July 29, 2020

By ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554


Dear Ms. Dortch:

On Monday, July 27, 2020, John Heitmann and Joshua Guyan of Kelley Drye & Warren LLP spoke by phone on behalf of the National Lifeline Association (NaLA) with Alisa Valentin, Special Advisor to Commissioner Geoffrey Starks and separately with Arielle Roth, Wireline Legal Advisor to Commissioner Michael O’Rielly. On Tuesday, July 28, 2020, John Heitmann spoke by phone with Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety to Commissioner Jessica Rosenworcel. The purpose of these meetings was to discuss the urgent need for action to alleviate regulatory uncertainty during the COVID-19 crisis to ensure that more consumers can remain or be connected to Lifeline services that are instrumental in closing the digital divide and to address the homework gap and remote work challenges exacerbated by the pandemic. In particular, we asked for support in favor of (1) extending through December 31, 2020 the COVID-19 Lifeline waivers that reduce barriers to program participation,\(^1\) (2) not worsening already acute problems caused by setting the Lifeline mobile broadband minimum service standards (MSS) with no real consideration for the impact of increases on affordability and program participation by extending the waiver\(^2\) setting the

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\(^{1}\) See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 20-577 (June 1, 2020).

mobile Lifeline mobile broadband minimum service standards at 3 GB,\(^3\) and (3) restoring full support for voice service reimbursement so that consumers can choose between plans with unlimited voice or plans with less voice and more broadband data.

The ongoing COVID-19 public health and economic crisis underscores the important role the Lifeline program can and should play in making sure that our nation’s truly needy households can remain connected to medical and emergency services, educators, employers, community and family. Because recent surges in COVID-19 infections and hospitalizations have caused the cessation or reversal of economic re-opening across much of the country, we urged the Commission to take urgent action on two requests made recently by NaLA. We also urged the Commission to take interim action to restore full Lifeline support for mobile wireless plans that offer unlimited voice.

First, we urged the Commission to act promptly to extend the Lifeline COVID-19 involuntary de-enrollment waivers now set to expire on August 31, 2020 through at least the end of the year. Lifeline subscribers ought not be burdened with manual documentation or other benefit retention obligations at a time when the public health and economic consequences of the COVID-19 crisis can make those tasks substantially more difficult to perform.

Second, we urged the Commission to act this month to extend the current waiver and leave the mobile broadband minimum at 3 GB until the Commission can properly assess and act on pending reconsideration petitions and issue the State of the Lifeline Marketplace Report. We explained that the ongoing COVID-19 crisis should cause the Commission to act now to allay regulatory uncertainty over what might become the new standard this coming December and

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\(^3\) While NaLA appreciates that the outcome of a 3 GB mobile broadband MSS was preferable to the 8.75 GB produced by the formula, it still had a devastating impact on the Lifeline program by forcing nearly all carriers to suspend in-person distribution and free hand-set offers in “$9.25 states” and others without significant additional subsidies. To conclude that the industry absorbed the increase from 2 to 3 GB of data would exhibit a willful blindness and ambivalence to the plummeting Lifeline program participation rates in states other than California and Oklahoma. While the COVID-19 waivers have allowed Lifeline subscribers who are being “harvested” by most Lifeline providers to retain their benefits longer, the free-fall in participation will resume once those waivers expire. If the Commission really wanted to do all that it could to ensure that Lifeline eligible consumers can participate in Lifeline during and after the COVID-19 crisis, it would suspend entirely the mobile broadband minimum service standards pending a fresh rulemaking on the matter and the outcome of the Commission’s State of the Lifeline Marketplace Report. See TracFone Ex Parte Letter, WC Docket Nos. 17-287, 11-42 and 09-197 at n.11 (July 27, 2020) (TracFone Ex Parte).
avert a certain price increase and corresponding large-scale de-enrollment of Lifeline subscribers that would result from the formula-based December 1, 2020 increases to the mobile broadband minimum service standards. We also explained that even an increase to 4 or 5 GB would force Lifeline providers to impose a co-pay requirement of $15 or more which would present an unsurmountable barrier to program participation for new Lifeline subscribers. Nothing in the record suggests that such an increase could be absorbed by Lifeline service providers to maintain free service offers – indeed the NaLA Retail Price Survey serves as evidence to the contrary. At a time when the Commission, NARUC and Congress have called for greater Lifeline participation, nothing could be more detrimental to that goal.

We explained that the service offerings currently available in California where there is an additional $14.85 in state subsidy make clear that the Commission cannot reasonably assume or conclude that mandating an increase to 4 or 5 GB will not force a co-pay requirement on Lifeline-eligible low-income Americans. Only two ETCs currently offer California LifeLine subscribers more than 3 GB of included mobile broadband, and one of those carriers, which enjoys beneficial use of the T-Mobile network (undeniably the best cost structure available), does so only on a promotional basis.

Third, we urged the Commission to act as it did in the wake of Hurricane Katrina to establish, for an interim period continuing to six months past the COVID-19 state of emergency

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4 As TracFone stated plainly in its recent ex parte letter, based on the retail price survey submitted by NaLA, plans that include 4 or 5 GB of monthly mobile broadband generally retail for between $25 and $40. See TracFone Ex Parte at 3; NaLA Notice of Oral Ex Parte, WC Docket Nos. 17-287, 11-42, 09-197, 10-90, 03-109, CC Docket No. 96-45 at Exhibit A (July 7, 2020) (NaLA July 7, 2020 Ex Parte). Therefore, a 1 GB increase in the mobile broadband MSS from 3 GB to 4 GB would likely result in Lifeline consumers paying $15 or more per month, depending on the carrier. See TracFone Ex Parte at 3. Increasing the MSS to 5 GB would force even higher co-pays.

5 See FCC and NARUC Joint Letter to NARUC Members (June 1, 2020) (“During this crisis, it is critical that Americans have the connectivity they need to stay in touch with loved ones, telework, search for jobs, participate in remote learning and telehealth, and maintain the social distancing necessary to slow the spread of the coronavirus.”); Letter from Chairman Ajit Pai to Senators and Members of Congress (June 15, 2020) (“Now more than ever, it is critical that all Americans maintain connectivity so that they can stay in touch with loved ones, telework, participate in telehealth and remote learning, and maintain the social distancing necessary to slow the spread of the coronavirus.”).

6 See NaLA July 7, 2020 Ex Parte at 4. TracFone notes that its current offer of 3 GB is paired with unlimited voice and texts in California. See TracFone Ex Parte at n.11.
or release of Commission order addressing Lifeline support levels in the wake of the State of the
Lifeline Marketplace Report, an emergency temporary subsidy support increase from $7.25 to
$9.25 for mobile wireless plans that include unlimited voice. During the COVID-19 pandemic,
mobile wireless Lifeline subscribers should be able to choose between plans that offer unlimited
voice or 3 GB of mobile broadband and get full support for the service they choose.\(^7\)

Pursuant to Section 1.1206(b) of the Commission’s rules, this letter is being filed
electronically.

Respectfully submitted,

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\(^7\) Consumers in states with state support for unlimited voice could be offered plans that include
unlimited voice and 3 GB of data.