

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**PETITION FOR RECONSIDERATION AND CLARIFICATION OF
THE UNITED STATES TELECOM ASSOCIATION**

INTRODUCTION AND SUMMARY

Pursuant to Section 1.429 of the Commission’s rules,¹ the United States Telecom Association (“USTelecom”) respectfully petitions the Commission to reconsider and clarify certain aspects of its *Lifeline and Link Up Reform and Modernization, Report and Order (Order)*.²

The Commission has taken important steps to reform and modernize the Universal Service Fund’s Lifeline program, and the United States Telecom Association (“USTelecom”) supports most of the Commission’s efforts and the reforms adopted in the *Order*. However, with an order of this magnitude, it is to be expected that there would be some areas for which additional clarity at the initiation of new rules and procedures would serve the interests of participants and the Commission. Reconsideration or clarification of those aspects of the *Order*

¹ 47 C.F.R. § 1.429.

² See *Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 11-42, FCC 12-11 (rel. Feb. 6, 2012) (“*Order*”).

would significantly minimize potential confusion and decrease regulatory burdens and, by doing so, help all parties to better meet the Commission’s objectives. Those items are: (i) the requirement for carriers to follow up with customers at “temporary addresses;” (ii) the obligation to provide Toll Limitation Service (TLS) despite a lack of funding for such service; (iii) the requirement for retaining annual recertification forms and providing them to USAC and the state commission if the state performs the annual recertification function; (iv) compliance by providers where the *Order’s* mandates apply to states or other parties not under the control of ETCs; (v) the requirement for ETCs to provide service initiation dates; (vi) unnecessary burdens in the audit requirements; (vii) appropriate documentation of program eligibility; (viii) the time period to remove de-enrolled Lifeline customers from the database; (ix) disclosures required in Lifeline advertising; (x) the requirement to describe how partial payments will apply to bundled services; (xi) payments suspended for non-compliance; (xii) collection of the tribal identification number by the ETC; (xiii) tribal reporting requirements; and (xiv) unequal speed benchmarks for Low-Income Broadband Pilot Program applicants.

I. THE REQUIREMENT FOR VERIFICATION OF CUSTOMER RESIDENCY AT TEMPORARY ADDRESSES SHOULD BE RECONSIDERED, AT LEAST FOR WIRELINE ETCs

The Commission should reconsider the requirement that carriers ask potential Lifeline subscribers whether the customer’s address is temporary and then verify at 90-day intervals whether the customer continues to rely upon that address, at least with respect to wireline ETCs. According to the *Order*, the temporary address rules serve as “additional protections to be implemented by those ETCs that serve consumers without a permanent address.” *Order* at ¶ 89. Because wireline ETC Lifeline subscribers cannot move their Lifeline service to a new address without discontinuing service at the first address and then reestablishing service at a new

address, such “additional protections” are unnecessary for wireline ETCs. If a customer moves and establishes service at a new address, the obligation that “all ETCs query the database to check to see if a prospective subscriber is already receiving service from another ETC at a residential address” is sufficient to guard against duplicates. *Order* at ¶ 203. The additional “temporary address” requirement is superfluous – it will simply confirm at 90-day intervals what the wireline ETC already knows, i.e., that the ETC is still providing the subscriber with Lifeline service at the same address.

If the Commission does not reconsider the application of the temporary address rule to wireline carriers, it should at a minimum clarify the rule in several respects. First, the Commission should clarify the definition of temporary address. Because every address is in some sense “temporary,” the Commission should minimize customer confusion by making clear that the scope of the temporary address rule is limited to “group living facilities such as nursing homes, shelters, halfway houses, boarding houses, and apartment buildings without individual unit numbers.” *Order* at ¶ 88.

Second, the rules accompanying the *Order* appear to place the responsibility on both the customer and the ETC for verifying every 90 days whether those customers residing at a temporary address continue to rely upon that address.³ USTelecom recommends that the Commission clarify whether both or just one of these parties is responsible for fulfilling this obligation and provide guidance on measures that would be sufficient for the responsible parties to fulfill their new obligations under Commission rules.

³ Section 54.410(d)(3)(iv) of the rules mandates that “if the subscriber provided a temporary residential address to the eligible telecommunications carrier, he or she will be required to verify his or her temporary residential address every 90 days;” Section 54.410(g) states that “An eligible telecommunications carrier must re-certify, every 90 days, the residential address of each of its subscribers who have provided a temporary address as part of the subscriber’s initial certification or re-certification of eligibility, pursuant to paragraphs (d) or (f) of this section.”

USTelecom recommends that the Commission clarify that customers alone have the notification obligation, because they are in the best position to identify their current residence. In addition, the Commission should clarify that if an ETC is issuing a monthly bill to a customer at a temporary address and the customer is making payments, that action by the customer is sufficient to satisfy the recertification requirement contained in Section 54.410(d)(3)(iv) of the rules. Self-certification by the customer that he or she continues residing at the temporary address should also be sufficient. Absent such notification from the billing address, the ETC would then de-enroll the customer.

If both the customer and the ETC have the recertification obligation, the Commission should make clear that customer notification to the ETC via a bill payment (as clarified above) would be sufficient for the ETC to fulfill its obligation and that no follow up by the ETC is required. If the customer does not make such notification within the 90 days permitted by Section 54.410(d)(3)(iv) of the rules, the Commission should clarify that the 30 days provided for verification by the ETC prior to de-enrollment begin at the conclusion of the 90-day period and that the lack of customer notification within the 90 days does not trigger automatic de-enrollment.⁴ That will allow the customer a full opportunity to initiate the verification within the 90-day period.

⁴ See paragraph 89 of the *Order* “[i]f the subscriber fails to respond within 30 days of the ETC’s attempt to verify the temporary address, the subscriber must be de-enrolled from Lifeline pursuant to the program’s de-enrollment rules.”

II. PROVISION OF TOLL LIMITATION SERVICE SHOULD NO LONGER BE REQUIRED

The Commission should eliminate the requirement to offer toll limitation service (TLS).⁵ The *Order* correctly concluded the original policy rationale for providing TLS to low-income consumers is no longer valid, and then declared that the Commission no longer would compensate ETCs for the cost of providing TLS.⁶ The *Order*, however, obligates ETCs to continue to offer the service. As long as service plans for which the ETC charges a fee for toll calls remains (and some states require maintenance of such plans).⁷ ETCs will have to maintain the capability to perform toll limitation and toll blocking across their networks. This requirement now is an unfunded mandate and should now be eliminated.

III. PROVIDERS SHOULD NOT BE REQUIRED TO OBTAIN RECERTIFICATION FORMS IN STATES WHERE THE STATE PERFORMS THE RECERTIFICATION FUNCTION

Pursuant to new sections 54.410(b)(2)(ii) and 54.410(c)(2)(ii) of the Commission's rules, where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, an ETC must not seek reimbursement for providing Lifeline service unless the carrier has received from the state Lifeline administrator or other state administrator a copy of the subscriber's certification. Similarly, in states where a state agency or third-party is responsible for performing the annual recertification, the state or its agent is

⁵ Alternatively, if the Commission does not eliminate the requirement to offer TLS, then it should provide universal service funding to sufficiently compensate ETCs for the costs of providing the service.

⁶ The Commission correctly points out that only 5 percent of Lifeline subscribers also subscribe to TLS and that many carriers no longer distinguish between toll and non-toll calls in how they price voice telephony. *Order* at; para. 220. Further, there are no data supporting the need for TLS by even that small minority of customers. Given that the service is free to Lifeline customers, the customers have no incentive to discontinue it even if it is not needed, so even the 5 percent take rate for this service may not reflect the true level of demand for it.

⁷ For example, Texas §26.412(e)(2) and Ohio 4901:1-6-19(b)(3).

required to provide the ETC with “the results of its annual re-certification efforts with respect to that [ETC]’s subscribers”⁸ and “a copy of each Lifeline subscriber’s recertification form.”⁹

The Commission should reconsider the requirement that the state or third-party administrator provide a “copy” of the certification form to the ETC before the ETC can claim reimbursement. Instead, the Commission should require only that the state or third-party administrator provide the ETC with “notice” that the subscriber qualifies for Lifeline, i.e., that the subscriber meets the income- or program-based eligibility criteria and has provided the state or third-party administrator with the required certification. *See* 47 CFR §§ 54.410(b)(2)(i), 54.410(c)(2)(i). The ETC should, in turn, be permitted to claim reimbursement when it has received such notice from the state or third-party administrator. Given that the state or third-party administrator has made the eligibility determination, the ETC has no need to examine the certification form, and thus has no need to obtain or retain a copy of the certification form.

Similarly, it is unnecessary for the state or third-party administrator to provide the ETC with a copy of each Lifeline subscriber’s recertification form. In states in which the state or third-party administrator is responsible for recertifying Lifeline customers, the ETC has no need to examine the certification forms and thus no need to obtain or retain a copy of those forms. Instead, the Commission should require that in those states where the state or its designee performs the annual recertification functions, the state or its agent must retain the annual recertification forms and provide the results to USAC, the Commission, the relevant state commission where the carrier is subject to state jurisdiction, and the relevant Tribal government for subscribers residing on reservations or Tribal lands.¹⁰ If the state (or, eventually, USAC)

⁸ 47 CFR 54.410(f)(4).

⁹ *Order*, ¶ 131, n.341.

¹⁰ *See Order* at para. 148.

performs the recertification function on behalf of ETCs, there is no reason for the ETC to obtain these forms.

Moreover, the Commission should clarify that states cannot add additional certification requirements in addition to the federal rules. For example, the Commission has determined that self-certifications are sufficient. ETCs can, therefore, be expected to implement the new procedures in a consistent way across their service territories, which for many ETCs cross multiple states. Permitting more onerous certification requirements on the state level would add complexity and cost to the program and is not necessary given the Commission's policy judgment that self-certifications are sufficient for federal funding.

IV. THE FCC SHOULD CLARIFY HOW ETCs ARE TO COMPLY WITH THE LIFELINE ORDER WHERE THE MANDATES APPLY TO STATES OR OTHER PARTIES NOT UNDER THE ETCs' CONTROL

In its *Order*, the Commission established new policies and procedures and, in a number of cases, it directed states to conform their Lifeline programs as necessary to be in compliance with these new federal requirements. One such example is automatic enrollment. In the *Order*, the Commission finds that "states with automatic enrollment programs must modify those programs, as necessary, to comply with our rules, so that consumers are not automatically enrolled without the consumers' express consent."¹¹ Another example is the Commission's new requirement that states adopt the Commission's program-based Lifeline eligibility criteria as a floor.¹²

The Commission should confirm that its new "floor" for program-based Lifeline eligibility criteria applies even in the absence of state action (to the extent a state is more restrictive), although it would, of course, be better for states to affirmatively align their eligibility

¹¹ *Order* at ¶ 170.

¹² *Order* at ¶ 65.

criteria with the new federal rules. With respect to auto-enrollment, however, this process is largely outside of an ETC's control, and it would be unreasonable to hold ETCs accountable for state action or inaction. Therefore, the Commission should clarify that ETCs are not in violation of the *Order* in situations where states fail, or are unable, to change existing automatic enrollment and similar procedures. To ensure an orderly transition, the Commission could also set a date certain by which auto-enrollment states must change those procedures, after which those particular state requirements will be deemed superseded. In those states that do utilize auto-enrollment or similar processes, changing those procedures would indeed take some time. For example, in Texas the auto-enrollment process is statutory, as are Lifeline enrollment procedures in other states.¹³

V. THE COMMISSION SHOULD CLARIFY THAT THE REQUIREMENT TO PROVIDE SERVICE INITIATION DATES IS FOR NEW SUBSCRIBERS ONLY

The Commission should clarify that the requirement to provide specific service initiation dates is for new Lifeline subscribers only.¹⁴ ILEC ETCs may have begun providing Lifeline service to some customers as long as 20 years ago. Billing and customer service records may not permit those providers to obtain Lifeline service initiation dates through any automated query. Providers are now on notice to begin including Lifeline service initiation dates in their customer records, so they can comply with the requirement for customers beginning Lifeline service as of the effective date of the Order. For Lifeline subscribers beginning service prior to that, however, the Commission should clarify that it is acceptable for carriers to indicate simply that the service initiation date was a date prior to the implementation of the Order.

¹³ See, e.g., Texas Public Utility Regulatory Act, Chapter 55, Subchapter A, Sec. 55.015(b).

¹⁴ See *Order* at para. 184.

VI. THE COMMISSION SHOULD RECONSIDER THE AUDIT PROGRAM AND CLARIFY THE AUDIT PROCESSES ESTABLISHED IN THE *ORDER*

The Commission should reconsider aspects of the audit program and clarify the audit processes established in the *Order*. USTelecom supports efforts to maintain and enhance the integrity of the Universal Service Fund programs, including Lifeline, but audit requirements need not be excessively burdensome or duplicative in order to be effective.

First, the Commission should find that draft audit reports should remain confidential and available only to the ETC until finalized. This finding would reverse the mandate of paragraph 294 of the *Order*, which requires the third-party auditor to submit a draft of the audit report to the Commission and USAC and specifically states that the audit reports will not be considered confidential and requests to render them so will be denied. The very nature of a draft means that it is subject to review and revision, some of which may be significant. Given the document is not in its final form, distribution of the draft to the Commission and USAC could cause unnecessary confusion and create impressions of compliance (or lack thereof) that may be difficult to correct in the minds of the readers at the Commission and USAC. Moreover, what function are the Commission and USAC intended to have with respect to a draft report? Presumably, any actions taken by either party would be pursuant to a final report, not merely a draft subject to revision. Making draft audit reports public is grossly unfair to providers that may not have a reasonable opportunity to refute proposed findings and correct auditor errors. This approach is also fundamentally at odds with the Commission's preexisting rules that provide for significant, automatic confidentiality of audit materials. Section 0.457(d)(1)(iii) of the Commission's rules provides automatic confidential treatment for information submitted in connection with audits, and 47 C.F.R. § 0.459(a) provides that a formal request for confidentiality need not be filed with each submission of audit materials.

Second, the Commission should eliminate the existing audit regime with respect to Lifeline,¹⁵ since this regime is redundant with the independent audit requirement. Fulfilling both sets of audit requirements is unnecessary and a drain on carrier and USAC resources. To the extent that an ETC is able to demonstrate program compliance through an audit, it stands to reason that it would similarly be able to demonstrate compliance via a BCAP audit or through the PQA process.

Alternatively, if the BCAP audits and PQA process are maintained, the Commission should consider stratifying them with the new independent audit requirement. Specifically, the Commission could impose the independent audit requirement on ETCs that have monetary findings in their BCAP audits or PQAs that exceed a given percentage of their annual Lifeline support.

VII. THE COMMISSION SHOULD CLARIFY THE REQUIREMENT FOR ACCEPTABLE DOCUMENTATION OF PROGRAM ELIGIBILITY

Providers should not have the responsibility for making judgment calls as to acceptable documentation for eligibility purposes. Paragraph 101 of the *Order* implies that the list of such documentation included in the *Order* is suggestive, not inclusive.¹⁶ The lack of a comprehensive list of acceptable documentation for use by providers could lead to inconsistent and unfair application of eligibility standards, confusion among potential Lifeline subscribers, and would make it easier to commit fraud. Absent bright-line guidance, inevitably ETCs will interpret this requirement differently, with some ETCs rejecting certain forms of documentation and others

¹⁵ The current Lifeline audit program includes the Beneficiary and Contributor Compliance Audit Program -- BCAP audits -- and Program Quality Assurance -- PQA process.

¹⁶See paragraph 101 of the Order, which includes in its list of acceptable documentation “*another* official document[s] evidencing the consumer’s participation in a qualifying state, federal or Tribal program” and “*other* official document containing income information.” [emphasis added]

accepting them. For that matter, even with extensive training, employees within each ETC could make inconsistent judgments, given the lack of a thorough, definitive list.¹⁷

A comprehensive and descriptive list of acceptable documentation, preferably with examples of documents available online, will support the integrity of the Lifeline program. It seems unlikely that a *post hoc* examination of the documentation process is possible since Commission and USAC auditors would never learn of any inconsistencies since ETCs will not retain copies of customer-supplied qualifying program documentation.¹⁸ A comprehensive and descriptive list of acceptable documentation will also help providers conform to the advertising rules¹⁹ and provide better guidance to potential Lifeline subscribers about the documents they need to provide to determine their eligibility.

USAC should issue a comprehensive list of acceptable documentation and post examples of approved documentation on its website. The list could be periodically refreshed by USAC and made available to all participants. The list of acceptable documentation should include not only a list of each type of document but also a description of the characteristics of the documents. For example, “a notice letter of participation in a qualifying state, federal or Tribal program” is acceptable documentation. Does that letter need to be dated within a calendar year of the consumer producing it? What if a document is undated? Are photocopies acceptable?²⁰

¹⁷ The date at which training materials on eligibility documentation are due from USAC is 45 days following the effective date of the *Order*, presumably mid-May, while carriers must implement the new documentation requirements June 1. This brief period is inadequate for employee training. The period should be at least 30 days for implementation of new documentation requirements following receipt of USAC training materials.

¹⁸ See §54.410(c)(ii) which states that an ETC “Must not retain copies of the documentation of a subscriber’s program-based eligibility for Lifeline services.

¹⁹ See §54.410(d)(1)(i – vi).

²⁰ At least one of our member companies no longer has any retail stores and therefore would require that customers send a copy (photocopy, scanned or faxed) of the appropriate documentation to the company.

Can documents be scanned and e-mailed or faxed? Without the requested clarification, the Commission's goals in including the documentation requirement may be undermined by the lack of a comprehensive and descriptive list of acceptable documentation for determining Lifeline eligibility.

VIII. THE COMMISSION SHOULD RECONSIDER THE TIME PERIOD PERMITTED TO REMOVE DE-ENROLLED LIFELINE CUSTOMERS FROM THE DATABASE

The Commission should reconsider the one-day allowed for updating of the database within one business day of any Lifeline subscriber's de-enrollment.²¹ This is an ambitious standard, especially when of the national database is only getting started, and when Lifeline providers and the administrator have not yet had any experience with the database. To account for the inevitable technical and procedural complications that may arise on both sides of the interaction during its early stages, three business days should be permitted for notification to the database of a subscriber de-enrollment.

This minor extension of time has no impact on the Lifeline Fund's size since the rules mandate that an ETC shall not be eligible for Lifeline reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.²² In the future, as the administrator and providers have more experience, the Commission could reassess whether the time period for notifying the database could practicably be shortened.

²¹ See *Order* at para. 206.

²² See Section 54.405(e)(1-4) of the rules.

IX. CARRIERS SHOULD NOT BE REQUIRED TO INCLUDE SPECIFIC DISCLOSURES IN LIFELINE ADVERTISING

The Commission should reconsider imposing an obligation on carriers to include extensive, specific disclosures in their Lifeline advertising. While USTelecom appreciates the intent to ensure the accurate targeting of program funds to eligible recipients, the requirements of the *Order* may have the unfortunate effect of discouraging or inhibiting carriers from performing a robust level of advertising and outreach. Moreover, in order to avoid future audit issues, ETCs may interpret the Commission's directive for use of clear, easily understood language, to mean that they should include the language included in the *Order* verbatim. For many advertising and outreach purposes, that specified language is unduly long and cumbersome. Carriers instead should be permitted to refer to a website and/or toll free message provided by USAC for the full text of the required disclosures that are common to all ETCs. Carriers still could include plain English disclosures in various advertising materials, but the requirement for making the complete disclosures would be fulfilled by including USAC website and/or a toll free message.

USTelecom's concerns are heightened by the variety of media that may be employed in Lifeline advertising and outreach. These include, among others, print, audio, video, and Internet advertising, as well as outdoor signage and posters.²³ Radio and TV ads are commonly of a very limited length. Outdoor signage and posters often will be unable to practically accommodate the extensive disclosures required by the *Order*.²⁴ Ads in many publications may have size

²³ See paragraph 275 of the *Order*.

²⁴ Paragraph 275 requires (1) disclosure that the offering is a Lifeline-supported service, (2) disclosure that only eligible consumers may enroll in the program, (3) description of documentation necessary for enrollment, and (4) disclosure that the program is limited to one benefit per household, consisting of either wireline or wireless service. ETCs also must explain (5) that Lifeline is a government benefit program, and (6) that consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be

restrictions. Including all the low-income disclosures in these media might result in ads of an impractical length, may discourage some valuable forms of outreach and advertising and may create confusion among consumers.

X. THE COMMISSION SHOULD CLARIFY THE FREQUENCY OF CUSTOMER NOTIFICATION REGARDING THE APPLICATION OF PARTIAL PAYMENTS TO SERVICE BUNDLES

The Commission should clarify that the requirement for carriers to notify Lifeline customers subscribed to service bundles about partial payments (i.e., that partial payments would be first applied to the voice component of the service bundle) can be flexibly applied by carriers as they deem appropriate, as long as the notice is provided at initial customer enrollment and no less frequently than each year thereafter.

Requiring disclosure on every bill will discourage ETCs from making bundles available to Lifeline customers because of the billing changes that will be entailed with a monthly partial payment billing notification. Providers have a finite amount of space on bills to provide various disclosures, and requiring this disclosure on every bill may make it difficult or impossible to make other disclosures that providers must (or want) to provide. Although the Commission does not require that bundles be made available to customers, presumably the offering of a wider range of customer choices for service offerings, including bundles that may include broadband, will make subscription by low-income households more attractive and increase penetration of communications services. The Commission should not place obstacles in the way of ETCs offering such bundles by unnecessarily increasing associated billing costs by requiring monthly notifications regarding partial payments.

barred from the program. Paragraph 101 of the *Order* then contains an extensive, although non-comprehensive list of acceptable documentation.

XI. THE COMMISSION SHOULD CLARIFY THAT LIFELINE REIMBURSEMENT PAYMENTS ARE THE ONLY PAYMENTS THAT WILL BE SUSPENDED DUE TO ALLEGED NON-COMPLIANCE

The Commission should clarify that suspension of payments for alleged non-compliance applies only to Lifeline reimbursement payments, not to high-cost or other universal service payments owed to an ETC. Paragraph 298 of the Order gives USAC the discretion to suspend further payments to a carrier pending USAC's receipt and evaluation of the carrier's response to notification of a finding by USAC that an ETC has failed to comply with the low-income rules. The Commission properly provides USAC discretion based on its receipt and evaluation of the carrier's response and limits the suspension of payments to the Study Area Codes where USAC finds that the ETC is operating in violation of the low-income rules. USTelecom trusts that USAC will use this authority judiciously.

The Commission, however, should clarify that any suspension of payments for non-compliance with the low-income rules applies solely to low-income reimbursement to the carrier. Many ETCs, particularly small high-cost companies, may be receiving many times more high-cost funding than low-income funding. Suspending high-cost payments because of alleged non-compliance with low-income rules would create an unnecessary hardship and would unreasonably and unfairly penalize the company out of all proportion to its violation. Moreover, the mechanisms for the programs are very distinct, and a carrier's compliance with the rules for each program is wholly unrelated.

XII. FOR VERIFYING ELIGIBILITY OF CONSUMERS RESIDING ON TRIBAL LANDS, THE COMMISSION SHOULD CLARIFY THAT ETCs ONLY NEED TO OBTAIN THE LAST FOUR DIGITS OF A TRIBAL GOVERNMENT IDENTIFICATION NUMBER OR AN EQUIVALENT TRUNCATION SUITABLE TO THE TRIBAL ID FORMAT

The Commission should clarify whether ETCs must collect the full Tribal government identification card number or just the last four digits (or an equivalent truncation suitable to the tribal identification number format). To verify the subscriber's identification through the National Accountability Database and thereby eliminate instances of duplicative support, the *Order* requires ETCs to collect subscribers' date of birth and either the last four digits of the Social Security number or an official Tribal government identification card number for eligible consumers who live on Tribal lands and lack a Social Security number.²⁵ Presumably the same privacy and security concerns that led the Commission to limit collection of the last four digits of the Social Security number would apply equally to those possessing tribal government identification cards. Thus, the Commission should clarify that collection of the last four digits of the Tribal government identification card number is sufficient to meet the requirement for collection of this information on the initial and annual certifications forms.

XIII. THE REQUIREMENT TO REPORT INFORMATION TO TRIBAL AUTHORITIES SHOULD BE RECONSIDERED

The new rules include the requirement that ETCs provide various reports to tribal governments.²⁶ The Commission should reconsider these requirements, and instead provide that a carrier shall provide tribe-specific information to tribal governments only upon reasonable

²⁵ *Id.* at para. 118.

²⁶ Paraphrasing section 54.420(a)(4), paragraph 294 mandates that "covered ETCs must provide audit reports to the FCC, USAC, and relevant state and Tribal governments." Section 54.416(b) requires ETCs to "annually provide results of their re-certification efforts" to "the relevant Tribal governments." Sections 54.410 and 54.422 have similar reporting requirements, which include tribal governments.

request. ETCs do not have contact information for each particular tribe. Even where they have such information, it may not be clear to an ETC which tribal representative should receive the information.

Proceeding in this way will allow identification of the proper party to whom the information should be reported, lead to more accurate reporting, and ensure that only the results associated with a particular tribe are reported to that tribe. The Commission should also recognize that this information may include private information of tribal residents, and no one wants such information needless or uncertainly distributed. Without an “upon request” limitation, tribes may be burdened with information that they do not want or cannot use.

Additionally, ILEC ETCs track such information by state, not by tribe, so reporting the information by tribe will require disaggregation of current data, a difficult, likely manual process that is unwarranted if a tribe does not want or need the information. Not all tribes are interested in regularly receiving the information, but this alternate approach ensures that those that want the information will receive it, and all tribes will have access at any time they reasonably choose.

XIV. THE COMMISSION SHOULD RECONSIDER THE SPEED BENCHMARKS ADOPTED FOR THE LOW-INCOME BROADBAND PILOT PROGRAM

The *Order* adopts different performance requirements for different technologies that may be supported by the Low-Income Broadband Pilot Program.²⁷ Such an approach violates the Commission’s goal of technological neutrality and is consistent with the Commission’s determination that consumers should have access to broadband that is capable of enabling key applications, including online learning and video conferencing. To eliminate these

²⁷ See *Order* at para. 341 (adopting minimum speed standards of 200 Kbps downstream/50 Kbps upstream for “3G networks” receiving Pilot Program funds; 768 Kbps downstream/200 Kbps upstream for supported “4G networks”; and 4 Mbps downstream/1 Mbps upstream for supported “fixed services”).

inconsistencies, the Commission should replace its technology-specific speed benchmarks with a single speed benchmark of 3 Mbps downstream.

First, the Commission should adopt a single speed benchmark to avoid competitive disparities when distributing Pilot Program funding. Under the Pilot Program’s current rules, disparate speed benchmarks may allow mobile providers to obtain an undue competitive advantage over fixed providers because low-speed broadband offerings will be presumptively eligible for support only if provided by mobile technologies. For example, if a 4G mobile wireless provider and a fixed provider both sell 1.5 Mbps and 4 Mbps service offerings, only the mobile provider would be eligible to receive Pilot Program funding for both service offerings. This sort of approach—which would give mobile providers an advantage over fixed providers when seeking funding—runs contrary to important, long-standing Commission precedent that recognizes, in many contexts, the importance of maintaining technological neutrality.²⁸ An outcome that is inconsistent with the important tenet of competitive neutrality should be avoided in the Pilot Program and any future restructuring intended to ensure that the Lifeline program “promote[s] the adoption and retention of broadband services by low-income households.”²⁹

²⁸ See, e.g., *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, WC Docket Nos. 10-90, 07-135, and 05-337 and GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, at para. 93 (rel. Feb. 9, 2011) (stating that public interest obligations for the provision of voice and broadband service should be technology-neutral); *Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, para. 55 (2007) (“Without a consistent approach toward all Internet service providers (both within the wireless industry and across diverse technologies), and absent a showing that an application of common carrier regulation to only one type of Internet access provider will promote the public interest, *the possibility of full and fair competition will be compromised.*”).

²⁹ *Order* at para. 323.

Second, adopting a single speed threshold of at least 3 Mbps downstream would be more consistent with the Commission’s finding that “[c]onsumers should have access to broadband that is capable of enabling the kinds of key applications that drive our efforts to achieve universal broadband, including education (e.g., distance/online learning), healthcare (e.g., remote health monitoring), and person-to-person communications (e.g., VoIP or online video chat with loved ones serving overseas).”³⁰ In its most recent Section 706 Report, the Commission set a national broadband availability target download speed of 4 Mbps, reasoning that “[i]t is the minimum speed required to stream a high-quality—even if not high-definition—video while leaving sufficient bandwidth for basic web browsing and e-mail.”³¹ The Commission has found that consumers require download speeds between 1 Mbps to 5 Mbps when using standard-definition, streaming video applications, depending on a variety of factors.³² In particular, the Commission’s “Broadband Speed Guide” concludes that the minimum download speed needed for adequate performance of streaming feature movies is 1.5 Mbps, and the minimum download speed needed for adequate performance of HD-quality streaming movie or university lecture is 4 Mbps.³³ Thus, a required downstream speed of *at least* 3 Mbps is needed to ensure customers can use Pilot Program-supported broadband offerings to access standard-definition video and typical online education offerings with somewhat reasonable reliability.

³⁰ *Id.* at para. 341.

³¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act; A National Broadband Plan for Our Future*, GN Docket Nos. 09-137, 09-51, Sixth Broadband Deployment Report, at para. 5 (2010).

³² *Id.* at para. 93.

³³ See Broadband Speed Guide, Federal Communications Commission, *available at* <http://www.fcc.gov/guides/broadband-speed-guide>. These findings were based upon running one activity at a time.

Third, as USTelecom has discussed previously, an additional 1 Mbps upload speed requirement is inadvisable. If any upload speed requirement is required, the Commission, instead, should use a 768 Kbps target.³⁴

Finally, the minimum download speed requirement proposed by USTelecom is needed to ensure that the Commission's Pilot Program produces the greatest possible amount of useful data. The *Order* establishes that the Program is intended to “focus on testing the necessary amount of subsidies for broadband and the length of support.”³⁵ With no more than \$25 million to fund the Pilot Program, the Bureau no doubt will have to make difficult decisions about how to allocate support. It should not make this task more challenging by dedicating funding to services that will not offer consumers access to “broadband that is capable of enabling the kinds of key applications that drive [the Commission's] efforts to achieve universal broadband.”³⁶ Testing such services is ultimately wasteful and introduces unnecessary variables—further limiting the Commission's ability to develop “data that will allow the Commission and participating ETCs to evaluate how best to structure the program in the future.”³⁷

³⁴ Many broadband providers do not provide 1Mbps upload speeds as a standard offering, because current technologies can deliver 768 Kbps upload speed with significantly lower deployment costs than 1 Mbps would require. Requiring carriers that offer maximum upload speeds of 768 Kbps to provide special justification of their lower speeds to qualify for the Pilot Program could discourage participation by some carriers, especially those facing higher costs in rural areas. In addition, a 1 Mbps upstream speed level is not needed to meet the vast majority of U.S. consumers' demands. The Commission's October 2011 Internet Access Services Report notes that 57 percent of reported connections have upload speeds of less than 768 Kbps, although upload speeds of 1.5 Mbps are available to 89 percent of customers. (Internet Access Services: Status as of December 31, 2010, Industry Analysis and Technology Division, Wireline Competition Bureau, at 4, 9 (Oct. 2011)).

³⁵ *See Order* at para. 323.

³⁶ *Id.* at para. 341.

³⁷ *Id.* at para. 323. Testing lower-speed broadband services also will not meaningfully deliver on the Commission's intent “to close the adoption gap for consumers that participate in the pilot.” *Id.*

XV. CONCLUSION

The Commission has taken important steps to reform and modernize the Universal Service Fund's Lifeline program, and USTelecom supports much of the Commission's efforts and the reforms adopted in the *Order*. However, the aspects of the *Order* noted above either should be clarified or reconsidered to best meet the Commission's goals of a targeted, effective and efficient program. Adoption of the changes suggested in the Petition will ease unnecessarily difficult or onerous compliance burdens on ETCs as well as simplify the process for potential and current Lifeline subscribers to subscribe to and maintain service. Clarifying and simplifying processes and procedures for ETCs and consumers helps the Commission meet its goals as well. USTelecom urges prompt action to adopt the items for reconsideration and clarification requested in the Petition.

Respectfully submitted,

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