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
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ON PETITIONS FOR RECONSIDERATION

Charles A. Acquard, Executive Director
NASUCA
8380 Colesville Road (Suite 101)
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

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INTRODUCTION

On February 6, 2012, the Federal Communications Commission ("Commission" or "FCC") issued a Report and Order ("R&O") and Further Notice of Proposed Rulemaking ("FNPRM") in these dockets.[1] As described by the FCC, the reforms set forth in the R&O

> substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund (USF or the Fund). …[T]hese significant actions, …. ensur[e] that eligible low-income consumers who do not have the means to pay for telephone service can maintain their current voice service through the Lifeline program and those who are not currently connected to the networks will have the opportunity to benefit from this program and the numerous opportunities

[1] *Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Board on Universal Service; Advancing Broadband Availability through Digital Literacy Training*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 11-42, 03-109, and 12-23 and CC Docket No. 96-45, FCC 12-11 (released February 6, 2012) ("FNPRM").

and security that telephone service affords.[2]

A number of Petitions for Reconsideration of the R&O were filed.[3] Pursuant to Public Notice, the FCC has set comments on the Petitions as due May 7, 2012, with reply comments due May 15, 2012.[4]

The National Association of State Utility Consumer Advocates ("NASUCA")[5] hereby provides comments on certain of the issues raised in certain of the Petitions for Reconsideration. Failure to address here any specific ground for reconsideration should not be deemed as NASUCA's agreement with or acquiescence to the Petitioner's argument(s).

American Public Communications Council

The American Public Communications Council, Inc. ("APCC"), a trade group for the payphone industry, continues its efforts to secure Lifeline support for its members. Although NASUCA sympathizes with the plight of payphone providers as their market withers away, providing Lifeline support is not the answer. Instead, as discussed below, a reexamination of "public interest telephones" under 47 U.S.C. § 276 is the better approach.

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[2] R&O, ¶ 1.

[3] Some of those Petitions were also styled as requests for clarification. See, e.g. Nexus " Request for Clarification and/or Reconsideration and Initial Comments," where, arguably, only one out of eight listed items requests reconsideration. Given the lack of specificity in those filings, the Commission would be entitled to treat them outside the reconsideration framework. Nonetheless, response to some of these requests for clarification is included in these comments.

[4] DA 12-655 (rel. April 25, 2012).

[5] NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

The travails of the payphone industry are well-described in APCC's various pleadings. Yet those problems cannot disguise the fact that APCC is asking the FCC to designate all payphone providers as providing service principally to Lifeline-qualified customers, and thus to require the wireline carriers that provide the lines that the payphone providers use to give the payphone companies the Lifeline discount. Simply put, § 254 cannot be stretched that far. Among other things, the payphone providers count as business customers of the wireline carriers, and — as best as can be determined — APCC's proposal includes no individualized examination of whether the consumers who use a payphone provider's phones are themselves actually qualified for Lifeline.

Lifeline simply does not work in the payphone context. But APCC does suggest the proper framework for addressing the need for payphones:

> While Section 276 does not "compel" the FCC to provide universal service support to payphones, the Commission cannot ignore that its current policies are not effectuating the Commission's Section 276 duty to encourage the deployment of payphones and that the Commission could help meet its responsibilities by providing support for payphone services.[6]

Section 276 provides for the designation of "public interest" payphones that can receive support. The Commission addressed this issue early on after the passage of the 1996 Telecom Act, and determined that states were individually suited to make these determinations.[7] Those state efforts have largely come to naught, but the issue deserves reexamination, given the changes described by APCC.[8]

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[6] APCC Petition at iii.

[7] *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, et al., Report and Order, FCC 96-388 (rel. September 20, 1996).

[8] See http://www.maine.gov/mpuc/online/forms/pip/index.html.

Thus the FCC should revisit its public interest payphone order and adopt a new program that could include criteria for payphone support such as:

1. Mobile service is not available or reliable

2. Existing revenues cannot support the continuation of the payphone and no operator would continue to provide it.

3. Public health safety or welfare would be enhanced by a payphone at that particular location.

Examples of supported locations could be remote stretches of road; remote transportation points such as ferry docks; public buildings; low-income neighborhoods; etc.

DC Public Service Commission

The Public Service Commission of the District of Columbia ("DC PSC") filed a "Petition for Clarification." Regardless of the procedural posture of the DC PSC's filing, NASUCA wishes to express support for the DC PSC "urg[ing] the FCC to classify Voice over Internet Protocol (VolP) services as telecommunications services, since VoIP services are now considered supported services eligible for federal Lifeline funds under section 54.401(a)(2)."[9] This is consistent with NASUCA's long-expressed views on VoIP.

T-Mobile

T-Mobile's focus for reconsideration is on the Commission's failure to grant (reduced amounts of) Lifeline support to additional lines on family plans.[10] T-Mobile claims that this is "discriminatory."[11] NASUCA opposed the T-Mobile proposal in comments on the FNPRM.[12]

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[9] DC PSC Petition at 1.

[10] T-Mobile Petition at 2.

[11] Id. at 1.

[12] NASUCA FNPRM Comments at 14.

Ultimately, any restrictions on the availability of Lifeline support are discriminatory. The crucial issue is whether they discriminate unduly or unreasonably. NASUCA submits that the limitation of Lifeline support to a single line per household[13] reasonably meets the universal service purposes of the Act. In addition, the administrative difficulty of determining the appropriate support amount for additional family plan lines, as well as ensuring that only "a spouse and dependents age 13 and up"[14] receive the additional support, do not justify the reconsideration T-Mobile seeks.

TracFone

Among the issues TracFone raises for reconsideration is the uniform level of support of $9.25.[15] NASUCA addressed this issue in comments on the FNPRM, arguing that that the support level should be $10.00 per month, and should be indexed to average basic service rates.[16] TracFone's argument that the $9.25 lacks record support consists merely of disagreement with the Commission's view of the record, in light of the asserted impact on TracFone.[17] That is scarcely grounds for reconsideration, especially given the Commission's explicit statement that the $9.25 was intended as an interim amount.[18]

USTelecom

USTelecom asserts that 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

[13] As "household" is properly defined. Clearly, persons on a "family plan" are members of the same household.

[14] T-Mobile Petition at 2.

[15] TracFone Petition at 25, citing R&O fn. 151.

[16] NASUCA FNPRM Comments at 11-12.

[17] See TracFone Petition at 25.

[18] R&O, ¶ 54.

> 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.[19]

NASUCA supports a requirement that Lifeline carriers be required to allow Lifeline customers to apply the Lifeline discount to any bundle that includes voice, and also supports the requirement that voice service be protected if a customer's payment is insufficient to cover the full cost of the bundle.[20] NASUCA, therefore, supports the requirement of a continuing reminder to Lifeline customers of how their partial payments will be applied.

USTelecom asserts that "[t]he 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."[21] NASUCA submits that such notification requirements properly balance the convenience of carriers with the need of Lifeline customers for continuing service. USTelecom's request for clarification should be denied.

Respectfully submitted,

Charles A. Acquard, Executive Director
NASUCA
8380 Colesville Road (Suite 101)
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

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[19] USTelecom Petition at 14.

[20] See NASUCA Comments on the FNPRM (April 2, 2012) at 16-21.

[21] USTelecom Petition at 14. Interestingly, USTelecom also states that "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." Id. This addresses on of the Commission's key questions in the FNPRM. FNPRM, ¶ 492.