

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Bridging the Digital Divide)
for Low-Income Consumers) WC Docket No. 17-287

In the Matter of Federal-State Joint Board)
On Universal Service Lifeline and Link Up)
Reform and Modernization) WC Docket No. 11-42

Telecommunications Carriers Eligible for)
Universal Service Support) WC Docket No. 09-197

COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON THE NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY

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EXECUTIVE SUMMARY

The National Association of State Utility Consumer Advocates (“NASUCA”) file these comments on the multiple questions presented by the Commission’s combined Notice of Proposed Rulemaking (“NPRM”) and Notice of Inquiry (“NOI”).

Regarding the NPRM’s proposal to refocus Lifeline universal service support primarily to encourage private investment in the provision, maintenance and upgrading of broadband capable facilities, NASUCA opposes these changes. Discontinuing reimbursement to Eligible Telecommunications Carriers (“ETCs”) that do not provide Lifeline service to eligible consumers over ETC-owned last mile facilities would provide disincentives for ETCs that are currently offering Lifeline service – particularly ETCs reselling wireless service – to continue offering affordable voice and broadband internet access services. The NPRM’s reforms are not properly designed to preserve and advance Lifeline universal service goals in general or to reduce the digital divide impacting low-income consumers in particular.

Other NPRM proposals, if adopted, would also reduce the availability of affordable Lifeline voice and broadband internet access services that benefit eligible consumers. NASUCA recommends that the FCC halt the current phase-down of support for Lifeline voice services. NASUCA supports continuation of the existing budget cap mechanism. If a different budget approach is adopted, NASUCA recommends that the size of the budget be determined based on consideration of the number of households that qualify as low-income and other factors that contribute to peaks in demand for Lifeline services. NASUCA opposes adoption of a “maximum discount” requirement that all Lifeline consumers pay some amount on top of the Lifeline support for the purchase of voice and/or broadband internet access services. If Lifeline services are not affordable, then there is greater risk that the low-income household will not have continuous Lifeline voice or Lifeline broadband internet access service, thereby diminishing the universal benefits to the entire public.

NASUCA supports the NPRM’s proposal to revise the FCC regulations to eliminate the “Lifeline Broadband Provider” (“LBP”) ETC category, as contrary to the law.

The NOI raise questions about refocusing or targeting Lifeline support to address a lack of broadband facilities in rural and rural Tribal areas or in areas with low broadband adoption rates. The NOI also questions whether changes in benefit levels, like lifetime restrictions, should be adopted. NASUCA urges the FCC to keep the Lifeline universal service support program focused on making quality, affordable voice and broadband internet access services available to all low-income consumers, whether in rural or urban areas, and without limitation as to duration.

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**COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

I. INTRODUCTION

Through the combined Notice of Proposed Rulemaking (“NPRM”) and Notice of Inquiry (“NOI”) the Federal Communications Commission (“Commission” or “FCC”) has proposed changes in statutory interpretation, regulations, and policy which, if adopted, would restrict Lifeline reimbursement to only Eligible Telecommunications Carriers (“ETCs”) that have invested in and own the “last mile” facilities serving a particular Lifeline consumer.¹ The National Association of State Utility Consumer Advocates (“NASUCA”)² is opposed to the

¹ See, *In the Matter of Bridging the Digital Divide for Low-Income Consumers*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket No. 17-287, et al. (rel. Dec. 1, 2017). The Order of Reconsideration addresses three issues, including elimination of the extended port freeze on Lifeline portability, as discussed below.

² NASUCA is a voluntary association of 56 consumer advocate offices. NASUCA members represent the interests of utility consumers in 42 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA is incorporated in Florida as a non-profit corporation. NASUCA’s full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also represent the interests of utility

FCC's proposal to treat Lifeline support as an incentive and reward restricted to only those broadband facilities owners that have invested in last-mile facilities and chosen to obtain ETC designation. Conversion of the Lifeline program into an infrastructure incentive program is at odds with the universal service purpose of the Lifeline program, as established prior to the 1996 Telecommunications Act.³ The FCC's prediction that the possible future receipt of Lifeline reimbursement will incent communications network owners to invest in broadband facilities is speculative and does not justify seismic disruption to the existing regime where ETCs provide eligible low-income consumers with more affordable communications services, including access to 911 and other public safety services, over today's modern communications networks.

NASUCA recommends that the FCC halt the phase-down of Lifeline support for voice services. NASUCA does support the FCC's proposed amendments regarding the Lifeline Broadband Provider (LBP) ETC category, so states may play a role in designation of ETCs. NASUCA also comments on other issues, including the National Verifier and the NPRM's proposed Lifeline program budget change. The NPRM and NOI seek comment on issues including limits on both the maximum Lifeline discount and benefit levels. NASUCA urges the FCC to adopt only those changes that will preserve and advance the universal service goal of providing low-income consumers with affordable Lifeline voice and Lifeline broadband internet access services.

consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

³ See, 47 U.S.C. § 254(j).

II. COMMENTS

A. The FCC Should Only Reform The Lifeline Program in Ways to Improve the Affordability of Lifeline Voice and Lifeline Broadband Services.

Before the FCC voted on the Fourth Report and Order/NPRM, NASUCA filed preliminary comments that urged the FCC to refrain from setting on the path to restrict the availability of Lifeline service as offered today by a mix of incumbent, facilities-based wireline ETCs and wireless ETCs that range from facilities-based to resellers.⁴ NASUCA has since adopted a Resolution urging the FCC “to refrain from adopting a policy of steering investment in network facilities as the controlling principle for modifying the Lifeline program and ETC designation.”⁵

Through prior reforms and grants of forbearance from the facilities-based requirement of Section 214(e)(1)(A),⁶ low-income consumers today have greater choice of Lifeline voice services, and – where available – some wireless or wireline Lifeline broadband internet access services. Access to Lifeline broadband services broadens the ability of low-income households to communicate in many ways. Low-income consumers with their own apartment or home and a preference for wireline telephone service may benefit from the Lifeline discount, waiver of any Universal Service Fund and Access Recovery Charge surcharges,⁷ and additional state Lifeline

⁴ *In the Matter of Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287, Comments of the National Association of State Utility Consumer Advocates (filed Nov. 8, 2017).

⁵ NASUCA Resolution 2018-01, “Urging the FCC and States to Assure that Lifeline Eligible Households in All Regions of the Nation Have Access to Voice and Broadband Internet Access Services from a Choice of Providers and Networks, Made More Affordable with Lifeline Support” (adopted Jan. 19, 2018). Adopted with support of 75% of NASUCA member offices, with 7 members abstaining (Indiana, Arkansas, Michigan, Nebraska, North Carolina, Pennsylvania Small Business, and Minnesota CUB). Available at: http://nasuca.org/nwp/wp-content/uploads/2013/11/2018-01-NASUCA-Affordable-Lifeline-Support-Resolution_-003.pdf.

⁶ 47 U.S.C. § 214(e)(1)(A). *Petition of TracFone Wireless, Inc. for Forbearance*, CC Docket No. 96 - 45, Order, 20 FCC Rcd 1509 (2005). (“*TracFone*”).

⁷ *See, e.g.*, 54 C.F.R. §§ 51.917(e)(4)(v), 69.131, 69.158.

support where offered.⁸ Other low-income consumer households, including those with less stable housing arrangements, are able to obtain wireless Lifeline services as a way to stay in contact with family, social support services, and employers. Low-income households with fixed incomes, such as retirees or those with disabilities, have limited prospects to increase their household resources but may have the greatest need for Lifeline broadband services to access healthcare, social service, and other service information and providers. The prevalence of Lifeline voice services benefits both the Lifeline household and the public by improving public access to 911 and other public safety services.

NASUCA supports improvements to the Lifeline program so that Lifeline universal service support is available to meet the needs of low-income households to afford telecommunications and information services, including broadband internet access services. NASUCA agrees that “[B]roadband service is increasingly important for participation in the 21st Century economy,” and “broadband service is not as ubiquitous or as affordable as voice service.”⁹ The FCC’s *National Broadband Plan Order*,¹⁰ *2012 Lifeline Reform Order*,¹¹ and *Lifeline Broadband Pilot*¹² project set the tone for development of Lifeline universal service to help low-income consumers afford and adopt broadband internet access service, with cooperation from ETCs and community organizations. The current NPRM’s proposal to refocus the Lifeline universal service program on incentivizing private investment in broadband infrastructure is a harsh departure from the FCC’s prior efforts to help bridge the digital divide

⁸ As of 2016, 23 states provided additional support to Lifeline subscribers, ranging from \$2.50 to \$13.00. *See*, NARUC Written Ex Parte, *In the Matter of Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-42, *et al.* (Mar. 23, 2016). View at: <https://ecfsapi.fcc.gov/file/60001550264.pdf>

⁹ NPRM ¶ 63.

¹⁰ National Broadband Plan (rel. May 17, 2010). Available at: <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>.

¹¹ *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, 27 FCC Rcd 6656 (2012) (“*2012 Lifeline Reform Order*”).

¹² *See*, Wireline Competition Bureau, *Lifeline Broadband Pilot Program Staff Report*, WC Docket No. 11-42 (May 2015). Available at: https://apps.fcc.gov/edocs_public/attachmatch/DA-15-624A1.pdf.

faced by low-income consumers. NASUCA is concerned that the NPRM proposals, if adopted, will put Lifeline eligible households in peril of either losing access to quality, affordable supported services with Lifeline support or reduced options for affordable Lifeline services.

B. The NPRM’s Proposal to Limit Lifeline Support as a Means to Incent Private Investment in Broadband Facilities Is Unsound and Unlikely to Preserve and Advance Access by Low-Income Consumers to Affordable Voice and Broadband Internet Access Services.

At the core of the NPRM’s proposals for “Improving Lifeline’s Effectiveness for Consumers,” are new interpretations of Section 254’s universal service provisions with regard to Lifeline services and the obligations of ETCs that receive universal service support. NASUCA does not agree with the NPRM’s premise that Lifeline support can and should be refocused to first encourage private investment in broadband-capable networks and second provide Lifeline support only to those ETCs that have provided facilities-based Lifeline services.¹³ Despite the NPRM’s citing to universal service principles as guidance for its Lifeline reform proposals, the NPRM fails to acknowledge and give full effect to those portions of Section 254 that explicitly relate to universal service support for low-income consumers and continuation of the original 1985 Lifeline Assistance program.¹⁴

1. The Lifeline Universal Service Mechanism Should Focus on the Needs of Low-Income Consumers for Affordable Lifeline Voice and Broadband Internet Services.

The NPRM cites to the first three universal service guiding principles set forth in Section 254(b).¹⁵ Section 254(b)(1) states that “[q]uality service should be available at just, reasonable,

¹³ NPRM ¶ 65.

¹⁴ NPRM ¶ 64.

¹⁵ NPRM ¶ 64, citing 47 U.S.C. § 254(b)(1), (2), and (3).

and affordable rates.”¹⁶ Section 254(b)(2) states that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.” Next, the NPRM quotes part of Section 254(b)(3):

[c]onsumers in all regions of the Nation ... should have access to ... advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.¹⁷

The NPRM omits the statute’s express reference to “low-income consumers.”

The full text of Section 254(b)(3) includes “[c]onsumers in all regions” but also singles out “low-income consumers” and “those in rural, insular, and high cost areas” as separate and distinct consumer groups to benefit from universal service policy:

Consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.¹⁸

In 1985, the FCC established the Lifeline Assistance program.¹⁹ Section 254(j) of the 1996 Telecommunications Act ensured the continuation of the Lifeline Assistance program.²⁰ In the *1997 Universal Service Order*, the FCC determined that it could modify the Lifeline Assistance program, consistent with its prior authority and in consideration of the other

¹⁶ The Section 254(b)(1) universal service goal of affordable rates is also stated as a consumer protection goal in Section 254(i). 47 U.S.C. § 254(i). (“Consumer Protection. The Commission and States should ensure that universal service is available at rates that are just, reasonable, and affordable.”)

¹⁷ NPRM ¶ 64, quoting 47 U.S.C. § 254(b)(3).

¹⁸ 47 U.S.C. § 254(b)(3). (Emphasis added).

¹⁹ The FCC established the Lifeline Assistance program “pursuant to authority under Sections 1, 4(i), 201, and 205 of the Act...”, citing 47 U.S.C. §§ 151, 154(i), 201, and 205. *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, ¶ 329 (1997) (“*1997 Universal Service Order*”).

²⁰ 47 U.S.C. § 254(j). (“Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance program”)

provisions of Section 254.²¹ The FCC made “Lifeline part of our universal service support mechanisms,” by revising the Lifeline Assistance program to apply nationwide and required all ETCs at that time to offer Lifeline service.²²

Historically, the needs of consumers in “rural, insular, and high cost areas” for access to upgraded facilities and networks have been met by the “high-cost” universal service program or mechanism, while the Lifeline universal service program has focused on the need of low-income consumers for affordable access to such services. As the FCC noted in the 2011 *USF/ICC Transformation Order*, “the high-cost program is not the primary universal service program for addressing affordability.”²³ The FCC reduced select high-cost support and determined that if those reductions made rates unaffordable as a result, then the Lifeline program “remains available to low-income consumers *regardless of this rule change*.”²⁴

In the same omnibus *USF/ICC Transformation Order*, the FCC denied Puerto Rico Telephone Company’s (“PRTC’s”) request for an insular Mobility Fund since PRTC had not shown that “consumers in Puerto Rico lack access to supported services because of inadequate federal universal service support.”²⁵ The FCC explained that low telephone subscribership levels, if present, would signal a lack of affordability. The FCC rejected PRTC’s request for an insular Mobility Fund because it was ““not at all apparent why the Commission should establish a new insular high-cost support mechanism rather than increase support for low-income consumers through its existing low-income support programs.”²⁶

²¹ 1997 *Universal Service Order*, ¶¶ 329-340.

²² *Id.*, ¶¶ 346, 347.

²³ *In re Connect America Fund*, 26 FCC Rcd 17663, ¶ 244 (2011) (“*USF/ICC Transformation Order*”), *aff’d sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (“*In re FCC 11-161*”).

²⁴ *USF/ICC Transformation Order*, ¶ 244. (Emphasis added).

²⁵ *USF/ICC Transformation Order*, Appendix D.

²⁶ *Id.* The 10th Circuit upheld the FCC’s ruling on the PRTC petition. *In re: FCC 11-161*, 753 F.3d at 1099-1100.

The FCC’s standards for ETC designation also reflect the differences between high-cost support, which is directed at network maintenance and upgrades, and Lifeline universal support, which is focused on service affordability. An applicant for ETC designation by the FCC must “certify that it will comply with *the service requirements applicable to the support that it receives.*”²⁷ Additionally, ETC applicants must “submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant’s network....”²⁸ But applicants for Lifeline-only ETC designation do “not need to submit such a five-year plan.”²⁹ An ETC eligible for reimbursement for Lifeline support must offer and advertise the availability of Lifeline that is defined as “a non-transferable *retail service offering* provided directly to qualifying low-income consumers....”³⁰

The FCC should allow the Lifeline program to continue to focus on improving the affordability of services made available over today’s modern communications networks for the benefit of low-income consumers and in furtherance of Section 254(b)(1), (2), (3), (i), and (j), whether the ETC provides the services over its own facilities or the networks of other communications carriers.³¹

2. Section 254(e) Does Not Require or Justify the NPRM’s Proposal that Lifeline Universal Service Support Must Apply to Both the Service Discount and Facilities Build-Out and Maintenance.

The NPRM proposes to restrict Lifeline support to facilities-based ETCs as a way to “leverage the Lifeline program to encourage access to broadband with the Commission’s efforts

²⁷ 47 U.S.C. § 54.202(a)(1)(i). (Emphasis added).

²⁸ 47 U.S.C. § 54.202(a)(1)(ii).

²⁹ *Id.*

³⁰ 47 U.S.C. §§ 54.401(a), 54.405(a). (Emphasis added). As discussed herein, the FCC has granted waivers and regulatory exceptions to certain ETCs from the obligation to offer Lifeline broadband internet access service.

³¹ 47 U.S.C. § 254(b)(1), (2), (3), (i), and (j).

to promote access to broadband through high-cost support.”³² The NPRM reads the second sentence of Section 254(e) as an “exhortation” from Congress that Lifeline universal service support “must” be spent on both facilities and services.³³ Section 254(e) states:

Universal service support. After the date on which the Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support. *A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.* Any such support should be explicit and sufficient to achieve the purposes of this section.³⁴

NASUCA disagrees that “facilities and services” is best read as conjunctive when determining the purpose for which Lifeline support is intended and how the ETC recipient must use such Lifeline support.

The FCC previously considered and rejected this very interpretation of Section 254(e), which the NPRM now advances. In 2005, USTelecom opposed TracFone’s petition for forbearance from the facilities-based requirement of Section 214(e)(A)(1). The FCC rejected USTelecom’s position that the “facilities and services” phrase in the second sentence of Section 254(e) must be read as conjunctive:

[W]e reject USTelecom’s argument that TracFone has not requested forbearance from the facilities requirement in section 254(e) and that without such forbearance TracFone cannot fulfill the obligations of an ETC. Specifically, section 254(e) requires that a “carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” USTelecom emphasizes that the words “facilities” and “services” are joined by the conjunctive article “and” and therefore an ETC must use any universal service support for facilities as well as services. We disagree with USTelecom’s interpretation.³⁵

³² NPRM, ¶ 78.

³³ See, e.g. NPRM, ¶ 72. “We seek comment on how to [determine full compliance by resellers] with the statute’s *exhortation* that universal service funding *must* be spent ‘only for the provision, maintenance and upgrading of facilities and services for which the support is intended.’ (Emphasis added). See also, NPRM ¶ 70. “We seek comment on how to balance Congress’s expectation that ETCs would invest universal service support in the areas they serve and its recognition that some amount of resale should be permissible.” (Footnote omitted).

³⁴ NPRM, ¶¶ 77, 78. (Emphasis added); 47 U.S.C. § 254(e).

³⁵ *TracFone*, ¶ 26. (Footnotes omitted).

The FCC read the first and second sentences of Section 254(e) together to discern the intent of Congress:

The preceding sentence [of Section 254(e)] states that only an ETC “shall be eligible to receive specific Federal universal service support.” The next sentence, which USTelecom quotes, then requires that “such service”, which we find refers to the specific universal support from the previous sentence, be used only for purposes “for which the support is intended.” *Reading these sentences together in their entirety, we find that Congress intended that a carrier must use the universal support received to meet the goals of the specific support mechanism under which it was distributed. For example, a carrier who receives specific Lifeline support must use that support to reduce the price of access to telecommunications services for the eligible customer.*³⁶

The FCC’s textual analysis of the second sentence of Section 254(e) provided further support for the FCC’s conclusion that “facilities” and “services” are separate terms and Lifeline universal support is properly focused on services alone.

Second, we note that not all the nominalized verbs in the sentence quoted by USTelecom, “provision,” “maintenance,” and “upgrading,” can be read to apply to both facilities and services. What for example would it mean to “maintain” a “service” apart from the “facilities”? We also note that the nominalized verbs themselves are joined by the conjunctive article “and”. Therefore, extending USTelecom’s logic, any universal support received by a carrier must always be used for the provision, maintenance, and upgrading of both facilities and services. The terms maintenance and upgrading as [sic] generally associated with a carrier’s network and not with service itself. Thus, USTelecom’s reading of section 254(e) would require us to interpret the term “service” as surplusage – a result that must be avoided when the statute admits to other interpretations. *We find the more appropriate reading is to consider these terms in the disjunctive. Thus, we conclude that an ETC receiving Lifeline support uses this specific universal service support for the purposes for which it was intended when it reduces the price of the Lifeline service by the amount of the support.*³⁷

The current NPRM’s reading of the second sentence of Section 254(e) is in conflict with the FCC’s prior, detailed statutory analysis and identification of Congressional intent. Lifeline universal service support is intended to make “services” more affordable for eligible low-income

³⁶ *TracFone*, ¶ 26 (Footnotes omitted). (Emphasis added).

³⁷ *TracFone*, ¶ 26. (Emphasis added).

households, just as the FCC twice acknowledged in the *USF/ICC Transformation Order*, as reviewed above.³⁸

In the *USF/ICC Transformation Order*, the FCC read “Section 254(e)’s reference to ‘facilities’ and ‘services’ as *distinct items* for which federal universal service funds *may* be used”³⁹ The FCC determined it was reasonable to require recipients of high-cost support to make network upgrades capable of providing both supported universal services and information services.⁴⁰ At that time, the regulatory concept of “supported services” did not include “broadband internet access services.”⁴¹ The 10th Circuit held that the FCC’s imposition of this “public interest requirement” was permissible. In that context, the 10th Circuit held that Section 254(e) provided the FCC with an “implicit grant of authority that allows it to decide how USF funds shall be used by recipients. . . .”⁴²

The NPRM suggests that denying an ETC Lifeline support for Lifeline services provided over facilities that are not owned by the ETC is similarly permissible.⁴³ NASUCA disagrees.

The NPRM’s proposal is the reverse of what the 10th Circuit found permissible. Lifeline support is paid to ETCs as a reimbursement. The NPRM proposes to keep Lifeline support away from ETCs that have not made *private investment* in specific, last-mile facilities or spectrum *prior* to the provision of Lifeline service and receipt of Lifeline support. The NPRM proposal jeopardizes the specific public interest benefits which led the FCC to grant conditional forbearance to wireless resellers from the Section 214(e) requirement that an ETC provide supported services over its own facilities or some combination of own facilities and resale. The FCC should hold to its prior determination that “an ETC receiving Lifeline support uses this

³⁸ *USF/ICC Transformation Order*, ¶ 244, Appendix D; see also, *In re: FCC 11-161*, 753 F.3d at 1099-1100.

³⁹ *USF/ICC Transformation Order*, ¶ 308. (Emphasis added).

⁴⁰ *Id.*

⁴¹ *In re: FCC 11-161*, 753 F.3d at 1043-1047; 47 U.S.C. § 254(c)(1).

⁴² *In re: FCC 11-161*, 753 F.3d at 1043-1047.

⁴³ NPRM, ¶¶ 67, 71, 78.

specific universal service support for the purposes for which it was intended when it reduces the price of the Lifeline service by the amount of the support.”⁴⁴

3. The NPRM’s Proposal to Restrict Lifeline Support to Service Provided over the ETC’s Own Facilities is in Conflict with Section 214(e) and the FCC’s Prior Grants of Conditional Forbearance to Non-Facilities-Based Wireless Carriers.

The NPRM does not reconcile its proposal to tie reimbursement for Lifeline support to the ETC’s prior investment in facilities with Congress’ recognition that ETCs may provide supported services over some combination of owned facilities and resale.⁴⁵ The NPRM concedes there may be “tension” between this proposal and the FCC’s prior grants of conditional forbearance to pure wireless resellers from the facilities-based requirement of Section 214(e)(1)(A).⁴⁶ “Tension” is an understatement.

The FCC has granted TracFone and other wireless carriers conditional forbearance from the Section 214(e)(1)(A) facilities requirement expressly to preserve and advance the goals of the Lifeline universal service program.⁴⁷ In 2005, only about one-third of eligible households were benefitting from Lifeline universal service support.⁴⁸ The FCC granted forbearance because positioning TracFone to obtain Lifeline only ETC designation would serve the public interest by “expand[ing] participation of qualifying consumers” in the Lifeline program.⁴⁹ Once designated as an ETC to offer Lifeline service, TracFone’s wireless Lifeline service would add competitive

⁴⁴ *TracFone*, ¶ 26. The FCC exercised its implicit authority to tell ETCs how to use Lifeline support in the Order on Reconsideration, by amending Section 54.403(b)(1) “to clarify that ETCs are only required to apply the Lifeline discount to the End User Common Line charge or equivalent federal charges where the ETC is receiving Lifeline support for that subscriber’s voice telephony service.” Order on Reconsideration, ¶ 43.

⁴⁵ NPRM, ¶ 70, citing 47 U.S.C. § 214(e)(1)(A).

⁴⁶ NPRM, ¶¶ 69, 70.

⁴⁷ See, *2012 Lifeline Reform Order*, ¶¶ 373, 389. (Following redefinition of “supported services” to functional terms, the FCC offered blanket conditional forbearance from the Section 214(e) facilities requirement to prospective, Lifeline-only ETCs.)

⁴⁸ *TracFone*, ¶ 24.

⁴⁹ *TracFone*, ¶ 24.

choice for Lifeline consumers and spur innovation in Lifeline service offerings.⁵⁰ In *TracFone*, the FCC held that enforcement of the Section 214(e) facilities requirement was not necessary for a pure wireless reseller to provide service at just and reasonable rates, was not necessary to protect consumer interests (subject to conditions to assure public safety access), and was not necessary to protect the public interest (subject to conditions).⁵¹ The FCC held that “requiring TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to the qualifying low-income consumers throughout the nation, regardless of where they live.”⁵²

The NPRM’s proposal does not create “tension” with the FCC’s prior grants of conditional forbearance from the facilities-based requirement of Section 214(e). The NPRM’s proposal directly conflicts with and will undermine the public benefits that have resulted from the such forbearance grants – benefits such as a choice between wireline and wireless based services, postpaid or prepaid Lifeline service offerings, and the benefits of competition – to encourage ETCs to provide more value for the same amount of support. At the end of 2017, over 10.3 million households received Lifeline services.⁵³ The majority of wireless ETCs have availed themselves of the FCC’s conditional grants of forbearance.⁵⁴ If adopted, the NPRM’s proposal will not “preserve and advance” the availability of Lifeline services to low-income consumers.⁵⁵

⁵⁰ *TracFone*, ¶ 13.

⁵¹ *TracFone*, ¶¶ 11-26.

⁵² *TracFone*, ¶ 23.

⁵³ USAC, Second Quarter 2018 Projections, App. LI08 “Lifeline Subscribers by State or Jurisdiction, January 2017 to December 2017”. Available at <http://www.usac.org/about/tools/fcc/filings/2018/Q2/LI08%20Lifeline%20Subscribers%20by%20State%20or%20Jurisdiction%20-%20January%202017%20through%20December%202017.xlsx>

⁵⁴ The FCC lists twenty-two (22) carriers that have had their compliance plans approved by the FCC, the first step towards designation as a Lifeline-only ETC under the FCC’s blanket grant of conditional forbearance. See, FCC webpage “Lifeline Compliance Plans & ETC Petitions.” Available at: <https://www.fcc.gov/general/lifeline-compliance-plans-etc-petitions>.

⁵⁵ 47 U.S.C. § 254(b).

4. The NPRM's Proposed Reform of the Lifeline Program to Address a Lack of Access to Broadband Services Is Unsound and Speculative.

The NPRM proposes to create incentives for private investment in broadband facilities by “limiting Lifeline support to facilities-based broadband service provided to a qualifying low-income consumer over the ETC’s voice- and broadband capable last-mile network.”⁵⁶ Would adoption of the NPRM proposal lead to the predicted public benefits of increased private investment in broadband facilities? Experience suggests “no.”

The NPRM’s proposed incentive is little different from the justifications provided for the institution of the 12-month port freeze in the *2016 Lifeline Order*, which the FCC has now reversed upon reconsideration.⁵⁷ In the *2016 Lifeline Order*, the FCC justified the extended port freeze as “facilitating market entry” and “allowing broadband providers the security of a longer term relationship with subscribers....”⁵⁸ In December 2017, the FCC reversed this part of the *2016 Lifeline Order* on reconsideration, agreeing with the petitioners and others “that the disadvantages to consumers of the port freeze rule, in practice, outweigh the anticipated advantages.”⁵⁹ The FCC ended this port freeze, despite some carriers’ arguments that the port freeze condition on Lifeline broadband service provided carriers with incentive “to make more significant investments....”⁶⁰

Compelling evidence casts doubt that the availability of Lifeline support is a reward or incentive sufficient to motivate common carriers to invest in more broadband infrastructure, for the ultimate benefit of Lifeline broadband service subscribers. AT&T – as an incumbent local exchange carrier (“ILEC”) and ETC in many states – has long been eligible for high-cost support

⁵⁶ NPRM, ¶ 65. The NPRM does not propose to target sufficient and explicit universal service support for new infrastructure and maintenance, as required by the last sentence of Section 254(e). 47 U.S.C. § 254(e).

⁵⁷ Order on Reconsideration, ¶¶ 33-40.

⁵⁸ *2016 Lifeline Order*, ¶ 385. See, Order on Reconsideration, ¶ 33.

⁵⁹ Order on Reconsideration, ¶¶ 35, 38.

⁶⁰ Order on Reconsideration, ¶ 36.

and obligated to offer Lifeline. There is no evidence of a correlation between the availability of Lifeline support and AT&T's decision to invest in broadband facilities. Instead, AT&T has proposed, where possible, to relinquish its ETC designation and obligation to offer Lifeline services.⁶¹ Other ILEC ETCs gave notice of their intent to avail themselves of the *2016 Lifeline Order's* offer of forbearance from the obligation to offer Lifeline broadband service, except for areas where the ETC had an obligation based on high-cost support to extend broadband facilities and services.⁶²

Any reforms of the Lifeline program to improve access by low-income consumer to affordable broadband internet access services must take into account the fact that ETCs may, for private business reasons, seek to relinquish their ETC designation. If threatened with denial of Lifeline support for not providing Lifeline service over the ETC's own facilities, a decision to invest in broadband facilities is but one option for the ETC. In such circumstances, it will likely be the low-income consumers – who need Lifeline support to afford supported services – who will lose out.

5. The NPRM's Proposal To Restrict Lifeline Support To Facilities-Based Providers Using Their Own Last Mile Facilities Will Harm Lifeline Consumers and Complicate Regulatory Oversight.

Making broadband facilities ownership the test for Lifeline reimbursement will harm Lifeline consumers by reducing their choice of providers, providing those remaining participating ETCs with greater market power, and creating regulatory uncertainty. The Lifeline

⁶¹ See, e.g. In the Matter of Southwestern Bell Telephone Company, d/b/a AT&T Missouri's Notice of Relinquishment of its ETC Designation, File No. IO-2017-0132, Order Confirming AT&T's Relinquishment of its Eligible Telecommunications Carrier Designation (Mo. P.S.C. 2017). Available at: https://www.efis.psc.mo.gov/mpsc/commoncomponents/view_itemno_details.asp?caseno=IO-2017-0132&attach_id=2017010428.

⁶² *2016 Lifeline Order*, ¶¶ 309-319. See, e.g. Windstream letter Notice of Forbearance from Lifeline BIAS Obligations, WC Docket No. 11-42 (filed Dec. 1, 2016). Available at: <https://ecfsapi.fcc.gov/file/1201132151507/WIN%20Forbearance%20Election%2012.1.16.pdf>. Windstream, Verizon and others stated that they might still chose to offer Lifeline Broadband Internet Access service in limited areas where they already were commercially offering services meeting the minimum speed requirements.

reforms proposed will not preserve and advance the availability of Lifeline voice and broadband services at affordable rates for eligible low-income consumers.

The NPRM's proposal to restrict Lifeline service reimbursement to facilities-based ETCs will have the most direct impact on Lifeline customers of wireless ETCs such as TracFone and others that obtained Lifeline-only ETC designation based on the FCC's conditional forbearance from the facilities requirement of Section 214(e). These wireless ETCs rely, all or in part, on the resale of nationwide wireless carrier's capacity and services.

Wireless ETCs also provide Lifeline service to an important group of consumers – those who are homeless or otherwise lack a permanent residential address.⁶³ The FCC's clarification of the one-per-household rule in 2012 made it possible for the homeless, shelter residents, and others without a fixed address to obtain Lifeline service, largely from wireless ETCs.⁶⁴ The NPRM's proposal to discontinue Lifeline reimbursement to non-facilities-based ETCs would have a significant and harmful impact on the needs of these consumers for affordable Lifeline voice or broadband internet access services. Any reforms to the Lifeline program should strengthen the preservation and advancement of Lifeline universal service goals for low-income consumers, including the vulnerable homeless and those without a permanent residential address, by allowing affordable Lifeline services from a choice of providers and technology.

Lifeline service is only useful if the low-income consumer can learn whether Lifeline voice and broadband services are available where they need it. The NPRM's proposal would allow an ETC that relies in part on resale to receive Lifeline support only for services provided over its own facilities. This approach would inject even more uncertainty for low-income consumers in their effort to identify not only whether an ETC is designated to offer Lifeline

⁶³ As early as 1996, community groups advocated that the homeless and consumers living in group homes should benefit from the availability of Lifeline universal service support. *1997 Universal Service Fund Order*, ¶ 406.

⁶⁴ *2012 Lifeline Order*, ¶¶ 69-80.

service in their general area, but whether the ETC will actually deliver Lifeline service to the consumer. Must a Lifeline applicant quiz the ETC about the ETC's ownership of facilities, the duration of any lease of spectrum, and the proximity of those facilities to the consumer? How are Lifeline eligible consumers to know whether or not they are within a census block where the ETC, as a recipient of high-cost support, has an obligation to offer Lifeline broadband support? How will the states and the FCC assure that there is at least one ETC designated and qualified to provide Lifeline supported services to each low-income consumer, wherever the consumer is? The proposal to restrict Lifeline broadband support to only those ETCs that meet, on a "last mile" basis, the proposed facilities-based requirement will leave Lifeline consumers confused and with fewer or no option for Lifeline-supported services, including broadband internet access service.

As the NPRM recognizes, the FCC's current universal service regulations do not require that those facilities owned by an ETC even be located in the same state where the ETC holds a designation.⁶⁵ The FCC's grants of conditional forbearance from the facilities-based requirement of Section 214(e) to wireless Lifeline-only ETCs helped streamline the review by states of Lifeline ETC applications. States no longer need to question what facilities suffice or what mix of "own facilities and resale" suffice under Section 214(e). Lifeline consumers are able to benefit from the availability of services over today's modern communications networks, even if the owners of those networks do not desire to participate directly in the provision of universal service as an ETC.

The NPRM's proposal, if adopted, would complicate the review of an application for ETC designation and the recertification by states of the continued eligibility of an ETC to receive support. Adoption of the Lifeline reforms proposed in the NPRM would cause these existing

⁶⁵ NPRM, ¶ 70.

service benefits and administrative efficiencies to be lost or undone, without any reasonable prospect that ETCs will be incentivized to invest in broadband capable facilities or spectrum.

6. Definition of “Facilities”

If the FCC adopts this contested NPRM proposal, NASUCA opposes using of the definition of facilities that the FCC has recently adopted for Enhanced Tribal Lifeline support.⁶⁶ To receive Enhanced Tribal Lifeline support, a “fixed wireless provider must ... provision or equip a broadband wireless channel to the end-user premises over licensed or unlicensed spectrum...” “[A] mobile wireless provider must hold usage rights under a spectrum license or a long-term spectrum leasing arrangement along with wireless network facilities that that [sic] can be used to provide wireless voice and broadband services.”⁶⁷ The FCC describes the indicia of facilities-based wireline service in similar fashion, requiring any leased services to be subject to a minimum 10-year lease or indefeasible right of use.⁶⁸

NASUCA does not support adoption of such a strict concept of “facilities-based” for baseline, nationwide Lifeline support. Imposing new hurdles is not a sound way to bridge the digital divide that prevents low-income households from obtaining quality, affordable broadband internet access service. The affordability of the connection, the quality of the service, and whether the service supports public safety communications are what matters to consumers, not what corporate entity owns a slice of spectrum or the duration of a lease agreement or what percentage of the communications channel depends on third party networks. The FCC has

⁶⁶ NPRM, ¶ 67; *see*, Fourth Report and Order, ¶¶ 21-29. The FCC now restricts “enhanced Tribal support to (1) fixed or mobile wireless facilities-based Lifeline service provided on Tribal lands with wireless network facilities covering all or a portion of the relevant Lifeline ETC’s service area on Tribal Lands; and (2) facilities-based fixed broadband or voice telephony service provided through the ETC’s ownership or a long-term lease of a last-mile wireline loop facilities capable of providing Lifeline service to all or a portion of the ETC’s service area on Tribal lands.” *Id.*, ¶ 24.

⁶⁷ *Id.*, ¶ 24. (Footnotes omitted).

⁶⁸ *Id.*

properly addressed these consumer and public safety concerns both through conditions tied to forbearance grants from the facilities-based requirements and through the establishment of minimum service standards.

Indeed, in the Memorandum Opinion and Order that accompanies the NPRM, the FCC ruled on whether and which products and approaches employed by certain ETCs, such as “premium Wi-Fi” delivered service, actually comport with the Lifeline minimum service regulations.⁶⁹ Adoption of a strict facilities-based requirement, including the definition adopted for Enhanced Tribal Lifeline, will decrease the number of common carriers designated as an ETC to offer Lifeline and so stifle innovative approaches on how to provision Lifeline services, including broadband internet access services. Clarification and periodic updates to the minimum service standards are a better way to make sure that Lifeline support is targeted to provide low-income consumers with access to quality services at just, reasonable and affordable rates, consistent with Section 254(b)(2) and 254(i).

7. Summary

The FCC should not adopt the NPRM proposed Lifeline reforms for the purpose of incentivizing carrier investment in broadband facilities. Such reforms will disadvantage Lifeline consumers, by restricting their choice to Lifeline broadband service to only those ETCs that meet the NPRM’s restrictive last-mile, facilities-based requirement with the attendant adverse consequences of reduced competition. The FCC should not treat the needs of low-income consumers for access to supported services – made more affordable with Lifeline support – as a regulatory commodity to be packaged and held out to incent private investment in broadband facilities. The likelihood that the reforms will achieve the objective of increased broadband

⁶⁹ Memorandum Opinion and Order, ¶¶ 47-52.

deployment is speculative. The FCC should follow the port freeze portion of the Order on Reconsideration and keep the Lifeline program focused on how best to provide Lifeline consumers with access to affordable, quality voice and broadband internet access service from a variety of providers. The NPRM's proposal to discontinue Lifeline support for non-facilities-based ETCs, i.e. wireless resellers, is an unreasonably blunt tool to try and reduce waste, fraud and abuse.⁷⁰ NASUCA agrees with TracFone that the FCC has other, more targeted regulatory tools available to address and deter fraud.⁷¹

C. The FCC Should Halt the Phase Down of Lifeline Support for Voice Service

In the *2016 Lifeline Reform Order*, the FCC set a schedule for the phase-down of support for Lifeline voice service through December 1, 2021. The NASUCA supports a halt to the phase-down.⁷² As noted above, some ETCs have chosen to relinquish their designation, while other ETCs are not obligated to offer broadband internet access service as an alternative to voice service throughout their service area. The FCC's clarification that "Wi-Fi premium" access does not qualify as Lifeline broadband internet access service may cause some ETCs to report more Lifeline services as voice service than broadband. ETCs do report Lifeline service data, broken out between voice, bundled, and broadband. Any phase-down in Lifeline support for voice services should be informed by review of such data.

Further, the FCC's distribution of high-cost support through the Mobility Fund Phase II and Connect America Fund Phase II has proceeded more slowly than originally planned. Thus it is too soon to know how much high-cost support is needed and where it will be spent for the construction, maintenance and upgrading of facilities which may, once finished and supporting

⁷⁰ NPRM, ¶ 68.

⁷¹ NPRM, ¶ 73.

⁷² See, NPRM, ¶¶ 74-76.

commercial broadband service, make Lifeline broadband internet access services more available. Until then, low-income consumers in those areas without broadband capable networks will need to rely on voice services.

D. The Concept of a Lifeline Broadband Provider as a Federally Designated ETC Should End, But the Goal of Broadening ETC Participation Should Be Preserved

In the *2016 Lifeline Order*, the Commission created the “Lifeline Broadband Provider” (“LBP”) as an exclusively federal category of Lifeline ETCs, to encourage a greater variety of providers to obtain ETC designation to offer Lifeline broadband internet access service.⁷³ To that end, the FCC amended its regulations by preempting states from their statutory authority under Section 214(e)(6) as first in line to designate a carrier as an ETC and possible imposition of state requirements on such Lifeline broadband ETCs.⁷⁴ The National Association of Regulatory Utility Commissions (“NARUC”) and certain individual state commissions appealed this portion of the *2016 Lifeline Order* and NASUCA joined as an intervenor.⁷⁵

In the present NPRM, the FCC states that its earlier action was “inconsistent with Section 214 ... which gives primary responsibility for designation of eligible telecommunications carriers to the states.”⁷⁶ The FCC invites comment on reversal of the *2016 Lifeline Order*’s preemption of states’ role in the designation of ETCs and the elimination of LBPs as federally designated, stand-alone ETCs without an obligation to provide voice service.⁷⁷

⁷³ *2016 Lifeline Order* ¶¶ 219-222, 229-258.

⁷⁴ *Id.* See, e.g. 47 C.F.R. § 54.201 “Definitions of eligible telecommunications carriers, generally,” Subpart (j) “A state commission shall not designate a common carrier as a Lifeline Broadband Provider eligible telecommunications carrier.”

⁷⁵ See, *NARUC v. FCC*, Case No. 16-1170 (D.C. Cir. Filed June 3, 2016); *Wisconsin v. FCC*, Case No. 16-1219, (D.C. Cir., filed June 30, 2017). On voluntary remand back to the FCC, by grant of the D.C. Circuit Court on April 19, 2017). See, NPRM ¶ 56.

⁷⁶ NPRM, ¶ 55.

⁷⁷ NPRM, ¶¶ 55-58.

NASUCA supports reversal of the portion of the *2016 Lifeline Order* that sought to interfere with the authority Congress granted to the states through Section 214(e) regarding designation of common carriers as ETCs. As NASUCA briefed in *NARUC v. FCC*, Section 214(e) of the Act reflects Congress' determination that states with jurisdiction shall have primary responsibility for designation of common carriers as the ETCs that will be obligated to provide supported services and will be eligible for federal universal service support.⁷⁸ If the common carrier is not subject to jurisdiction of a state commission, then "the Commission shall upon request" make the ETC designation.⁷⁹ No provision of the Act gives the FCC authority to override Congress' delegation to state commissions of the primary role in determining whether a common carrier qualifies for ETC designation. Congress granted the FCC the authority to forbear from its regulations, or from the provisions of the Telecommunications Act, as they apply to carriers.⁸⁰ Congress did not grant the FCC the authority to forbear from the provisions of the Act as they apply to the states.

NASUCA supports elimination of those regulations, as set forth in the NPRM's Appendix B "Proposed Regulations," that established the LBP construct as an ETC category subject to the FCC's exclusive jurisdiction for designation and relinquishment. And, NASUCA restates its position that the states and FCC should encourage more providers to seek designation as ETCs to offer Lifeline voice and/or Lifeline broadband internet access services to eligible consumers, whether in part of a single state or in multiple areas in the country.⁸¹ The LBP concept did attract applications for designation by providers who offered creative proposals to

⁷⁸ 47 U.S.C. § 214(e)(1), (2).

⁷⁹ 47 U.S.C. § 214(e)(6).

⁸⁰ 47 U.S.C. § 160(a).

⁸¹ NASUCA Resolution 2017-05, "Urging State Commissions and the FCC to Adopt Policies and Processes to Provide Lifeline Eligible Households with Access to Affordable Lifeline Voice and Broadband Internet Access Services." (June 12, 2017). Approved, two members abstaining. Available at: <http://nasuca.org/nwp/wp-content/uploads/2017/01/2017-05-NASUCA-Lifeline-Broadband-Resolution-pdf>.

address the needs of Lifeline households for affordable broadband internet access service.⁸² Community groups and advocates for low-income consumers generally supported those ETC applications.⁸³ As shown in the Wireline Competition Bureau's Low-Income Broadband Pilot Report, bridging the digital divide for low-income households may depend not only on Lifeline support but other community or business supplied resources to address the need for equipment and training.⁸⁴ While the FCC should amend its regulations to undo the legally unsound federal-only LBP construct, the FCC should preserve and advance the *2016 Lifeline Order's* goal of broadening the number and variety of providers of Lifeline voice and/or broadband internet access service.

E. The National Verifier

The NPRM invites comments on ways to encourage states to work cooperatively with the FCC and the Universal Service Administrative Company to integrate state databases with information about consumer eligibility into the National Verifier, as the function of making eligibility determinations shifts from ETCs to the National Verifier.⁸⁵ NASUCA supports the *2016 Lifeline Order's* key objectives in establishing the National Verifier, including the goals of better serving eligible beneficiaries, improving the enrollment process, and preventing waste, fraud, and abuse.⁸⁶

⁸² The FCC's website provides a list of the applications received for Lifeline Broadband Provider designation. Available at: <https://www.fcc.gov/lifeline-broadband-provider-petitions-public-comment-periods>.

⁸³ See, e.g. Lifeline Reform and Modernization, WC Docket No. 11-42, Comments of Voices for Internet Freedom Members (filed Mar. 16, 2017). The comments express support, on the merits, for applications such as filed by Kajeet and Spot On, Kajeet proposed a national service. Spot On proposed to offer Lifeline broadband to a specific multi-unit housing complex in Queens, NY.

⁸⁴ See, Wireline Competition Bureau's Low-Income Broadband Pilot Report, WC Docket No. 11-42 (May 2015). Available at: https://apps.fcc.gov/edocs_public/attachmatch/DA-15-624A1.pdf

⁸⁵ NPRM, ¶¶ 59-61.

⁸⁶ NPRM, ¶ 59, citing the *2016 Lifeline Order*.

However, a state's failure to meet the FCC's expectations of timely state cooperation at reasonable cost should not result in a halt of the processing of all Lifeline enrollments or those Lifeline applications whose eligibility may be checked against a state database. That approach would unreasonably harm the very low-income households that should benefit from the continued availability of Lifeline universal service support, pursuant to Section 254(b), (i), and (j).⁸⁷ On the state's side, the state may face legitimate legal, budget, or staffing constraints that impede timely cooperation on the FCC's terms. The consequence of a delay by a state should not fall on the Lifeline applicant.

F. ETC Sales and Eligibility Verification Employees and Contractors.

The NPRM proposes a prohibition on agent commissions related to enrolling subscribers in the Lifeline program, codifying a requirement that ETC representatives who participate in customer enrollment register with USAC, and other steps to reduce the potential for improper enrollments and waste, fraud, and abuse.⁸⁸ NASUCA shares the FCC's concern that commissions may undermine the integrity of the enrollment and verification of eligibility processes. A prohibition against commissions paid to ETC representatives would reduce incentives to create phantom subscribers.

Also, Lifeline applicants are asked to supply sensitive personal information as part of their application. It is imperative that there be safeguards and consequences so that those ETC representatives that have access to such information do not misuse such information. NASUCA supports the development of protocols to assure that ETCs representatives involved in the enrollment process can be matched to the subscriber application and so may be subject to any consequences for misconduct or misuse of such sensitive information.

⁸⁷ 47 U.S.C. § 254(b), (i), and (j).

⁸⁸ NPRM, ¶¶ 90-94.

G. Adopting a Self-Enforcing Budget

The NPRM proposes to replace the current budget mechanism that has a soft cap, with a “self-enforcing budget.”⁸⁹ The NPRM requests comments on how to set the budget limit.

NASUCA represents the interests of both consumers who contribute to the federal USF and consumers who benefit from the federal USF mechanisms, including the Lifeline program. NASUCA is sensitive to the impact of the cost of the universal service fund mechanisms on consumer’s bills for interstate telecommunications services. But Lifeline support provides a direct benefit to low-income consumers and so benefits all in the community with their inclusion and connection.

The current budget approach is workable. Demand for Lifeline support has not triggered the reporting requirement and the related need to assess how to respond to demand that is near that year’s budget.

NASUCA has no specific recommendation as to an appropriate level for a hard budget cap at this time. The NPRM notes that the current budget is \$2.25 billion and in 2015 disbursements totaled \$1.5 billion, following implementation of initial steps to improve verification, recertification and elimination of duplicate enrollments.⁹⁰ Setting a budget close to the level of actual disbursements in recent years would not be appropriate.

Selection of an appropriate budget level should take into consideration the number of households in poverty during the past five or ten years as well as peak levels of participation in the Supplemental Nutrition Assistance Program (“SNAP”) and other assistance programs that are used as program-based eligibility criteria for Lifeline. Any discussion of an appropriate budget

⁸⁹ NPRM, ¶¶ 104-110. The *2016 Lifeline Order* implemented a budget process, but not a cap. “[I]f Lifeline disbursements in a given year meet or exceed 90 percent of that year’s budget, initially set at \$2.25 billion, the Bureau is required to issue a report to the full Commission detailing the reasons for the increased spending and recommending next steps.” *Id.*, ¶ 110.

⁹⁰ NPRM, ¶ 109.

should also address whether the \$9.25 per month per qualified household is sufficient, under Section 254(e), to accomplish the universal service goal of Section 254(b) to make Lifeline broadband internet access more affordable for low-income consumers.⁹¹

While the implementation of the National Lifeline Verifier is underway, some reduction in Lifeline enrollment may result. And, as more ETCs have accepted high-cost support with the obligation to offer Lifeline broadband services when commercially available, more low-income consumers may have broadband internet access services available but at costs several multiples of telephone service. These low-income consumers may be more motivated to apply for Lifeline broadband service support. The impact of the federal Tax Cuts and Jobs Act on poverty levels and on low-income consumers, including their spending power, remains unknown. Significant and varied natural disasters – devastating hurricanes and fires – can rapidly increase the number of households that qualify as low-income. Any budget cap should be set high enough to accommodate these changes in the number of low-income consumers in need of Lifeline support. The FCC should not set a budget level process and budget level that would require the curtailment of Lifeline service broadly or eliminate the availability of Lifeline service in certain geographic areas such as cities.

H. Maximum Discounts

The NPRM proposes adoption of a maximum discount approach, whereby the Lifeline consumer must pay something towards the cost of the Lifeline supported service.⁹² The NPRM proposes this change as a way to assure that only low-income consumers who actually value the service obtained from the ETC purchase the service. The NPRM suggests that this change might

⁹¹ 47 U.S.C. §§ 254(b), (e).

⁹² NPRM, ¶¶ 112-116.

lessen the need for the establishment of minimum standards for the Lifeline voice service or Lifeline broadband service offered by ETCs.

This proposed change should not be adopted. The FCC's minimum standards for Lifeline voice and Lifeline broadband internet access service offerings meet an important need, given that states do not regulate the rates for wireless services or broadband internet access services. To obtain broadband internet access service, low-income consumers may incur other expenses for equipment such as a modem and computer, deposits and other fees. Imposing a maximum discount on Lifeline broadband service would make it more difficult for a low-income household to afford it. Lifeline broadband service providers may decline to offer service based on the low-income household's creditworthiness. Adoption of a maximum discount would thwart the Section 254(b) universal service goal of preservation and advancement of Lifeline universal service.

The Lifeline universal service program is not comparable to the other universal service support programs such as E-Rate, Rural Health Care, and the Connect America Fund, each of which requires recipients to pay a portion of the cost of the service. Lifeline support is provided as pass through by the ETC, on a customer by customer basis specifically to address affordability. As Commissioner O'Rielly recognized in his separate statement, some portion of the participating households are truly destitute and cannot afford to contribute even one dollar to the service. As another commenter observed, an estimated nine million American households are unbanked, and another 19.9 percent are underbanked, using money orders, payday loans and check cashing or pawn shops to pay their monthly bills.⁹³ For many, a co-pay requirement would mean the difference between having and not having network connectivity.⁹⁴ Schools and

⁹³ Consumer Action, Jan. 24, 2018, pp. 2-3.

⁹⁴ *Id.*

libraries, rural health care facilities and carriers that receive Connect America Fund support are banked. They are not similarly situated to Lifeline households.

The NPRM asks: “Do the users of the supported service value that service more if they contribute financially?” The answer is no. Lifeline consumers that opt for no-cost wireless Lifeline service receive a fixed amount of service per month for the \$9.25 in support. They have the option of buying additional airtime. The fact that the Lifeline consumer does not buy more airtime is more likely a result of the Lifeline consumer’s need to allocate very limited resources among other necessities like food, shelter.

The NPRM asks whether a maximum discount level or co-pay would make consumers more sensitive to the price and quality of the service and therefore make minimum standards for the services offered by supported ETCs unnecessary.⁹⁵ Again, the answer is “no.” NASUCA supports the FCC’s adoption of minimum standards. Lifeline consumers should have access to voice and advanced services at just, reasonable and affordable rates which are comparable to services which have been subscribed to by a majority of residential customers throughout the nation. The FCC’s minimum standards help Lifeline customers obtain the type of quality robust service that is essential to participate in today’s society.⁹⁶ As the Memorandum Opinion and Order illustrates, ETCs have differing concepts of what network and services – such as “premium Wi-Fi service” connections in businesses and public spaces -- suffice as broadband internet access service. A co-pay requirement would not provide the requisite assurances. With or without co-pays, low-income households have little or no ability to prevent companies from

⁹⁵ NOI, ¶ 116

⁹⁶ 2016 Lifeline Reform Order, ¶¶ 69-71.

giving them “second tier”⁹⁷ services. The support that the ETCs receive from the Lifeline program properly carries with it the obligation to meet the minimum standards.

I. Lifeline Support Tailored to Target the Digital Divide

As part of the NOI, the FCC suggests that Lifeline support should be targeted to address a lack of access in areas where private network owners have not invested in broadband facilities, such as rural and Tribal areas.⁹⁸ The NOI also suggests that Lifeline support should be refocused to provide support only to Lifeline eligible households that have not adopted broadband internet access services.⁹⁹ The NOI questions whether some increased level of enhanced Lifeline support should be adopted to target such problems.

NASUCA agrees with observations in the articles cited in footnote 246 of the NOI that companies have not invested in broadband facilities in rural and low-income urban areas and that persons in those areas lack affordable access to broadband offerings at desired and needed speeds. The source of the problem is easily identified: market forces prompt companies to invest in areas where profits will be realized and to neglect areas where profits will not be realized. These forces work in opposition to the universal service public policies that quality advanced services be available at affordable rates to consumers in all areas.

NASUCA does not have at this time a recommendation as to an appropriate level of enhanced support to address these specific concerns. As addressed above, NASUCA does not believe that the Lifeline universal service program is the appropriate mechanism to address a lack of infrastructure and facilities. NASUCA would also oppose, as may be implicit in the

⁹⁷ *Id.*, ¶ 75.

⁹⁸ NOI, ¶¶ 121-129.

⁹⁹ *Id.*

NOI's discussion,¹⁰⁰ any outcome such that new enhanced Lifeline support would be paired with the elimination or reduction of Lifeline support to eligible low-income consumers in other areas.

Identification of an appropriate regulatory response to these issues should be based on a well-developed record, supported by data about broadband network availability and adoption rates, and informed by consideration of past pilot programs, as well as other community or industry efforts to help low-income households bridge the digital divide.

J. Benefit Levels

In the NOI, the Commission invites comment on whether Lifeline service support received by a household should be subject to a time limitation or limit on the total level of assistance received.¹⁰¹ NASUCA is opposed to this proposal. The more compelling questions are how to assure that Lifeline eligible households are able to obtain and stay connected, whether through Lifeline voice service or Lifeline broadband internet access service. Telephone subscribership levels were used as a benchmark in the past. If Lifeline households adopt broadband internet access, with voice service as part of a bundle or VoIP, and the household loses that broadband internet access due to payment problems, then that is one less household connected to today's modern communications network including access to public safety resources. As noted above, the FCC should assess whether the level of monthly Lifeline support for broadband internet access service is sufficient to help low-income household acquire and keep broadband internet access service, to preserve and advance the universal service goals of Section 254(b).

¹⁰⁰ See, e.g., NOI, ¶ 121 (“changes to the Lifeline program funding paradigm ... [to] more efficiently target funds ...”), ¶ 126 (How to target “enhanced Lifeline support for consumers in rural and rural Tribal areas .. while promoting the interests of fiscal responsibility ...”).

¹⁰¹ NOI, ¶¶ 130, 131.

III. CONCLUSION

For the reasons set forth above, NASUCA encourages the Commission to make only those changes to the Lifeline universal program and the obligations of Eligible Telecommunications Carriers that will enhance the ability of low-income consumers to benefit from affordable access to voice and broadband internet service from a variety of providers that best meet their needs.

Respectfully submitted,

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