund of \$0.51 per subscriber per month.<sup>619</sup> We implement this rule to address our immediate concerns with the unprecedented growth in TLS support claims at a time when technological innovation and industry practices suggest there is less need for this service. This decision is also consistent with the Commission's focus on improving fiscal responsibility and reducing waste, fraud, and abuse.

236. We considered an immediate elimination of separate support for TLS provisioning, but take a more gradual approach to avoid a flash cut that could potentially have a negative impact on low-income consumers. Some commenters, including state regulators, support the elimination of reimbursement for TLS.<sup>620</sup> Other commenters, however, recommend that the Commission cap TLS support instead of eliminating it altogether.<sup>621</sup> One commenter argued for a limit of \$1 per month per subscriber.<sup>622</sup> Given that we still require provision of TLS by ETCs offering Lifeline services that would result in higher charges for consumers who elect to make a toll call, immediate imposition of a \$1 cap or immediate elimination of TLS support could have an impact on certain ETCs in the near term.<sup>623</sup> Incumbent LECs' wholesale cost of TLS varies – Verizon reports that its TLS costs range from \$0.58 to \$3.50 per month,<sup>624</sup> while AT&T reports that its TLS costs range from \$0 to \$5.38 per month.<sup>625</sup> Wireline competitive ETCs purchase resold TLS with periodic agreements sometimes purchased months in advance. An immediate elimination of TLS support could leave some wireline competitive ETCs with little time to readjust their business arrangements to be able to provide TLS at a lower cost.<sup>626</sup> Therefore, we conclude that this glide path is necessary to provide sufficient opportunity to ETCs and other interested parties to modify their practices in anticipation of the elimination of support for TLS.

<sup>618</sup> See *USAC 2011 Support Amounts Letter*.

<sup>619</sup> See *id.*

<sup>620</sup> See, e.g., MI PSC Comments at 4; MO Commission Comments at 6.

<sup>621</sup> See, e.g., Amvensys Comments at 6; AT&T Comments at 31; COMPTTEL Reply Comments at 3; Image Access Reply Comments at 1-2; NALA/PCA Reply Comments at 5; NJ DRC Comments at 14.

<sup>622</sup> See AT&T Comments at 31.

<sup>623</sup> See NALA/PCA Reply Comments at 2; see also Reunion Reply Comments at 11.

<sup>624</sup> See Letter from Alan Buzacott, Executive Director, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, (filed Nov. 21, 2011) (Verizon Nov. 21 *ex parte* Letter).

<sup>625</sup> See, e.g., AT&T Jan. 24 *ex parte* Letter; Letter from John J. Heitmann, Counsel, Reunion, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. 11-42 *et al.*, (filed Jan. 20, 2012) (Reunion Jan. 20 *ex parte* Letter).

<sup>626</sup> In an *ex parte* filing, Reunion asserted that ILECs fees are up to \$8.52 in non-recurring charges and \$5.12 in monthly-recurring charges. Letter from John J. Heitman, Counsel, Reunion, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. 11-42 *et al.*, at 2 (filed April 8, 2011) (Reunion April 8 *ex parte* Letter). AT&T's average TLS rate is \$3.50. See Reunion Jan. 20 *ex parte* Letter as amended by AT&T Jan. 24 *ex parte* Letter. AT&T's average TLS rate was calculated by averaging the wholesale residential TLS rates of AT&T across all states except Wisconsin, for which wholesale TLS rates were unavailable.

237. We are also not persuaded by commenters who suggest a significantly higher cap for TLS. Reunion suggests a non-recurring charge of \$5.50 followed by \$3.50 in monthly-recurring charges per subscriber.<sup>627</sup> Two parties filed comments in support of Reunion's proposal.<sup>628</sup> The actual support claimed by the vast majority of ETCs for providing TLS, however, is significantly lower than Reunion's proposed caps. According to what ETCs submitted this year in TLS support claims, the average incremental cost per month per subscriber is \$2.65.<sup>629</sup> Because ETCs have not been required to substantiate their TLS costs, however, we have no way to determine what the actual costs may be, and the wide variance in submitted costs suggests that these figures may be higher than actual average costs.

238. Finally, we find that phasing out TLS support does not create an unfunded mandate for ETCs to supply TLS without reimbursement, despite what two commenters argued.<sup>630</sup> In this Order, we relieve ETCs of the obligation to offer TLS in the first instance if their Lifeline offering does not distinguish in the pricing of toll and non-toll calls, which may relieve many ETCs of the obligation to offer TLS.<sup>631</sup> For those ETCs that will still be required to offer TLS, we reject arguments that it is inappropriate or unlawful to require the offering of TLS but to deny separate reimbursement.<sup>632</sup> Commenters seem to suggest that they are entitled to continued separate support for TLS as a matter of right. Precedent makes clear, however, that carriers have no vested property interest in specific levels of support for the provision of supported services. To recognize a property interest, carriers must "have a legitimate claim of entitlement to" USF support.<sup>633</sup> Such entitlement would not be established by the Constitution, but by independent sources of law.<sup>634</sup> Section 254 does not expressly or implicitly provide that particular companies are entitled to a specified level of ongoing USF support, but rather that support mechanisms be specific and predictable.<sup>635</sup> The glide path established by this Order clearly satisfies those statutory requirements. Indeed, there is no statutory provision or Commission rule that provides companies with a vested right to continued receipt of support at current levels, and we are not aware of any other, independent source of law that gives particular companies an entitlement to ongoing USF support. Carriers, therefore, have no property interest in or right to continued USF support to cover the incremental costs of providing TLS.<sup>636</sup>

<sup>627</sup> See Reunion April 8 *ex parte* Letter.

<sup>628</sup> See Letter of Jim Dry *et al.*, Image Access *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (filed May 10, 2011) (Image Access May 10 *ex parte* Letter); NALA/PCA Reply Comments at 5.

<sup>629</sup> See USAC 2011 Support Amounts Letter.

<sup>630</sup> See Amvensys Comments at 5-6; *see also* AT&T Comments at 31.

<sup>631</sup> As noted above, in today's marketplace many ETCs offer calling plans that do not distinguish between toll and non-toll calls.

<sup>632</sup> See, e.g., AT&T Reply Comments at 28; USTelecom Comments at v, 16.

<sup>633</sup> *Board of Regents*, 408 U.S. at 577.

<sup>634</sup> See *id.*; *see also* *Members of the Peanut Quota Holders Assoc. v. U.S.*, 421 F.3d 1323, 1334 (Fed. Cir. 2005), *cert. denied*, 548 U.S. 904 (2006) (finding that congressional action amending peanut quota program to exclude prior beneficiaries from that program did not effect a taking because "the property interest represented by the peanut quota is entirely the product of a government program unilaterally extending benefits to the quota holders, and nothing in the terms of the statute indicated that the benefits could not be altered or extinguished at the government's election").

<sup>635</sup> See 47 U.S.C. § 254(b)(5).

<sup>636</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 293. Moreover, we note that, even if we were to recognize a property interest in USF support, our action today would not result in a taking in circumstances (continued....)

239. Our rule balances the needs of the relatively few subscribers who subscribe to TLS with our goal of minimizing the USF contribution burden and providing support that is sufficient but not excessive. Our rule is specifically tailored to reduce burdens on the Fund; spur innovation in the TLS provisioning market; and minimize, through the gradual reduction in TLS support, the potential impact on ETCs caused by the elimination of TLS support. Further, we give ample transition for affected ETCs of the phase-out of TLS support so as to ease the burden of incorporating the costs of providing TLS with the costs of other aspects of Lifeline service.

### C. Link Up

#### 1. Background

240. Link Up was originally adopted to provide up to \$30 to offset half of the customary charges assessed by incumbent local exchange carriers for commencing telephone service.<sup>637</sup> When the Commission adopted its current Link Up rules in 1997, Link Up support was provided to ETCs, and passed through to low-income subscribers, to reduce a single service connection charge at a consumer's principal place of residence.<sup>638</sup>

241. In 2000, in an effort to create incentives for ETCs to construct telecommunications facilities on Tribal lands, the Commission amended its Link Up rules to provide up to \$70 in additional support for ETCs serving residents of Tribal lands.<sup>639</sup> The Commission stated that enhanced Link Up was to be used to cover part of the costs of extending telecommunications infrastructure to eligible low-

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such as these, where the "interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn Central*, 438 U.S. at 124; see also *Connolly*, 475 U.S. at 225. The "purpose of universal service is to benefit the customer, not the carrier." *Rural Cellular Association v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009) (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000)). The Commission has discretion to balance competing section 254(b) principles. *Qwest Communications Intern., Inc. v. FCC*, 298 F.3d 1222, 1234 (10<sup>th</sup> Cir. 2005) ("The FCC may exercise its discretion to balance the principles against one another when they conflict, but may not depart from them altogether to achieve some other goal."). Thus, the Commission may balance the principles posited in section 254(b)(3) ("Access to advanced telecommunications and information services should be provided in all regions of the Nation") and (b)(4) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services" at rates that are reasonably comparable to urban rates) with the principle in section 254(b)(5) ("There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service"). Nothing in the Takings Clause or section 254 precludes the Commission from such reasoned decision making, even if it means reducing support of some current support recipients. The requirement that support should be "specific, predictable and sufficient" does not mean that support levels may never change, nor does it mean that required service offerings may not be combined.

<sup>637</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8977, para. 380 (adopting Joint Board recommendation to permit carriers to offset half of customary charges, up to \$30); see *MTS and WATS Market Structure Recommended Decision and Order*, 2 FCC Rcd at 2332, para. 68 (the Joint Board noted that "we believe that more can be done to directly address the problem of high non-recurring charges for low income households that are not presently on the network, thereby not only preserving, but also increasing, universal telephone service. Toward this end...we are recommending an additional lifeline assistance program to offset the charges assessed for commencing telephone service.").

<sup>638</sup> See *Universal Service First Report and Order*, at 8977, para. 380 (determining "support shall only be available for the primary residential connection"); see also 47 C.F.R. § 54.411 (a) (defining Link Up).

<sup>639</sup> See *2000 Tribal Lifeline Order*, 15 FCC Rcd 12208 at 12239-40, para. 60.

income consumers on Tribal lands.<sup>640</sup> In 2003, the Commission clarified that wireless carriers are eligible for Link Up support for their customary charges for commencing telecommunications service, but that Link Up does not support any costs of a wireless handset.<sup>641</sup>

242. The Commission's rules currently specify that such support reimburses ETCs for the revenue they forgo in reducing their customary charge for commencing telecommunications service and for providing a deferred schedule for interest-free payment of charges assessed for commencing service.<sup>642</sup> Link Up provides qualifying consumers with discounts of up to \$30 off the initial costs of installing a single telecommunications connection and up to \$100 for qualifying residents of Tribal lands.<sup>643</sup> Commission rules for Tribal Link Up specify that the charges that the carrier customarily assesses to connect subscribers to the network include facilities-based charges associated with the extension of lines or construction of facilities needed to initiate service.<sup>644</sup>

243. Link Up support has increased over 230 percent in the last three years.<sup>645</sup> USAC projects that it will disburse more than \$180 million in Link Up support to ETCs in 2012, compared to \$122.9 million in 2011, and up from \$37.2 million disbursed in 2008.<sup>646</sup> The increase in support is largely the result of certain Lifeline-only wireless ETCs entering the market in recent years and seeking reimbursement for Link Up, including enhanced Link Up on Tribal lands.<sup>647</sup> In September 2011, incumbent LECs accounted for 27 percent of Link Up claims, while competitive ETCs accounted for 73 percent.<sup>648</sup>

244. In the *Lifeline and Link Up NPRM*, the Commission proposed amendments to the Link

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<sup>640</sup> 2000 *Tribal Lifeline Order*, 15 FCC Rcd at 122240-41, paras. 61-62 (discussing line extension charges). At the time, the Commission stated: "we do not anticipate that expanded Link Up support will encourage inefficient investment in telecommunications infrastructure because (1) support for line extension or other construction costs is capped at \$100 per qualifying low-income individual on Tribal lands; and (2) the line extension or other construction costs in many tribal areas will exceed the maximum amount covered under the expanded Link Up support; and (3) carriers therefore may have to absorb certain costs in excess of the maximum expanded Link Up support amount in order to induce low-income individuals to initiate service." *Id.* at 122241, para. 62.

<sup>641</sup> 2003 *Tribal Lifeline Order*, 18 FCC Rcd at 10967-68, para. 18.

<sup>642</sup> 47 C.F.R. §§ 54.411, 54.413.

<sup>643</sup> 47 C.F.R. § 54.411.

<sup>644</sup> 47 C.F.R. § 54.411(a)(3).

<sup>645</sup> See 2011 MONITORING REPORT at Table 2.2 (providing actual Link Up disbursements from 2007 to end of 2010); see also *USAC 2011 Support Amounts Letter* at 3; *USAC Jan. 30 Support Letter*.

<sup>646</sup> See *USAC Federal Universal Service Support Mechanisms Fund Size Projects for First Quarter 2012*, dated Nov. 2, 2011, at 19, available at <http://www.usac.org/about/governance/fcc-filings/2012/Q1/1Q2012%20Quarterly%20Demand%20Filing.pdf> (detailing how USAC projects total annual 2012 Link Up support to be approximately \$183.48 million); see also *USAC 2011 Support Amounts Letter*; 2011 MONITORING REPORT at Table 2.2.

<sup>647</sup> ETCs typically are designated and eligible to receive both high-cost and low-income universal service support. Lifeline-only ETCs, however, are carriers authorized to receive support only for the provision of the Lifeline supported services to eligible low-income consumers. These carriers are not eligible to receive high-cost universal service support.

<sup>648</sup> See *USAC 2011 Support Amounts Letter* at 3 (listing support amounts for incumbent LECs and competitive ETCs from January 2011 through September 2011).

Up rules to eliminate waste, fraud, and abuse.<sup>649</sup> In response to a subsequent proposal to eliminate Link Up support,<sup>650</sup> the August Public Notice sought further comment on whether such support should be eliminated or limited to reimbursement for service initiations that involve physical installation of facilities by the provider at the consumer's residence.<sup>651</sup>

## 2. Discussion

245. We amend our rules to eliminate Link Up support on non-Tribal lands for all ETCs.<sup>652</sup> Marketplace trends indicate that Lifeline consumers increasingly have service options from ETCs that neither draw on Link Up support nor charge the consumer a service initiation fee,<sup>653</sup> raising concerns that Link Up support is not the most efficient means to reach our programmatic goals. As part of our responsibility to balance a number of universal service goals with finite resources, we conclude that dollars currently spent for Link Up in its current form can be more effectively spent to improve and modernize the Lifeline program.<sup>654</sup> Given the significant telecommunications deployment and access challenges on Tribal lands, however, at the present time we will maintain enhanced Link Up support for those ETCs that also receive high-cost support on Tribal lands.<sup>655</sup>

246. *Link Up on Non-Tribal Lands.* Today, unlike in 1997, many low-income consumers have competitive choices among carriers that do not charge an activation fee and do not draw on Link Up support.<sup>656</sup> At a time when we seek to modernize the program and constrain the growth of the Fund and

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<sup>649</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2795-96, paras. 72-76; see also TracFone Wireless, Inc. Petition for Declaratory Ruling, WC Dkt. No. 96-45 *et al.*, filed December 1, 2010 (TracFone Petition) (proposing reforms to Link Up to eliminate waste and abuse based on business practices of some Lifeline-only ETCs).

<sup>650</sup> See Sprint Comments at 9-10.

<sup>651</sup> *Lifeline and Link Up Public Notice*, 26 FCC Rcd at 11103-04, para. 3.b.

<sup>652</sup> March is the last month for which ETCs serving customers on non-Tribal lands can claim Link Up support on their FCC Form 497. For example, if an ETC serving non-Tribal lands currently receives Link Up support and enrolls a new subscriber on March 15, 2012, that ETC may claim Link Up support for that subscriber. If, however, that ETC enrolls a new subscriber on April 1, 2012, that ETC may not claim Link Up support for that subscriber.

<sup>653</sup> See Letter from Mitchell F. Brecher, Counsel, TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-3 (filed Nov. 21, 2011) (TracFone Nov. 21 *ex parte* Letter) (explaining that both TracFone and Virgin Mobile do not impose activation charges on Lifeline subscribers and operate in the same markets as other ETCs that obtain Link Up support); see also USAC Low Income disbursement tool, <http://www.usac.org/li/tools/disbursements/default.aspx> (showing the increase in subscribership of i-wireless, an ETC that does not receive Link Up support) (support amounts can be determined by typing "i-wireless" in "Study Area Name" option) (last visited Feb. 5, 2012).

<sup>654</sup> See, e.g., Cricket PN Comments at 4 (arguing that Link Up support is not necessary to enable consumers to access the public switched telephone network); AT&T PN Comments at 8-10 (supports elimination of Link Up for all ETCs and explains problems of limiting Link Up to physical installations); T-Mobile Dec. 16 *ex parte* Letter, at 6 (urging the Commission to eliminate Link Up support, which would free up approximately \$136 million per year in funding that could be allocated toward other uses); Sprint PN Comments at 1 (supporting elimination of Link Up support and re-purposing of funds to support the broadband pilot).

<sup>655</sup> See *USF/ICC Transformation Order*, FCC 11-161 at para. 482 (recognizing that Tribal lands have significant telecommunications deployment and access challenges). When the Commission first established the expanded Link Up program for Tribal lands, it observed that doing so would create incentives for carriers to construct facilities where none existed. See *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12239-40, para. 60.

<sup>656</sup> The two largest wireless Lifeline providers, TracFone and Virgin Mobile (Sprint), along with Cricket and i-wireless, enroll millions of low-income consumers in Lifeline without reliance on Link Up support. See Letter from (continued...)

there are many competing demands for program support, we question whether it makes sense to provide Link Up support to ETCs with high activation fees for voice service when low-income consumers can get Lifeline service from another provider without paying an activation fee.<sup>657</sup> Declining costs and competitive pressures have led many ETCs to stop assessing connection charges on low-income consumers.<sup>658</sup> The Lifeline-only ETCs that do not assess a connection fee or collect Link Up support are operating in the same geographic markets as ETCs obtaining Link Up support.<sup>659</sup> In a competitive environment, carriers will only assess a fee that the market will bear. Indeed, the lack of activation fees assessed by many competitive ETCs raises the question of whether the existence of rules allowing ETCs to collect Link Up support creates an incentive for some ETCs to charge such fees, when they otherwise would not.<sup>660</sup>

247. We also have concerns that Link Up, in its current form, is vulnerable to waste and abuse.<sup>661</sup> Providing support for half of a “customary” charge up to a flat \$30 amount creates incentives for carriers to set their customary charge at \$60 in order to maximize their draw from the program, with incentives to focus on obtaining new subscribers, thus triggering application of the activation fee, rather than focus on maintaining existing subscribers.<sup>662</sup> Indeed, a number of Lifeline-only ETCs collecting Link Up support have \$60 activation fees for which they take \$30 from the Fund and waive the remaining

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Mitchell Brecher, Counsel, TracFone, to Marlene H. Dortch, Secretary of the Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 4 (filed Oct. 13, 2011), (TracFone Oct. 13 *ex parte* Letter) (providing examples of competitive choices of ETCs that do not receive Link Up support). The Link Up Coalition has also acknowledged that members of the coalition serve the same geographic areas. *See* Letter from John Heitmann, Counsel, Link Up Coalition, to Marlene Dortch, Secretary, Federal Communications Commission, at 2 (filed Dec. 7, 2011) (Link Up Coalition Dec. 7 *ex parte* Letter).

<sup>657</sup> *See supra* n.653 (providing examples of ETCs that do not charge activation fees and do not receive Link Up support).

<sup>658</sup> *See* Cricket PN Comments at 4 (noting that over the years many carriers have reduced and then eliminated their activation fees); *see also* Sprint Comments at 9-10 (stating that “the ever increasing level of automation has reduced the cost of initiating service”).

<sup>659</sup> *See* TracFone Nov. 21 *ex parte* Letter at 1-4 (explaining that both TracFone and Sprint do not impose activation charges on Lifeline customers and operate in the same markets as other wireless ETCs that obtain Link Up support). Indeed, some facilities-based wireless ETCs that provide Lifeline service using their own network argue that technological advances and business efficiencies have rendered activation fees unnecessary for wireless providers. *See* Sprint Comments at 9-10; *see also* Cricket PN Comments at 4 (recognizing changes in marketplace such that Link Up is unnecessary).

<sup>660</sup> *See* TracFone Nov. 21 *ex parte* Letter at 3-4 (noting that many Lifeline-only ETCs receiving Link Up support charge the maximum amount allowable under current Link Up rules).

<sup>661</sup> *See* AT&T PN Comments at 8-10 (providing examples of how Link Up support can create wasteful spending); *see also* Sprint Comments at 9-10 (arguing that elimination of Link Up, which it claims is a service of questionable utility, will promote the public interest by helping to keep the Fund at a manageable and sustainable size, and will discourage ETCs from manipulating program rules to get unneeded subsidies).

<sup>662</sup> *See* Letter from John J. Heitmann, Counsel, Link Up Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42, Redacted – Public Version, at 2-5 (filed Nov. 14, 2011) (Link Up Coalition Nov. 14 *ex parte* Letter) (arguing that activation fees are general industry practice and that several of its members charge \$60 due to their costs of operation, which gives them the maximum amount of allowable funds under Link Up rules); *but see* TracFone Nov. 21 *ex parte* Letter at 3-4 (rebutting Link Up Coalition Nov. 14 *ex parte* Letter by noting that the examples provided by the Link Up Coalition are of facilities-based wireless carriers with activation fees almost half the amount that the Link Up Coalition imposes).

balance.<sup>663</sup> In such circumstances, the ETC has no incentive to lower its activation fee.

248. There is significant disagreement in the record as to the purpose of Link Up and what costs are properly reimbursable through Link Up. The record indicates that Link Up support is being used to offset an array of costs, including customer billing, basic labor, equipment and facilities, outreach and marketing, as well as compliance with Lifeline rules, all of which are costs that every carrier assumes in doing business in today's market.<sup>664</sup> In fact, it appears that a number of Link Up recipients rely upon Link Up so that they can charge lower monthly charges to low-income consumers.<sup>665</sup>

249. As noted above, Link Up was adopted as a discount off "customary" connection charges, at a time when such connection charges were rate-regulated by state public utility commissions.<sup>666</sup> Now, the majority of Link Up is going to pre-paid wireless resellers who are not rate-regulated.<sup>667</sup> If we specified that only certain costs are properly recoverable through Link Up, compliance with such a rule would be difficult for USAC and this Commission to monitor, audit, and enforce for companies whose rates are not regulated today under cost of service principles.<sup>668</sup> Record evidence indicates that most wireless resellers are not charged a separate connection fee by their underlying wholesale providers.<sup>669</sup> Because their rates are not regulated, however, wireless carriers can set their "activation" fees at any level

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<sup>663</sup> See 47 C.F.R. § 54.413(b); see also Link Up Coalition Nov. 14 *ex parte* Letter at 2-5 (acknowledging they charge the maximum amount allowable in activation fees when receiving Link Up support); see TracFone Petition at 3-9 (explaining how at least one Lifeline-only ETC either waives the remaining balance of an activation not covered by Link Up or "defers" payment over a period of 12 months giving the customer the option of reducing any activation fee by purchasing more airtime minutes).

<sup>664</sup> See, e.g., COMPTTEL PN Comments at 9-11 (providing examples of the broad array of costs associated with connection charges); CenturyLink PN Comments at 3-4 (noting that Link Up support covers the cost of making the access line available to the customer, provisioning services, and processing the customer's service order and opening the account); GRTI PN Comments at 15 (noting that it charges its customers a one-time fee of \$75 in order to recoup its basic labor, equipment and facilities costs); Nexus PN Comments at 7-8 (providing examples of how the ETC uses Link Up to cover the costs of community outreach and marketing).

<sup>665</sup> The Link Up Coalition, comprised of at least six wireless competitive ETCs, acknowledges that its members rely on Link Up subsidies to provide low cost (and most often free) wireless service and "free" phones to Lifeline consumers. See Link Up Coalition PN Comments at 2.

<sup>666</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8969-70, paras. 365, 380 (originally intended for incumbent LECs' cost of connecting service in the residence).

<sup>667</sup> See 47 U.S.C. § 332(c)(3)(a) (preventing states from regulating commercial mobile radio service providers' rates).

<sup>668</sup> Dollars are fungible, and there is no administratively practical way to determine whether \$30 is recovering the costs of "acceptable" activities but not being used for other things, including defraying the costs of handsets. See Link Up Coalition PN Comments at 21 (stating that if Link Up was eliminated Coalition members would have to evaluate whether they could continue to provide "no-charge handsets;"); see also *supra* para. 241 (explaining how the Commission has previously held that Link Up does not support costs of wireless handsets).

<sup>669</sup> See TracFone Nov. 21 *ex parte* Letter at 3 (noting that TracFone's underlying carriers include three of the four largest CMRS network operators in the nation -- AT&T Mobility, Verizon Wireless and T-Mobile -- none of which impose activation fees on TracFone as the wholesale customers). We note that the incremental cost to connect a new subscriber to the network may be built into the wholesale rate structure. The Link Up Coalition claims that several of its members are subject to network activation charges from the underlying provider, but nothing in the record indicates that such charges are based on individual customer activations as opposed to a general charge built into the wholesale rates. See Link Up Coalition Reply Comments at 4.

the marketplace will bear.<sup>670</sup> The Link Up subsidy, coupled with the ability to waive the fee borne by the consumer, insulates those charges from the effects of competition when serving Link Up subscribers.<sup>671</sup> Indeed, as noted above, we are concerned that Link Up support may act as an incentive for ETCs that focus primarily or exclusively on the low-income market to charge higher activation fees to Lifeline consumers than typically are charged by other ETCs to non-Lifeline customers.<sup>672</sup>

250. We acknowledge that some incumbent LECs continue to assess a customary charge on their subscribers to commence service. The record indicates that such charges vary significantly among the incumbent carriers, ranging from \$13.50 to \$66.00.<sup>673</sup> Given the many competing demands for program support and our desire to maintain a technology-neutral approach, we decline to adopt a policy that would provide Link Up support only to wireline carriers.<sup>674</sup> We are not convinced from the record before us that elimination of Link Up support for incumbent LECs will discourage or prevent consumers from subscribing to telephone service.<sup>675</sup> Indeed, some incumbent LECs support eliminating Link Up

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<sup>670</sup> There is information in the record that the average activation charge for facilities-based wireless carriers is \$35, whereas some wireless ETCs do not charge any fees on Lifeline customers and others impose as much as \$72 for activation, but waive such fees for Lifeline customers. See Nexus Nov. 15 *ex parte* Letter, at 4, Attach. (providing examples of activation fees from competitors); see also Link Up Coalition Nov. 14 *ex parte* Letter at 2-4 (providing examples of activation fees in industry which are approximately \$35). In contrast, all or most of the members of the Link Up Coalition charge an activation fee of \$60, the level that maximizes draw from the Fund. See *id.*; see also *supra* n.662 (providing examples of how most Lifeline-only ETCs that are recipients of Link Up charge at least the maximum amount permitted under current regulations).

<sup>671</sup> See TracFone Petition at 3-9 (providing example of how at least one ETC either waives the remaining balance of an activation not covered by Link Up or “defers” payment over a period of 12 months giving the customer the option of reducing any activation fee by purchasing more airtime minutes).

<sup>672</sup> Many facilities-based wireless carriers charge fees at or about \$35-\$36, which is almost half the amount charged by Lifeline-only ETCs receiving Link Up. See Nexus Nov. 15 *Ex Parte* (noting that Verizon, AT&T and T-Mobile charge activation fees in the range of \$35-\$36); see also Letter from Matthew A. Brill, Counsel, Cricket, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Nov. 22, 2011) (Cricket Nov. 22 *Ex Parte*) (claiming that Link Up provides little benefit due to competitive pressures and invites waste and abuse in the program).

<sup>673</sup> Most incumbent LEC connection fees are based on the terms contained in state tariffs. See Letter from Jamie M. Tan, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Nov. 22, 2011) (listing line connection charges in its 22-state region) (AT&T Nov. 22 *ex parte* Letter); see also Verizon Nov. 21 *ex parte* Letter (listing activation charges for the 12-state region).

<sup>674</sup> Cox suggests that the Commission should consider eliminating Link Up support altogether unless it is available on a competitively neutral basis. See Letter from Charles Keller, Counsel, Cox, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (filed Oct. 24, 2011) (Cox Oct. 24 *ex parte* Letter). CenturyLink argues that Link Up support should be limited to wireline ETCs as opposed to wireless ETCs. See CenturyLink PN Reply Comments at 4.

<sup>675</sup> A number of commenters point out that for low-income consumers that face the challenges of securing employment, mobile service is preferred over landline service. See, e.g., Letter from Mitchell Brecher, Counsel, TracFone, to Marlene H. Dortch, WC Dkt. No. 11-42, Attach., “Subsidized Cell Phones Provide Significant Economic Gains for Poor and Near-Poor Americans” (filed Dec. 5, 2011). USAC data indicate that while incumbent LECs are receiving less Link Up support each month, likely due to subscribers choosing competitive alternatives, Lifeline disbursements for Virgin Mobile, TracFone, i-wireless and Cricket, as non-recipients of Link Up, are steadily increasing. See USAC Low Income disbursement tool, <http://www.usac.org/li/tools/disbursements/default.aspx> (last visited Feb. 5, 2012). Disbursements for particular companies can be accessed on the USAC tool by typing company name in “Study Area Name” option.

support.<sup>676</sup> Others argue that Link Up should be limited to physical installation of facilities.<sup>677</sup> If the Commission limited support to physical installation of facilities, it is unlikely that many providers would be eligible for Link Up, as initiation of phone service in today's marketplace typically is an automated process.<sup>678</sup> With declining costs of initiating service and competitive pressures, we are not convinced that we should maintain Link Up for only wireline providers, even if we were to limit it only to the physical installation of facilities. Based on the record before us, we decline to maintain Link Up support for wireline ETCs only.<sup>679</sup>

251. We acknowledge that certain Link Up recipients contend that Link Up enables them to market Lifeline service in innovative ways to underserved markets that do not presently have phone service.<sup>680</sup> The record merely suggests, however, that community sign-up campaigns can be effective at signing up consumers, not that Link Up in its current form is the only way to ensure that such consumers subscribe to phone service.<sup>681</sup> We also note that ultimately the program is funded by other consumers and allowing the use of these funds for corporate marketing has moved the uses of the funds far from the original purpose of the Lifeline program. We note that through USAC's in-depth data validation process targeted at uncovering duplicative claims for Lifeline support, USAC has identified thousands of consumers subscribing to Lifeline service from both an ETC receiving Link Up and an ETC that does not receive Link Up.<sup>682</sup> For example, in the state of Maryland, there were 10,201 subscribers – accounting for

<sup>676</sup> AT&T PN Comments at 8-10; Verizon Nov. 21 *ex parte* Letter.

<sup>677</sup> IN URC Comments at 4-5 (contending that ETCs must not be allowed to collect Link Up funds except when they are installing physical equipment on the subscriber's premises).

<sup>678</sup> See Centurylink PN Comments at 3 (noting that for most customers, initiating service does not require installation at the residence); Nexus PN Comments at 4 (acknowledging that physical installations are rare for both wireline and wireless providers in today's market); *supra* n. 658 (providing examples of how the ever increasing level of automation has reduced the cost of initiating service).

<sup>679</sup> Several LECs support elimination of Link Up support and believe that the funds could be redirected to more tangible benefits to consumers. See AT&T PN Comments at 8-10 (supporting elimination of Link Up support); Verizon Nov. 21 *ex parte* Letter (noting that it is not opposed to elimination of Link Up support to all ETCs provided carriers obligation to provide discounts are eliminated); Cox *ex parte* Oct. 24 Letter (advocating for Link Up support to be reallocated to more productive uses).

<sup>680</sup> See Link Up Coalition PN Comments at 14, Figs. 1, 2 (contending that community outreach efforts should be reimbursed by Link Up because, without the subsidy, certain low-income consumers would not otherwise be served); Letter from Christopher Savage, Counsel, Nexus, to Marlene H. Dortch, WC Dkt. No. 11-42, Attach. at 11, (filed Jan. 20, 2012) (Nexus Jan. 12 *ex parte* Letter) (stating that 62 percent of Nexus subscribers have no phone service at time of enrollment); Nexus' claim that 62 percent of their subscribers have no phone service at time of enrollment appears high given that approximately 91.5 percent of low-income households subscribe to telephone service. See 2011 MONITORING REPORT at Table 3.2. Nexus provides no back up support for its data. Indeed, one explanation for why its statistic could be so high is because a low-income consumer may disconnect service for periods of time and resume service with the same or competing carrier during the course of the year. There is no indication in Nexus' Jan. 12 *ex parte* Letter of whether the service provider properly verified whether the 62 percent of subscribers had previously had phone service in the last few months or benefited from Link Up support in the past by dropping service and reconnecting multiple times. The Commission's rules, however, make clear that a consumer can only receive the benefit from the Link Up support once unless the individual moves from their principal place of residence. See 47 C.F.R. § 54.411(c) (limiting a consumer to receive benefit of Link Up support only once unless the individual changes principal place of residence).

<sup>681</sup> See USAC 2011 IDV Process Letter at 5-6, 9, nn. 19, 21, 30 (providing details on duplicates with Link Up).

<sup>682</sup> See *id.* (providing details on duplicates from customers in Maryland, Michigan and Louisiana in which subscribers were found to subscribe to ETCs receiving Link Up and ETCs that did not receive Link Up support).

51 percent of total duplicates found in the state – who were found to be receiving Lifeline service from both an ETC that receives Link Up and an ETC that does not receive Link Up support.<sup>683</sup> This example suggests that at least for some low-income consumers, Link Up is not increasing phone subscribership. We seek further comment in the attached *FNPRM* whether there should be support for one-time service charges as opposed to monthly charges in a modernized Lifeline program.

252. Certain carriers suggest that a decrease in support to \$20-24 would be an appropriate amount of Link Up support.<sup>684</sup> We decline to adopt this proposal for the same reasons we are eliminating the \$30 amount allowable under our rules for receiving Link Up support. Many low-income consumers have competitive choices from ETCs that do not charge an activation fee and do not receive Link Up support. In balancing a number of universal service goals with finite resources, and given the circumstances described above, we decline to adopt this proposal. Because we find that the Link Up program is potentially susceptible to abuse,<sup>685</sup> is creating unhelpful incentives, and is providing little public-interest benefit, we conclude that it should be eliminated as soon as possible. We are unpersuaded by the factual arguments that some supporters of Link Up have made<sup>686</sup> and conclude there is no persuasive evidence in the record of any public-interest benefit to continuing to provide this support on non-Tribal lands<sup>687</sup> for any amount of time.

253. We therefore revise our rules, on a technologically-neutral basis, to eliminate Link Up support for all ETCs on non-Tribal lands. We also conclude there is no federal obligation for ETCs to offset or discount their activation fees for qualifying low-income consumers. While we considered various proposals to define more narrowly appropriate and inappropriate uses of Link Up, on balance, we conclude that the dollars spent on Link Up in its current form can be better spent on other uses, such as modernizing the program and constraining the overall size of the fund.<sup>688</sup> In eliminating Link Up today, we do not prejudice whether it would be appropriate in the future to adopt a new rule to provide subsidies for non-recurring charges imposed at service initiation.

254. *Link Up on Tribal Lands.* At present, we maintain the enhanced Link Up program on Tribal lands, but limit its availability to those ETCs receiving high-cost support.<sup>689</sup> Consistent with the

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<sup>683</sup> See *id.* at 5-6, n. 19. Similarly, in the state of Michigan, there were 25,055 subscribers who were found to be receiving Lifeline service from both an ETC who receives Link Up and an ETC that does not receive Link Up support, which accounted for 47 percent of total duplicates found in the state. *Id.* at 6, n. 21.

<sup>684</sup> See *Nexus Jan. 20 Ex Parte* at 3-4 (suggesting a decrease in Link Up per customer based on changes in market).

<sup>685</sup> See *supra* para. 247.

<sup>686</sup> See *supra* para. 251.

<sup>687</sup> Despite this finding, we will continue to provide Link Up support on Tribal lands for ETCs receiving high-cost support because those ETCs are building telecommunications infrastructure on Tribal lands, which have significant telecommunications deployment and connectivity challenges.

<sup>688</sup> See *Sprint PN Comments* at 1 (“Sprint supports elimination of Link Up support (for the Lifeline voice telephony program and the redeployment of those funds to support the broadband pilot.”); *Cox Oct. 24 ex parte Letter* (advocating for Link Up support to be reallocated to more productive uses).

<sup>689</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 479-482 (recognizing the unique challenges in bringing communications services to Tribal Lands). Today, several Lifeline-only ETCs are receiving a large amount of enhanced Link Up support on Tribal Lands. See, e.g., USAC Low Income disbursement tool, <http://www.usac.org/li/tools/disbursements/default.aspx> (providing an example of how at least one Lifeline-only ETC has received approximately a million in Link Up support for two months in 2011 on Tribal lands in OK without building infrastructure) (support amounts can be determined for a company such as True Wireless by typing the company name in “Study Area Name” option) (last visited Feb. 5, 2012).

intent of the enhanced Link Up program, those ETCs are building telecommunications infrastructure on Tribal lands, which have significant telecommunications deployment and connectivity challenges.<sup>690</sup> This rule change will be effective beginning with April 2012 support claims.<sup>691</sup> Given changes in how high-cost support will be directed to Tribal lands as a result of the *USF/ICC Transformation Order and FNPRM*, however, we seek further comment in the attached *FNPRM* on whether the Commission should maintain the enhanced Link Up program for Tribal lands in the future, or whether such funding should be re-purposed for other uses, such as efforts to modernize Lifeline on Tribal lands.<sup>692</sup>

#### D. Subscriber Usage of Lifeline-Supported Service

##### 1. Background

255. ETCs receive a specific amount of Lifeline support per month for each qualifying low-income consumer they serve. Some ETCs reduce the subscriber's monthly bill by the support amount and require the subscriber to pay the balance. Other ETCs, however, particularly those offering pre-paid services, do not charge for service on a monthly basis and do not have a regular billing relationship with the subscriber, or other similar relationship to track activity by the subscriber. Our current rules do not require ETCs to ensure the qualifying low-income consumer is actually using the Lifeline-supported service. As a result, some ETCs may seek and receive Lifeline support for a consumer who has abandoned the service, transferred the service to someone else, or failed to use the service at all.<sup>693</sup> This wastes Lifeline support, because the program is not actually benefiting the consumer for which it is intended. To address this situation, the Commission and some states have imposed "non-usage" procedures on some pre-paid wireless ETCs in order to eliminate payments from the Fund for enrolled Lifeline subscribers who are no longer using the service.<sup>694</sup>

<sup>690</sup> See *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12239, para. 60 (concluding that expanded Link Up should apply to costs associated with the construction of facilities needed to initiate service to qualifying individuals on Tribal lands).

<sup>691</sup> March 2012 is the last month that Lifeline-only ETCs operating on Tribal lands (*i.e.*, those ETCs who do not receive high-cost support) may seek reimbursement for enhanced Link Up support on Tribal lands.

<sup>692</sup> See section XIII.E (Tribal Lands Lifeline and Link Up Support).

<sup>693</sup> There are many reasons why a consumer may not use his or her Lifeline-supported service. For example, some subscribers may have lost or abandoned their wireless devices, may lack a readily accessible source of electricity to charge the device, or may lack consistent access to a signal. In other cases, the consumer may have given or sold the phone to another person, in violation of the ETC's terms of service.

<sup>694</sup> See, *e.g.*, *PlatinumTel Forbearance Order*, 26 FCC Rcd at 13788; *Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Wisconsin*, 9385-TI-100, Wisconsin Public Service Commission Final Decision, May 21, 2009, available at [http://psc.wi.gov/apps35/erf\\_view/viewdoc.aspx?docid=118017](http://psc.wi.gov/apps35/erf_view/viewdoc.aspx?docid=118017) (*Wisconsin Non-Usage Order*); *Application of Nexus Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia for the Limited Purpose of Offering Wireless Lifeline and Link Up Service to Qualified Households* (Dkt. No. 19664), available at <ftp://www.psc.state.ga.us/dockets/18664/121955.PDF>; *Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in Georgia for the Limited Purpose of Offering Lifeline Service to Qualified Households* (Dkt. No. 26282), available at <http://www.psc.state.ga.us/factsv2/Docket.aspx?docketNumber=26282>; Georgia Public Service Commission Order Amending ETC Designations, October 20, 2010, available at <ftp://www.psc.state.ga.us/dockets/26282/131742.pdf> (*Georgia Non-Usage Order*); *Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Kansas for the Limited Purpose of Offering Lifeline Service to Qualified Households*, Dkt. No. 09-TFWZ-945-ETC, available at <http://estar.kcc.ks.gov/estar/portal/kcc/page/docket-docs/PSC/DocketDetails.aspx?DocketId=d40c343e-be19-4913-88ec-c567d1215bb3>; Kansas State Corporation Commission Order Granting in Part and Denying in Part Amended Application of TracFone for Designation as ETC (continued....)

256. In the *NPRM*, the Commission proposed to prohibit ETCs from seeking reimbursement from the Fund for any Lifeline subscriber who has failed to use his or her service for 60 consecutive days. The *NPRM* sought comment on whether a subscriber's failure to use the service for a specific period of time may reasonably demonstrate, or serve as a proxy for, intended service discontinuation. The Commission also sought comment on whether a 60-day period of inactivity, or something shorter or longer, would be reasonable and whether a usage requirement should be limited to particular types of service or should apply to all types of service.<sup>695</sup>

## 2. Discussion

257. We find that imposing a reasonable consumer usage requirement is appropriate in certain circumstances in order to ensure that Lifeline support benefits only eligible low-income subscribers actually using the supported service.<sup>696</sup> We also amend our rules to clarify that Lifeline service is a non-transferable benefit; an eligible Lifeline subscriber may not transfer his or her phone service to anyone, not even someone who is also eligible. We further amend our rules to prevent ETCs who do not assess and collect from end users a monthly charge (pre-paid ETCs) from obtaining Lifeline support for an inactive subscriber who has failed to use his or her service in the first instance.<sup>697</sup> If a pre-paid wireless service is not initiated, the consumer will not be considered enrolled, and the pre-paid wireless ETC will not be eligible for Lifeline support until a new subscriber personally activates the service. Furthermore, prepaid ETCs will not receive Lifeline support for inactive subscribers who have not used the service for a consecutive 60-day period. These new requirements for qualifying for Lifeline support respond directly to recommendations made by the GAO in 2010, and represent an important step in addressing potential waste, fraud, and abuse in the program.<sup>698</sup> Moreover, in order to make sure consumers are fully informed about the consequences of non-usage, we require pre-paid ETCs to notify their subscribers at service initiation about the non-transferability of the phone service, its usage requirements, and the de-enrollment and deactivation that will result following non-usage in any 60-day period of time.<sup>699</sup> We also require pre-paid ETCs to update the database within one business day of de-enrolling a consumer for non-use. Furthermore, we require pre-paid ETCs to annually report USAC the number of subscribers de-enrolled for non-usage. The de-enrollment reports must be submitted with the ETC's annual recertification results, and must report the number of de-enrolled subscribers on a month-by-month basis.

258. Adopting usage requirements should reduce waste and inefficiencies in the Lifeline program by eliminating support for subscribers who are not using the service and reducing any incentives ETCs may have to continue to report line counts for subscribers that have discontinued their service. The vast majority of commenters support a 60-day subscriber usage requirement for pre-paid ETCs.<sup>700</sup> One

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(Continued from previous page)

for Limited Purpose of Offering Lifeline Service to Qualified Households, December 14, 2010, available at <http://estar.kcc.ks.gov/estar/portal/kcc/page/docket-docs/PSC/DocketDetails.aspx?DocketId=d40c343e-be19-4913-88ec-c567d1215bb3> (*Kansas Non-Usage Order*).

<sup>695</sup> See *NPRM*, 26 FCC Rcd at 2798, para. 82.

<sup>696</sup> See *Wisconsin Non-Usage Order* at 8; see also *Georgia Non-Usage Order* at 2; *Kansas Non-Usage Order* at 6.

<sup>697</sup> These restrictions do not apply to prepaid providers that do not collect some monthly amount from the customer.

<sup>698</sup> GAO recognized this general approach as one step toward improving the integrity of the Lifeline program. See 2010 GAO REPORT at 36.

<sup>699</sup> See *id.*; see also NASUCA Reply Comments at 8 (supporting sufficient notice of termination for non-usage).

<sup>700</sup> See, e.g., Cricket Comments at 5; FL PSC Comments at 12-13; COMPTTEL Comments at 13-14; MI PSC Comments at 5; MO PSC Comments at 7-8; NASUCA Reply Comments at 8; NY PSC Comments at 8-9; TracFone Reply Comments at 2-3; USTelecom Comments at v, 17-18; IN URC Comments at 5; Sprint Reply Comments at 7.

commenter argues for a significantly longer non-usage interval of 120 days to account for seasonal migrations in rural and Tribal areas and job opportunities that may require that Lifeline service be interrupted for months at a time.<sup>701</sup> While we understand that there may be unique circumstances that may disrupt some subscribers' connectivity for periods of time, the 60-day period we adopt is fiscally responsible and balances the interests of subscribers with the risks associated with potential waste in the program.<sup>702</sup> As noted above, we expect ETCs to educate their subscribers about usage requirements and the de-enrollment that will result from non-usage.

259. Existing consumer usage policies have already resulted in substantial savings for the program. TracFone, Virgin Mobile, and others have already implemented a 60-day "non-usage" policy in a number of states.<sup>703</sup> TracFone, for example, has de-enrolled 700,000 subscribers for non-usage in the last two years alone.<sup>704</sup> The Florida PSC has also instituted a 60-day non-usage requirement that has resulted in \$8.5 million in savings over six months from a single provider.<sup>705</sup> Some ETCs encourage the Commission to follow this policy and assert that by doing so savings to the program would approach \$230 million annually.<sup>706</sup> We are building on the proven success of practices developed and implemented at the state level, including in Florida, and believe that adopting a rule that will apply uniformly across the country should result in additional savings to the Fund.

260. An ETC offering pre-paid service may not seek or receive universal service support for a qualifying low-income consumer until that individual subscriber uses the supported service to either activate the service or complete an outgoing call.<sup>707</sup> We amend section 54.407 of our rules to make clear that all new Lifeline subscribers of pre-paid wireless service must personally activate the service prior to the ETC seeking reimbursement from the Fund. After service has been initiated in this manner (by initiation and/or actual use of the service by a subscriber), pre-paid ETCs will continue to receive universal service support reimbursement for each qualifying low-income subscriber who continues to use the supported service, as described below.

261. To provide clear guidance to ETCs on what is necessary to comply with this new rule, we specify the activities that establish continued usage by a consumer. An account will be considered active if during any 60-day period the authorized subscriber does at least one of the following: makes a monthly payment; purchases minutes from the ETC to add to an existing pre-paid Lifeline account; completes an outbound call; answers an incoming call from anyone other than the ETC, its representative, or agent; or affirmatively responds to a direct contact from the ETC confirming that he or she wants to continue

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<sup>701</sup> See GCI Comments at 32-33.

<sup>702</sup> See GAO Report at 35.

<sup>703</sup> See TracFone Aug. 24 *ex parte* Letter (noting that TracFone posts its non-usage policy on its Lifeline website [www.safelink.com](http://www.safelink.com), which states: "Regardless of the Service End Date displayed on your handset, if you exceed 2 months without any Usage, you will be de-enrolled from the SAFELINK Program").

<sup>704</sup> See Nexus Comments at 27; *see also* TracFone Comments at 17-18.

<sup>705</sup> See FL PSC Comments at 12-13. Other state commissions concur. *See* IRUC Comments at 5; *see also* MI PSC Comments at 5; MO PSC Comments at 7-8; OH PUC Comments at 9.

<sup>706</sup> See TracFone Oct. 17 *ex parte* Letter at page; *see also* Letter from Danielle Frappier, Counsel, Nexus Communications, Inc., WC Dkt. No. 11-42 *et al.*, at 1 (filed Oct. 25, 2011) (citing TracFone Oct. 17 *ex parte* Letter) (Nexus Oct. 25 *ex parte* Letter).

<sup>707</sup> The subscriber must activate the service, or the service must be activated in the presence of the subscriber. A third party, such as an ETC, cannot activate the service for the subscriber unless expressly authorized to do so by the subscriber. Unless and until the subscriber personally activates the Lifeline service, the pre-paid ETC may not seek or receive reimbursement from the Fund.

receiving the Lifeline supported service.<sup>708</sup> We find these actions impose an appropriately small burden on the subscriber to maintain use of the supported service and clearly establish for the ETCs the few actions they must monitor.<sup>709</sup> We decline to specify any other qualifying actions to establish usage at this time, and will evaluate whether any future modifications are necessary based on experience with the new rule.

262. We further clarify that ETCs must continue to comply with existing public safety obligations, and nothing in this Order modifies those obligations. For example, the Commission's rules require commercial mobile radio service (CMRS) providers subject to the Commission's 911 rules to transmit all wireless 911 calls, including those from non-service initialized phones, to Public Safety Answering Points (PSAPs).<sup>710</sup> We do not modify this rule, and we make clear that our 60-day usage rule applicable to pre-paid ETCs does not modify in any way the requirement that ETCs transmit a Lifeline subscriber's wireless 911 calls, regardless of subscriber inactivity. Hence, an ETC must transmit 911 calls even if the ETC is no longer providing Lifeline service to that consumer.<sup>711</sup>

263. We extend the consumer usage condition only to pre-paid services, which are those services for which subscribers do not receive monthly bills and do not have any regular billing relationship with the ETC, and decline at this time to impose this condition on other types of Lifeline supported services. A number of commenters raised concern with a usage rule being applied to post-paid ETCs,<sup>712</sup> with several pointing out that post-paid service does not present the same risk of phantom accounts that can be detected only by inactivity.<sup>713</sup> Similarly, others argue that even a minimum payment on post-paid accounts is a clear indication of the subscriber's intent to maintain the Lifeline service.<sup>714</sup> Another commenter points out that a paying subscriber who is away from their phone does not signal that the consumer does not want the service.<sup>715</sup> We conclude that subscribers of post-paid ETCs do not present the same risk of inactivity as subscribers of pre-paid services. The possibility that a wireless phone has been lost, is no longer working, or the subscriber has abandoned or improperly transferred the account is much greater for pre-paid services.<sup>716</sup> We are sensitive to the administrative burden that a 60-day usage requirement may have on post-paid services, and at this time do not extend the usage requirements to post-paid services, whether wireline or wireless.<sup>717</sup> For pre-paid service with no monthly charge, by contrast, there may be no other means beside usage patterns to track whether a consumer is

<sup>708</sup> See Sprint Comments at 10-11; see also NASUCA Reply Comments at 8 (concurring with Sprint's list of activities for determination of active use).

<sup>709</sup> We also decline to adopt CompTel's suggestion to include sending or receiving a text message in the enumerated list as text messaging is not a supported service. See COMPTTEL Comments at 13-14; see also 47 C.F.R. § 54.101(a)(1)-(9).

<sup>710</sup> See 47 C.F.R. § 20.18(b).

<sup>711</sup> See *id.*; see also NPRM, 26 FCC Rcd at 2798, para 83.

<sup>712</sup> See Alaska PUC Reply Comments at 2, 9-10; see also AT&T Reply Comments at 21-22; GCI Comments at 30; NASUCA Comments at 15; NASUCA Reply Comments at 8; NY PSC Comments at 8-9; TracFone Reply Comments at 2-3; Verizon Reply Comments at 8; YourTel Reply Comments at 2.

<sup>713</sup> See AT&T Reply Comments at 21; see also GCI Comments at 30; NASUCA Comments at 15; NASUCA Reply Comments at 8.

<sup>714</sup> See CenturyLink Comments at 9; see also GCI Comments at 3.

<sup>715</sup> See Verizon Reply Comments at 8.

<sup>716</sup> See Consumer Cellular Comments at 12 (explaining that subscribers may not be aware of the social cost of abandoning service).

<sup>717</sup> See AT&T Reply Comments at 21-22; see also GCI Comments at 30-31; NASUCA Comments at 15.

still receiving the benefit of the supported service.<sup>718</sup> Thus, the 60-day usage requirement we adopt is applicable only to subscribers of pre-paid ETCs who, because of the pre-paid contract arrangement, do not have regular contact with the ETC that would provide a reasonable opportunity to ascertain a continued desire to continue to receive Lifeline benefits.

## **E. Minimum Consumer Charges**

### **1. Background**

264. In the *2010 Recommended Decision*, the Joint Board expressed concern about Lifeline service offerings provided at no cost to the subscriber.<sup>719</sup> In particular, the Joint Board raised concerns about the connection between prepaid wireless ETCs, which do not provide a monthly bill and, in some cases, provide handsets and service at no charge to consumers, and the significant growth in the Fund.<sup>720</sup> The Joint Board recommended that the Commission consider whether all Lifeline subscribers should pay a minimum monthly rate, including eligible subscribers on Tribal lands.<sup>721</sup>

265. In the *NPRM*, the Commission sought comment on how best to prevent waste of universal service funds without creating unnecessary obstacles for low-income households to obtaining vital communications services.<sup>722</sup> The Commission noted alternatives, including a rule requiring all ETCs in all states to collect some minimum monthly amount from participating households, and sought comment on the administrative burdens for ETCs of a requirement to collect a minimum amount, such as \$1 per month, from participating consumers,<sup>723</sup> acknowledging that it may not be cost-effective to send a bill to collect such a small amount.<sup>724</sup>

### **2. Discussion**

266. At this time, we decline to adopt a rule requiring ETCs to impose a minimum consumer charge on subscribers for Lifeline services. We are concerned that requiring a minimum consumer charge could be burdensome for those low-income consumers who lack the ability to make such payments electronically or in person,<sup>725</sup> potentially undermining the program's goal of serving low-income consumers in need. We conclude that imposing a minimum charge could impose a significant burden on some classes of Lifeline consumers.<sup>726</sup> For example, making regular payments to an ETC, even when those payments are minimal, may be difficult for low-income consumers who do not have bank accounts

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<sup>718</sup> See GCI Comments at 30 (noting that for free pre-paid Lifeline wireless services in which there is no activation fee, no monthly fee, no surcharges or taxes, there is no objective means of ascertaining whether the subscriber should still be viewed as active apart from their usage patterns).

<sup>719</sup> See *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15626-27, para. 79.

<sup>720</sup> See *id.*; see also *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2782, para. 27. See, e.g., Assurance Wireless Lifeline Program, Program Description, <http://www.assurancewireless.com/Public/MorePrograms.aspx> (last visited Feb. 5, 2012); SafeLink Wireless, Lifeline/SafeLink Fact Sheet, [https://www.safelinkwireless.com/Safelink/program\\_info/benefits](https://www.safelinkwireless.com/Safelink/program_info/benefits) (last visited Feb. 5, 2012).

<sup>721</sup> See *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15626-27, para. 79.

<sup>722</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2799, para. 86.

<sup>723</sup> See *id.*

<sup>724</sup> See *id.* at para. 89.

<sup>725</sup> See Keep USF Fair Reply Comments 2 at 1; see also NAACP Reno Sparks Branch Comments at 1; TracFone Reply Comments at 6.

<sup>726</sup> See Amvensys Comments at 4; see also APRIL Comments at 1; Las Vegas Urban League Comments at 1.

and might fail credit checks.<sup>727</sup> TracFone reports that 60 percent of its Lifeline subscribers do not have checking accounts, credit cards, or debit cards, and would have no alternative other than to use money transfer services or purchase money orders to make minimum payments.<sup>728</sup> Further, the cost of a money transfer is likely to exceed the nominal \$1-\$5 monthly fee that some parties advocate, significantly raising the effective cost of Lifeline services for low-income consumers.<sup>729</sup> For example, one commenter notes that a Western Union money transfer for \$1 would cost consumers \$12.99 in fees.<sup>730</sup> We have serious concerns about the unintended costs of imposing a minimum charge.<sup>731</sup>

267. We also find that a minimum charge could potentially discourage consumers from enrolling in the program and could result in current Lifeline subscribers leaving the program.<sup>732</sup> Commenters argue that a minimum charge will drive down participation, and cite to a TracFone survey in which almost 65 percent of its responding consumers stated that they would de-enroll from the Lifeline program instead of paying a mandatory charge.<sup>733</sup> While we recognize that requiring low-income consumers to pay some minimum monthly charge would help ensure that the subscriber places some value on the service,<sup>734</sup> the possibility that the subscriber will not or cannot pay that minimal charge does not necessarily mean that the low-income consumer does not value Lifeline service.<sup>735</sup> The Lifeline program is serving the truly neediest of the population in the most dire economic circumstances and for whom even a routine charge is an excessive financial burden.<sup>736</sup>

268. While some state commissions and providers advocate for a minimum charge,<sup>737</sup> and argue that such a charge will protect against abuse because the nominal charge ensures that subscribers place some value on the service,<sup>738</sup> there is insufficient data to establish that such a federal requirement would effectively protect the program from waste, fraud, and abuse without thwarting our goal of making vital communications services available to low-income consumers. It also is unnecessary to impose a federal minimum charge requirement in light of the other significant steps we take here to reform the

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<sup>727</sup> See Letter from Cheryl Leanza, Policy Advisor, United Church of Christ, OC Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed May 18, 2011) (LCCHR May 18. *ex parte* Letter).

<sup>728</sup> See TracFone Comments at 23-24; *see also* TracFone Reply Comments at 7, n.7.

<sup>729</sup> See Open Access Connections Comments at 5; *see also* TracFone Reply Comments at 7.

<sup>730</sup> See Open Access Connections Comments at 5.

<sup>731</sup> See USTelecom Comments at 18 (discussing the cost of billing a minimum consumer charge).

<sup>732</sup> See Keep USF Fair Reply Comments 2 at 1; *see also* NAACP Reno Sparks Branch at 1; TracFone Reply Comments at 6.

<sup>733</sup> See AT&T Reply Comments at 24; *see also* TracFone Comments at 21.

<sup>734</sup> See State of Alaska Reply Comments at 9.

<sup>735</sup> See NASUCA Reply Comments at 9; *see also* NJ DRC Reply Comments at 17.

<sup>736</sup> See AT&T Reply Comments at 24; *see also* TracFone Comments at 23; TracFone Aug. 10 *ex parte* Letter at Attach. (“When you’re on a limited income you’ve gotta watch your money. . . . If I didn’t have [SafeLink] I would be more of a recluse than anything else. I just thank God and SafeLink for the freedom I have”).

<sup>737</sup> For instance, the California PUC requires a minimum monthly payment and believes it serves as a deterrent for consumers to receive more than one Lifeline benefit. *See* CA PUC Reply Comments at 4; *see also* Cricket Comments at 4-5; Cricket Reply Comments at 7; INURC Comments at 6; NE PSC at 8-9.

<sup>738</sup> For instance, GCI argues that a minimum charge establishes a billing relationship between the ETC and the subscriber and thus ensures that the ETC knows there is an actual *bona fide* customer behind an account. *See* GCI Comments at 15.

Lifeline program. We therefore choose not to implement such a requirement at this time.<sup>739</sup> A minimal charge, such as \$1 per month, might be insufficient to serve as a deterrent to those seeking to exploit the program, while a greater amount, such as \$5 per month, would potentially pose a significant barrier to participation for those in severe economic need.<sup>740</sup> While a minimum charge might reduce the number of duplicate claims,<sup>741</sup> duplicative claims can better be reduced by additional certification requirements, improved consumer education about Lifeline program rules, and the implementation of a duplicates database, in conjunction with the measures the Commission has already taken to reduce duplicative claims.<sup>742</sup> Finally, we are not persuaded at this time that charging low-income consumers a one-time fee upon service activation, rather than a minimal monthly amount, would be an appropriate measure to address waste, fraud, and abuse.<sup>743</sup> A number of commenters oppose a one-time fee as creating an unreasonable hurdle for low-income consumers for the same reasons applicable to a monthly fee.<sup>744</sup> Even a minimal one-time fee could be a significant barrier for many of the intended recipients of the program. As noted above, the concerns about waste, fraud, and abuse are sufficiently addressed by other rules adopted in this Order.<sup>745</sup> For example, identification verification and enrollment requirements, along with the subscriber usage policy adopted in this Order will help ensure that there will be a valid and qualifying subscriber behind each account and that the ETC is accountable for that subscriber's continued use of the supported service.<sup>746</sup>

269. *Application of Minimum Charge to Tribal Consumers.* The Commission's rules currently require that the basic local residential rate for Tier 4 subscribers (*i.e.*, eligible low-income households residing on Tribal lands) may not fall below \$1 per month.<sup>747</sup> We understand, however, that some carriers do not collect the \$1 from their Tribal subscribers.<sup>748</sup> While the Commission's current rules specify the minimum rate, they do not require the ETC to bill or collect such amounts.<sup>749</sup> As a result, we sought comment in the *NPRM* on whether to amend section 54.403(a)(4)(i) of the Commission's rules to require a \$1 monthly payment from each participating subscriber on Tribal Lands to their ETC, and whether this proposal would adequately balance our objective of ensuring affordable service for eligible Tribal consumers while also guarding against waste, fraud, and abuse in the Lifeline program.<sup>750</sup>

270. At this time, we decline to impose a payment requirement on Tribal Lifeline recipients, but we will monitor Lifeline subscribership on Tribal lands and revisit this issue in the future if necessary.

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<sup>739</sup> Notwithstanding the foregoing, nothing in this Order precludes states from requiring state-designated ETCs to assess and collect a minimum charge from Lifeline subscribers.

<sup>740</sup> See, e.g., CA PUC Reply Comments at 4; GCI Comments at 15.

<sup>741</sup> See Cincinnati Bell Comments at 5.

<sup>742</sup> See *supra* section VII.A. (National Lifeline Accountability Database)

<sup>743</sup> For instance, the Michigan PSC suggests that a one-time \$10 charge for Lifeline consumers who receive service without a monthly fee would help deter situations in which a Lifeline-supported service has been activated on a phone that is unused or improperly transferred to third parties. See MI PSC Comments at 5.

<sup>744</sup> See Consumer Groups Comments at 12-13; see also TracFone Reply Comments at 6.

<sup>745</sup> See *supra* section VII (Reforms to eliminate waste, fraud & abuse.)

<sup>746</sup> See section VII.D (Subscriber Usage of Lifeline-Supported Service).

<sup>747</sup> See 47 C.F.R. § 54.403(a)(4)(i).

<sup>748</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2800, para. 990.

<sup>749</sup> See 47 C.F.R. § 54.403(a)(4).

<sup>750</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2799-80, paras. 90-92.

In an effort to eliminate any confusion as to what our rules require ETCs to collect from Lifeline subscribers on Tribal lands, we eliminate section 54.403(a)(4)(i) of the Commission's rules. We note that the additional federal Lifeline support of up to \$25 per month Tribal support will be available to an ETC providing service to an eligible resident of Tribal lands regardless of whether that amount brings the rate for service below \$1 per month per qualifying low-income subscriber. However, we maintain the current requirements of section 54.403(a)(4)(ii) to require an ETC to certify to the Administrator that it will pass through the full Tribal support amount to qualifying residents of Tribal lands.<sup>751</sup> We also clarify that, under no circumstances can an ETC collect from the Fund more than the rate charged to Tribal subscribers, up to a maximum of \$34.25 for monthly Lifeline support.

## **F. Marketing & Outreach**

### **1. Background**

271. Section 214(e)(1)(B) of the Act requires ETCs to advertise the availability of services supported by universal service funds "using media of general distribution."<sup>752</sup> Over the years, the Commission has highlighted the importance of outreach to low-income consumers,<sup>753</sup> and in 2004 adopted outreach guidelines for ETCs and states to ensure that those in need of Lifeline service would be made aware of the program.<sup>754</sup> While we continue to believe in the benefits of outreach, which entails increasing public awareness of the program, we are also concerned about messages ETCs use when marketing Lifeline supported services that may mislead consumers and increase waste, fraud, and abuse. We therefore take significant steps to ensure that potential consumers receive accurate and quality information from ETCs.

272. In its *2010 Recommended Decision*, the Joint Board looked at both outreach and marketing and urged the Commission to adopt mandatory outreach requirements for all ETCs that receive low-income support from the Universal Service Fund.<sup>755</sup> In support, the Joint Board cited USAC data showing that, in 2009, only 36 percent of eligible consumers participated in Lifeline.<sup>756</sup> Based on this statistic, the Joint Board expressed concern that current outreach is ineffective or that some ETCs are neglecting low-income outreach altogether.<sup>757</sup> The Joint Board also recommended that the Commission review carrier best practices on community-based outreach,<sup>758</sup> clarify the role of the states in performing low-income outreach,<sup>759</sup> including working with ETCs to formulate methods to reach households that do not currently have telephone and/or broadband service;<sup>760</sup> and monitor ETCs' outreach efforts.<sup>761</sup> With

<sup>751</sup> 47 C.F.R. § 54.403(a)(4)(ii).

<sup>752</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>753</sup> *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12250, para 78.

<sup>754</sup> These outreach guidelines are: (1) States and carriers should utilize outreach materials and methods designed to reach households that do not currently have telephone service; (2) states and carriers should develop outreach advertising that can be read or accessed by any sizable non-English speaking populations within a carrier's service area; and (3) states and carriers should coordinate their outreach efforts with governmental agencies/Tribal governments that administer any of the relevant government assistance programs. *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd. at 8326-28, paras. 45-48.

<sup>755</sup> *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15619, para. 60.

<sup>756</sup> *See id.* at 15618-19, para. 59 n.152.

<sup>757</sup> *See id.* at 15618-19, paras. 59-60.

<sup>758</sup> *See id.* at 15621, para. 64.

<sup>759</sup> *See id.* at 15622, para. 67.

<sup>760</sup> *See id.* at 15622, para. 68.

respect to marketing, the Joint Board encouraged the Commission to provide ETCs with the flexibility to market their service offerings to eligible consumers in accordance with their respective business models, and recommended that the Commission seek comment on whether ETCs should be required to submit a marketing plan to the state or Commission describing outreach efforts.<sup>762</sup> In accordance with the Joint Board's recommendation, the Commission sought comment on effective outreach methods to low-income subscribers and inquired whether additional outreach requirements were necessary.<sup>763</sup> The Commission also sought comment on whether to impose marketing guidelines on ETCs to ensure that consumers fully understand the benefit being offered.<sup>764</sup>

273. Some ETCs market their Lifeline-supported service offerings under trade names. For example, TracFone offers Lifeline-supported service under the name SafeLink Wireless, while Virgin Mobile's competing offering is called Assurance Wireless. A number of ETCs also spend significant amounts of money marketing their Lifeline-supported services to low-income consumers. For example, TracFone states it spent \$41 million in advertising during 2010 to promote SafeLink Wireless.<sup>765</sup> Virgin Mobile, now owned by Sprint, notes that it has spent tens of millions of dollars promoting its Assurance Wireless prepaid Lifeline offering through television, radio, and newspaper advertising; direct mail campaigns; and partnerships with organizations and agencies that serve Lifeline-eligible consumers.<sup>766</sup> The Commission sought comment in the *NPRM* on whether to require all ETCs to include standard language in their marketing materials.<sup>767</sup>

## 2. Discussion

274. While we continue to support increased public awareness of the program, we are concerned about the messages ETCs use when marketing Lifeline-supported services to potential subscribers. Consumers may not understand that these products are Lifeline-supported offerings entailing a government benefit, that they must be eligible in order to receive the benefit, or that they may receive no more than one benefit at a time from the program.<sup>768</sup> We therefore take significant steps to increase the quality of information ETCs must provide to potential consumers.

275. *Marketing and Uniform Language To Describe Lifeline.* To increase accountability within the program and to target support where it is needed most, we require that ETCs providing Lifeline-supported services make specific disclosures in all marketing materials related to the supported service. We adopt rules requiring ETCs to explain in clear, easily understood language in all such marketing materials that the offering is a Lifeline-supported service; that only eligible consumers may enroll in the program; what documentation is necessary for enrollment; and that the program is limited to one benefit per household, consisting of either wireline or wireless service. We also require ETCs to explain that Lifeline is a government benefit program, and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from

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<sup>761</sup> See *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15623, para. 70.

<sup>762</sup> See *id.* at 15620-21, paras. 62-63.

<sup>763</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2841, para. 230.

<sup>764</sup> *Id.*

<sup>765</sup> See TracFone Comments at 41.

<sup>766</sup> See Sprint Comments at 16.

<sup>767</sup> See *NPRM*, 26 FCC Rcd at 2842-43, para. 237.

<sup>768</sup> See *2011 Duplicative Program Payments Order*.

the program.<sup>769</sup> For purposes of this rule, the term “marketing materials” includes materials in all media, including but not limited to print, audio, video, Internet (including email, web, and social networking media), and outdoor signage, that describe the Lifeline-supported service offering, including application and certification forms. These disclosures will help ensure that only eligible consumers enroll in the program and that those consumers are fully informed of the limitations of the program, so as to prevent duplicative or otherwise ineligible service as well as other forms of waste, fraud, and abuse.<sup>770</sup> Additionally, we require every ETC to disclose the company name under which it does business and the details of its Lifeline service offerings in any Lifeline-related marketing and advertising.<sup>771</sup>

276. Some ETCs have already revised their marketing materials to make some of these disclosures and others have committed to doing so.<sup>772</sup> We require all ETCs to implement these disclosures six months from the effective date of this Order. We direct USAC to undertake ongoing reviews of ETCs’ marketing materials sufficient to ensure compliance with program rules. We leave the scope and frequency of those reviews to USAC’s discretion, but direct the Wireline Competition Bureau to oversee USAC’s efforts to review the ETCs’ materials.

277. ETCs should have the flexibility to market their Lifeline-supported services in creative and innovative ways. Therefore, we do not mandate a uniform Lifeline application or provide model language for ETCs to include in marketing materials.<sup>773</sup> The rules summarized above provide sufficient information that ETCs must convey to potential subscribers about the Lifeline service. Additionally, we do not believe it is necessary to adopt a rule, as some suggest, that prepaid wireless providers explain how their Lifeline service differs from other forms of Lifeline service. There is no benefit to imposing this burden on only one segment of the Lifeline service provider community particularly considering the disclosures we require above.<sup>774</sup>

278. *Outreach Guidelines.* Since 2004, the Commission has urged states and carriers to coordinate their outreach efforts with governmental agencies that administer the relevant government assistance programs.<sup>775</sup> The Commission’s 2004 outreach guidelines make clear that states play an important role in working with ETCs to advertise the availability of Lifeline-supported services.<sup>776</sup> Although the Joint Board recommended that the Commission adopt mandatory outreach requirements for all ETCs that receive low-income support from the Fund,<sup>777</sup> the current outreach guidelines, as established in the *2004 Lifeline and Link Up Order*, provide a broadly applicable set of goals without prescribing any specific outreach methods.<sup>778</sup> Many states already perform a variety of outreach activities designed to inform consumers about the Lifeline program, consistent with our broad guidelines. For example, the

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<sup>769</sup> See 47 C.F.R. § 54.8, permitting the Commission to suspend and debar individuals from activities associated with or related to the low-income program.

<sup>770</sup> See, e.g., CenturyLink Comments at iv, 23; CinciBell Comments at 4; Consumer Group Comments at 41; MI PSC Comments at 10; Missouri Commission Comments at 19; OH PUC Comments at 21; OR PUC Comments at 2; Sprint Comments at 14-15; YourTel Reply Comments at 2.

<sup>771</sup> Consumer Groups Reply Comments 2 at 9; MO PSC Comments at 19; YourTel Reply Comments at 2.

<sup>772</sup> See, e.g., *i-Wireless Forbearance Order*, 26 FCC Rcd 14508 at 14510.

<sup>773</sup> See CenturyLink Comments at 23.

<sup>774</sup> See OH PUC Comments at 21.

<sup>775</sup> See *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd. at 8328, para 48.

<sup>776</sup> See *id.* at 8326-8327, para. 45-46.

<sup>777</sup> *2010 Joint Board Recommended Decision* at 15619, para. 60.

<sup>778</sup> *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd. at 8326-28, paras. 45-48.

Regulatory Commission of Alaska and the Massachusetts Department of Telecommunications and Cable provide information on Lifeline availability to other state agencies involved with assistance to low-income consumers.<sup>779</sup>

279. We encourage states to provide comparative information to low-income consumers requiring Lifeline service plans available in their states, such as the rates charged, number of minutes included in the Lifeline plan, and what additional charges, if any, are assessed for toll calls or additional minutes of use.

280. Given the wide variety of outreach engaged in by ETCs and states, we do not, at this time, amend our outreach guidelines. However, the Commission received many insightful comments regarding how to improve outreach.<sup>780</sup> Two commenters suggested the development of best practices for the purposes of outreach, including increased public-private partnerships.<sup>781</sup> Another commenter recommended methods for state public service commissions to work with other state agencies for purposes of coordinated enrollment; this commenter also suggested a variety of possible outreach requirements of state public service commissions and ETCs.<sup>782</sup> Many of these recommendations dovetail

<sup>779</sup> See Alaska Commission Reply Comments at 15; MA DTC Comments at 10.

<sup>780</sup> See, e.g., AARP Comments at 8-10; Consumer Groups Comments at 36, 39-41; DC PSC Comments at 7; FL PSC Comments at 27-28; MA DTC Comments at 10.

<sup>781</sup> See Consumer Groups Comments at 35; FL PSC Comments at 26. Consumer Groups also provided a series of specific outreach recommendations, including: include a reference about discounted telephone programs on the home page of the website of each ETC (or state agency), with comprehensive information about the program only one click away either on the carrier's website or a third party website; provide state-specific and program-specific material about Lifeline, translated into languages other than English and in formats accessible to those with disabilities; inform new customers about the discounted telephone program either verbally or through a separate mailing at the time they sign up for telephone service, or at the latest within 14 days from the customer's service initiation; provide additional annual notice to all subscribers of the availability of the program, its basic eligibility requirements, and a reference to the website or to a phone number to call for more information; and provide additional notice to customers who are at risk of service termination due to non-payment. See Consumer Groups Comments at 36. FL PSC recommended the Commission expand its Lifeline Across America Working Group to include wireline and wireless representatives to determine which methods of outreach work best with each of the underserved populations making up the body of Lifeline subscribers. See FL PSC Comments at 26-28. FL PSC also recommended public-private partnerships, one-on-one outreach, train-the-trainer programs, and interagency cooperation at the state level as useful at expanding outreach. See *id.*

<sup>782</sup> See AARP Comments 8-10. AARP recommended the Commission require state public service commissions to conduct statewide outreach and education programs designed to raise awareness about the Lifeline and Link Up program, with a goal of 100 percent enrollment of eligible subscribers. AARP further recommended that any statewide education program should be developed and implemented with the advice and assistance of local community-based organizations with firsthand experience with the means to effectively communicate with their respective members and communities. Additionally, AARP recommended that:

Outreach efforts should be undertaken by or on behalf of an ETC or a consortium of ETCs. Accordingly, any such ETC, or ETC-sponsored program, should be subject to the approval of the state commission and should be coordinated with the statewide education and outreach program. At a minimum as part of an ETC's outreach efforts, the ETC should be required to solicit eligibility for Lifeline and Link Up from each residential customer at the time that the customer requests installation of service, at a contact with the customer prior to a pending termination of service for nonpayment, and at a contact with a customer who seeks to negotiate a deferred payment plan. In addition, the ETC should be required to notify all residential customers about the Lifeline and Link Up program and how to participate in the program at least once per year. The incremental costs of the statewide consumer education and outreach program should be eligible for recovery in rates in the same manner as state-funded Lifeline and Link Up benefits.

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with outreach guidelines suggested in 2006 by the Lifeline Across America Working Group (LAAWG).<sup>783</sup> Given that the LAAWG has already provided a compendium of outreach guidelines that remain as relevant today as when they were published five years ago, we do not find further Commission action with regards to outreach to be necessary at this time, except as noted below with respect to consumer education.

281. *Consumer Education.* After the Commission adopted the *2011 Duplicative Program Payments Order*, the Commission's Bureau and Consumer and Governmental Affairs Bureau (Consumer Bureau), in concert with USAC, ETCs, states, and consumer groups, engaged in an outreach campaign designed to educate consumers about the changes to the Lifeline program rules. USAC sent a letter to subscribers explaining that they are not permitted to receive more than one Lifeline subsidy and had to select a single provider, which was followed by a postcard and telephone call to those subscribers who did not respond. The Commission also coordinated with consumer groups and states to run Public Service Announcements (PSAs) in states participating in the duplicate resolution process, to create posters for distribution to social service offices in such states, and to create consumer tip sheets to be circulated by the Commission, states, and consumer service groups. USAC received a high response rate from low-income consumers who were contacted as part of this outreach process.

282. In light of the success of these recent outreach efforts, we direct the Commission's Wireline Competition Bureau and Consumer and Governmental Affairs Bureau to conduct an outreach campaign to educate low-income consumers about the Lifeline program rules adopted in this Order.<sup>784</sup> The Bureaus shall coordinate, as appropriate, with USAC, consumer groups, and states to ensure that consumers are sufficiently apprised of the new Lifeline program rules and any actions they may be required to take in the future to obtain Lifeline service.

## G. Audits and Enforcement

### 1. Background

283. The Commission is committed to ensuring that there is a focused and effective system for identifying and deterring program abuse. Our existing rules authorize USAC to conduct audits of Lifeline recipients.<sup>785</sup> As directed by the Commission's Office of Managing Director,<sup>786</sup> USAC currently has two

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AARP Comments at 10.

<sup>783</sup> See WORKING GROUP REPORT; Consumer Groups Comments at 35; FL PSC Comments at 26-28.

<sup>784</sup> See NCLC Jan. 24 *ex parte* Letter, at Attach.

<sup>785</sup> See 47 C.F.R. § 54.707. The 2008 FCC-USAC Memorandum of Understanding requires USAC to conduct audits, including audits of Fund beneficiaries, in accordance with generally accepted government auditing standards (GAGAS), as required by section 54.702(n) of our rules. See Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company at 7 (Sept. 9, 2008) (2008 FCC-USAC MOU), available at <http://www.fcc.gov/omd/usac-mou.pdf>; see also Letter from Dana R. Shaffer, Deputy Managing Director, Federal Communications Commission to Scott Barash, Acting CEO, Universal Service Administrative Company, October 13, 2010, available at <http://www.fcc.gov/omd/usac-letters/2010/101310CPA-USAC.pdf>; 47 C.F.R. § 54.702(n).

<sup>786</sup> See Letter from Steven Van Roekel, Managing Director, Federal Communications Commission to Scott Barash, Acting CEO, Universal Service Administrative Company, February 12, 2010, available at <http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf>. (FCC IPIA Letter); see also OMB Circular A-123, available at [http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a123/a123\\_rev.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a123/a123_rev.pdf). In 2010, the Commission provided additional direction to USAC regarding independent CPA firms and follow-up on audit findings. See Letter from Steven Van Roekel, Managing Director, Federal Communications Commission to Scott Barash, Acting CEO, Universal Service Administrative Company, January 25, 2011, available at (continued....)

programs in place to safeguard the Universal Service Fund – the Beneficiary/Contributor Compliance Audit Program (BCAP)<sup>787</sup> and the Payment Quality Assurance (PQA) program.<sup>788</sup> USAC has completed its first round of PQA assessments and initiated a number of Lifeline and Link Up BCAP compliance audits in 2011.

284. In the *NPRM*, the Commission sought comment on ways to improve the current low-income audit program in light of growing concerns with waste, fraud, and abuse in the program, including duplicative claims and ineligible consumers.<sup>789</sup> The Commission proposed that all new ETCs be audited after the first year of providing Lifeline-supported service.<sup>790</sup> The Commission also proposed that negative audit findings above a specified dollar threshold, or affecting at least a specific percentage of an ETC's Lifeline consumers, trigger shorter intervals between audits, an expanded audit for the company at issue, and/or an additional audit the following year in the relevant study area.<sup>791</sup> The *NPRM* also sought comment on appropriate Commission responses to multiple audit findings of non-compliance, such as precluding an ETC with significant non-compliance from receiving some or all Lifeline support.<sup>792</sup> Lastly, the Commission sought comment on whether to require some or all ETCs in the program to engage an independent third-party firm to assess the ETCs' compliance with some or all Commission

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[http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0210/DA-11-128A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0210/DA-11-128A1.pdf); see also Letter from Steven Van Roekel, Managing Director, Federal Communications Commission to Scott Barash, Acting CEO, Universal Service Administrative Company (filed Oct. 13, 2010), available at <http://www.fcc.gov/omd/usac-letters/2010/101310CPA-USAC.pdf>.

<sup>787</sup> The Compliance Audit program, BCAP, was developed with the following objectives: (1) cover all four programs and contributors; (2) tailor audit type and scope to program risk elements, size of disbursement, audit timing and other specific factors; (3) keep costs reasonable in relation to overall program disbursements, amount disbursed to beneficiary being audited, and USF administrative costs; (4) spread audits throughout the year; and (5) retain capacity and capability for targeted and risk-based audits. See FCC IPIA Letter at 2, 4. To assist program participants, USAC has information about BCAP available on its website. See USAC, Understanding Audits, <http://www.usac.org/li/about/understanding-audits.aspx> (last visited Feb. 5, 2012).

<sup>788</sup> The Improper Payments Information Act (IPIA) assessment program (PQA) was developed with the following objectives: (1) separately cover all four USF programs; (2) measure the accuracy of the Administrator's payments to program applicants; (3) evaluate the eligibility of program applicants who have received payments; (4) include high-level testing of information obtained from program participants; and (5) tailor scope of procedures to ensure reasonable cost while meeting IPIA requirements for sample size and precision. Unlike BCAP, the PQA program does not involve audits. See USAC, Payment Quality Assurance (PQA) Program FAQs, available at <http://www.usac.org/fund-administration/about/program-integrity/pqa-faqs.aspx>. Rather, it provides for reviews specifically designed to assess estimated rates of improper payments, thereby supporting IPIA requirements. The PQA reviews measure the accuracy of USAC payments to applicants, evaluate the eligibility of program applicants, and involve high level testing of information obtained from program participants. USAC tailors the scope of procedures to ensure reasonable costs while still meeting IPIA requirements. To assist program participants, USAC has information about the PQA program available on its website. See USAC, Payment Quality Assurance (PQA) Program, <http://www.usac.org/fund-administration/about/program-integrity/pqa-program.aspx> (last visited Feb. 5, 2012).

<sup>789</sup> The 2010 GAO REPORT also expressed concern about the increased risk of waste, fraud, and abuse due to consumers simultaneously receiving Lifeline discounts for both a wireline and wireless phone. See 2010 GAO REPORT at 35.

<sup>790</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2802, para. 98.

<sup>791</sup> See *id.* at 2802, para. 99.

<sup>792</sup> See *id.* at 2082, paras. 100-01.

low-income requirements.<sup>793</sup>

## 2. Discussion

285. The Commission will continue to use the audit process to ensure there is a focused and effective system for identifying and deterring program abuse.<sup>794</sup> The development of a uniform audit program, USAC audits of ETCs in their first year of providing Lifeline service, the requirement for biennial independent audits for larger ETCs, and stepped-up enforcement will strengthen our existing low-income oversight process to reduce improper payments and mitigate the potential for program violations.

286. *Uniform Audit Program.* USAC must assess compliance with the program's requirements, including the new requirements established in this Order for recipients of low-income support. We therefore direct USAC to review and revise the BCAP and PQA programs to take into account the changes adopted in this Order. We further direct USAC to submit a report to the Wireline Competition Bureau (Bureau) and Office of Managing Director (OMD) within 60 days of the effective date of this Order proposing changes to the BCAP and PQA programs consistent with this Order. Program audits should be conducted against a uniform set of auditing guidelines. The Bureau and OMD will work with USAC as necessary to ensure that there is consistency in these compliance standards.<sup>795</sup>

287. USAC's oversight program to assess compliance should be designed to test the effectiveness of Lifeline ETCs' internal controls and ensure that management is reporting accurately to USAC, the Commission, and state regulators, as appropriate. The oversight program should also be designed to test some of the underlying data that forms the basis for management's certification of compliance with various requirements including, but not limited to, verifying eligibility at enrollment and thereafter, verifying that only one discount per household is provided, verifying that subscribers are not receiving duplicate discounts, and verifying that subscribers are de-enrolled for non-use of the service. This list is not intended to be exhaustive, but rather illustrative of the requirements that USAC must take into account in determining what modifications to make to its existing oversight activities. We also direct USAC to test the accuracy of carrier certifications made pursuant to our new reporting requirements, the accuracy of the data included in the carriers' Form 497, and the data input into the database by carriers.

288. *First Year Audit Requirement.* We conclude there is a need for heightened oversight of newly designated ETCs that have not previously provided Lifeline services anywhere in the country to

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<sup>793</sup> See *id.* at 2803, para. 102.

<sup>794</sup> USAC's audit program historically has consisted of audits by USAC's internal audit division staff as well as audits by independent auditors under contract with USAC. In addition, in the past, the Commission's OIG has conducted audits of USF program beneficiaries. See FEDERAL COMMUNICATIONS COMMISSION OFFICE OF INSPECTOR GENERAL, SEMI-ANNUAL REPORT TO CONGRESS, OCTOBER 1, 2009 THROUGH MARCH 31, 2010 AT 17-20, available at [http://transition.fcc.gov/oig/SAR\\_March\\_2010\\_050710.pdf](http://transition.fcc.gov/oig/SAR_March_2010_050710.pdf). In a February 12, 2010, letter to USAC, OMD directed USAC to separate its two audit objectives into distinct programs – one focused on Improper Payments Information Act ("IPIA") assessment and the second on auditing compliance with all four USF programs. See Improper Payments Information Act of 2002, Pub.L.No. 107-300, 116 Stat. 2350 (2002). In addition to providing guidance on the implementation of the IPIA assessment program and compliance audit program, the letter informed USAC that OMD would assume responsibility for oversight of USAC's implementation of both programs. See Letter from Steven Van Roekel, Managing Director, Federal Communications Commission to Scott Barash, Acting CEO, Universal Service Administrative Company (filed Feb. 12, 2010), available at <http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf>.

<sup>795</sup> Several commenters noted that the current audit process could be improved by increased clarity of the standards against which the auditors are auditing carrier behavior and increased consistency of these compliance standards. See Conexions Comments at 7-8; see also YourTel Comments at 8.