

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)	
In the Matter(s) of)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
Advancing Broadband Availability)	WC Docket No. 12-23
Through Digital Literacy Training)	
)	[DA 12-387]
_____)	

**INITIAL COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

The National Association of Regulatory Utility Commissioners (NARUC) respectfully submits these brief comments in response to the Federal Communications Commission’s (“FCC”) or (“Commission”) March 9, 2012 released “*Comment Sought on USTelecom et. al Petition for Wavier and Clarification of Lifeline Reform Order.*”¹

¹ See, Text of the FCC notice at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-387A1.pdf .

In the subject petition,² USTelecom and several other associations representing local exchange carriers request that the FCC waive for “post-paid ETCs” the effective date of several rules established in the recent *Lifeline Reform Order*.³

Specifically, the petitioners request that the Commission waive, with respect to “post-paid ETCs,” the April 2, 2012 effective date for: (1) the establishment of the new flat-rate Lifeline reimbursement amount for subscribers on non-Tribal lands; (2) the elimination of Link Up discounts on non-Tribal lands and (3) changes to the Link Up discount on Tribal lands.⁴ The petitioners request that the effective dates for these requirements be extended until October 1, 2012.⁵

NARUC generally supports extension of the current April 2, 2012 effective date to October 1, 2012.

In support of this position, NARUC states as follows:

² Petition for Waiver and Clarification of the United States Telecom Association, the Independent Telephone and Telecommunications Alliance, the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, the Western Telecommunications Alliance, and the Eastern Rural Telecom Association, WC Dkt. Nos. 11-42 *et al.* CC Dkt. No. 95-45 (filed Mar. 9, 2012), (*Petition*), at pages 3-8, available online at: <http://apps.fcc.gov/ecfs/document/view?id=7021899467>

³ See *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Dkt. Nos. 11-42 *et al.*, CC Dkt. No. 96-45, FCC 12-11 (rel. Feb. 6, 2012) (*Lifeline Reform Order*).

⁴ *Id.* The petitioners also request that, to the extent the Commission did not intend to make “changes [in the] manner by which carriers must calculate the Link Up discount” on Tribal lands, the Commission should clarify its intent. *Petition* at 7-8. NARUC takes no position on that element of the *Petitioners* request.

⁵ *Id.* at 8.

DISCUSSION

NARUC is a nonprofit organization founded in 1889. Its members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the activities of telecommunications,⁶ energy, and water utilities. Congress and the courts⁷ have consistently recognized NARUC as a proper entity to represent the collective interests of the State public utility commissions. In the Federal Telecommunications Act,⁸ Congress references NARUC as “the national organization of the State commissions” responsible for economic and safety regulation of the intrastate operation of carriers and utilities.⁹

Beginning with April 2012 disbursements, the Feb. 6, 2012 *Lifeline Reform Order* [i] establishes an interim flat-rate reimbursement amount of \$9.25 per month in place of the current tiered reimbursement structure, [ii] eliminates the Link Up

⁶ NARUC’s member commissions have oversight over intrastate telecommunications services and particularly the local service supplied by incumbent and competing local exchange carriers (LECs). These commissions are obligated to ensure that local phone service supplied by the incumbent LECs is provided universally at just and reasonable rates. They have a further interest to encourage LECs to take the steps necessary to allow unfettered competition in the intrastate telecommunications market as part of their responsibilities in implementing: (1) State law and (2) federal statutory provisions specifying LEC obligations to interconnect and provide nondiscriminatory access to competitors. See, e.g., 47 U.S.C. § 252 (1996).

⁷ See *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff’d 672 F.2d 469 (5th Cir. 1982), aff’d en banc on reh’g, 702 F.2d 532 (5th Cir. 1983), rev’d on other grounds, 471 U.S. 48 (1985). See also *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976).

⁸ *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq.*, Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) (“Act” or “1996 Act”).

⁹ See 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon; Cf. 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains “...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the “bingo card” system.)

program in non-Tribal lands for all eligible ETCs, and [iii] changes the calculation of the Link Up discount for eligible residents of Tribal lands.

However, to effectuate these changes, carriers must comply with State tariffing and/or customer notification requirements to submit revised tariffs or provide new customer notices. The current deadline on its face does not allow sufficient time to comply with some of these requirements.

The Petition cites several States where complying with both the FCC's deadline and the State's deadline is not possible. Among the examples citing by Petitioners, (i) a requirement of Nevada's approval of updated tariffs to reflect new Lifeline discount rates, the elimination of the Link Up program on non-Tribal lands, and changes to the Tribal Link Up discount, the requirement in Minnesota for 30 to 60 days prior notice before amending tariffs to reflect the impact of the Order on Lifeline and Link Up customers, the Texas 10-35 day prior notice for similar tariff changes, the requirement in Mississippi for a 30 day delay after the state commission approves tariff changes for those changes to be effective, and the requirements in California for a 20-day protest period.

Last Friday, shortly after the release of the FCC Notice seeking comment, NARUC discussed on a NARUC Telecommunications Conference Call whether the association should file in support of this deadline extension. As a result of that discussion, the undersigned received instructions to file these comments supporting the requested deadline extension.

Conclusion

Because the current deadline does not allow the subject local exchange carriers sufficient time to comply with existing State tariffing requirements, NARUC respectfully requests the FCC extend the deadline to October 2012 as Petitioners request.

Respectfully Submitted,

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