subsidy level, the amount of time the subsidy is made available, and whether different approaches are warranted based on consumer demographics or geography.[940] Proposals are not, however, limited to examining these factors, and may seek funding for one or more models of providing broadband service to low-income consumers, including variations on technology used and program design (*e.g.*, utilizing different techniques to combine discounts on service with efforts to address other barriers to broadband adoption such as digital literacy).[941] In addition, in light of the extremely low broadband penetration rate on Tribal lands, we direct the Bureau, in coordination with the Office of Native Affairs and Policy, to select at least one pilot project directed at providing support on Tribal lands.[942] If the Bureau determines that a single or small number of proposals provide the best opportunity to gather data consistent with the guidelines set forth in this Order, the Bureau should select only that set of proposals for funding.

351. *Digital Literacy*. The National Broadband Plan and subsequent research have identified the lack of digital literacy among low-income Americans as a major barrier to broadband adoption.[943] Being able to use a computer or other Internet-enabled device to retrieve and interpret information or to communicate and collaborate with other users, and even such fundamental steps as navigating a website and creating a username and password, may pose significant difficulties for many consumers. Therefore the *Lifeline and Link Up NPRM* proposed that pilot projects be prepared to experiment with different approaches to overcoming digital literacy barriers to broadband adoption.[944] In the *FNPRM* accompanying this Order, we propose to provide support for digital literacy training and seek comment on dedicating a certain amount of annual funding for training at libraries and schools that do not currently offer this service in order to help these institutions develop ways to reduce the digital literacy skills gap and to assist Americans who have not yet adopted broadband technology gain the necessary digital skills.[945]

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[940] One Economy recommended three possible pilot designs: one involving a 4G public-private partnership focused on a selected metropolitan area; one involving a reverse auction pilot; and one providing shared wireless service in multi-dwelling units identified by HUD as being affordable housing. *See* One Economy Comments at 22-25. We welcome projects aimed at studying adoption among varied groups of low-income consumers.

[941] One commenter suggested that Pilot Program funds be directed at low-income consumers in Puerto Rico. *See* Letter of Colleen Newman, Strategic Policy Advisor, Puerto Rico Federal Affairs Administration, to Marlene H. Dortch, Secretary, Federal Communications Commission, (filed Nov. 17, 2011). Still another commenter suggested that Pilot Program funds be directed at low-income consumers who are blind or visually impaired. *See* Cintex PN Reply Comments at 1-2. There was general agreement that any broadband pilot program should be geographically diverse, and technology-neutral, and should be flexible enough to allow different pilots to test different elements of a pilot program. *See* Benton Comments at 6; *see also* AT&T Comments at 22-23. As one commenter noted, "[p]ilot programs, by definition, are expected to be experimental and exploratory. As the Commission seeks to determine what the best path forward is, it must assess the widest range of models, strategies, and networks, and other components." NAF Comments at 9.

[942] Some commenters suggested that some Pilot Program funds be directed at low-income consumers residing on Tribal lands. *See, e.g.*, SBI Comments at 6-7; GRTI PN Comments at 7; Standing Rock PN Comments at 10-11.

[943] *See* EXPLORING THE DIGITAL NATION (noting that level of education is a strong predictor of broadband use among adults); SOCIAL SCIENCE RESEARCH COUNCIL, BROADBAND ADOPTION IN LOW-INCOME COMMUNITIES, *available at* http://webarchive.ssrc.org/pdfs/Broadband_Adoption_v1.1.pdf (Mar. 2010).

[944] *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2858, para. 284.

[945] *See infra* section XIII.B (Advancing Broadband Availability for Low-Income Americans through Digital Literacy Training).

352. *Partnerships.* The Commission sought comment on whether to require funded ETCs to partner with entities approved by the NTIA's State Broadband Data & Development (SBDD) Program.[946] We direct the Bureau to give preference in the selection process to ETCs that partner with non-ETCs in designing and implementing proposals that include components involving digital literacy and equipment.[947] In particular, we believe ETCs should consider partnering with successful BTOP/BIP grantees, those involved in "Connect to Compete," existing library programs or other entities currently providing broadband adoption and education services to low-income consumers in order to develop pilot projects that integrate federal universal service support into existing or planned adoption efforts.[948]

353. We recognize the importance of digital literacy in encouraging broadband adoption and in providing the tools consumers need to fully explore and exploit the benefit of having broadband services.[949] Indeed, as discussed above, the "Connect to Compete" program recently announced includes a substantial digital literacy component.[950] Therefore, we strongly encourage applicants for Pilot Program funding to explore cost-effective ways to incorporate existing digital literacy programs into their pilot programs and to include in their proposals a plan for overcoming digital literacy barriers.[951]

2. Pilot Project Data Gathering and Evaluation

354. During the Pilot Program and at its conclusion, the Bureau will hold workshops discussing the interim and final results of the various projects as well as the Pilot Program as a whole, and provide an opportunity for participants to share information with the Commission, other policy makers, and stakeholders about how best to use limited universal service funds to increase low-income consumers' adoption of broadband services. Funded projects must commit to participate in those

[946] *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2860-61, para 284. The SBDD program, led by state entities or non-profit organizations working at their direction, facilitates the integration of broadband and information technology into state and local economies. The program awarded a total of $293 million to 56 grantees or their designees and the grantees use this funding to support the use of broadband technology. Among other objectives, these state-created projects use the grants to research and investigate barriers to broadband adoption and created state and local task forces to expand broadband access and adoption. *See id.*at para. 295.

[947] We received a wealth of comments discussing the importance of partnerships-- public-private partnerships, private-non-profit partnerships; and federal-state partnerships – in finding ways to speed broadband adoption among low-income consumers and we received comments from entities, including state and local governments, nonprofit groups, academics, and others, that are not ETCs describing their own work or work of third parties that could add substantial value to ETC-led pilot projects. *See, e.g.*,Benton/NAF PN Comments at 5-6; Cox PN Comments at 9-10; Connected Living PN Comments at 1-2; LISTA PN Comments at 1-2.

[948] The Commission will plan to publicly recognize those multi-stakeholder partnerships, and their members, that successfully integrate federal universal service support with digital literacy programs to increase broadband adoption.

[949] A number of commenters also stressed that digital literacy is a significant barrier to broadband adoption and stressed the need to include digital literacy in pilot projects. *See, e.g.* Connected Living PN Comments at 2; Cox PN Comments at 6-7; Joint Center PN Reply Comments at 7; USTelecom Comments at 25. There was disagreement among the commenters, however, about whether the Commission can and should use USF funds to pay for digital literacy training. *See* GRTI PN Comments at 4-5; *see also* Cox PN Comments at 4-7.

[950] *See generally* http://connect2compete.org/; *see also* FCC & "Connect to Compete" Tackle Broadband Adoption Challenge Through Expanded Digital Literacy Training, Fact Sheet (Oct. 12, 2011) (Connect to Compete Digital Literacy Fact Sheet), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1012/DOC-310346A1.pdf.

[951] *See, e.g.*, One Economy Comments at 9 (recognizing the benefits of partnerships between private and nonprofit sectors); *see* Connected Living PN Comments (providing examples of how digital literacy programs increase adoption for seniors); MMTC PN Comments at 4 (recognizing digital literacy as barrier to broadband adoption).

workshops and to respond to informal inquiries from the Bureau about the data gathered and the information generated by the Pilot Program.

X. MANAGING THE SIZE OF THE LOW-INCOME FUND

355. Today's Order takes a number of substantial and unprecedented steps to eliminate waste, fraud, and abuse from Lifeline, including establishing a database to eliminate duplicative support, requiring electronic or documentary evidence of program-based eligibility, and eliminating support for services such as toll limitation and Link Up that are no longer the best uses of funds given current product offerings available in the marketplace. These reforms build on significant action the Commission has already taken to curb waste in the program. In June, the Commission directed USAC to undertake a series of in-depth data validations to identify duplicative support. Through the IDV process, now completed in 12 states, USAC examined 3.6 million customer records and directed ETCs to de-enroll over 292,000 customers receiving duplicative support, saving the Fund approximately $35 million annually.[952] As explained above, the IDV process will continue and expand to additional states until the duplicates database is online, resulting in additional savings.[953] In addition, the Commission is actively investigating allegations that some providers have signed up subscribers who may not be eligible for Lifeline.[954]

356. The Joint Board recommended that the Commission develop a full record on the recent growth in low-income program support.[955] In the *NPRM*, the Commission sought comment generally on how to balance the principles of deterring waste, fraud, and abuse with the need to enable households in economic distress to access essential communications services.[956] Specifically, the Commission sought comment on whether and how it should constrain the growth of the Fund.[957]

357. As the reforms adopted in this Order take effect, they will substantially constrain program growth. Program disbursements have reached a $2.1 billion annual rate.[958] We project that, absent the reforms adopted in this Order, the program would disburse $3.3 billion in 2014, a 57 percent increase over three years.[959] With today's reforms, we project program growth will start declining in 2012 and

[952] *See USAC 2011 IDV Process Letter.*

[953] *See supra* para. 211.

[954] *See Lifeline Enforcement Advisory*, DA 11-1971.

[955] *See 2010 Joint Board Recommended Decision*, 25 FCC Rcd 15598, at 15630, para. 91.

[956] As the United States Court of Appeals for the Fifth Circuit held in *Alenco*, "[t]he agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service." *Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 620–21 (5th Cir. 2000) (*Alenco*). The *Alenco* court also found that "excessive funding may itself violate the sufficiency requirements." *Id.* at 620. The United States Court of Appeals for the Tenth Circuit has stated that "excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in [section] 254(b)(1)." *Qwest Comm'ns Int'l Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005).

[957] *NPRM* at 2817-18, paras. 143-45.

[958] $2.1 billion is equal to approximately four times the average quarterly run rate of disbursements for the fourth quarter of calendar year 2011 as calculated by USAC ($502 million) and staff's projections for disbursements for the first quarter of calendar year 2012 ($547 million). *See USAC Jan. 30 Support Letter*; n. 959.

[959] This estimate is arrived at by starting with a baseline estimate of program disbursements for 2012 in the absence of this Order's reforms. Based on growth trends in disbursements in 2011, during which the quarter over quarter growth in disbursements declined from 13 percent (Q1-Q2) to 11 percent (Q2-Q3) to 9 percent (Q3-Q4). Staff conservatively assumed that disbursements would grow nine percent from the fourth quarter of 2011 to the first quarter of 2012, and seven percent quarterly for the rest of 2012. *See* USAC Q1 2012 Filing, Appendices at LI04 (continued….)

turn negative in 2013, reducing Lifeline disbursements so that by 2014 the program will be at or below its current size of approximately $2.1 billion annually.[960] The reforms we adopt in this Order will save up to

(Continued from previous page)
(Quarterly Low-Income Disbursement Amounts by Company (3Q 2011), *available at* http://www.usac.org/about/governance/fcc-filings/2012/Q1/LI04-Quarterly%20Low%20Income%20Support%20Disbursement%20Amounts%20by%20Company-%203Q2011.xlsx; USAC Q4 2011 Filing, Appendices at LI04 (Quarterly Low-Income Disbursement Amounts by Company (2Q 2011) *available at* http://www.usac.org/about/governance/fcc-filings/2011/Q4/LI04%20-%20Quarterly%20Low%20Income%20Support%20Disbursement%20Amounts%20by%20Company%20-%202Q2011.xlsx; *USAC Jan. 30 Support Letter* (providing actual 2011 Q4 disbursements). Based on these assumptions, staff estimated disbursements would reach $547 million in Q1 2012 (a nine percent increase from the $502 million in actual support disbursed in Q4 2011) and $2.4 billion by the end of 2012. $2.4 billion represents approximately 18.5 million subscriptions, of which approximately 5.3 million would represent either duplicate subscriptions or ineligible subscribers. *See supra* para 102 and accompanying footnotes (explaining calculation of ineligible consumers); *Jan. 10 IDV Letter* (describing the extent to which individuals and households are receiving duplicative support). Based on the Current Population Survey) for the number of consumers receiving one of the benefits that qualify consumers for Lifeline, staff estimated that there are approximately 32.6 million eligible subscribers, suggesting that, not counting ineligibles and duplicates, approximately 13.2 million subscriptions in 2012 would constitute a take rate for Lifeline of approximately 41 percent. *See* UNITED STATES CENSUS BUREAU, CURRENT POPULATION SURVEY, CPS March Supplement, *available at* http://www.bls.census.gov/cps_ftp.html#cpsmarch.

For 2013 and 2014, staff used additional data to project from the 2012 baseline an estimated fund size in the absence of reform of approximately $2.8 billion in 2013, and $3.3 billion in 2014. To derive these estimates, staff assumed that competition, marketing, and expansion of operators offering prepaid wireless Lifeline service would cause the subscriber take rate (not counting duplicates and ineligibles) to increase from 41 percent in 2012 to 46 percent and 51 percent in 2013 and 2014, respectively. In addition, staff made the conservative assumption that from 2013-2014, absent reforms, the share of ineligible subscribers would remain at 15 percent (as was the case in 2012) and the duplicate rate would increase to 19 percent in 2013 and 22 percent in 2014, due to several factors, including the continued use of self-certification for program-based eligibility and the lack of a database for preventing duplicates. Furthermore, staff estimated that the eligible population for Lifeline would stay roughly constant at 32.6 million from 2012 to 2014, reflecting the combined effect of an improving economy and a growing U.S. population. Staff's estimates of the eligible population are based on (1) the Congressional Budget Office's projection that the unemployment rate will decline from 9.1 percent in 2011 to 8.3 percent in 2014, from which staff estimated that the poverty rate would decline 3 percent from 2011 to 2014; and (2) Census estimates of past household growth nationwide from which staff projected continued household growth of 1.1 percent annually. *See CBO*, THE BUDGET AND ECONOMIC OUTLOOK, AN UPDATE at 73 (Aug. 2011), *available at* http://www.cbo.gov/ftpdocs/123xx/doc12316/08-24-BudgetEconUpdate.pdf); CENSUS, CURRENT POPULATION REPORTS, PROJECTIONS OF THE NUMBER OF HOUSEHOLDS AND FAMILIES IN THE UNITED STATES: FROM 1995 TO 2010 at 7 (1996) *available at* http://www.census.gov/prod/1/pop/p25-1129.pdf

[960] Staff estimated the impact of the reforms as follows: (1) in 2012, reforms are projected to eliminate 10 percent of total duplicate and ineligible consumers, and by the end of 2013, nearly all duplicate and ineligible consumers will be removed (we expect that the savings will accelerate as the reforms are implemented over the next three years); (2) the combined effect of requiring electronic or documentary evidence of initial eligibility along with annual recertification for all subscribers is expected to result in the subscriber take rate (not counting duplicates or ineligibles) increasing from 41 percent in 2012 to 43 percent in 2013 and 45 percent in 2014; (3) Link Up support is eliminated for all subscribers except Tier-4 subscribers initiating service with an ETC that also receives high-cost funding; and (4) $25 million is budgeted for the broadband pilot program from Q1 2012 to Q3 2013. Combining the impacts of all these reforms, staff estimated the size of the Lifeline fund as approximately $2.1 billion in 2014.

an estimated $2 billion over the next three years.[961]

358. As part of today's comprehensive reform to eliminate waste, fraud, and abuse, we adopt a savings target of $200 million for 2012–that is, we expect to realize $200 million in savings in 2012 versus the program's status quo path in the absence of reform. We direct the Bureau to closely monitor the impact of the reforms adopted today in meeting that savings target, and to provide each Commissioner a report no later than the first anniversary of the adoption of this Order evaluating the impact of today's reforms; determining whether the reforms have succeeded in meeting the savings target; and, if they have not, analyzing the causes, providing options for realizing those savings, and making specific recommendations for corrective action to realize those savings. Such recommendations may include accelerating the development of the database capabilities for duplicates and eligibility, as well as a possible reduction of the monthly support amount ETCs receive. The Bureau shall also provide to each Commissioner an interim report no later than six months from the adoption of this Order analyzing the reforms' progress in meeting the savings target. Both reports shall be made available for public input on the Commission's website.

359. In addition to the fundamental overhaul of the program we begin today, the Commission is addressing in the *FNPRM* the key question of the appropriate monthly support amount for the program, among other issues. We find that at this time, it is appropriate for us to review how the reforms impact the size of the Fund and whether our assumptions and projections are accurate, whether growth of the Fund is impacted by changes in macroeconomic conditions and the number of consumers who seek to initiate Lifeline service, and the impact of competitive Lifeline offerings on the program. With the information we will gather in the next year as a result of the reforms and in response to the Further Notice, and from the Bureau's reports described in the previous paragraph, we fully expect to have the information needed to determine an appropriate budget for the program and its appropriate duration. We will be in a position to take into account the program's goals—ensuring availability of communications service to low-income Americans, and minimizing the contribution burden on consumers and businesses—and the Commission's review of the effects of the reforms adopted in this Order; the effects of any further reforms and modernization of the program, including adoption of proposals in the *FNPRM*; and changes in the economy. In doing so, the Commission may consider linking the size of the monthly support amount to a communications price index as one way to constrain the size of Lifeline, as discussed in the FNRPM.

360. During this interim period between the adoption of today's Order and the Commission's decision regarding an appropriate budget, we strongly discourage ETCs from enrolling ineligible subscribers or taking other actions (or failing to take actions) that enable or exacerbate waste, fraud, and abuse in the program. We note that today's Order largely eliminates Link Up based in part on our conclusion that Link Up has become too susceptible to abuse and provides perverse incentives to ETCs. We will be particularly vigilant over the coming year to ensure such problems do not persist or arise elsewhere in the program.

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[961] Considering the impacts of the reforms (including the one-time shift in 2012 to reimbursements based on actual subscriber counts), staff estimated the size of the Lifeline fund as $2.2 billion, $2.2 billion, and $2.0 billion in 2012, 2013, and 2014, respectively. Thus, because of the reforms in the program, up to $2 billion less will be spent on the Lifeline program by 2014 than would have been the case in the absence of reforms. *See also*, Tracfone Nov. 10 *ex parte* Letter, Attach. at 3 (arguing that verification of ID, the minimization of Link Up, annual 100 percent verification and non-usage requirements would result in an annual savings of $760 million); Nexus Oct. 25 ex parte letter at 2 (supporting Tracfone's savings estimates).

XI. ELIGIBLE TELECOMMUNICATIONS CARRIER REQUIREMENTS

A. Facilities-Based Requirements for Lifeline-Only ETCs

1. Background.

361. To be eligible for federal universal service support, the Act provides that an ETC must offer the services supported by federal universal service support mechanisms throughout a service area "either using its own facilities or a combination of its own facilities and resale of another carrier's services."[962] In the *Universal Service First Report and Order,* the Commission interpreted this to mean that a carrier "must use its own facilities to provide at least one of the supported services," but did not specify or define the amount of its own facilities a carrier must use.[963] The Commission clarified, however, that "a carrier that serves customers by reselling wholesale service may not receive universal service support for those customers that it serves through resale alone."[964] It interpreted the term "facilities" to mean "any physical component of the telecommunications network that are used in the transmission or routing of the services that are designated for support."[965] As such, pursuant to the Act as interpreted by the Commission, a carrier's facilities that are not being used to route or transmit USF supported services do not qualify as "facilities" to meet the ETC requirements in section 214(e)(1)(A).[966]

362. In 2005, the Commission agreed to conditionally forbear from the own-facilities requirement for the limited purpose of allowing TracFone to participate in the federal Lifeline program and receive Lifeline-only support.[967] By receiving forbearance, TracFone was able to apply for and become an ETC for Lifeline-only support. The Commission subsequently granted conditional forbearance from the facilities requirement for Lifeline support to several other carriers, but refused to extend this forbearance for Link-Up support, finding that such carriers had not demonstrated that doing so was in the public interest.[968] In the most recent forbearance orders, the Commission conditioned forbearance on carriers meeting several 911 and E911 obligations as a precaution to ensure that a lack of facilities would not impair emergency services.[969] Other conditions have focused on preventing waste, fraud, and abuse of universal service funding.[970]

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[962] 47 U.S.C. § 214(e)(1)(A).

[963] *See USF First Report and Order* at 8871, para. 169.

[964] *USF First Report and Order* at 8873, para. 174.

[965] 47 C.F.R. § 54.201(e).

[966] 47 U.S.C. § 214(e)(1)(A).

[967] *See TracFone Forbearance Order.*

[968] *See Virgin Mobile Forbearance Order; i-wireless Forbearance Order; Global Forbearance Order,* WC Dkt. No. 09-197, CC Dkt. No. 96-45, Order, 25 FCC Rcd 10510 (2010) ("*Global Forbearance Order*"); *Conexions ETC Order; PlatinumTel. Forbearance Order.* The Commission has pending before it several petitions seeking forbearance from the facilities requirement. *See, e.g.,* American Broadband and Telecommunications Petition for Forbearance, WC Dkt. No. 09-197 (filed Feb. 25, 2011); Petition for Forbearance of Millennium 2000, Inc., WC Dkt. No. 09-197 (filed Apr. 12, 2011); Petition for Forbearance of North American Local, LLC, WC Dkt. No. 09-197 (filed Apr. 27, 2011); Total Call Mobile, Inc. Petition for Forbearance, WC Dkt. No. 09-197 (filed May 25, 2011); Petition of Airvoice Wireless, LLC, WC Dkt. No. 09-197 (filed Sept. 13, 2011).

[969] *See TracFone Forbearance Order*, 20 FCC Rcd at 15101–02, paras. 15–16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390–91, paras. 21–23; *PlatinumTel,Forbearance Order*, 26 FCC Rcd at 13793-94, paras. 12-14.

[970] *See, e.g., TracFone Forbearance Order*, 20 FCC Rcd at 15102–03, paras. 17–18; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3393, para. 29; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *PlatinumTel Forbearance Order*, 26 FCC Rcd at 13794-96, paras. 17-18. In granting forbearance from the facilities requirement (continued….)

363. In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether it should forbear from applying the Act's facilities-based requirement to all carriers that seek limited ETC designation to participate in the Lifeline program.[971] In determining whether to grant a blanket forbearance, the Commission also asked whether it should adopt rules codifying any conditions it would impose on grant of forbearance, rather than imposing them on a case-by-case basis.[972] Section 10 of the Act requires that the Commission forbear from applying any regulation of any provision of the Act to telecommunications services or telecommunications carriers, or classes thereof, in any or some of its or their geographic markets, if the Commission determines that the three conditions set forth in section 10(a) are satisfied.[973]

364. In avoiding the forbearance process, some carriers seeking designation as ETCs by state commissions for the limited purpose of participating in the federal low-income program have relied on their provision of operator services and/or directory assistance to meet the ETC "facilities" requirement.[974] These carriers have received ETC status as facilities-based carriers because they are using their own "facilities" to provide at least one of the supported services.[975]

365. As noted above, in the *USF/ICC Transformation Order FNPRM*, the Commission eliminated its former list of nine supported services and amended section 54.101 of the Commission's rules to specify that "voice telephony service" is supported by federal universal service support mechanisms.[976] In amending section 54.101, the Commission eliminated the following functionalities as supported services: dual tone multi-frequency signaling or its functional equivalent; single-party service

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for Lifeline-only ETCs, the Commission has not approved Link Up support for any ETC. *TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*; *Conexions Forbearance Order*; *PlatinumTel et. al. Forbearance Order*.

[971] *Lifeline and Link Up NPRM*, at 2863, para. 306.

[972] *Id.*

[973] Specifically section 10(a) provides that the Commission shall forbear from applying such provision or regulation if the Commission determines that:

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers;

(3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a).

[974] *See, e.g.*, Comments of Ohio Public Utilities Commission Staff, WC Dkt. No. 09-197, WC Dkt. No. 03-109, at 9-10 (explaining how entrance of wireless carriers into the Lifeline market raises questions as to what constitutes "wireless facilities" in the ETC designation process); Reply Comments of Michigan Public Service Commission, CC Dkt. 96-45, WC Dkt. No. 09-197 at 2-3 (raising concerns on whether American Broadband and Telecommunications Company claims that it is a facilities-based ETC meets the requirements under the Act); Comments of South Carolina Office of Regulatory Staff, WC Dkt. No. 09-197, at 2-4 (arguing that Budget PrePay, Inc. should be denied Link Up support because it is not providing facilities-based wireless service).

[975] *See id; see also* Letter of Kerri J. DeYoung, Counsel, MA DTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Dkt. No. 11-42 *et al.*, (filed Nov. 10, 2011) (MA DTC Nov. 10 *ex parte* Letter (reporting that in MA and elsewhere, many wireless carriers are filing ETC petitions claiming satisfaction of the facilities requirement solely by facilities used for operator services and directory assistance).

[976] *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 3, 78; *see also* revised section 54.101(a).

or its functional equivalent; access to operator services; access to interexchange service; and access to directory assistance.[977]

366. On December 23, 2011, the Commission affirmed that only carriers that provide voice telephony as defined under section 54.101(a) as amended using their own facilities will be deemed to meet the requirements of section 214(e)(1).[978] Thus, a Lifeline-only ETC does not meet the "own-facilities" requirement of section 214(e)(1) if its only facilities are those used to provide functions that are no longer supported "voice telephony service" under amended rule 54.101, such as access to operator service or directory assistance. The Commission stated that to be in compliance with the rules, Lifeline-only carriers that seek ETC designation after the December 29, 2011 effective date of the *USF/ICC Transformation Order and FNPRM,* as well as such carriers that had previously obtained ETC designation prior to December 29, 2011 on the basis of facilities associated solely with, for example, access to operator service or directory assistance, must either use their own facilities, in whole or in part, to provide the supported "voice telephony service," or obtain forbearance from the "own-facilities" requirement from the Commission.[979] To avoid disruption to consumers of previously designated ETCs, however, the Commission set July 1, 2012 as the effective date of amended rule 54.101 for Lifeline-only ETCs in the service areas for which they were designated prior to December 29, 2011, to provide sufficient time to take further action related to the "own-facilities" requirement for Lifeline providers in this proceeding.[980]

367. Moreover, in light of the modifications to TLS adopted in this Order, TLS is no longer required to be provided except in certain specified circumstances, and no longer will be deemed a supported service. We provide support for TLS only on a transitional basis for those carriers that are required to offer TLS – namely, ETCs that charge a fee for toll calls, whether domestic or international, that is in addition to the per month or per billing cycle price of the consumer's Lifeline service. Furthermore, we clarify that call management functionality that tracks usage for a Lifeline offering that provides a specified number of minutes for a set price does not constitute TLS. As a consequence of such actions, a carrier that formerly relied on toll-limitation facilities as its "own" facilities can no longer rely on those facilities to satisfy the facilities-based requirement in section 214, and such carriers must also obtain forbearance from this Commission.[981]

2. Discussion.

368. We forbear, on our own motion, from applying the Act's facilities requirement of section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions noted below.[982] For the reasons explained below, we find

[977] *See USF/ICC Transformation Order and FNPRM,* FCC 11-161 at paras. 3, 78, nn.114-115 (noting that the Commission no longer mandates that ETCs provide those services that were eliminated from the definition of USF-supported services under section 54.101, but encourages carriers to continue to offer them to customers).

[978] *See id.* at para. 4.

[979] *See id.*

[980] *See id.*

[981] *See supra* section VII.B, para. 230 (explaining how facilities that enable a subscriber to access a call center to purchase additional minutes or to pay for an international call do not constitute toll limitation facilities).

[982] *See* Section 214(e)(1)(A); *see also* Letter from John J. Heitmann, Link Up for America Coalition, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, .at 1-2 (filed Dec. 15, 2011) (Link Up Coalition Dec. 15, 2011 *ex parte* Letter) (describing customer impact to existing Lifeline-only ETCs if Commission does not issue blanket forbearance). Upon the effective date of this Order, we grant forbearance from the facilities requirement of section 214(e)(1)(A) of the Act and section 54.201(d)(1), (i) of the Commission's rules, subject to (continued....)

that all three prongs of section (10)(a) are satisfied and that, as a result, the Commission will forbear from the "own-facilities" requirement contained in section 214(e)(1)(A) for carriers that are, or seek to become, Lifeline-only ETCs, subject to the following conditions: (1) the carrier must comply with certain 911 requirements, as explained below; and (2) the carrier must file, and the Bureau must approve, a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in this Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary.[983] The review and approval of all compliance plans is a critical element of our action today. These conditions will give the states and the Commission the ability to evaluate the Lifeline providers' offerings to low-income consumers and adherence with program rules before such companies may receive any Lifeline funds. At the same time, this grant of forbearance will re-allocate administrative resources that would otherwise be devoted to evaluating forbearance petitions subject to a statutory timeframe, resources that can otherwise be utilized to improve and oversee the Lifeline program.

369. Since 2005, the Commission has granted forbearance eleven times to carriers seeking to participate in the Lifeline program without using their own facilities to provide service.[984] In each case, the Commission has concluded that the use of a carrier's own facilities when participating in the Lifeline program is not necessary to ensure just and reasonable rates or to protect consumers and is in the public interest as long as such carriers meet certain conditions, approved by the Bureau in each carrier's compliance plan.[985]

370. *Just and Reasonable.* Under section 10(a)(1) of the Act, we must consider whether enforcement of the facilities requirement of section 214(e) for carriers that are, or seek to become, Lifeline-only ETCs is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory.[986]

371. We conclude that the section 214(e) facilities requirement is not necessary to ensure that Lifeline-only ETCs have charges, practices, classifications, and regulations for Lifeline service that are just and reasonable and not unjustly or unreasonably discriminatory. Resellers necessarily will face existing competition in the marketplace from the Lifeline offerings of the incumbent wireline carriers in the same designated areas, as well as other carriers, such as facilities-based wireless providers. Competition should help to keep their rates and other terms and conditions of service just and reasonable

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the conditions contained in this Order, to carriers with petitions for forbearance from the facilities requirement of the Act pending with the Commission, including American Broadband & Telecommunications, Millennium 2000, Inc., North American Local, LLC, Total Call Mobile, Inc., and Airvoice Wireless, LLC. See Petition for Forbearance of American Broadband & Telecommunications, WC Dkt. No. 09-197 (filed Feb. 25, 2012); Petition for Forbearance by Millennium 2000, Inc., CC Dkt. No. 96-45, WC Dkt. 09-197 (filed Apr. 12, 2011); Petition for Forbearance by North American Local, LLC., WC Dkt. 09-197 (filed Apr. 28, 2011); Petition for Forbearance by Total Call Mobile, Inc., WC Dkt. 09-197 (filed May 25, 2011); and Petition for Forbearance of Airvoice Wireless, LLC, WC Dkt. 09-197 (filed Sep. 13, 2011); 47 U.S.C. § 214(e)(1)(A); 47 C.F.R § 54.201(d)(1), (i).

[983] All ETCs availing themselves of forbearance from the facilities requirement as granted in this Order, including carriers with forbearance petitions and compliance plans pending with the Commission must comply with this requirement. Carriers with compliance plans currently pending Commission approval must revise, and if necessary amend, its compliance plan to include a detailed description of its compliance with this Order.

[984] *See, e.g., TracFone Forbearance Order; Virgin Mobile Forbearance Order; i-wireless Forbearance Order; Global Forbearance Order; Conexions Petition for Forbearance, PlatinumTel Forbearance Order.*

[985] *See, e.g., Conexions Forbearance Order*, 25 FCC Rcd at 13868, paras. 8-20.

[986] 47 U.S.C. §160(a)(1); 47 U.S.C. §214(e).

and not unjustly or unreasonably discriminatory.[987] The additional competition that they provide would do more to ensure just and reasonable rates and terms than a requirement to use their own facilities. For these reasons, we find that the first prong of section 10(a) is met.

372. *Consumer Protection.* Section 10(a)(2) requires the Commission to consider whether enforcement of the "own-facilities" requirement of section 214(e) for the Lifeline-only ETCs is necessary for protection of consumers. We find that imposing the "own-facilities" requirement on Lifeline-only ETCs is not necessary for the protection of consumers so long as the carriers comply with the obligations described below.

373. We reaffirm the Commission's previous finding that ensuring consumers' access to 911 and E911 services is an essential element of consumer protection.[988] Given the importance of public safety, we condition this grant of forbearance on each carrier's compliance with certain obligations as an ETC. Specifically, our forbearance from the facilities requirement of section 214(e) is conditioned on each carrier: (a) providing its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes; (b) providing its Lifeline subscribers with E911-compliant handsets and replacing, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services; and (c) complying with conditions (a) and (b) starting on the effective date of this Order.[989]

374. The Commission has an obligation to promote "safety of life and property" and to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure" for public safety.[990] The provision of 911 and E911 services is critical to our nation's ability to respond to a host of crises, and the Commission has a longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline consumers.[991] We find that these conditions are necessary to ensure that Lifeline subscribers of these Lifeline-only ETCs will continue to have meaningful access to emergency services.[992]

375. Based on the record and the fact that wireless resellers are obligated to comply with section 20.18(m) of the Commission's rules, we are not requiring that each Lifeline-only ETC obtain a

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[987] *See* TracFone Oct. 13 *ex parte* Letter at 4 (noting that both TracFone and Sprint, as ETCs, operate in the same markets as other wireless ETCs).

[988] *See, e.g., Virgin Mobile Forbearance Order,* 24 FCC Rcd at 3390-91, paras. 22-23; *TracFone Forbearance Order,* 20 FCC Rcd at 15102-03, paras. 16-17.

[989] Under section 20.18(m) of our rules, wireless resellers have an independent obligation, beginning December 31, 2006, to provide access to basic and E911 service, to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver E911 information to the appropriate Public Safety Answering Point (PSAP). *See* 47 C.F.R. § 20.18(m). Section 20.18(m) further provides that resellers have an independent obligation to ensure that all handsets or other devices offered to their customers for voice communications are location-capable. *Id.* Under our rules, this obligation applies only to new handsets sold after December 31, 2006. *Id.*

[990] *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorization,* WT Dkt. No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14020, para. 144 (2005).

[991] *Id.*

[992] *See, e.g., TracFone Forbearance Order,* 20 FCC Rcd at 15101-02, paras. 15-16; *Virgin Mobile Forbearance Order,* 24 FCC Rcd at 3390-91, para. 21-23; *i-wireless Forbearance Order,* 25 FCC Rcd at 8788, para. 12; *Global Forbearance Order,* 25 FCC Rcd at 10515, para. 12.

certification from each PSAP where it currently provides Lifeline service.[993] States, however, have a right to impose a state-specific obligation on each existing Lifeline-only ETC to obtain either a certification from each PSAP where the company plans to offer service, or a self-certification, confirming that the carrier provides its subscribers with 911 and E911 access.[994]

376. We find that, subject to the conditions contained herein, the facilities requirement is not necessary for consumer protection with respect to Lifeline-only ETCs. We therefore conclude that the second prong of section 10(a) is satisfied.

377. *Public Interest.* Section 10(a)(3) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for Lifeline-only ETCs is in the public interest. Requiring Lifeline-only ETCs to use their own facilities to offer Lifeline service does not further the statutory goal of the low-income program.[995]

378. Our public-interest inquiry must include consideration of whether forbearance would promote competitive market conditions, including the extent to which such forbearance would enhance competition among providers of telecommunications services.[996] We conclude that forbearance from the facilities requirement will enhance competition among retail providers that service low-income subscribers. Lifeline-only ETCs offer eligible consumers an additional choice of providers for telecommunications services. The prepaid feature that many Lifeline-only ETCs offer is an attractive alternative for subscribers who need the mobility, security, and convenience of a wireless phone, but who are concerned about usage charges or long-term contracts.[997]

379. The Commission has made clear its ongoing commitment to fight waste, fraud and abuse in the Lifeline program. The Commission has historically conditioned forbearance from the facilities requirement on the filing and approval by the Bureau of a compliance plan describing the ETC's adherence to certain protections designed to protect consumers and the Fund, and we see no reason to disrupt that precedent.[998] Accordingly, in addition to the requirements currently imposed on all ETCs that participate in the Lifeline program, including those we adopt in this Order, we condition this grant of forbearance from the "own-facilities" requirement by requiring each carrier to submit to the Bureau for approval a compliance plan that (a) outlines the measures the carrier will take to implement the obligations contained in this Order, including but not limited to the procedures the ETC follows in enrolling a subscriber in Lifeline and submitting for reimbursement for that subscriber from the Fund, materials related to initial and ongoing certifications and sample marketing materials, as well as further

[993] *See* 47 C.F.R. § 20.18(m); *see also* Letter from Jonathan Lee, Consumer Cellular, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, Attach. (filed, Dec. 21, 2011) (explaining how the underlying facilities-based provider has complete control over deployment of 911/E911 and how AT&T, its underlying network provider, provides Consumer Cellular with a certification stating that AT&T routes all 911 calls on its network to PSAPs in accordance with applicable FCC rules).

[994] Section 214(e)(2) of the Act authorizes state commissions to designate ETCs for federal universal service purposes. 47 U.S.C. § 214(e)(2).

[995] *See, e.g., i-wireless Forbearance Order*, 25 FCC Rcd at 8789, para. 15. We also note that the Commission's traditional concern with a carrier doubling its recovery by reselling facilities that are already supported by the high-cost fund does not apply in the low-income context. *Id.*

[996] *See* 47 U.S.C. § 160(b) (requiring the Commission to consider whether forbearance will promote competitive market conditions).

[997] *See* Link Up Coalition Dec. 15 *ex parte* Letter at 5.

[998] *See, e.g., TracFone Forbearance Order; Virgin Mobile Forbearance Order; i-wireless Forbearance Order; Global Forbearance Order; Conexions Petition for Forbearance, PlatinumTel Forbearance Order.*

safeguards against waste, fraud and abuse the Bureau may deem necessary; and (b) provides a detailed description of how the carrier offers service, the geographic areas in which it offers service, and a description of the carrier's various Lifeline service plan offerings, including subscriber rates, number of minutes included and types of plans available.

380. We note that after each carrier submits its compliance plan, the Bureau will review it for conformance with this Order. To avoid disruption to the millions of low-income subscribers served by existing Lifeline-only ETCs that met the facilities requirement based solely on operator services/directory assistance facilities and were designated prior to December 29, 2011,[999] those ETCs may continue to receive reimbursement pending approval of their compliance plans in the states in which they currently serve Lifeline subscribers, provided they submit their compliance plans to the Bureau by July 1, 2012.[1000] Such existing Lifeline-only ETCs may not receive reimbursement, however, for additional states where they have not yet been designated as of December 29, 2011, until their compliance plans are approved. No designations shall be granted for any pending or new Lifeline-only ETC applications filed with the states or the Commission after December 29, 2011, and carriers shall not receive reimbursement from the program, until the Bureau approves their compliance plans. We find that these requirements are necessary to ensure ongoing compliance with our rules.

381. With the reforms adopted today, along with the conditions outlined herein to address potential waste, fraud and abuse, including the Bureau's review and approval of all compliance plans, we find that the public interest is served by forbearing from the facilities requirement in section 214(e) for all carriers that are, or seek to become, Lifeline-only ETCs, and that the third prong of section 10(a) is therefore satisfied.

B. Impact of New Rules on Prior Forbearance Conditions

382. The Commission has exercised its statutory authority to forbear from enforcing the facilities requirement of the Act on several non-facilities based wireless resellers so that those wireless resellers may be eligible to be designated as an ETC for participation in the Lifeline program.[1001] In each forbearance order, the Commission provisioned forbearance on several key conditions aimed at consumer safety protection and at protecting the Lifeline fund from waste, fraud and abuse.[1002] Each of the orders

[999] *See* Link Up Coalition Dec. 15 *ex parte* Letter (claiming that the rule change would threaten service disruption for an estimated 2 million-plus Lifeline service customers served by members of the Link Up Coalition).

[1000] If an existing Lifeline-only ETC fails to submit its compliance plan by July 1, 2012, however, that ETC will not be able to continue to receive Lifeline support after July 1, 2012. If the Bureau finds that an existing Lifeline-only ETC's compliance plan does not conform to the requirements of the Order, it shall provide that ETC with notice that it must file a revised compliance plan within 45 days that conforms to the requirements of the Order. If the ETC fails to file a revised compliance plan pursuant to the Bureau's direction, the Bureau may direct USAC to suspend Lifeline disbursements to that ETC until such time as its compliance plan is revised to the satisfaction of the Bureau. In the event there is a change in ownership control of an existing Lifeline-only ETC that received forbearance of the facilities-based requirement, designated prior to December 29, 2011, and that Lifeline-only ETC is acquired by a telecommunications carrier that does not meet the definition of a facilities-based carrier under section 214(e)(1)(A), the controlling carrier may not rely on the existing Lifeline-only ETC's compliance plan and must submit a compliance plan for Bureau approval as detailed in paragraph 379 before receiving reimbursement from the program.

[1001] *See TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*); *i-wireless Forbearance Order; Global Forbearance Order*; *Conexions Forbearance Order*; *PlatinumTel Forbearance Order*. No wireless reseller has received forbearance for the purpose of receiving Link Up support.

[1002] *See, e.g.*, *TracFone Forbearance Order*, 20 FCC Rcd at 15101–03, paras. 15–18; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390-93, paras. 21-29; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *Global*
(continued….)

also requires that the carrier subject to forbearance submit a compliance plan describing how that carrier would comply with the conditions of forbearance.[1003]

383. In this Order, the Commission adopts several new rules, many of which relate to the requirements set forth in prior forbearance orders and compliance plans.[1004] To the extent that any of the conditions in the carrier-specific forbearance orders and compliance plans are inconsistent with the rules adopted herein, the newly adopted rules established in this proceeding shall prevail. However, the conditions and rules adopted in this Order set forth the minimum obligations with which a carrier must comply for forbearance from the facilities requirement, and any carrier whose grant of forbearance was conditioned on more stringent compliance plans must comply with those additional obligations as well as the conditions adopted herein. In addition, any ETC that has received forbearance from the facilities requirement prior to this Order must continue to comply with the 911/E911 public safety obligations, as set forth in the preceding paragraphs 373-375.[1005]

C. Additional Rule Amendments

384. In the *Lifeline & Link Up NPRM*, we sought comment on whether the current process for designating eligible telecommunications carriers should be revised for Lifeline providers and, if so, how.[1006] In this Order, we have made a number of important changes to our rules in order to eliminate waste and inefficiency, and to increase accountability in the program. Here, we make some conforming changes to our rules and several other changes that reflect the growing role of Lifeline-only ETCs in today's marketplace. We seek further comment in the attached *FNPRM* on additional proposal to streamline the process of becoming a Lifeline-only service provider.

385. First, we modify the definition of "eligible telecommunications carrier" in section 54.5 of our rules to include not just ETCs designated by the states pursuant to section 54.201, but to include all ETCs designated pursuant to our rules. This modification is necessary because section 214 of the Act, and our rules provide for designation of ETCs by the states and by the Commission.[1007] Furthermore this

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Forbearance Order, 25 FCC Rcd 10517-18, paras. 16-18; *Conexions Forbearance Order*, 25 FCC Rcd at 13871, paras. 17-18; *PlatinumTel et. al Forbearance Order*, 26 FCC Rcd 13795-96, paras. 17-18.

[1003] *See TracFone Forbearance Order*, 20 FCC Rcd at 15105, para. 25; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3397, para. 44; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 17; *Global Forbearance Order*, 25 FCC Rcd 10517, paras. 16; *Conexions Forbearance Order*, 25 FCC Rcd at 13871, para. 17; *PlatinumTel et. al Forbearance Order*, 26 FCC Rcd 13796, para. 17.

[1004] *See, e.g. supra* para. 74 (adopting a one-per-household requirement similar to the head of household certification condition in the *TracFone Forbearance Order and the PlatinumTel. Forbearance Order*); *TracFone Forbearance Order*, 20 FCC Rcd at 15098, para. 6; *PlatinumTel. Forbearance Order*, 26 FCC Rcd 13795, para. 17.

[1005] Given that section 20.18(m) already requires wireless resellers to provide access to basic and enhanced 911 service to the extent that the underlying licensee of the facilities the reseller uses to provide access to the public switched network complies with 20.18(d)-(g), we are no longer requiring that Lifeline-only ETCs subject to existing forbearance orders to obtain a certification from each PSAP where it currently provides Lifeline service. *See* 47 C.F.R. § 20.18(m). As noted in paragraph 375 above, states, however, have a right to impose a state-specific obligation on these existing Lifeline-only ETCs. *See supra* para. 375.

[1006] *NPRM* at 2865. para. 312.

[1007] *See* 47 U.S.C. 214(e)(2), (3) and (6); and 47 C.F.R. §§ 54.201-203. In 1997, Congress amended section 214 of the Act to give the Commission specific authority to designate ETCs, and the Commission issued a public notice setting forth the procedures it would use to designate ETCs, but did not amend its rules at that time. *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947 (1997).

modification conforms the rule to the Commission's consistent use of the term since it was given specific authority to designate ETCs by Congress in 1997.[1008] We therefore find good cause to amend this rule without notice and comment.[1009]

386. Second, we amend section 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC. In the *USF/ICC Transformation Order and FNPRM,* the Commission included a new requirement in section 54.202, requiring a common carrier seeking to be designated as an eligible telecommunications carrier by the Commission to submit a five-year plan describing proposed network improvements and upgrades. Given that Lifeline-only ETCs are not receiving funds to improve or extend their networks, we see little purpose in requiring such plans as part of the ETC designation process.

387. Third, we amend sections 54.201 and 54.202 of our rules, which govern ETC designations by states and this Commission, respectively, to require a carrier seeking designation as a Lifeline-only ETC to demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules.[1010] In 2005, the Commission declined to adopt such an explicit requirement for federally-designated ETCs, concluding that the Commission's existing rules, including the showings a common carrier had to make to be designated as an ETC pursuant to section 54.202, would provide sufficient assurance of the carrier's financial and technical ability to provide the supported service.[1011]

388. Given recent growth in the number of companies obtaining ETC designation,[1012] we now conclude that it is appropriate to update our rules for federally-designated ETCs and extend the requirement to all ETCs to ensure that Lifeline-only ETCs have the financial and technical ability to offer Lifeline-supported services. Therefore, in order to ensure Lifeline-only ETCs, whether designated by the Commission or the states, are financially and technically capable of providing Lifeline services, we now include an explicit requirement in both 54.202 and 54.203 that a common carrier seeking to be designated as a Lifeline-only ETC demonstrate its technical and financial capacity to provide the supported

[1008] *See, e.g., ETC Designation Order*, 20 FCC Rcd, at 6378-79, para. 17 ("State commissions and the Commission are charged with reviewing ETC designation applications for compliance with section 214(e)(1) of the Act"); *Virgin Mobile Forbearance Order* ,24 FCC Rcd at 3383-84. para. 5 (discussing the authority of the state commissions and the Commission to designate ETCs); *USF/ICC Transformation Order and FNRPM*, FCC 11-161 at para. 390 ("By statute the states, along with the Commission, are empowered to designate common carriers as ETCs.").

[1009] *See* 5 U.S.C. § 553(b)(3)(B).

[1010] *See* Indiana Commission Comments at 15 ("[C]ompanies that have made a business case to serve a certain market in a state prior to receiving Lifeline subsidies may be less inclined to risk being cited for non-compliance with the program.").

[1011] *See ETC Designation Order*, 20 FCC Rcd at 6387-88, paras. 37-39.

[1012] USAC assigns a study area code (SAC) for each state in which a company receives designation as an ETC, and USAC reported disbursement information for 135 more SACs in the fourth quarter of 2011 than it did in the fourth quarter of 2010. *See* Universal Service Administrative Company, 2Q 2011 Filing, Appendices at LI04 http://usac.org/about/governance/fcc-filings/2011/quarter-2.aspx (reporting fourth quarter 2010 disbursements for 2085 SACs); Universal Service Administrative Company, 2Q 2012 Filing, Appendices at LI04 (usac.org/about/governance/fcc-filings/2012/quarter-2.aspx (reporting 4th quarter 2011 disbursements for 2220 SACs).

service.[1013] Among the relevant considerations for such a showing would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.

389. Fourth, we delete section 54.209 of our rules regarding certification and reporting obligations for federally-designated ETCs, while moving those reporting requirements relevant to ETCs providing Lifeline services to subpart E, which governs universal service support provided to low-income consumers. [1014] In the *USF/ICC Transformation Order and FNPRM*, the Commission indicated that recipients of high-cost support would henceforth report pursuant to new section 54.313, and section 54.209 would continue to apply only to Lifeline-only ETCs.[1015] In order to centralize and streamline certification and reporting requirements pertaining to federally-designated Lifeline-only ETCs in subpart E of the rules, we move the relevant portions of 54.209, as they related to ETCs offering Lifeline services to new section 54.422. In particular, in order to receive support under subpart E, an ETC must provide the following information, previously required by section 54.209: information regarding service outages, the number of complaints received per 1,000 connections, certification of compliance with applicable service quality standards and consumer protection rules, and certification that the carrier is able to function in emergency situations. In doing so, we streamline annual reporting by eliminating reporting requirements that no longer make sense in today's marketplace for federally-designated Lifeline providers.

390. We also establish targeted reporting requirements in this new rule section that will apply to all ETCs receiving Lifeline. First, as discussed above,[1016] an ETC receiving low-income support must annually report the names and identifiers used by the ETC, its holding company, operating companies and affiliates, which will assist us in the Lifeline audit program. Second, we require every ETC receiving low-income support to provide to the Commission and USAC general information regarding the terms and conditions of the Lifeline plans for voice telephony service offered specifically for low income consumers through the program they offered during the previous year, including the number of minutes provided, and whether there are additional charges to the consumer for service, including minutes of use and/or toll calls, which will enable us to monitor service levels provided to low-income consumers. [1017]

391. Because section 54.209 is now obsolete in light of the rule changes adopted in this Order and in the *USF/ICC Transformation Order and FNPRM*, we find good cause to delete it without notice and comment.[1018]

[1013] *See* Letter from Luisa Lancetti, T-Mobile, to Marlene H. Dortch, WC Dkt. No. 11-42 *et al.*, Attach. at 10 (filed Jan. 24) (arguing that the Commision should require ETCS to demonstrate that they are technically and financially capable).

[1014] *See* USTelecom Comments at 23 (participation in Lifeline should not be tied to high-cost requirements).

[1015] *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at 580, n.955.

[1016] *See supra* para. *296.*

[1017] In the event ETCs choose to offer, as an additional option to low income consumers, the Lifeline discount to other retail service offerings, including bundles, that are available to the general public as described in section IX.A above, ETCs are not required to submit the terms and conditions of such retail service offerings to the Commission or USAC.

[1018] *See* 5 U.S.C. § 553(b)(3)(B).

XII. APCC PETITION FOR RULEMAKING AND INTERIM RELIEF

392. *Background.* On December 6, 2010, the American Public Communications Council (APCC) petitioned the Commission (Petition) to initiate a rulemaking to make payphone service eligible for Lifeline support at $10 per month per line for all publicly available phones.[1019] APCC also petitioned for interim relief (Petition for Interim Relief), seeking to allow ETCs to receive Lifeline support for service provided over payphone lines.[1020] APCC asserts that Lifeline funds for payphone service will prevent the disappearance of payphones.[1021] It urges the Commission to "act on an interim basis to provide immediate relief before the decline in payphones becomes irreversible as payphone deployment ceases to be a viable business."[1022] The Wireline Competition Bureau sought comment on the petitions.[1023]

393. According to APCC, in 1998, there were over 2 million payphones in service, but there are now fewer than 475,000 payphones, a collapse APCC attributes to the growth in wireless telephone service as well as in Lifeline-supported wireless service.[1024] APCC seeks universal service support for the 475,000 payphones in service.[1025]

394. APCC argues that the Commission should amend its rules to give Lifeline support to payphone service providers. APCC argues that section 276 of the Act was established to promote widespread deployment of payphone services to the benefit of the general public, and the Act requires the Commission to determine whether "public interest payphones" located "where there would otherwise not be a payphone, should be maintained, and if so, to ensure that such public interest payphones are supported fairly and equitably."[1026] APCC asserts that such support would cost the Fund roughly $57 million annually.[1027]

[1019] *Petition for Rulemaking to Provide Lifeline Support to Payphone Line Service*, WC Dkt No. 03-109 *et al.* (filed Dec. 6, 2010) (*Petition*). APCC is a national trade association that represents independent payphone providers.

[1020] *Emergency Petition for Interim Relief to Prevent the Disappearance of Payphones*, CC Dkt. No. 96-45; WC Dkt. No. 03-109 (filed December 6, 2010) (*Petition for Interim Relief*).

[1021] *Petition* at 32; *Petition for Interim Relief* at 9.

[1022] *Petition for Interim Relief* at 1.

[1023] *Wireline Competition Bureau Seeks Comment on American Public Communications Council Petitions Regarding Universal Service and Payphone Issues*, Public Notice, WC Dkt. No. 03-109 *et al.*, 25 FCC Rcd 17345 (2010). Five commenters, Rosebud Telephone, the Florida Public Telecommunications Association, Minority Media & Telecom Council, and, in a joint submission, Consumer Action and the National Consumers League support APCC's petitions. Verizon and Verizon Wireless, Sprint Nextel Corporation, TracFone, United States Telecom Association, and NASUCA oppose the petitions.

[1024] *Petition* at 3.

[1025] *Id. at* 19-20.

[1026] *Id.* at 17; 47 U.S.C. § 276(b)(1), (2). We note that APCC requests support for *all* publicly available payphones, rather than petitioning for support only for public interest payphones. Congress stated clearly in its Conference Report accompanying the Act that "public interest payphones" refers to "payphones at locations where payphone service would not otherwise be available as a result of the operation of the market. Thus, the term does *not* apply to a payphone located near other payphones, or to a payphone that, even though unprofitable by itself, is provided for a location provider with whom the payphone provider has a contract." *S. Rept. 104-230*, 104th Cong., 2d Sess. at 157 (1996).

[1027] *Petition for Interim Relief* at 5.

395. *Discussion.* After consideration of the petitions and filed comments, we deny both the Petition for Rulemaking and the Petition for Interim Relief. We question whether the requested relief is consistent with section 254, and we are not persuaded that the agency should devote resources to commence a proceeding to explore these issues at a time when our focus is on reforming the program to protect it against waste, fraud and abuse and modernizing it to include broadband.

396. As the Commission has long made clear, Lifeline is intended to benefit eligible low-income consumers, not service providers.[1028] There is no indication in the Petitions that Lifeline support would be passed through to consumers. Indeed, APCC seeks to redefine "qualifying low-income consumers" to include payphone service providers, without a commitment to pass through the Lifeline discount to the consumers that would use those payphones.[1029] As proposed, this would merely provide a windfall to payphone service providers. On its face, APCC's request is inconsistent with our longstanding commitment to ensure that low-income consumers have access to phone service in their homes. Moreover, we are not persuaded by APCC that section 276 somehow compels us to use contributions collected pursuant to section 254 to advance the goals of section 276.

397. Pursuant to section 254 of the Act, the Commission must define services eligible for universal service based in part on a determination that the services "have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers . . . ."[1030] As APCC readily admits, payphone service cannot, by definition, meet this criteria.[1031] Indeed, in 2002, the Joint Board considered and rejected the idea of providing universal service support to payphone service providers in part for the same reason.[1032] In 2003, the Commission agreed with the Joint Board and explicitly excluded payphone service from universal service support.[1033] The Commission reasoned that "payphone lines are not subscribed to by a substantial majority of residential consumers."[1034] We decline, at this time, choose to overturn this previous Commission determination.

398. For the reasons set forth above, we deny APCC's petitions for interim relief and for a rulemaking to make payphone service providers eligible for Lifeline support.

XIII. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Establishing an Eligibility Database

399. *Background.* In the *Lifeline and Link Up NPRM*, we sought comment on the administrative, practical, and legal issues involved in establishing a database to check consumer eligibility

[1028] *See Universal Service First Report and Order* 12 FCC Rcd at 8952, para. 326. "First, we adopt the Joint Board's recommendation that Lifeline service should be made available to low-income consumers nationwide, even in states that currently do not participate in Lifeline. To that end, we adopt the Joint Board's recommendations that Lifeline service should be provided to low-income consumers in every state, irrespective of whether the state provides matching funds, and that all eligible telecommunications carriers should be required to provide Lifeline service." *See also* Sprint APCC Comments at 2-3.

[1029] *Petition* at Attach. § 54.400(a)

[1030] 47 U.S.C. § 254(c)(1)(B).

[1031] *Petition* at 5.

[1032] *Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45, Recommended Descision, 17 FCC Rcd 14095 at 14114 (2002).

[1033] *2003 Tribal Lifeline* Order, 18 FCC Rcd at 15090.

[1034] *Id.*

for Lifeline.[1035] We asked a number of questions regarding whether it would be beneficial and administratively feasible to establish a database at the national level or facilitate the creation of databases at the state level to allow ETCs and other interested parties to check whether a consumer is eligible for Lifeline. There was widespread agreement that such databases would help ensure that only those customers who qualify for Lifeline benefits would receive such benefits, while also reducing carriers' costs.[1036]

400. The record shows that some states have already implemented automated processes and systems to ensure Lifeline eligibility.[1037] Some states utilize eligibility databases as part of the coordinated enrollment process to further increase participation in the program.[1038] Some states also utilize databases to verify ongoing eligibility.[1039] States also vary in how available automated processes are to different types of ETCs. In Washington state, for instance, the extent to which a carrier is required and authorized to access eligibility databases depends upon whether that ETC is wireline, pre-paid wireless, or post-paid wireless.[1040] In Maryland, the PSC makes a list of consumers who are receiving benefits under certain state social service programs that qualify consumers for Lifeline available to any ETC signing a confidentiality agreement.[1041]

401. The record indicates that eligibility data is typically housed at state social service agencies and separately administered from the Lifeline program, posing an obstacle to broader implementation of electronic eligibility checks.[1042] The Commission, ETCs, and in some cases even state commissions are unable to easily access such eligibility data and determine quickly whether a potential Lifeline subscriber is eligible for the program.[1043] Some states do not have an easily accessible centralized electronic depository for even the individual programs which qualify consumers for Lifeline, let alone a coordinated system across all such programs, and even those that have established such systems may face limitations, due to cost or privacy concerns, in providing ETCs or their own state PUC access.[1044] As a result, only a handful of states have implemented eligibility databases, and fewer still have implemented databases that account for all programs for which consumers can qualify for Lifeline.

402. There is currently no robust federally administered national database that can be utilized to check for Lifeline eligibility because nearly all of the program data is maintained exclusively at the state level. However, efforts are currently underway within and across federal agencies to facilitate eligibility determinations and eliminate waste in various government programs, some of which qualify

[1035] *See Lifeline and Link Up NPRM* at 2834, para 207.

[1036] *See, e.g.*, Nexus Nov. 18 *ex parte* Letter.

[1037] *See, e.g.*, Tracfone Nov. 11 *ex parte* Letter, Attach. at 8 (noting that it can access eligiblity data in Washington state and Wisconsin to determine eligiblity).

[1038] *See supra* para. 177.

[1039] *See, e.g.*, OR PUC Comments at 6.

[1040] *See* Washington State Aug. 30 *ex parte* Letter at 8.

[1041] *See* filing from Ralph Markus, Maryland, WC Dkt. No. 11-42 (filed June 30, 2011) (describing data lists)

[1042] *See, e.g.*, Solix Comments at 2.

[1043] *See, e.g.*, Michigan PSC Comments at 9 ("In Michigan, it is unlikely that the social service agencies will allow the ETCs or the MPSC to have direct access to the confidential information in their databases.").

[1044] *See* Cincinnati Bell Comments at 9-10; *see also* Missouri PSC Comments at 4 ("The Missouri Department of Social Services is only able to verify eligibility in the following four programs: Missouri Healthnet, food stamps, LIHEAP, and Temporary Assistance for Needy Families.").

consumers for Lifeline. For example, a June 2010 Presidential memorandum created a "do not pay" system through which federal benefits payments could be cross-checked by agencies to prevent ineligible recipients from receiving payments.[1045] The Office of Management and Budget (OMB), through its Partnership Fund for Program Integrity Innovation, has provided grants for states for pilot programs to computerize and share benefits data for social services programs across states.[1046] For example, a group of southeastern states received a grant to aggregate their Medicaid (a program that qualifies consumers for Lifeline) eligibility information into a single database.[1047] Another pilot provides funding for an interstate food stamps database, which may be expanded to include TANF and Medicaid information.[1048] In addition, other federal agencies and third parties have worked cooperatively to solve this problem in other federal programs or initiatives. An intergovernmental board administers the Public Assistance Reporting Information System (PARIS) database, an intergovernmental database which permits states to check for duplicative claims for several government programs across states (including Medicaid) through a social security number match.[1049] One Economy has explored with HUD whether it is feasible to make available the database containing information for Section 8 housing assistance recipients, another program that qualifies consumers for Lifeline.[1050]

403. *Discussion.* As explained above, we conclude that establishing a fully automated means for verifying consumers' initial and ongoing Lifeline eligibility from governmental data sources would both improve the accuracy of eligibility determinations and ensure that only eligible consumers receive Lifeline benefits, and reduce burdens on consumers as well as ETCs. We conclude that it is important to accelerate the adoption of a widespread, automated means of verifying program eligibility. We therefore direct the Bureau and USAC to take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline.[1051]. To ensure that the

[1045] Whitehouse.gov, President's Memorandum on Enhancing Payment Accuracy through a "Do Not Pay List," 75 Fed. Reg. 35,953 (June 18, 2010), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/financial_improper/06232010_donotpaylist.pdf.

[1046] Office of Management and Budget (OMB), Partnership Fund for Program Integrity Innovation, About the Partnership Fund, *available at* http://partner4solutions.gov/about (last visited Jan. 18, 2012).

[1047] OMB, Partnership Fund for Program Integrity Innovation, Centers for Medicare and Medicaid Services Partnership Fund Pilot Award Summary, *available at* http://partner4solutions.gov/sites/www.partner4solutions.gov/files/CMS_Pilot_Award_Summary.pdf (last visited Jan. 18, 2012) ("The pilot will test how open source technology reduces fraud and administrative costs to States and the Federal government by enabling multiple states to check Medicaid provider eligibility.").

[1048] OMB, Partnership Fund for Program Integrity Innovation, USDA Partnership Fund Pilot Award Summary, http://partner4solutions.gov/sites/www.partner4solutions.gov/files/USDA_Pilot_Award_Summary.pdf. (last visited Jan. 18, 2012).

[1049] Admin. for Children and Families, U.S. Dep't of Health and Human Servs., Public Assistance Reporting Information System (PARIS), About PARIS, http://www.acf.hhs.gov/programs/paris/about/index.html (last visited Jan. 18, 2012).

[1050] One Economy Comments at 4 (noting that One Economy, as leader of the Digital Adoption Coalition applied for a BTOP grant in which Federal Public Housing assistance program beneficiaries would receive broadband, "only because senior officials at HUD thought our program was so necessary for their residents that they agreed to modernize their database structure and allow 'blind' access to the Digital Adoption Coalition to provide these services. As we did not receive this grant, this vital modernization and access provision at HUD never occurred").

[1051] Based on the information in the record, most consumers qualify for Lifeline through Medicaid, Food Stamps and SSI. *See supra* para. 104. We recognize that meeting this goal will require coordinated action among numerous parties outside of the Commission.

Commission has sufficient information to implement such a solution, we seek focused comment on the issues below.

404. Because much of the relevant federal eligibility data is housed at the state level, we seek comment on how the Commission can encourage the accelerated deployment of widespread state databases that can be used or accessed to streamline Lifeline eligibility determinations. These databases could be queried directly by ETCs to determine customer eligibility, and potentially used to provide information to a national eligibility database. We also seek comment on whether federal benefit databases under development across states and at the national level can be leveraged to assist in checking for Lifeline eligibility. We seek comment on whether a state-specific or national eligibility database approach is more reliable, efficient, or imposes greater costs on the states and ETCs.

405. We seek to further develop the record on ways to mitigate the potential cost on states if the Commission were to mandate the creation of Lifeline eligibility databases at the state level or the transmission of state eligibility data to a national database. Several states argue, for example, that they are unable to implement a Lifeline eligibility database because they lack sufficient funding and expertise.[1052] Should the Fund be used to assist states in implementing their own eligibility databases and/or facilitate the transfer of state eligibility data to a federal database? Does the Commission have the legal authority to provide Fund support to states for this purpose? How much funding would be necessary to materially assist states in implementing a database? To assist in our determination of the size of such funding, we seek comment on the implementation and ongoing costs of those Lifeline databases that are currently in operation at the state level.

406. We seek comment on whether we should condition receipt of federal Lifeline funds on state implementation of an eligibility database. Some commenters argue that the Commission does not have the authority to impose requirements on states to implement state eligibility databases for Lifeline.[1053] However, we note that states must, as a condition of receiving federal funds for certain other federal programs, such as Medicaid, participate in national eligibility databases by transmitting beneficiary data to a national database.[1054] Should the Commission condition federal Lifeline support to a state's consumers on the state's ability to facilitate access to eligibility data? Are there other measures we could adopt to encourage states and other participating entities to implement a database or provide the necessary information to support a federal database? What would the impact on Lifeline consumers be if the state, for whatever reason, were unable to implement such a database?

407. We seek focused comment on the federal or state privacy requirements implicated in the establishment of a national or state eligibility database. Some states appear to assert that federal and state privacy rules preclude the transmission of eligibility information or other personal data from state social

[1052] *See, e.g.*, Alabama PSC Comments at 2 ("The APSC currently has at its disposal the data necessary for populating a fully functional Lifeline eligibility database, but lacks the funding required to achieve that goal. Therefore, the APSC seeks the financial assistance needed to fully develop, test, implement, and maintain the software required for management of that database.").

[1053] *See, e.g.*, Missouri PSC Comments at 2.

[1054] State Health Access Data Assistance Ctr., *New Opportunities for Medicaid data-matching using PARIS database*, *available at* http://www.shadac.org/blog/new-opportunities-medicaid-data-matching-using-paris-database (Jul. 20, 2010) ("Participation in the Public Assistance Reporting Information System (PARIS) is required by states to receive Medicaid funding for automated data systems (including the Medicaid Management Information System). The requirement to participate, effective October 1, 2009 as part of the Qualifying Individual (QI) Program Supplemental Funding Act of 2008, allows the sharing of enrollee and applicant information for state public assistance agencies (SPAAs) and federal agencies.").

services agencies to third parties.[1055] However, other states do not appear to have similar state laws, or they interpret federal laws to allow the transmission of such information.[1056] We ask commenters to specify the federal and state privacy laws that they believe may preclude the transmission of eligibility information to a state or national eligibility database. Would affirmative customer consent at the time of application allow for the transmission of information notwithstanding such laws? If so, can and should we mandate that ETCs seek to obtain such consent at the time the consumer applies for Lifeline?

408. An alternative approach would be for the Commission to establish a national eligibility database instead of or in addition to state databases. If the Commission establishes a national database, should it be populated by individual customer eligibility data stored in state eligibility databases? Should state or federal entities pay for the electronic interface between the state and federal databases? If the national database did not house eligibility data, should it only have the capability of querying the individual state databases to determine consumer eligibility?

409. We seek comment on whether there are reasons to mandate a national eligibility database if that database relies on data provided by states. One commenter argues that it would be costly and administratively difficult to implement a national eligibility database and that nothing would be gained over state database access because the data is housed at the state level.[1057] If a national database merely served as a conduit or gateway through which ETCs could query state databases, what are the advantages of such a national database over and above separate state databases? Do these advantages outweigh the costs of additional sources of error that may be introduced when a state database interacts with a national database?

410. We also seek comment on whether, as a practical matter, a national Lifeline eligibility database could be established without the need to access or obtain eligibility data housed at the state level. As explained above, there are several national databases at various stages of development which contain beneficiary information for certain federal programs and enable authorized parties to check federal program eligibility. Some of these databases are for programs that qualify consumers for Lifeline.[1058] We seek comment on how these national databases for other programs can be leveraged to assist in the creation of a national Lifeline database. How could the Commission best partner with other relevant agencies to share information housed in other agencies' databases? Can third parties, such as ETCs, query other existing national benefit databases, or can only another federal or state agency do so? We also seek comment on how issues relating to the accuracy of information in federal government databases already in service are handled and corrected.[1059] Moreover, we seek comment on whether national

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[1055] *See, e.g.*, Cincinatti Bell Aug. 30, 2011 *ex parte* Letter *at 2*.

[1056] *Compare id.* (discussing how privacy concerns precluded the transmission of eligibility data to the Ohio PUC) *with* Washington State Aug. 31 *ex parte* Letter at 4 ("DSHS is providing prepaid wireless ETCs with access to their online Beneficiary Verification System (BVS). The BVS is an interactive online interface. When an authorized user keys in a Lifeline applicant's 9-digit DSHS client ID or the combination of the applicant's full name and Social Security number, the website will confirm if the customer is receiving one of the nine qualifying public assistance programs administered by the DSHS.").

[1057] *See* CGM Comments at 2 ("It is much more difficult and time consuming to require states to provide timely state centric eligibility data to a centralized national repository than it is to gain access to this data at the state level. The vast majority of eligibility is determined at the state level. The eligibility criteria are not generally called into question, only timely access to that data. Nationalizing this data and access to it doesn't do anything to make the task easier or make its accuracy any better. It makes on-going maintenance more difficult and prone to error. Transferring eligibility data from state care to a national database will also expose privacy and security issues.").

[1058] *See supra* section VI.F (Automatic and Coordinated Enrollment).

[1059] Letter from Cheryl Leanza, Leadership Conference on Civil Rights, to Marlene H. Dortch, FCC, WC Dkt. No.
(continued....)

databases are sufficiently robust to be utilized to check for eligibility in the Lifeline program. For example, is the PARIS database updated frequently enough to be utilized to check for Lifeline eligibility?

411. To the extent that the program data available at the federal level is utilized to establish a Lifeline database, we propose that the Commission should first focus on the three programs which, based on the record, qualify the most consumers for Lifeline (*i.e.*, Medicaid, food stamps, SSI).[1060] We expect that such a focus will impact the largest number of Lifeline beneficiaries, and may also be able to leverage the work already done by HHS in its PARIS program and recent OMB grants for Medicaid administration.

412. In the Order, we adopt a national database to check for duplicative support. We seek comment on the synergies that could result from combining the duplicates database and a national eligibility database. Should a national eligibility database be built "on top of" the duplicates database, and, if so, what is the most efficient way of doing so? What are the cost savings and other benefits that would result from the integration of both duplicate and eligibility databases and what, if any, are the drawbacks of such an approach?

413. In the Order, we require ETCs to transmit the name, address, telephone number, date of birth, last four digits of the social security number and the means through which the consumer qualified for Lifeline to the duplicates database. We find that such data will allow the database to check for duplicative support. However, it may be necessary for ETCs to collect and transmit additional information (*e.g.*, the full SSN) to a national eligibility database to determine eligibility. For example, some state Lifeline databases require that any valid query to determine eligibility include the transmission of a beneficiary's full social security number and/or date of birth.[1061] At the same time, several parties have raised concerns regarding ETCs' collection of the full social security number.[1062] We seek comment to refresh the record about the privacy issues surrounding the creation of any eligibility database and the transmission of the full social security number. Do state or federal laws *require* the submission of particular information (*e.g.*, the full SSN) in order for a third party such as an ETC to be able to determine if a consumer is receiving a federal or state benefit which qualifies a consumer for Lifeline? Does the answer depend upon the program? Can the Commission decline to provide benefits to a consumer based on the consumer's refusal to provide a full social security number?[1063]

414. Some commenters argue that the Commission should pursue other, non-electronic methods to check for eligibility in lieu of or in the interim while an electronic means of verifying eligibility is created. For example, both Verizon and AT&T suggest that a national third-party administrator, not the ETCs, should examine income and program documentation submitted by end-users

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11-42 at 5 (filed Nov. 21, 2011) (dicusssing how errors in the social security database are corrected).

[1060] *See supra* para. 104; *see also* Holt *et al.*, *Making Telephone Service Affordable for Low Income Households* at 40 (Jan. 28, 2007) *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=959692 (noting that, in Florida, programs that increased the number of households the most . . . were Medicaid, Food Stamps and SSI).

[1061] *See* Washington State Aug. 31 *ex parte* Letter at 4.

[1062] *See* GCI Ex Parte Presentation, WC Dkt. Nos. 11-42 *et al.*, Attach. 1 at 2 (filed June 13, 2011) ("The Commission cannot use the whole Social Security number without express statutory authorization").

[1063] *See* Privacy Act § 7(a)(1), 5 U.S.C. § 552A ("It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his Social Security account number."); *Ingerman v. Delaware River Port Authority,* 630 F. Supp. 2d 426, 442 (D. N.J. 2009) (invalidating requirement of Social Security number for an EZ Pass seniors discount, which was collected in part to prevent fraud).

and make a determination of eligibility.[1064] We recognize that establishing a centralized third-party review of documentation may involve a delay in time between the application and proof of verification being submitted by the consumer and being approved. At the same time, however, it would relieve carriers from the burden of having to make initial determinations of eligibility as required by our rules and would result in increased standardization of eligibility determinations.[1065] We seek comment on the costs and benefits of mandating a non-electronic means of checking program eligibility by a third-party administrator, including the cost of implementing such a solution on a nationwide basis, and whether such a non-mechanized approach can be integrated with the duplicates database at a later date.[1066] What would be the benefits and costs if USAC were to assume this function given its role to implement the National Lifeline Accountability Database to eliminate duplicative support?

415. Finally, we seek comment on additional features and functions which can and should be added to the National Accountability database. We seek comment on whether the current features and functions of the database can be refined, including the manner in which ETCs interact with the database.

B. Advancing Broadband Availability for Low-Income Americans through Digital Literacy Training

416. In the attached Order, the Commission established a goal of ensuring the availability of broadband service for low-income Americans and adopted broadband penetration rates among low-income Americans as an outcome measure for this goal. The most recently available statistics suggest that approximately 32 percent of the American population has not adopted high-speed Internet at home,[1067] and the percentage of non-adopters among low-income Americans may be as much as double the national rate.[1068] As discussed in today's Order, for broadband to be "available" to a consumer, a broadband network must be deployed to the consumer, the service must be of sufficient robustness to meet the needs of consumers, and the broadband service offered over the network must be affordable.[1069]

[1064] *See* Verizon Reply Comments at 4-5; Letter of Mary L Henze, AT&T, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 at 2 (filed Jan. 24, 2012) (arguing that ETCs should not be involved in making eligibility determinations). California engages a third party contractor to examine the program documentation of those Lifeline customers who are audited during the renewal process. *See* California Comments, WC Dkt. No. 03-109 *et al.*, at 11 (filed Jul. 13, 2010) ("[T]he CPUC's Certifying Agent vendor annually reviews a sample of customers who are verifying their status for renewal of Lifeline eligibility. If a customer is randomly selected for this 'audit' during the renewal process, the customer must provide documentation of participation in one of the above programs, and the web-based system cannot be used.").

[1065] As we explain above, we direct USAC to establish a process so that, after 2012, ETCs may elect to have USAC administer the re-certification process on their behalf. We seek additional comment here on whether a third party administrator, such as USAC or another party, should perform initial certifications of Lifeline eligibility.

[1066] Letter of Alan Buzzacott, Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 11-24 at 2 (filed Nov. 7, 2011) ("Even if the database administrator does not initially have direct, real-time access to state systems that contain eligibility information, the database administrator's responsibilities should not be limited solely to checking for duplicates. At a minimum, the administrator should assume responsibility for the annual verification process. The California Lifeline program is an example of how a centralized administrator can assume responsibility for annual verifications even without access to state systems that contain eligibility information.").

[1067] *See* NTIA, U.S. DEP'T OF COMMERCE, DIGITAL NATION: EXPANDING INTERNET USAGE, NTIA RESEARCH PREVIEW at 2 (Feb. 2011), *available at* http://www.ntia.doc.gov/files/ntia/publications/ntia_internet_use_report_february_2011.pdf.

[1068] AARON SMITH, PEW INTERNET & AMERICAN LIFE PROJECT, HOME BROADBAND 2010, at 8 (Aug. 11, 2010), *available at* http://pewinternet.org/~/media//Files/Reports/2010/Home%20broadband%202010.pdf (*2010 Broadband Adoption Report*).

[1069] *See supra* para. 34.

The *USF/ICC Transformation Order and FNPRM* recently adopted by the Commission reformed and modernized USF's high-cost program to address the first two of these barriers, while the attached Order adopts a Broadband Pilot Program to assess how best to modernize the Lifeline program to address affordability of broadband service.[1070] However, barriers to broadband adoption also include lack of digital literacy, and a perception that the Internet is not relevant or useful.[1071] The Commission has taken a number of steps to help tackle the digital literacy challenge, including through the recent "Apps for Communities" contest, which focused on increasing the relevance of Internet access.[1072] In this section, we seek comment on the use of universal service funding to address the barrier that lack of digital literacy creates to increased broadband adoption among low-income Americans.

1. Background

417. The National Broadband Plan (NBP) defined digital literacy as the skills needed to "us[e] [information and communications technology] to find, evaluate, create and communicate information," while recognizing that digital literacy is an evolving concept.[1073] Digital literacy is increasingly essential to obtaining an education, searching for a job, learning job-related skills, accessing government information, participating in civic processes, and managing household and financial responsibilities.[1074] Additionally, increasing digital literacy and use of the Internet can help bridge the skills gap, reduce job search discouragement,[1075] and aid the country's economic recovery.[1076]

[1070] *See generally*, *USF/ICC Transformation Order and FNPRM.*

[1071] *2010 Broadband Adoption Report* at 2-3, 11.

[1072] *See* Apps for Communities, *available* at http://appsforcommunities.challenge.gov (last visited Jan. 19, 2012). Winning entries included tools to help people find jobs and connect the homeless with services.

[1073] *See, e.g.*, NATIONAL BROADBAND PLAN at 174-77.

[1074] *See* Remarks on Broadband Adoption, Federal Communications Commission, Chairman Julius Genachowski, Washington, D.C. at 3 (Oct. 12, 2011) (Chairman Broadband Remarks), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1012/DOC-310350A1.pdf (*Chairman's Broaband Remarks*); American Library Association, *Public Library Funding & Technology Access Study 2010-2011: Public Library Technology Study*, at 24, http://www.ala.org/ala/research/initiatives/plftas/2010_2011/plftas11-techlandscape.pdf (*Library Tech Study*); Carlos A. Manjarrez & Kyle Schoembs, *Who's In the Queue? A Demographic Analysis of Public Access Computer Users and Uses in U.S. Public Libraries*, Institute of Museum and Library Services, at 5 (June 2011), http://www.imls.gov/assets/1/AssetManager/Brief2011_04.pdf (*IMLS Research Brief*); George S. Ford, PhD, *Phoenix Center Perspectives 11-04: Internet Use and Labor Market Participation: Additional Insights from New and Old Data*, Phoenix Center for Advanced Legal & Economic Public Policy Studies, at 7 (Aug. 18, 2011), *available at* http://www.phoenix-center.org/perspectives/Perspective11-04Final.pdf (*Phoenix Center Perspective 11-04*); Digital Literacy and Citizenship in the 21st Century, White Paper, Common Sense Media, at 2 (Mar. 2011), *available at* http://www.commonsensemedia.org/sites/default/files/DigitalLiteracyandCitizenshipWhitePaper-Mar2011.pdf (*Common Sense 2011 White Paper*) (discussing the definition of digital literacy and digital citizenship).

[1075] *See, e.g., Phoenix Center Perspective 11-04* at 3; George S. Ford, PhD, *Phoenix Center Perspective 10-01s: Internet Use and Job Search: More Evidence*, Phoenix Center for Advanced Legal & Economic Public Policy Studies (Jan. 26, 2011), http://www.phoenix-center.org/perspectives/Perspective10-01Final.pdf (*Phoenix Center Perspective 10-01*); T. Randolph Beard, *et al.*, *Phoenix Center Policy Paper Number 39: Internet Use and Job Search*, Phoenix Center for Advanced Legal & Economic Public Policy Studies, at 21 (Jan. 2010), http://www.phoenix-center.org/pcpp/PCPP39Final.pdf (*Phoenix Policy Paper No. 39*).

[1076] *See, e.g., U.S. Commerce Secretary Gary Locke Announces Digital Literacy Initiative*, Press Release, NTIA (May 13, 2011), *available at* http://www.ntia.doc.gov/print/press-release/2011/us-commerce-secretary-gary-locke-announces-digital-literacy-initiative; *Fact Sheet: Digital Literacy*, U.S. Department of Commerce, http://www.commerce.gov/news/fact-sheets/2011/05/13/fact-sheet-digital-literacy (May 13, 2011); Robert D.
(continued….)

418. Americans who lack the skills to use the Internet fall behind in a number of important areas. Consumers who do not know how to participate in e-commerce lose the financial benefit of online sales and discounts,[1077] lose out on the cost savings and benefits of e-banking,[1078] and lose access to government services – also imposing additional costs on the government to maintain duplicative service-delivery models.[1079] Broadband Internet is also a tremendous resource for health care information, including specific information about treatment options, safety and drug recall information, doctors and other health professionals, and health insurance.[1080] Americans who lack the skills to use broadband simply do not have the same access to services and information as other consumers.

419. The NBP recommended a number of steps to help all Americans obtain access to broadband and acquire the skills to use it, including launching a National Digital Literacy Corps to train young people and adults to teach digital literacy skills to non-adopters of computer and Internet technology.[1081] The NBP also recommended private and public sector programs with similar digital literacy goals, and suggested an online digital literacy website.[1082] In recent months, several private sector organizations have announced significant commitments to tackle barriers to digital literacy.[1083] For example, the "Connect to Compete" initiative seeks to address barriers to broadband adoption, including a focus on digital literacy and the employment skills gap.[1084] Additionally, the National Telecommunications and Information Administration (NTIA), part of the U.S. Department of Commerce,

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Atkinson, *et al.*, *The Internet Economy 25 Years After .com*, Information Technology and Innovation Foundation at 42 (Mar. 15, 2010), *available at* http://www.itif.org/files/2010-25-years.pdf; Hamilton Consultants, Inc., *Economic Value of the Advertising-Supported Internet Ecosystem*, Hamilton Consultants, at 12 (June 2009), *available at* http://www.iab.net/media/file/Economic-Value-Report.pdf; *Phoenix Center Perspective 11-04*, at 6; *ECDL Foundation highlights role of digital literacy in economic recovery, awards top programs at Global Forum*, Press Release, AMEinfo.com (Dec. 13, 2009), *available at* http://www.ameinfo.com/218610.html; *Digital Inclusion Report New Report Shows the Economic Benefit of Getting Everyone Online*, PR Newswire, http://www.prnewswire.co.uk/cgi/news/release?id=268499 (Oct. 13, 2009) (stating that digital literacy could potentially provide billions of dollars to the economy).

1077 *Id.* (stating that lack of Internet access can greatly impact personal finances and the national economy).

1078 Pew Research Center, Pew Internet & American Life Project (2006), *available at* http://www.pewinternet.org/~/media//Files/Reports/2006/PIP_Online_Banking_2006.pdf.pdf, at 1-3.

1079 *See PRNewswire Report* (suggesting UK government could save hundreds of millions of pounds per year in efficiencies if better use was made of online government services).

1080 *See, e.g.* ,Susannah Fox, *The Social Life of Health Information, 2011*, Pew Internet and American Life Project, at 3 (May 12, 2011), *available at* http://pewinternet.org/~/media//Files/Reports/2011/PIP_Social_Life_of_Health_Info.pdf.

1081 *See* NATIONAL BROADBAND PLAN at 174-78.

1082 *See id.* The website was developed by NTIA and is available at www.digitalliteracy.gov.

1083 *See* Chairman Julius Genachowski, FCC, Remarks at Comcast Internet Essentials Event, Washington, D.C. (Sept. 20, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-309693A1.pdf (recognizing Comcast's Internet Essentials program that seeks to provide low-cost high-speed Internet combined with digital literacy training).

1084 *See Chairman's Broadband Remarks* at 4-6; *see also* FCC & "Connect to Compete" Tackle Broadband Adoption Challenge Through Expanded Digital Literacy Training, Fact Sheet (Oct. 12, 2011) (*Connect to Compete Digital Literacy Fact Sheet*), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1012/DOC-310346A1.pdf; Supporting Statements From Connect to Compete Partners, (Oct. 12, 2011) (*Connect to Compete Supporting Statements*), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1012/DOC-310348A1.pdf.

has been providing funding to develop digital literacy programs through its Broadband Technology Opportunities Program grants.[1085] BTOP grant funds are currently being used in libraries across the country.[1086] BTOP funds are also being used by various community programs and technology corporations to improve digital literacy and citizenship.[1087]

420. Although these initiatives are making significant progress in boosting the digital literacy skills of Americans where such programs are available, much more needs to be done to make digital literacy ubiquitous, particularly among low-income populations. BTOP's Sustainable Broadband Adoption and Public Computing Center programs are providing needed funding, but its projects are available only in certain communities and during certain times. Additionally, BTOP funding will end by 2013.[1088] The number of public libraries offering formal digital literacy programs is still relatively low, with only 38 percent of public libraries offering formal digital literacy courses, and only 25 percent of those in rural America offering courses.[1089] More than 60 percent of public libraries still do not provide any formal digital literacy services to their patrons, and due to budgetary restrictions, some libraries have reported eliminating digital literacy skills training programs.[1090]

2. Discussion

421. We seek comment on using universal service support for targeted, time-limited funding to ensure that low-income Americans who have not adopted broadband have the digital literacy skills they need to access and use broadband. In particular, we seek comment on the details of providing digital literacy funding, including whether such funding should be used for digital literacy training programs, what types of entities should receive such funding, how much funding to provide and for how long, and how funding should be administered.

422. *Legal Authority*. As an initial matter, we seek comment on our statutory authority to use universal service funds to support digital literacy. As we recently noted in the *USF/ICC Transformation Order and FNPRM*, the principle that all Americans should have access to communications services has been at the core of the Commission's mandate since its creation. Congress created the Commission in 1934 for the purpose of making "available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . . ."[1091] In the Telecommunications

[1085] *See* NTIA, BroadbandUSA, Grants Awarded: Sustainable Broadband Adoption, http://www2.ntia.doc.gov/sustainableadoption (last visited Jan. 19, 2012). *See also* DIGITALLITERACY.GOV, In the Community Stories, http://www.digitalliteracy.gov/communities (last visited Jan. 19, 2012).

[1086] *See, e.g.*, Enhancing Computer Centers in Montana Public Libraries, http://msl.mt.gov/btop/; New Jersey State Library, *available at* http://njworks.org/; State Library of Louisiana, http://www.state.lib.la.us/; Technology Expertise, Access and Learning for all Texans, https://www.tsl.state.tx.us/teal/; DC Public Library, Public Computing Centers, http://dclibrary.org/broadbandusa/public-computing-centers.

[1087] *See, e.g.*, CFY, http://cfy.org/ (last visited Jan. 19, 2012) (providing services in NYC, Philadelphia, Atlanta, LA, and San Francisco Bay Area); ONECOMMUNITY, http://www.onecommunity.org/ (last visited Jan. 19, 2012); Common Sense Media, *Digital Literacy and Citizenship Curriculum for Grades 6-8*, COMMON SENSE MEDIA, http://www.commonsensemedia.org/educators/curriculum/6-8 (last visited Jan. 19, 2012).

[1088] BTOP Quarterly Status Report, NTIA, Department of Commerce, at 9 (Dec. 2011), *available at* http://www.ntia.doc.gov/files/ntia/publications/btop-quarterly-congressional-report-dec-2011.pdf.

[1089] *See Library Tech Study* at 32-33. Formal training generally refers to group/classroom type training. Informal training generally refers to anything outside of formal classes, including one-on-one training, downloadable references and guides and ad hoc point-of-use library staff assistance. *See id.*

[1090] *Id.* at 35.

[1091] 47 U.S.C. § 151.