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
	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

UNITED STATES TELECOM ASSOCIATION
PETITION FOR RECONSIDERATION AND CLARIFICATION

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SUMMARY

USTelecom supports many of the Federal Communications Commission's (Commission) comprehensive reforms to the Lifeline program contained in its Order. However, there are aspects of the Order where the Commission ignored requirements of the Administrative Procedure Act (APA), unnecessarily increased administrative burdens, as well as areas where the Commission should have been clearer.

In its rulemaking leading up to the order, the Commission did not provide adequate notice pursuant to the APA that it was considering any changes to the current carrier recertification process prior to the implementation of the National Verifier. As such, the recertification rules it issued, to the extent they impose additional requirements upon Lifeline providers prior to the implementation of the National Verifier (which will take over the recertification process) must be removed as being in violation of the APA.

The Commission also must reconsider the port freeze requirements imposed in the Order, since they suffer from the same lack of APA notice as the rolling recertification requirements. The Commission's rulemaking did not propose a port freeze, did not seek comment on a port freeze, and did not even mention a port freeze. Thus, the changes in the Order and in the rules it implements with respect to port freezes violate the APA and cannot stand. The same lack of notice holds true for the related requirement that a provider cannot materially change the initial terms or conditions of a Lifeline BIAS offering without the consent of the subscriber for the first twelve months of service.

The Commission should reconsider the effective date of the new streamlined federal eligibility criteria and the obligation to offer Lifeline BIAS, and defer it at least until the later of December 31, 2017, or 12 months after OMB approval of the Order. While laudable, the Commission's streamlining of its eligibility criteria does have a negative consequence for Lifeline providers who will continue to manage eligibility determinations in those approximately 30 states that have their own state-mandated Lifeline discounts, as well as handling Federal eligibility for as long as it takes to implement the National Verifier. A December 1st obligation to offer Lifeline broadband does not allow adequate time to modify systems to identify those locations where Lifeline broadband must be made available. The Commission should stay the effectiveness of the new criteria and Lifeline BIAS offer obligation until it has ruled on this Petition for Reconsideration.

The Commission should also eliminate its changes to rule 54.410 that require the National Verifier to send, and providers to obtain, copies of customer certifications. These rule changes stand in direct opposition to the purpose of creating the National Verifier, which was to remove the providers from the eligibility determination process altogether. There is no sense in setting up the National Verifier, only to continue to require that providers obtain and retain appropriate certifications.

The Commission should also revise ETC's document retention requirements after implementation of the National Verifier. The Commission's order states that ETCs will not need to retain eligibility documentation for subscribers who have been determined eligible by the National Verifier, and the Commission should amend its rules to reflect elimination of such a retention requirement. At the very least, it should amend its rules to specify that a provider is not required

to retain any eligibility or recertification information for any subscriber for more than three years after the National Verifier has recertified such subscriber.

Notwithstanding its cogent and convincing analysis of the voice market and the lack of any need to continue with voice Lifeline service, the Commission with little explanation and in conflict with its own analysis then determines that voice will continue to be supported but only in Census blocks with a single Lifeline provider. This anomalous treatment should not stand. One of the foundations for the Commission's decision to shift Lifeline dollars from voice service to broadband service is the notion that those dollars are no longer necessary in order for voice service to be affordable, and that affordability is not related to the number of ETCs in a census blocks.

The Commission should also reconsider the exception to its minimum standard requirements targeted towards fixed providers who have yet to deploy broadband capable networks in specific geographic areas that meet the agency's minimum service standards. The Commission states that in areas where a provider does not offer a 10 Mbps/1 Mbps service, a provider may choose to qualify for the exception and claim Lifeline support for a household as long as the Lifeline discount is applied only to the purchase of its "highest performing generally available" residential offering that meets or exceeds 4Mbps/1Mbps. The Commission should instead permit providers to participate in such offerings, so long as they provide a 4Mbps/1 Mbps "or better" service to consumers.

The Commission should reverse its decision that high-cost carriers with state ETC designations are subject to BIAS Lifeline obligations as a result of that designation. The Commission can accomplish its goal of streamlining the entry process for new BIAS Lifeline providers by allowing existing high-cost ETCs to voluntarily apply for LBP status on an expedited basis, relying on their performance as an existing ETC status. In the alternative, if the Commission's concern is to have an LBP in CAF II areas, it could simply designate the high-cost carriers that accepted CAF II funding as LBPs for those locations they build using CAF II funds.

The Commission's order clarifies the term "media of general distribution" as any media reasonably calculated to reach the general public. It then goes on to indicate that for an LBP, it means media reasonably calculated to reach "the specific audience that makes up the demographic for a particular service offering." However, there is no reason for the Commission to narrowly apply that latter interpretation only to LBPs or Lifeline-only broadband ETCs.

The Commission should also amend certain of its rules to be consistent with the actions taken in the Order. The Commission should delete rule 54.403(b)(1), since it addresses ETC accounting measures solely for voice-centric services which are being phased out. The Commission should also correct various provisions of section 54.101 of its rules.

The Commission should clarify that a high cost ETC that accepts forbearance from the Lifeline broadband obligation in a given area can seek a Lifeline Broadband Provider ETC designation for that same area if it decides that it wants to offer Lifeline broadband at a later date.
Such clarification would acknowledge the reality that marketplace conditions are fluid and evolving for providers.

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UNITED STATES TELECOM ASSOCIATION
PETITION FOR RECONSIDERATION AND CLARIFICATION

Pursuant to Section 1.429 of the rules of the Federal Communications Commission (Commission),[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, Third Report and Order, Further Report and Order, and Order on Reconsideration* (Order).[2]

I. Introduction

USTelecom supports many of the Commission's comprehensive reforms to the Lifeline program contained in the Order. In many instances, the Commission adopted reforms that will not only make the Lifeline program more effective, but also more administratively streamlined. However, there are aspects of the Order where the Commission ignored requirements of the Administrative Procedure Act (APA), unnecessarily increased administrative burdens, as well as areas where the Commission should have been clearer. We discuss these areas below and

[1] 47 C.F.R. § 1.429.

[2] Third Report and Order, Further Report And Order, and Order on Reconsideration, *Lifeline and Link Up Reform and Modernization,* FCC 16-38, 31 FCC Rcd. 3962, 81 FR 33025 (2016) (*Order*).

respectfully request the Commission to reconsider and clarify its Order consistent with this petition.

II. The Commission Cannot Require Rolling Recertification Prior to Implementation of the National Verifier

In the Second Further Notice of Proposed Rulemaking[3] (FNPRM) that led up to the Order, the Commission did not provide notice pursuant to §553 of the APA that it was considering any changes to the current carrier recertification process prior to the implementation of the National Verifier.[4] As such, the recertification rules it issued, to the extent they impose additional requirements upon Lifeline providers prior to the implementation of the National Verifier (which will take over the recertification process) must be removed as being in violation of the APA. Although the Commission posed a host of different questions and topics for consideration, it never flagged the current provider process for recertification as one under consideration.

For example, the FNPRM proposed a wide variety of other interim administrative changes to the program, and many commenters objected, on good grounds, to the imposition of such requirements, including but not limited to determinations of Tribal residence, special 24-hour disconnect lines, additional customer identification documentation, and additional officer

[3] Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, *Lifeline and Link Up Reform and Modernization et al.*, FCC 15-71, 30 FCC Rcd 7818, 80 FR 40923 (2015) (*FNPRM*).

[4] In the *Order*, the Commission asserts that it "sought comment on whether we should make any changes to the recertification process as we modernize the administration of the Lifeline program." *Order* at ¶ 416, citing ¶ 86 of the *FNPRM*. However that paragraph 86, captioned "Additional Functions of a National Verifier" only inquired as to whether the National Verifier, as part of its functions, should become involved in the subscriber recertification process. This is not notice that the Commission was in any way considering or requesting comment on changes to the *current provider process* for recertification, and it certainly never raised the potential for a rolling recertification requirement.

training certifications.[5] Had the Commission hinted that it might consider an overhaul of the administrative requirements of the existing recertification process, it would have had the benefit of comments explaining why such changes were unnecessary and burdensome.

Ironically, the Commission finds that the rolling recertification "will result in administrative efficiencies and avoid imposing undue burdens on providers, USAC, or the National Verifier,"[6] but cites no support whatsoever for that finding. The only comments to which it refers in that entire section of the Order have nothing to do with efficiencies or burdens connected to potential changes to the provider certification process, but to the many failures of the National Lifeline Accountability Database (NLAD) in connection with the current processes.[7]

In fact, the new requirements to move to a rolling process for recertification do impose significant additional administrative burdens on Lifeline providers who already have processes in place for managing recertifications under the existing Lifeline rules. And it is important to note that while the changes impose costs, they do nothing whatsoever to strengthen the Lifeline program against waste, fraud, or abuse. Prior to implementation of the National Verifier, except in those states where a state agency or administrator manages recertification, Lifeline providers remain in the position of determining continuing eligibility of consumers for the Lifeline program. As long as providers carry the burden of recertification, any modification to the

[5] *See, e.g.*, AT&T Comments at 36-39; Cox Communications, Inc. Comments at 4; Tracfone Comments at 51; United States Telecom Association Comments at 12-14; Verizon Comments at 6-7; Windstream Comments at 9; Small Carriers Coalition Comments at 3-5, Joint Commenters Comments at 95-96.

[6] *Order*, ¶ 416.

[7] *See, Order* at n. 1038 (citing Comments of the New York Public Service Commission, p. 6).

current recertification rules can only increase those burdens because they require a change to current processes.

For example, some states require the provider to first query their state databases to determine ongoing eligibility.[8] As opposed to submitting a file for an entire state, the new rules require the provider to query the state database based on the service initiation date of each customer. While the order claims that giving the subscriber 60 days to respond allows "batching of daily subscriber recertification deadlines into more manageable weekly or monthly groupings,"[9] the fact that each subscriber must be given exactly 60 days to respond eliminates the ability to batch the recertifications.[10] Implementing a new recertification process will divert resources from the critical tasks of implementing Lifeline broadband internet access service (BIAS) requirements and providing stakeholder input into the National Verifier process. The new rules impose a needless drain on carrier resources, with no concomitant benefits for the program. Absent removal of the recertification rules, the Commission should alternatively delay their implementation until such time as the National Verifier is fully established.

III. The Commission Cannot Impose Port Freeze Requirements or Limitations on a Carrier's Ability to Make Material Changes to Its Service Plans for Twelve Months

The port freeze requirements imposed in the Order suffer from the same lack of APA notice as the rolling recertification requirements. As Commissioner Pai points out in his Dissenting Statement, the FNPRM "didn't propose a port freeze. It didn't seek comment on a

[8] *Order*, ¶ 416.

[9] *Id.*, ¶ 420.

[10] *See*, §54.405(e)(4).

port freeze. It didn't even *mention* a port freeze."[11] Thus, the changes in the Order and in the rules it implements with respect to port freezes violate the APA and cannot stand.

The same lack of notice holds true for the related requirement that a provider cannot materially change the initial terms or conditions of a Lifeline BIAS offering without the consent of the subscriber for the first twelve months of service. No such requirement was even hinted at in the FNPRM, and commenters had no opportunity to react to such a requirement. There is no attempt in the Order to suggest that any notice was given – the only discussion of this freeze on terms and conditions is in paragraph 391 of the Order.[12] It is a misnomer to call it a discussion, however, since the paragraph simply recites that requirement, with no background or justification, no mention of any notice in the FNPRM, no reason for the imposition of the rule, and no reference to any comments on such a requirement – nothing. Limiting a provider's ability to make changes to a rate plan for all customers on that rate plan imposes additional administration requirements and complexity by, for example, expecting a carrier to roll out changes based on the service anniversary dates of its existing subscribers. This is particularly problematic for companies who do not offer specific Lifeline products but rather allow customers to apply the Lifeline discount to any qualifying product the company offers.

Further, the rules related to the port freeze cannot be implemented by Lifeline providers on their own. The length of these port freezes makes it conceivable that the subscriber's change

[11] *See*, Dissenting Statement of Commissioner Ajit Pai, *Order*, p. 211 (emphasis in original).

[12] *See*, *Order*, ¶ 391 (stating that a "provider that enrolls Lifeline-eligible subscribers cannot materially change the initial terms or conditions of that service offering without the consent of the subscriber until the end of the 12 months, except to increase the offering's speeds or usage allowances. Changes that lower the quality or speed of service, lower the offering's usage allowance, or increase the service's price are presumptively material changes to the terms or conditions of service, even if such changes are made in response to an amendment to the Commission's rules or a change to the Lifeline program's minimum service standards." This is the sum total of the discussion of this requirement.).

in service would not occur through a benefit transfer process – a subscriber could simply drop one provider's service and then some time later seek another provider's service. The Lifeline providers do not know whether and when a potential subscriber initiated service with another provider, nor do they know when a subscriber leaves them whether or when the subscriber will seek service from another Lifeline provider.

The exceptions to the port freeze requirements are even more complicated, and cannot be managed by the Lifeline providers. The Order instructs USAC to make improvements to the NLAD to help providers comply with the new requirements, but does not place any deadline on those improvements or create any sort of safe harbor for carriers who are unable to comply with the rules in the absence of information from the NLAD. While USAC has indicated that it intends to complete its work on the NLAD prior to December 1, 2016, there is no assurance that the work will in fact be done or, in the absence of stakeholder engagement, that the work will provide the data providers need. Even if the NLAD can be changed by December, process and systems changes will be necessary on the providers' side to adapt to the NLAD changes.

In addition, while the order directs USAC to make these changes, the rules themselves state that the "original provider must provide the subscriber's eligibility records to either the subscriber's new provider or the subscriber."[13] This presents an entirely new set of issues in an already complicated process. Can the benefits be transferred before the eligibility records are received by the new provider? What if the new provider finds the eligibility records to be invalid? How is this confidential information transferred amongst providers? How does the new provider know whether the original provider or the subscriber will provide the required paperwork? And while the rules impose obligations on service providers, they fail to address

[13] *See*, 47 C.F.R. §54.411(d)*; see also, Order*, Appendix A, p. 178.

any requirement for state agencies or administrators that determine initial eligibility to send that information to a subsequent provider.

Finally, like the rolling recertification rules, these interim changes to obligations of Lifeline providers prior to the implementation of the National Verifier do nothing to curb waste, fraud or abuse, but impose additional burdens on the providers. In both cases, absent their elimination, the Commission should at the very least delay implementation of these modifications to the date when the National Verifier takes over Lifeline administration in a state.

IV. The Commission Should Extend the Effective Date for Implementation of the Streamlined Eligibility Criteria and the Offering of BIAS for the Federal Lifeline Program

The Commission took a laudable step in streamlining the eligibility criteria for entry into the federal Lifeline program, and in preempting the states from layering on additional qualifying programs and/or income thresholds applicable to the federal program. This will simplify administration of the federal Lifeline program, and allow providers, and ultimately the National Verifier, to operate more efficiently while evaluating a consistent set of criteria in every state.

However, this streamlining does have a negative consequence for Lifeline providers who will continue to manage eligibility determinations in those approximately 30 states that have their own state-mandated Lifeline discounts,[14] as well as handling Federal eligibility for as long as it takes to implement the National Verifier. As a result of the change to the federal criteria, some or all of such states' eligibility rules for their state discounts are now out of alignment with the new federal rules. State rules or laws may allow subscribers to be eligible for both the federal and state Lifeline discounts under an expanded set of assistance programs or under income thresholds higher than 135% of the federal poverty guidelines. Even those states whose

[14] *See e.g.*, USTelecom Ex Parte Notice, WC Docket No. 09-197 (submitted March 4, 2016).

criteria are stated in their rules and currently align with the federal program will be out of alignment upon the effective date of the new rules, because, absent some state action, they continue to include LIHEAP, TANF, and NSLP, and do not include Veterans and Survivors Pension Benefit.

The result of such a misalignment in a state that requires providers to give state Lifeline discounts to customers eligible under state criteria is that providers now potentially have to manage three different sets of Lifeline subscribers: those eligible for both federal and state discounts, those eligible for only the federal discount (such as a subscriber relying on Veterans and Survivors Pension Benefit or purchasing stand-alone broadband), and those eligible for only the state discount (such as a subscriber relying on a state program or higher income threshold). Needless to say this complicates the application and intake process, eligibility determinations, recertifications, customer counts, rate plans (which now must proliferate – with potentially three sets of discounted rates for every one discounted rate previously provided) and every other aspect of managing the Lifeline program. The number of potential subscribers who are only eligible for either the state discount or the federal discount is difficult to estimate and the problem will certainly not be resolved by the implementation of the National Verifier. However, since there is more time available until the National Verifier is operational, states will have a better opportunity to address the changes in the federal Lifeline program. As it is, the current timeline for implementation of the eligibility criteria as well as the Lifeline BIAS offering puts both state administrators and ETCs in a severe time constraint to figure out how to implement all of these changes.

These complexities will attach not only to carriers, but to those state agencies and administrators who handle eligibility determinations and recertification of subscribers. While

they are currently able to handle state and federal program eligibility and recertification in a consistent manner, they will now have to determine whether they will continue to manage both state and federal program issues when those are not consistent, or whether they will cease to manage one or the other program and put the obligation on the provider to manage the program that they do not choose to manage. Depending on how long that decision-making takes, the providers may have very little to no time to adapt to a new process.

The best result is that states bring their state Lifeline eligibility criteria into alignment with the federal criteria, and USTelecom is optimistic that states with their own Lifeline discounts will see the benefit of consistency in this area. Such consistency will allow both providers and relevant state agencies and administrators to continue to manage a single population of Lifeline subscribers. However, alignment of state and federal Lifeline programs will take some time. States will need time to open proceedings to amend their rules or, in some cases, to amend their statutes. It is unlikely that most or all affected states will be able to change their rules prior to the current effective date of the new federal rules.

Therefore, USTelecom requests that the Commission reconsider the effective date of the new streamlined federal eligibility criteria and the obligation to offer Lifeline BIAS, and defer it at least until the later of December 31, 2017, or 12 months after OMB approval of the Order. Some carriers already have locations where 10/1 broadband is available and that will be counted as helping satisfy their CAF II commitment to offer 10/1 broadband. A December 1st obligation to offer Lifeline broadband does not allow adequate time to modify systems to identify those locations where Lifeline broadband must be made available. The Commission should stay the effectiveness of the new criteria and Lifeline BIAS offer obligation until it has ruled on this Petition for Reconsideration.

V. The Commission Should Eliminate Changes to Rule 54.410 that Require the National Verifier to Send, and Providers to Obtain, Copies of Customer Certifications

The Order amends rules 54.410(b)(2) and (c)(2) to require that where the National Verifier is responsible for determining eligibility, an ETC must not seek reimbursement for Lifeline service to a subscriber unless it has received from the National Verifier a copy of the subscriber's certification that complies with the requirements of rule 54.410, and requires that the ETC retain such documentation in accordance with rule 54.417. It also amends rule 54.410(e) to require the National Verifier to send such certifications to the relevant Lifeline provider.

These rule changes stand in direct opposition to the purpose of creating the National Verifier. The National Verifier is intended to remove the providers from the eligibility determination process altogether. There is no sense in setting up the National Verifier, only to continue to require that providers obtain and retain appropriate certifications. USAC currently audits carriers, and not the states, on their compliance with the rules that require them to hold certifications obtained by state agencies and administrators. It would run contrary to the purpose of the National Verifier regime to perpetuate these retention and audit requirements. To the extent that the National Verifier does not ultimately utilize the certification forms described in rule 54.410, it might not even be possible to comply with the changes described here.

The Order clearly specifies that "[t]he National Verifier will retain eligibility information collected as a result of the eligibility determination process" and that "Lifeline providers will not be required to retain eligibility documentation for subscribers who have been determined eligible by the National Verifier."[15] Because the rule changes discussed here are in direct conflict with

[15] *Order*, at ¶ 151.

that statement, USTelecom posits that the changes may simply be the result of an administration oversight. It is possible that in ensuring that the rules required the National Verifier to take over all responsibilities from state agencies and administrators, the Commission added the National Verifier to these rules in error. In any case, because the rule changes conflict with both the intent and the plain language of the Order, USTelecom requests that the Commission reconsider them and reverse the changes.

VI. The Commission Should Revise ETC's Document Retention Requirements after Implementation of the National Verifier

Rule 54.417 specifies recordkeeping requirements for ETCs, which must maintain records to document compliance with all Commission and state requirements governing Lifeline, and specifically must retain the documentation required in rule 54.410, related to eligibility and recertification.[16] These documents must be retained for as long as the subscriber receives Lifeline service from that ETC, but for no less than the three full preceding calendar years.[17]

After the National Verifier is implemented in a state, it will take over responsibility for both initial eligibility determinations and recertifications. As noted above, the Order states that ETCs will not need to retain eligibility documentation for subscribers who have been determined eligible by the National Verifier. Accordingly, the Commission should amend its rule 54.417 to reflect elimination of such a retention requirement.

In the Order, the Commission states that current Lifeline program rules regarding record retention of eligibility documentation will remain in effect for Lifeline providers who have determined the eligibility of a current subscriber when enrolling that subscriber, as this is

[16] *See*, 47 C.F.R. §54.417(a).

[17] *Id*.

necessary for Lifeline program evaluations and audits.[18] However, this is not strictly the case. Because the National Verifier will also be conducting recertification, once it has recertified a subscriber, it has in effect determined that the subscriber is eligible, and the provider should no longer have an obligation to retain past eligibility documentation, even if it made the initial eligibility determination for the subscriber. Otherwise, the provider could be left retaining documents years after the subscriber enrolled, simply because it has stayed with the same provider, and despite the fact that its continuing eligibility has been determined by the National Verifier.

At the very least, the Commission should amend its rules to specify that a provider is not required to retain any eligibility or recertification information for any subscriber for more than three years after the National Verifier has recertified such subscriber. This would accommodate the Commission's concern that USAC be able to audit retrospectively for the preceding three years and be more consistent with the Commission's concern about consumer privacy.

VII. The Commission Should Eliminate the Requirement that the Last Lifeline Provider in a Census Block Must Continue to Offer Voice Lifeline Service

Notwithstanding its cogent and convincing analysis of the voice market and the lack of any need to continue with voice Lifeline service, the Commission with little explanation and in conflict with its own analysis then determines that voice will continue to be supported but only in Census blocks with a single Lifeline provider. It states that the $5.25 support amount shall remain in place – together with that ETC's obligations as a Lifeline provider – until the first year after the Commission (or the Bureau, acting on delegated authority) announces that a second Lifeline provider has begun providing service in the Census block.[19] This anomalous treatment

[18] *Order*, ¶ 151.

[19] *Order*, ¶ 121. *See also*, new rule 47 CFR §54.403(a)(2)(v).

should not stand. One of the foundations for the Commission's decision to shift Lifeline dollars from voice service to broadband service is the notion that those dollars are no longer necessary in order for voice service to be affordable, and that affordability is not related to the number of ETCs in a census blocks.

The Commission notes that non-Lifeline voice rates have fallen "drastically" since the 2012 Lifeline Reform Order.[20] It does not find that they have only fallen in particular census blocks or that voice services will be more expensive in census blocks with only one ETC. Rather, it concludes that voice service overall is declining in the marketplace, and that cost decreases outside the Lifeline program have "led to a large variety of reasonably priced voice options."[21] Many wireless companies operate with no ETC designation and offer voice service in areas where other providers are ETCs. There is no reason to believe, for example, that the rates of these providers will be higher in census blocks where there is only one ETC. The existence of just one ETC does not correlate to the absence of multiple voice providers.

There is no reason that the Commission's conclusions that Lifeline dollars should support those services that are otherwise unaffordable to consumers absent a Lifeline discount and that it is inconsistent with Congressional intent to continue providing Lifeline support to voice-only services[22] would not apply equally to census blocks that have several ETCs and those that have only one. As such, the Commission's decision to retain support and a Lifeline voice obligation for those ETCs who happen to be the only ETC is a particular census block is arbitrary and capricious.

The reasons cited by the Commission for this exception to the phase down of support for

[20] *Id.*, ¶ 54.

[21] *Id.*, ¶ 55.

[22] *Id*.

standalone voice are not supportable. After having explained why it is not appropriate to funnel Lifeline support to now-presumptively-affordable voice services, it makes a series of inconsistent statements about the need to retain voice services that apply equally to all areas, regardless of the existence of the number of ETCs in that area. It references a mindfulness of the "historical" importance of voice service, and that consumer migration to new technologies might not always be uniform – generic statements that are not limited to any particular census block.[23] It then inexplicably concludes that "certain measures" to continue to address the affordability of voice services "may be appropriate" and that it should prioritize support for those areas where it anticipates there to be the "greatest likely need for doing so," with no analysis of which areas might have the greatest need for support or where both fixed and mobile voice services are not as affordable as in other areas.[24] Rather, it simply concludes that if it is going to spend some Lifeline funds on voice-only service, it will do so where it is administratively simplest.[25] It goes on to make the irrelevant argument that it makes more sense to burden an existing ETC with a continuing voice obligation rather than designating a new ETC to serve this post-phase out role – when it has never explained why there is, in fact, any need for anyone to serve a post-phase out role.[26]

Finally, regardless of whether the Commission grants reconsideration on this issue, it should nevertheless reconsider a disparity in its new rule 54.401(b)(4). That provision states that commencing on December 1, 2021, ETCs must provide the "minimum service levels for

[23] *Order*, ¶ 119.

[24] *Id.*

[25] *Id.*, ¶ 120.

[26] *Id.*, ¶ 121.

broadband Internet access service *in every Lifeline offering*."[27] This requirement conflicts with the Commission's decision to apply a voice-only Lifeline offering in Census blocks with only one Lifeline provider.[28] In such areas where the single ETC is providing *only* Lifeline voice service, it cannot be expected to meet "minimum service levels for broadband Internet access service" in its "Lifeline offering." Even absent grant of reconsideration on this broader single ETC issue, the Commission must address this discrepancy in its rules.

VIII. The Commission Should Reconsider its Exception Standard for the "Highest Performing Generally Available" Residential Offering

The Commission should reconsider the exception to its minimum standard requirements targeted towards fixed providers who have yet to deploy broadband capable networks in specific geographic areas that meet the agency's minimum service standards.[29] The Commission states that in areas where a provider does not offer a 10 Mbps/1 Mbps service, a provider may choose to qualify for the exception and claim Lifeline support for a household as long as the Lifeline discount is applied only to the purchase of its "highest performing generally available"[30] residential offering that meets or exceeds 4Mbps/1Mbps. The Commission should instead permit providers to participate in such offerings, so long as they provide a 4Mbps/1 Mbps "or better" service to consumers. The Commission could accomplish this change by deleting section 54.408(d)(iii) of its rules in its entirety, and updating section 54.408(d)(ii) of its rules accordingly.

Given its administrative and logistical complexities, the Commission's proposed "highest performing generally available" standard is unworkable, and will discourage providers from

[27] 47 C.F.R. §54.401(b)(4). *See also*, *Order*, Appendix A, p. 167 (emphasis added).

[28] *Order*, ¶ 52.

[29] *See generally*, *Order*, ¶¶ 107 – 113.

[30] *Order*, ¶ 112. *See also*, 47 C.F.R. § 54.408(d)(iii); *Order*, p. 173.

participating in such offerings. In their ongoing process of network and service offering upgrades, providers will need to ensure Lifeline compliance by continually monitoring and administratively updating which of their service tiers constitutes the "highest performing generally available" service standard.[31] As a provider's 'highest performing generally available' service standard changes, that same provider will presumably need to adjust associated marketing, accounting, regulatory reporting and other administrative obligations in order to ensure ongoing compliance. Such administrative burdens may very well discourage providers from participating in such offerings.

In contrast, a service offering of "a 4Mbps/1 Mbps or better" still ensures a minimum level of service under the Commission's exception, while removing unnecessary administrative obstacles. Moreover, the removal of such administrative obstacles will likely encourage broader participation by providers in the Commission's exception. This in turn will facilitate broader participation in the Lifeline program by eligible subscribers. However, regardless of which standard the Commission ultimately adopts, it is unclear from the Order whether the Lifeline subscriber would need to subscribe to the higher offering in order to maintain the Lifeline benefit, or if they would be grandfathered into the initial offering.

Similarly, it is also unclear from the Order the geography to which the exception standards would apply. In other words, it is unclear whether the Commission will apply any chosen speed standard on a location by location basis, or whether the standard would be applied at the census block level (or some other geographic standard). Given the ambiguity on this issue, the Commission should clarify the geographic scope of any speed standard utilized for the

[31] It can reasonably be expected that a provider that initially qualifies for the exception may at some point deploy upgraded broadband service that exceeds the service for which it originally obtained the exception (*e.g.*, from a service providing 4Mbps/1Mbps to one that offers 7Mbps/1Mbps).

exception.

IX. The Commission Cannot Apply Broadband Obligations to a State-designated ETC

The Commission interprets section 214(e)(1) "only to impose service obligations associated with the particular mechanism or mechanisms for which a carrier is designated an ETC."[32] In addition, the Commission finds that it is inappropriate for a carrier designated for intrastate services by a state to be required to also provide interstate services.[33] In this way, it clarifies that Lifeline Broadband Providers (LBPs) named by the Commission to provide interstate BIAS service need not provide intrastate Lifeline services.

The Commission then violates its own interpretation of section 214(e), ignoring the jurisdictional foundation for its LBP designation, and states that existing state ETC designations for high-cost carriers are broad enough to encompass a BIAS Lifeline obligation.[34] High cost carriers designated by states were designated for the high cost program, and not for a broadband Lifeline program. While the Commission offers forbearance for portions of these ETCs' service areas in connection with the federal Lifeline program, it essentially subjects these carriers to state ETC jurisdiction over interstate broadband internet access services.

The Commission imposes this obligation despite its recognition that incumbent LECs' designated service areas as ETCs were defined as wherever they offered voice telephony service in a state,[35] once again putting them in a different and unequal regulatory position vis-à-vis LBPs, which are allowed to (1) decide whether to participate as an LBP at all, and (2) select the service areas for which they apply for LBP ETC status. LBPs also have a streamlined

[32] *Order*, ¶ 247.

[33] *Id.*

[34] *Id.* at ¶ 309.

[35] *Id.* at ¶ 317.

relinquishment process that was not given to existing ETCs.

Accordingly, the Commission must reverse its decision that high-cost carriers with state ETC designations are subject to BIAS Lifeline obligations as a result of that designation. USTelecom appreciates the Commission's desire to streamline the entry process for new BIAS Lifeline providers – and that goal can be accomplished by allowing existing high-cost ETCs to voluntarily apply for LBP status on an expedited basis, relying on their performance as an existing ETC status.

In the alternative, if the Commission's concern is to have an LBP in CAF II areas, it could simply designate the high-cost carriers that accepted CAF II funding as LBPs for those locations they build using CAF II funds. The Commission should further clarify that a state Lifeline program can only include BIAS Lifeline on a voluntary basis, since states lack jurisdiction over interstate services.

X. The Commission Should Amend its Rules to be Consistent with the Actions Taken in the Order

A. The Commission Should Delete Section 54.403(b)(1) of its Rules

The Commission should delete rule 54.403(b)(1), since it addresses ETC accounting measures solely for voice-centric services which are being phased out. Rule 54.403(b) sets out the manner in which Lifeline support must be passed through to the consumer. The Commission's 2012 Lifeline order affirmed that the $9.25 credit was to be applied first against the Federal Subscriber Line charge and then against intrastate service.[36]

[36] Report And Order And Further Notice Of Proposed Rulemaking, *Lifeline and Link Up Reform and Modernization, Lifeline Order*, ¶ 312, FCC 12-11, 27 FCC Rcd. 6656, 77 FR 19125 (2012) (stating that "ETCs that charge federal subscriber line charges or equivalent federal charges to the subscriber apply Tier 1 federal Lifeline support to waive the federal SLC for Lifeline subscribers. Any additional support received (*i.e.*, from Tiers 2 through 4) is then applied to reduce the consumer's intrastate rate."). *See also*, 47 C.F.R. § 54.403(b)(1).

The Commission's recent order, however, changed the Lifeline program to permit application of the credit to broadband only services. Broadband services do not have a Federal Subscriber Line charge or intrastate service to which the credit could be applied. Therefore, rule 54.403(b)(1) is irrelevant in the Commission's reformed Lifeline program and should therefore be deleted.

B. The Commission Should Correct Section 54.101 of its Rules

Section 54.101(a): In the Order, the Commission is clear that it is adding BIAS as a supported service for purposes of the Lifeline program, and that it is a supported service only in that context.[37] However, it fails to make that distinction clear in rule 54.101(a), which it amends to include variously "broadband" or "broadband Internet access service" as a supported service without any limitation as to its context. The placement of broadband Internet access service in rule 54.101 is in error, as that section is reserved (as indicated by its section heading) for "[s]upported services for rural, insular and high cost areas." As such, only those supported services that are part of a high-cost program belong in rule 54.101.

Further, there are state regulations that incorporate by reference the supported services in rule 54.101 for purposes of state programs, which might result in unintended consequences for existing state programs that lack jurisdiction over an interstate service like BIAS. To address both of these issues, the Commission should delete the references to "broadband" and "broadband Internet access service" in 54.101(a).[38] Those references are unnecessary in light of the amendment to rule 54.400, which defines both Voice Telephony and BIAS as supported

[37] *Order*, ¶ 39; *see also*, *Order*, n. 90.

[38] While the Commission should delete section 54.101(a)(2), it can move the requirements set out in that subsection to either section 54.400(l) or 54.401(a)(2).

services for the Lifeline program.[39]

While USTelecom believes that the Commission should make Lifeline broadband participation voluntary for all carriers (*see supra* at Section IX), at a minimum, together with the amendment to rule 54.101, the Commission also should clarify that an ETC may avail itself of the Order's Lifeline broadband forbearance relief for all locations in its ETC service area except those locations where it is commercially offering qualifying BIAS pursuant to its obligations under the Commission's high-cost rules (*i.e.*, to those locations that the ETC is reporting toward its CAF II broadband obligation). Once that ETC's high-cost broadband public interest obligations end, so too does its Lifeline broadband service obligation. In making this forbearance clarification, the Commission should delete its new rule 54.101(c), and amend rule 54.201(d) by adding 54.201(d)(4):

> (4) Exception. Eligible telecommunications carriers are not required to comply with paragraphs (d)(1) and (2) of this section with respect to the Lifeline broadband Internet access service defined in 54.400(l), except that an eligible telecommunications carrier subject to a high-cost public interest obligation to offer broadband Internet access services and receiving high cost support (other than Phase I high-cost support) must offer Lifeline broadband Internet access service to those locations where it commercially offers qualifying broadband Internet access service pursuant to its obligations set forth in Part 54 of this chapter, and subparts D, K, L and M of this part.

The Order recognizes that Phase I frozen high-cost recipients receive interim support that the Commission will eliminate once it implements the CAF Phase II competitive bidding process. For that reason, the Commission correctly concluded that Phase I frozen recipients should not have Lifeline broadband obligations. The Commission should extend this finding to

[39] If the Commission rejects these corrections to its rules, it must at the very least amend section 54.101(a) to remove the generic reference to "broadband service" and limit the designation of broadband Internet access service to a supports service only for purposes of the federal Lifeline program, as follows:

> (a) Services designated for support. Voice Telephony services shall be supported by federal universal service support mechanisms. Broadband internet access services shall be supported solely for purposes of the federal Lifeline program.

CAF Phase I incremental support recipients. These recipients received a one-time payment in order to deploy broadband to a certain number of locations over a three-year period. After that service term ends, which it will no later than next year for all incremental support recipients, CAF I incremental support recipients will have no broadband public interest obligations. Consequently, the Commission should delete its new rule 54.101(c) and amend rule 54. 201(d) as set forth above to make clear that no carrier shall have an obligation to offer Lifeline broadband service as a result of receiving Phase I high cost support.

Section 54.101(d): The Commission should delete new subsection 54.101(d) in its entirety, which provides that "Any ETC must comply with Subpart E." The Commission was quite clear that ETCs may become, for example, high-cost-only ETCs and are permitted to convert their existing ETC designation to a program-specific designation. For that reason, new rule 54.101(d) does not accurately reflect the Commission's decisions contained in the Order.

Section 54.405: In the Order, the Commission interprets section 214(e)(4) of the Act to allow ETC designations to be relinquished on a program-specific basis, and expressly states that a high-cost/Lifeline ETC could seek relinquishment of its ETC designation for Lifeline purposes without relinquishing its designation for high-cost purposes. It further makes clear that this interpretation of section 214 with respect to an ETC's relinquishment rights is binding on the states.

In light of that interpretation, the Commission should amend its rule 54.405, which imposes a variety of Lifeline obligations on "all eligible telecommunications carriers," including the obligation to offer Lifeline. Because the Order creates the possibility that there may be a high-cost ETC, for example, that relinquishes its Lifeline ETC designation but not its high-cost ETC designation, the rules must recognize the possibility that not all ETCs will have Lifeline

obligations. Also, the generic term "eligible telecommunications carriers" is used to describe the entities to which all of the Lifeline rules will apply, and this issue needs to be addressed as well.

Accordingly, rule 54.405 should be amended to make clear that it applies only to ETCs that have a Lifeline ETC designation as follows:

> 54.405 All carriers that have a Lifeline eligible telecommunications carrier designation ("Lifeline ETC") must: …
>
> (a) Make available Lifeline …

In addition, the rest of the Lifeline rules in Part 54, Subpart E should be amended to refer to "Lifeline ETCs" as defined in rule 54.405, to clarify that these rules apply only to those ETCs who have not relinquished their Lifeline designation.

XI. The Commission Should Clarify that ETCs That Previously Sought Forbearance, Can Subsequently Seek an LBP ETC Designation

The Commission also forbears from certain ETCs' obligation to offer Lifeline BIAS by permitting such ETCs to solely offer voice in the Lifeline program, provided that such ETCs file a notification with the Commission that they are availing themselves of this relief.[40] USTelecom agrees with the grant of forbearance established in the Order. However, the Commission should clarify that a high cost ETC that accepts forbearance from the Lifeline broadband obligation in a given area can seek an LBP ETC designation for that same area if it decides that it wants to offer Lifeline broadband at a later date.

Such clarification would acknowledge the reality that marketplace conditions are fluid and evolving for providers. Adopting such an approach will help achieve the Commission's goal of encouraging broader provider participation in the Lifeline program as providers' respective

[40] *Order*, ¶¶ 309 – 312.

operational conditions change.[41] Moreover, that increased participation will create competition in the Lifeline market that will "ultimately redound to the benefit of Lifeline-eligible consumers."[42]

XII. The Commission Should Reconsider its Clarification of "Media of General Distribution"

In the Order, the Commission clarified that the term "media of general distribution" in Section 214(e)(1)(B) of the Act is any media reasonably calculated to reach the general public.[43] It then goes on to indicate that for an LBP, it means media reasonably calculated to reach "the specific audience that makes up the demographic for a particular service offering."[44] However, there is no reason for the Commission to narrowly apply that latter interpretation only to LBPs or Lifeline-only broadband ETCs. A high-cost ETC that provides widespread voice service might still be obligated to reach the general public, but if that same ETC is also providing Lifeline broadband, it could well have a smaller or more discrete service area for its broadband offering as a result of forbearance.

To require a high-cost ETC to broadly advertise a broadband service that is not broadly available will cause confusion and dissatisfaction among consumers who seek the service, only to find that it is not available, and create inefficiency and increased costs for carriers who have to field inquiries from potential customers outside of their Lifeline broadband service area. Accordingly, the Commission should reconsider its clarification and make clear that the advertising requirement for *any* provider of Lifeline broadband Internet access service is media reasonably calculated to reach "the specific audience that makes up the demographic for a

[41] *Id.* at ¶ 221.

[42] *Id*.

[43] *Id.* at ¶ 364.

[44] *Id.*

particular service offering."[45]

XIII. The Commission Should Clarify Treatment of Standalone Voice

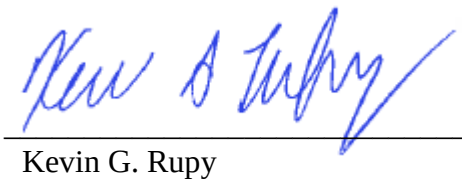
In its Order, the Commission concludes that section 254 of the Act authorizes it to support bundled voice and BIAS as well as standalone BIAS by defining BIAS as a supported service for purposes of a Lifeline broadband program.[46] However, the Commission also states that "for both fixed and mobile voice services . . . we phase in a requirement that to be eligible for Lifeline support, a voice service must include broadband service, thereby phasing-out support for voice service as a standalone option."[47] In this regard, USTelecom seeks clarification that during the interim period when support for standalone voice will remain available, providers can choose to offer either standalone voice or voice as part of a bundle with broadband.

XIV. Conclusion

For the foregoing reasons, the Commission should grant USTelecom's Petition for Reconsideration and Clarification.

Respectfully submitted,

United States Telecom Association

By: 

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June 23, 2016

[45] *Order*, ¶ 364.

[46] *Id.* at ¶ 6.

[47] *Id.* at ¶ 48.

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