

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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

**REPLY COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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Dated: May 1, 2012

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I. SUMMARY.

The Massachusetts Department of Telecommunications and Cable (MDTC) respectfully submits these reply comments in response to initial comments on the Further Notice of Proposed Rulemaking (FNPRM) released by the Federal Communications Commission (Commission) on February 6, 2012 in the above-referenced dockets.¹ In the *Lifeline Reform Order*, the undertook important steps toward reforming and modernizing the Universal Service Fund's Lifeline program, and released a seeking comment on reform implementation and other issues relating to the program.² The MDTC commends and supports the Commission for its efforts to reform and

¹ The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. MASS. GEN. LAWS ch. 25C, § 1.

² *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,

modernize Lifeline while at the same time adopting important measures to eliminate waste, fraud, and abuse in the program. These reply comments focus on three issues commenters have addressed in this Lifeline proceeding.

First, the Commission should heed the advice of the majority of commenters by calling for the establishment of a national Lifeline eligibility database. Further, the Commission can and should use Lifeline funds to offset any costs to states of populating the national database with state-specific data. Such a database is vital to the Commission's efforts to eliminate waste, fraud, and abuse in the Lifeline program. Second, it is important that the Commission clarify open issues regarding the facilities requirement of Section 214(e)(1)(A) of the Communications Act³ that various commenters have highlighted, including whether states may impose additional requirements related to ownership of facilities. Finally, the MDTC agrees with those commenters who stated that the Commission should reject the two AT&T proposals (1) to make wireline carrier participation in the Lifeline optional, and (2) to create a process for carriers to become Lifeline providers outside of the traditional ETC designation process. These two proposals are unnecessary because there are preexisting relinquishment processes, the proposals would harm low-income consumers, and the proposals would circumvent congressionally-granted state oversight. By implementing these suggestions, the Commission will aid more than 200,000 Massachusetts Lifeline subscribers and their families.⁴

II. THE MDTC AGREES WITH COMMENTERS THAT A NATIONAL ELIGIBILITY DATABASE WITH SUPPORT TO FACILITATE STATE INPUT WOULD BE MORE EFFICIENT AND MORE PRACTICABLE THAN MANDATING STATE-LEVEL DATABASES.

Advancing Broadband Availability Through Digital Literacy Training, WC Docket No. 12-23, *Report and Order and Further Notice of Proposed Rulemaking* (rel. Feb. 6, 2012) (“*Lifeline Reform Order*”).

³ 47 U.S.C. § 214(e)(1)(A) (requiring that “[a] common carrier designated as an eligible telecommunications carrier” under the statute must offer services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services”).

⁴ See Universal Service Monitoring Report at Table 2.4, CC Docket No. 98-202 (2011).

In the FNPRM, the Commission sought comment on the merits of either requiring states to create state-specific databases or establishing a single national database to verify Lifeline program eligibility.⁵ The majority of initial commenters, including state commissions, ILECs, CLECs, wireless companies, and other entities, stated their preference for a national eligibility database, rather than fifty different Commission-mandated state databases.⁶ While the Commission should continue to permit states to establish their own databases if they so choose, the MDTC asserts that a mandate is inappropriate, and therefore it joins the majority of commenters who support a national eligibility database as the best way to reduce waste, fraud, and abuse in the Lifeline program. A national database, “widely supported by industry,”⁷ would provide an automated means of determining Lifeline eligibility using at least the Supplemental Nutrition Assistance Program (SNAP), the Supplemental Security Income Program (SSI), and Medicaid.⁸

The Commission should also encourage individual state agencies from each state to submit pertinent data to the national database.⁹ As consumers may be eligible for Lifeline by means of a number of different federal and state programs,¹⁰ there are a number of different agencies, even within one state, that may house the information needed to confirm Lifeline eligibility.¹¹ While some states may already have some relevant databases in place, in many

⁵ *Lifeline Reform Order*, ¶ 404.

⁶ *See, e.g.*, Ohio PUC Comments at 1; AT&T Comments at 4; COMPTTEL Comments at 2; Cox Comments at 5; T-Mobile Comments at 3; Third Party Verification, Inc. Comments at 2.

⁷ Cox Comments at 5.

⁸ *Lifeline Reform Order*, ¶ 403 & n.1051.

⁹ Michigan PSC Comments at 3 (asking the Commission to be mindful of “the different needs of each state”). While the MDTC acknowledges that the Commission permits states to implement additional eligibility requirements and thus requirements may not be uniform across the country, the national database should provide eligibility based on the federal guidelines, and states that impose additional requirements should be able to supplement the database with that information. *See Lifeline Reform Order*, ¶ 65.

¹⁰ *See* 47 C.F.R. § 54.409(a)(2) (listing the federal programs that qualify consumers for Lifeline).

¹¹ *See Lifeline Reform Order*, ¶ 401 (indicating that Lifeline eligibility data often are housed at an agency that does not administer the Lifeline program); *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*

cases, not one, single state agency is in charge of, or even has access to, all of the consumer information necessary to determine Lifeline eligibility.¹² In Massachusetts, for example, the MDTC designates Lifeline providers, but a different agency, the Massachusetts Department of Transitional Assistance (MDTA),¹³ administers SNAP¹⁴ and houses the data for both SNAP and SSI.¹⁵ A third agency, MassHealth, administers Medicaid.¹⁶ Thus, the Commission’s proposed initial database¹⁷ would require coordination of at least three distinct agencies in Massachusetts.¹⁸ Most commenters agree that in light of circumstances similar to those presented in Massachusetts, mandating implementation of state-level databases is not as practicable,¹⁹ efficient,²⁰ or cost-effective²¹ as the creation of a national database that would allow and facilitate state input.²²

¹² *Board on Universal Service*, CC Docket No. 96-45, Mich. Pub. Serv. Comm’n Reply Comments at 2 (filed May 9, 2011) (“Michigan 2011 Reply Comments”) (asserting that multiple state agencies from each state may need to be involved in the establishment of a database(s)).
See, e.g., 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, Mo. Pub. Serv. Comm’n Comments at 4 (filed Apr. 21, 2011) (“Missouri 2011 Comments”) (indicating that MoPSC Staff does not have direct access to relevant databases); Mich. Pub. Serv. Comm’n Comments at 9 (“Michigan 2011 Comments”) (filed Apr. 21, 2011) (“it is unlikely that the social service agencies will allow the ETCs or the MPSC to have direct access to the confidential information in their databases.”). There is not a Lifeline eligibility database in Massachusetts, and the MDTC currently does not have the funding or access to the data necessary to create one.

¹³ For more information on the MDTA, see <http://www.mass.gov/eohhs/gov/departments/dta/>.

¹⁴ *See* 106 C.M.R. §§ 320-67. The MDTC notes that non-governmental agencies—such as Lifeline providers—are not permitted access to MDTA’s database. MASS. GEN. LAWS ch. 66, § 17A.

¹⁵ *Computer Matching & Privacy Protection Act Agreement Between the Soc. Sec. Admin. & the Commonwealth of Mass. Executive Off. of Health and Hum. Services* (Oct. 15, 2009); *see also Info. Exchange Agreement Between the Soc. Sec. Admin. & the Commonwealth of Mass. Executive Off. of Health and Hum. Services* (Nov. 19, 2009).

¹⁶ *See* 106 C.M.R. § 501.004.

¹⁷ *See Lifeline Reform Order*, ¶ 97 & n.264 (calling for the establishment of an automated means of determining Lifeline eligibility using at least SNAP, SSI, and Medicaid).

¹⁸ And this is without taking into account the many other programs that can determine Lifeline eligibility and ideally would be added to the database as it expands.

¹⁹ Third Party Verification, Inc. Comments at 2-3.

²⁰ District of Columbia PSC Comments at 1-2; Verizon Comments at 2-3.

²¹ Tennessee Regulatory Authority Comments at 2; AT&T Comments at 5.

²² *See Lifeline Reform Order*, ¶ 401 (outlining the issues and potential problems that states would face if forced to implement separate eligibility databases); *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, Neb. Pub. Serv. Comm’n Comments at 5 (filed Apr.

The Commission also seeks comment on using Lifeline funds to assist states in the implementation or population of eligibility databases, whether the databases exist at the federal or state level.²³ The MDTC agrees with those commenters that support such use of Lifeline funds regardless of whether the Commission mandates state-specific databases.²⁴ States will incur significant costs related to the submission of data sets to a national database and, of course, if the Commission requires states to establish and maintain their own Lifeline eligibility databases, the states will incur significant costs as well. For example, in Massachusetts, the creation of the MDTA's current automated data system cost \$63.56 million.²⁵ And the Administration of SNAP costs Massachusetts approximately \$3 million a year.²⁶ Regardless of what type of database(s) the Commission chooses, the MDTA and other Massachusetts agencies that populate the database need financial support for that purpose.²⁷ The Commission plans to use only a fraction of the anticipated savings from Lifeline for the creation of the broadband pilot program.²⁸ Consequently, a substantial amount of those remaining savings could be used to help offset the costs of establishing a national database and of populating that database with data provided by states.

While providing USF funds to assist in the creation of a database makes sense from a practical standpoint, COMPTEL opined that the Commission does not have the statutory

21, 2011) ("Nebraska 2011 Comments"); Michigan 2011 Comments at 9 (calling for data to be made publicly available at the national level).

²³ *Lifeline Reform Order*, ¶ 405.

²⁴ *See, e.g.*, Ohio PUC Comments at 5; Tennessee Regulatory Authority Comments at 2; Tracfone Comments at 3; T-Mobile Comments at 4.

²⁵ OFFICE OF THE STATE AUDITOR'S REP. ON INFO. TECH. CONTROLS AT THE DEP'T OF TRANSITIONAL ASSISTANCE 1 (June 2005).

²⁶ *See* MASSACHUSETTS DEP'T OF TRANSITIONAL ASSISTANCE FACTS AND FIGURES 3 (2011), <http://www.mass.gov/eohhs/docs/dta/dec-11.pdf> (detailing MDTA's FY12 appropriations). As of October 2011, MDTA was handling over 800,000 SNAP recipients alone. *Id.* at 1.

²⁷ The likely substantial increased cost of creating multiple state-level databases rather than a single, national database is another reason why a national database is preferable. Tennessee Regulatory Authority Comments at 2; AT&T Comments at 5.

²⁸ *See Lifeline Reform Order*, ¶ 3.

authority to allocate USF funds in this manner.²⁹ These claims, based on COMPTTEL’s interpretation of section 254(e),³⁰ are incorrect. Because section 254(e) and 214(e)(1) each cross-reference the other, it is appropriate to read them together to obtain the correct context.³¹ Doing so reveals that the limit on receipt of universal service support in section 254(e) is a carrier-based limit, meaning that section 254(e) specifies what type of common carriers (*i.e.* ETCs) are eligible to receive universal service support. The statute does not state that ETCs are the exclusive recipients of such support.³²

The lack of logic to COMPTTEL’s argument is demonstrated by the very existence of the Universal Service Administration Company (USAC). USAC is the permanent administrator of the USF.³³ USAC is not “an eligible telecommunications carrier designated under section 214(e),”³⁴ and yet USAC is reimbursed for its expenses directly from the Fund.³⁵ COMPTTEL’s argument therefore has no merit, as Commission rules already provide universal service support to a non-ETC for purposes of administering the universal service programs.³⁶ Accordingly, it is appropriate for the FCC to provide USF funding to states for purposes of administering the Lifeline program, namely the population of a national eligibility database.

²⁹ COMPTTEL Comments at 3.

³⁰ COMPTTEL also claims that providing universal service support to states would violate section 254(f), which prohibits states from adopting regulations that rely on or burden federal universal support mechanisms. COMPTTEL Comments at 3-4. However, providing universal service support to states for purposes of populating or establishing a database would not violate section 254(f) because states would not be adopting regulations. Rather, the Commission would be adopting a policy, which is expressly authorized by section 254(b). 47 U.S.C. § 254(b) (“the Commission shall base policies for the preservation and advancement of universal service on the following principles.”).

³¹ *See* 47 U.S.C. §§ 214(e)(1), 254(e).

³² *Id.* § 254(e).

³³ 47 C.F.R. § 54.701(a).

³⁴ COMPTTEL Comments at 3 (quoting 47 U.S.C. § 254(e)); *see also* Third Party Verification, Inc. Comments at 3.

³⁵ 47 C.F.R. § 54.715(c) (“The administrative expenses incurred by [USAC] in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high-cost support mechanism, and the low income support mechanism shall be deducted from the annual funding of each respective support mechanism.”).

³⁶ *Id.*

Moreover, section 254(j) explicitly states that nothing elsewhere in section 254 “shall affect the . . . *administration* of the Lifeline Assistance Program”³⁷ As the Commission stated in the *Lifeline Reform Order*, the creation and population of a Lifeline eligibility database has become a necessary part of the administration of Lifeline.³⁸ And without support from the Fund, Massachusetts and other states will not be able to effectively implement or populate a database. Therefore, even if the Commission chooses to read section 254(e) differently than outlined above, the outcome remains the same because section 254(e) cannot affect the establishment or population of an eligibility database(s).

In sum, the MDTC fully supports the national Lifeline program and allocates significant resources to its administration and ongoing success. Since Lifeline is a federal program, however, the MDTC shares the view of a number of other commenters that the Lifeline program’s reform and maintenance should be financed primarily with federal funds.³⁹

III. COMMENTERS HIGHLIGHTED OPEN ISSUES REGARDING THE FACILITIES REQUIREMENT, WHICH THE FCC SHOULD REFINE TO ENSURE THAT THE REQUIREMENT IS CONSISTENT WITH THE PURPOSES OF THE LIFELINE PROGRAM.

While the Commission decided in the *Lifeline Reform Order* to waive the facilities requirement of Section 214(e)(1)(A) through forbearance (provided the carrier seeking forbearance meets certain requirements),⁴⁰ the requirement remains a central facet of universal service.⁴¹ Even carriers that seek a Lifeline-only ETC designation may not choose to avail

³⁷ 47 U.S.C. § 254(j) (emphasis added).

³⁸ *Lifeline Reform Order*, ¶ 402.

³⁹ See, e.g., District of Columbia PSC Comments at 2; *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, Fla. Pub. Serv. Comm’n Comments at 24 (filed Apr. 6, 2011); Ind. Util. Regulatory Comm’n Comments at 12 (filed Apr. 21, 2011); Missouri 2011 Comments at 18; Michigan 2011 Reply Comments at 2.

⁴⁰ *Lifeline Reform Order*, ¶ 368.

⁴¹ The Commission’s forbearance order is for carriers seeking ETC designation for Lifeline only. *Id.*

themselves of the forbearance process.⁴² The Commission should heed commenters' calls to note certain open issues and further develop the requirement by answering the questions that various parties have raised.⁴³

A. The Commission Should Clarify That States May Impose Additional Requirements On Carriers That Do Not Meet The Facilities Requirement To Ensure That Their ETC Designation Is In The Public Interest.

In the *Lifeline Reform Order*, the Commission, taking into account the fact that states encounter “unique circumstances” and have “specific concerns” about ETCs, confirmed that states may impose eligibility requirements and verification procedures in addition to the minimum federal requirements.⁴⁴ The Commission should apply the same rationale and come to the same conclusion in regards to the facilities requirement.

In addition to the Commission's forbearance requirements,⁴⁵ state-based requirements for carriers that do not own network assets may be necessary in order to ensure that ETC designations are consistent with the public interest, convenience, and necessity.⁴⁶ The Commission should stipulate that states individually may establish requirements that are in addition to and not inconsistent with federal rules or the Commission's blanket forbearance order.⁴⁷ States are uniquely situated to be able to set suitable additional standards for designating

⁴² See *id.*, ¶ 368, n.983.

⁴³ See *id.*, ¶ 499.

⁴⁴ *Id.*, ¶¶ 65, 140.

⁴⁵ See *id.*, ¶ 368.

⁴⁶ See 47 U.S.C. § 214(e)(2) (directing state commissions to determine that an ETC designation is in the public interest before granting the designation in areas served by a rural telephone company).

⁴⁷ *Lifeline Reform Order*, ¶¶ 368-81. The Commission should also reconsider establishing—or allowing states individually to establish—a minimum amount of use of facilities. Demonstrating a minimum level of facilities use will allow states like Massachusetts to determine whether the ETC applicant offers a sustainable service to consumers. The Commission should prevent carriers from nominally meeting the facilities requirement and thereby avoiding filing a compliance plan without complying with one of the true purposes of the facilities requirement—sustainable service. See Wisconsin PSC Comments at 11; Michigan PSC Comments at 8-9.

non-facilities-based ETCs.⁴⁸ Furthermore, given the many differences among states (*e.g.*, service providers, service availability, existence of a state fund), the Commission does not have to make these additional standards uniform.⁴⁹

B. The Commission Should Address Open Questions That State Commissions Raised Regarding The Facilities Requirement.

The Commission asked for comment on the need for resolution of any issues regarding the facilities requirement.⁵⁰ The Commission should review several open issues that commenters raised concerning the location of facilities, the requirement that ETCs “offer” voice telephony services, and requirements regarding the ownership of facilities.⁵¹

First, as the Wisconsin PSC and the Michigan PSC noted,⁵² the Commission should clarify the required location of facilities as it pertains to ETC designation. In its *First USF Order*,⁵³ the Commission specified that an ETC’s facilities do not have to be located physically within a particular *service area* to meet the facilities requirement for ETC designation in the state wherein that service area lies.⁵⁴ However, the Commission has not directly addressed the distinct question of whether it or states may require an ETC to own or lease facilities within a particular *state* in order to meet the facilities requirement in that state. This determination bears on the sustainability of ETCs in Massachusetts. As a result, the MDTC agrees with the Wisconsin and Michigan PSCs and requests that the Commission clarify this issue and declare whether the

⁴⁸ See, *e.g.*, *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, MDTC Comments at 8, 9 (filed Apr. 21, 2011).

⁴⁹ See Joint Commenters Comments at 15 (requesting guidance regarding the facilities requirement while advocating against “uniform facilities standards or requirements”).

⁵⁰ *Lifeline Reform Order*, ¶ 496.

⁵¹ See *id.*, ¶¶ 500, 501.

⁵² Wisconsin PSC Comments at 10; Michigan PSC Comments at 9.

⁵³ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order* (rel. May 8, 1997) (“*First USF Order*”).

⁵⁴ *Id.*, ¶ 177; see also 47 C.F.R. § 54.201(g).

Commission or states may require an ETC to have physical facilities in a particular state prior to being designated as an ETC in that state.

Second, building off of an example that the Wisconsin PSC suggested,⁵⁵ the Commission should clarify whether it requires ETCs to actually *provide* designated voice telephony service using their own facilities versus simply *offering* the service. To meet the facilities requirement, ETCs must use their own facilities, at least in part, to “offer” voice telephony service.⁵⁶ However, to offer voice telephony service in a service area can be very different than actually continuously providing that service throughout the service area. In theory, an ETC could *offer* voice telephony service throughout a service area located in Massachusetts using its own facilities located in New Hampshire, but only actually *provide* service in the service area using its own facilities in the rare case that a customer in the service area makes a call to the location in New Hampshire where the facilities are located. Meanwhile, when customers in Massachusetts make calls to all other parts of the country, including intrastate calls in the service area within Massachusetts, the ETC would be using resold facilities.⁵⁷ The Commission should clarify whether this and similar practices that the Wisconsin PSC raised actually would constitute compliance with the facilities requirement.⁵⁸

Finally, as states and ETCs request,⁵⁹ the Commission should clarify what may constitute ownership of facilities for purposes of section 214(e)(1)(A).⁶⁰ Historically, ETC applicants have claimed to meet the facilities requirement by utilizing management companies or third-party

⁵⁵ Wisconsin PSC Comments at 10 (presenting a hypothetical in which a carrier owns a switch in North Dakota, but is seeking to become an ETC in Wisconsin).

⁵⁶ 47 U.S.C. § 214(e)(1)(A).

⁵⁷ NASUCA has argued that to meet the facilities requirement, facilities “must be used in the provision of local service.” *In the Matter of TracFone Wireless, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-197, CC Docket No. 96-45, NASUCA Reply Comments at 4, n.14 (filed Jan. 10, 2011).

⁵⁸ Wisconsin PSC Comments at 9-10.

⁵⁹ *Id.* at 11; Joint Commenters Comments at 15; Michigan PSC Comments at 8-9.

⁶⁰ *See Lifeline Reform Order*, ¶ 501.

entities to lease the facilities and manage the applicants' intended low-income services.⁶¹ In these cases, as the Commission alludes to in its FNPRM,⁶² it is unclear whether the management company/third-party or the ETC applicant has the exclusive right to use the facilities.⁶³ Additionally, the MDTC respectfully submits that it remains unclear if anything other than unbundled network elements may qualify as leased facilities. Section 54.201(f) of the Commission's rules states that "'own facilities' includes, but is not limited to, facilities obtained as unbundled network elements,"⁶⁴ but it is not clear what else may constitute "own facilities." The Commission should address these open questions, and in doing so, make clear what is meant by "requiring that a facilities-based ETC have exclusive right to use facilities in the provisioning of the supported services."⁶⁵

C. The Original Designating Authority Is In The Best Position To Determine Whether An ETC's Discontinued Use Of Facilities Should Change Its ETC Designation.

If, after an ETC has been designated as a facilities-based carrier, the ETC then discontinues the use of its own facilities, the entity that made the initial designation should determine the future of that carrier's ETC status.⁶⁶ If a state commission in a non-federal default state such as Massachusetts made the initial ETC designation, the state commission should continue to make determinations regarding the carrier's ETC status. The entity that designates

⁶¹ Letter from Kerri J. DeYoung, Counsel, MDTC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109 (filed Nov. 10, 2011).

⁶² *Lifeline Reform Order*, ¶ 501 (questioning whether an ETC jointly leasing facilities has the exclusive right to use those facilities).

⁶³ *See First USF Order*, ¶ 160 (determining that to meet the facilities requirement, the ETC must have the exclusive right to use the facilities used to provision the supported services). It is also unclear whether the management company/third-party is acting in the capacity of the ETC in every way except in name.

⁶⁴ 47 C.F.R. § 54.201(f).

⁶⁵ *Lifeline Reform Order*, ¶ 501.

⁶⁶ *See* 47 U.S.C. § 214(e)(2); *Lifeline Reform Order*, ¶ 500.

an ETC generally will be in the best position to determine the carrier's status moving forward.⁶⁷ Further, as state commissions in non-federal default states have the sole authority both to designate and relinquish ETC status,⁶⁸ there is no reason why that authority should change when a carrier's ETC status is subject to change.

IV. STATES AND CONSUMER GROUPS ARE CORRECT IN THEIR ASSERTION THAT THE COMMISSION SHOULD DISMISS AT&T'S LIFELINE PROPOSALS BECAUSE THEY ARE UNNECESSARY, WOULD HARM CONSUMERS, AND ARE CONTRARY TO CONGRESSIONAL MANDATES.

In its FNPRM, the Commission asked for comment on two AT&T proposals regarding ETC designation and relinquishment processes.⁶⁹ One proposal asks the Commission to give ILECs the ability to choose not to participate in the Lifeline program.⁷⁰ The other proposal asks the Commission to allow voice and broadband providers the opportunity to provide Lifeline outside of the ETC designation process.⁷¹ The MDTC agrees with comments from multiple state commissions and consumer groups, which state that these proposals, if implemented in any form, would be detrimental to low-income consumers and would take away congressionally-granted state authority in the ETC designation and relinquishment processes.⁷² Consequently, the Commission should reject these proposals.

A. Various Commenters Are Correct In Their Assertion That AT&T's Wireline Lifeline Participation Proposal Is Unnecessary And Not In The Public Interest.

⁶⁷ *In the Matter of Connect America Fund*, et al., WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, State Members of the Federal-State Joint Board on Universal Service Comments at 88-89 (filed May 2, 2011) (asserting that “[s]tates are uniquely qualified to . . . assess local conditions generally, and service quality in particular,” and to “identify public benefits and harms” involved with the presence of ETCs in local markets).

⁶⁸ 47 U.S.C. §§ 214(e)(2), (4).

⁶⁹ *Lifeline Reform Order*, ¶¶ 503, 504.

⁷⁰ *Id.*, ¶ 503.

⁷¹ *Id.*, ¶ 504.

⁷² 47 U.S.C. §§ 214(e)(2), (4).

In a January 24, 2012 *ex parte* letter to the Commission, AT&T proposed that wireline telephone companies should be able to choose whether to participate in the Lifeline program.⁷³ The MDTC agrees with states and consumer groups that the proposal is unnecessary and not in the public interest.⁷⁴ If approved, the proposal would allow the four ILECs in Massachusetts to abandon their low-income customers.

AT&T's proposal is unnecessary because Congress has already fashioned "a single means by which an ETC may relinquish its designation."⁷⁵ Section 214(e)(4) enables an ETC to relinquish its ETC designation—and, thereby, its Lifeline responsibilities—in specific areas.⁷⁶ The Commission acknowledges as much in its FNPRM,⁷⁷ and AT&T has not provided an explanation as to why section 214(e)(4) is insufficient.⁷⁸

Additionally, as the District of Columbia PSC argued, the proposal is not in the public interest because numerous consumers continue to rely on wireline service, and for a variety of reasons, they may have no desire to leave that service.⁷⁹ The proposal would eliminate consumer choice, presenting a critical problem for consumers in remote or rural areas, including in

⁷³ Letter from Mary L. Henze, Asst. Vice President, AT&T Servs., Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, WC Docket No. 03-109 (filed Jan. 24, 2012).

⁷⁴ See, e.g., California PUC Comments at 9; Ohio PUC Comments at 11; NASUCA Comments at 21; Joint Consumers Comments at 10.

⁷⁵ NASUCA Comments at 22 (referring to 47 U.S.C. § 214(e)(4)); see also Alaska Rural Coalition Comments at 9 ("The ARC continues to believe that State Commissions are in the best position to monitor and adjudicate [ILECs'] opt out procedure."). Even Tracfone, which offers conditional support for AT&T's proposal, agrees that Section 214(e)(4) is the proper path to relinquishment of ETC status. Tracfone Comments at 23.

⁷⁶ See 47 U.S.C. § 214(e)(4) ("A State commission . . . shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier.").

⁷⁷ *Lifeline Reform Order*, ¶ 503.

⁷⁸ To the MDTC's knowledge, AT&T's only input at the Commission regarding section 214(e)(4) consists of merely a single footnote in which AT&T actually is addressing alteration of ETC-designated service areas, and not ETC designations in general. *In the Matter of Connect America Fund*, WC Docket No. 10-90, AT&T Comments at 16, n.30 (filed Jan. 18, 2012). AT&T claims that there is "no statutory obstacle to the Commission relieving requesting carriers" of their Lifeline obligations, but inexplicably neglects to mention Section 214(e)(4) once in its Lifeline reform comments. See AT&T Comments at 19.

⁷⁹ District of Columbia PSC Comments at 5; see also FCC LOC. TELEPHONE COMPETITION STATUS AS OF DECEMBER 31, 2010 20 (Oct. 2011) (showing that there were 1,444,000 residential landlines in Massachusetts at the end of 2010).

Massachusetts where consumers face wireless service quality issues and areas without wireless service and consequently rely on wireline service.⁸⁰ Indeed, while the MDTC takes no position on AT&T's claim that "the majority of Lifeline-eligible consumers prefer wireless Lifeline service,"⁸¹ even if the statement were taken as true, there would remain over 3.8 million wireline Lifeline subscribers in jeopardy of losing their phone service, or, at best, their chosen service provider and technology.⁸² If consumers cannot receive, or have poor wireless service, then a wireless phone would not serve the many vital purposes of the Lifeline program for that particular customer.⁸³ Thus, the Commission should dismiss the proposal and avoid establishing a duplicative process that permits wireline Lifeline providers to force a single, potentially less reliable technology upon low-income consumers.⁸⁴

B. AT&T's ETC Designation Process Proposal Is Ill-advised.

In a December 22, 2009 *ex parte* communication filed with the Commission, AT&T proposed that the Commission allow carriers to become Lifeline providers outside of the

⁸⁰ See, e.g., MDTC COMPETITION STATUS REP. ix, 54 (2010), available at <http://www.mass.gov/ocabr/docs/dtc/compreport/competitionreport-combined.pdf> (concluding that wireless phone service availability "may not be as ubiquitous as suggested by the coverage maps" and that "approximately 471 square miles (6%) of the land area in Massachusetts is without any Wireless Voice service").

⁸¹ AT&T Comments at 19.

⁸² Compare Universal Service Monitoring Report at Table 2.8, CC Docket No. 98-202 (2011) (showing that as of 2010, incumbent wireline providers AT&T, Verizon, and Qwest accounted for 36.2 percent of disbursed Lifeline support), with *id.* at Table 2.4 (showing that the total number of Lifeline subscribers nationwide in 2010 was 10,580,336).

⁸³ See 47 U.S.C. § 254(b)(1) (outlining the Lifeline principle that "[q]uality services should be available at just, reasonable, and affordable rates.") (emphasis added); Michigan Comments at 9 ("if an ILEC decided to discontinue providing [Lifeline] service, a large percentage of customers would not receive Lifeline."). The comments of Carolina West Wireless, et al. highlight this problem, as these carriers advocate AT&T's proposal because "[r]educing the number of Lifeline providers will help the Commission to achieve its overarching goal of controlling the overall size of the Universal Service Fund." Carolina West Wireless, et al. Comments at 3. While keeping the size of the Fund in check is important, "[r]educing the number of Lifeline providers" also means reducing the number of eligible consumers that receive Lifeline, contrary to the Commission's congressional directive. See 47 U.S.C. § 254(b).

⁸⁴ The MDTC also notes that the Commission based its forbearance from applying the facilities requirement of section 214(e)(1)(A) in large part on the competition that wireless resellers face from incumbent wireline carriers in the Lifeline market. See *Lifeline Reform Order*, ¶ 371 ("Resellers necessarily will face existing competition in the marketplace from the Lifeline offerings of the incumbent wireline carriers in the same designated areas . . ."). If such incumbents could freely choose whether or not to provide Lifeline service, the FCC would have to reconsider its forbearance order.

congressionally-mandated ETC designation process.⁸⁵ AT&T proposed that the Commission establish a “Lifeline Provider” registration process separate from ETC designations and section 214 requirements.⁸⁶ The MDTC agrees with NASUCA that the Commission should dismiss this proposal,⁸⁷ as it is inappropriate from legal, policy, and practical standpoints.

This proposal explicitly seeks to bar state commissions from asserting a congressionally-delegated authority.⁸⁸ Congress mandated that the only carriers eligible to receive universal service funds are those designated as ETCs pursuant to section 214(e).⁸⁹ Section 214(e)(2) requires that in non-federal default states like Massachusetts, state commissions designate ETCs.⁹⁰ AT&T’s proposal, which aims to take away that authority, is therefore unlawful.

Furthermore, AT&T’s claim that section 254(j) “gave the Commission the flexibility to ‘distribut[e]’ support without regard to the other subsections in section 254”⁹¹ skews the true meaning of the statute. What section 254(j) actually states is that nothing in the rest of section 254 “shall affect the . . . distribution” of Lifeline funds.⁹² No party has presented compelling evidence that section 254(e)’s prohibition on carriers that are not ETCs receiving funds “affect[s]” that distribution; section 254(e) merely provides an avenue for such distribution.⁹³

In addition to its legal flaws, the proposal is flawed from a policy perspective as well. With a Lifeline registration process outside of section 214, states would lose key oversight authority, as the Commission would be permitting Lifeline providers to escape state-specific

⁸⁵ Letter from Jamie M. Tan, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 03-109, GN Docket Nos. 09-51, 09-47, 09-137 (filed Dec. 22, 2009); *see also* 47 U.S.C. § 214(e)(2) (granting statutory ETC designation authority to state commissions); *Lifeline Reform Order*, ¶ 504.

⁸⁶ Letter from Jamie M. Tan, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 03-109, GN Docket Nos. 09-51, 09-47, 09-137 (filed Dec. 22, 2009).

⁸⁷ NASUCA Comments at 23.

⁸⁸ *See* 47 U.S.C. § 214(e)(2).

⁸⁹ 47 U.S.C. § 254(e).

⁹⁰ 47 U.S.C. § 214(e)(2).

⁹¹ AT&T Comments at 22 (quoting 47 U.S.C. § 254(j)).

⁹² 47 U.S.C. § 254(j).

⁹³ *See infra* page 16.

Lifeline requirements.⁹⁴ As the MDTC and the Commission have noted, states play crucial roles in achieving universal service goals.⁹⁵ With waste, fraud, and abuse already presenting a significant problem for the Lifeline program,⁹⁶ the Commission should not consider adopting a proposal that would allow any carrier with service that meets “*minimal*” criteria⁹⁷ to receive federal subsidies through the Lifeline program.

Finally, as a practical matter, AT&T’s proposal is unnecessary. As mentioned above, there is already a Lifeline provider designation process in place and, despite Cox’s characterization of that process,⁹⁸ it is generally very efficient.⁹⁹ Cox claims that “ETC designation can be a significant barrier to competitors that wish to qualify for Lifeline funds” and that “state decisions on ETC applications are often based on considerations other than the potential benefit to consumers”¹⁰⁰ Cox, however, provides no evidence to support either of those claims and, at least in Massachusetts, such claims are overstated, if not completely false. Moreover, despite Cox’s claim that states have “wide discretion” in granting ETC designations,¹⁰¹ any due diligence state commissions perform prior to carriers’ participation in Lifeline is necessary to prevent waste, fraud, and abuse in accordance with states’ statutory

⁹⁴ 47 U.S.C. § 254(f) (“A State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.”); *see also 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, Regulatory Comm’n of Alaska Reply Comments at 6-7 (filed May 25, 2011); Pub. Serv. Comm’n of D.C. Comments at 8 (filed Apr. 21, 2011); Nebraska 2011 Comments at 14-15.

⁹⁵ *In the Matter of Connect America Fund*, WC Docket No. 10-90, MDTC Comments at 27-29 (filed Jan. 18, 2012); *Lifeline Reform Order*, ¶ 107.

⁹⁶ *See, e.g., Lifeline Reform Order*, ¶¶ 180-81.

⁹⁷ *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, AT&T Comments at 7 (filed Apr. 21, 2011) (emphasis added) (“AT&T 2011 Comments”).

⁹⁸ *See* Cox Comments at 11.

⁹⁹ In Massachusetts, any recent delays in the designation process have been for purposes of administrative efficiency on account of anticipation of the *Lifeline Reform Order*. *See, e.g., In re Global Connection Inc. of America d/b/a STAND UP WIRELESS*, D.T.C. 11-11, *Hearing Officer Order Suspending Procedural Schedule* (rel. Dec. 5, 2011).

¹⁰⁰ Cox Comments at 11.

¹⁰¹ *Id.*

duties.¹⁰² The Commission would better serve the public by using its resources to implement other important aspects of the *Lifeline Reform Order* and universal service reform in general. For these reasons, the MDTC opposes AT&T's proposal and requests that the Commission dismiss it.

V. THE COMMISSION SHOULD SUPPORT SUSTAINABLE DIGITAL LITERACY OPPORTUNITIES.

As part of the FNPRM, the Commission sought comment on the merits of funding digital literacy efforts through the USF as a way of overcoming barriers to broadband adoption.¹⁰³ Several commenters, including the Boston-based Technology Goes Home (TGH) program, support the use of USF funds to advance the Commission's goals for broadband adoption and digital literacy.¹⁰⁴ Good programs such as the TGH program assist low-income, school-based families to learn how to use anchor institutions to breach the digital divide. TGH notes that its successful program was enhanced by a two-year federal Broadband Technology Opportunities Program (BTOP) grant, but continuing its level of success depends on continued funding after the BTOP support runs out.¹⁰⁵ TGH asserts that it will serve over 10,000 Massachusetts residents by the end of the BTOP grant funding in 2013.¹⁰⁶ Under the Commission's proposal to provide \$15,000 annually per school or library, TGH asserts it could serve over 7,500

¹⁰² See 47 U.S.C. § 214(e)(2). Under section 214(e)(2), states (or the Commission) are tasked with merely designating as ETCs only those providers that meet statutory ETC requirements and whose designation is consistent with the public interest. *Id.*; see also *id.* § 214(e)(1). The only absolute discretion states have in the process comes from a part of section 214(e)(2) that grants states discretion in designating ETCs in areas served by a rural telephone company. See *id.* § 214(e)(2) (“[a] State commission *may*, in the case of an area served by a rural telephone company, . . . designate more than one common carrier as an eligible telecommunications carrier. . . .”) (emphasis added).

¹⁰³ *Lifeline Reform Order*, ¶ 421.

¹⁰⁴ See, e.g., Technology Goes Home (TGH) Comments at 2; District of Columbia PSC Comments at 3; Michigan PSC Comments at 4; Cox Comments at 4; Joint Commenters Comments at 11; i-wireless Comments at 5; Joint Consumers Comments at 5-7; American Library Association Comments at 15; Alaska State Library Comments at 3; National Hispanic Media Coalition Comments at 6.

¹⁰⁵ TGH Comments at 2.

¹⁰⁶ *Id.*

Massachusetts households.¹⁰⁷ Consequently, the MDTC agrees with TGH that the Commission should support digital literacy programs with a proven track record, such as the TGH program.

VI. CONCLUSION.

The MDTC concurs with commenters that the Commission should advance the goals of the federal Lifeline program by establishing a national eligibility database, clarifying and further developing the facilities requirement, and dismissing AT&T's unnecessary and harmful Lifeline proposals. The MDTC thanks the Commission for its consideration and continued efforts in the reform and modernization of the Lifeline program.

Respectfully submitted,

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May 1, 2012

¹⁰⁷ *Lifeline Reform Order*, ¶ 439; TGH Comments at 7-8.