**Before the**

**Federal Communications Commission**

**Washington, D.C. 20554**

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| In the Matter of Bridging the Digital Divide<br>for Low-Income Consumers | )<br>) | <br>WC Docket No. 17-287 |
| In the Matter of Federal-State Joint Board<br>on Universal Service Lifeline and Link Up<br>Reform and Modernization | )<br>)<br>) | <br><br>WC Docket No. 11-42 |
| Telecommunications Carriers Eligible for<br>Universal Service Support | )<br>) | <br>WC Docket No. 09-197 |

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


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## I. REPLY COMMENTS

### A. 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 that, if adopted, would reduce the availability and affordability of Lifeline supported voice and broadband internet access service.[1] The National Association of State Utility Consumer Advocates' ("NASUCA") opposition to the FCC's core proposal to refocus the Lifeline program on investment in infrastructure is shared by a symphony of other commenters. This NPRM proposal should not be adopted because it would undermine universal service goals and harm Lifeline eligible consumers and their communities. NASUCA's Reply Comments focus on this NPRM proposal.

[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).

NASUCA will also reply to the mix of comments regarding the FCC's proposals to:

- end the Lifeline Broadband Provider ("LBP") concept;
- suspend the phase-down of Lifeline support for voice services;
- adopt a strict, self-enforcing budget cap;
- impose limits on the availability of Lifeline service;
- suspend the requirement that wireless Lifeline handsets be Wi-Fi enabled;
- require Lifeline subscribers pay some amount for Lifeline service; and
- address TracFone's proposal to describe Lifeline services in terms of "units."

NASUCA further opposes USTelecom's request that the FCC revise the definition of universal "supported services" by deleting the reference to broadband services.

B. <u>The FCC Should Not Require ETCs to Provide Lifeline Services Over Their Own Facilities</u>

The NASUCA Comments address the legal and policy shortcomings of the NPRM's proposal to convert the Lifeline program to an infrastructure incentive program. Other parties' comments demonstrate a strong consensus that the Lifeline program should continue as the universal service program focused on making affordable telecommunications and advanced services available to eligible low-income households.[2] The FCC should not recast the Lifeline program as an instrument to promote broadband investment or to keep Lifeline support away from wireless carriers that rely on network capacity owned by other carriers. The NPRM's proposal will harm Lifeline eligible households rather than promote the availability and affordability of voice and broadband internet access services.[3]

[2] *See, e.g.* NARUC Comments at 18-22; USTelecom Comments at 1-2 (Should not utilize the Lifeline program to achieve a goal for which it is not designed); New York Public Service Commission ("NYPSC") Comments at 1-2; Public Utility Commission of Ohio ("PUCO") Comments at 1-5; NATOA Comments at 3; National Hispanic Media Coalition at 6-11; Low-Income Consumer Advocates at 1-6; Cox Communications Comments at 1-3; Mobile Future Comments at 1-8; Verizon Comments at 8-10; TracFone Comments at 1-44; INCOMPAS Comments at 2, 4-7, 15-16; Cities of Boston, et al. Comments at 3-10. *But see*, Betty Ann Kane Comments at 5-9. Ms. Kane, Chair of the District of Columbia Public Service Commission, supports the NPRM proposal due to a lack of empirical evidence that Lifeline support received by wireless reseller ETCs has been invested in network expansion.

[3] Sprint Comments at 14-17.

Many commenters have refuted the NPRM's premise that Lifeline reimbursement provided to wireless resellers does not support the maintenance and expansion of networks. As AARP explains, "[r]esellers buy capacity from facilities-based providers, and the increased demand from resellers thus encourages investment by facilities-based providers."[4] According to INCOMPAS, the availability of Lifeline support is not sufficient to incent network owners to invest where the margins from Lifeline service are slim and capital resources are scarce.[5] Dr. John Mayo, an economist, provides a declaration on behalf of CTIA. Dr. Mayo notes that mobile virtual network operators ("MVNOs") "and other resellers throughout the economy have been shown to promote economic efficiency, invigorate competition, drive price reductions and satisfy the nuanced need of consumers that would otherwise go unfulfilled."[6] Dr. Mayo determined that requiring wireless reseller Eligible Telecommunications Carriers ("ETCs") to offer Lifeline over their own facilities or else lose Lifeline subscribers will not incent more network investment:

> First, … facilities-based carriers are already the beneficiaries of the capacity utilization caused by MVNO customers, including their Lifeline customers. Indeed, as explained, MVNO customers are likely to cause greater utilization of the facilities-based carriers' networks than if the facilities-based carriers were to solely provide the services themselves. Thus, to the extent that MVNO customers do switch to facilities-based firms as a consequence of the proposal, capacity utilization is likely to fall rather than increase, thereby reducing incentives for network investment.[7]

Dr. Mayo further determined that NPRM's proposal would harm Lifeline eligible consumers, contrary to universal service policy of promoting connectivity.

> Second, some MVNO customers will not switch to facilities-based providers as a consequence of the regulatory-induced price increase brought about by the proposal's adoption. This will, in turn, leave a set of vulnerable customers with higher bills and with

[4] AARP Comments at 13-15; NARUC Comments at 21-22; NYPSC Comments at 2.
[5] INCOMPAS Comments at 15-16; *see also*, Sprint Comments at 20-22
[6] *Id*., ¶ 12; *see also* Benton Foundation ("Benton") Comments at 3-4, 7-8; AARP Comments at 14.
[7] CTIA Comments, Mayo Declaration ¶ 14.

> a heightened sense that their most salient option is simply to not subscribe. In this manner, adoption of the proposal would be to harm, rather than advance, the goal of universal connectivity.[8]

Elimination of wireless resellers from the Lifeline market would reduce competition, provide an unnecessary advantage to facilities-based carriers, and, more importantly, disadvantage consumers.[9]

The comments by low-income advocacy groups, communities, and even health care service providers illustrate the many varied ways that the adoption of the NPRM's proposal would harm Lifeline eligible households and diminish universal service.[10] Eliminating wireless reseller Lifeline ETC offerings would reduce competitive pressure on ETCs to develop more robust Lifeline offerings. The costs of Lifeline service offerings from facilities-based wireline or wireless providers require out-of-pocket monthly charges that render such services unaffordable and out-of-reach.[11] The NPRM's proposal would particularly impact transient or homeless consumers who could not obtain a facilities-based wireline Lifeline service connection.[12] An increase in the number of Lifeline eligible households that are disconnected is a likely result.

The NPRM would also diminish the many public benefits that arise from connecting more low-income households to today's modern communications network. If low-income households are less connected, then public safety is compromised. Healthcare providers and insurers take advantage of the voice and texting capabilities provided by wireless Lifeline

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[8] *Id*.
[9] AARP Comments at 14; Benton Comments at 6-9; INCOMPAS Comments at 4-7.
[10] Joint Comments of Pennsylvania's Low Income Consumers, Service Providers, Organizations and Consumers Rights Advocates ("Pa. Consumers Coalition") at 1-3; Multonah County Library Comments at 1 (Multonah County Library's "Digital Equity Program" counts on Lifeline service as part of its blueprint to help bring broadband connectivity to homes and schools in its service area in Portland, Oregon.).
[11] AARP at 16; Pa. Consumers Coalition Comments at 1-3; Low-Income Consumer Advocates Comments at 8-13; NARUC Comments at 20-21.
[12] Minn. P.U.C. and Minn. Dept. of Commerce Comments at 12 ("Minn. Agencies"); NARUC Comments at 20-21.

services to help Lifeline households improve their health and reduce health care costs.[13] Limiting Lifeline reimbursement to facilities-based service will deter or reduce the effectiveness of businesses and community groups that are trying to bridge the digital divide for low-income households.[14]

Other commenters share NASUCA's concern that Lifeline voice (alone) or voice and broadband internet access services from facilities-based ETCs are not uniformly available throughout the Nation.[15] The premise of the NPRM – that Lifeline eligible households could maintain connectivity and simply switch to a facilities-based ETC – is not supported.

The FCC should not adopt this NPRM proposal to eliminate wireless Lifeline service provided by resellers. The actions proposed in the NPRM to refocus and limit Lifeline service reimbursement to facilities-based service could trigger a cascade of severe and unwarranted harms on Lifeline eligible households, the marketplace for Lifeline services, and the communities, public safety agencies, and businesses that are working to maximize the public policy benefits of Lifeline supported voice and broadband internet access services. The FCC should keep the Lifeline program focused on affordability and keep the Connect America Fund focused on network improvement.

C. The FCC Should End the Lifeline Broadband Provider ETC Category

NASUCA, NARUC, and individual state commissions support the NPRM's proposal to end the Lifeline Broadband Provider ("LBP") concept and regulations.[16] The FCC previously created the LBP as a federal-only ETC in contravention of the provisions of Section 214(e),

[13] UMPC For You Comments at 1-3; American Health Insurance Plans Comments at 1-3; EmblemHealth Comments at 1-2.
[14] *See, e.g.*, Applied Research Designs, Inc. ("ARDI") Comments at 4-6.
[15] Indiana Utility Regulatory Commission Comments at 1-4; Missouri Public Service Commission ("Mo. PSC") Comments at 3-4, 6; Minn. Agencies Comments at 5; NARUC Comments at 18-20; Open Technology Institute Comments at 21; Sprint Comments at 17; Benton Foundation at 5-6.
[16] NARUC Comments at 10-18; Minn. Agencies Comments at 2-3.

which vests states with primary authority to designate common carriers as ETCs.[17] As such, the LBP concept is legally unsound. Additionally, the concept of a federal-only LBP complicates administration of some state programs.[18] However, some commenters support continuation of the LBP, which they view as an efficient path to obtain designation as an ETC in multiple states or for Lifeline only broadband service providers.[19] NASUCA submits the FCC should end the LBP as a type of ETC. States and the FCC can and should work to make the ETC designation process efficient so it promotes entry by common carriers and community partners that may offer novel approaches to bridge the digital divide for Lifeline-eligible households. The Commission should adopt this particular NPRM proposal.

### D. The FCC Should Halt the Phase-Down Of Lifeline Support for Voice Services

There is broad support for continuation of Lifeline support for voice services. NASUCA concurs with NARUC and others that continuation of Lifeline support for voice service is necessary, since broadband internet access service is no longer classified as telecommunications service.[20] Voice service remains an essential service.[21] Lifeline voice services allow consumers to contact public safety responders, through voice or text (where supported).[22] Lifeline support for voice services should continue in all areas, whether rural, urban or in-between.[23]

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[17] *See*, 47 U.S.C. § 214(e).
[18] California Public Utilities Commission ("Cal. PUC") Comments at 3-9; Nebraska Public Service Commission ("Neb. PSC") Comments at 2-4.
[19] *See, e.g.*, National Housing Foundation Comments at 2-14; National Hispanic Media Coalition at 11-12; Peter Koo of the City Council of New York, et al. ("NYC Officials") Comments at 1-2; EveryoneOn Comments at 1-2; ITIF Comments at 3-4. ARDI briefly held LBP designation as part of its plan to provide more affordable broadband connectivity to low-income communities in Chicago. ARDI Comments at 1-2.
[20] NARUC Comments at 24-27; Florida Public Service Commission Comments ("Fl. PSC") Comments at 3-5; Okla. P.U.D. Comments at 2-3.
[21] Low-Income Consumer Advocates at 7-13; General Communications, Inc. Comments at 2-10 (Many Alaskans only have access to voice services); AARP Comments at 15-18; Mo. PS. Comments at 7.
[22] B. A. Kane Comments at 2-3; AARP Comments at 15-18; Neb. PSC Comments at 7; Cal. PUC Comments at 13; NYC Officials Comments at 1-2.
[23] AARP Comments at 15-18; WTA Comments at 2; Cities of Boston, et al. Comments at 7-10; Multonah County Library Comments at 1; Pa. Consumers Coalition Comments at 3-4; Low-Income Consumer Advocates at 1-6; Verizon Comments at 10-11.

E. A Budget Cap Is Not Compatible with the Universal Service Goal of Providing Access to Affordable Voice and Broadband Internet Access Services

NASUCA concurs with others that oppose adoption of a budget cap as unnecessary and complex to administer.[24] The FCC has taken multiple steps – including audits, the National Lifeline Accountability Database, and the pending National Lifeline Verifier – to reduce the opportunity for fraud, waste and abuse. These steps have resulted in a reduction in the size of the Lifeline program spending. All low-income households, whether already subscribed to Lifeline or eligible but not enrolled, should have the same opportunity to obtain universal services made more affordable with Lifeline support.[25] Any discussion of the size and burden of the Lifeline universal service program should include reform of the contributions mechanism, as recommended by AARP and others.[26] The FCC should not adopt a budget cap that would make Lifeline support unavailable for eligible households.

F. Lifeline Support Should Remain Available for All Eligible Low Income Households, Without Other Limitations

NASUCA and others do not support the NPRM's proposal to limit Lifeline support based on geography, such as a preference for low-income consumers in rural areas over urban areas.[27] Section 214 imposes an obligation that ETCs offer and advertise the availability of Lifeline service throughout their service territories.[28] NASUCA and other commenters also oppose the

[24] AARP Comments at 22-23; USTelecom at 8-9; INCOMPAS Comments at 12-14; Multicultural Media Comments at 14; Sprint Comments at 3-4; Low-Income Consumer Advocates at 13-14. *But see*, Fl. PSC at 7-8 (Could tie self-enforcing budget level to SNAP participation).
[25] NARUC Comments at 27-28. NARUC notes that based on 2014/2015 census data, only about 33 percent of households that qualify for Lifeline are enrolled. *See also*, Q Link Comments at 19-22.
[26] AARP Comments at 3, 9-12, 26-27; NARUC at 27-28; Multicultural Media Comments at 14.
[27] AARP Comments at 15-18; Sprint Comments at 8-12; WTA Comments at 1-2; Cities of Boston, et al. Comments at 27-28.
[28] 47 U.S.C. § 214.

NOI's proposals to restrict Lifeline support for individual households for a maximum number of months or to a cap on Lifeline support.[29]

These proposed limits on Lifeline support are inconsistent with the universal service principles set forth in Section 254, as discussed in NASUCA's comments. The FCC should not restrict the availability of Lifeline support to any sub-group of low-income households that otherwise meet the eligibility criteria.[30]

G. <u>The FCC Should Preserve the Equipment Requirement</u>

The NPRM has proposed to suspend the requirement that equipment provided by ETCs to Lifeline consumers, i.e. wireless handsets, support Wi-Fi and hotspot connectivity. NASUCA agrees with AARP and other commenters that this requirement should be preserved, as one meaningful way to help Lifeline households maximize a wireless data connection to help bridge the homework gap and other household needs.[31]

H. <u>The FCC Should Not Adopt a "Maximum Discount" Requirement, Which Would Prevent ETCs from Offering No Cost Lifeline Services</u>

NASUCA agrees with AARP and other opponents to the NOI's proposal to require Lifeline subscribers to pay some minimum amount for Lifeline service.[32] This proposal fails to consider the many challenges faced by households with little or limited income and limited or no access to banking.[33] Wireless ETCs that have developed Lifeline service offerings at no cost to the consumer would need to change their model and implement new billing procedures or

[29] *See, e.g.*, Minn. Agencies Comments at 12; Oregon CUB Comments at 3; NATOA Comments at 3-4.
[30] NYC Officials Comments at 1-2.
[31] AARP Comments at 19-20; NATOA Comments at 3-4; Cities of Boston, et al. Comments at 18-20; Open Technology Institute at 11-17.
[32] AARP Comments at 20-21 (Imposition of a co-pay depresses participation in public benefit programs); Cities of Boston, et al. Comments at 23-26; INCOMPAS Comments at 7-12; Low-Income Consumer Advocates at 15-17; Q Link Comments at 42-43.
[33] INCOMPAS Comments at 7-12.

relinquish their ETC status. This NPRM proposal fails to consider the Broadband Lifeline Pilot results, in which no-cost offerings incented adoption.[34]

I. TracFone's Proposal to Convert Voice Minutes and Data into Blended "Units" Should Not Be Adopted

NASUCA agrees with AARP that TracFone's "units" proposal is not reasonable.[35] AARP explains:

> Consumer's access to voice services should not be impinged by broadband usage. Voice minutes and broadband data, as sold by wireless carriers, are distinct services, and consumers continue to treat voice and data services as separate. Blending all usage into "units," as proposed by TracFone would make it more difficult for consumers to track their usage.[36]

As AARP notes, voice usage is measured in minutes and readily observable, whereas the rate of data usage is less visible and predictable. Based on the information available, NASUCA opposes TracFone's "units" proposal.

J. The FCC Should Not Delete "Broadband Services" from the Regulatory Definition of "Supported Services" in this Lifeline-Specific Proceeding

USTelecom asks the Commission to remove "broadband services" from the regulatory definition of universal "supported services," based upon the FCC's reclassification of broadband internet access services as Title II and so no longer telecommunications services.[37] NASUCA opposes USTelecom's request. The FCC added broadband services to the definition of universal supported services at a time when broadband was classified as Title II services.[38] The FCC should not revise this regulatory definition, which applies to other universal service programs –

[34] INCOMPAS Comments at 10-11.
[35] AARP Comments at 18; Okla. P.U.D. Comments at 9-10.
[36] AARP Comments at 18.
[37] USTelecom Comments at 2-3. *See*, 47 C.F.R. § 54.101.
[38] *See*, *In re: FCC 11-161*, 753 F.3d 1015, 1043-1047 (10th Cir., 2014).

including the high cost Connect America Fund and the Rural Health Care program – in this Lifeline specific proceeding.

## II. CONCLUSION

For the reasons set forth above, NASUCA encourages the Commission to further the universal service principles established by Congress and make only those changes to the federal Lifeline universal service 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.

Respectfully submitted,

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