

**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
	)	

**OPPOSITION TO PETITIONS FOR RECONSIDERATION**

The National Association of State Utility Consumer Advocates (“NASUCA”) opposes certain parts of certain Petitions for Reconsideration of the Federal Communications Commission (“FCC” or “Commission”) Third Report and Order, Further Report and Order, and Order on Reconsideration (“Broadband Lifeline Order”).<sup>1</sup> The Commission’s Public Notice<sup>2</sup> listed eight Petitions for Reconsideration of the Order, including NASUCA’s.<sup>3</sup> NASUCA does not address here some of the grounds in individual Petitions, and, indeed agrees with some.<sup>4</sup>

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<sup>1</sup> The Order was released in these dockets on April 27, 2016 as FCC 16-38 and published in the Federal Register on May 24, 2016.

<sup>2</sup> Report No. 3046 (June 30, 2016).

<sup>3</sup> NASUCA filed a Petition for Reconsideration of the following issues: The decision to remove Lifeline support for stand-alone voice services will force Lifeline customers onto more expensive bundles; the failure to adopt regulations so that customers who cannot afford bundled service will be able to maintain basic voice service; the failure to require that payment arrangements be offered for back-up power for Lifeline customers; and the failure to act now to reform the universal service contribution mechanism to require contribution from broadband services, especially with all Lifeline customers being forcibly migrated to broadband.

<sup>4</sup> NASUCA agrees with: USTelecom on questions about port freezes, and on the elimination of Lifeline voice support; NTCA –The Rural Broadband Association and WTA – Advocates For Rural Broadband (“NTCA/WTA”) on the impact of a 4Mbps standard on areas currently lacking; elimination of voice support, and the port freeze; Joint

This Opposition is filed pursuant to 47 CFR § 1.429(f). Specifically, NASUCA opposes reconsideration of the following issues:

1. The United States Telecom Association (“USTelecom”)<sup>5</sup> seeks to delay the broadband Lifeline program to December of 2017, rather than the Order’s December 1, 2016 date;
2. USTelecom also seeks to excuse high-cost carriers from broadband Lifeline obligations;<sup>6</sup> and eliminate the requirement that the last Lifeline provider in a census block must continue to offer Lifeline service;<sup>7</sup>
3. USTelecom also seeks to eliminate the requirement that a provider not make material changes to its Lifeline plan for the first 12 months a subscriber has service;<sup>8</sup>
4. CTIA opposes setting standards based on usage by 70% of customers;<sup>9</sup>
5. USTelecom seeks elimination of voice-only accounting;<sup>10</sup> and
6. Joint ETCs seek a streamlined procedure for voice-only ETCs.<sup>11</sup>

## ARGUMENT

### **1. Implementation of the Broadband Lifeline program should not be delayed until December 2017.**

USTelecom seeks a delay of the effective date of the broadband Lifeline program to December of 2017, rather than the Order’s December 1, 2016:

While laudable, the Commission’s streamlining of its eligibility criteria does have a negative consequence for Lifeline providers who will continue to manage

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ETCs: on voice-only service; with TracFone on voice-only service. NASUCA agrees with Pa PUC on all its issues (enforcement and consumer protection; notice requirements; and outstanding compliance plans).

<sup>5</sup> USTelecom at 7-9.

<sup>6</sup> Id. at 17-18.

<sup>7</sup> Id. at 12-15.

<sup>8</sup> Id. at 4-7.

<sup>9</sup> CTIA at 5-6.

<sup>10</sup> USTelecom at 18-19.

<sup>11</sup> Joint ETCs at 17-19.

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.<sup>12</sup>

USTelecom’s blanket nationwide request for a delay is not supported by any data. The potential implementation issues for ETCs do not justify delaying broadband Lifeline, with its benefits to low-income consumers. USTelecom should at minimum be required to be more specific as to what should be delayed – or at least not enforced – without delaying the whole program for a year. The better approach is for the FCC to address implementation and compliance concerns on a case-by-case basis, through ETC filed petitions for waiver.

**2. High-cost carriers should not be excused from broadband Lifeline obligations.<sup>13</sup>  
The last Lifeline provider in a census block must continue to offer voice Lifeline service.<sup>14</sup>**

USTelecom asserts that the Commission “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.”<sup>15</sup> Contrary to USTelecom’s argument, it is clearly within the Commission jurisdiction, based on the holdings of *USTA III*<sup>16</sup> and *Chevron*<sup>17</sup>, to **not** preempt state authority over ETCs in this instance.<sup>18</sup>

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<sup>12</sup> USTelecom at 6-7.

<sup>13</sup> Id. at 17-18.

<sup>14</sup> Id. at 12-15

<sup>15</sup> Id. at 17.

<sup>16</sup> *United States Telecom Ass’n v. FCC*, D.C. Cir. Docket No. 15-1063 (June 14, 2016), (“*USTA III*”).  
[https://www.cadc.uscourts.gov/internet/opinions.nsf/3F95E49183E6F8AF85257FD200505A3A/\\$file/15-1063-1619173.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/3F95E49183E6F8AF85257FD200505A3A/$file/15-1063-1619173.pdf).

USTelecom further argues that the FCC erred in requiring that the last ETC in an area maintain the voice Lifeline obligations.<sup>19</sup> USTelecom is complaining about the FCC directive 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.”<sup>20</sup> USTelecom wrongly asks the FCC to relieve the last serving ETC of its obligation to offer “supported services” which includes voice and broadband. Lifeline should continue to be available to make affordable voice as well as broadband service.

**3. The Commission should prohibit providers from making material changes to their Lifeline plans for the first twelve months of a customer’s service.**

USTelecom argues that the requirement that a provider not make material changes to its plan for the first 12 months of service without subscriber consent should be eliminated, based on lack of APA notice.<sup>21</sup> NASUCA has not examined the record on this subject, but submits that the twelve-month freeze ensures that Lifeline customers get the benefit of the plan they signed up for. Otherwise the carriers – who will be accepting USF funding for the service – could arbitrarily reduce the value of the service the Lifeline consumer signed up for. The FCC and state commissions should both assure that carriers offering broadband with Lifeline support provide service which meets minimum standards to meet Lifeline consumer needs. The

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<sup>17</sup> *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

<sup>18</sup> This preemption is the subject of the appeals by the National Association of State Regulatory Commissioners (“NARUC”) and a number of states, docketed in the D.C. Circuit. *NARUC v. FCC*, D.C. Cir. Docket No. 16-1170, et al.

<sup>19</sup> USTelecom at 12.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 5.

regulation opposed by USTelecom is a necessary protection, especially in light of the port limitation imposed on Lifeline consumers.

**4. The Commission reasonably based mobile data Lifeline standards on the usage of 70% of customers.**

CTIA opposes the Commission setting mobile Lifeline standards based on the usage of 70% of all customers, arguing that such performance standards may render service unaffordable.<sup>22</sup> The Commission may deem such a service as one Lifeline would be “reasonably comparable” to, and comply with § 254. Affordability should be addressed first, however.

**5. The Commission should continue accounting for voice-only services.**

USTelecom asserts that the Commission should eliminate voice-only accounting because voice-only Lifeline service is being phased out.<sup>23</sup> (This appears to conflict with USTelecom’s position opposing elimination of voice-only service. NASUCA shares that opposition to elimination of support for voice-only service.) If the Commission does, however, continue with elimination of support for voice-only service, keeping track of the number of such subscribers will be all the more important for assessing the effect of the elimination of support. It will be vital for the State of the Lifeline Marketplace Report.<sup>24</sup>

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<sup>22</sup> CTIA at 2-3, citing Order, ¶94.

<sup>23</sup> USTelecom at 18-19.

<sup>24</sup> Order, ¶ 66.

**6. The Commission should not adopt a streamlined ETC procedure for voice-only ETCS.**

Joint ETCs seek a streamlined ETC procedure for voice-only providers.<sup>25</sup> The burden of the current process is not unreasonable.<sup>26</sup> The fact that the FCC has streamlined the process to encourage the newly-defined LBPs does not justify a quicker process for traditional Lifeline voice providers.

Respectfully submitted,

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<sup>25</sup> Joint ETCs at 17-19.

<sup>26</sup> Joint ETCs point out that the FCC has a backlog of ETC applications (id. at 18-19), but without context, it is not possible to ascertain the cause of the delay.