

Act of 1996, Congress built upon that longstanding principle by enacting section 254, which sets forth six principles upon which we must “base policies for the preservation and advancement of universal service”¹⁰⁹² Among these principles are that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation,” and that “[c]onsumers in all regions of the nation, including low-income consumers . . . should have access to telecommunications and information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”¹⁰⁹³ Congress also directed the Commission to take the steps necessary to ensure the delivery of affordable telecommunications service to all Americans, including eligible schools and libraries.¹⁰⁹⁴ Section 254(h)(2) directs the Commission “to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services” for libraries and school classrooms.¹⁰⁹⁵ Furthermore, the Commission has the authority under section 254(c)(3) to designate “additional” services eligible for universal service support under the schools and libraries program.¹⁰⁹⁶ Under this authority, the Commission may provide support to non-telecommunications carriers providing non-telecommunications services, such as Internet access and internal connections.¹⁰⁹⁷ Historically, the Commission has supported transmission used to access advanced information services. Training on how to use information services also enhances access to those services in classrooms and libraries and furthers the purposes of section 254(h).¹⁰⁹⁸

423. Against this statutory backdrop, we seek comment on our legal authority to use universal service funds to support digital literacy in general and digital literacy training in particular. Should the directive to provide “access” be understood to include the ability for consumers to use the services once they have access to them? Just as the Commission has long relied upon sections 254(c)(3) and 254(h)(2) to provide support for internal connections to enable access to the Internet in classrooms, could we also authorize funding for training to enable library patrons to effectively utilize the Internet access provided at libraries, or to enable parents and other members of the community to learn the skills to use E-rate funded connections at School Spots¹⁰⁹⁹ across the country?

424. We seek comment on whether promoting digital literacy would serve the objective of providing support that is sufficient but not excessive, so as to not impose an excessive burden on consumers and businesses who ultimately pay to support USF. By providing more consumers with the

¹⁰⁹² 47 U.S.C. § 254(b).

¹⁰⁹³ 47 U.S.C. § 254(b) (1) – (3).

¹⁰⁹⁴ 47 U.S.C. § 254 (a)– (c). See *Universal Service First Report and Order*, 12 FCC Rcd at 8780, para. 1.

¹⁰⁹⁵ 47 U.S.C. § 254(h)(2).

¹⁰⁹⁶ 47 U.S.C. § 254(c)(3).

¹⁰⁹⁷ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 440-45 (5th Cir. 1999).

¹⁰⁹⁸ See, e.g., S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 132 (1996) (“The provisions of subsection (h) will help open new worlds of knowledge, learning and education to all Americans They are intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of an illness, to Americans everywhere via schools and libraries.”); but see, e.g., *Schools and Libraries Universal Service Support Mechanism et al.*, CC Dkt. No. 02-6 *et al.*, Sixth Report and Order, 25 FCC Rcd 18762, 18841 (2010) (*2010 E-Rate Sixth Report and Order*) (listing such training as “Ineligible for E-rate Funding as Internet Access Services”).

¹⁰⁹⁹ See *2010 E-Rate Sixth Report and Order*, 25 FCC Rcd at 18901 (Statement of Chairman Julius Genachowski); *Schools and Libraries Universal Service Support Mechanism*, CC Dkt. No. 02-6, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 1740, para. 13 (2010) (*E-rate Community Use Order and NPRM*).

requisite skills to use broadband, we could expect to see more demand for broadband, which would improve the business case for broadband providers to deploy and expand networks and offer services to all consumers. Increased broadband penetration rates could reduce the need for Connect America Fund subsidies to enable broadband networks in high cost areas to provide service at reasonably comparable rates. As the Commission explained in its most recent Broadband Progress Report, obstacles to broadband adoption, such as poor digital literacy, are barriers to infrastructure investment because they reduce the revenue available to providers who invest in broadband.¹¹⁰⁰ The Commission recognized that one of the most significant barriers to investment in broadband infrastructure is the lack of a “business case for operating a broadband network” in high-cost areas “[i]n the absence of programs that provide additional support.”¹¹⁰¹ In addition, to the extent digital literacy contributes to consumers’ ability to search for, secure, and keep jobs, targeted investment in digital literacy could, over time, help reduce demand on Lifeline by reducing unemployment. Consistent with court holdings that the “purpose of universal service is to benefit the customer, not the carrier,”¹¹⁰² would providing digital literacy training be a way to lessen demand for both low-income and high-cost funding, and thereby reduce contribution obligations on consumers and businesses?

425. In the wake of the 1996 Act, the Commission implemented the directives in section 254 by adopting rules to administer universal service through four functionally separate programs – high cost, low-income, E-rate, and rural health care. Our current rules direct USAC, the USF program administrator, to project program demand separately for those four programs, and to keep separate accounts for the amounts of money collected and disbursed for each program.¹¹⁰³ Nothing in the statutory framework, however, dictates that the Commission must keep these four programs functionally separate from one another, or precludes the Commission from creating a new program that is administered separately from existing programs, so long as that program is consistent with our statutory authority. We therefore seek comment on whether a digital literacy program should be administered through the existing E-rate program, the low-income program, or as a separate program outside of the current structure of any of the existing programs. What are the practical and administrative implications of each of these alternatives?

426. *Digital Literacy Training.* We seek comment on whether universal service funding for digital literacy should be focused on training programs. By reducing the digital literacy skills gap, training programs could help consumers, and particularly low-income Americans, who have not yet adopted broadband to gain the digital skills necessary to adopt broadband. Connect Ohio, a BTOP grantee that offers digital literacy training classes in libraries and community centers across Ohio, found that approximately 87 percent of consumers who took formal digital literacy classes said they intended to subscribe to broadband at home within a year as a result of the training, demonstrating the effectiveness of digital literacy training as a tool for increasing broadband adoption.¹¹⁰⁴ We seek comment and data on the effectiveness of formal digital literacy training classes, and the benefits such training provides as compared to informal digital literacy guidance that may be provided by librarians and others to consumers who have not adopted broadband.

427. Although some digital literacy training programs are already being offered, many

¹¹⁰⁰ *Seventh Broadband Progress Report*, 26 FCC Rcd at 8040, paras. 64-65.

¹¹⁰¹ *Id.* at 8040-41, para. 66.

¹¹⁰² *Rural Cellular Association* 588 F.3d at 1103 (quoting *Alenco Communications, Inc.* 201 F.3d at 621).

¹¹⁰³ See 47 C.F.R. § 54.702(h).

¹¹⁰⁴ Amanda Murphy, *2011 Review: ECO Progress, Last Mile Successes, New Initiatives & Partnerships*, Connect Ohio, (Dec. 28, 2011), available at <http://connectohio.org/blog/post/2011-review-eco-progress-last-mile-successes-new-initiatives-partnerships>.

Americans who haven't adopted broadband still may not have access to digital literacy training, because it may not be offered where they live or because the service may be offered through a program or institution that is only available to certain populations. For example, a local area senior center may provide computer or Internet classes, but the mission of these institutions and the people they serve is limited to the elderly. Of the approximately 16,800 public libraries in the United States,¹¹⁰⁵ only about 38 percent currently provide formal digital literacy training.¹¹⁰⁶ Providing additional funding for digital literacy training that is free and open to all consumers, for example through programs offered at libraries and schools, could help close that gap by ensuring that all Americans, particularly low-income Americans, can access the benefits of digital literacy training. Furthermore, funding digital literacy training programs could provide not only an immediate infusion of resources, but also produce a more sustainable impact by fostering the development of curricula and training skills that would serve as building blocks for future digital literacy training programs run without USF support. Accordingly, we seek comment on whether funding digital literacy training is an effective way to help close the digital literacy gap and thereby increase demand for and the availability of broadband to low-income consumers and others. We also seek comment on how to ensure that the non-adopters we are targeting are aware of and can access the digital literacy training programs that are established as a result of our providing funding. Are there ways to utilize the expertise of other government agencies, groups or organizations to assist us in better targeting digital literacy training?¹¹⁰⁷

428. *Funded Entities.* We seek comment on what types of entities should be eligible to receive digital literacy training funds, consistent with our statutory authority, efficient program design, and the targeting of the funding towards low-income consumers. Many have advocated that libraries are effective institutions for digital literacy training,¹¹⁰⁸ while schools, particularly those offering School Spots pursuant to the *E-rate Community Use Order and NPRM*, could be effective as well. Does our authority allow funding received from savings in the Lifeline program to be directed to libraries and schools through our current E-rate program? Could this minimize administrative overhead and provide a ready means to prioritize or limit receipt of funds to libraries and schools in low-income areas?¹¹⁰⁹ Alternatively, as part of the low-income program, could USF funding be provided to ETCs that apply for additional support for the purpose of providing digital literacy training in locations like libraries that are targeted to low-income communities?¹¹¹⁰ We also seek comment on whether to provide funding to ETCs

¹¹⁰⁵ See *Funding & Technology Access Study, Public Libraries and Access, Information Policy & Access Center at 1* (2010-2011 data presented) (*iPAC Information*), available at www.ala.org/plinternetfunding. See also *How Libraries Stack Up: 2010, OCLC at 1* (2010) (*OCLC Research*), available at www.oclc.org/reports/stackup

¹¹⁰⁶ See *Library Tech Report at 33, Figure C-17.*

¹¹⁰⁷ See, e.g., Letter from Marijke Visser, American Library Association, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Jan. 24, 2012) (American Library Association Jan 24 *ex parte* Letter).

¹¹⁰⁸ *Informing Communities Sustaining Democracy in the Digital Age*, The Aspen Institute and The Knight Foundation at 47 (2009), available at http://www.knightfoundation.org/media/uploads/publication_pdfs/Knight_Commission_Report_-_Informing_Communities.pdf; INFORMATION NEEDS OF COMMUNITIES REPORT: PART 3 - RECOMMENDATIONS, Federal Communications Commission, Office of Strategic Planning and Policy Analysis at 358 (July 2011), available at <http://transition.fcc.gov/osp/inc-report/INoC-35-Recommendations.pdf>.

¹¹⁰⁹ See 47 C.F.R. § 54.505(c) (*E-rate Discount Matrix*). An E-rate applicant filing for discounts on eligible services must calculate the percentage discount that it is eligible to receive measured by the percentage of students eligible for the National School Lunch Program and dependant upon whether it is located in an urban or rural location. FCC Form 471 Instructions at 8-19 (identifying how an E-rate applicant should calculate its discount).

¹¹¹⁰ See, e.g., *Communications Workers of America Comments*, WC Dkt No. 10-90 *et al.*, at 16-17 (filed Apr. 18 2011).

that participate in the high-cost program, conditioned on their offering digital literacy training to consumers in their service territory.¹¹¹¹ For example, such training could be provided by ETC employees in public locations such as libraries or schools. Are there anchor institutions better suited to serve low-income non-adopters than schools and libraries, or perhaps in addition to schools and libraries? If so, what are they, and how could we target them? For example, would Tribal government administrative buildings or other community centers be more accessible and better suited to serve low-income non-adopters on Tribal lands?

429. Libraries are open to the general public during operating hours, while digital literacy training offered by schools to non-students would presumably be offered only outside of school hours. In addition, libraries may be open during the evenings and on weekends, which could increase the opportunities for digital literacy classes to be held at times when people could attend them. Furthermore, for millions of Americans, libraries have become established institutions where people feel comfortable accessing the Internet,¹¹¹² and libraries are a known place in the community where people may already go to seek help in becoming digitally literate.¹¹¹³ For example, data shows that approximately 32 percent of the American public 14 years or older have accessed the Internet using a library computer or wireless network at least once in the last 12 months.¹¹¹⁴ Additionally, this access is highest among low-income and working poor, people of mixed race, 14-18 year olds, men, and non-English speakers.¹¹¹⁵ Schools can also provide meaningful opportunities for digital literacy courses and potentially reach non-adopters, although they may be more limited in their reach and purpose – focusing primarily on students and their immediate families and on digital citizenship, a concept that teaches how to appropriately and safely use technology and the Internet in a technology-rich society.¹¹¹⁶

¹¹¹¹ In the *USF/ICC Transformation Order and FNPRM* proceeding, several rural telecommunications companies commented that they maintain relatively low broadband adoption rates. Some advocated for greater availability of information to increase adoption. See, e.g., Hargray Telephone Company Reply Comments at ii, 2; Hawaiian Telecom 9-10; IT&E Reply Comments at 3-5; San Juan Cable at 3, 6; ALA at 4; California Emerging Technology Fund at 1; CA PUC at 11, 14-15; Connected Nation at 17; DC PSC at 3; Free Press at 6; Global Crossing at 18; Information Technology Industry Council at 5; Internet2 at 3; Kansas Corporation Commission at 20-21; Maine Public Advocate Office at 5; National Assoc of State Utility Advocates at 48, 51; NY PSC at 4-5; Schools, Health and Libraries Broadband Coalition at 4; State of Hawaii at Reply Comments at 3-4.

¹¹¹² See NATIONAL BROADBAND PLAN at 176-77; *OCLC Research* at 1; *iPAC Information*; *IMLS Research Brief*; Library Tech Study at 30, 32-39; The U.S. IMPACT Study, Opportunity for All: How Library Policies and Practices Impact Public Internet Access, Institute of Museum and Library Studies (June 2011) (*IMPACT Study*), available at <http://tascha.washington.edu/usimpact>; Phoenix Center Perspective 11-04 at 3 (showing the impact that libraries have made in reducing the probability of labor market discouragement).

¹¹¹³ See *IMPACT Study*; *OCLC Research*; *IMLS Research Brief* at 2-4; *iPAC Information* at 3.

¹¹¹⁴ See *Opportunity for All: How the American Public Benefits from Internet Access at U.S. Libraries*, The U.S. IMPACT Study, IMLS at 32 (Mar. 2010) (*2010 IMLS Study*), available at <http://www.gatesfoundation.org/learning/Documents/OpportunityForAll.pdf>; Library Tech Study at 34.

¹¹¹⁵ *Id.*

¹¹¹⁶ See, e.g., Secretary Arne Duncan, *Common Sense 2011 White Paper; Using Technology to Transform Schools*, Remarks to the 2010 Association of American Publishers Annual Meeting, Department of Education (Mar. 3, 2010) (stating, “In the 21st century, students must be fully engaged. This requires the use of technology tools and resources, involvement with interesting and relevant projects, and learning environments—including online environments—that are supportive and safe”), available at <http://www2.ed.gov/news/speeches/2010/03/03032010.html>; New York City Department of Education Connected Learning, available at <http://schools.nyc.gov/community/innovation/ConnectedLearning/default.htm> (offering digital literacy training in New York City for disadvantaged middle school students and their families); Ten Elements of High Quality Digital Learning, Digital Learning Now! (Dec. 1, 2010), available at (continued....)

430. We propose to limit funds to entities that do *not* already offer formal digital literacy training services so that USF does not displace existing funding sources for such training, whether derived from public or private sector sources. Further, to encourage outreach to the community, we propose that any digital literacy training supported in schools be limited to those schools that offer community access after regular school hours.¹¹¹⁷ We propose to establish these eligibility criteria to encourage the development of new digital literacy training programs for the purpose of helping those people without digital literacy skills gain access to digital literacy training. We believe these criteria will further the goal of promoting universal service, instead of simply funding programs that already exist. We seek comment on these criteria, and whether they will promote the goal of expanding access to and demand for broadband among populations that disproportionately lack digital literacy skills, particularly low-income consumers. We also seek comment on whether we should limit funding only to “communities” that are not already served by digital literacy programs, such as BTOP-funded programs designed to teach digital literacy skills. For purposes of administering such a requirement, how should we define a “community” such that we could determine what community would not be eligible for digital literacy training funding? Should the Commission establish additional eligibility criteria, and, if so, what should those criteria include?

431. We also seek comment on the criteria for selection of recipients in the event that demand exceeds available funding. Research shows that certain demographic populations, such as the elderly, disabled, low-income, and non-English speaking populations, need more help with digital literacy.¹¹¹⁸ Accordingly, for example, funding could be prioritized to areas, such as census tracts, that have more low-income consumers. Should we direct funding to low-income areas? If so, at what level and based on what criteria? Should we direct funding to entities serving elderly, disabled, bilingual, Tribal or non-English speaking populations? How would we verify that these entities serve the targeted population? The census data show that rural areas generally have higher non-adoption rates than urban areas. Should we establish a rural priority for the funding if the demand exceeds the amount we ultimately adopt for this program?

432. On the other hand, if demand does not exceed available funding, should we consider funding existing programs or entities that have already received funding for digital literacy training? Should we consider funding programs focused on particular digital literacy skills, e.g., job searching, e-government services, or financial services? We propose that the Wireline Competition Bureau provide USAC with detailed criteria and guidelines for determining which applicants receive funding if the demand exceeds the amount available. We seek comment on delegating this authority to the Bureau.

433. *Funding Levels and Duration.* We seek comment on how to fund digital literacy training without increasing the overall size of the Universal Service Fund. Could we use funding reclaimed through savings in one USF program to advance digital literacy, potentially administered through another program? Could, for instance, digital literacy training be administered in conjunction with the current E-

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<http://digitallearningnow.com/wp-content/uploads/2011/11/Digital-Learning-Now-Report-FINAL.pdf>. *But see* Mexican Institute For Greater Houston – Computer Literacy, available at <http://www.org/programs/computer-training> (Spanish-language program consists of 100 hours of classroom training taught in 2 weekly 2-3 hour sessions, which take place largely in K-12 public schools; curriculum consists of training on how to navigate the Internet; create E-mail accounts; and use Microsoft Word, PowerPoint, and Excel).

¹¹¹⁷ See *E-rate Community Use Order and NPRM*.

¹¹¹⁸ See Reply Comments of The United States Internet Industry Association and Netliteracy, GN Dkt. No. 09-51 at 8-11, Illustration #1 (June 8, 2009); see also John B. Horrigan, *Closing the Broadband Divide*, Pew Internet & American Life Project at 2-3 (Aug. 2007), available at <http://www.pewinternet.org/Reports/2007/Closing-the-Broadband-Divide.aspx>; 2010 *Broadband Adoption Report* at 7.

rate program, but be funded through savings realized by measures we adopt today to eliminate waste, fraud, and abuse in the Lifeline program, or by savings realized in high-cost support?¹¹¹⁹

434. Would up to \$50 million in annual funding over a four year period appropriately balance the goal of advancing digital literacy for Americas that lack such skills, such as low-income consumers, with minimizing the USF contribution burden on consumers and businesses? Would this level and duration of funding appropriately balance advancing digital literacy for Americas that lack such skills, such as low-income consumers, with minimizing the USF contribution burden on consumers and businesses? To aid commenters in addressing the impact of this amount of funding, we offer an example of how a digital literacy training program could be structured if libraries and schools were the primary recipients of funding and the program were administered through E-rate; we also estimate the likely number of libraries and schools such a program could reach.

435. Through E-rate, eligible schools and libraries may receive discounts from for eligible services, including telecommunications services, Internet access, and internal connections.¹¹²⁰ As noted above, section 254 gives the Commission authority to designate additional services eligible for support through E-rate.¹¹²¹ The Commission also has determined that it has the authority to designate services eligible for E-rate support as part of its authority to enhance access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms and libraries, to the extent technically feasible and economically reasonable.¹¹²² If we were to administer support for digital literacy training through E-rate, we seek comment on designating certain additional services as eligible for funding for entities that separately apply and are authorized to receive such funding. We also seek comment on whether we can designate these services as eligible under a different USF program.

436. A recent study of libraries shows that there are a number of challenges to establishing and maintaining a robust digital literacy program, including limited funds to hire staff, provide training, and acquire the tools and resources to provide digital literacy training to patrons.¹¹²³ Accordingly, we seek comment as to whether any of the following specific services to advance digital literacy should be added to the Eligible Services List (ESL) as supported services eligible for E-rate program funding support if digital literacy support were administered through the E-rate program:

¹¹¹⁹ *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 138, n.221 (noting that Connect America Fund support declined by carriers “could be held as part of accumulated reserve funds that would help minimize budget fluctuations in the event the Commission grants some petitions for waiver,” or, in addition or instead, “[t]o the extent that savings were available from CAF programs, the Commission could reallocate that funding for broadband adoption programs, consistent with our statutory authority, while still remaining within our budget target”).

¹¹²⁰ 47 C.F.R. §§ 54.502, 54.503, 54.506, 54.517.

¹¹²¹ See 47 U.S.C. § 254(c)(1), (c)(3), (h)(2)(A). Congress charged the Commission with establishing competitively neutral rules to enhance access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms and libraries; and also provided the Commission with the authority to designate “special” or “additional” services eligible for universal service support for schools and libraries. 47 U.S.C. § 254 (c)(3), (h)(2).

¹¹²² *Universal Service First Report and Order*, 12 FCC Rcd at 9008-9015, paras. 436-449; see also 47 U.S.C. § 254(h)(2)(A). We note that in the *Universal Service First Report and Order*, the Commission concluded that training costs would not be deemed eligible for E-rate support for several reasons, including that the cost of supporting training would be prohibitive, the E-rate program should provide funds to as many applicants as possible, and participation in the program requires a showing that the applicant is ready and able to use the E-rate supported services. See *id.* at 9038, 9077, paras. 497, 572.

¹¹²³ See *Library Tech Study* at 24-25, 32-39; see also *IMPACT Study*.

- Labor costs for trainers: dedicated personnel to provide digital literacy training for a minimum number of hours per week;
- Staff training for the trainers: providing effective in-person digital literacy training courses, including supporting costs for in-person training, conferences, and online training;
- Curriculum development: staff time developing curriculum, purchase of training content for in-person digital literacy classroom courses, one-on-one training, and online tutorials;
- Software and materials to facilitate in-person digital literacy training;
- Marketing: staff time spent on marketing the training classes, including time spent developing marketing materials as well as printing and advertising costs;
- Volunteer recruitment: staff time spent on recruiting and training volunteer digital literacy trainers; and
- Administrative costs: staff time spent administering the program, including scheduling the classes and reserving rooms.

In the alternative, if the digital literacy program were administered through the low-income or the high-cost program, would the costs of these specific services or activities be appropriate to support and how would the support be disbursed through those existing programs?

437. We seek comment on whether these are the digital literacy resources that USF funding should support. Are there other necessary resources that digital literacy training funding should support? If so, what are they and why are they vital to providing digital literacy training?

438. We also seek comment on whether and how funding should be allocated across libraries and schools. Is it reasonable to assume that libraries are better situated to provide digital literacy training to low-income consumers, and therefore that an allocation of digital literacy funding such as 80 percent to libraries and 20 percent to schools would be appropriate? Does this allocation between two groups of eligible entities allow for sufficient funding to encourage the development of sustainable digital literacy training programs? If not, what would be a better allocation?

439. We estimate that approximately \$15,000 a year would be sufficient to cover the cost of approximately eight to 10 hours of digital literacy training per week at one funded location (e.g., one library or school).¹¹²⁴ If we structured the support to provide up to \$10,500 per library or school per year, requiring that the participant matches this funding by providing an additional \$4,500 per year, each entity would have a total of \$15,000 per year to use for digital literacy training. A program structured in this way could provide funding to nearly 4,800 entities annually within a \$50 million annual budget.¹¹²⁵ We note that providing funding for digital literacy training to 4,000 libraries could increase the percentage of public libraries that provide formal digital literacy training from 38 percent to about 60 percent.

440. We seek comment on this structure and its impact. Would a \$15,000 annual program budget per entity be sufficient to support a digital literacy training program? Would that level of support allow eligible entities to provide meaningful training programs in the community? How many low-income non-adopters could be reached with such a digital literacy training budget? Would ensuring digital literacy training is available in 60 percent of libraries as well as nearly a thousand schools be sufficient to ensure that all or nearly all low-income Americans who have not adopted broadband have access to a digital literacy training program? Should a priority be established for schools and libraries on Tribal lands, which historically have lagged behind in terms of both infrastructure deployment and

¹¹²⁴ This estimate is based on a review of the average hourly trainer salary, benefits and administrative costs of various ongoing digital literacy training programs administered by NTIA.

¹¹²⁵ If the funding were allocated 80% to libraries and 20% to schools, this would provide funding to 3,809 libraries (\$40M/\$10,500) and 952 schools (\$10M/\$10,500) annually.

subscriber¹¹²⁶ Is the \$10,500 USF/\$4,500 entity contribution (*i.e.*, a 30 percent match, equivalent to the 70 percent discount rate in the E-rate program) a reasonable balance between USF funding and entity contribution, or would there be a greater impact if we required a smaller match and funded a smaller number of entities? Is a \$4,500 entity contribution an attainable amount for most libraries and schools? If not, what would be a reasonable amount? Should the contribution amount be different for libraries and schools? If so, on what basis and what should the amount be? Should we establish different discount rates or match requirements for libraries and schools? If so, on what basis and what should they be? We note that providing a set amount per entity, regardless of poverty level or urban versus rural location, is different from the way libraries currently receive USF funding.¹¹²⁷ However, libraries have consistently maintained that the current structure is not ideal for the way libraries serve their communities.¹¹²⁸ Given the objective of increasing the number of and access to digital literacy training programs, a funding framework different from the current USF funding structure could be beneficial. We seek comment on providing a set discount level for funding all eligible entities.

441. We seek comment on whether four years is an appropriate length of time to provide funding for digital literacy training. Should it be longer or shorter? Is four years sufficient time to improve significantly the digital literacy skills of low-income Americans and thereby increase broadband adoption? Would funding for a shorter period of time discourage recipients from hiring permanent staff, fully implementing a digital literacy curriculum, and providing training? Will there be a continued need for digital literacy funding in the future?

442. *Administrative Structure.* We propose that any digital literacy training funding that might be established be administered through USAC. We anticipate the number of entities applying for funding to offer digital literacy training could be high, and USAC has the experience and the resources to process applications and distribute funding. We seek comment on this proposal. Is an alternative approach to administration preferable, and, if so, why and what should that approach be?

443. We seek comment on whether there should be an annual application process, comparable to the E-rate process, or whether an eligible entity should be authorized to receive funding for the full four years upon initially satisfying any applicable requirements. Are there other methods of disbursing support that are more appropriate or more efficient considering the amount of support for each recipient and the number of anticipated recipients? Could we utilize another government agency or organization to review applications or distribute the funds to recipients?¹¹²⁹

444. If the funding were to be administered as part of E-rate, should we establish a separate filing window for digital literacy training applications? If a majority of funding is provided to libraries, would there be less need to tie the funding cycle to the calendar of a typical school year? Given the idea to provide a set amount of funding per applicant, linked to a specified number of hours of training per week, there may be less of a need for a competitive bidding process for eligible recipients to procure the necessary training resources and services. Does it generally make sense to apply the E-rate rules to this

¹¹²⁶ See *Native Nations NOI*, 26 FCC Rcd 2672, at 2673-74, para. 1 (estimating broadband deployment on Tribal lands at less than 10 percent). See also *id.* at 2674, para. 2 (“where Native Nations and their community members do have access to broadband, studies indicate that their rates of use are on par with, if not higher than, national averages”) (*citing* Traci L. Morris Ph.D, *Native Public Media* and Sascha D. Meinrath, *New America Foundation, NEW MEDIA, TECHNOLOGY AND INDIAN USE IN INDIAN COUNTRY* (Nov. 19, 2009).

¹¹²⁷ See *E-rate Discount Matrix*.

¹¹²⁸ See, e.g., ALA Comments, CC Dkt. No. 10-14 *et al.* (filed Jul. 9, 2010).

¹¹²⁹ See, e.g., American Library Association Jan. 24 *ex parte* Letter at 1 (suggesting the FCC seek comment on the suitability of disbursing Lifeline reform savings to the Institute for Museum and Library Services (IMLS) so that IMLS “may award grants to promote digital literacy training through public, school and tribal libraries.”)

program? If not, why not? If so, are there existing E-rate program rules that should not apply?

445. If digital literacy funding were to be administered as part of another USF program, what modifications to existing rules for that program rules should be made? Are there other USF program rules or requirements we should consider waiving or should not apply?

446. We also seek comment on the content and the format of the application forms. Should we amend any of our current forms or create new forms only for the purpose of providing digital literacy training support? What data should be submitted along with the digital literacy funding application? How would applicants be required to demonstrate they are contributing the requisite amount of funding? We propose to delegate the development of any new forms to the Bureau, and we seek comment on this proposal.

447. What reporting requirements and certifications should be imposed on recipients of funding, and how would we ensure that the minimum number of hours of training per week are provided? Should we require recipients to report to the Commission and/or to the public the number of individuals that receive training, the number of individuals receiving training that go on to adopt broadband at home, and/or any other metrics? If so, how frequently should such data be reported? Is there other information that would enable us to monitor the impact of using universal service funds for this purpose? How often should funding be disbursed – annually, quarterly, monthly, or some other interval?

C. Limits on Resale of Lifeline-Supported Services

1. Background

448. Some telecommunications carriers are offering Lifeline-supported services directly to consumers through resale arrangements with incumbent LECs.¹¹³⁰ Pursuant to section 251(c)(4) of the Communications Act of 1934 (as amended), incumbent LECs have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.¹¹³¹ In 1996, the Commission concluded that all retail services are subject to this resale obligation.¹¹³² In 1997, in its initial implementation of section 254, the Commission rejected arguments that all carriers, not just ETCs, should be able to participate in Lifeline, noting that section 254 allows universal service support to be provided only to ETCs. It concluded, however, that a large class of companies that would not be eligible to receive universal service support directly would nonetheless be able to offer Lifeline-supported service because “resellers could obtain Lifeline service at wholesale rates that include the Lifeline discount and pass these discounts through to qualifying low-income consumers.”¹¹³³ In its 2004 Lifeline Report and Order, the Commission required non-ETCs that provide Lifeline-supported service to eligible consumers through resale arrangements with the incumbent LECs to comply with all Lifeline/Link Up requirements, including certification and verification of subscribers.¹¹³⁴

¹¹³⁰ See 47 U.S.C. § 251(c)(4).

¹¹³¹ See *id.*

¹¹³² The Commission concluded there was no reason to limit the resale duty to basic telephone services, and that all retail services are subject to wholesale rate obligations under section 251(c)(4). See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Dkt. No. 96-98 *et al.*, 11 FCC Rcd 15499, 15934 (1996) (*Local Competition Order*).

¹¹³³ See *Universal Service First Report and Order*, 12 FCC Rcd at 8972, para. 370; see also *id.* at paras. 161, 178; *Tracfone Forbearance Order*, 20 FCC Rcd at 15100-01, para. 12.

¹¹³⁴ See *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd 8302, 8325.

2. Discussion

449. In the Order adopted today, our goal is to make sure that all providers of Lifeline service operate under a common set of rules designed to protect consumers and the Fund. We are very concerned that in today's marketplace, the current resale arrangements pose risk to the Fund in two respects.¹¹³⁵ First, in situations where both the wholesaler and the reseller are ETCs, there is a risk that both the wholesaler and the reseller could seek reimbursement from the Fund for the same subscriber.¹¹³⁶ Because ETCs submit line counts to USAC for reimbursement without identifying customer information, there is no way for USAC to determine whether both the wholesale provider and the ETC-reseller are seeking reimbursement from the Fund for the same subscriber.

450. Second, in situations where only the wholesaler is an ETC, allowing non-ETC resellers to provide Lifeline-supported services to consumers poses a risk to the Fund because non-ETCs are subject to less oversight to ensure compliance with the Commission's Lifeline rules. While our rules require resellers to maintain records sufficient to demonstrate compliance with Commission rules,¹¹³⁷ it is difficult, as a practical matter, to oversee compliance with our Lifeline rules in situations where the entity with the retail relationship with the consumer is not interfacing directly with either USAC or regulators (state or federal). Non-ETC resellers may lack incentives to comply with a number of the protective measures we adopt in this Order today, including the measures related to the institution of the duplicates database.¹¹³⁸ In the most extreme case, carriers that have been denied designation as an ETC or otherwise "red-lighted" as ineligible to receive Fund support could effectively circumvent those decisions by entering into resale arrangements with the incumbent LECs under section 251 of the Act.¹¹³⁹

a. Limiting Lifeline Support to the ETCs Directly Serving the Lifeline Customers

451. Consistent with our obligation to protect the program and reduce waste and abuse in the Fund, we therefore propose to allow ETCs to receive Lifeline support from the Fund only when they provide Lifeline service directly to subscribers. ETCs offering services at wholesale to resellers would no longer be eligible to receive reimbursement from the Fund for such services when they are resold as Lifeline services directly to end-users by resellers. This means that the incumbent LEC wholesale provider would not be eligible to seek reimbursement from the Fund for any low-income subscriber for whom it does not directly provide service. We seek comment on this proposal. How could such a requirement be implemented? For example, could the Commission adopt a new Lifeline rule specifying

¹¹³⁵ The discussion in this section is confined to section 251 resale arrangements with incumbent local exchange carriers for landline service; the questions posed here are confined to such arrangements and are not intended to seek comment on issues relating to wireless resellers who are ETCs seeking reimbursement directly from the Fund.

¹¹³⁶ Pursuant to section 254(e) of the Act, only ETCs designated by a state commission or this Commission pursuant to section 214(e) can receive federal universal service support. See 47 U.S.C. § 254(e).

¹¹³⁷ See 47 C.F.R. § 54.417.

¹¹³⁸ For example, we impose a number of new obligations on ETCs including, among other requirements, the transmission of all subscribers' information into the National Lifeline Accountability Database and initial and annual certification requirements. See *supra* sections VII.A and VI.C.

¹¹³⁹ The "Red Light Rule" is codified at 47 C.F.R. § 1.1910, and provides that anyone filing an application or seeking a benefit from the Commission or one of its components (including USAC and the Pooling Administrator) that is delinquent in debt owed to the Commission, will be barred from receiving a license or other benefit until the delinquency has been resolved. Any entity that files an application or seeks a benefit from the Commission or one of its components, and is delinquent in debt to the Commission, will be notified of the delinquency and given 30 days to resolve it. Failure to resolve it will result in dismissal of the application or other request for a benefit.

this requirement? Could we define the supported Lifeline service to be “voice telephony service provided directly to end users,” thus excluding wholesale services that are used to serve Lifeline customers? If we do not limit Lifeline support only to ETCs when they provide Lifeline service directly to eligible subscribers, what other measures could we take to address the potential risks to the Fund?

b. Re-examining the Scope of the Incumbent LEC Resale Obligation

452. Even if incumbent LECs no longer receive support from the Fund when providing a wholesale service used to serve Lifeline customers, we acknowledge that, as long as the incumbent LEC continues to offer Lifeline-supported voice telephony service to retail customers, the section 251(c)(4) resale obligation could be interpreted to require that incumbent LECs offer their Lifeline-discounted retail voice telephony services for resale “at wholesale rates.”¹¹⁴⁰ This result could be avoided, however, if we interpret the statute not to require incumbent LECs to resell their voice telephony services at a wholesale discount based on their ordinary retail rate further discounted by the amount of the Lifeline subsidy when resold to carriers seeking to serve Lifeline customers. Although certain Commission precedent could be read to adopt a contrary interpretation,¹¹⁴¹ we believe that this interpretation of section 251(c)(4) is reasonable here, especially in light of intervening changes in the marketplace. In interpreting section 251(c)(4) in the *Local Competition Order*, the Commission found that “[t]he 1996 Act does not define ‘retail rate;’ nor is there any indication that Congress considered the issue” and “[i]n view of this ambiguity” and thus concluded “that ‘retail rate’ should be interpreted in light of the pro-competitive policies underlying the 1996 Act.”¹¹⁴² In resolving the ambiguity in “retail rates” in this context, we believe that section 251(c)(4) might also appropriately be interpreted in light of certain universal service policies. In particular, we believe that section 251(c)(4) could be interpreted in light of the goals of section 254, including avoiding waste, fraud, and abuse of universal service, and section 214(e), which anticipates that universal service support will be flowing to ETCs that meet certain criteria, including that they will not be providing service solely using resale.¹¹⁴³ Balancing the pro-competitive goals of the Act with these universal service-specific considerations, we believe that we could conclude that the “retail rate” in this context is the rate for the incumbent LEC’s voice telephony service before applying the Lifeline discount. In the case of such resold services, only an ETC-reseller that has the direct relationship with the end-user could apply for and obtain subsidies from the Fund.¹¹⁴⁴ Consequently, this approach would retain section 251(c)(4) resale as a competitive option in the case of ETCs serving Lifeline customers, which can get wholesale-priced service for resale plus direct Lifeline support from the Fund, while protecting against waste, fraud, and abuse under section 254 and remaining consistent with the framework of section 214(e). We seek comment on that interpretation of section 251(c)(4), as well as other approaches that would achieve the statutory and regulatory goals of universal service. For example, could the Commission achieve a similar result through the interpretation of the phrase “other costs that

¹¹⁴⁰ See 47 U.S.C. § 251(c)(4).

¹¹⁴¹ See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd at 8866, 8875, 8972, paras. 161, 178, 370 (discussing reliance on resale to provide Lifeline services); see also *Tracfone Forbearance Order*, 20 FCC Rcd at 15100-01, para. 12 (same); *Local Competition Order*, 11 FCC Rcd 15499, 15975, para. 962 (1996) (“We also conclude that section 251(c)(4)(B) allows states to make similar prohibitions on the resale of Lifeline or any other means-tested service offering to end users not eligible to subscribe to such service offerings.”).

¹¹⁴² *Local Competition Order*, 11 FCC Rcd 15499 at 15970, para. 949.

¹¹⁴³ See generally 47 U.S.C. §§ 214(e), 254.

¹¹⁴⁴ Non-ETC resellers are precluded from obtaining subsidies directly from the Fund for their provision of service to Lifeline eligible subscribers. See 47 U.S.C. §214(e).

will be avoided by the [LEC]” in the resale pricing standard in section 252(d)(3)?¹¹⁴⁵

453. As an alternative to that statutory interpretation, we seek comment on whether we could relieve incumbent LECs of any section 251(c)(4) obligations they may have to resell Lifeline-discounted services by forbearing, on our own motion, from applying those obligations to the resale of Lifeline-discounted services.¹¹⁴⁶ We seek comment on our analysis for each of the criteria for forbearance set forth in section 10(a). We also seek further comment on the competitive effect if the Commission were to forbear from the resale requirement of section 251(c)(4) as it applies to Lifeline-discounted services sold to non-ETC providers.

454. *Just and Reasonable.* Under section 10(a)(1) of the Act, we must consider whether enforcement of a section 251(c)(4) duty to offer Lifeline-discounted services at wholesale rates is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory.¹¹⁴⁷ Requiring incumbent LECs to offer for resale Lifeline-discounted services at wholesale rates may not be necessary to ensure that the charges, practices, classifications, and regulations for Lifeline service are just and reasonable, because low-income consumers would still be able to receive Lifeline-supported services from other providers. Would eliminating this resale requirement be unjustly or unreasonably discriminatory against non-ETCs—which could not compete to offer Lifeline services because they would not be eligible to obtain such support directly from the Fund—given the intent in the Act that only ETCs be eligible to offer Lifeline-supported services?¹¹⁴⁸

455. *Consumer Protection.* Section 10(a)(2) requires the Commission to consider whether requiring incumbent LECs to offer Lifeline-supported services at wholesale under section 251(c)(4) is necessary to protect consumers. Imposing this aspect of a resale requirement may not be necessary for the protection of consumers as they will continue to have access to Lifeline-supported services from numerous providers, including competitive ETCs that resell voice telephony services and receive Lifeline support directly from the Fund.

¹¹⁴⁵ See 47 U.S.C. § 252(d)(3).

¹¹⁴⁶ Section 10 of the Act requires the Commission to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that the telecommunications carrier’s charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. See 47 U.S.C. § 160. In making a forbearance determination regarding the public interest, the Commission must also consider “whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which forbearance will promote competition among providers of telecommunications services.” *Id.* We note that section 10(d) provides that the Commission may not forbear from applying the requirements of section 251(c) unless it determines that those requirements are “fully implemented.” See *id.* § 160(d). In the *Qwest Omaha Forbearance Order*, the Commission determined that, for purposes of section 10(d), the requirements of section 251(c) are fully implemented nationwide and may be forborne from. See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Dkt. No. 04-223, *Memorandum and Order*, 20 FCC Rcd 19415, 19439-42, paras. 51-56 (2005). The D.C. Circuit affirmed the Commission’s interpretation, see *Qwest Corp. v. FCC*, 482 F.3d 471, 477-79 (2007).

¹¹⁴⁷ See 47 U.S.C. § 160(a)(1); 47 U.S.C. § 251(c)(4); see also *CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003) (finding reasonable the Commission’s view that the term “necessary” means that there is a strong connection between the requirement and its regulatory goal).

¹¹⁴⁸ See 47 U.S.C. § 214(e)(1)(A). Although non-ETC resellers currently do not receive reimbursement directly from the Fund, they do receive a benefit from the Fund in the form of a discounted wholesale price that effectively passes the Lifeline subsidy through to the reseller.

456. *Public Interest.* Section 10(a)(3) requires that we consider whether enforcement of a section 251(c)(4) resale requirement for Lifeline-discounted services is in the public interest. The Commission has made clear its ongoing commitment to fight waste, fraud, and abuse in the Lifeline program. Restricting Lifeline support to resellers that also are ETCs, thereby limiting reimbursements to only those entities that have a direct reporting requirement to the Commission and USAC, should function to prevent waste, fraud, and abuse of the program, which is in the public interest. Section 10(b) requires that the analysis under section 10(a)(3) include consideration of whether forbearance would promote competitive market conditions. Although we do not believe that forbearance will necessarily increase competition in the market for Lifeline services, given the number of Lifeline providers currently in the market and ongoing efforts to market and make available Lifeline services, commenters should address whether the proposed forbearance will in any way harm the already-competitive Lifeline services market. We seek comment on this analysis.

457. We seek comment on whether there are any policy concerns with the Commission precluding the flow-through of Lifeline support to resellers, whether through statutory interpretation or limited forbearance, and instead providing such support only directly to the ETC serving the Lifeline customer. If so, what other ways exist to achieve the intended objective of preventing waste, fraud, and abuse of the Fund and ensuring Commission rules regarding the provision of Lifeline services are being followed by all Lifeline service providers? For example, if the Commission does not interpret the statute or forbear as described above, what, if any, additional recordkeeping, reporting, or other measures should be imposed to ensure that the Lifeline rules and requirements are being followed by the resellers?

c. Implementation Issues

458. We seek comment on how best to implement these changes if we were to adopt them. Would limiting Lifeline funding to ETCs directly serving the Lifeline customers, coupled with either of the alternatives to protecting against an unfunded incumbent LEC resale obligation, harm any existing Lifeline subscribers? We seek input on how we could ensure continuity of service to current subscribers of Lifeline resold service. Resellers are free to take steps, consistent with statutory requirements, to become ETCs and, therefore, continue to resell Lifeline services. Should we defer the implementation date of any rules for a limited time to provide sufficient time for existing non-ETC resellers to obtain ETC designation, and if so, what time period would be appropriate? If non-ETC resellers do not choose to apply for, or do not obtain, ETC designation, how should their subscribers be handled? Alternatively, should existing resold lines be grandfathered? If so, how can the Commission ensure that the non-ETC resellers offering such services to Lifeline subscribers are complying with the Commission's rules?

459. We also seek comment on the extent to which incumbent LEC Lifeline services today are tariffed offerings that include a discount for the Lifeline subsidy as part of the wholesale price in the tariff. Under the proposed alternatives, would incumbent LECs need to amend such tariffs to separate the amount of the Lifeline subsidy from the wholesale price of the underlying service that is being resold, and could they do so consistent with federal and state regulations? We also seek comment on how a rule that restricts reimbursement from the Fund to ETCs providing Lifeline directly to end-users would impact existing contractual arrangements, including interconnection agreements, that may exist between incumbent LECs and resellers. Should we provide some period of transition before such a rule would become effective to allow parties to renegotiate or terminate such agreements? Are there any other actions the Commission should take with respect to such agreements under either of the approaches discussed here?

460. We seek comment on procedures that could be implemented to provide assurance that ETCs are not seeking reimbursement for their wholesale service offerings. For instance, should wholesale carriers be required to certify that they are not seeking reimbursement for resold services when they submit line counts to USAC? Should incumbent LECs and other wholesalers be required to maintain records of their resold lines for purposes of annual self-certification to USAC and any audit

requirements?

461. The Order requires ETCs to populate a database with Lifeline subscriber information to ensure that duplicate services are not awarded to qualifying individuals.¹¹⁴⁹ In the case of resold services, the carrier that is providing Lifeline service directly to the low-income consumer is in the best position to obtain the necessary information. We propose requiring that the Lifeline service provider with the direct relationship to the end-user be responsible for entering all pertinent information into the database as described in today's Order. In the alternative, we propose that the Lifeline resellers be required to provide the information, including subscribers' names and service addresses, to the Lifeline wholesaler, which then would be responsible for entering that information into the database. Regardless of which party is required to populate the database, we also seek comment on methods to ensure that resellers are adhering to the requirement to not enroll existing subscribers. We also seek comment on which entity, the incumbent LEC wholesaler or the ETC-reseller, will be responsible for obtaining annual subscriber certifications and who will de-enroll ineligible subscribers pursuant to the rules we adopt in this Order.

D. Lifeline Support Amount for Voice Service

462. In the Order, we adopted on an interim basis a uniform reimbursement amount of \$9.25 in monthly Lifeline support for voice service.¹¹⁵⁰ In this *FNPRM*, we seek to further develop the record on what a modernized Lifeline support amount should be, including the appropriate structure of support (e.g., whether it should be uniform or vary in some way) and how the level or levels of support should be determined. We are seeking to determine the optimal level of Lifeline discount that will help us accomplish our goals.¹¹⁵¹

463. First, we seek comment on whether to continue with a flat rate of reimbursement. We note that a uniform Lifeline support level is administratively simple and unlikely to significantly distort the aims of the Lifeline program in any specific cases. While prices do vary somewhat from place to place, reflecting market conditions such as underlying costs and the nature and extent of competition, we are aware that many regional and national carriers set relatively uniform prices across a wide geographic area.¹¹⁵² Are there other approaches, such as one based on the price of the lowest-priced available offering in a particular geographic area, that the Commission should consider instead of a flat rate of reimbursement? Should the Commission provide support for any non-recurring up-front charges associated with the provision of the service?

464. We also seek comment on how we should determine the size of the support amount for voice service. In the attached Order, we adopt a pilot program to test the impact of different support amounts on broadband penetration rates. In the voice context, however, we could potentially develop an estimate of the impact of different support amounts on voice service penetration based on data from the existing program.

465. For example, we could estimate low-income consumers' demand response to price, and hence estimate the subsidy levels that would achieve our goals. To do this we would need demand data – both price and quantity information – from the Lifeline program, including data from the enhanced Lifeline program on Tribal lands. Because Lifeline is a subsidy, “price” means both the actual price paid by consumers for Lifeline service and the effective price received by ETCs. These two prices differ by

¹¹⁴⁹ *Supra* Order at paras. 182-208.

¹¹⁵⁰ *Id.* at para. 53.

¹¹⁵¹ *Id.* at paras. 24-43.

¹¹⁵² We note that one commenter suggests that a flat rate be based upon the “costs incurred by the least cost provider for a given area.” Ohio PUC Comments at 26.

the support amount, currently set at \$9.25, or up to \$34.25 on Tribal lands. In this case, “quantity” means the number of lines of a given quality obtained for a given price. Because the quality of service may differ from one observation to the next, information on service characteristics (i.e., wireline or wireless, number of minutes, value-added services, etc.) would also be needed. Ideally, this price and quantity information would be obtained at the level of the Lifeline household. The more specific information available to us, the better we could estimate demand for Lifeline-supported service, which would in turn help us determine the optimal amount for the Lifeline discount. While a cross-section of households (or study areas or states) may be sufficient for demand estimation, the more aggregated the data set is, the more statistical fluctuation may be introduced into the estimate. Ideally, we would test data over a period of time.

466. We seek comment on the best method to determine the optimal support amount. Should we require ETCs providing Lifeline service to submit the data described above to USAC as part of the reimbursement process? Should this data be submitted directly to the Commission? Or is there a less burdensome way to obtain the necessary information?

467. In the alternative, could we rely on commenters’ estimates of the impact – on both voice penetration and the Fund – of support amounts above or below the \$9.25 or up to \$34.25 on Tribal lands, adopted on an interim basis in the attached Order? For us to do so, commenters would need to provide specific credible evidence in support of their positions. If they believe that a lower rate would be sufficient to meet our program goals, they would need to provide estimates of the expected savings obtained from a lower rate, and also of the expected impact on penetration by low-income consumers, including low-income consumers on Tribal lands. Conversely, if commenters believe a higher rate would have a material impact on achievement of our goals for the program, they should describe with specificity how such a higher rate would affect penetration rates for the targeted low-income population as well as the associated costs it would impose on the Fund.

468. We seek comment on whether support amount for voice should be uniform across all providers or whether there should be different amounts for fixed v. mobile voice? Should the support amount take into account varying business models for delivering the supported voice telephony service, or the relative value that consumers may place on different types of service offerings? Should support be provided on a monthly basis to those ETCs that do not charge for service on a monthly basis?

469. We seek comment on whether the support levels could in the future be linked to a communications price index? If so, how often should it be updated?

470. Finally, we seek additional comment on issues related to the one-per-household rule adopted in the Order. We ask whether the flat rate discount amount should be provided in a way that would provide support for multiple services within a household. For example, should a household be able to split the Lifeline discount across two or more lines? Should a household be able to use the discount for both a wireless and a wireline service?

471. Some commenters propose that the Commission make additional support available within a household. For example, T-Mobile argues that the Commission should permit households receiving one Lifeline-supported service to obtain a second supported service at 50 percent of the Lifeline support level (e.g., 50 percent of \$9.25, or \$4.60).¹¹⁵³ We seek comment on this proposal. First, how would such a rule be enforced? Would the extra support be available only to the ETC already serving the household, or

¹¹⁵³ See T-Mobile Dec. 16 *ex parte* Letter, at 4 (stating that a reduced Lifeline subsidy should be available for second (and subsequent, if applicable) household members, in recognition that wireless carriers generally offer family plans with lower rates for additional connections); SBI Jan. 23 *ex parte*, at 2 (stating that the Commission could provide an additional ten dollars of Lifeline support to enable households to afford wireless family plans which share minutes).

could the discount be split between two ETCs? How could such a rule be applied to the purchase of a wireline connection and a wireless phone for a household, as opposed to a wireless family shared calling plan? If such a rule were adopted, how should the Commission determine an appropriate per-household support amount, or should the total support amount be one and a half times the standard support amount as T-Mobile proposed?

472. In the *Lifeline and Link Up Public Notice*, we sought comment on the costs associated with providing one Lifeline-supported service per eligible resident of Tribal lands.¹¹⁵⁴ We seek to refresh the record on this issue. Commenters are encouraged to provide written analysis to support their recommendations.

473. Should a household be able to allocate the set discount amount between both voice service and broadband service? Finally, should the support amount for voice service be reduced over time to the extent voice becomes an application that is available at no or minimal charge over a broadband connection?¹¹⁵⁵ If so, how should the support amount be adjusted for areas in which broadband is not available?

E. Tribal Lands Lifeline and Link Up Support

474. *Tribal Lands Lifeline Support.* In the *2000 Tribal Lifeline Order*, the Commission adopted several measures to enhance Lifeline support for low-income residents living on Tribal lands.¹¹⁵⁶ One such measure was the adoption of enhanced low-income support, now known as Tribal Lands support, for eligible residents of Tribal lands.¹¹⁵⁷ Tribal Lands Lifeline support provides up to an additional \$25 per month in support to eligible low-income consumers living on Tribal lands.¹¹⁵⁸ In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether the Tribal Lands support amount remains a reasonable additional reimbursement rate for consumers receiving enhanced Tribal support.¹¹⁵⁹

475. In the Order above, we codified a rule limiting Lifeline support to a single subscription per household.¹¹⁶⁰ We concluded that a one-per-household rule is a reasonable way to ensure that voice and broadband service are available to low-income consumers, while minimizing the contribution burden on consumers and businesses.¹¹⁶¹ Thus, eligible residents of Tribal lands may currently receive one Tribal Lands-supported service per household. However, as noted in the Order, some commenters responding to the *Lifeline and Link Up NPRM* suggest that the Commission adopt a less restrictive “one-per-person

¹¹⁵⁴ See *Lifeline and Link Up Public Notice*, 26 FCC Rcd at 11103, para. 2(c).

¹¹⁵⁵ *Supra* section III (Performance Goals and Measures).

¹¹⁵⁶ See *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12231-32, paras. 20-85. See also *supra* discussion at section VI.D (Tribal Lifeline Eligibility).

¹¹⁵⁷ *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12230-31, 12238-39, paras. 42, 59.

¹¹⁵⁸ Tribal Lands Link Up support provides up to an additional \$70 in support to eligible low-income consumers living on Tribal lands.

¹¹⁵⁹ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2847, para. 250.

¹¹⁶⁰ Order at para. 74. We further defined “household” in a manner consistent with the definition used in the Low-Income Home Energy Assistance Program, as “any individual or group of individuals who are living together at the same address as one economic unit.” *Id.* We also defined an “economic unit” for the purposes of this rule as “all adult individuals contributing to and/or sharing in the income and expenses of a household.” *Id.*

¹¹⁶¹ *Id.* at para. 82; see *supra* Order at section III.C.

rule” applicable only to eligible residents of Tribal lands.¹¹⁶²

476. We seek comment on whether to adopt a rule permitting eligible residents of Tribal lands to apply their allotted Tribal Lands discount amount to more than one supported service per household. Under such a rule, ETCs would have the flexibility to permit their consumers to apply their discount to multiple services, up to the maximum allowable discount amount. For example, should a household receiving a \$34 Lifeline discount per month be permitted to “split” the discount between a wireline and a mobile phone service (*e.g.*, the household could receive a \$17 discount off of the cost of each service) or between two mobile services? Should eligible households on Tribal lands also be permitted to apply Link Up to reduce the connection or activation costs for multiple services? Are there other areas of the country that are similarly situated to Tribal lands such that subscribers in those areas should be permitted to apply their allotted Lifeline discount amount to more than one supported service per household?¹¹⁶³

477. We also seek comment on how such a rule could be administered. Should eligible households on Tribal lands be permitted to obtain supported services from more than one ETC, or should low-income support be limited to one ETC per household? What changes, if any, would need to be made to sections 54.403 and 54.407 of the Lifeline rules, as amended today, if multiple ETCs are permitted to seek support for the same household on Tribal lands? What steps could the Commission take to prevent improper payments in that scenario? Additionally, how could the Commission and the Administrator ensure compliance with the Commission’s reimbursement rules?¹¹⁶⁴

478. In the Order above, we remove section 54.403(a)(4)(i) of the Commission’s current rules, which required that the basic local residential rate for Tribal Lands subscribers not fall below \$1 per month.¹¹⁶⁵ Thus, Tribal lands Lifeline support will be available to an ETC providing service to an eligible household on Tribal lands regardless of whether that amount brings the rate for voice telephony service below \$1 per month per qualifying low-income household.¹¹⁶⁶ We seek comment on what precautions we could implement to prevent waste, fraud, and abuse in this situation.

479. *Enhanced Link Up Support on Tribal Lands.* In the Order, we eliminate Link Up support, except for those ETCs receiving high-cost support on Tribal lands. In this *FNPRM*, we seek comment on whether the Link Up program for residents of Tribal lands as currently implemented is the most effective way to use these funds, or whether we should alter or eliminate Link Up support for Tribal lands.

480. As the Commission has previously observed, Tribal lands have significant communications deployment and access challenges.¹¹⁶⁷ In the past, the Commission has targeted additional universal service support for residents of Tribal lands in a variety of ways, including by providing enhanced Lifeline and expanded Link Up support and by exempting competitive ETCs serving Tribal lands from the interim cap on competitive ETC support the Commission adopted in 2008. Under the exemption from the interim cap, high-cost support to competitive ETCs for Tribal lands more than doubled between 2008 and 2011, to an estimated \$150 million, while support for other parts of the nation was frozen. While significant strides have been made with this funding, including bringing new services to many Tribal lands, more remains to be done. The Commission remains committed to continuing to

¹¹⁶² Order at para. 81 (citing SBI Comments at 9-10; SBI Nov. 23 *ex parte*; GCI Dec. 6 *ex parte*).

¹¹⁶³ *See, e.g.*, PR Wireless Jan. 24 *ex parte* Letter at 5.

¹¹⁶⁴ *See* Order at Appendix A, 47 C.F.R. §§ 54.407, 54.413 (adopted rules).

¹¹⁶⁵ *See* Order at para. 270.

¹¹⁶⁶ *See id.*

¹¹⁶⁷ *See generally Native Nations NOI*, 26 FCC Rcd 2672; *see, e.g., USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 479-88 (discussing the Tribal Mobility Fund Phase I).

expand access to advanced telecommunications services on Tribal lands.

481. In the recent *USF/ICC Transformation Order and FNPRM*, the Commission adopted comprehensive reforms to the high-cost support program. Those reforms will make more efficient use of limited federal universal service resources and ensure that carriers accepting funding are accountable for meeting clearly defined universal service obligations, including buildout obligations. The Commission's reforms will expand access to both wireline and wireless services in high-cost, difficult-to-serve areas across the nation—both Tribal and non-Tribal. In addition, the Commission took several steps specifically targeted to facilitate deployment and improve access on Tribal lands. First, the Commission's Mobility Fund I, which allocates \$300 million in one-time support to fund deployment of 3G or better mobile services where no 3G service currently exists, provides for a 25 percent bidding credit for Tribally owned or controlled carriers that seek to provide service on their own Tribal lands.¹¹⁶⁸ In addition, the Commission established the Tribal Mobility Fund I, which allocates \$50 million in one-time support for advanced mobile services on Tribal lands where no such services currently exist. The Commission also created Mobility Fund II, which will provide \$500 million in ongoing support for wireless service. While the details of that support mechanism are the subject of a further notice of proposed rulemaking, the Commission has stated that it anticipates that up to \$100 million annually will be reserved exclusively for Tribal lands. In addition, the Commission budgeted at least \$100 million per year for the new Remote Areas Fund to support affordable access to broadband and voice service, including through the use of alternative technologies, in areas in the nation that are most costly to serve.

482. These comprehensive reforms to the high-cost program will efficiently target support for voice and broadband service both in the nation generally and on Tribal lands specifically. In light of those reforms, and the reforms we make to the program in this Order, we seek comment on whether the Link Up program for Tribal lands should be modified or eliminated. In this context, we note that when the Commission first established the enhanced Link Up program for Tribal lands, it observed that doing so would create incentives for carriers to construct facilities where none existed.¹¹⁶⁹ Today, enhanced Link Up could support multiple providers extending facilities in the same geographic area (to the extent that there is a business case for multiple providers to serve Tribal lands), which is inconsistent with our overall framework of not providing support to multiple providers. We seek comment on whether enhanced Link Up support for Tribal lands remains necessary given the recent reforms in high-cost support. We also seek comment on the benefits of enhanced Link Up support and the impact of elimination of that benefit for low-income consumers living on Tribal lands. We further seek comment on ways any savings might be used to more efficiently serve the purposes of the program, the specific needs of low-income consumers on Tribal lands, or both.

F. Adding Women, Infants, and Children Program to the Eligibility Criteria

483. Lifeline currently permits consumers to qualify for a Lifeline supported service if the consumer participates in one of several federal or Tribal assistance programs.¹¹⁷⁰ Several commenters suggest that we add the Special Supplemental Nutrition Assistance Program for Women, Infants, and

¹¹⁶⁸ *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 490.

¹¹⁶⁹ *2000 Tribal Lifeline Order*.

¹¹⁷⁰ See 47 C.F.R. § 54.409. Currently, participation in any of several federal assistance programs qualifies participants for Lifeline. These programs are Medicaid; Supplemental Nutrition Assistance Program (Food Stamps); Supplemental Security Income; Federal Public Housing Assistance (Section 8); Low-Income Home Energy Assistance Program; National School Lunch Program's free lunch program; and Temporary Assistance for Needy Families (TANF). In addition to these programs, participation in Bureau of Indian Affairs General Assistance, Tribally administered TANF, or Head Start (only those meeting its income standard), qualifies participants living on Tribal lands for Lifeline.

Children (WIC) administered by the Department of Agriculture to the list of qualifying federal assistance programs for Lifeline.¹¹⁷¹ We seek comment on whether adding WIC to the eligibility criteria will advance our goal of ensuring universal availability of phone service to low-income consumers.¹¹⁷²

484. The WIC program was “established to counteract the negative effects of poverty on prenatal and pediatric health and provides a combination of direct nutritional supplementation, nutrition education and counseling, and increased access to health care and social service providers for pregnant, breastfeeding, and postpartum women; infants; and children up to the age of five years.”¹¹⁷³ As such, it functions as a complement to the National School Lunch Program’s Free Lunch Program, a qualifying program for Lifeline that provides nutritional assistance to low-income, at-risk, children enrolled in school.¹¹⁷⁴ To qualify for WIC, applicants must meet four requirements:¹¹⁷⁵ categorical,¹¹⁷⁶ residential,¹¹⁷⁷ income,¹¹⁷⁸ and nutrition risk.¹¹⁷⁹ WIC is offered in all states, and over 35 percent of WIC participants do not participate in another federal assistance program.¹¹⁸⁰ One commenter estimates that more than two-thirds of WIC participants are at or below the federal poverty line, though we note that such WIC participants are already eligible for Lifeline through the income eligibility standard¹¹⁸¹

¹¹⁷¹ See Letter of Debra Whitford, Supplemental Food Programs Division, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 (filed Aug. 17, 2011) (Aug. 17 WIC *ex parte* Letter); YourTel Comments at 11; Media Action Grassroots Network and Consumers Union Reply Comments at 12; Letter from Geraldine Henchy, Director, Food and Research Action Center, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 (filed Sept. 2, 2011) (Food and Research Action Center Sept. 2 *ex parte* Letter); LCCHR Comments at 9.

¹¹⁷² One commenter states that WIC participants are “particularly likely to benefit from discounted telephone services...; families with young children require extensive connection to the community, whether it be pediatricians, child care providers or schools.” Media Action Grassroots Network and Consumers Union Reply Comments at 12.

¹¹⁷³ See Aug. 17 WIC *ex parte* Letter, at Attach.

¹¹⁷⁴ See 7 C.F.R. § 210.1; 7 C.F.R. § 245.3.

¹¹⁷⁵ See Food and Nutrition Service, WIC Eligibility Requirements, *available at* <http://www.fns.usda.gov/wic/howtoapply/eligibilityrequirements.htm> (last visited Feb. 5, 2012).

¹¹⁷⁶ To meet the categorical criterion for WIC, an individual must be: a woman who is pregnant (during pregnancy and up to 6 weeks after the birth of an infant or the end of the pregnancy), postpartum (up to six months after the birth of the infant or the end of the pregnancy), or breastfeeding (up to the infant’s first birthday); an infant; or a child (up until the child’s fifth birthday). *See id.*

¹¹⁷⁷ Applicants must live in the state in which they apply for WIC benefits in order to meet the residential eligibility criterion. *See id.*

¹¹⁷⁸ WIC applicants must also meet an income standard as established by the state agency administering WIC. This income standard must be between 100 percent of the Federal Poverty Guidelines and 185 percent of the Federal Poverty Guidelines and varies by state. Applicants automatically meet the income criterion through participation in certain programs, including SNAP, Medicaid, and Temporary Assistance for Needy Families. At the state agency’s option, applicants who are eligible to participate in certain other State-administered programs may be granted automatic income eligibility. *See id.*

¹¹⁷⁹ To meet the nutritional risk criterion, applicants must be seen by a health professional such as a physician, nurse, or nutritionist who must determine whether the individual is at nutrition risk. “Nutrition risk” means that an individual has medical-based or dietary-based conditions. *See id.*

¹¹⁸⁰ *See id.*; Media Action Grassroots Network and Consumers Union Reply Comments at 12; Aug. 17 WIC *ex parte* Letter.

¹¹⁸¹ Food and Research Action Center Sept. 2 *ex parte* letter.

485. We seek comment on whether adding WIC to the list of programs that automatically confers Lifeline eligibility would advance our universal service goals. Is expansion of program eligibility to households participating in WIC necessary given the multiple assistance programs and income-eligibility standard that already confer Lifeline eligibility? Would there be any administrative complexities given that WIC benefits are also available to infants and children? Would the Lifeline benefit, as with the National School Lunch Free Lunch Program eligibility criterion, attach to the household? How many households that are not eligible today would qualify if we were to allow participation based on WIC? Could WIC clinics potentially be a partner of ETCs in outreach to low-income consumers?¹¹⁸² Would WIC clinics be willing to do this? If so, how would such a partnership work? What would be the monetary impact of potential inclusion of WIC as an eligibility criterion? Finally, given the temporary nature of WIC participation, should there be additional verification requirements?¹¹⁸³

G. Establishing Eligibility for Homeless Veterans

486. The Department of Veterans Affairs (VA) has a number of programs designed to assist homeless veterans and veterans at risk of homelessness.¹¹⁸⁴ The Veterans Benefits Administration-Veterans Health Administration Special Outreach and Benefits Assistance program consists of “outreach, benefits counseling, referral, and additional assistance to eligible veterans.”¹¹⁸⁵ The program has homeless veterans coordinators spread out nationally who work with homeless veterans.¹¹⁸⁶ The Healthcare for Homeless Veterans program identifies homeless veterans to the VA for eligibility determinations and then connects the veterans to assistance programs.¹¹⁸⁷

487. The Veterans Homeless Initiative Office, a division of VA, suggested that we include homeless veterans programs as qualifying eligibility criteria.¹¹⁸⁸ Our rules for demonstrating income eligibility require the subscriber to provide documentation such as an income tax return or current income statement from an employer to establish income is at or below 135 percent of the Federal Poverty Guidelines. The rule does not address, however, situations in which the consumer has no income at all, and therefore lacks any such documentation. We seek comment on measures that would enable veterans who lack any income, but are not otherwise enrolled in a qualifying program, to demonstrate eligibility for Lifeline. For instance, should a low-income consumer that lacks any income be permitted to sign a certification under penalty of perjury that he or she has no income, with some form of additional certification from an authorized VA official, such as an outreach worker or program coordinator, that the person in question is a homeless veteran or at risk of becoming homeless? Given the unique difficulties in verifying transient and homeless Lifeline consumers' eligibility, are there any additional measures that should be implemented in situations where an eligible veteran has no documentation of income eligibility

¹¹⁸² WIC requires participant interaction with caregivers on a regular basis. *See id.*

¹¹⁸³ *See* 47 C.F.R. § 54.409(d)(3). Our rules already require Lifeline participants to notify their carrier if they cease to participate in the qualifying program conferring Lifeline eligibility.

¹¹⁸⁴ Department of Veterans Affairs, Homeless Programs & Initiatives, *available at* <http://www.va.gov/homeless/programs.asp>.

¹¹⁸⁵ *Id.*

¹¹⁸⁶ *Id.*

¹¹⁸⁷ Department of Veterans Affairs, HCHV Frequently Asked Questions, *available at* http://www.va.gov/HOMELESS/HCHV_Frequently_Asked_Questions.asp.

¹¹⁸⁸ Letter from C.Q. Tillery, VA Homeless Veterans Initiative Office, to Marlene Dortch, WC Dkt. No. 11-42 (filed Jan. 30, 2012).

to minimize waste, fraud, and abuse while ensuring Lifeline access?

H. Mandatory Application of Lifeline Discount to Bundled Service Offerings

488. In the above Order, we amend sections 54.401 and 54.403 of the Commission's rules to adopt a federal policy providing all ETCs (whether designated by a state or this Commission) the flexibility to permit Lifeline subscribers to apply their Lifeline discount to bundled service packages or packages containing optional calling features available to Lifeline consumers.¹¹⁸⁹ Giving ETCs the flexibility to offer expanded service packages to Lifeline consumers will enhance consumer choice by making broadband and mobile voice services more accessible and affordable for low-income consumers.¹¹⁹⁰

489. In the *Lifeline and Link Up NPRM*, the Commission also sought comment on amending the Commission's rules to adopt a uniform federal requirement that Lifeline discounts may be used on any Lifeline calling plan offered by an ETC with a voice component, including bundled service packaging combining voice and broadband, or packages containing optional calling features.¹¹⁹¹ Some argued that by requiring ETCs to permit eligible low-income consumers to apply their Lifeline discount to the purchase of expanded service offerings, particularly packages that include broadband, the Commission will help make broadband available to consumers who may otherwise be underserved.¹¹⁹² Others argued that the Commission should not interfere with the products offered by ETCs and should allow the market to resolve this issue.¹¹⁹³ Certain ETCs argued that requiring such ETCs to offer these added features as part of their Lifeline service offerings could upset their respective business models.¹¹⁹⁴

490. Several states, including Oregon, Texas, and Kansas, have enacted rules *requiring* ETCs to offer Lifeline discounts on all voice service offerings, including expanded service plans.¹¹⁹⁵ We now seek comment on whether to further revise our rules to require ETCs to permit subscribers to apply their Lifeline discount on any bundle that includes a voice component.¹¹⁹⁶ Would a uniform federal requirement mandating that ETCs permit Lifeline subscribers to apply their discount on any service offering that includes voice further the statutory principle that consumers have access to quality services at "just, reasonable, and affordable rates" because it would make bundled offerings more affordable to

¹¹⁸⁹ Order at para. 316. Pursuant to this rule, each subscriber's Lifeline discount can be no larger than if he or she chose a basic voice plan. *Id.* at para. 315.

¹¹⁹⁰ *Id.* at para. 317.

¹¹⁹¹ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2850, para. 258.

¹¹⁹² See, e.g., NATOA Comments at 2-3; NJ DRC Comments at 24; NASUCA Comments at 29-30. In the Order, we adopted a program performance goal of ensuring the availability of broadband service for low-income Americans. See Order at paras. 33-36. A uniform federal policy requiring that ETCs permit Lifeline consumers to apply their discount to the service plan of their choice could help us to more effectively achieve this goal.

¹¹⁹³ See, e.g., Letter from Mitchell F. Brecher, Counsel, TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (filed Nov. 14, 2011) (TracFone Nov. 14 *ex parte* Letter).

¹¹⁹⁵ Or. Admin. R. 860-033-0010 (2009); Tex. Admin. Code tit. 16, § 26.412(e)(6)-(7); see also *Petition of Sprint Spectrum L.P. for a Declaratory Ruling that the Kansas Corporation Commission's October 2, 2006 Order in Dkt. 06-GIMT-446-GIT, Violates Federal Law*, WC Dkt. No. 03-109 *et al.*, (filed June 8, 2007) (challenging an order of the Corporation Commission of the State of Kansas, which modified the state's Lifeline rules to require that ETCs allow Lifeline customers to choose a calling plan and apply the Lifeline discount to the plan selected by the customer).

¹¹⁹⁶ ETCs would apply federal Lifeline support to reduce the cost of any voice calling plan or package selected by an eligible consumer. See Appendix A, 47 C.F.R. § 54.401(b) (adopted rule).

low-income consumers?¹¹⁹⁷

491. We seek further comment on and information about current ETC practices. In states that do not mandate use of a discount on any offering, to what extent do ETCs currently offer Lifeline discounts on plans that include bundles of services or optional calling features? If so, what services are Lifeline consumers permitted to purchase? We also seek comment on the extent to which specific states mandate that ETCs allow the application of Lifeline discounts to expanded service plans. Where available, commenters are encouraged to submit supporting documentation of ETC or state practices along with any written submissions.

492. We also seek comment on the potential benefits and costs of such a requirement. For example, would such a requirement stimulate broadband adoption by low-income individuals? Is there any evidence that voice telephone penetration rates have been positively impacted by state requirements mandating the extension of program discounts to the purchase of bundled packages and optional services? Would there be any growth in Lifeline subscription rates stemming from the extension of Lifeline support to expanded service packages?¹¹⁹⁸ What are the potential administrative costs to carriers in complying with the proposed rule? Finally, are there any potential unidentified costs to consumers associated with the proposed rule?

493. We also ask whether there should be any limitations on this potential requirement, if we were to adopt such a rule. Should ETCs be obligated to offer a Lifeline discount on all of their service plans, including premium plans and packages that contain services other than voice and broadband (e.g., packages that include video)? To what extent could Lifeline consumers risk the termination of their local voice service based on an inability to pay for the remaining portion of their chosen calling plan?¹¹⁹⁹ In the states that currently mandate that discounts be used on all offerings, has this been an issue, and how have the states addressed this potential concern? Do Lifeline providers have the capability to block Lifeline consumers' ability to purchase and be billed for additional service offerings, such as pay-per-view offerings in a bundled package that includes video, or to specify certain usage amounts that may be incurred per billing cycle? Do the carriers that operate in the states that mandate the use of discounts on any service package provide consumers with any way to limit their usage of premium features that would result in additional charges?

I. "Own Facilities" Requirements

494. *Background.* To be eligible for universal service support, a common carrier 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."¹²⁰⁰ The Commission has 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."¹²⁰¹ As such, a carrier's facilities that are not being used to route or transmit voice telephony services do not qualify as "facilities" to meet the ETC requirements in section 214(e)(1)(A). In the *USF First Report and Order*, the Commission held that a carrier "must use its own facilities to provide at least one of the supported services" but did not qualify the term "own facilities" with respect to

¹¹⁹⁷ See 47 U.S.C. § 254(b)(1).

¹¹⁹⁸ See, e.g., Verizon Comments at 16 ("Assuming the extension of Lifeline support to bundled services will increase participation in the Lifeline program, this approach will further grow the fund and has the potential to effectively negate other efforts to constrain the size of the fund."); Verizon Jan. 17 *ex parte* Letter at 2.

¹¹⁹⁹ See, e.g., NJ DRC PN Comments at 17.

¹²⁰⁰ 47 U.S.C. § 214(e)(1)(A).

¹²⁰¹ 47 C.F.R. § 54.201(e).

the amount of facilities a carrier must use.¹²⁰²

495. In the *USF/ICC Transformation Order and 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.¹²⁰³ 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).¹²⁰⁴ 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 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.¹²⁰⁵

496. In today's Order, the Commission issued a blanket forbearance from the facilities-based requirement contained in section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions contained in sections XI.A & B of the Order.¹²⁰⁶ In light of these actions, we now seek further, focused comment on whether there remains a need for the Commission to resolve any further issues concerning the facilities requirement of section 214(e)(1)(A).¹²⁰⁷

497. *Discussion.* In light of the reforms adopted in today's Order to limit waste, fraud, and abuse and our continued requirement for non-facilities-based Lifeline-only ETCs to obtain approval of a compliance plan before receiving Lifeline reimbursements, is there a need to establish additional uniform standards for the designation of Lifeline-only ETCs?¹²⁰⁸ In order to ensure compliance with the Lifeline rules and prevent waste and abuse in the program, should we consider any additional requirements if a

¹²⁰² See *USF First Report and Order*, 12 FCC Rcd at 8871, para. 169.

¹²⁰³ *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 3, 78; see also revised section 54.101(a).

¹²⁰⁴ See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 4.

¹²⁰⁵ See *id.*

¹²⁰⁶ Order section XI.A & B.

¹²⁰⁷ 47 U.S.C. § 214(e)(1)(A) (imposing a requirement that ETCs must "either us[e] its own facilities or a combination of its own facilities and resale of another carrier's services"). Several state commissions as well as carriers seeking ETC designation have expressed concern regarding what may be considered "facilities" under section 214(e)(1)(A) for purposes of ETC designation. In addition, the Commission has pending before it a Petition for Declaratory Ruling filed by TracFone in which this question of the facilities requirement is at issue. See generally South Carolina PUC Comments (recommending denial of Budget Prepay, Inc.'s request for Link Up support in its Petition for limited designation as a facilities based ETC on the grounds it only provides ancillary services using its own facilities and resells all other supported services); see also MI PSC Comments at 2-3 (requesting that Commission provide guidance to states on "level of facilities an applicant must own" to be considered facilities-based). In addition, the Commission has pending before it a Petition for Declaratory ruling filed by TracFone in which this question of the facilities requirement is at issue. See *TracFone Petition*.

¹²⁰⁸ The Commission recognizes that most of the existing Lifeline-only ETCs operating in today's market do not own network facilities or could not meet the requirements of section 214(e)(1)(A) based on the Commission's recent action to amend Section 54.101. See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 4; Link Up Coalition Dec. 15 *ex parte* Letter at 2-3 (recognizing that its members would not meet the amended definition of 54.101 based on Commission staff interpretation); see *TracFone Oct. 13 ex parte* Letter (acknowledging that as one of the largest recipients in the Lifeline program, it is not a facilities-based wireless carrier). See also generally *TracFone Forbearance Order*.

carrier does not own network assets or meets the requirements of section 214(e)(1)(A)?

498. We seek comment on whether we should amend our rules to clarify the term “combination of its own facilities” with respect to the facilities a carrier must own and use to provide USF supported services.¹²⁰⁹ Historically, ETCs have had broad flexibility in how they combine the use of their own facilities with the resale of another carrier’s services so long as at least one supported service is offered using that carrier’s “own facilities.”¹²¹⁰ Several ETCs, some of which call themselves “facilities-based resellers,” have previously maintained they are facilities-based based on facilities that provision operator and/or directory assistance services, which are provided in conjunction with their retail offering.¹²¹¹ Parties in the record have suggested that ETC applicants seeking Link Up support have an incentive to become facilities-based carriers to avoid the Commission’s forbearance process.¹²¹²

499. If a carrier does claim that it is a facilities-based provider and meets the requirements of section 214(e)(1)(A), should there be a minimum combination of facilities that the carrier should own and use in order to qualify as a facilities-based ETC under the rules? Is there a continuing financial incentive for carriers to be classified as a facilities-based ETC? Should the rules specify in more detail what facilities must be used to provide voice telephony service, in order for a carrier to be deemed facilities-based? Several parties filed comments on TracFone’s Petition for Declaratory Ruling on the issue of what constitutes facilities.¹²¹³ We seek to refresh the record in light of the reforms set forth in the *Order*, so that we may appropriately consider whether there is a need to clarify any minimum requirements of what is classified as “facilities” under section 214(e)(1)(A).

500. We seek comment on whether the location and continued use of facilities is relevant to the ETC designation process for Lifeline-only ETCs under section 214(e)(1)(A). The Commission has previously provided guidance on the location of an ETC’s facilities for purposes of satisfying section 214(e)(1)(A).¹²¹⁴ Our current rules provide that a common carrier’s facilities need not be located within the relevant service area as long as the carrier uses them within the designated service area.¹²¹⁵ Our rules do not address, however, how the designated carrier must utilize those facilities. If a carrier relies on certain “facilities” to get designated as a Lifeline-only ETC by a state or the Commission, but subsequently discontinues use of those facilities, is the ETC designation invalid given that the facilities are no longer being used to transmit or route the services designated for support? In such cases, should the designation be re-opened to determine whether the ETC is using its own facilities to provide the service?

¹²⁰⁹ See *Universal Service First Report and Order*, 12 FCC Rcd 8776, at 8861-62, para. 152 (1997).

¹²¹⁰ See *id.* at 8871, para. 169.

¹²¹¹ See Letter from John Heitmann, *et al.*, Link Up For America Coalition, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, (filed Oct. 25, 2011) (calling themselves “facilities-based resellers”); *Ex Parte* Conexions LLC d/b/a Conexion Wireless, WC Dkt. No. 09-197 (Jan. 20, 2011) (explaining how company believes it is a facilities-based ETC).

¹²¹² See Ohio PUC Comments at 5 (explaining how some wireless companies are claiming to own “wireless facilities” in order to receive Link Up funding); see also Michigan PUC Comments at 2-4 (noting that American Broadband and Telecommunications Company claimed it was a facilities-based ETC in Michigan because it owned and used a switch in Ohio even though the company has previously held that it is not a facilities-based provider in Ohio through the American Broadband and Telecommunications Company Petition for Forbearance).

¹²¹³ See AT&T Comments; Budget Pre-Pay and Great Call Comments; CETC Commenters Comments; NASUCA Comments; Nexus Comments; Nexus Reply Comments; Ohio PUC Comments; TracFone Reply Comments.

¹²¹⁴ See 47 C.F.R. § 54.201(g).

¹²¹⁵ See *id.*