

**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
	)	

**JOINT LIFELINE ETC PETITIONERS' PETITION FOR PARTIAL  
RECONSIDERATION AND CLARIFICATION**

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(d/b/a TruConnect)*

June 23, 2016

## SUMMARY

Joint Petitioners applaud the Commission for taking important steps in the Lifeline Modernization Order to bring the Lifeline program further into the 21<sup>st</sup> Century. We appreciate the hard work of the Commission staff in preparing the Order and the responsiveness throughout the proceeding to the concerns and positions of the undersigned and low-income subscribers. By adding standalone broadband as a supported service, the Lifeline program is now positioned to usher in a wave of Internet adoption, with millions of Americans gaining access to fixed and mobile broadband service. Further, the administrative changes adopted in the Order build upon the progress that the Commission made in the 2012 Lifeline Reform Order to minimize real and perceived waste, fraud and abuse in the program.

While the Lifeline Modernization Order generally takes steps in the right direction, several aspects of the adopted rules would undermine the important goals of the Lifeline program, including allowing low-income consumers to choose the services that they can afford and that best meet their needs, respecting the dignity of eligible low-income consumers, encouraging robust competition among ETCs, and incentivizing the provision of enhanced equipment including smartphones (which today drive the adoption of broadband among low-income Americans). In this petition, Joint Petitioners offer several targeted proposals for rule changes or clarifications that would enhance competition, consumer dignity and innovation, while removing unnecessary friction and confusion in the rules as initially adopted.

In Section I, the petition seeks reconsideration of the mobile broadband minimum service standards after December 1, 2017, which disregard the fundamental principle of affordability and would disproportionately impact smaller than average households. Joint Petitioners propose an alternative formula for devising the minimum service standard that directly addresses the

infirmities of the Commission's adopted formula, but would still provide an evolving and generous level of service for low-income consumers. Moreover, the Commission should not step down support for mobile voice Lifeline service until it has completed its review of the Wireline Competition Bureau's (Bureau's) State of the Lifeline Marketplace Report. To promote consumer choice, the Commission should further clarify that ETCs may meet the minimum service standards for mobile voice and broadband service through a broadband offering that meets the broadband minimum service standard but can be decremented with either voice, text or broadband usage.

In Section II, Joint Petitioners seek reconsideration and clarification of several issues related to the National Verifier. Most importantly, the Commission should clarify that the National Verifier will verify eligibility in real-time. Real-time enrollment is essential to preserving the equality of consumer experience for low-income and non-low-income consumers, the dignity of low-income consumers and the promotion of advanced handsets and services. Moreover, the Commission should adopt several safe harbors to encourage participation by Lifeline broadband providers by easing the enforcement risks for ETCs including: a safe harbor for enrollments using the National Verifier since ETCs will not retain eligibility documentation and a safe harbor for ETCs that use any universal or standardized forms that the Wireline Competition Bureau or Universal Service Administrative Company adopts.

In Section III, Joint Petitioners seek reconsideration of the Commission's decision not to provide streamlined ETC application processing for voice-only Lifeline services. The Commission should recognize the value of streamlined processing for Lifeline broadband providers and extend the 60-day streamlined consideration to all ETC applications, including

those for voice-only services. In this way, the Commission can increase competition in the Lifeline market, and drive down costs while promoting improved voice and bundled offerings.

In Section IV, Joint Petitioners ask the Commission to clarify and reconsider its “rolling recertification” rule. As a threshold matter, the Commission should clarify that ETCs will continue to be heavily involved in the process of recertifying the eligibility of their subscribers, including through contacting subscribers, educating subscribers and collecting recertification information. Further, as adopted, this rule would cause undue confusion for consumers, would chill investment in advanced equipment and improved services, and would result in a much higher percentage of failed annual recertifications, as it has in California, which has in place a similar rule. The Commission should reconsider this rule and instead reset subscribers’ recertification date for a new 12-month period upon enrollment with a new carrier, as occurs under the current rule.

Together, these small, but important, changes would dramatically improve the positive impact of the Commission’s modernized Lifeline program, enhancing competition, consumer dignity and innovation, while removing unnecessary friction and confusion in the rules as initially adopted. We respectfully urge the Commission to adopt the proposals and clarifications proposed herein.

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**JOINT LIFELINE ETC PETITIONERS' PETITION FOR PARTIAL  
RECONSIDERATION AND CLARIFICATION**

The Joint Lifeline ETC Petitioners<sup>1</sup> (Joint Petitioners) hereby petition for partial reconsideration and for clarification of several components of the Lifeline Modernization Order<sup>2</sup> (Order) pursuant to section 1.429 of the Commission's rules.<sup>3</sup> Joint Petitioners are wireless eligible telecommunications carriers (ETCs) and a wholesale supplier of wireless services to ETCs committed to defending the integrity of the Lifeline program so that it remains available for and to all who are eligible, enabling access to modern wireless telecommunications necessary

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<sup>1</sup> The Joint Lifeline ETC Petitioners are American Broadband & Telecommunications Company, Blue Jay Wireless, LLC, i-wireless LLC, Telrite Corporation (collectively, the Lifeline Connects Coalition), and Assist Wireless, LLC, Easy Telephone Services Company d/b/a Easy Wireless, Prepaid Wireless Group LLC and Telscape Communications, Inc./Sage Telecom Communications, LLC (d/b/a TruConnect).

<sup>2</sup> See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (Lifeline Modernization Order or Order).

<sup>3</sup> See 47 C.F.R. § 1.429.

for low-income Americans to connect to jobs, healthcare, education, emergency services and family.

Joint Petitioners applaud the Commission for taking important steps in the Lifeline Modernization Order to bring the Lifeline program further into the 21<sup>st</sup> Century. We appreciate the hard work of the Commission staff in preparing the Order and the responsiveness throughout the proceeding to the concerns and positions of the undersigned and low-income subscribers. By adding standalone broadband as a supported service, the Lifeline program is now positioned to usher in a wave of Internet adoption, with millions of Americans gaining access to fixed and mobile broadband service. Further, the administrative changes adopted in the Order build upon the progress that the Commission made in the 2012 Lifeline Reform Order<sup>4</sup> to minimize real and perceived waste, fraud and abuse in the program.

While the Lifeline Modernization Order generally takes steps in the right direction, several aspects of the adopted rules would undermine the important goals of the Lifeline program, including allowing low-income consumers to choose the services that they can afford and that best meet their needs, respecting the dignity of eligible low-income consumers, encouraging robust competition among ETCs, and incentivizing the provision of enhanced equipment including smartphones (which today drive the adoption of broadband among low-income Americans). In this petition, Joint Petitioners offer several targeted proposals for rule changes or clarifications that would enhance competition, consumer dignity and innovation, while removing unnecessary friction and confusion in the rules as initially adopted.

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<sup>4</sup> See generally *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (2012) (2012 Lifeline Reform Order).

**I. The Commission's Minimum Service Standards Should Be Revised to Account for the Affordability Challenges of Low-Income Americans and the Continuing Value of Voice Service**

In the Lifeline Modernization Order, the Commission establishes, for the first time, minimum service standards for mobile voice and broadband service, which will increase over time based on the Commission's assumptions about future costs and prices of those services.<sup>5</sup> Joint Petitioners urge the Commission to reconsider its minimum service standard for broadband, which relies on an unworkable multi-person household formula untethered to the Lifeline program's "central touchstone" of affordability, and replace it with a formula that respects single-individual households and includes an affordability safety valve. Further, the Commission should complete its review of the State of the Lifeline Marketplace Report (Report) before stepping down support for voice-only Lifeline services.

**A. The Mobile Broadband Minimum Service Standard Is Ill-Conceived Because It Disregards Affordability and Unfairly Burdens Single-Person Households**

In the Lifeline Modernization Order, the Commission adopts a mobile broadband minimum service standard that will phase-in over three years and then will be based on an unnecessarily complicated formula to determine "the average mobile broadband data usage per

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<sup>5</sup> See Lifeline Modernization Order ¶¶ 91-98, 100-102. For mobile voice service, the Commission establishes increasing minimum service standards and then phases down support for mobile standalone voice before eliminating support for it by December 1, 2021. First, the FCC imposes the following minimum service standards to receive Lifeline support for mobile voice service offerings (1) as of December 1, 2016, providers must offer at least 500 minutes per month; (2) as of December 1, 2017, providers must offer at least 750 minutes per month; (3) as of December 1, 2018, providers must offer at least 1,000 minutes per month. Second, the Commission phases down support for standalone mobile voice, with full support until November 30, 2019, stepping down to \$7.25 in support until November 30, 2020, then \$5.25 until November 2021, with no support as of December 1, 2021, except where there is only one Lifeline provider in a given census block. For mobile broadband service, The initial data usage standards for mobile broadband are: (1) as of the later of December 1, 2016 (or 60 days after PRA approval), 500 MB per month; (2) as of December 1, 2017, 1 GB per month; and (3) as of December 1, 2018, 2 GB per month. 47 C.F.R. § 54.408(b)(2). Starting on December 1, 2019, the minimum data usage service standards will be set based on a complicated formula to determine the average mobile broadband data usage per household rather than individual. See *id.*



household.”<sup>6</sup> The Commission should reconsider this formula to take into consideration affordability and to avoid disproportionately burdening households with fewer than the average number of members or mobile subscriptions.

Under the adopted mobile broadband minimum service standard framework, beginning December 1, 2016,<sup>7</sup> the standard will be set at 500 MB per month. On December 1, 2017, the standard will increase to 1 GB per month. On December 1, 2018, the standard will increase again to 2 GB per month. Beginning on December 1, 2019, the Commission will calculate its minimum service standard for mobile broadband usage based on “70 percent of the calculated average mobile data usage per household.”<sup>8</sup>

This formula will first determine the average number of mobile subscriptions per household by dividing the total number of mobile-cellular subscribers in the United States as reported in the Commission’s Mobile Competition Report or by CTIA, by the total number of American households, as determined by the U.S. Census Bureau, and then round the result to the nearest hundredths place.<sup>9</sup> Second, the formula will determine the number of mobile smartphone subscriptions per American household by multiplying the number of mobile subscribers per American household by the percentage of mobile subscribers who own a smartphone, “as reported by the Commission in its annual Mobile Competition Report, or other publicly available data sources if necessary,” and round that number of the nearest hundredths place.<sup>10</sup> Third, the formula will determine the average mobile broadband data usage per household by multiplying the calculated average number of mobile smartphone subscriptions per household by the average

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<sup>6</sup> See Lifeline Modernization Order ¶ 94; 47 C.F.R. § 54.408(c)(2)(ii)-(iii).

<sup>7</sup> Or 60 days after Paperwork Reduction Act (PRA) approval, whichever is later.

<sup>8</sup> See Lifeline Modernization Order ¶ 94.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

data used per mobile smartphone subscriber, as reported by the Commission in its annual Mobile Competition Report, and then round that number to the nearest hundredths place and multiply it by 0.7 “to adjust for the fact that in these circumstances a ‘substantial majority’ of subscribers will use less than the average.”<sup>11</sup> Fourth, the formula will round down the result of steps one through three to the nearest 250 MB.<sup>12</sup> Based on this formula, the Commission determines that “if applied today, the minimum service standards for mobile data usage allowance would be set at 2 GB per month.”<sup>13</sup>

The principal flaw with this framework is that it is inconsistent with the core Lifeline program goal of promoting affordability. In the Order, the Commission states that “[a]ffordability must remain a *central touchstone* within the Lifeline program,” purports to “consider the risk that, while some low-income consumers subscribe to a service, they must spend an undue portion of their funds to do so but for the provision of universal service support,” and notes evidence that “certain segments of existing broadband subscribers, including low income subscribers, ‘more frequently have to cancel or suspend service due to financial constraints.’”<sup>14</sup> And yet, in its formula for determining broadband minimum service standards, affordability quite literally does not enter the equation.

If left to stand, the Commission’s formula effectively would price-out many Lifeline consumers. In the proceeding, several ETCs filed cost data in the record that clearly shows that

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<sup>11</sup> *See id.*

<sup>12</sup> *See id.* This provision is incorrectly written in the adopted rule in Appendix A – 54.408(c)(2)(ii)(D) – because the rule states that the result will be rounded up to the nearest 250 MB interval. At the very least this must be corrected, but this also gives the Commission the opportunity to revise the framework to consider affordability as discussed herein.

<sup>13</sup> *See id.* ¶ 95. In addition footnote 275 states, “Based on current data, the 2.22 GB household capacity leads to a minimum capacity standard of 2 GB per month.” This footnote and paragraph 95 make it clear that the Commission intended the result of the calculation to be rounded down to the nearest 250 MB, not up as was written in the rule. *See infra* n. 12.

<sup>14</sup> *Id.* ¶ 57 & n.163 (emphasis added).

the costs of providing the Commission’s proposed 1 GB starting point in December 2017 (which reflects the result of the phase-in to its formula) would exceed the subsidy amount. As a result, the adopted standard would require a significant co-pay, driving thousands of low-income Americans to de-enroll from Lifeline service and hindering the Commission’s low-income broadband adoption goals. Further, the Commission’s own data demonstrates that its proposal is unaffordable for low-income consumers. The latest Mobile Competition Report notes that, among “major service providers,” the average price of a single line of prepaid wireless service with 2 GB of data is \$40 per month, which is over four times higher than the \$9.25 monthly subsidy.<sup>15</sup> For those consumers that could not otherwise pay for that level of service (but would enroll in a free plan with more modest data allowances), it would render service “unaffordable” in contravention of the “central touchstone” of the program.

Another flaw with the formula is that it unfairly burdens households with fewer than the average number of mobile subscriptions. In the Order, the Commission notes that the average smartphone user uses 1.361 GB per month of data.<sup>16</sup> In the non-Lifeline market, this average consumer could purchase a service plan tailored to his or her average monthly usage (e.g., a 1.5 GB plan). Under the Commission’s adopted rule, by contrast, this average consumer would lose the freedom to choose a plan tailored to his or her needs, and instead would be required to purchase a plan designed for a multi-family household—obtaining 700 MB more data than he or she is likely to use.

An additional flaw with the formula is that it relies on a grab bag of data inputs that are prone to politicized results. The Commission proposes to determine the total number of mobile-

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<sup>15</sup> See Eighteenth Mobile Competition Report (WTB 2015).

<sup>16</sup> See Lifeline Modernization Order ¶ 94 n.272 (citing Eighteenth Mobile Competition Report, Chart VII.B.2).

cellular subscribers in the U.S. as reported in its Mobile Competition Report or by CTIA, with no indication of how it would choose between the two figures if they differ. Similarly, the Commission will determine the percentage of mobile subscribers who own a smartphone based on either the annual Mobile Competition Report or “other publicly available data sources if necessary,” again with no indication of what data sources the Commission will use, how it will use them or when using such data sources will be “necessary.” Joint Petitioners are concerned that a model based on ad hoc data decisions will undermine the predictability of the Lifeline market, chilling ETC participation in the program (for fear of having their cost assumptions pulled out from under them) and unfairly erecting barriers to participation in the program for the lowest-income consumers, many of whom already must live with variable and sporadic sources of income.

Joint Petitioners urge the Commission to reconsider its flawed broadband minimum service standard formula—and its initial ramp up to 2 GB—in favor of a more graduated and modest standard that respects the needs and means of all low-income households, and that explicitly adopts affordability as a factor in the analysis. Specifically, we propose the following formula:

- **Step 1:** the Commission determines the average mobile broadband data usage per individual as reported by the Commission in its annual Mobile Competition Report, rounds that number to the nearest hundredths place, multiplies that result by 0.7 “to adjust for the fact that in these circumstances a ‘substantial majority’ of subscribers will use less than the average,” and rounds that result down to the nearest 250 MB.
- **Step 2:** the Commission compares the result of Step 1 to the average retail price of similar offerings in the market to determine whether the minimum standard would be “reasonably affordable to the average low-income single-person household.” If the answer is “yes,” then the result of Step 1 will be the minimum service standard beginning December 1 of the following year. If the answer is “no,” then the Commission will take steps necessary to make the minimum

service standard affordable, e.g., by lowering the standard or increasing the subsidy.

The resulting minimum service standard should be effective on December 1 of the following year to provide ETCs and their subscribers with sufficient time to adjust.

If this framework were applied today based on the average individual usage (1.361 GB per month), Step 1 would result in a starting minimum service standard of 750 MB per month beginning December 1, 2017, which is less likely to require a resort to the safety valve in Step 2 than the Commission's adopted 1 GB minimum for that time period. Based on average usage increases over the last several years (approximately 240 MB per year), we project that the minimum service standard beginning December 1, 2018 would be 1 GB, followed by 1.25 GB in 2019. Based on current pricing, we believe that this standard accurately reflects market trends and in the near term would not require resorting to the safety valve.<sup>17</sup>

This framework is superior to the adopted framework for several reasons. First, it respects the choices and means of all low-income households by tying the minimum standard to the minimum household (i.e., one person). In this way, the proposed formula does not force a low-income individual with no family or a smaller-than-average household to purchase the equivalent of a family plan. Indeed, this approach is similar to the approach that the Commission takes in 54.408(c)(2)(iii), which the Commission will automatically apply if it fails to timely release a Public Notice announcing the new minimum service standard (or if the underlying data

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<sup>17</sup> If the Commission declines to modify its minimum service standard formula, it should nevertheless reconsider its ramp up from 1 GB per month in 2017 to 2 GB per month in 2018. As the Lifeline Connects Coalition explained at multiple times during this proceeding, these increases are "too much, too soon" and should be recalibrated to better reflect market trends and to ensure that Lifeline-supported services are affordable to low-income consumers. To that end, should the Commission decline to adopt our proposed formula, we propose that the Commission adopt a minimum service standard beginning December 1, 2018 at 1 GB per month, followed by 1.25 GB per month beginning December 1, 2019.

is too old).<sup>18</sup> Second, it explicitly incorporates affordability as a factor in determining the standard, which will avoid pricing out low-income Americans from the program. Third, by implementing the standard on December 1 of the following year, it provides ETCs sufficient time to renegotiate rate improvements with underlying carriers, reconfigure service plans, update terms and conditions (if necessary), and notify customers of the change.

**B. The Mobile Voice Support Phase-Down Should Not Occur Until the Commission Has Completed its Review of the State of the Lifeline Marketplace Report**

In the Order, the Commission adopts a phase-out of standalone voice service that will discontinue support entirely as of December 1, 2021—except for Census blocks containing only one Lifeline provider—unless the Commission determines, in a “State of the Lifeline Marketplace Report” that it should “continue delaying Lifeline’s transition to chiefly supporting broadband service.”<sup>19</sup> Under the current rules, the Bureau is required to submit the Report by June 30, 2021, and “if necessary,” the Commission is expected to take action within six months

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<sup>18</sup> See 47 C.F.R. § 54.408(c)(2)(iii). That provision states, “If the Wireline Competition Bureau does not release a Public Notice giving new minimum standards for mobile broadband capacity on or before July 31, or if the necessary data needed to calculate the new minimum standard are older than 18 months, the data usage allowance will be updated by multiplying the current data usage allowance by the percentage of the year-over-year change in average mobile data usage per smartphone user, as reported in the Mobile Competition Report. That amount will be rounded up to the nearest 250 MB.” See *id.* Like section 54.408(c)(2)(iii), our proposal would focus on the average mobile data usage per smartphone user, as reported in the Mobile Competition Report, and would round results to the hundredths place. At the same time, our proposal would retain some elements of the general formula, multiplying the average mobile data usage per smartphone user by 0.7 in recognition of the fact that a “substantial majority” of consumers will use less than the average, and rounding down to the nearest 250 MB to further ease the burden on single-member households.

<sup>19</sup> See Lifeline Modernization Order ¶ 66. Specifically, on December 1, 2019, the Commission will step down the standalone voice subsidy from \$9.25 per month to \$7.25 per month. On December 1, 2020, the Commission will further step down standalone voice support to \$5.25 per month. On December 1, 2021, the Commission will discontinue support for standalone voice service in all Census blocks that have more than one Lifeline provider, unless the State of the Lifeline Marketplace Report counsels in favor of extending the sunset date. See *id.* ¶ 118.

of receiving the Report by, “for example, adjusting support levels or minimum service standards.”<sup>20</sup>

In advance of the Order, several ETCs submitted cost information into the record showing that wholesale voice service costs are not expected to decline significantly in the near term in a manner that would offset the proposed annual increases to the minimum service standards or the decreases in support amounts.<sup>21</sup> The Order disregards this cost-trend information and fails to adequately take into account the tremendous value that voice service has for low-income Americans. Indeed, the Commission’s review of the Report will only conclude *after* the Commission has effectively halved the standalone voice subsidy amount. At that point, Lifeline voice service is likely to be unaffordable for thousands if not millions of low-income Americans and many if not most wireless ETCs will have stopped offering standalone voice service.

Joint Petitioners request that the Commission reconsider this framework and not step-down full support for standalone-voice until it completes and reviews its State of the Lifeline Marketplace Report. More specifically, the Commission should either push out the step-down in support for voice service until December 31, 2021 (giving the Commission six months to review the Report), or advance the due date of the Report to June 30, 2019, before the planned first step-down in subsidy amounts. In either case, if the Commission determines that prices or demand for standalone voice services have not decreased sufficiently to warrant decreasing support for

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<sup>20</sup> See *id.* ¶ 66.

<sup>21</sup> See Written *Ex Parte* Presentation, Declaration of Jeffrey Ansted, American Broadband and Telecommunications Company, WC Docket Nos. 11-42, 09-197, 10-90 (Mar. 22, 2016) and Written *Ex Parte* Presentation, Declaration of Brian Lisle, Telrite Corporation, WC Docket Nos. 11-42, 09-197, 10-90 (Mar. 22, 2016).

voice, support amounts should remain at \$9.25 per month or the minimum standard should be reduced to reflect the support amount and affordability for low-income consumers.

**C. The Commission Should Clarify That ETCs May Meet the Broadband Minimum Service Standard with Bundles That Decrement Based on Subscriber Voice, Text or Broadband Usage**

In the Order, the Commission adopts a rule under which ETCs may obtain support for service plans that bundle voice, text and data (although text messaging remains an unsupported service). Specifically, from December 1, 2016 until November 30, 2019, the Commission will provide full support for any bundle that meets either the applicable broadband minimum service standard or the applicable standalone voice minimum service standard. Beginning December 1, 2019 until November 30, 2021, the Commission will only provide full support for a bundle that meets the broadband minimum service standard, but will provide reduced support for a bundle that meets the applicable voice minimum service standard. Following December 1, 2021, the Commission will only provide support for bundles that meet the broadband minimum service standard.<sup>22</sup>

The Commission should clarify that an ETC may meet the applicable broadband minimum service standard with a broadband offering that “makes available” the applicable minimum service standard, but allows a consumer to decrement the broadband offering using data, voice minutes or text messages. For example, under this interpretation, a 500 MB plan that enables a consumer to use either the full 500 MB, or to decrement that amount through voice minutes or text messages, meets the minimum service standard.

This clarification is appropriate for two reasons. First, it is consistent with the text of the new Commission rule and the Lifeline Modernization Order. Section 54.408(a)(1) of the

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<sup>22</sup> See *id.* ¶ 103.



Commission’s rules states that the minimum service standard is the level of service an ETC must “provide” to an end user.<sup>23</sup> In the Order, the Commission interprets the word “provide” to mean to “mak[e] available.”<sup>24</sup> When an ETC offers 500 MB that can be decremented with voice, text or data, the entire 500 MB is “made available” to the end user, since an end user can use all 500 MB for broadband if they so choose. Further, the Order states that the Commission will “continue to allow low-income consumers to apply the Lifeline discount to support fixed and mobile bundles that include one or more of the supported services so long as one of the supported services offered satisfies the minimum service standard requirements.”<sup>25</sup> A 500 MB plan that enables consumers to use a volume of minutes or data that meets the respective minimum service standard includes “one of the supported services” and “satisfies the minimum service standard requirements.” Therefore, a plain reading of the minimum service standard rule and section of the Order would enable a consumer to put his or her Lifeline benefit toward that plan.

Second, this clarification is consistent with common industry practice, which is recognized and unchanged in the Order. The Commission states that its rule on bundles “*does not represent a change in policy* as many Lifeline providers have voluntarily offered non-supported services to consumers bundled with Lifeline-supported services,” and that the Commission “agree[s] with commenters and view[s] such offerings as enhancing consumer benefits.”<sup>26</sup> Indeed, the Commission recognizes the positive role of bundles in the current

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<sup>23</sup> See 47 C.F.R. § 54.408(a)(1).

<sup>24</sup> See Lifeline Modernization Order ¶ 263 n.710.

<sup>25</sup> See *id.* ¶ 67.

<sup>26</sup> See Lifeline Modernization Order ¶ 67 (emphasis added). The Order cites to the Joint Wireless Commenters Comments at pp. 5-7, which discusses “500 ‘unit’ offerings, which can be used for either voice or text communication.” See *id.* ¶ 67, n. 181.

Lifeline marketplace, which enables ETCs to “improve their service offerings and attract consumers.”<sup>27</sup>

Under the Commission’s previous informal 250 minute standard, ETCs were permitted to provide bundles to consumers that decrement voice minutes (a supported service) with texts (an unsupported service) (often at a 3:1 ratio), which the Commission agrees “enhance[s] consumer benefits.”<sup>28</sup> Therefore, to reflect no change in policy with respect to bundles, it appears clear that the Order would permit ETCs to decrement broadband offerings with voice or text usage as chosen by the subscribers. We read the Lifeline Modernization Order to reflect the Commission’s continued blessing of bundled packages to permit ETCs to meet the broadband minimum service standard through an allotment of data that a consumer can decrement using voice minutes, broadband or text messages, and seek the Commission’s clarification of our understanding.

## **II. The Commission Should Reconsider or Clarify Several Issues Related to the National Lifeline Eligibility Verifier**

One of the most significant changes adopted in the Lifeline Modernization Order is the transition to the National Lifeline Eligibility Verifier (National Verifier). The National Verifier assumes several functions that previously were served by ETCs, their vendors and the states. Although Joint Petitioners had advocated for a more flexible approach that would have better leveraged the significant enrollment infrastructure already in place to reduce the administrative costs and the development timeframe, Joint Petitioners do not seek comprehensive reconsideration of the National Verifier. Rather, we respectfully request that the Commission confirm that the National Verifier will conduct eligibility verifications in real-time to protect the

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<sup>27</sup> See *id.* ¶ 103.

<sup>28</sup> See *id.* ¶ 67.

dignity of low-income consumers and provide explicit safe harbors from enforcement action for enrollments that are processed through the National Verifier.

**A. The Commission Should Clarify That the National Verifier Must Verify Eligibility in Real-Time**

The primary function of the National Verifier will be to verify eligibility for Lifeline applicants by reviewing proof of enrollment in Federal and Tribal Programs. Unfortunately, while the Order sets the expectation that the National Verifier will conduct “comprehensive and timely reviews,”<sup>29</sup> and that the manual and electronic certification processes will be completed in a “reasonable amount of time,”<sup>30</sup> it does not explicitly require the National Verifier to include an option for real-time verifications. The Commission should clarify that the National Verifier will conduct Lifeline eligibility verifications in real-time.

As the record in this proceeding reflects, real-time enrollment is essential to preserve low-income consumers’ dignity by providing equality of consumer experience between low-income and non-low-income consumers. Average non-low-income consumers do not expect to have to wait hours or days after sign-up to receive a wireless device and/or start receiving service, and neither should low-income consumers. The failure to require real-time verification as an option through the National Verifier would undermine the dignity of low-income consumers, and for that reason the Commission should clarify that ETCs and consumers will be able to confirm Lifeline eligibility in real-time.

Moreover, the lack of real-time verification also would undermine one of the central goals of the modernization process: promoting the deployment of Wi-Fi-enabled smartphones.<sup>31</sup>

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<sup>29</sup> See Lifeline Modernization Order ¶ 136.

<sup>30</sup> See *id.* ¶ 146.

<sup>31</sup> See Lifeline Modernization Order ¶¶ 367-378.

Specifically, the lack of real-time eligibility verification could limit the ability of or incentives for ETCs to distribute advanced devices and initiate service at the point of consumer interaction. Before handing out a smartphone at the time of enrollment, an ETC must be sure that the prospective customer is eligible for Lifeline service. If a customer walks away from an enrollment event with a phone, but is later determined to be ineligible, the ETC cannot recover the value of the phone over time and would not have the means or incentive to track down the ineligible applicant to reclaim the phone. Such losses could result in ETCs deciding not to provide handsets in person at the time of enrollment, which would treat low-income consumers as inferior compared to non-low-income consumers who expect to walk away from purchasing communications services with an activated device.

Finally, the lack of real-time verification could have follow-on effects for the Commission's new rolling annual recertification process, as discussed in further detail in Section IV. Real-time information from the National Verifier will be essential to improving the rolling recertification process because it enables ETCs to know when to collect proof of eligibility documentation. If a subscriber is switching from one ETC to another, the National Verifier would not require the ETC receiving the customer to collect proof of eligibility, since eligibility is retained in the verifier's database. However, ETCs should be informed of the subscriber's recertification date and permitted to collect recertification information at the time of benefit transfer so that the switching subscriber does not have to recertify his or her eligibility again potentially only a few months later. This will not be possible without real-time information from the National Verifier.

Of course, Joint Petitioners recognize that not all ETCs have business models that incorporate real-time consumer engagement. As a result, we support including real-time

eligibility check as an option for those ETCs conducting in-person enrollments, but do not request that the Commission mandate real-time eligibility checks across the board.

**B. The FCC Should Adopt a Safe Harbor for Lifeline Enrollments Verified by the National Verifier and For Use of Universal or Standardized Forms**

The Commission recognizes that the “National Verifier takes on the risk of determining eligibility for subscribers”<sup>32</sup> and “Lifeline providers will not be required to retain eligibility documentation for subscribers who have been determined eligible by the National Verifier.”<sup>33</sup> However, the Order does not provide explicit safe harbors from enforcement action for ETCs that enroll Lifeline subscribers using the National Verifier. While Joint Petitioners appreciate the Commission’s willingness to ease the recordkeeping burden of ETCs, we are concerned that failing to retain documentation could make it more difficult for ETCs to defend themselves in enforcement actions.

To effectively reduce the burden on ETCs and encourage additional Lifeline competitors, the Commission should adopt a safe harbor from enforcement actions for providers when the enrollment is verified by the National Verifier. Indeed, the Commission has already demonstrated that it is willing to bring enforcement actions against ETCs for alleged duplicate subscribers that would have passed the initial National Lifeline Eligibility Database (NLAD) screen and without even defining a duplicate subscriber in its rules or orders. Moreover, USAC caused ETCs significant economic and administrative hardship when it created “production duplicates” in the NLAD. The Commission and USAC allowed ETCs to enroll subscribers in the NLAD and then changed the screening methodology and required ETCs to de-enroll thousands of subscribers in which they had made significant investments. For these reasons, the

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<sup>32</sup> See *id.* ¶ 130.

<sup>33</sup> See *id.* ¶ 151.

Commission should make explicit that ETCs that rely on the National Verifier and do not retain eligibility documentation enjoy a safe harbor from enforcement action related to the eligibility of such subscribers to participate in the program.

The Order should also clarify that universal or standardized Commission or USAC forms qualify for a safe harbor from enforcement action related to the use of those forms. In the Order, the Commission delegates to the Bureau authority “to create uniform, standardized Lifeline forms approved by the Office of Management and Budget (OMB) for all subscribers receiving a federal Lifeline benefit, if it believes that doing so will aid program administration.”<sup>34</sup> As above, the goals of such universal forms include enhancing consumer understanding and ETC compliance with the rules. Joint Petitioners appreciate and applaud the Commission for taking this important step to promote the creation of standardized forms. However, based on the overly aggressive enforcement and auditing with respect to the current rules, including USAC and Commission asserted requirements to include “under penalty of perjury” in multiple sections of enrollment forms and recent changes to the Tribal certification language, Joint Petitioners remain concerned that even if they do adopt universal Commission or USAC forms, there could still be some risk of enforcement or calls to “make the fund whole” if some issue is later discovered. For that reason, Joint Petitioners urge the Commission to adopt an explicit safe harbor from enforcement for any ETC that uses universal or standardized Commission or USAC forms.

### **III. The Commission Should Extend Streamlined Consideration to All ETC Petitions**

The centerpiece of the Lifeline Modernization Order is the Commission’s decision to include broadband as a supported service in the Lifeline program and to create a mechanism for broadband providers to obtain status as a Lifeline Broadband Provider (LBP). Joint Petitioners

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<sup>34</sup> See Lifeline Modernization Order ¶ 429.

appreciate the Commission’s interest in ensuring competition in the broadband Lifeline market through streamlined ETC designations for LBPs. However, the adopted streamlining process unjustifiably excludes streamlined voice ETC designations. The Commission should reconsider its decision to limit streamlined designation to Lifeline Broadband Providers and permit streamlined ETC application processing for Lifeline voice providers as well.

In the Order, the Commission establishes a streamlined ETC designation process for LBPs, recognizing that the existing ETC designation process is “unnecessarily burdensome and hinders competition in the Lifeline market.”<sup>35</sup> Unfortunately, rather than take the opportunity to modernize the entire ETC designation process, the Order arbitrarily streamlines only the process for broadband providers,<sup>36</sup> leaving voice service ETCs to face a costly, complex and uncertain designation process. The Commission should reconsider its decision to limit streamlined designation to LBPs and should self-impose streamlined ETC petition processing for Lifeline voice ETC petitions as well.

The Commission designates voice ETCs in a dozen states, including many large and heavily populated states like New York, Florida and Virginia, and has not acted on dozens of pending ETC petitions for years (including one pending since 2010). This kind of inaction and hindrance to competition presumably is one of the primary reasons the Commission developed a

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<sup>35</sup> See Lifeline Modernization Order ¶¶ 223, 235 (“Many commenters supported streamlining the ETC designation process, indicating that the current ETC designation process is unnecessarily burdensome and hinders competition in the Lifeline market.”).

<sup>36</sup> See *id.* ¶ 278. Under this streamlined process, LBP petitioners will be subject to an expedited review under which petitions will be deemed granted within 60 days of filing a completed petition, provided that (1) the provider has 1,000 or more non-Lifeline customers with voice telephone and/or BIAS service; (2) the provider has offered broadband services to the public for at least the preceding two years (without non-emergency interruption); and (3) the Commission has not notified the petitioner that the grant will not be automatically effective. These streamlined procedures will apply to LBP petitioners on Tribal lands regardless of whether they meet the service or existing customer preconditions, so long as the provider is “greater than 50 percent owned and actually controlled by one or more federally-recognized Tribal Nation(s) or Tribal consortia.”

streamlined process for LBPs. As the Order recognizes, “many consumers . . . will continue to demand voice communications,” which “continue[] to be an important resource for consumers to utilize in communications with others.”<sup>37</sup> Further, for at least the next five years, eligible consumers will be able to obtain Lifeline-discounted standalone voice services, and many carriers will want to step up to meet this demand. The Commission provides no reasonable explanation for continuing to subject Lifeline voice providers to an “unnecessarily burdensome,” competition-hindering designation process.

Joint Petitioners urge the Commission to extend the 60-day streamlined designation process to voice-based ETC petitions filed with the Commission. By establishing a reasonable streamlining mechanism for voice ETC designations, the Commission can increase competition in the voice Lifeline market, driving down costs while promoting service-level innovation in a manner that will better position ETCs to meet the proposed voice minimum service standards and support-level phase-out.<sup>38</sup>

#### **IV. The Commission Should Retain Certain Aspects of the Current Annual Recertification Process in the New Rolling Recertification to Avoid Confusing and Burdening Customers and Disincentivizing Lifeline Providers From Providing Enhanced Equipment and Services**

In the Lifeline Modernization Order, the Commission changes the annual recertification requirement from once per calendar year to a process by which an individual subscriber must be recertified “every 12 months, as measured from the subscriber’s service initiation date.”<sup>39</sup> The

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<sup>37</sup> See *id.* ¶ 58.

<sup>38</sup> The Commission should also impose streamlined processing for appeals, guidance and other decisions affecting the Lifeline program such that ETC requested actions are deemed granted if not acted upon in a set timeframe. Such efficient government will also attract additional providers to the program, improve competition and drive maximum value for low-income consumers.

<sup>39</sup> See *id.* ¶ 416; 47 C.F.R. § 54.410(f).



Commission argues that rolling recertification “will result in administrative efficiencies and avoid imposing undue burdens on providers, USAC, or the National Verifier.”<sup>40</sup> However, aspects of the current recertification process should be maintained to avoid confusing and burdening Lifeline subscribers and discouraging the provision of enhanced equipment and service offerings. As a threshold matter, the Commission should clarify that ETCs will continue to be heavily involved in the process of recertifying the eligibility of their subscribers, including through contacting subscribers, educating subscribers regarding the annual recertification process and requirements and collecting recertification information.

In addition, when Lifeline subscribers switch service providers and enroll with a new ETC, their eligibility should be recertified at that time and a new 12 month recertification timeframe should be established. Under the existing annual recertification process, subscribers do not need to recertify in the same year that they enroll or transfer their benefit to another ETC because the enrollment (or transfer) process achieves the same purpose as recertification: it proves continuing eligibility and a desire to continue receiving Lifeline service.<sup>41</sup> The proposed rolling recertification process, however, requires recertification within 12 months of the initial service initiation date even if the subscriber transfers his or her benefit in the interim.<sup>42</sup> Therefore, a consumer that enrolls in September 2016 with ETC A and transfers his or her benefit to ETC B in August 2017 by completing an enrollment application and consenting to

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<sup>40</sup> See Lifeline Modernization Order ¶ 416.

<sup>41</sup> See *Wireline Competition Bureau Provides Guidance Regarding the 2013 Lifeline Recertification Process*, WC Docket No. 11-42, Public Notice, DA 13-1188 (2013) (“if a subscriber is either initially enrolled with or recertified by an ETC in a particular calendar year (e.g., 2013), the subscriber must be recertified by that ETC the next calendar year (e.g., 2014)”).

<sup>42</sup> See Lifeline Modernization Order ¶ 418.

transferring the benefit from one ETC to another would have to recertify his or her eligibility in September 2017 by completing an almost identical process.<sup>43</sup>

First, this process would confuse and unnecessarily burden Lifeline subscribers. Subscribers that recently switched service providers and confirmed their eligibility for Lifeline will not expect to have to recertify their eligibility again potentially within days, weeks or even a few months. Therefore, they are less likely to respond to the annual recertification attempts and are more likely to be de-enrolled even though they are eligible. Indeed, in California, which has adopted rolling recertification, it is often the case that a Lifeline provider can lose a customer for failure to recertify within a month after enrollment. One ETC represented herein reported that in California nearly eight percent of benefit transfers to the ETC are disconnected for failure to recertify within the first 30 days of service.

We recognize the Commission's interest in simplifying the benefit transfer process and seemingly reducing the burden on consumers by retaining eligibility in the National Verifier or Lifeline Eligibility Database (LED), which will enable a consumer to switch providers without producing proof of eligibility again. However, the Commission's perceived burden is misplaced. Low-income consumers often carry their SNAP and Medicaid cards around with them, just as non-low-income consumers carry credit cards or health insurance cards with them. In fact, for low-income consumers, it is *less* burdensome to present a SNAP card when he or she has decided to go into a store or approach a mobile enrollment event to transfer his or her Lifeline benefit, than it is to recertify eligibility a month or two after switching service providers, answering the same questions and making the same certifications that he or she just made a few months prior.

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<sup>43</sup> The section 54.410(f) recertification process refers back to the 54.410(d) enrollment process and so the processes are very similar.

Further, this process will result in increasing the overall number of subscribers that have to be recertified each year and therefore the number of eligible subscribers that are de-enrolled each year. The current annual recertification process only requires the recertification of subscribers that did not enroll or switch service providers within the current year. The new process will have to recertify all subscribers within 12 months of enrollment, including those that switched service providers in the same year. Therefore, at the same recertification failure percentage, the program will de-enroll more subscribers because the base of subscribers to be recertified is larger.<sup>44</sup>

Second, the requirement to recertify subscribers that have switched providers in the same year would disincentivize the provision of enhanced equipment and service offerings by Lifeline ETCs. As discussed above, if ETCs are not able to recertify eligibility when a subscriber transfers his or her service, they are more likely to face situations where an incoming customer must be de-enrolled only a few months after enrollment. The risk of inheriting such short-term customers—and losing the upfront investment in smartphones—would chill ETCs’ willingness to offer advanced devices, including Wi-Fi and hotspot capable handsets up front, for risk of losing the customer shortly after enrolling them.

The Commission should reconsider its new requirement. Specifically, Joint Petitioners propose that when a subscriber switches service providers, his or her eligibility should be re-verified, and the recertification date should be reset to 12 months from the new enrollment date. This proposal also would avoid confusing and burdening Lifeline subscribers and allow ETCs to offer smartphones and improved service plans without fear of losing the up-front investment within a matter of weeks due to the recertification process.

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<sup>44</sup> One ETC represented herein reported that in California nearly 13 percent more subscribers have to be recertified that would not under the current Commission rule.

## V. Conclusion

In the Lifeline Modernization Order, the Commission took important steps to bring the Lifeline Program into the 21<sup>st</sup> Century. However, as described above, several elements of the Order would hinder, rather than further, the Commission's goals. To realize the full transformative power of the Order, the Commission should reconsider and/or clarify aspects of the Order consistent with this petition.

Respectfully submitted,

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