

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

In the Matter of )  
Lifeline and Link Up Reform and Modernization ) WC Docket No. 11-42  
Telecommunications Carriers Eligible for Universal ) WC Docket No. 09-197  
Service Support )  
Connect America Fund ) WC Docket No. 10-90  
)

To: The Commission

**PETITION FOR RECONSIDERATION OF CTIA**

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CTIA<sup>1</sup> petitions the Federal Communications Commission (“Commission”) to reconsider its decision in the *Lifeline Third Report and Order* (“*Order*”) to set long-term minimum capacity standards for mobile broadband at 70 percent of the average mobile data usage per household.<sup>2</sup> While CTIA generally supports the Commission’s effort to modify the Lifeline program to support mobile broadband services for low-income consumers, as discussed in detail below, the Commission adopted a long-term minimum service standard for mobile broadband without any

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<sup>1</sup> CTIA<sup>®</sup> represents the U.S. wireless communications industry. With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century connected life. CTIA members benefit from its vigorous advocacy at all levels of government for policies that foster the continued innovation, investment and economic impact of America’s competitive and world-leading mobile ecosystem. The association also coordinates the industry’s voluntary best practices and initiatives and convenes the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> *Lifeline and Link-Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket Nos. 11-42, 09-197, and 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3995 ¶ 94 (Apr. 27, 2016) (“*Order*”).

consideration of whether it was consistent with the statutory universal service principle of affordability, which the Commission acknowledges as central to the Lifeline program.<sup>3</sup> In fact, the record raises serious questions about whether the 70 percent average of mobile data usage per-household standard adequately accounts for the affordability of Lifeline broadband service for the lowest-income consumers who otherwise would stand to benefit the most from the Commission’s recent modifications to the Lifeline program. Additionally, the standard is neither supported by the record nor implemented in a consistent fashion by the *Order* and rules. In light of these concerns, the Commission should seek public input on a more economically justifiable standard and reconsider the *Order*’s long-term minimum service standard for mobile broadband data usage allowances, grounded in record evidence, of what level of service will be affordable for the most economically-stressed consumers who may come to rely on Lifeline support for mobile broadband.

**I. THE COMMISSION FAILED TO ANALYZE WHETHER THE LONG-TERM LIFELINE MOBILE BROADBAND USAGE STANDARD IS CONSISTENT WITH AFFORDABILITY, A CORE TENET OF UNIVERSAL SERVICE POLICY.**

**A. The Lifeline Order Does Not Engage in Any Meaningful Analysis of Affordability in Setting its Usage Standard for Mobile Broadband.**

In the *Order*, the Commission stated that, beginning December 1, 2019, providers who offer Lifeline supported mobile broadband services must offer a minimum usage allowance that will be 70 percent of the calculated average mobile data usage per household, in order to update mobile broadband standards for data usage allowance in line with the principle of supporting services that a “substantial majority” of American consumers subscribe to, and given the types of

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<sup>3</sup> See 47 U.S.C. § 254(b)(1); *Order*, 31 FCC Rcd 3989 ¶ 71.

data that are publically and regularly available.<sup>4</sup> The Commission, however, failed to analyze whether the minimum service standard for mobile broadband— set at 70 percent of the calculated average mobile data usage per household – is consistent with one of Congress’ most critical and central universal service principles: affordability.

The first among the “universal service principles” set out by Congress is that quality services should be “available at just, reasonable, and *affordable* rates.”<sup>5</sup> The Commission has frequently acknowledged the importance of affordability for Lifeline in particular. The *Order* invokes affordability as a “central touchstone”<sup>6</sup> and the “animating principle of the Lifeline program.”<sup>7</sup> Despite its appearance alongside justness and reasonableness in the statute, the Commission has stated that affordability is its own core tenet of universal service policy.<sup>8</sup> Moreover, the universal service principle of affordability must be considered in light of the purpose of the Lifeline program, which is directed at the lowest-income Americans.

In adopting the mobile broadband capacity standards, however, the Commission failed to engage in any analysis of the affordability of Lifeline service, putting at risk the agency’s longstanding approach to this principle. As the record demonstrates, an unjustifiably high usage requirement does not adequately account for the affordability of mobile broadband plans for the lowest-income Americans who may rely upon the Lifeline program.<sup>9</sup>

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<sup>4</sup> *Order*, 31 FCC Rcd 3995-96 ¶ 94.

<sup>5</sup> 47 U.S.C. § 254(b)(1) (emphasis added).

<sup>6</sup> *Order*, 31 FCC Rcd at 3984 ¶ 57.

<sup>7</sup> *Id.* at 3981 ¶ 54.

<sup>8</sup> *Id.* at 4089 ¶ 350 n. 875.

<sup>9</sup> *See, e.g.*, Letter from Ken McEldowney, Executive Director, Consumer Action, to Marlene H. Dortch, Secretary, FCC, at 1 (filed Mar. 18, 2016) (the minimum standards “will have a negative

The Commission recognized that Lifeline minimum service standards must “strike a balance between the demands of affordability and reasonable comparability by providing consumers with services that allow them to experience many of the Internet’s offerings, *but not mandating the purchase of prohibitively expensive offerings.*”<sup>10</sup> Despite recognizing the need for this balancing, the *Order* failed to perform the necessary analysis to determine whether the standard would be consistent with affordable service to the lowest-income Americans. For these reasons, the Commission should seek public input on a more economically justifiable standard and reconsider the *Order*’s long-term minimum service standard for mobile broadband services.

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impact on wireless Lifeline providers,” and, more importantly, “on the low-income consumers of wireless Lifeline who have come to rely on the service”) (“Consumer Action”); Letter from John T. Nakahata, Counsel to Q Link Wireless, LLC, to Marlene H. Dortch, Secretary, FCC, at 4 (filed Mar. 18, 2016) (even the lower-than-70 percent “500 MB” minimum standalone data service requirement is “economically infeasible without a co-payment”) (“Q Link”); Letter from Steven A. Augustino, Counsel for TruConnect, to Marlene H. Dortch, Secretary, FCC, at 9, 11 (filed Mar. 25, 2016) (emphasizing that raising standards would “effectively eliminate carriers’ ability to maintain a free (no-cost-to-consumer) Lifeline service offering,” leaving only offerings unaffordable for the lowest-income producers available in the market) (“TruConnect”); Comments of AEI’s Center for Internet, Communications, and Technology Policy, Attachment at 1-3 (filed Apr. 13, 2016) (highlighting that there is insufficient information that *current* subsidies produce affordable results for consumers, and calling for an activities-derived standard rather than minimum service standards); Letter from Asian Americans Advancing Justice *et al.* to Chairman Tom Wheeler, FCC, at 3 (filed Mar. 24, 2016) (explaining that the average cost of monthly broadband service is already far greater than the Lifeline subsidy; hence, regulations that effectively eliminate no-cost offerings would be especially harmful) (“AAJC *et al.*”); Letter from Paul Meyer *et al.*, Voxiva Inc., to Marlene H. Dortch, Secretary, FCC, at 2 (filed Mar. 11, 2016) (“Simply stated, an unintended consequence of imposing minimum service standards ... would be a reduction in the adoption of both wireless bundles and the Health Phone, either because wireless customers can no longer afford the service, or the carriers become disincentivized to offer any wireless Lifeline service that bundles broadband with voice and text messaging services (which is clearly a consumer desire).”); Letter from Todd B. Lantor, Counsel for Budget PrePay, Inc., to Marlene H. Dortch, Secretary, FCC, at 5 (filed Mar. 24, 2016) (“the proposal to jump to unlimited voice minutes as of December 1, 2016 and to quadruple minimum data requirements in just two years is not reasonable or economically justifiable”).

<sup>10</sup> *Order*, 31 FCC Rcd at 3989 ¶ 71 (emphasis added).

**B. The Long-Term Lifeline Mobile Broadband Usage Standard Is Not Supported by the Record.**

To the extent the record informs the adoption of a long-term usage standard for mobile broadband, the evidence does not support the Commission’s decision to adopt a Lifeline broadband usage standard of 70 percent of the average per-household mobile data usage beginning December 1, 2019.<sup>11</sup>

Data in the record suggests that a usage level set at 70 percent of the average mobile data usage per household would require a minimum charge that may well place the service out of the reach of the very low-income consumers who are most reliant on Lifeline.<sup>12</sup> Although mobile data prices are likely to continue to decline over the coming years, consumer usage of mobile data is also likely to exponentially increase.<sup>13</sup> Moreover, higher mobile data usage from unlimited service plans and Free Data offerings will skew the comparative results of average household use, without accounting for the costs of such services and offerings.<sup>14</sup>

In addition, the record reflects that the adopted usage level would preclude the offering of Lifeline broadband plans offered at no charge to the consumer.<sup>15</sup> The record demonstrates that

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<sup>11</sup> *See supra* note 9.

<sup>12</sup> *Id.*

<sup>13</sup> *See, e.g.* CTIA Mobile Competition Report Comments, WT Dkt. 16-137, at 14 (filed May 31, 2016) (“Estimates show that by 2020, the average subscriber in North America will consume approximately 22 gigabytes of mobile data per month.”)

<sup>14</sup> *Id.* at 28-31.

<sup>15</sup> *See, e.g.*, Q Link at 4 (even lower standards than the one in the *Order* are economically infeasible sans co-payment); TruConnect at 9, 11 (raising standards as the *Order* does will eliminate no-cost-to-consumer Lifeline offerings); Voxiva at 2 (such standards will disincent Lifeline offerings that consumers desire).

such no-charge plans are by far the most popular offerings in the Lifeline market today.<sup>16</sup> Both consumer advocates representing low-income consumers and Lifeline providers familiar with the program’s customer base expressed strong concern for ensuring that consumers have access to affordable plans, including no-charge plans.<sup>17</sup>

Without record support on the issue of a long-term mobile broadband standard, the Commission asserted that its rule was “in line with the principle of supporting services that a ‘substantial majority’ of American consumers subscribe to.”<sup>18</sup> However, the Commission’s decision was not supported by any record evidence that 70 percent of the average mobile data usage per-household will be either affordable or appropriate. As a consequence, the *Order* may well have inadvertently set a standard that is neither. In fact—and as enumerated above<sup>19</sup>—the record points in a different direction than the Commission’s approach, and overwhelmingly counsels for a more economically justified usage standard for mobile broadband supported by Lifeline.

Thus, because the adopted standard is not supported by the record—and in fact the record demonstrates that these levels of mobile data usage may be out of reach for the lowest-income Americans—the Commission should reconsider its standard of 70 percent of average household mobile data usage beginning December 1, 2019.

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<sup>16</sup> See, e.g., Consumer Action at 1 (such plans are relied on by “millions of low-income consumers” to “keep in touch with work, job opportunities, schools, health providers and emergency services”); see also AEI at 1-3; Voxiva at 2-3.

<sup>17</sup> Consumer Action at 1-2 (the minimum standards will have a negative impact on such plans); AAJC *et al.* at 3; Voxiva at 2; TruConnect at 11.

<sup>18</sup> See, e.g., *Order*, 31 FCC Rcd 3995, ¶ 94; see also 47 U.S.C. § 254(c)(1)(B) (definition of universal service based on services that “have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers”).

<sup>19</sup> See *supra* notes 9-17.



## II. THE ORDER AND RULES CONTAIN CONFLICTING DIRECTION ABOUT HOW TO CALCULATE THE LONG TERM LIFELINE MOBILE BROADBAND USAGE STANDARD.

Beyond the potential for harmful impact from the standard itself, the Commission should reconsider the long-term minimum standard for mobile broadband usage because the Order and corresponding rules present conflicting information. Specifically, there are significant discrepancies between the rule as described in the body of the *Order* and as codified in the rules per Appendix A (the latter of which presumably stands to be enforced against market participants).<sup>20</sup> The discrepancies make the rule impossible to interpret or implement, and such lack of clarity about the applicable long-term minimum service standard for mobile broadband introduces uncertainties that will inhibit provider participation in the Lifeline market.

Three problems are particularly noteworthy. First, the *Order* states that the formula for average mobile household data usage will be computed starting from “the total number of mobile-cellular subscriptions in the United States, as reported in the *Mobile Competition Report* or by CTIA....”<sup>21</sup> However, the *Report’s* number of subscriptions differs from CTIA’s reported number.<sup>22</sup> Depending on which report is used, a materially different outcome is reached when applying the Commission’s formula for average mobile household data usage.

Second, although the *Order* states that the total number of mobile-cellular subscriptions in the United States will be determined based on reports in “the *Mobile Competition Report* or by

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<sup>20</sup> See *Order*, 31 FCC Rcd at 4131-35, App. A.

<sup>21</sup> *Id.* at 3995-96 ¶ 94 (internal citation omitted).

<sup>22</sup> The *Order* cites to Table II.B.2 of the *Report*, which cites a UBS study showing 371.4 million mobile wireless subscriber connections in the fourth quarter of 2014. *18<sup>th</sup> Annual Mobile Competition Report*, 30 FCC Rcd 14515, 14523 (2015) (“*Report*”). However, just above that table, is another table citing CTIA data showing 355.4 million total mobile wireless subscriber connections by the end of 2014. *Id.* at Table II.B.1.

CTIA,”<sup>23</sup> the rules appendix lists only the *Mobile Competition Report*.<sup>24</sup> It is therefore unclear which data set will be used. For this reason, the Commission should seek public input on the appropriate source of data for calculating average mobile broadband usage per household and reconsider the long-term minimum service standard for mobile broadband usage.

Finally, the *Order* states that the result of the final computation will be “rounded *down* to the nearest 250 MB,”<sup>25</sup> while the rules appendix states that it will be “rounded *up* to the nearest 250 MB.”<sup>26</sup> Obviously, this conflict presents an outcome that is materially different depending on which course is taken. If the Commission, upon reconsideration, decides to modify the current formula to address the issues raised herein, rounding *down* to the nearest 250 MBs would be the appropriate approach for such a formula.

At a minimum, the Commission must modify the Order and rule to address the discrepancies noted immediately above in order to ensure that providers have certainty to offer mobile broadband services that meet the minimum service standards. Based on public input, the Commission must clarify how average mobile broadband usage per household will be calculated. In addition, the Commission should take the opportunity to reconsider the long-term minimum service standard for mobile broadband supported by Lifeline, for all the reasons discussed in the preceding sections.

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<sup>23</sup> *Order*, 31 FCC Rcd at 3995-96 ¶ 94.

<sup>24</sup> *Id.* at 4133, App. A (modifying 47 C.F.R. § 54.408(c)(2)(ii)(A)).

<sup>25</sup> *Id.* at 3995-96 ¶ 94 (emphasis added).

<sup>26</sup> *Id.* at 4133, App. A (modifying 47 C.F.R. § 54.408(c)(2)(ii)(D)) (emphasis added).

### III. CONCLUSION

While CTIA generally supports the Commission's effort to modify the Lifeline program to support mobile broadband services for low-income consumers, the Commission must reconsider its decision to set long-term minimum capacity standards for mobile broadband at 70 percent of the average mobile data usage per household. The Commission's *Order* lacked the appropriate analysis to determine whether this standard will place these critical services out of reach of the lowest-income consumers that Lifeline principally benefits. Moreover, the standard established in the *Order* is not supported by the record in this proceeding, and the *Order* and the rules contain conflicting instructions on how to calculate the standard. The Commission should seek public input on a more economically justifiable standard and reconsider the *Order*'s long-term minimum service standard for mobile broadband data usage allowances for the lowest-income consumers who may come to rely on Lifeline support for mobile broadband.

Respectfully submitted,

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