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Via Electronic Filing and U.S. Mail

OREGON PUBLIC UTILITY COMMISSION
ATTENTION: FILING CENTER
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**RE: Docket No. UM 1437 – In the Matter of TRACFONE WIRELESS, INC.
Application for Designation as an Eligible Telecommunications Carrier.**

Enclosed for electronic filing in the above-captioned docket is the Public Utility Commission Staff's Redacted Testimony in Response to TracFone's Second Amended Application.

/s/ Kay Barnes

Kay Barnes

Regulatory Operations Division

Filing on Behalf of Public Utility Commission Staff

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c: UM 1437 Service List (parties)

CERTIFICATE OF SERVICE

UM 1437

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-001-0180, to the following parties or attorneys of parties.

Dated this 23rd day of March, 2011 at Salem, Oregon.



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**UM 1437
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**PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1437

**STAFF TESTIMONY IN
RESPONSE TO TRACFONE'S
SECOND AMENDED APPLICATION**

**KAY MARINOS
JON CRAY**

**In the Matter of
TRACFONE WIRELESS, INC.
Application for Designation as an Eligible
Telecommunications Carrier.**

**REDACTED
March 23, 2011**

CASE: UM 1437
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 300

**Staff Testimony in Response to
TracFone's Second Amended Application**

March 23, 2011

**CERTAIN INFORMATION CONTAINED IN STAFF EXHIBIT 300,
PAGES 50 AND 51 OF
UM 1437 IS CONFIDENTIAL AND SUBJECT TO PROTECTIVE
ORDER NO. 10-189 IN UM 1437. YOU MUST HAVE SIGNED
APPENDIX B OF THE PROTECTIVE ORDER IN
DOCKET UM 1437 TO RECEIVE THE
CONFIDENTIAL VERSION.**

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Kay Marinos. I am employed by the Public Utility Commission of
4 Oregon (OPUC) as the Program Manager of the Competitive Issues Section in
5 the Telecommunications Division. My business address is 550 Capitol
6 Street NE, Suite 215, Salem, Oregon 97301-2551.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
8 **EXPERIENCE.**

9 A. My Witness Qualification Statement is found in previously submitted testimony
10 in Exhibit Staff/101. I have performed various types of work within the
11 telecommunications industry for over 25 years. My experience has been
12 largely in the regulatory field, both within a telecommunications company, i.e.,
13 Verizon and its predecessor companies GTE, NYNEX and Bell Atlantic, and at
14 the National Exchange Carrier Association (NECA) that provides service to all
15 incumbent local exchange carriers in the U.S. I have a Masters Degree in
16 Economics, and have completed all of the required and elective coursework for
17 a Ph.D. in the same subject.

18 For the previous six years I have been the staff member at the Oregon
19 Commission responsible for reviewing carrier applications for Eligible
20 Telecommunications Carrier (ETC) designation and recommending approval or
21 denial of the applications to the Commission. I manage the annual
22 recertification process for the continuance of federal universal service support
23 funds to all current ETCs, including all incumbent local exchange carriers

1 (ILECs) in Oregon. I was the lead staff in Docket UM 1217, in which the
2 Commission established the current requirements for initial and continuing
3 designation of federal ETCs in Oregon. The ETC applications that I reviewed
4 include those from one competitive local exchange carrier (ComSpan) and four
5 wireless carriers (Edge Wireless, Snake River PCS, AT&T Wireless fka
6 Cingular Wireless, and LCW). In addition, I served as state staff chair of the
7 Federal-State Joint Board on Universal Service during development and
8 release of that body's recent recommendation on matters pertaining to the
9 Lifeline program.

10 **Q. WHAT IS YOUR ROLE AND RESPONSIBILITY IN THIS DOCKET?**

11 A. I am the staff case manager in UM 1437. As the case manager, I am
12 responsible for Staff's overall recommendation in this docket.

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. I present staff's summary recommendations and provide an assessment of the
15 extent to which TracFone meets the requirements for designation as a federal
16 Eligible Telecommunications Carrier (ETC) in Oregon. As case manager, I
17 also address TracFone's request for designation as an Eligible
18 Telecommunications Provider (ETP) to participate in the Oregon Telephone
19 Assistance Program (OTAP). Further details relative to ETP requirements and
20 the OTAP are provided by Mr. Cray in Exhibit Staff/400.

21 **Q. DID YOU PREPARE EXHIBITS FOR THIS DOCKET?**

22 A. Yes. I prepared Exhibit Staff/301 through Exhibit Staff/310.

23 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

1 A. My testimony is organized into five sections. The first section is staff's
 2 summary recommendation. The second section addresses background and
 3 introductory information regarding ETC and ETP designations and how
 4 TracFone's approach to Lifeline service offerings differs from other carriers.
 5 The third section summarizes the testimony of Mr. Cray regarding ETP
 6 requirements and the OTAP. The fourth section addresses ETC requirements
 7 and whether TracFone's application meets those requirements. The final
 8 section addresses public interest considerations that are key to determining
 9 whether the Commission should grant TracFone's requests for ETC and ETP
 10 designation. A table of contents follows.

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1

SUMMARY RECOMMENDATION

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Q. WHAT IS STAFF'S SUMMARY RECOMMENDATION?

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A. Staff recommends the Commission deny TracFone's request for ETC and ETP designation because its application fails to demonstrate that TracFone meets the ETC and ETP requirements in Oregon.

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Q. WHAT ARE THE OPTIONS OPEN TO THE COMMISSION IN THIS CASE?

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A. The Commission could adopt staff's recommendation and deny TracFone's application because it does not meet the current requirements for designation.

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Alternatively, the Commission could grant TracFone's application, but require

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TracFone to demonstrate it can meet the requirements for which staff

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recommends against granting a waiver, in addition to any special conditions

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staff recommends. Or the Commission could simply grant TracFone's

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application as filed, along with all the waivers TracFone requests, assuming the

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Commission can waive the ETP rules.

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Q. DOES THIS CASE INVOLVE ISSUES THE COMMISSION HAS NOT

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FACED BEFORE?

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A. It does. TracFone presents a business model not seen before in ETC

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applications in Oregon.

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Q. HOW DOES TRACFONE DIFFER SIGNIFICANTLY FROM ETCS

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DESIGNATED TO DATE?

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A. First, TracFone owns none of the facilities it uses to provide service. Second,

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TracFone proposes to offer only free Lifeline services. Third, TracFone will not

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accept or flow-through to consumers the additional benefits available through

1 the OTAP. Fourth, TracFone does not collect or remit E911 or RSPF
2 surcharges from any of its customers.

3 **Q. DO THESE DIFFERENCES RAISE THE NEW ISSUES TO WHICH YOU**
4 **REFER?**

5 A. Yes. First, the Commission must address the fact that TracFone may not be
6 able to comply with some of the OTAP and ETP requirements because these
7 requirements were written for carriers that own facilities and provide monthly
8 billings to customers. TracFone does neither. Second, TracFone's business
9 plan means that it may not be supporting E911 and OTAP services through
10 payment of associated surcharges.

11 The bottom line is that the company's business model and its approach to
12 offering Lifeline services do not fit the framework under which the current
13 requirements for ETCs and ETPs were established in Oregon. That is why
14 TracFone requests waivers or exemptions from many of the current ETC and
15 ETP requirements.

16 **Q. DO YOU HAVE A RECOMMENDATION AS TO HOW THE COMMISSION**
17 **SHOULD DEAL WITH TRACFONE'S BUSINESS PLAN?**

18 A. One approach that the Commission should consider is to deny this application
19 for now, but open a generic investigation related to the need to update and
20 revise current ETC and ETP rules and requirements for wireless resellers and
21 providers proposing to offer free Lifeline services. Other carriers with business
22 models similar to TracFone's also have ETC and ETP applications before the
23 Commission. A generic investigation would give all parties the opportunity to

1 provide input into formulating revised requirements, and could also deal with
2 the payment of surcharges to support E911 and OTAP services.

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BACKGROUND AND INTRODUCTION

Q. HAS STAFF PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

A. Yes, staff filed Staff/100 and Staff/200 on August 3, 2010 that addressed TracFone's original application.

Q. HAS TRACFONE AMENDED ITS APPLICATION SINCE ITS ORIGINAL APPLICATION?

A. Yes, on January 7, 2011, TracFone filed a second amended application.

Q. HOW DOES STAFF'S CURRENT TESTIMONY RELATE TO PREVIOUS TESTIMONY?

A. Staff's testimony addresses information as it is presented in TracFone's second amended application. However, where information presented as exhibits in earlier testimony still remains relevant, Staff will refer to exhibits from its previously filed testimony.

Q. WHY DOES TRACFONE SEEK ETC DESIGNATION FROM THE COMMISSION?

A. TracFone seeks ETC designation solely to enable it to offer its Lifeline services (branded as SafeLink) to qualifying low-income consumers in Oregon, and to receive compensating support funds from the low-income portion of the federal universal service fund (FUSF) in return. The Telecom Act grants the authority to make such designations to state commissions, even though the funds disbursed are federal funds. ETC designation also enables a carrier to obtain support from the high-cost portion of the FUSF. Unlike most other Oregon ETCs, TracFone does not seek designation for

1 the purpose of receiving high-cost support. TracFone cannot receive high-
2 cost support because it has no network of its own for which to claim or use
3 such support.

4 **Q. WHY DOES TRACFONE SEEK ETP DESIGNATION FROM THE**
5 **COMMISSION?**

6 A. ETP designation is necessary to participate in the OTAP, and OTAP
7 participation is one of several requirements for ETC designation.

8 **Q. HAS ANY ETC EVER BEEN GRANTED A WAIVER OF THE ETP**
9 **REQUIREMENT?**

10 A. No ETC to date has been designated without also receiving ETP
11 designation and participating in the OTAP.

12 **Q. WHAT ARE THE REQUIREMENTS FOR ETC AND ETP DESIGNATION?**

13 A. The Commission established the requirements for ETC designation in
14 docket UM 1217, Order No. 06-292. Requirements for ETP status and the
15 OTAP are in Division 33 of the Oregon Administrative Rules for the
16 Residential Service Protection Fund (RSPF), the program that funds the
17 OTAP, as well as the Telecommunications Access Program (TDAP) and
18 Oregon Telecommunications Relay Service (OTRS).

19 **Q. DOES TRACFONE MEET ALL THE REQUIREMENTS FOR BOTH ETC**
20 **AND ETP DESIGNATION?**

21 A. No. TracFone does not meet several of the applicable requirements for
22 ETC and ETP designation and in some cases requests a waiver from
23 specific requirements. Staff discusses each ETC and ETP requirement,

1 whether TracFone's application meets the requirement, and if a waiver from
2 any specific requirement should be granted.

3 **Q. WHY DO YOU BELIEVE TRACFONE CANNOT MEET SEVERAL OF THE**
4 **COMMISSION'S ETP AND ETC REQUIREMENTS?**

5 A TracFone's business model, while not entirely unique, is relatively new. Its
6 business model is centered on using funds from the FUSF to provide a free
7 handset and monthly allotment of minutes to its wireless customers. In this
8 respect, TracFone's approach is quite different from the ILEC and wireless
9 carriers that the Commission has designated to date. In addition, unlike any
10 other ETCs in Oregon, TracFone does not own the network it uses to provide
11 services.

12 **Q. IN WHAT WAYS DOES TRACFONE DIFFER FROM OTHER CARRIERS**
13 **GRANTED ETC STATUS IN OREGON?**

14 A. TracFone differs in several ways and those will be discussed more fully in
15 my testimony. At this time, I will summarize the major differences. First,
16 TracFone is a Mobile Virtual Network Operator (MVNO), otherwise known
17 as a pure reseller of wireless services. It owns no facilities, but provides
18 service over the networks of other carriers. Second, TracFone proposes to
19 offer only a subset of its service offerings to Lifeline customers in Oregon.
20 In that regard, it is also the first ETC/ETP applicant proposing to offer free
21 Lifeline/OTAP services. Third, TracFone states that it will not accept and
22 flow-through the additional \$3.50 of Lifeline benefits made available to low-
23 income consumers in Oregon. Fourth, under TracFone's plan, it will not pay

1 the RSPF surcharge that is collected to fund the OTAP or the 911 surcharge
2 that is collected to fund the 911 services that are available to all customers,
3 including TracFone's.

4 **Q. DO YOU BELIEVE THE COMMISSION'S RULES AND OTHER**
5 **REQUIREMENTS RELATED TO ETC AND ETP STATUS WERE**
6 **DESIGNED TO WORK WITH A BUSINESS MODEL LIKE TRACFONE'S?**

7 A. No, they were not. The rules and requirements were developed in an earlier
8 time, before the FCC granted forbearance to TracFone (or any other pure
9 resellers), and before any carriers had the idea to offer free services equal to
10 the amount of support they could receive from the FUSF.

11 **Q. SHOULD THE COMMISSION WAIVE THE RULES AND REQUIREMENTS**
12 **THAT DO NOT APPLY DUE TO TRACFONE'S BUSINESS MODEL?**

13 A. Yes, but only if it determines that the requirements are not necessary to meet
14 the goals of the Lifeline and OTAP programs, e.g., ensuring that customers
15 receive high quality services at reasonable rates. Furthermore, the offering of
16 such services should not unfairly burden other customers or discriminate
17 against other ETCs.

18 **Q. PLEASE EXPLAIN.**

19 A. Just because our rules and requirements do not fit with TracFone's business
20 model does not automatically imply that the Commission should deny
21 TracFone's application nor does it imply that all requirements should be
22 waived. It does complicate the analysis and decisions that need to be made.
23 This is precisely why I recommend the Commission, should it not approve

1 TracFone's application at this time, open a generic investigation to determine
2 the need to revise or amend ETC and ETP rules and requirements to
3 accommodate Lifeline providers that are pure resellers or that propose to offer
4 free Lifeline services.

5 **Q. HAS THIS COMMISSION PREVIOUSLY GRANTED SIMILAR WAIVERS**
6 **TO ANY ETCS OR ETPS?**

7 A. No, not to my knowledge. No previous ETC applicants requested waivers of
8 either ETC or ETP requirements as they were able to meet the applicable
9 requirements at the time of their designations.

10 **Q. WHAT BENEFIT WOULD THERE BE TO A GENERIC INVESTIGATION IF**
11 **THE COMMISSION DID NOT APPROVE TRACFONE'S APPLICATION?**

12 A. TracFone's business model appears to be one that others have emulated. The
13 Commission has recently received applications for ETC and ETP status from a
14 number of companies that have business models that are similar to
15 TracFone's. A generic investigation would allow the Commission the
16 opportunity to amend its rules and requirements to better fit a new and evolving
17 business opportunity with feedback from all of the affected companies and
18 other interested parties.

19 **Q. PLEASE TELL ME MORE ABOUT TRACFONE'S EXISTING SERVICE IN**
20 **OREGON.**

21 A. TracFone offers wireless calling service that is "prepaid." That is, the customer
22 must purchase a TracFone handset and pay for usage (airtime minutes) either
23 by ordering on-line, using a credit card, or buying TracFone calling cards.

1 TracFone does not have any local service centers, but retails its services
2 through stores such as Walmart and Sears. TracFone has several service
3 offerings that are available on a monthly basis, including Net10 and
4 StraightTalk. The latter service bundles unlimited calling and texting with
5 internet access for \$45.00 per month.

6 **Q. WILL TRACFONE OFFER LIFELINE/OTAP DISCOUNTS ON THESE**
7 **SERVICES TO ELIGIBLE LOW-INCOME CUSTOMERS?**

8 A. No, these service plans will not be available to Lifeline customers under
9 TracFone's proposed plan. TracFone does not intend to provide Lifeline
10 discounts on its existing services. Instead, TracFone intends to provide only
11 newly developed free Lifeline plans to eligible customers. Customers will
12 have a choice of three free calling plans, each with different calling
13 allotments. TracFone will provide a free handset to each customer.

14 **Q. HOW MANY FREE MINUTES PER MONTH WILL BE OFFERED IN EACH**
15 **PLAN?**

16 A. The first plan includes 250 free minutes each month of domestic calling
17 (with no carry-over of unused minutes), with texting included at a rate of one
18 text per minute of airtime. Plan 2 includes 125 free minutes each month of
19 domestic calling (which can be carried over to the next month if unused),
20 with texting included at a rate of one text per minute of airtime. Plan 3
21 includes 68 free minutes (with roll-over of unused minutes), with
22 international calling included, and texting at a rate of 3 texts per minute of
23 airtime.

1 **Q. WHAT RATE WILL LIFELINE CUSTOMERS PAY IF THEY WISH TO**
2 **PURCHASE ADDITIONAL MINUTES BEYOND THE FREE ONES?**

3 A. TracFone's application on page 25 states that its Lifeline customers can
4 purchase additional usage cards at a rate of \$0.10 per minute. However, it
5 does not explain the minimum number of minutes that must be purchased
6 with each card.

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ETP REQUIREMENTS AND THE OTAP**Q. PLEASE SUMMARIZE STAFF'S CONCLUSIONS REGARDING****TRACFONE'S ABILITY TO MEET THE ETP REQUIREMENTS.**

A. TracFone cannot meet many of the key requirements for ETP status. As discussed in Mr. Cray's testimony, TracFone does not meet the definition of an ETP in the Oregon Administrative Rules. See Exhibit Staff/400, Cray/9-32. TracFone does not have its own facilities as required by the rules, and it has not requested a waiver of the ETP rules for this requirement. TracFone does not intend to collect RSPF surcharges or contribute to the costs that will be incurred by the OTAP as a direct consequence of its designation. TracFone will not fully participate in the OTAP or accept and flow-through to qualifying customers the \$3.50 of state-mandated support that is made available by the OTAP. TracFone will not provide OTAP benefits to consumers who may wish to purchase other TracFone service offerings.

Q. WILL TRACFONE'S PARTICIPATION IN THE OTAP RESULT IN INCREASED COSTS TO THE PROGRAM?

A. Yes. Considerable OTAP staff time is devoted to processing applications, and verifying customer eligibility – both on an initial and ongoing basis. TracFone's offerings have proven popular in other states, so it appears that it would similarly have many customers in Oregon. TracFone itself estimates that it will bring a significant number of new customers into the OTAP. Mr. Cray addresses the impacts on the OTAP in his testimony. See Exhibit Staff/400, Cray/33-37.

1 **Q. WILL TRACFONE PAY INTO RSPF LIKE OTHER ETPS?**

2 A. No. At this point, TracFone declines to pay the RSPF surcharge, although it
3 has indicated that it may consider some other compensation arrangement.
4 The result is that the program may have a difficult time absorbing the
5 additional costs associated with TracFone's Lifeline offering. Mr. Cray
6 addresses the RSPF surcharge in detail in his testimony. See Exhibit
7 Staff/400, Cray/12-15.

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ETC REQUIREMENTS

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Q. WHAT IS AN ETC?

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A. An Eligible Telecommunications Carrier or ETC is a carrier that is eligible under the Telecommunications Act of 1996 (the Act) to receive Federal Universal Service Fund (FUSF) support. See 47 USC § 214 (e). Section 214(e)(2) of the Act gives state commissions the primary responsibility for granting ETC designation.

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Q. WHAT IS THE PURPOSE OF THE FUSF?

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A. The purpose of the FUSF is to provide support to further the goals of universal service as set forth in the Act. These include the provision of quality telecommunications services at just, reasonable and affordable rates, and ensuring that consumers in all regions of the country, including those in rural areas and those with low incomes, have access to services that are reasonably comparable to services available in urban areas.

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Q. WHAT ARE THE REQUIREMENTS FOR ETC DESIGNATION IN OREGON?

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A. The Commission established requirements for ETC designation in Order No. 06-292, after considering requirements set forth in the Act and other requirements imposed by the FCC. These requirements were adopted to demonstrate that the ETC applicant meets the general conditions for designation in Section 214(e) of the Act. Requirements are summarized in Appendix A of Order No. 06-292 and are included in my testimony as Exhibit Staff/301 for ease of reference.

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1 **Q. WHAT DOES SECTION 214(E) OF THE ACT REQUIRE?**

2 A. The Act requires that an ETC offer and advertise its supported services
3 throughout its designated service area, with service provided through the use
4 of either its own facilities or a combination of its own facilities and resale of
5 another carrier's services.

6 **Q. IN ADDITION TO REQUIREMENTS FOR INITIAL DESIGNATION, ARE**
7 **THERE ONGOING REQUIREMENTS AN ETC MUST AGREE TO MEET?**

8 A. Yes. An ETC must continue to meet its responsibilities for the duration of its
9 designation.

10 **Q. HOW ARE THE ONGOING REQUIREMENTS ENFORCED?**

11 A. ETCs must file reports by July 15 of each year to demonstrate that they have
12 complied with requirements during the past year. Filing of acceptable reports
13 is required if the ETC wishes to retain designation for the coming year.

14 **Q. WHAT HAPPENS IF AN ETC CANNOT MEET ALL OF THE ONGOING**
15 **REQUIREMENTS?**

16 A. If an ETC applicant cannot meet the reporting requirements, e.g., it cannot
17 report certain numbers or measures required, the applicant must show good
18 cause, prior to designation, as to why it should receive an exemption from any
19 particular requirement. If an ETC, after receiving designation, does not fulfill
20 the reporting requirements by the July 15 deadline, it may have its designation
21 revoked by the Commission.

22 **Q. WHAT TYPES OF FUSF SUPPORT ARE AVAILABLE TO AN ETC?**

1 A. There are two types of support available to ETCs. The first is “high-cost”
2 support. This support is intended to meet the goals of universal service by
3 subsidizing telephone services in “high-cost” areas of the country,
4 predominantly rural areas, where it is expensive to provide service. This
5 support helps carriers maintain and improve networks in these areas and keep
6 rates comparable to those in the urban or lower-cost areas. Historically, most
7 ETC applicants were primarily interested in receiving high-cost support.

8 The second type of support available to ETCs is “low-income” support. This
9 support is intended to help make telephone service more affordable for low-
10 income consumers through lower rates for local exchanges services. It
11 appears that the most recent spate of ETC applicants throughout the country is
12 not interested in high-cost support, but rather, seeks ETC designation only for
13 low-income support.

14 **Q. WILL TRACFONE CLAIM BOTH TYPES OF FUSF SUPPORT?**

15 A. No. TracFone requests designation as an ETC for the purpose of claiming only
16 low-income support. Since TracFone does not own any of the facilities that it
17 uses to provide telecommunications services, i.e., it has no network of its own,
18 it cannot claim high-cost support.

19 **Q. WHAT TYPE OF SUPPORT IS AVAILABLE THROUGH THE FUSF LOW-**
20 **INCOME FUND?**

21 A. The low-income fund support is largely of two types. The first type of
22 support, called “Lifeline” support, is a monthly recurring amount of support
23 to each qualifying subscriber. It does not go directly to the subscriber, but

1 rather to the subscriber's carrier offering Lifeline service (an ETC). The
2 ETC credits the subscriber's bill (reduces the normal rate) for the Lifeline
3 support amount, and submits a corresponding claim for reimbursement to
4 the fund administrator, the Universal Service Administrative Company
5 (USAC). The amount of Lifeline support available for each qualifying low-
6 income consumers is determined by a series of computations described in
7 Mr. Cray's testimony. See Staff/400, Cray/14-15. The second type of
8 federal low-income fund support is called Link Up and it is intended to
9 provide support to defray costs to the low-income consumer associated with
10 initial service establishment (e.g., installation charges).

11 **Q. WILL TRACFONE CLAIM BOTH LIFELINE AND LINK UP SUPPORT**
12 **FUNDS?**

13 A. No. TracFone will claim only Lifeline support. It cannot claim Link Up
14 support because it charges no initial connection fees for new service.

15 **Q. DO REQUIREMENTS FOR ETC DESIGNATION DIFFER DEPENDING ON**
16 **THE TYPE OF FUSF SUPPORT THE ETC RECEIVES?**

17 A. The requirements are generally the same, but there is one exception. The
18 Commission determined in Order No. 06-292 that the requirements should
19 generally not vary by the type of support (high-cost or low-income) that the
20 ETC receives. ETCs are obligated to provide reliable, high-quality, and
21 affordable services to all their customers, regardless of the customer's income
22 or the area in which they live. However, only ETCs receiving high-cost support
23 are required to demonstrate the use of that support by submitting network

1 improvement plans, as high-cost support is to be used to improve and expand
2 an ETC's network. In contrast, low-income support is to be flowed through, in
3 its entirety, to qualifying low-income (Lifeline) consumers in the form of
4 discounts on their local exchange services provided by ETCs. Because the
5 low-income support is not intended to be used for network purposes, there is
6 no need for network improvement plans.

7 Additionally, to the extent that affidavits or copies of certifications are required
8 that relate only to high-cost support (e.g., requirements 5.1, 5.2), an ETC
9 requesting only low-income support would not be expected to include those in
10 its application.

11 **Q. DOES TRACFONE DIFFER SIGNIFICANTLY FROM OTHER ETCs THE**
12 **COMMISSION HAS DESIGNATED TO DATE?**

13 A. Yes, as pointed out previously, TracFone differs in several significant ways.
14 First, TracFone provides service by reselling the service of other wireless
15 carriers. It does not have its own network facilities. As a pure reseller,
16 TracFone was prohibited by Section 214(e) of the Telecom Act from receiving
17 ETC designation. However, TracFone sought, and the FCC granted,
18 forbearance from the Act's facilities requirement. See FCC 05-165
19 (Forbearance Order) included as Exhibit 3 to TracFone's Second Amended
20 Application. It is not clear whether Oregon must acknowledge the forbearance.
21 However, it is clear that a wireless carrier that does not own its own network
22 may be unable to meet certain ETC responsibilities that are associated with
23 network service quality.

1 Second, TracFone's proposal for Lifeline/OTAP services does not fit the
2 current framework or requirements of the OTAP. Many issues remain to be
3 ironed out regarding whether TracFone can meet the requirements for ETP
4 status. If a carrier cannot meet ETP designation requirements, it cannot be
5 granted ETC status.

6 Third, unlike other ETCs, neither TracFone, nor any of its customers, pay to
7 support the 911 services they use in Oregon. TracFone's designation is likely
8 to cause significant incremental demands and costs on the 911 system for
9 which its customers will not pay. The additional costs would have to be borne
10 by other telephone users who do pay the surcharge.

11 **Q. DO THESE DIFFERENCES IMPACT WHETHER TRACFONE CAN MEET**
12 **THE CURRENT ETC DESIGNATION REQUIREMENTS?**

13 A. Yes, they do. Based largely on these differences, TracFone requests waivers
14 of many requirements for ETC designation. In the following pages, I address
15 each of the requirements for designation and provide an assessment of
16 TracFone's ability to meet them. TracFone's differences also raise concerns
17 regarding whether granting designation is in the public interest. I address
18 public interest considerations in the final section of my testimony.

19

INITIAL DESIGNATION REQUIREMENTS FOR ETC STATUS**Q. DOES TRACFONE MEET THE REQUIREMENTS FOR ETC****DESIGNATION IN OREGON?**

A. No. TracFone does not meet all of the requirements for ETC designation in Oregon. In some instances, TracFone asks the Commission to waive those requirements. In other instances, it does not.

Q. HOW DID STAFF ARRIVE AT THIS CONCLUSION?

A. Staff compared information contained in TracFone's second amended application with the list of ETC requirements attached to Order No. 06-292 in Appendix A. In addition, staff reviewed TracFone's responses to data requests submitted by staff and CUB. See Exhibit Staff/301 for a copy of the Appendix A requirements.

Q. PLEASE DISCUSS THE FIRST ETC REQUIREMENT.

A. The first requirement is that the ETC be a common carrier that provides services over its own facilities, either in whole or in part. TracFone does not meet this requirement. Although it is a common carrier, TracFone is a pure reseller and owns no facilities.

Q. WHAT IS THE IMPACT OF TRACFONE BEING A PURE RESELLER?

A. Section 214(e)(1)(A) of the Communications Act, as amended, requires ETCs to offer services, at least in part, over their own facilities. Consistent with this requirement, Section 54.201(i) of the FCC rules prohibits the designation as an ETC of any carrier that offers services exclusively through the resale of another carrier's services.

1 **Q. HOW DOES TRACFONE MEET THE FEDERAL REQUIREMENT YOU**
2 **JUST DISCUSSED?**

3 A. The FCC granted TracFone forbearance from the facilities requirement in
4 Order 05-165 dated September 8, 2005. See Forbearance Order included as
5 Exhibit 3 in TracFone's Second Amended Application.

6 **Q. DID THE FCC IMPOSE ANY REQUIREMENTS IN ITS FORBEARANCE**
7 **ORDER?**

8 A. Yes. The Forbearance Order requires TracFone to:

- 9 a) provide customers with 911 and E911 access regardless of activation
10 status and availability of prepaid minutes;
- 11 b) provide customers with E911-compliant handsets and replace, at no
12 additional charge, non-compliant handsets of existing customers who
13 obtain Lifeline service;
- 14 c) comply with conditions a) and b) as of the date it provides Lifeline
15 service;
- 16 d) obtain a certificate from each Public Safety Answering Point (PSAP)
17 confirming compliance with a) where Lifeline service is offered
18 (FCC 09-17 modified this to allow TracFone to self-certify, with
19 documentation from underlying carriers, if PSAPs do not act within 90
20 days);
- 21 e) require customers to self-certify, under penalty of perjury, at time of
22 service activation and annually thereafter that they are the head of

1 household and receive Lifeline service only from TracFone (penalties for
2 perjury must be clearly stated on the certification form);

- 3 f) establish safeguards to prevent customers from receiving multiple
4 TracFone Lifeline subsidies at the same address (TracFone must track
5 the customer's primary residential address and prohibit more than one
6 TracFone Lifeline service at each residential address); and,
7 g) have direct contact with its Lifeline customer (phone, fax, internet, in-
8 person) when establishing initial and continued eligibility. (The customer
9 may purchase handsets at retail outlets, e.g., Walmart, but must deal
10 directly with TracFone to certify and verify customer's eligibility.)

11 **Q. DID THE FCC'S FORBEARANCE ORDER MODIFY OREGON'S ETC**
12 **REQUIREMENTS?**

13 A. No. However, TracFone asserts that the Oregon Commission is required to act
14 in accordance with the FCC's forbearance order. See TracFone's second
15 amended application, pages 6-7.

16 **Q. HAS TRACFONE'S ASSERTION THAT THE FCC'S FORBEARANCE**
17 **ORDER BINDS A STATE COMMISSION BEEN UNIVERSALLY**
18 **ACCEPTED?**

19 A. No. The Oklahoma Corporation Commission (OCC) found that "Since the FCC
20 lacks the authority to designate an ETC in Oklahoma, it is illogical to draw the
21 conclusion that the Forbearance Order must be construed to apply to the
22 Oklahoma Commission's requirements for ETC designation." See Exhibit
23 Staff/115 submitted in previous testimony.

1 **Q. DID TRACFONE REQUEST A WAIVER OF THIS OREGON ETC**
2 **REQUIREMENT?**

3 A. No. A waiver of this requirement was not included in TracFone's list of waiver
4 requests in Exhibit 2 of its second amended application.

5 **Q. DO YOU RECOMMEND THE COMMISSION ENFORCE THIS**
6 **REQUIREMENT FOR ETC DESIGNATION?**

7 A. No. Should the Commission determine it wishes to grant ETC and ETP status
8 to TracFone, I recommend the Commission not require TracFone to provide
9 services using its own facilities per the ETC requirements. However, in this
10 event, staff recommends the Commission impose conditions a) through d), as
11 well as f) of the FCC Forbearance Order. Additionally I note that there is a
12 similar requirement to own facilities in the ETP rules and the Commission must
13 deal with the same issue there.

14 **Q. WHY DO YOU NOT RECOMMEND THE COMMISSION IMPOSE**
15 **CONDITIONS E) AND G) OF THE FCC'S FORBEARANCE ORDER?**

16 A. Requirements e) and g) of the Forbearance Order conflict with the certification
17 and verification procedures used in the OTAP process. In granting
18 forbearance, the FCC required TracFone to file a compliance plan. In the plan,
19 TracFone stated that it "will comply with all certification and verification
20 requirements for Lifeline eligibility established by states where it is designated
21 as an ETC." See TracFone's Compliance Plan, page 14, included in previous
22 testimony as Exhibit Staff/116.

23 **Q. PLEASE DISCUSS THE SECOND ETC REQUIREMENT.**

1 A. The second requirement is a demonstration of an applicant's commitment and
2 ability to provide all the supported services. This requirement has five sub-
3 requirements (2.1 - 2.5). TracFone meets all of the sub-requirements except
4 2.4. However, I note that sub-requirement 2.3 has a related requirement in the
5 ETP rules that may not be met by this filing.

6 **Q. PLEASE EXPLAIN.**

7 A. Sub-requirement 2.3 requires the applicant to identify and describe each of its
8 service plans that will qualify for FUSF support. TracFone proposes to offer
9 only three plans that will qualify for FUSF Lifeline support. Since it has
10 identified these plans, it technically meets the ETC requirement.¹ However,
11 TracFone's proposed Lifeline offerings are not in accordance with OTAP rules.
12 See Staff/400, Cray/15-18.

13 Sub-requirement 2.4 requires a demonstration that the applicant will offer a
14 local usage plan that is comparable to the basic local service offerings of the
15 ILEC in the proposed designated service areas. ILECs in Oregon are required
16 to offer a flat-rated unlimited local usage plan. TracFone offers two unlimited
17 usage service plans – Net10 and StraightTalk. However, it appears that
18 TracFone does not intend to make either of these unlimited usage plans
19 available to Lifeline/OTAP customers. TracFone should be required to offer
20 Lifeline discounts on these unlimited plans to meet sub-requirement 2.4.

21 **Q. PLEASE DISCUSS THE THIRD ETC REQUIREMENT.**

¹ TracFone's proposed Lifeline offerings include the ability to use free minutes for international calling and texting. These services are not included in the FCC's list of supported services in C.F.R. § 54.101. However, the FCC has failed to address this issue to date in approving TracFone's ETC designations.

1 A. The third requirement is that an applicant demonstrates its commitment and
2 ability to provide the supported services throughout its proposed designated
3 service area. This requirement has three sub-requirements. The first two sub-
4 requirements entail an explicit identification of the proposed designated service
5 area through two means: 3.1) a map showing the proposed designated service
6 area overlaid on the boundaries of ILEC wire centers, and 3.2) a list of wire
7 centers that will comprise the designated service area. The third sub-
8 requirement (3.3) is a commitment to provide service to any requesting
9 customers throughout the entire designated service area.

10 **Q. WHAT CONSTITUTES AN ETC'S PROPOSED DESIGNATED SERVICE**
11 **AREA PURSUANT TO ETC REQUIREMENT 3.1?**

12 A. A designated service area is the area for which an ETC is designated by the
13 Commission to receive FUSF support. It is the area within which the ETC must
14 abide by all requirements of its ETC designation. For instance, an ETC must
15 offer the supported services (in TracFone's case, Lifeline services) to every
16 requesting customer throughout its entire designated service area. The ETC
17 applicant must clearly define its proposed designated service area so that the
18 Commission and potential Lifeline customers know exactly where Lifeline
19 services will be available. Further, the Commission and the USAC, the entity
20 responsible for distributing FUSF support, must know exactly where the ETC is
21 authorized to be reimbursed for its services from the federal universal service
22 fund. An ETC cannot claim, or receive, support for any customers that reside
23 outside the area where it is designated. Finally, an ETC receives support

1 based on the ILEC area in which its customer resides. Therefore, the ETC
2 must clearly identify the ILEC areas in which it wishes to be designated.

3 **Q. DOES TRACFONE DEFINE ITS PROPOSED DESIGNATED SERVICE**
4 **AREA?**

5 A. Only in general terms, and not in the required detail. TracFone's second
6 amended application (page 18) states that TracFone requests designation
7 "statewide in all exchanges to the extent that its underlying carriers have
8 facilities and coverage."²

9 **Q. DOES TRACFONE'S APPLICATION INCLUDE THE REQUIRED LIST OF**
10 **WIRE CENTERS PURSUANT TO ETC REQUIREMENT 3.2?**

11 A. TracFone has attempted several times to provide a list of wire centers, and
12 staff has offered its assistance. In an attempt to clarify the wire centers where
13 TracFone wishes to be designated, staff compared the most recent TracFone
14 list of rate centers with a TracFone-provided wireless coverage map and found
15 that the two are inconsistent. Staff continues to offer its assistance in
16 developing a list of wire centers that accurately reflects where TracFone seeks
17 designation in Oregon.

18 **Q. HAS TRACFONE SUBMITTED THE REQUIRED MAP SHOWING ITS**
19 **PROPOSED DESIGNATED SERVICE AREA OVERLAID ON THE**
20 **BOUNDARIES OF THE ILEC WIRE CENTERS?**

² In addition, TracFone does not indicate whether it will include Tribal Lands within its designated service area. If Tribal Lands are included, TracFone should be required to offer the maximum Tribal Lifeline benefits available to qualifying low-income consumers living on Tribal Lands.

1 A. No. TracFone's application did not include such a map. TracFone's application
2 requests a waiver of this map requirement on the grounds that it does not have
3 access to a map of ILEC wire centers. Staff suggested to TracFone that it
4 address this issue as other ETC applicants have, i.e., request and utilize the
5 Oregon exchange map as published by the Oregon Telecommunications
6 Association (OTA). Staff continues to offer its assistance with TracFone's
7 efforts to develop a wire center list and maps that are consistent and
8 adequately reflect the areas that comprise TracFone's proposed designated
9 service area.

10 **Q. SHOULD THE COMMISSION GRANT TRACFONE'S WAIVER REQUEST**
11 **REGARDING THE SUBMISSION OF A WIRE CENTER LIST AND A MAP**
12 **AS REQUIRED IN THE ORDER?**

13 A. No. Other wireless ETCs have been able to meet the map and wire center
14 requirements. The specific identification of an ETC's designated service area
15 is a critical requirement for designation. If TracFone cannot identify its
16 proposed designated service area, it cannot accurately claim Lifeline support
17 for its eligible Lifeline customers as support amounts are based on ILEC study
18 areas. Furthermore, TracFone cannot offer Lifeline service to customers in
19 areas where its underlying carriers do not provide service, i.e., where the
20 customer cannot send or receive calls from its Lifeline-supported phone.
21 TracFone has yet to explain how the Commission will know with any degree of
22 certainty exactly where TracFone will be authorized to provide Lifeline services
23 and where its Lifeline phones will actually work.

1 **Q. DOES TRACFONE COMMIT TO OFFERING THE SUPPORTED**
2 **SERVICES THROUGHOUT ITS PROPOSED DESIGNATED SERVICE**
3 **AREA IN COMPLIANCE WITH THE FINAL PART OF THE THIRD**
4 **REQUIREMENT?**

5 A. No, it does not. TracFone requests a waiver of this requirement on the basis
6 that "it can only comply with requests for service within its underlying carriers'
7 service areas" because it has no facilities of its own. TracFone also implies
8 that the requirement is only relevant for ETCs that have their own networks and
9 receive high cost support. See TracFone Second Amended Application,
10 Exhibit 2, page 11.

11 **Q. SHOULD THE COMMISSION GRANT A WAIVER FROM THIS**
12 **REQUIREMENT?**

13 A. No. This Commission should not provide support to TracFone for a customer
14 in an area where TracFone cannot provide service. If TracFone cannot provide
15 service in a particular area, then that area must be excluded from TracFone's
16 designated service area. This is especially important in TracFone's case
17 because it cannot build out facilities to serve customers, as it has no network of
18 its own. TracFone is incorrect in asserting that this requirement applies only to
19 ETCs that receive high cost support. Staff continues to offer its assistance in
20 properly defining TracFone's designated territory, but cannot support shifting
21 the responsibility away from TracFone and on to the Commission to determine
22 the exact boundaries of TracFone's proposed designated service area.

23 **Q. PLEASE EXPLAIN THE FOURTH DESIGNATION REQUIREMENT.**

1 A. The fourth requirement is a description of facilities that an applicant will use to
2 offer services.

3 **Q. DOES TRACFONE'S APPLICATION MEET THIS REQUIREMENT?**

4 A. Not entirely. This requirement has three sub-requirements. Tracfone's
5 application meets the first and third sub-requirement by explaining that it
6 has no facilities of its own, but resells the networks of Verizon Wireless,
7 AT&T Mobility and T-Mobile. However, TracFone does not meet the second
8 sub-requirement.

9 **Q. PLEASE EXPLAIN.**

10 A. The second sub-requirement is a map of network coverage and wireless signal
11 strengths. This map differs from the map required under 3.2. That map should
12 depict TracFone's designated service area as it relates to ILEC service areas.
13 The map required here must show the areas where TracFone actually has
14 wireless coverage in Oregon. TracFone's application includes a coverage
15 map, but not a map indicating signal strengths. However, the coverage map
16 TracFone submitted with its application indicates TracFone has no coverage in
17 some areas it proposes to include in its designated service area. As noted
18 previously, it appears that TracFone has difficulties determining where its
19 supported services will be available.

20 **Q. DOES TRACFONE REQUEST A WAIVER OF THIS REQUIREMENT?**

21 A. Yes. On page 11 of Exhibit 2 of its second amended application, TracFone
22 requests a waiver of requirement 4.2 on the basis that it does not have access
23 to the information, which belongs to its underlying carriers.

1 **Q. WHAT IS STAFF'S RECOMMENDATION REGARDING THE WAIVER**
2 **REQUESTED FOR REQUIREMENT 4.2?**

3 A. Staff recommends that the Commission grant a waiver only for the portion of
4 the requirement pertaining to a map showing signal strengths. Information
5 regarding signal strengths is used to determine areas where carriers
6 requesting high-cost support need funds to improve service where signal is
7 weak or non-existent. TracFone is not requesting high-cost support. However,
8 staff does not support a waiver of the requirement to submit a map of network
9 coverage.

10 **Q. IS THERE ANYTHING ELSE YOU WISH TO ADD REGARDING**
11 **TRACFONE'S SUBMISSION OF A COVERAGE MAP?**

12 A. Yes. Clearly identifying the portions of Oregon where TracFone's services
13 qualify for support may be slightly more complicated than for other wireless
14 carriers since TracFone does not supply its own facilities. Furthermore,
15 TracFone's underlying carriers provide services using two different types of
16 technology – GSM (AT&T, T-Mobile) and CDMA (Verizon). TracFone provides
17 different handsets depending on the prevalent wireless technology in a specific
18 customer's area; the handset must be compatible with the technology in the
19 area. A customer who receives a GSM phone in a CDMA coverage area will
20 not be able to place or receive calls, unless there is also GSM coverage in the
21 same area. For this reason, the Commission should require TracFone to
22 submit a coverage map for each of the two technologies utilized by its
23 underlying carriers. That is, one for GSM coverage and one for CDMA

1 coverage. Further, because a customer's coverage area differs depending on
2 the type of handset TracFone gives them, TracFone should also explain how it
3 decides which network a specific customer will be assigned to use and which
4 handset it will give that customer.

5 **Q. PLEASE DISCUSS THE FIFTH ETC REQUIREMENT.**

6 A. The fifth requirement, which includes several sub-requirements, pertains to a
7 demonstration that the applicant will use high-cost support only for the intended
8 purposes. Since TracFone does not request high-cost support, this
9 requirement is not applicable to TracFone.

10 **Q. PLEASE DISCUSS THE SIXTH ETC REQUIREMENT.**

11 A. The sixth requirement is a demonstration of a commitment to advertise
12 supported services throughout the service area. TracFone sufficiently
13 describes how it will advertise its Lifeline services.

14 **Q. PLEASE DISCUSS THE SEVENTH ETC REQUIREMENT.**

15 A. This ETC requirement is met by committing to offer and advertise the
16 required low-income services. It is unclear if TracFone meets this
17 requirement. Although TracFone states its commitment to offering and
18 advertising Lifeline and OTAP services, TracFone will not offer Lifeline and
19 OTAP services in compliance with OTAP rules. The details regarding
20 TracFone's non-compliance with OTAP rules are addressed in Mr. Cray's
21 testimony, Exhibit Staff/400, Cray/9-32.

22 **Q. PLEASE DISCUSS THE EIGHTH ETC REQUIREMENT.**

1 A. To meet this requirement a provider must demonstrate its ability to remain
2 functional in emergencies. This requirement has two sub-requirements. The
3 first relates to back-up power, traffic re-routing abilities, and management of
4 traffic spikes. The second relates to E911 deployment and compliance.
5 TracFone does not meet this requirement.

6 **Q. DOES TRACFONE REQUEST A WAIVER OF THIS REQUIREMENT?**

7 A. Yes, TracFone requests waivers of both sub-requirements on the grounds that
8 it does not own the networks it uses to provide service and therefore cannot
9 take responsibility for the functioning of the networks during emergencies.

10 **Q. SHOULD THE COMMISSION WAIVE THE FIRST SUB-REQUIREMENT?**

11 A. No. One rationale for Lifeline service is to enable low-income consumers to
12 have access to a phone for use in personal or public emergencies. If a Lifeline
13 customer has service from TracFone, it forgoes the opportunity to have service
14 from another ETC that may be able to meet this requirement. An ETC must be
15 able to remain functional in emergencies; it must demonstrate that the network
16 used to provide services has sufficient backup power, the means to reroute
17 traffic, and the ability to manage traffic spikes during emergencies. TracFone
18 should be required to provide information from its underlying carriers to
19 demonstrate that they each meet this condition.

20 **Q. SHOULD THE COMMISSION GRANT A WAIVER OF THE SECOND SUB-**
21 **REQUIREMENT RELATING TO E911 COMPLIANCE?**

22 A. No. The second sub-requirement is a demonstration of compliance with E911
23 deployment requirements. The ability to reach 911 in times of emergency is

1 critical to all consumers. TracFone should provide information that
2 demonstrates that its underlying carriers meet this requirement. TracFone
3 should also explain whether wireless resellers are subject to federal E911
4 requirements and if so, the extent to which TracFone meets those
5 requirements. Finally, in the FCC's TracFone Forbearance Order, TracFone
6 was required to obtain a certification from each PSAP that it can provide its
7 Lifeline customers with basic and enhanced 911 access regardless of handset
8 activation status or available minutes. Instead of obtaining certification from
9 each Oregon PSAP, TracFone chose to self-certify that it meets FCC
10 requirements.

11 Again, a rationale for providing supported Lifeline services is to enable low-
12 income consumers to have access to a phone for use in personal or public
13 emergencies. Customers should not have to choose between a supported
14 Lifeline service that can consistently access 911 services and one that cannot.

15 **Q. PLEASE DISCUSS THE NINTH REQUIREMENT.**

16 A. This requirement has two sub-requirements. The first is commitment to
17 specific, objective measures for service quality and consumer protection, such
18 as the CTIA³ Consumer Code. The second is commitment to resolve
19 complaints received by the PUC regarding the applicant's services. TracFone
20 states its commitment to meeting both.

21 **Q. DOES TRACFONE COMMIT TO ANY SPECIFIC, OBJECTIVE MEASURES**
22 **FOR SERVICE QUALITY AND CONSUMER PROTECTION, E.G., THE**

³ CTIA is the international association for the wireless telecommunications industry.

1 **CTIA CONSUMER CODE FOR WIRELESS CARRIERS, PER**
2 **REQUIREMENT 9.1?**

3 A. Yes. TracFone, although not a signatory to the CTIA Consumer Code,
4 commits to abide by it. Therefore, it meets sub-requirement 9.1. However,
5 staff has concerns as to the adequacy of the code relative to its ability to
6 capture appropriate service quality protections due to TracFone's manner of
7 providing services.

8 **Q. WHAT IS THE CTIA CONSUMER CODE?**

9 A. The CTIA Consumer Code is a code to which wireless carriers may become
10 signatories. A copy of the Code is attached to TracFone's testimony. See
11 TracFone/3, Fuentes/1. Signatories to the code commit to: 1) disclose rates
12 and terms of service to customers, 2) make available maps showing where
13 service is generally available, 3) provide contract terms to customers and
14 confirm changes in service, 4) allow a trial period for new service, 5) provide
15 specific disclosures in advertising, 6) separately identify carrier charges from
16 taxes on billing statement, 7) provide customers the right to terminate service
17 for changes to contract terms, 8) provide ready access to customer service, 9)
18 promptly respond to consumer inquiries and complaints received from
19 government agencies, and 10) abide by policies for protection of customer
20 privacy.

21 **Q. WHY IS IT IMPORTANT THAT TRACFONE COMMIT TO ABIDE BY THIS**
22 **CODE?**

1 A. The Commission uses a commitment to abide by this code as a means to
2 ensure some type of minimum customer service and quality standards
3 appropriate for wireless ETCs. Landline local exchange carriers are subject to
4 varying degrees of Commission oversight of the quality of service they offer.
5 The Commission has no comparable oversight powers for wireless carriers in
6 Oregon; therefore, the Commission encourages wireless ETC applicants to
7 commit to abide by the code if they are not already a signatory. As the code
8 largely addresses consumer protection measures, network service quality
9 measures are also required for wireless ETCs through annual reporting
10 requirements (addressed below).

11 **Q. CAN TRACFONE ABIDE BY ALL PROVISIONS OF THE CODE?**

12 A. No, four of the ten provisions of the code (provisions 3, 4, 6, and 7) do not
13 apply to TracFone because of the prepaid nature of its service. Such a
14 commitment may not be adequate to address the new concerns raised by
15 TracFone's model for providing Lifeline service. In the area of customer
16 service, staff is concerned that TracFone has no local presence (personnel) to
17 aid Lifeline customers. Handsets are mailed to customers from out of state.
18 All interactions with TracFone customer service staff must take place over the
19 phone or via the internet (to which few low-income consumers presumably
20 have access). Staff recommends that the Commission consider placing
21 additional service commitments and performance measures on TracFone prior
22 to designation. Staff is willing to work with TracFone to develop suitable
23 conditions, such as those related to acceptable industry standards for customer

1 holding times, customers' ability to reach a service representative (no busy
2 signals for customer service), and hours of operations for telephone customer
3 service. At a minimum, TracFone should not be permitted to subtract Lifeline
4 customer calls to TracFone's customer service centers from the allotment of
5 free minutes provided, or to charge Lifeline customers for such calls.

6 **Q. DOES TRACFONE COMMIT TO RESOLVE ALL COMPLAINTS**
7 **RECEIVED BY THE PUC?**

8 A. TracFone states its commitment to resolve all complaints received by the PUC.
9 However, I am concerned that TracFone may not be able to resolve complaints
10 regarding certain issues (such as network performance) because it does not
11 own, and cannot control, the networks used to provide its services. TracFone
12 should be required to demonstrate how it will be able to address and resolve
13 these types of complaints before it is granted ETC status.

14 **Q. PLEASE DISCUSS THE TENTH REQUIREMENT.**

15 A. The tenth, and final, requirement for initial designation is a public interest
16 showing. This requirement is so important that I address it separately in the
17 final section of my testimony.

18

19

ETC ANNUAL REPORTING REQUIREMENTS**Q. PLEASE DESCRIBE THE ANNUAL REPORTING REQUIREMENTS.**

A. The annual ETC reporting requirements, also referred to as annual recertification requirements, are listed in Appendix A, pages 4-6 of Order No. 06-292. See Exhibit Staff/301. They largely follow the same requirements adopted for initial ETC designation. The reports are due on July 15 each year.

Q. WHAT PURPOSE DO THE ANNUAL REPORTS SERVE?

A. One purpose of the annual reports is to enable the Commission to certify each October 1, to the FCC, that ETCs receiving high-cost support in the state are using such funds only for the purposes intended by the Act. Another purpose is to monitor whether all ETCs are complying with ongoing responsibilities, including providing and advertising the supported services throughout their designated service areas. The Commission may revoke the ETC designation of any carrier at any time the carrier is not meeting responsibilities associated with ETC status.

Q. WILL TRACFONE BE ABLE TO COMPLY WITH ALL ETC ANNUAL REPORTING REQUIREMENTS?

A. No. TracFone will not be able to comply with all ETC annual reporting requirements and requests waivers, in whole or part, of five of the eight reporting requirements. TracFone will be able to comply with reporting requirements related to descriptions of supported services offered during the prior year (#1), and to demonstrations of advertising during the prior year (#3, #4.2, and #4.3). Although TracFone requests a waiver of requirement #7

1 (demonstration of appropriate use of high-cost support funds), a waiver of this
2 requirement is not necessary based on the inapplicability to TracFone, as it will
3 not receive high cost support funds. Reporting requirement #8 pertains only to
4 ETCs that have special requirements imposed as conditions of their
5 designation.

6 **Q. WHY DOES TRACFONE REQUEST A WAIVER OF THE REQUIREMENT TO**
7 **REPORT THE NUMBER OF UNFULFILLED SERVICE REQUESTS IN THE**
8 **PREVIOUS YEAR (#2)?**

9 A. Tracfone asserts that it will provide service to all requesting customers in its
10 ETC designated service area and that this requirement applies only to ETCs
11 receiving high-cost support.

12 **Q. SHOULD THE COMMISSION GRANT THIS WAIVER?**

13 A. It should, but only after TracFone has adequately defined its proposed
14 designated service area and demonstrates that it will include only areas where
15 it can provide coverage.

16 **Q. WHY DOES TRACFONE REQUEST A WAIVER OF THE REQUIREMENT**
17 **TO REPORT THE NUMBER OF CUSTOMERS IN THE LIFELINE**
18 **PROGRAM, BY ILEC STUDY AREA, DURING DECEMBER OF THE**
19 **PREVIOUS YEAR (#4.1)?**

20 A. Tracfone seeks a waiver to allow it to report customers by zip code rather than
21 by ILEC study area, on the basis that it does not have access to the data
22 necessary to develop the report.

23 **Q. SHOULD THE COMMISSION GRANT THIS WAIVER?**

1 A. No. The Commission has required all ETCs to report the number of Lifeline
2 customers by study area, and it appears that TracFone is capable of providing
3 this information. In response to Staff DR-176, TracFone admits that it already
4 compiles Lifeline customer line counts by ILEC study to report to the USAC for
5 support reimbursement in the states where it is currently designated. See
6 Exhibit Staff/302. Furthermore, zip code areas do not correspond neatly to
7 ILEC study areas. Support reimbursement is based on ILEC areas, not zip
8 code areas.

9 **Q. WHY DOES TRACFONE REQUEST A WAIVER OF THE OUTAGE**
10 **REPORT REQUIREMENT (#5.2)?**

11 A. In its second amended application, TracFone states that it receives outage
12 reports from its underlying carriers, but it cannot determine the occurrences by
13 switch location nor can it identify the number of its customers affected by
14 outages, as required. Therefore, it requests a partial waiver as related to the
15 latter two details.

16 **Q. SHOULD THE COMMISSION APPROVE THIS WAIVER REQUEST?**

17 A. The Commission should grant a limited waiver of this request. That is,
18 TracFone should be required to submit outage reports for Oregon that match
19 those filed with the FCC by its underlying carriers. TracFone need not identify
20 the associated switches, but should estimate the number of its customers
21 affected. Such reports will indicate where and when its customers were
22 deprived of working service.

23 **Q. WILL TRACFONE MEET REPORTING REQUIREMENT #5.1?**

1 A. Yes. This requirement is merely a statement certifying that the ETC is able to
2 remain functional in emergencies. However, as discussed previously,
3 TracFone is not in a position to make such a certification because it cannot
4 control the networks in uses. Therefore, this condition should be modified to
5 be consistent with the original designation requirement, i.e., that TracFone
6 submit affidavits from each of its underlying carriers certifying they are able to
7 remain functional in emergencies.

8 **Q. WHY DOES TRACFONE REQUEST A WAIVER OF THE REQUIREMENT**
9 **TO REPORT THE NUMBER OF TROUBLE REPORTS IT RECEIVES**
10 **(#6.2)?**

11 A. TracFone states that its underlying carriers do not provide it with any trouble
12 reports.

13 **Q. SHOULD THE COMMISSION GRANT THIS WAIVER REQUEST?**

14 A. No. All other wireless ETCs submit this information annually and by categories
15 of trouble. Without such information, the Commission can make no
16 assessment as to the quality of network services provided by TracFone. It is
17 important that low-income customers receive high-quality service even though
18 they have discounted plans. TracFone should comply with this requirement or
19 propose a comparable measure that it can produce each year to enable the
20 Commission to monitor network service quality.

21 **Q. DOES TRACFONE REQUEST A WAIVER OF REQUIREMENT #6.1?**

22 A. No. Requirement #6.1 is a statement certifying compliance with objective
23 measures such as the CTIA Consumer Code for wireless carriers. While

1 TracFone can easily commit to compliance to the code, as discussed in the
2 ETC initial designation requirements earlier, staff has concerns as to whether
3 the code provides sufficient consumer protections in TracFone's case. The
4 Commission should consider special reporting requirements related to item #8
5 of the code that requires carriers to provide customers ready access to
6 customer service. These could include measures such as customer holding
7 time to reach a service representative and the number of unsuccessful
8 attempts to reach a representative, e.g., due to busy signals.

9 **Q. WHAT DOES STAFF CONCLUDE REGARDING TRACFONE'S ABILITY**
10 **TO PROVIDE COMPLETE INFORMATION REQUIRED IN ITS ANNUAL**
11 **ETC REPORTS?**

12 A. TracFone seems unable to provide the information required. Specifically, it
13 cannot provide much of the data related to network performance and service
14 quality that the Commission needs to determine whether TracFone will fulfill
15 the responsibilities of continuing ETC status, should TracFone be granted initial
16 designation. The Commission should require TracFone to demonstrate that it
17 will be able to meet the reporting requirements.

18 **Q. IS THERE ANOTHER ALTERNATIVE?**

19 A. Yes. TracFone can work with staff to develop comparable reporting
20 requirements to replace those it cannot meet. Staff recommends that such
21 reporting requirements be worked out in advance of an order granting ETC
22 status.

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PUBLIC INTEREST CONSIDERATIONS

Q. WHAT IS THE FINAL REQUIREMENT FOR ETC DESIGNATION?

A. The final requirement is a public interest showing. That is, the applicant must demonstrate that designation is in the public interest.

Q. WHAT CRITERIA SHOULD THE COMMISSION USE TO DETERMINE WHETHER GRANTING TRACFONE'S REQUEST FOR ETC DESIGNATION IS IN THE PUBLIC INTEREST?

A. In Order No. 06-292, the Commission adopted the public interest criteria proposed by the FCC in FCC 05-46. They are: 1) the benefits of increased customer choice, and 2) the advantages and disadvantages of the particular service offerings made available by the designation. The Commission may also consider other public interest criteria. In addition, if an ETC applicant's proposed designated service area will not include the entire study area of a rural ILEC, a creamskimming analysis must also be performed.

Q. WOULD TRACFONE'S DESIGNATION RESULT IN INCREASED CUSTOMER CHOICE?

A. Yes. Any time a new ETC receives designation and offers another option for customers to obtain Lifeline/OTAP benefits, customer choice is increased. However, by prohibiting customers from using their Lifeline benefits on any TracFone plan that best suits their individual needs, TracFone's proposal limits the maximum customer choice intended by the OTAP rules.

Q. WHAT ARE THE ADVANTAGES OF TRACFONE'S PROPOSED LIFELINE OFFERINGS?

1 A. TracFone's proposed offerings share many of the advantages of the services
2 already offered by wireless ETCs currently designated in Oregon, primarily
3 mobility of the service as compared to the stationary nature of landline
4 services. According to TracFone, the primary advantage of its proposed
5 Lifeline services compared to other ETCs designated to date is that the
6 consumer has to pay nothing to receive the service – in TracFone's words, it is
7 "free." Because customers receive service at no cost, there are no issues of
8 contracts or credit checks.

9 TracFone claims that its offers are unique because its services are free.
10 However, numerous other wireless carriers across the nation have followed in
11 TracFone's footsteps and now offer free Lifeline services as well. Here in
12 Oregon, the Commission has before it applications from two other carriers
13 proposing to offer free Lifeline services. Recent inquiries to staff indicate other
14 companies may also be filing applications in the near future.

15 **Q. DOES STAFF BELIEVE GRANTING TRACFONE'S APPLICATION IS IN THE**
16 **PUBLIC INTEREST?**

17 A. No. There are several reasons why TracFone's designation is not in the public
18 interest. First, TracFone fails to meet several of the important requirements for
19 ETC designation. Second, TracFone fails to meet several of the important
20 requirements for ETP designation. Third, TracFone's business model presents
21 several new key issues that the Commission has not formally addressed to
22 date. These new issues relate to 1) TracFone's status as a pure reseller, 2) its
23 proposal to offer free Lifeline services, 3) the nature of its participation in OTAP

1 and the delivery of OTAP benefits to consumers, and 4) its willingness to
2 support 911 services (through the 911 surcharge) and the OTAP (through the
3 RSPF surcharge).

4 **Q. WHAT IMPACT DOES THE FIRST ISSUE - TRACFONE'S RESELLER**
5 **STATUS - HAVE ON THE PUBLIC INTEREST?**

6 A. TracFone must rely on three other carriers' networks and network operation
7 and maintenance policies to deliver its service. The Commission must decide
8 whether it must, or will, abide by the FCC's Order of Forbearance for
9 TracFone. If so, it must also determine whether it can waive the definition of
10 ETP that appears in its rules. One of the key responsibilities of an ETC is to
11 deliver quality services to its customers, yet TracFone asks the Commission to
12 relieve it of these responsibilities. TracFone is the entity requesting ETC
13 designation, and TracFone cannot expect the Commission to obtain its
14 required information from the underlying carriers. The Commission does not
15 currently gather the required information from wireless carriers that are not
16 ETCs and therefore does not have it available.

17 **Q. WHAT PUBLIC INTEREST CONCERNS ARE RAISED BY THE SECOND**
18 **ISSUE - TRACFONE'S PROPOSAL TO OFFER A FREE LIFELINE**
19 **SERVICE?**

20 A. Unlike any other ETC designated to date in Oregon, TracFone proposes to flow
21 through the support funds it receives to Lifeline/OTAP customers not as a
22 discount to current service offerings, but rather as a service offering for which

1 the customer pays nothing. There are at least two areas of concern that arise
2 relative to the offering of a free Lifeline service as proposed by TracFone.

3 **Q. WHAT IS THE FIRST AREA OF CONCERN ASSOCIATED WITH A FREE**
4 **LIFELINE OFFERING?**

5 A. The first area of concern relates to the requirement that all support funds
6 received by the ETC be flowed through, in full, to the Lifeline/OTAP customer.

7 In the case of the OTAP benefit being applied as a credit on a customer's bill
8 against an existing service, there is certainty that the full subsidy, e.g., \$13.50,
9 makes its way to the customer – the intended beneficiary. However, in the
10 case of “free” services, there is no assurance that the value of the support that
11 TracFone receives is flowed through to the customer in any of the free plans.

12 TracFone's second amended application states at page 25 that “TracFone
13 pledges that one hundred percent of the federal Lifeline support it receives will
14 be flowed through to Lifeline customers in the form of free usage.” Footnote 39
15 to this statement explains further that “TracFone reserves the right to modify its
16 Lifeline plan based on changes in market conditions or the amount of USF
17 support available. However, under the Lifeline plan, 100 percent of federal **and**
18 **state required Lifeline support** will be provided to Lifeline customers in the
19 form of free usage.” (emphasis added) Despite this pledge, TracFone
20 provides no evidence as to how a discount of \$13.50 (including \$3.50 of its
21 own money it proposes to use as a match to federal funds) applied to any of its
22 current service offerings results in any of the three free calling plans it
23 proposes to offer. Furthermore, TracFone provides no evidence to

1 demonstrate that the three free plans it proposes to offer are comparable in
2 cost or value to one another. Finally, as Mr. Cray points out in his testimony,
3 TracFone receives less than \$10.00 in other states from the FUSF, yet it
4 proposes to offer the same number of free minutes in Oregon as in the other
5 states where it receives a lower amount of support. See Exhibit Staff/400,
6 Cray/18-19.

7 **Q. WHAT IS THE SECOND AREA OF CONCERN ASSOCIATED WITH A**
8 **FREE LIFELINE OFFERING?**

9 A. The second aspect of free wireless service that causes concern relates to
10 TracFone's ability to ensure that instances of waste, fraud and abuse do not
11 occur. Unlike wireline service, mobile service is difficult to track and control as
12 it is not stationary. It can be used anywhere there is signal available and by
13 any person who possesses the handset. While mobility is a benefit of wireless
14 service, it also means that customers can lose the handset, the handset can be
15 stolen, or it can be sold, along with the service that comes with it. These
16 incidents are less likely to occur when the customer must pay some amount
17 each month to the provider (or otherwise service would be disconnected) than
18 when the customer pays nothing to the provider and service continues
19 regardless. Without adequate safeguards to track eligible consumers and the
20 handsets, the Lifeline subsidy can accrue to non-qualified customers or simply
21 to TracFone's shareholders.

22 Additionally, TracFone advertises the service as free for a year, and the free
23 minutes will continue to be downloaded each month. Indeed, people selling

1 the TracFone Lifeline phones on the internet note how many months of free
2 service come with the phone. See Exhibit Staff/118 included in previous
3 testimony. The possibility of a customer monetizing (i.e., selling) the Lifeline
4 benefit or losing the phone is a unique issue that is related to the free nature of
5 the service.

6 **Q. WHAT HAPPENS IF THE TRACFONE HANDSETS ARE NOT RECEIVED**
7 **BY THE QUALIFYING LIFELINE CUSTOMER OR DO NOT REMAIN WITH**
8 **THAT CUSTOMER?**

9 A. A TracFone Lifeline phone can be lost, stolen, given away or sold and
10 TracFone may never find out. Nevertheless, the phone remains eligible for
11 monthly support and TracFone receives reimbursement from the FUSF. This
12 continues until TracFone learns that the customer is no longer qualified for
13 Lifeline and stops reporting the phone for reimbursement. Because TracFone
14 loses money if it seeks out and reports instances of customer fraud or abuse,
15 this can create a tension between shareholders and regulatory agencies.
16 Although TracFone has committed to flowing through all support to qualifying
17 customers in every state where it is designated, it cannot fulfill this commitment
18 if its Lifeline phones are not used by the qualifying customers and TracFone
19 continues to receive support funds in the interim.

20 **Q. IS THERE ANY ACTUAL EVIDENCE SUGGESTING WASTE, FRAUD,**
21 **AND ABUSE RELATED TO TRACFONE'S LIFELINE SERVICES IN**
22 **OTHER STATES?**

1 A. Yes, there is compelling evidence. In previous testimony, Staff included
2 examples of TracFone Lifeline services for sale on the internet. See Exhibit
3 Staff/118. Staff also expressed concerns as to how little information TracFone
4 would provide to explain what actions it takes to find and combat illegal sales of
5 its Lifeline services. See Exhibit Staff/100, Marinos/46-48.

6 Since then, Staff has gathered more information that shows other dimensions
7 of the potential risks regarding waste, fraud and abuse. The Massachusetts
8 Commission performed an audit last year that indicated that 43 percent of
9 TracFone's Lifeline customers in that state were found to be ineligible for the
10 Lifeline services they had been receiving. The Commission remarked on
11 page 2 of the report that "the rate of ineligible subscribers remains
12 unacceptably high, again raising the issue of possibly significant numbers of
13 customers fraudulently obtaining Lifeline services." The audit report is included
14 here as Exhibit Staff/303.

15 **Q. WHAT OTHER EVIDENCE IS AVAILABLE?**

16 A. In response to a request in staff DR-174, TracFone submitted results of last
17 year's annual eligibility certification surveys from several states. Each year, in
18 certain states, TracFone must survey its Lifeline customers to determine how
19 many are still eligible for Lifeline services. For each of the eight states
20 reported, approximately [REDACTED] of TracFone's Lifeline customers in the
21 state were not eligible. This ineligible number includes customers TracFone
22 could not contact or that did not respond when they were asked to contact
23 TracFone. The data are included in confidential Exhibit Staff/304.

1 **Q. DID STAFF REQUEST ANY OTHER INFORMATION FROM TRACFONE?**

2 A. Yes. Staff also requested data that TracFone submits to states that require
3 TracFone to identify and report on the number of Lifeline customers that do not
4 use their phones for 60 days. This is the so-called "60-day non-usage test" first
5 required by Wisconsin. In response to staff DR-175, TracFone submitted data
6 for four states. In each state, the number of customers de-enrolled from
7 Lifeline due to non-usage, when compared to the number of TracFone Lifeline
8 customers in the state (submitted in response to staff DR-137) averaged
9 around [REDACTED] of all customers annually (based on results from the
10 last quarter of 2010). TracFone's responses to staff DR-175 and DR-137 are
11 included in confidential Exhibit Staff/305.

12 **Q. HOW DOES TRACFONE MAINTAIN OVERSIGHT OF ITS LIFELINE**
13 **CUSTOMERS?**

14 A. TracFone maintains its relationship with its Lifeline customers indirectly, making
15 it difficult to maintain oversight. Unlike service providers that collect payments
16 from their Lifeline customers every month, or have local service locations of
17 their own, TracFone renders its Lifeline services by phone or internet and sells
18 its non-Lifeline services largely through third parties. For Lifeline services,
19 TracFone does not need to have an ongoing customer relationship for payment
20 purposes, as it goes directly to the FUSF for its payment.

21 **Q. HOW DID THE FCC ADDRESS THE INDIRECT NATURE OF TRACFONE'S**
22 **RELATIONSHIP WITH ITS CUSTOMERS?**

1 A. Because TracFone sells its services largely through third parties such as
2 Walmart and Sears, the FCC required in its TracFone Forbearance Order that
3 TracFone deal directly with Lifeline customers to certify and verify initial
4 customer eligibility. That order at paragraph 19 prohibits the performance of
5 these functions at the retail outlets that sell TracFone phones and phone cards.
6 See Forbearance Order, TracFone Second Amended Application, Exhibit 3.

7 **Q. DO YOU BELIEVE THIS REQUIREMENT ADEQUATELY ADDRESSES THE**
8 **ISSUE?**

9 A. No. As a result of the Forbearance Order, TracFone ships the phone from its
10 warehouse to a customer's address. TracFone sends the phone already
11 activated for use by whoever receives it. Since no customer signature is
12 required and the phone is active, TracFone has no proof that the eligible
13 customer is receiving the Lifeline benefit. Further, since TracFone renders no
14 bills, it may never know who is actually receiving the federal Lifeline service or
15 the benefits. Staff remains concerned that this business practice presents
16 challenges for ensuring the integrity of the Lifeline program.

17 **Q. WHY SHOULD THE COMMISSION BE CONCERNED ABOUT THIS ISSUE?**

18 A. Although TracFone's Lifeline service may be free to those who obtain it, the
19 remaining telecommunications customers in Oregon pay for the support
20 through their contributions to the FUSF and the OTAP. In other words, the cost
21 of any potential waste, fraud or abuse is borne by all users of
22 telecommunications services. In response to staff DR-172, TracFone stated
23 that it does not reimburse USAC for support payments it receives in cases

1 where it discovers incidents of waste, fraud and abuse. See Exhibit Staff/306.

2 This makes the minimization of such occurrences all the more important.

3 **Q. HAVE OTHER ORGANIZATIONS EXPRESSED SIMILAR CONCERNS?**

4 A. Yes. As TracFone has gained more and more Lifeline customers, and the FCC
5 has granted forbearance to many other carriers operating under a similar
6 model, the size of the FUSF, the associated surcharge rate, and the risk of
7 waste, fraud, and abuse have all increased dramatically. The Federal-State
8 Joint Board on Universal Service expressed concerns in its Lifeline
9 Recommended Decision (FC 10J-3), released November 4, 2010. A copy is
10 included as Exhibit Staff/307. Paragraph 79 of the Decision states:

11 the Joint Board and numerous commenters [NASUCA
12 and Consumer Groups] express concern about the impact on
13 the Universal Service Fund of designation of prepaid wireless
14 carriers to only offer Lifeline service. In particular, the Joint
15 Board supports the further examination of those Lifeline
16 offerings that are offered at no cost to the subscriber. The
17 relevant decisions to expand USF Lifeline funding to include
18 prepaid wireless lifeline-only carriers were made largely by the
19 FCC in the context of various forbearance and waiver
20 petitions.

21 In a separate statement, Ray Baum, State Chair of the Joint Board,
22 addressed impacts of the prepaid wireless carriers that offer free Lifeline
23 services as follows:

1 ...several states have reported that a significant number
2 (nearly half in some cases) of the Lifeline customers of these
3 new participants are not eligible to receive support. Providing
4 public support to ineligible customers represents a waste of
5 public support funds and is unacceptable. This waste not only
6 harms the customers who pay into the low-income fund, but
7 potentially denies needed support for those who are truly
8 eligible. We must ensure there is accountability for those who
9 benefit from the low-income fund.

10 In October of 2010, the United States Government Accountability Office
11 (GAO) released a report recommending changes the FCC should make to its
12 management of the FUSF low-income fund. The report noted the significant
13 increase in the FUSF low-income fund as due primarily to TracFone and other
14 wireless carriers offering free Lifeline services. It pointed out that many
15 consumers may be simultaneously receiving Lifeline discounts on both a
16 wireline and wireless phone. Representatives from twenty one states indicated
17 they were concerned about consumer fraud in the Lifeline program. The report
18 at page 36 notes comments from the Florida Public Service Commission that
19 “the inclusion of prepaid wireless options in the Lifeline program presents the
20 risk that these companies, which do not bill their customers monthly, can claim
21 support for all subscribers without confirming that the person is still in
22 possession of and is using the phone.” Relative to the 60-day non-usage test,
23 the Florida PSC stated that “While a good first step, the mechanism still does

1 not prevent the phone or minute allotment from being sold to ineligible
2 customers.” The GAO report is included here as Exhibit Staff/308.

3 And finally, the FCC just recently released a Notice of Proposed Rulemaking
4 (NPRM) on the Lifeline program that proposes implementation of several
5 means to eliminate waste, fraud and abuse in the Lifeline program. The NPRM
6 is included here as Exhibit Staff/309.

7 **Q. WHAT MEASURES ARE PROPOSED IN THE FCC’S RECENT NPRM?**

8 A. The FCC states in paragraph 46 of the NPRM that “We are committed to
9 eliminating waste, fraud, and abuse in Lifeline/Link Up, and to identifying and
10 penalizing program violations when they occur.” Of particular interest in this
11 docket is the FCC’s proposed near-term rule changes intended to “ensure that
12 carriers are reimbursed only for the provision of Lifeline services to current
13 customers.” These include the reporting of certain customer items of
14 information to USAC, procedures ETCs should follow when duplicate support
15 to a customer is detected (including customer treatment and fund
16 reimbursement), permissible customer addresses (post office box numbers),
17 pro rata reporting for support reimbursement, 60-day non-usage testing, and
18 customer de-enrollment procedures.

19 **Q. WHAT SHOULD THIS COMMISSION DO TO ADDRESS ISSUES
20 RELATED TO THE FREE WIRELESS MODEL?**

21 A. Staff recommends that the Commission prohibit the offering of free wireless
22 Lifeline services until it can gather information and further input as to how the
23 issues raised by such offerings should be addressed. For instance, measures

1 to minimize the potential for waste, fraud and abuse associated with free
2 wireless service are suggested in the FCC's NPRM, and parties will file
3 comments on April 21. The comments filed by other state commissions that
4 already have experience with providers of free Lifeline services could be very
5 informative and instructive in deciding the issues in Oregon. The new docket
6 proposed elsewhere in my testimony would be an appropriate avenue for
7 achieving this end. Alternatively, the Commission may decide that there are
8 reasons why Lifeline eligible customers should pay some minimal amount of
9 their own money for service, and require such a minimum customer charge for
10 all Lifeline service offerings in Oregon.

11 **Q. WOULD REQUIRING LIFELINE/OTAP CUSTOMERS TO PAY SOME**
12 **MINIMAL AMOUNT OF THEIR OWN MONEY FOR LIFELINE SERVICE**
13 **HELP TO COMBAT THE POTENTIAL FOR WASTE, FRAUD AND**
14 **ABUSE?**

15 A. Requiring customers to pay some minimal amount per month could resolve a
16 few issues. Customers would be less likely to sell their Lifeline services
17 because the owner of the phone would have an ongoing requirement to pay a
18 monthly charge to the service provider. If the phones are lost or stolen, the
19 person in possession of the phone would have to contact the provider with
20 payment information. If the provider receives no payment for the month, it
21 would discontinue the service and stop receipt of the Lifeline funds.

22 **Q. HAS THE IDEA OF A MINIMUM REQUIRED CHARGE BEEN USED**
23 **ELSEWHERE?**

1 A. Yes. The FCC requires Tribal Lifeline customers, who are eligible for discounts
2 of up to \$25 per month, to pay a minimum of one dollar each month for that
3 service. In addition, California has recently determined that its Lifeline
4 customers must pay a minimum of \$5.00 of their own money each month. The
5 relevant pages of that order are included here as Exhibit Staff/310. And the
6 Joint Board Recommended Decision referenced above also addressed this
7 idea. Paragraph 79 of the Decision states:

8 Our concerns include the implications of demand for a service
9 or product that is essentially free. When the Commission last
10 considered the issue of free service for Lifeline customers, it
11 was determined that the local residential rate charged to
12 Lifeline-eligible Tribal members should not fall below a monthly
13 minimum of \$1.00 , even if the Lifeline credit exceeded the
14 amount of their bill for local service. The Commission should
15 develop a record, and determine whether this requirement for
16 a minimum monthly rate should be made applicable to all
17 Lifeline subscribers and not just to Tribal members.

18 **Q. WHAT IS THE THIRD NEW ISSUE RAISED BY TRACFONE'S BUSINESS**
19 **MODEL?**

20 A. The third new issue relates to the nature of TracFone's participation in the
21 OTAP and the delivery of OTAP benefits to consumers. Elements of this
22 concern are fully addressed in Mr. Cray's testimony. Staff is puzzled as to why
23 TracFone, unlike every other ETC designated to date, will not accept the

1 additional \$3.50 of support made available by the OTAP in order to increase
2 the benefits (raise the number of free minutes) to Oregon low-income
3 consumers. It would be contrary to the public interest to not flow through the
4 maximum support available to OTAP customers. Additionally, there is the
5 question of whether not accepting the additional OTAP support relieves
6 TracFone of any of the requirements that other ETPs follow, such as offering
7 the Lifeline/OTAP discount on all services. Staff recommends that TracFone
8 be required to follow all applicable OTAP rules in furtherance of the public
9 interest.

10 **Q. WHAT IS THE FOURTH NEW ISSUE PRESENTED BY TRACFONE'S**
11 **BUSINESS MODEL?**

12 A. The fourth new issue is that TracFone will not commit to collecting or remitting
13 E911 or RSPF surcharges from any of its current or post-designation
14 customers in Oregon. It appears that TracFone does not currently collect or
15 remit these surcharges from its Oregon customers due to the prepaid nature of
16 those services. TracFone apparently assumes that its proposed new free
17 Lifeline services will fall into the same "prepaid" category, even though the
18 payment will come from the FUSF (as other ETC's reimbursements do) rather
19 than from the customer. If TracFone is granted ETC designation it will bring in
20 substantial numbers of new customers that will further burden the 911 system
21 and the OTAP, without contributing to the increased costs that will be incurred
22 as a direct result of its designation.

1 **Q. AS TO THE FINAL PUBLIC INTEREST SHOWING REQUIREMENT, WILL**
2 **TRACFONE'S DESIGNATION RESULT IN CREAMSKIMMING IN THE**
3 **RURAL ILEC AREAS IN WHICH IT SEEKS DESIGNATION?**

4 A. Until TracFone adequately defines its designated service area, a
5 creamskiimming analysis cannot be completed.

6 **Q. PLEASE EXPLAIN CREAMSKIMMING AND ITS RELEVANCE AS AN**
7 **ISSUE.**

8 A. The FCC requires a creamskiimming test when a competitive carrier seeks ETC
9 designation in only a portion of a rural ILEC's study area. See FCC 05-46,
10 pages 22-25, included in previous testimony as Exhibit Staff/135. The
11 creamskiimming test is to ensure that the competitive ETC will not serve a
12 disproportionate share of the rural ILEC's high-density, low-cost areas, while
13 receiving support that the ILEC has averaged across its entire study area. If a
14 state designates a competitive ETC in only a portion of a rural ILEC's study
15 area, a petition must be submitted to the FCC for "redefinition" of that study
16 area before the state's ETC designation can become effective. The petition
17 must include a demonstration that creamskiimming will not occur in any rural
18 ILEC area.

19 **Q. HOW DOES TRACFONE'S APPLICATION ADDRESS THE**
20 **CREAMSKIMMING ISSUE?**

21 A. TracFone's application does not appear to address the creamskiimming issue,
22 but Mr. Fuentes asserts in his testimony that "A creamskiimming analysis as

1 part of the Commission's consideration of TracFone's ETC application is
2 neither not relevant nor appropriate [sic]." See TracFone/1, Fuentes/43.

3 **Q. DOES THE CREAMSKIMMING ISSUE APPLY TO AN ETC SEEKING ONLY**
4 **LOW-INCOME, AND NOT HIGH-COST, SUPPORT?**

5 A. Until the FCC determines that creamskimming does not apply, it appears to be
6 a requirement for granting ETC designation. Two wireless carriers seeking
7 ETC designation for only low-income support (NTCH, Inc. and Cricket
8 Communications, Inc.) filed for forbearance from the creamskimming test over
9 a year ago. Their petitions were included as Exhibits Staff/136 and Staff/137,
10 respectively, in my previous testimony. To my knowledge, the FCC has not
11 issued a decision on the petitions. However, if TracFone is aware of such a
12 decision and provides a copy, staff will reconsider its viewpoint on this issue.

13 **Q. WHAT DO YOU RECOMMEND REGARDING THIS ISSUE?**

14 A. The issue should be addressed after TracFone determines exactly where it
15 seeks designation. At that time, TracFone may also submit any evidence it has
16 to demonstrate that the FCC does not require a creamskimming test for ETC
17 applicants seeking only low-income support.

18 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

19 A. Yes.

CASE: UM 1437
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 301

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

Initial Designation – Application Requirements (Issues II.A., II. B. 1 &2)

Requirements apply to all applicants (wireline and wireless) in all ILEC service areas (rural and non-rural) regardless of type of federal universal service support sought unless specifically noted.

1. Common carrier status

- 1.1. Demonstration of the applicant's common carrier status.
- 1.2. Description of the general types of services and geographic area for which the applicant is authorized in the state of Oregon.

2. Commitment and ability to provide all supported services

- 2.1. Statement of commitment to offer all required supported services and description of each supported service currently offered (voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers).
- 2.2. Identification of any required supported services that are not currently offered, and an explanation of when and how such services will be made available.
- 2.3. Identification and description of each of applicant's service offerings (e.g., calling plans) that will qualify for federal universal service support (the name the plan is marketed under, the number of minutes and included calling area, and the price).
- 2.4. Demonstration that the applicant offers a local usage plan that is comparable to the basic local service offerings of the ILEC in the proposed designated service area.
- 2.5. Acknowledgment that applicant may be required to provide equal access if it is the only remaining ETC in an area (non-LEC applicants only).

3. Commitment and ability to provide supported services throughout the designated service area

- 3.1. Explicit identification of the proposed designated service area through:
 - 3.1.1. Map showing applicant's licensed area boundaries and its requested designated service area boundaries overlaid on the boundaries of all ILEC wire centers it proposes to include in its designated service area, and
 - 3.1.2. List of ILEC wire centers (by ILEC name, wire center name and CLLI code), with indications for each wire center, whether it will be fully or partially included in the ETC's proposed designated service area.
- 3.2. Commitment to offer supported services throughout the proposed service area and to provide service to all customers consistent with the requirements of 47 CFR Section 54.202(a)(1)(i). This section of the FCC rules includes the six-step process that must be used when service is requested within the applicant's designated service area, but outside its existing network coverage.

4. Types of facilities used to offer supported services
 - 4.1. Description of types of network facilities currently used to provide service.
 - 4.2. Map showing extent of current network coverage and, for wireless applicants, signal strengths.
 - 4.3. Identification of current relevant resale or interconnection agreements.

5. Commitment to use support funds only for the intended purposes
 - 5.1. Affidavit, signed by responsible corporate officer, certifying that support funds received pursuant to 47 C.F.R. Part 54, Subpart D, and Part 36, Subpart F, will be used only for the intended purposes.
 - 5.2. Copy of certification required by FCC pursuant to 47 C.F.R. Subpart 54.809 to receive Interstate Access Support, or pursuant to 47 C.F.R. Subpart 54.904 to receive Interstate Common Line Support.
 - 5.3. Formal network improvement plan demonstrating how applicant will use support funds (all federal support types except low-income support).
 - 5.3.1. Detailed plan covering each of first 2 years of designation.
 - 5.3.1.1. Current counts of eligible lines/handsets in service in each ILEC wire center with disaggregated per-line support, and in each ILEC study area where support is averaged, by residence, single-line business, and multi-line business categories.
 - 5.3.1.2. Forecast of support amount, by type other than low-income, and by ILEC service area, that the applicant expects to receive, as well as an explanation of how the forecast was derived.
 - 5.3.1.3. Detailed information for each project that will use support funds:
 - 5.3.1.3.1. Description and purpose of the project, its physical location and the ILEC serving that area.
 - 5.3.1.3.2. The start date and completion data (by quarter).
 - 5.3.1.3.3. Amount of support money allocated to the project, in total and broken down by investment and expense types.
 - 5.3.1.3.4. The amount of company's own funds that will be used for each supported project.
 - 5.3.1.3.5. Brief explanation of why the carrier would not make these improvements without the availability of support funding.
 - 5.3.1.3.6. Quantification of resulting service improvements by type (increased coverage, signal strength, capacity, etc.), population benefited, and geographic area benefited (shown on map).
 - 5.3.2. Overview plan for years 3-5, consisting of descriptions of how applicant plans to expand or improve services 3-5 years into future, using its own money and future support funds. This is a higher level plan to share the applicant's vision and objectives for its operations in Oregon.

6. Commitment to advertise supported services throughout the service area
 - 6.1. Statement of commitment to advertise supported services throughout the service area.
 - 6.2. Brief description of advertising plans for supported services (excluding low-income service offerings).

7. Commitment to offer and advertise Lifeline, Link Up, and OTAP services
 - 7.1. Statement of commitment to offer and advertise required low-income services.
 - 7.2. Identification and description of specific services that will be offered to qualifying low-income customers.
 - 7.3. Description of advertising plans designed to reach the target low-income population.

8. Ability to remain functional in emergencies
 - 8.1. Demonstration of ability to remain functional in emergencies specifically addressing:
 - 8.1.1. Amount of backup power available.
 - 8.1.2. Ability to reroute traffic around damaged facilities.
 - 8.1.3. Ability to manage traffic spikes during emergency periods.
 - 8.2. Description of current status of E911 deployment and compliance; if full deployment has not been attained, describe plans to achieve full deployment.

9. Commitment to meet service quality and consumer protection standards
 - 9.1. Commitment to specific, objective measures for service quality and consumer protection, e.g., the CTIA Consumer Code for wireless carriers or the applicable Commission rules for wireline carriers.
 - 9.2. Commitment to resolve complaints received by PUC, and designation of specific contact person to work with PUC's Consumer Services Division for complaint resolution.

10. Public interest showing
 - 10.1. Demonstration that designation would be in the public interest; this must address:
 - 10.1.1. Specific ways in which consumer choices will be increased.
 - 10.1.2. Specific advantages and disadvantages of applicant's service offerings.
 - 10.1.3. Any other specific criteria determined by the Commission.
 - 10.2. Creamskimming analysis for cases in which the applicant's proposed designated service area will not include the entire study area of a rural ILEC.

Annual Recertification Requirements (Issue II.A.)

Requirements apply to all applicants (wireline and wireless) in all ILEC service areas (rural and non-rural) regardless of type of federal universal service support received unless specifically noted.

1. Supported services offerings

- 1.1. Local usage plans: Identification of basic local usage plan offerings, including each offering's name, advertised public description, number of local minutes included, calling area, and rates. ETCs that file tariffs for basic local service offerings can meet this requirement by providing specific tariff references.
- 1.2. CETCs only: status report on provision of supported services that were not available at designation (e.g., toll restriction for qualifying low-income consumers).
- 1.3. CETCs only: acknowledgment that carrier may be required to provide equal access if it is the only remaining ETC in an area. This is a one-time requirement and does not apply if the CETC provided such acknowledgment at initial designation.

2. Provision of supported services throughout the designated service area

- 2.1. Report on the number of unfulfilled service requests.
 - 2.1.1. Wireless carriers: report on number of unfulfilled service requests during past calendar year, noting location of each such request, and description of ETC's attempts to provide service; a brief description of how the ETC ensures that every request for service that cannot be immediately fulfilled is recorded and processed further under the 6-step process set forth in 47 C.F.R. Section 54.202(a)(1)(i).
 - 2.1.2. Wireline carriers that file service quality reports to the PUC: reference reports filed for primary held orders over 30 days.
 - 2.1.3. Wireline carriers that do not file service quality reports to the PUC: report conforming to requirements in either 2.1.1. or 2.1.2. above.

3. Advertisement of supported services throughout the service area

- 3.1. Demonstration that supported service offerings (excluding low-income offerings) were advertised during the past calendar year throughout all geographic areas in the state where the carrier is designated as an ETC. This demonstration should identify the types of media used (e.g., newspaper, radio, internet) and the general frequency of advertising for supported services. It should also include examples of actual advertisements for supported services (noting dates, specific distribution methods, and target geographical populations) sufficient to demonstrate the geographical extent of the ETC's advertising during the past year.

4. Offering and advertisement of Lifeline, Link Up, and OTAP services

- 4.1. Report on the number of customers in the Lifeline program, by ILEC study area, during December of the previous calendar year.

- 4.2. Brief description of how and where low-income program service offerings were advertised.
- 4.3. Copies of all actual advertisements for Lifeline, Link Up, and OTAP service offerings that were run during the previous calendar year. These may include newspaper advertisements, radio announcements, pamphlet distributions, website postings, etc.
5. Ability to remain functional in emergencies
 - 5.1. Statement certifying that ETC is able to remain functional in emergencies.
 - 5.2. Outage report:
 - 5.2.1. Wireless ETCs: annual outage report consistent with definitions and details in 47 C.F.R. § 54.209(a)(2).
 - 5.2.2. Wireline ETCs subject to PUC outage reporting requirement: reference to PUC outage reporting requirement, with indication of whether any reports were filed during previous calendar year.
 - 5.2.3. Other ETCs: annual outage report conforming to requirements in either 5.2.1. or 5.2.2. above.
 - 5.3. CETCs only: E911 implementation status if not complete at time of application.
6. Commitment to service quality and consumer protection
 - 6.1. Statement certifying compliance with specific, objective measures for service quality and consumer protection, e.g., the CTIA Consumer Code for wireless ETCs or applicable Commission rules for wireline ETCs.
 - 6.2. Trouble report:
 - 6.2.1. Wireless ETCs: annual report of troubles per 100 handsets, by wireless switch, experienced by customers of the ETC within the designated service area. Troubles should be categorized into 4 general types: no service, network busy, interruption of service, and poor reception. If the ETC cannot report by the 4 categories listed, it should obtain Staff's approval for any different categorizations prior to filing.
 - 6.2.2. Wireline ETCs that file PUC trouble reports: reference filed trouble reports.
 - 6.2.3. Other ETCs: submit annual trouble report conforming to requirements in either 6.2.1. or 6.2.2. above.
7. Use of support funds
 - 7.1. Affidavit, signed by responsible corporate officer, certifying that support funds received pursuant to 47 C.F.R. Part 54, Subpart D, and Part 36, Subpart F, will be used only for the intended purposes.
 - 7.2. Copy of most recent certification submitted to FCC pursuant to 47 C.F.R. Subpart 54.809 for Interstate Access Support, or pursuant to 47 C.F.R. Subpart 54.904 for Interstate Common Line Support.
 - 7.3. CETCs only: Network improvement plan update consisting of:
 - 7.3.1. Demonstration of use of support funds (other than low-income funds) received during previous calendar year, including:
 - 7.3.1.1. The amount of support funds, by type, received during the year.

- 7.3.1.2. Year-end counts of eligible lines/handsets in service for each ILEC service area as they were reported to USAC for the past December.
 - 7.3.1.2. Identification of each project for which the support was used, the actual support expenditures (by amount and type) for each project, and status of project (completed or still in progress).
 - 7.3.1.3. The resulting benefits to consumers (qualitative and quantitative) from each project and updates to coverage and signal strength maps.
 - 7.3.1.4. Explanation of how and why actual spending of support funds differed from spending proposed in the previous network improvement plan.
 - 7.3.2. Updates to network improvement plan for the current calendar year and the following year:
 - 7.3.2.1. Forecast of support amount, by type (LSS, HCL, ICLS, IAS), that the applicant expects to receive during each of the next 2 years, as well as an explanation of how the forecast was derived.
 - 7.3.2.2. Detailed information for each project that will use support funds:
 - 7.3.2.2.1. Description and purpose of the project, its physical location and the ILEC serving that area.
 - 7.3.2.2.2. The start date and completion data (by quarter).
 - 7.3.2.2.3. Amount of support money allocated to the project, in total and broken down by investment and expense types.
 - 7.3.2.2.4. The amount of company's own funds that will be used for each supported project.
 - 7.3.2.2.5. Brief explanation of why the carrier would not make these improvements without the availability of support funding.
 - 7.3.2.2.6. Quantification of resulting service improvements by type (increased coverage, signal strength, capacity, etc.), population benefited, and geographic area benefited (shown on map).
8. Public interest factors
- 8.1. Report on any special commitments or requirements imposed at initial designation or during the previous annual recertification process.

CASE: UM 1437
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 302

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

DR 176 For states that have varying ILEC federal subscriber line charge (SLC) rates, how does TracFone determine and report the amount of reimbursement it is claiming to USAC each month? That is, are reimbursable customer counts compiled by individual ILEC study area and reported for each such study area to USAC each month? If not, what categories are used to report for reimbursement purposes?

Response

Reimbursable line counts are compiled by ILEC study area so that the amount of Tier 1 support is based on the subscriber line charges of the ILECs who operate where TracFone is providing Lifeline service.

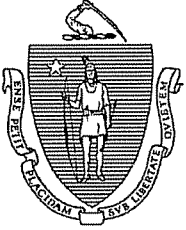
CASE: UM 1437
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 303

**Exhibits in Support
Of Staff Testimony**

March 23, 2011



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 10-6

October 19, 2010

TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers

ORDER

APPEARANCES: Mitchell F. Brecher
Debra McGuire Mercer
Greenberg Traurig, LLP
2101 L Street, NW
Suite 1000
Washington, D.C. 20037

FOR: TRACFONE WIRELESS, INC.

I. Introduction & Procedural History

TracFone Wireless, Inc. (“TracFone”) provides SafeLink Wireless® (“SafeLink”) Lifeline services in Massachusetts. Lifeline is a universal service support mechanism designed to provide low-income consumers with discounted monthly telephone service for a single line per residence. *In the Matter of Lifeline and Link-Up*, 19 F.C.C.R. 8302, *Report and Order and Further Notice of Proposed Rulemaking* at 8306-07 (rel. Apr. 29, 2004) (“*Lifeline Order*”). As an eligible telecommunications carrier (“ETC”),¹ TracFone receives federal reimbursements for every qualifying low-income consumer that it provides with Lifeline services under the Low Income Program of the Universal Service Fund (“USF”). 47 C.F.R. § 54.407(b).

In order to receive USF reimbursements for its SafeLink Lifeline customers in Massachusetts, TracFone must comply with state procedures to certify and verify its customers’ eligibility. 47 C.F.R. §§ 54.410 (a)(1), (c)(1). The Department of Telecommunications and Cable (“Department”) requires TracFone to conduct an annual audit of a random, statistically-valid sample of its customers to verify subscriber eligibility, consistent with the FCC’s annual audit requirement, and to submit a report of its results to the Department. *Lifeline Order* at Appendix J; *TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers*, D.T.C. 09-9, *Order* at Attachment 1 (June 30, 2010) (“*2009 TracFone Order*”).

As required under the current verification procedures, TracFone submitted its second² Annual Audit Report (“Audit Report”) to the Department on August 31, 2010. Notice of Filing, Annual Audit Report (“Audit Report”).

¹ Only carriers designated as ETCs under 47 U.S.C. § 214(e), may receive universal service reimbursement for providing Lifeline services. *Lifeline Order* at 8306.

² TracFone filed the report on its first annual verification audit on November 18, 2009, which sampled 43 subscribers. *2009 TracFone Order* at 5, 13.

II. Analysis and Findings: Annual Verification Audit

As an initial matter, the Department finds that TracFone complied with the current eligibility verification requirements. *See 2009 TracFone Order* at Attachment 1. The Department requires that TracFone conduct its audit on a statistically valid, random sample³ of subscribers, based on the FCC's guidelines. *See Lifeline Order* at Appendix J. Additionally, TracFone must comply with the Department's audit reporting requirements, designed to facilitate Department review of the audit results, which are set out in Attachment 1 to the *2009 TracFone Order*. The Department finds that TracFone has satisfied these requirements. First, TracFone conducted its audit on a statistically valid sample of 244 subscribers, as required.⁴ *See Lifeline Order* at Appendix J; Audit Report at Attachment 1. Additionally, the Department finds that TracFone submitted its Audit Report in compliance with the Department's requirements by submitting a detailed report of each audited subscriber. *See 2009 TracFone Order* at Attachment 1.

The Audit Report indicates that TracFone verified 140 (or 57%) of the subscribers in the sample. Audit Report at Attachment 1. The remaining 104 subscribers (or 43% of the sample), were ineligible. *Id.* The Department finds that while the audit results have improved slightly since last year,⁵ the rate of ineligible subscribers remains unacceptably high, again raising the issue of possibly significant numbers of customers fraudulently obtaining Lifeline services.

³ The FCC provides a formula for calculating the size of a statistically valid sample based upon the total customer base, and the percentage of Lifeline subscribers found to be inappropriately receiving Lifeline services the previous year. *Lifeline Order* at Appendix J.

⁴ TracFone's subscriber base was between 130,000-140,000 when it conducted its audit. Universal Service Administrative Company, Low Income Disbursement Data, <http://www.usac.org/li/tools/disbursements/default.aspx> (last visited Oct. 13, 2010) (TracFone specific disbursement data indicates approximately 137,000 Massachusetts subscribers for June 2010). While the estimated percentage of Lifeline subscribers determined to be inappropriately receiving Lifeline service from last year was 49%, the FCC caps this percentage at 6% for the purposes of calculating sample size. *See Lifeline Order* at Appendix J; *2009 TracFone Order* at 13. Accordingly, this sample size is correctly calculated based on the FCC's guidelines. *See Lifeline Order* at Appendix J.

⁵ The results of TracFone's annual audit submitted in 2009 found 22 eligible subscribers out of a sample of 43 (or 51%), and 21 (49%) were found to be ineligible. *2009 TracFone Order* at 13.

Additionally, since nearly 30% of subscribers in the sample failed to respond, the Department notes that the response rate of subscribers continues to be an issue in the verification process. Audit Report at Attachment 3. The Department is presently addressing both of these issues in an ongoing proceeding,⁶ investigating, *inter alia*, appropriate verification procedures to ensure that only eligible subscribers receive Lifeline benefits in Massachusetts.

Accordingly, the Department finds that TracFone has satisfied its annual audit requirement. Unless and until it is instructed to do otherwise by a Department Order or ruling, TracFone shall continue performing annual verification audits, consistent with the audit performed this year, using a random, statistically-valid sample of its SafeLink subscribers, calculated using the formula provided in Appendix J to the *Lifeline Order*. TracFone must submit the results of its next audit to the Department by August 31, 2011, consistent with the current audit report requirements and the instructions provided in Attachment 1.

⁶ This investigation, docketed as D.T.C. 10-3, was opened in part as a result of concerns about TracFone's audit submitted in 2009. See *Investigation by the Department on its Own Motion into the Lifeline and Link-Up Programs for Massachusetts Telephone Customers*, D.T.C. 10-3, *Order Opening Investigation* at 2 (Sept. 17, 2010); *2009 TracFone Order* at 13-16.

III. Order

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That TracFone conduct an annual verification audit, using a random, statistically-valid sample of subscribers, consistent with the current requirements, and submit the audit results to the Department by August 31, 2011; and

FURTHER ORDERED: That TracFone submit an audit report, consistent with the audit report submitted in this proceeding, amended according to the instructions provided in Attachment 1 to this *Order*.

By Order of the Department

/s/ Geoffrey G. Why

Geoffrey G. Why
Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable federal and state laws.

Attachment 1

Additional Audit Report Instructions

1. Submit a detailed report of each audited subscriber, listed by subscriber identification number, consistent with that submitted as a part of Attachments 3 to the previous Audit Reports, and additionally classify each subscriber by “reason” for de-enrollment, specifically:
 - a. No response: subscriber did not respond at all.
 - b. Incomplete response: subscriber responded in some way – for instance, subscriber provided an incomplete response by mailing back the audit form but failed to provide documentation of program participation.
 - c. Duplicate service: subscribers indicated they were receiving services from another ETC.
 - d. De-enroll: subscriber cancelled service. Not applicable for subscribers who fit into another category.
 - e. Fraud: subscriber mistakenly/fraudulently enrolled.
 - f. No longer eligible: subscriber indicated that they had become ineligible at some point after enrollment.
2. Continue to indicate the initial enrollment method for each subscriber.
3. Complete the Annual Lifeline Certification and Verification form, including columns A through E, and submit to both the Department and to USAC. *Available at* http://www.usac.org/_res/documents/li/pdf/Annual-Lifeline-Certification-Verification-letter-for-OMB-and-USAC.pdf.

CASE: UM 1437
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 304

**Exhibits in Support
Of Testimony**

March 23, 2011

STAFF EXHIBIT 304

IS CONFIDENTIAL AND SUBJECT TO PROTECTIVE

ORDER NO. 10-189. YOU MUST HAVE SIGNED

APPENDIX B OF THE PROTECTIVE ORDER IN

DOCKET UM 1437 TO RECEIVE THE

CONFIDENTIAL VERSION

OF THIS EXHIBIT.

CASE: UM 1437
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 305

**Exhibits in Support
Of Testimony**

March 23, 2011

STAFF EXHIBIT 305

IS CONFIDENTIAL AND SUBJECT TO PROTECTIVE

ORDER NO. 10-189. YOU MUST HAVE SIGNED

APPENDIX B OF THE PROTECTIVE ORDER IN

DOCKET UM 1437 TO RECEIVE THE

CONFIDENTIAL VERSION

OF THIS EXHIBIT.

CASE: UM 1437
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 306

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

DR 172 Does TracFone reimburse USAC for support payments it received in cases where it discovers incidents of waste, fraud and abuse? If so, what was the dollar amount of such low-income support that TracFone returned to USAC in 2010?

Response

No. All discovered cases of waste, fraud, and abuse are immediately de-enrolled from TracFone's Lifeline program upon discovery and are no longer included in claims for Lifeline support reimbursement.

CASE: UM 1437
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 307

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	

RECOMMENDED DECISION

Adopted: November 3, 2010

Released: November 4, 2010

By the Federal-State Joint Board: Commissioner Baker and Senior Assistant Attorney General ffitch issuing separate statements; Commissioners Clyburn, Copps, and Board Member Burke approving in part, concurring in part, and issuing separate statements; Chairmen Baum and Cawley and Commissioner Landis concurring in part, dissenting in part, and issuing separate statements.

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APPENDIX A - List of Initial Commenters

APPENDIX B - List of Reply Commenters

I. INTRODUCTION

1. In its May 4, 2010 *Referral Order*, the Commission asked the Federal-State Joint Board

on Universal Service (Joint Board) to review the Commission's eligibility, verification, and outreach rules for the Lifeline and Link Up universal service programs, which currently provide discounts on telephone service for low-income customers.¹ This Recommended Decision addresses these issues and, in addition, recommends that the Commission take into consideration the issues of broadband, overall fund size, and prepaid wireless Lifeline service as it moves forward with universal service reform.

2. In this Recommended Decision, the Joint Board recommends that: (1) the Commission encourage automatic enrollment as a best practice for all states; (2) the Commission adopt uniform minimum verification procedures and sampling criteria that would apply to all eligible telecommunications carriers (ETCs) in all states; (3) states be allowed to utilize different and/or additional verification procedures so long as these procedures are at least as effective in detecting waste, fraud, and abuse as the uniform minimum required procedures; (4) all ETCs in all states be required to submit the data results of their verification sampling to the Commission, the states, and the Universal Service Administrative Company (USAC) and that the results be publicly available; (5) the Commission adopt mandatory outreach requirements for all ETCs that receive low-income support; and (6) the Commission maintain advisory guidelines for states with respect to performing low-income outreach.

3. Additionally, in this Recommended Decision, the Joint Board recommends that the Commission seek further comment on numerous universal service low-income program issues, including whether the current eligibility requirement of household income at or below 135 percent of the federal poverty guidelines (FPG) should be raised to 150 percent for the existing Lifeline and Link Up programs; the potential impact, costs, and benefits of minimum uniform eligibility requirements; and the costs and benefits of database certification and verification of low-income consumers' eligibility.

4. Finally, the Joint Board responds to other issues raised by the *2010 Referral Order*, including the request that the Joint Board "consider how the potential expansion of the low-income program to broadband would affect any of its recommendations."² While the Joint Board has found it difficult to consider whether any of the instant recommendations should be modified prior to the appropriate consideration of the broadband services that might be included in an extension of the low-income program, it reiterates the importance of broadband service to consumers. Indeed, consistent with the Joint Board's *2007 Recommended Decision* that universal service funding is appropriate for broadband network deployment, the National Broadband Plan's recommendation that the Commission reform the Universal Service Fund to support the provision of both voice and broadband communications, and section 254(b)(3) of the Communications Act of 1934, as amended (the Act), the Joint Board recommends that the Commission adopt an additional principle for universal service pursuant to section 254(b)(7) of the Act – that universal service support should be directed where possible to networks that provide both broadband and voice services. In particular, the Joint Board supports deployment and maintenance of broadband services in areas that are now unserved or underserved, although it remains important to continue support for existing voice networks. Further, the Joint Board acknowledges that the extension of universal service support to broadband raises a number of issues which the Joint Board highlights for the Commission to consider as it undertakes broader universal service reform. The Joint Board also raises additional issues for consideration that were raised in the record, including the need for close review of prepaid wireless service offerings and fund size.

¹ *Federal-State Joint Board On Universal Service; Lifeline and Link-Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order, 25 FCC Red 5079 (2010) (*2010 Referral Order*).

² *2010 Referral Order*, 25 FCC Red at 5088, para. 24.

II. CONSUMER ELIGIBILITY

A. Background

5. Currently, Lifeline and Link Up eligibility is based upon participation in means-tested programs and, in some states, upon income. In states that mandate Lifeline and Link Up support, the consumer must meet eligibility criteria established by the state, consistent with sections 54.409 and 54.415 of the Commission's rules.³ The current rules allow states with their own Lifeline and Link Up programs flexibility in establishing their own income-based eligibility criteria, though some of these states instead use the federal default eligibility criteria.⁴ Federal default criteria apply to eligibility for federal Lifeline and Link Up support in states that do not mandate state Lifeline support.⁵ The federal default eligibility criteria require consumers to certify that they participate in at least one of the following federal assistance programs: Medicaid; Food Stamps; Supplemental Security Income (SSI); Federal Public Housing Assistance; Low-Income Home Energy Assistance Program (LIHEAP); National School Lunch Program's free lunch program; or Temporary Assistance for Needy Families (TANF).⁶

6. In the *2004 Lifeline and Link Up Order*, the Commission adopted, upon the recommendation of the Joint Board, an additional eligibility criterion based on income level.⁷ This criterion is mandatory for federal default states, but optional for other states. Specifically, the Commission adopted the income-based standard of 135 percent of the FPG.⁸ The Commission adopted this standard for two main reasons: (1) Commission staff analysis projected that an income-based criterion would result in approximately 1.17 million to 1.29 million new Lifeline/Link Up subscribers of which roughly one in five would be new subscribers to telephone service; and (2) existing low-income subscribers would more easily be able to maintain their service.⁹

7. In the *2010 Referral Order*, the Commission asked the Joint Board "to undertake a thorough review of the existing consumer eligibility requirements, as well as the certification and documentation requirements imposed on ETCs."¹⁰ The Commission requested that the Joint Board "consider whether any changes should be made to the existing eligibility criteria in the Commission's rules."¹¹ Specifically, the Commission requested that the Joint Board examine "whether customers qualifying for low-income support based on income should be eligible to receive support if their income is at or below a percentage of the federal poverty guidelines different than the current 135 percent threshold."¹² Finally, the Commission asked the Joint Board to "consider whether certain classes of

³ 47 C.F.R. §§ 54.409, 54.415.

⁴ 47 C.F.R. § 54.409.

⁵ 47 C.F.R. § 54.409(b).

⁶ *Id.* Low-income consumers living on Tribal lands may qualify by participation in one of several additional assistance programs: Bureau of Indian Affairs general assistance; Tribally-administered TANF; or Head Start (only those meeting its income-qualifying standards). See 47 C.F.R. § 54.409(c).

⁷ See *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, 19 FCC Rcd 8302, 8308-09, para. 10 (2004) (*2004 Lifeline and Link Up Order*).

⁸ *Id.*

⁹ *Id.*

¹⁰ *2010 Referral Order*, 25 FCC Rcd at 5081, para. 6.

¹¹ *Id.*

¹² *Id.*

individuals, such as residents of homeless shelters, should be automatically eligible for participation in the low-income programs.”¹³

B. Discussion

8. *Eligibility requirements.* The Joint Board deliberated on the alternative income-based eligibility criterion and whether the Commission should adopt uniform minimum eligibility standards applicable to all states, including both income and program-based eligibility criteria. The Joint Board recommends that the Commission seek comment to identify and quantify the potential impact, costs, and benefits of minimum uniform eligibility requirements and where such burdens and benefits will occur. The Joint Board supports the concept of minimum uniform eligibility requirements, but acknowledges that there are potential difficulties in terms of cost and administration that must be explored before the Joint Board can conclude that such requirements should be adopted.¹⁴ The Joint Board’s support presumes that states would be able to set eligibility criteria in addition to the minimum requirements. The Joint Board recommends that the Commission adopt minimum uniform eligibility requirements only if the impacts on the states are not unreasonable.

9. Requiring all states to include participation in qualifying federal programs as eligibility criteria could simplify ETC certification of consumer eligibility. Further, a federal baseline of eligibility criteria may increase program participation. The Joint Board recognizes Qwest’s objections to uniformity of eligibility criteria – that states and providers need the flexibility of state rules¹⁵ – but the Joint Board’s recommendation would allow states to maintain and add eligibility standards beyond the minimum uniform requirements tailored specifically to each state’s unique situation. Additionally, allowing states to maintain and add eligibility standards beyond the minimum uniform requirements will prevent existing eligible Lifeline customers from losing Lifeline support.

10. *Income eligibility.* The Joint Board recommends that the Commission seek comment to determine whether the current eligibility requirement of household income at or below 135 percent of the federal poverty guidelines should be raised to 150 percent for the existing Lifeline and Link Up programs in states that include an eligibility option based only on household income. Comments filed in this proceeding, as explained below, suggest that 135 percent of the FPG may be too low a standard and that 150 percent may be more appropriate. Expansion of eligibility would also allow more of those in economic need of Lifeline and Link Up support to access these important services without unduly impacting the overall sustainability of the Universal Service Fund. This recommendation to seek comment on raising the income eligibility to 150 percent of the FPG does not apply to broadband Lifeline and Link Up support should broadband be included as a supported service. This is a separate issue discussed later in this recommendation. The Joint Board cannot, at this time, conclude that this eligibility requirement should apply if the Commission ultimately expands universal service and the Lifeline and Link Up programs to encompass broadband.

11. Many commenters favor raising the income eligibility criteria for end-user customers qualifying for low-income support to a level higher than the current 135 percent threshold of the FPG. NASUCA reiterates its long-standing support for moving the income eligibility standard to 150 percent of

¹³ *Id.*

¹⁴ *See, e.g.*, Consumers Groups Comments at 10. Additionally, not all states include all programs for eligibility that are currently required under federal default rules. Modifications to state program eligibility requirements will cost money, take time to implement, and may require changes to state laws. Only about half of the states currently have an income-based eligibility option for low-income consumers not participating in qualifying programs.

¹⁵ Qwest Reply Comments at 2.

the federal poverty guidelines.¹⁶ Benton agrees and notes that other federal low-income support programs, such as LIHEAP, already have a 150 percent threshold.¹⁷ The Consumer Groups express the same sentiment, arguing that the FPG formula has been criticized as a dated and inaccurate measurement of poverty, and that alternative studies have suggested income levels for economic “self-sufficiency” at 161 percent of the poverty level.¹⁸ The Consumer Groups note further that, during the past two fiscal years, the U.S. Congress has increased the maximum income eligibility for LIHEAP from the higher of 150 percent of FPG or 60 percent of state median income to 75 percent of state median income.¹⁹ Increasing the income eligibility criteria to 150 percent of the FPG, as suggested by many commenters, could help to increase the subscriber rate among low-income consumers, which is a long-standing goal of universal service. Conversely, Verizon and USTelecom argue against expansion of program eligibility. According to Verizon, “there is no demonstrable need” to do so, while USTelecom argues that such expansion is “unnecessary.”²⁰ According to US Telecom, there is no evidence that expansion of the federal eligibility rules will materially change the Lifeline take rates among low-income consumers, and low-income consumers already exhibit strong telephone subscribership rates. Relying on the FCC’s May 2010 Telephone Penetration by Income by State report, USTelecom asserts that the national telephone subscribership rate among low-income consumers in households with an annual income of less than \$20,000 amounted to 90.4 percent as of March 2009.²¹

12. *Serving the homeless community.* The Joint Board recommends that the Commission seek comment on how to increase participation in the low-income programs among homeless shelter residents (and possibly other segments of the low-income community) while maintaining a commitment to prevent waste, fraud, and abuse. The Commission should seek comment not only on when and how eligibility should be awarded to residents of homeless shelters, but also on when and how eligibility may be withdrawn should the consumer no longer be homeless. Additionally, the Joint Board recommends that the Commission seek comment on the feasibility of making Lifeline funding available to agencies or non-profit organizations that are able to provide communications services to homeless populations. Public comment will assist the Commission in determining how to serve these traditionally underserved individuals. The Joint Board recognizes that social welfare agencies and non-profit organizations do not qualify as ETCs eligible for low-income support, and therefore recommends that the Commission only seek comment on this issue if the Commission believes it could have the legal authority to extend universal service low-income support to non-ETCs.

13. The underlying rationale behind these recommendations is that members of certain communities, such as residents of homeless shelters, are frequently underserved due to high mobility and

¹⁶ Consumer Advisory Committee Reply Comments at 9; NASUCA Comments at 7; NASUCA Reply Comments at 11.

¹⁷ Benton Comments at 5-6.

¹⁸ Consumer Groups Comments at 7-8.

¹⁹ *Id.* at 8-9.

²⁰ USTelecom Comments at 5; Verizon Reply Comments at 5.

²¹ The Joint Board recognizes the importance of making Lifeline support available to low-income households in need. In addition, based on experiences in some states, only a small portion of customers participate in the Lifeline program based on income eligibility. Therefore, even though a 150 percent of the FPG threshold may potentially increase the disbursement of Lifeline support, the increase is unlikely to be substantial solely based on the income eligibility.

have difficulties in documenting and certifying eligibility.²² Certain groups commenting on the *2010 Referral Order* recognize this: Benton, the Consumer Advisory Committee, and Consumer Groups assert that low-income support should be extended to group housing, though not necessarily automatically.²³ The Florida PSC also supports the expansion of low-income programs to group living facilities.²⁴

14. Many of those filing comments with regard to the homeless shelter issue address the inherent difficulties of serving and verifying such highly mobile populations.²⁵ The Joint Board shares such reservations and, therefore, recommends that, as the Commission moves forward with any plans to make certain classes of individuals automatically eligible for participation in the low-income programs, it keep in mind its commitment to prevent fraud, waste, and abuse.

III. AUTOMATIC ENROLLMENT

A. Background

15. Some states employ “automatic enrollment” whereby an “electronic interface between a state agency and the carrier . . . allows low-income individuals to automatically enroll in Lifeline/Link-Up following enrollment in a qualifying public assistance program.”²⁶ Several states have reported that automatic enrollment is an efficient and effective means of increasing participation in the Lifeline and Link Up programs.²⁷ In 2004, the Commission agreed with the Joint Board’s recommendation and declined to require all states to adopt automatic enrollment, instead encouraging all states to adopt such an approach.²⁸ In so doing, the Commission agreed with the Joint Board’s concern that automatic enrollment could impose significant administrative, technological, and financial burdens on states and ETCs.²⁹

16. In the *2010 Referral Order*, the Commission asked the Joint Board to revisit the issue of whether the Commission should require automatic enrollment in all states in order to participate in the federal low-income program.³⁰ Further, the Commission asked that, should the Joint Board recommend such an approach, how the resulting administrative, technological, and financial challenges could be

²² Benton Comments at 6; Consumer Advisory Committee Reply Comments at 9-10; Ohio Commission Comments at 7.

²³ Benton Comments at 6; Consumer Advisory Committee Reply Comments at 9; Consumer Groups Comments at 12-14; Consumer Groups Reply Comments at 5.

²⁴ FL PSC Comments at 4.

²⁵ Ohio Commission Comments at 7; Smith Bagley Comments at 4; Smith Bagley Reply Comments at 8; Tracfone Comments at 4-5.

²⁶ See *Federal-State Joint Board on Universal Service Recommended Decision*, 18 FCC Rcd 6589, 6608, para. 38 (2003) (*2003 Recommended Decision*); see also LIFELINE ACROSS AMERICA WORKING GROUP, REPORT OF THE FCC/NARUC/NASUCA WORKING GROUP ON LIFELINE AND LINK-UP: “LIFELINE ACROSS AMERICA” 6 (2007), <http://www.lifeline.gov/LLLUReport.pdf> (WORKING GROUP REPORT). In its Report, the Working Group cited Iowa, New Mexico, New Jersey, New York, North Dakota, and Washington as states utilizing automatic enrollment in some fashion. WORKING GROUP REPORT at 6, 10.

²⁷ See *2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8318, para. 25; see also WORKING GROUP REPORT at 9-10.

²⁸ See *2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8318, para. 25.

²⁹ *Id.*; see also *2003 Recommended Decision*, 18 FCC Rcd at 6608, para. 40.

³⁰ See *2010 Referral Order*, 25 FCC Rcd at 5085, para. 9.

addressed.³¹

17. Commenters support a wide range of views regarding automatic enrollment. For example, AT&T is strongly opposed to implementing an automatic enrollment mechanism.³² In AT&T's view, the costs of implementing mandatory automatic enrollment could significantly increase the size of the low-income fund.³³ The Nebraska PSC also takes the position that automatic enrollment is cost prohibitive.³⁴ The California PUC supports a federal mandate for automatic enrollment conditioned on federal payment for the costs of electronic communications systems, provided that the systems are designed to ensure privacy and security of customer information.³⁵ The Florida PSC supports the use of automatic enrollment processes for Lifeline.³⁶ However, many commenters state that the Commission should not impose a mandatory automatic enrollment requirement for Lifeline on the states.³⁷

B. Discussion

18. The Joint Board recommends that automatic enrollment should be encouraged as a best practice by the states, but believes that there are issues that must be more fully understood prior to imposing mandatory requirements on all states. Specifically, as explained below, the Joint Board recommends that the Commission further develop the record with regard to the administrative, technological, and funding issues of automatic enrollment.

19. *Administrative issues.* Several commenters note that, should the Commission decide to mandate automatic enrollment, there may be compliance difficulties if such a mandate included increased costs to state social service agencies.³⁸ Many commenters suggest that there are likely to be significant up-front costs associated with the development of software interfaces between state and federal agencies and Lifeline providers. Others note, however, that some agencies have been able to implement automatic enrollment programs.³⁹ For instance, Florida required passage of a new state law requiring agencies and providers to cooperate in the establishment of electronic database transfer capabilities coupled with the need to protect consumer privacy.⁴⁰ Any changes in state laws necessary to effectuate automatic enrollment may impede the ability of the Commission to mandate nationwide automatic enrollment. Other commenters highlighted areas for particular attention, including ensuring that automatic enrollment does not direct consumers to some but not all of the Lifeline providers in a state;⁴¹ the need for prompt

³¹ *Id.*

³² AT&T Comments at 7-8.

³³ *Id.* at 8.

³⁴ Nebraska PSC Comments at 3-4.

³⁵ CPUC Comments at 13-14.

³⁶ FL PSC Comments at 2, 5-6.

³⁷ *Id.* at 2-5. Several other commenters support automatic enrollment without a Commission mandate. *See, e.g.* CG Comments at 15; CVM Comments at 3, GCI Reply Comments at 8; NASUCA Comments at 7; PIC Reply Comments at 6; PRWI Comments at 9-11; Qwest Reply Comments at 3; Smith Bagley Comments at 10; Smith Bagley Reply Comments at 14; TracFone Comments at 5; YourTel Comments at 1-3.

³⁸ Consumer Advisory Committee Reply Comments at 11; NASUCA Reply Comments at 8; PaPUC Comments at 5.

³⁹ FL PSC Comments at 4-5.

⁴⁰ *Id.* at 5-6.

⁴¹ TracFone Comments at 7.

notification of eligibility to carriers;⁴² and that an automatic enrollment program should not prevent eligible consumers from qualifying under the income criteria instead.⁴³ The Joint Board recommends that the Commission seek further comment on these issues.

20. *Technological issues.* The Missouri and Pennsylvania commissions point out that adoption of automatic enrollment procedures may have significant administrative, technological, and financial burdens, especially in view of the current realities of state and federal government budget deficits and fiscal constraints.⁴⁴ In view of the fact that automatic enrollment has already been implemented by some states, this past experience may assist other states in developing automatic enrollment processes. Nevertheless, each state may face unique technological circumstances and financial burdens that may make it impractical or unduly burdensome to implement automatic enrollment. For example, the ability of a state to implement automatic enrollment may depend upon the nature and capabilities of the state's existing data processing equipment, software, and data communication networks, as well as the need to invest in new systems to make automatic enrollment possible. The Joint Board recommends that the Commission seek further comment on these issues.

21. *Funding issues.* Numerous commenters point out the costs of interconnecting agency databases with carrier databases while simultaneously protecting consumer privacy.⁴⁵ AT&T's opposition to automatic enrollment is based on its conclusion that the increased costs associated with automatic enrollment would increase the size of the fund by several billion dollars, excluding broadband.⁴⁶ AT&T's scenario appears to include the costs of automatic enrollment systems, plus the impact of significant expansion of funding should participation in the Lifeline program increase dramatically as a result of automatic enrollment. Both NASUCA and the Florida PSC suggest that Lifeline participation increases significantly with implementation of automatic enrollment.⁴⁷ While fund size is a legitimate concern, the Joint Board notes that increased Lifeline participation is a significant program goal. The Joint Board also recommends that the Commission seek further comment on issues associated with funding of automatic enrollment.

22. *Other issues.* The overwhelming majority of commenters support continuation of the Commission's policy of encouraging states to develop automatic enrollment procedures but not requiring states to do so.⁴⁸ Many commenters suggest caveats that should be considered by the states in order to protect privacy, such as treating all ETCs in a like manner; allowing for continued eligibility through income criteria; and not allowing default selections that favor incumbents.⁴⁹ The need for cooperation between state and federal agencies is pointed out by a number of states engaged in the process of

⁴² *Id.* at 6.

⁴³ PRWI Comments at 10, Smith Bagley Reply Comments at 14. MoPSC points out the need to attempt to avoid reluctance on the part of federal agencies to allow any parties direct access to their data bases. MoPSC Comments at 5.

⁴⁴ MoPSC Comments at; PaPUC Comments at 5.

⁴⁵ Consumer Groups Comments at 15; CPUC at 13-14; FL PSC Comments at 4-5; PaPUC Comments at 5, PaPUC Reply Comments at 5-6.

⁴⁶ AT&T Reply Comments at 12.

⁴⁷ FL PSC Comments at 4-5; NASUCA Comments at 7.

⁴⁸ FL PSC Comments at 4-5; PRWI at 9-11, PRWI Reply Comments at 14; Smith Bagley at ii, 13.

⁴⁹ CPUC at 13-14; PRWI Comments at 11, PRWI Reply Comments at 15; Smith Bagley Comments at iii and at 9-10; Smith Bagley Reply Comments at 14.

implementing various state automatic enrollment programs.⁵⁰ Several states provided information on best practices and advice on automatic enrollment.⁵¹ The Joint Board recommends that this information be considered by those states that are proceeding to develop electronic interfaces to assist in administration of the Lifeline program.

IV. VERIFICATION

A. Background

23. Verification rules help to ensure the integrity of the low-income programs by determining whether participants remain eligible under program rules.⁵² The Commission's rules governing ongoing verification of consumers' continued eligibility for low-income support are bifurcated in a manner similar to the rules associated with initial eligibility and certification. Following the Joint Board's *2003 Recommended Decision*, in 2004, the Commission adopted changes to the initial verification rules, including requiring all states to verify continued eligibility, encouraging states to develop an on-line verification process, adopting federal default criteria for annually verifying program-eligibility including requiring 60 days notice of cancellation to consumers that do not return their verification form, and adopting federal default criteria for verifying income-eligibility.⁵³ Accordingly, the Commission's current verification rules require ETCs in states that have their own Lifeline programs to comply with state verification procedures.⁵⁴ ETCs in federal default states are required to implement procedures to verify annually the continued eligibility of a statistically valid random sample of their Lifeline consumers and provide results of that sample to USAC.⁵⁵ As a result, consumers qualifying for Lifeline benefits in federal default states may be required to verify with their ETC, on an annual basis, their continued eligibility to receive Lifeline support.⁵⁶ However, consumers in states that have their own Lifeline programs and verification procedures may or may not be subject to the same requirements, and those states may or may not provide the results of their verification samples to USAC.

24. A few states face even more complicated verification procedures due to the limitation of their jurisdiction over certain carriers. For example, some states have a state Lifeline program but

⁵⁰ MoPSC Comments at 5.

⁵¹ See, e.g., CPUC Comments; FL PSC Comments.

⁵² See, e.g., USAC, SECOND QUARTER APPENDICES - 2010, available at <http://usac.org/about/governance/fcc-filings/2010/quarter-2.aspx> (2010).

⁵³ See *2004 Lifeline and Link-Up Order*, 19 FCC Rcd at 8302, 8322-24, paras. 33-36; see also *2003 Recommended Decision*, 18 FCC Rcd at 6605-6611, paras. 31-46.

⁵⁴ See 47 C.F.R. § 54.410(c)(1). As explained above, the Commission recently concluded that when a state Commission mandates Lifeline support, but does not impose certification and verification requirements on certain carriers within the state, the affected carriers must follow federal default criteria for certification and verification purposes. See *Lifeline and Link-Up, Order and Declaratory Ruling*, WC Docket No. 03-109, 25 FCC Rcd 1641, 1641, 1645, paras. 1, 9 (Feb. 2, 2010) (*Lifeline Declaratory Ruling*).

⁵⁵ See 47 C.F.R. § 54.410(c)(2).

⁵⁶ See 47 C.F.R. § 54.410(c). For example, as a condition of designating TracFone Wireless as an ETC eligible to receive Lifeline support, the Commission requires TracFone's subscribers to self-certify at the time of service activation and annually thereafter that they are the head of household and that they receive Lifeline-supported service only from TracFone. See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15098-99, para. 6 (2005) (*TracFone Forbearance Order*); see also *TracFone ETC Designation Order*, 23 FCC Rcd at 6214-15, para. 21.

exclude the contribution from and participation of wireless ETCs. The Commission clarified in a recent order that when a state commission mandates Lifeline support, but does not impose certification and verification requirements on certain carriers within the state, the affected carriers must follow federal default criteria for certification and verification purposes.⁵⁷ In these states (e.g., Washington), wireline ETCs follow state Lifeline verification procedures while wireless ETCs follow the federal default procedures.

25. Based on the recent growth in federal low-income support and expansion of participating carriers, the Commission referred a number of issues regarding verification to the Joint Board.⁵⁸ Specifically, in order to reevaluate whether the Commission is taking all appropriate steps to ensure program integrity, the Commission asked the Joint Board to consider whether verification procedures should be more consistent across the states and whether any changes should be made to the existing verification procedures in the Commission's rules.⁵⁹

B. Discussion

26. The Joint Board recommends that the Commission adopt uniform minimum verification procedures and sampling criteria that would apply to all ETCs in all states. These uniform procedures would serve as a "floor" of minimum requirements upon which the states could impose stricter standards. Additionally, as part of the minimum verification procedures, the Joint Board recommends that all ETCs in all states be required to submit the data results of their verification sampling to USAC, the Commission, and their respective state(s), and that the results for each ETC be publicly available.⁶⁰ The Joint Board agrees with commenters that a uniform floor of minimum verification requirements across states could help improve low-income service and utilization across the states by reducing confusion, streamlining administration, and allowing consumers and ETCs to be treated more equally across states.⁶¹ Today, eight states and two territories are required to follow the federal default verification rules and procedures,⁶² while 42 states employ their own verification procedures.

27. Uniformity of verification requirements would help provide better instruction to both carriers and consumers seeking to utilize the Lifeline program by more clearly identifying what information and what steps are required to participate, would help improve consistency in data collection, and would further the goal of maintaining technological neutrality.⁶³ Further, the Joint Board agrees that requiring all ETCs across all states to submit their verification sampling data to USAC, the Commission, and their state would provide a more complete data set and allow for more accurate nation-wide program analysis. Gathering the same minimal data from all states would provide a more complete picture of how the Lifeline program is utilized and help identify verification issues on a regional and national basis. This

⁵⁷ See *Lifeline Declaratory Ruling*, 25 FCC Rcd at 1645, para.9.

⁵⁸ See *2010 Referral Order*, 25 FCC Rcd at 5088-89, paras. 25-30.

⁵⁹ See *id.* at 5088-89, paras. 27-28.

⁶⁰ The Joint Board received little, if any, comment directly on this issue. However, the DC Public Service Commission stated that audit results should be made available to state commissions, and the Joint Board agrees. See DC PSC Comments at 5-6.

⁶¹ See AT&T at 7; Consumer Groups Comments at 22; Leap Comments at 2, 6-7 (stating carriers are equally confused by varying procedures across states); NASUCA Comments at 5-6; PRWI at 9; Smith Bagley Reply Comments at 9, 11-12; Sprint Comments at 2; TracFone Reply Comments at 1; YourTel Comments at 1-3.

⁶² See USAC Low Income at <http://www.usac.org/li/low-income/eligibility/federal-criteria.aspx>.

⁶³ See Leap Comments at 2, 6-7; TracFone Reply Comments at 4; Verizon Reply Comments at 1-2.

more complete data set would also better inform the Commission on how best to prevent waste, fraud, and abuse. Moreover, making the data available to the public could help inform all parties, including those paying to support the program, about whether the support funds are being used for the intended purposes.

28. The Joint Board agrees that, while adopting uniform reporting and a set of uniform procedures and sampling criteria has definite advantages, those procedures should not be so constrained as to prohibit the use of mechanisms by individual states that would be more effective in reducing waste, fraud, and abuse. Individual states may have state-specific concerns or program requirements that necessitate targeted or different solutions that may not be applicable to all states. Accordingly, the Joint Board recommends that states be allowed to utilize different and/or additional verification procedures so long as these procedures are at least as effective in detecting waste, fraud, and abuse as the uniform minimum required procedures.⁶⁴ These procedures may include the use of real-time verification mechanisms or databases.

29. The Joint Board also recommends that the Commission seek further comment on what should comprise the uniform minimum verification procedures, including required minimum sample size, sampling methodology, sampling criteria, and regularity of verification. The Commission should also seek further comment on what would be the costs for state and third party verification, and whether the verification sampling results and data should be made public and available to all states. The Joint Board agrees that the increase in the number of Lifeline subscribers and the addition of new wireless technologies have created new challenges for effectively completing verification sampling under the current rules.⁶⁵

30. Therefore, in developing uniform minimum verification procedures, the Joint Board recommends that the Commission first reconsider both the required sampling size, and whether the previous statistically valid random sampling equation is still relevant.⁶⁶ A uniform minimum method of conducting the “statistically valid random sample” would help ensure accuracy, improve consistency among the sampling data, and assist in analyzing regional and national verification issues.⁶⁷ Some commenters have suggested that verification should be conducted for 100 percent of Lifeline recipients to further the goal of eliminating waste, fraud, and abuse in the program.⁶⁸ However, others argue that the cost of conducting such a thorough review outweighs the benefits.⁶⁹ The Joint Board’s proposal would

⁶⁴ See Consumer Groups Comments at 22; CPUC Comments at 3, 21; MDTC Comments at 2; see also *2003 Recommended Decision*, 18 FCC Rcd at 6609, para. 41 (recognizing the unique state interests that may arise).

⁶⁵ See Nexus Comments at 6-7; Ohio Comments Commission at 13-14.

⁶⁶ See *2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8365, Appendix J-1. The size of a statistically valid random sample varies based on a number of factors, including the number of Lifeline subscribers (N) and the previously estimated proportion of Lifeline subscribers “inappropriately taking” Lifeline service (P). ETCs use the results of samples taken from previous years to determine the estimated proportion. In all instances, the estimated proportion, P, should never be less than .01 and never more than .06. For ETCs with large numbers of Lifeline subscribers (400,000 or more), a statistically valid random sample size is calculated as: $\text{Sample Size} = 2.706 * P * (1 - P) / .000625$. *Id.* For ETCs with less than 400,000 subscribers this formula can yield a sample size that is larger than necessary, and so a table of sample sizes is provided. *Id.* at 8366, Appendix J-2 and J-3. All ETCs must provide the estimated proportion for their sample size to USAC. *Id.*

⁶⁷ See Consumer Groups Comments at 22.

⁶⁸ See, e.g., Nebraska PSC Comments at 6; Ohio Commission Comments at 13 (stating that at least one carrier in that state verifies every customer).

⁶⁹ See NASUCA Reply Comments at 14; TracFone Comments at 9.

allow states to continue to verify 100 percent of their Lifeline customers' eligibility or to adopt such uniform minimum verification procedures. Minimum standards for determining sampling would be required for other states.

31. For purposes of determining the minimum, acceptable verification requirements, the Joint Board recommends that the Commission gather further data regarding the typical margin of error and confidence levels in verifying Lifeline subscribers and what are acceptable. The Commission should determine what minimum confidence levels and what maximum levels of sampling error and non-responsiveness, if any, are acceptable. Although the Joint Board received some comments on verification procedures in California, Florida, and Ohio, the record does not provide a sufficiently representative sample to advise on state best practices or to determine what method should be adopted as a minimum standard.⁷⁰ Accordingly, the Commission should gather further information on the best practice methodology for conducting random sampling.⁷¹ A few states have reported that they conduct random sampling.⁷² The Commission should reach out to those states for more information on their processes. The Commission should then consider whether to revise the statistically valid random sample equation and adopt a precise method of random sampling that can be uniform across all ETCs in all states.

32. Second, the Joint Board recommends that the Commission should also gather further information on whether the uniform minimum procedures should require ETCs to conduct verification directly with the consumer, or whether the state or the qualifying program administrator should conduct the verification. The Commission should also seek further comment on whether, alternatively, verification should be conducted by a neutral third-party. The Commission should specifically seek comment on the costs associated with implementing state or third-party verification procedures. Some commenters point out that verification by ETCs directly with the consumer may present challenges including lack of reliability in consumer responses and hesitancy of consumers to provide information to ETCs.⁷³ Additionally, some commenters argue that federal or state agencies administering the qualifying program may be able to provide more reliable and more accurate information for verifying program or income eligibility than consumers.⁷⁴ Certain states have reported that they periodically require submission of verification documents from their Lifeline recipients.⁷⁵ The Commission should seek out further information from these states on their processes and the reliability of their processes. Further, some commenters argue that ETCs should not be responsible for conducting verification.⁷⁶ For example,

⁷⁰ See AT&T Comments at 16 (providing some information on Florida's verification process for pre-paid wireless providers); Consumer Groups Comments at 25-26; CPUC Comments at 21 (providing some data on California's verification process); FL PSC Comments at 9-10; Ohio Commission Comments at 13.

⁷¹ See Nexus Reply Comments at 7-8 (suggesting various methods for conducting sampling).

⁷² Alaska, Arizona, Florida, Maryland, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Virginia, and West Virginia have reported that they conduct random audits of Lifeline recipients. See E-mail from states to Federal-State Joint Board (Aug. 18, 2010, 18:04 EST) (providing various state data on Lifeline eligibility, verification, and outreach procedures and practices) ("State Data").

⁷³ See TracFone Reply Comments at 6.

⁷⁴ See, e.g., CVM Comments at 3; Verizon Reply Comments at 1-2.

⁷⁵ Arizona, Florida, Idaho, Kentucky, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Vermont, Virginia, and Wyoming have reported that they require periodic submission of documentation from Lifeline recipients to provide their continued eligibility. See State Data.

⁷⁶ See AT&T Reply Comments at 9-11, 14-16; Nebraska PSC Comments at 6; PRWI Comments at 11; Qwest Reply Comments at 6; TracFone Comments at 8-9; USTelecom Comments at 7.

CTIA and AT&T support a centralized system managed by a neutral third party.⁷⁷ The Joint Board, in the *2003 Recommended Decision*, noted that on-line verification is being utilized by some states already.⁷⁸ However, while the Joint Board received some additional comments regarding a few state verification procedures, the Joint Board recommends that the Commission seek further cost information for implementing each option before evaluating which procedure should be adopted as the uniform minimum standard.⁷⁹

33. Third, the Joint Board recommends that the Commission seek further comment on whether verification should be conducted uniformly on an annual basis or at some other interval by all ETCs in all states. For example, the comments identify that, in certain instances, Florida requires verification every 60 days,⁸⁰ California requires annual verification,⁸¹ and Ohio conducts verification at different intervals depending on the type of provider.⁸² However, the overall record does not contain enough information to determine whether annual verification, or some other regular interval, would be most effective at furthering the goal of guarding against waste, fraud, and abuse without becoming overly burdensome. Therefore, the Commission should seek further comment on the benefits of varying methods, the costs, and the overall best practices for how often verification should be conducted before adopting a uniform minimum standard.

34. Lastly, the Joint Board recommends that the Commission seek further comment on what consumer information should be uniformly verified and collected. In addition to verifying continued eligibility, the Commission should inquire whether it is useful and feasible for the uniform minimum verification sampling procedures to require information regarding initial enrollment eligibility, the consumer's selected service (i.e., wireline or wireless), and whether a consumer is receiving Lifeline support for only one line per household. The Joint Board agrees with commenters who are concerned about strengthening the program and preventing waste, fraud, and abuse.⁸³ Likewise, the Joint Board agrees with commenters that suggest it is important to verify whether Lifeline recipients are receiving support in compliance with the Commission's one Lifeline-supported line per household rule.⁸⁴ The current federal default rules require that subscribers qualifying for Lifeline based on income eligibility self-certify regarding the number of individuals in their household.⁸⁵ The usefulness of this information is

⁷⁷ See CTIA Reply Comments at 2-6; see also generally AT&T Comments (outlining a possible framework for a national database); DC PSC Comments at 5-6 (supporting a third party audit program).

⁷⁸ See *2003 Recommended Decision*, 18 FCC Rcd at 6609, 6627, para. 42, Appendix E (identifying Illinois, Minnesota, and Tennessee as states already having implemented on-line verification procedures). Florida, Kentucky, Washington, Wisconsin and Wyoming have also recently reported they have adopted on-line verification procedures in their states. See State Data.

⁷⁹ See *supra* note 72 (identifying some of the verification procedures for CA, FL, and OH).

⁸⁰ See AT&T Comments at 16 (identifying Florida's procedures); FL PSC Comments at 9-10 (stating that for a six-month period in 2009, their procedures have saved the USF over \$8.5 million); see also NASUCA Comments at 14 (supporting 60 days for certain carriers).

⁸¹ See CPUC Comments at 21.

⁸² Ohio Commission Comments at 13.

⁸³ See, e.g., Consumer Groups Comments at 27; DC PSC Comments at 5; NASUCA Reply Comments at 10; Nexus Reply Comments at 2-4.

⁸⁴ See DC PSC Comments at 5-6; Nexus Reply Comments at 4; Qwest Comments at 3-4.

⁸⁵ See 47 C.F.R. § 54.4410(c)(2).

limited, however, both because it is provided only by ETCs in federal default states and because it is unclear whether that support is received for only one line per household. The Joint Board received information from only a few non-federal default states regarding the information collected through their verification procedures. Much of the information collected appears to be limited in scope. For example, California requires only verification of continued eligibility.⁸⁶ As such, the Joint Board recommends that the Commission seek further comment on whether the uniform minimum verification standards should require ETCs to request information regarding initial eligibility, the service selected, and more specific household information regarding how many lines are received per household. The Commission should also seek further comment on whether there are better or different eligibility criteria that should be verified during the process.

V. DATABASE

A. Background

35. Given the widespread transition from paper-based environments to those effectively managed with electronic systems, in its *Referral Order*, the Commission asked the Joint Board to review online mechanisms that would allow carriers to automate their interactions with states and the federal government to certify a customer's initial and ongoing eligibility for program discounts.⁸⁷ The National Broadband Plan suggests that the Commission should consider a centralized database for online certification and verification, based on numerous such proposals in the record.⁸⁸ The Commission asked the Joint Board to address how any national or state databases might streamline certification and verification of low-income consumers' eligibility for the Lifeline and Link Up programs.⁸⁹ The Commission further asked the Joint Board to review alternatives to a database, and to recommend mechanisms that are reasonably practical, efficient, accurate, secure, and respectful of customer privacy.⁹⁰

B. Discussion

36. The Joint Board recommends that the Commission seek further comment and information necessary to determine whether the Commission should adopt a national database, potentially requiring interaction with state and/or regional databases and resources. The Joint Board recommends that the Commission seek further comment as to specifically what information would be contained in the database and the feasibility of collecting this information. The Joint Board also recommends that the Commission develop the record regarding the feasibility and potential advantages and/or disadvantages of regional and/or state databases as opposed to, or in addition to, a national database. In particular, the Joint Board recognizes that, while creating centralized databases of some kind (whether at the national, regional, and/or state level) may lead to certain advantages, significant questions exist regarding this approach. Therefore, as detailed more fully below, the Joint Board recommends that the Commission seek comment

⁸⁶ See CPUC Comments at 21.

⁸⁷ 2010 *Referral Order*, 25 FCC Rcd at 5086, para. 20.

⁸⁸ See National Broadband Plan at 173; see also Nebraska Public Service Commission Comments in re NBP PN #19 at 9 (suggesting "the Commission should work with states to develop an accurate system that could be administered either at a central location or as a cooperative arrangement between states and the Universal Service Administrative Company for eligibility and verification of low-income participants"); NASUCA Comments in re NBP PN #19 at 35 (suggesting that "a universal database could be created to trap 'double-dippers'" who seek to obtain Lifeline-supported service from two different providers).

⁸⁹ 2010 *Referral Order*, 25 FCC Rcd at 5086, para. 20.

⁹⁰ *Id.*

on several key factors, including potential costs of building and maintaining a database, funding sources, administration, and security and privacy issues. Further, the Joint Board recommends that the Commission seek further comment as to what information should be contained in the database and the feasibility of collecting the information.

37. In response to the Joint Board's inquiry on these issues, a number of parties supported establishment of a centralized database for certification and verification of Lifeline consumers' eligibility.⁹¹ The ETC industry, in general, supports such a database, while others point out significant implementation issues with such an approach. The record in this proceeding does not include the level of operational details or associated tangible cost estimates necessary to implement a national database at this time.

38. *National database.* Commenters assert many advantages of a centralized database of eligible Lifeline customers.⁹² First, a national database could eliminate fraudulent and duplicate claims for Lifeline support because carriers no longer would rely solely on applicants' self-certification that they participate in one of the public assistance programs.⁹³ These commenters believe that a database could provide accurate and up-to-date information on customers' eligibility, and would also contain information on the applicant's current Lifeline enrollment status, thereby ensuring only one Lifeline-supported line per household.⁹⁴

39. Second, consumers could benefit through improved operational efficiency from the establishment of centralized electronic mechanisms for use in certifying and verifying Lifeline eligibility.⁹⁵ A national database system could potentially enable a real-time verification process to speed up the enrollment. In theory, the database would receive updates on changes in consumers' eligibility from appropriate social service agencies so that a customer's eligibility for Lifeline could be monitored in a timely manner, though it is less clear how the database would be updated to reflect changes in income eligibility.⁹⁶

40. Third, a centralized administrator could greatly reduce carriers' administrative burden.⁹⁷ In federal default states, carriers would no longer need to conduct the annual survey on randomly selected samples of customers.⁹⁸ In some non-federal default states, state Lifeline programs have various mechanisms to verify customers' eligibility on an ongoing basis, such as random surveys, collecting eligibility documentation from customers, and audits.⁹⁹ Carriers in these states could be relieved from such obligations (to the extent that those carriers' state obligations were fulfilled through the centralized

⁹¹ See Consumer Advisory Committee Reply Comments at 15.

⁹² See, e.g., AT&T Comments, Florida PSC Comments, Ohio Commission Comments, Qwest Comments, Sprint Comments, TracFone Comments.

⁹³ AT&T Comments at 14; FL PSC Comments at 3; Leap Comments at 6; Sprint Reply Comments at 5.

⁹⁴ PRWI Comments at 10.

⁹⁵ Smith Bagley Reply Comments at iii.

⁹⁶ AT&T Reply Comments at 3-4; Nebraska PSC Comments at 6.

⁹⁷ CPUC Comments at 17; Smith Bagley Reply Comments at 10

⁹⁸ AT&T Comments at 5; Qwest Reply Comments at 6.

⁹⁹ For example, the Missouri Public Service Commission conducts periodic, random audits to independently verify Lifeline customers' eligibility. Missouri also requires all Lifeline customers to provide documentation of participation in the applicable programs. Missouri Code of State Regulations, 4 CSF 240-31.050(3).

database). And, fourth, some commenters state that a dedicated administrator could also ensure privacy better than individual telecommunications service providers.¹⁰⁰

41. On the other hand, as some commenters point out, implementing a national database may pose significant administrative, technological, and financial challenges.¹⁰¹ Any material administrative burden associated with determining eligibility may not be eliminated, but may instead be shifted under the database approach. Specifically, the burden would shift to the organizations that collect and provide the input data and maintain the database.¹⁰² Significant questions remain as to which entities would be responsible for this function, whether those entities have the capability and willingness to perform the duties, and whether the Commission has the legal authority to require compliance. Further, data interoperability, privacy, and security should also be taken into serious consideration when constructing the electronic database.¹⁰³ The Joint Board shares these concerns and, therefore, recommends that the Commission seek comment or otherwise pursue these critical areas in advance of concluding that a national database should be implemented.

42. *Administration of a national database.* In general, comments from carriers show that they do not want the responsibility of ensuring Lifeline applicants' eligibility.¹⁰⁴ Some argue that such tasks are outside of their core competencies.¹⁰⁵ Carriers do not always have access to information ensuring applicants' eligibility or whether the applicants already receive Lifeline benefits from another company. Additionally, some carriers do not feel comfortable collecting applicants' sensitive income documentation.¹⁰⁶

43. Some commenters state that the optimum strategy would require the Commission to establish, and USAC to administer, a national customer eligibility and verification database.¹⁰⁷ For example, AT&T asserts that assigning government administrators the responsibility for determining eligibility for support would provide greater consistency in consumer eligibility determinations as the number of Lifeline providers increases.¹⁰⁸ According to some commenters, these government entities may be in the best position to safeguard a consumer's highly sensitive information, such as household income.¹⁰⁹

44. Other commenters, however, caution that a shift to a nationwide administrator sharing data with state-qualifying agencies would be a mammoth undertaking.¹¹⁰ Commenters further assert that it is not clear whether a national database would achieve better results than state-wide administration of

¹⁰⁰ See, e.g., AT&T Reply Comments at 10-11; TracFone Comments at 7.

¹⁰¹ MoPSC Comments at 5.

¹⁰² PaPUC Reply Comments at 6-7.

¹⁰³ *Id.*; see also Sprint Reply Comments at 5.

¹⁰⁴ See, e.g., AT&T Comments; TracFone Comments.

¹⁰⁵ CTIA Reply Comments at 2-6; Qwest Reply Comments at 9.

¹⁰⁶ AT&T Reply Comments at 10-11.

¹⁰⁷ AT&T Comments at 11; USTelecom Comments at 5.

¹⁰⁸ AT&T Reply Comments at 11.

¹⁰⁹ *Id.* at 10-11.

¹¹⁰ Consumer Groups Comments at 19.

Lifeline consumer eligibility.¹¹¹ For example, the Florida PSC considers impractical AT&T's proposal regarding the use of USAC-issued Personal Identification Numbers (PINs) for Lifeline applicants, and asserts that the issuance of PINs would be an additional burden for state agencies that deal with customer Lifeline eligibility.¹¹² Sprint states that AT&T's PIN system might reduce duplicate claims, but notes that some ETCs might not have the technical ability to interface with a centralized database.¹¹³ In addition, a nationwide database would need to accommodate the differences in state Lifeline practices, which include varying Lifeline eligibility criteria and verification mechanisms.¹¹⁴

45. Some commenters argue that states are in a better position to administer the Lifeline program and maintain the database.¹¹⁵ These commenters assert that state agencies work more closely with low-income consumers and may be able to respond to their needs more effectively. Commenters also stated that states should have the flexibility to administer their state Lifeline programs based on their unique needs and resources. In addition, commenters argue that, if states are in charge of supplying state-specific information in the national database, each state would be empowered to continue to determine the best method of determining eligibility.¹¹⁶

46. Qwest proposes that, because state agencies determine consumer eligibility, those same agencies should monitor or periodically review to determine if a customer is no longer eligible.¹¹⁷ When the state agency determines a consumer is not eligible because he or she no longer qualifies for the underlying programs, the state agency could notify the appropriate service provider, or if there is a national database, provide that information to the database to notify the provider.¹¹⁸ Further, Qwest argues, if state agencies monitor continued eligibility, it could eliminate or minimize the need for sample verifications and could potentially reduce the number of consumers that are legitimately eligible but are removed for not responding to verification requests.¹¹⁹ Given the complexity of the issues surrounding the administration of a national database, the Joint Board recommends that the Commission seek further comment on how a national database should be administered.

47. *Funding a national database.* Despite strong general support in the comments for the creation of a national database, there is little consensus on how to fund a database.¹²⁰ Whereas almost all carriers embrace the idea of a national database, there was no consensus on a funding mechanism.¹²¹

¹¹¹ *Id.*

¹¹² FL PSC Comments at 6-7.

¹¹³ Sprint Reply Comments at 4.

¹¹⁴ AT&T Comments at 3.

¹¹⁵ Qwest Reply Comments at 6.

¹¹⁶ Nebraska PSC Comments at 6.

¹¹⁷ Qwest Reply Comments at 6.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See Consumer Groups Comments at 18 (disagreeing about the workability of such a plan).

¹²¹ See, e.g., AT&T Comments at 4 (advocating for state agencies to take responsibility for its proposed database); TracFone Reply Comments at 6 (stating that state and federal agencies are best placed to manage a national database); Verizon Reply Comments at 1 (suggesting that a national administrator would be the most effective method to proceed with a centralized database).

Some think that USAC should be the national administrator of a database, implying that the Universal Service Fund should provide the necessary resources.¹²² Some argue that state and federal governments should not charge ETCs unreasonable fees to cover the database costs.¹²³ On the other hand, while only a few states commented on the database proposal, those that did voiced serious concern about the possible state costs of such an undertaking.¹²⁴

48. Regardless of which entity would administer a centralized national database of eligible Lifeline customers, the database would need input from various parties on a frequent basis. The federal default criteria for program-based Lifeline eligibility include nine federal assistance programs.¹²⁵ Therefore, administrators of these programs would need to provide data on program participants to the Lifeline database. These administrators include, among others, the Social Security Administration, the U.S. Department of Housing and Urban Development, the U.S. Department of Education, state social service agencies, and local school districts. In addition, all Lifeline providers and state Lifeline program administrators would need to update data for customers already enrolled in Lifeline. This would involve a significant coordination of resources.

49. Other related costs for the states would include set-up, continuous operation and updating of the appropriate databases, as well as establishing the appropriate telecommunications and information links and electronic data interfaces (EDIs) with the national database. Additional issues would include whether existing state databases would need to be converted in order to be compatible with the national database and at what cost, and whether the national database would have the inherent capability to perform seamless data protocol conversions while interacting with the state databases. The existing proposals have not addressed how the related non-recurring and recurring costs would be allocated among the individual states, the national/federal level, and the ETC industry.¹²⁶

50. Given the necessary involvement of ETCs and state and local government agencies, the Joint Board recommends that the Commission seek further comment on the cost of providing data input services, and whether funding would be necessary for the service. The Joint Board recommends that the Commission also seek comment to estimate the cost of operating a national database, including both an IT backbone and ongoing administrative costs.

51. *State privacy and security laws.* Various commenters support a centralized database as long as it contains sufficient safeguards to protect consumer privacy and avoids any inadvertent disqualification of eligible consumers or anticompetitive effects.¹²⁷ A number of commenters emphasized the importance of ensuring data security if a national database is implemented because the database would contain a series of critical personal information such as name, address, social security number, and

¹²² AT&T Comments at 9-10; AT&T Reply Comments at 3-4.

¹²³ TracFone Reply Comments at 4.

¹²⁴ The PaPUC is particularly concerned by recent industry proposals that effectively shift various costs for eligibility, verification, and outreach to the states while the carriers obtain the benefit of resources obtained for the low-income programs. The PaPUC is opposed to a solution in which the states exclusively bear the burden of automatic enrollment and verification while the carriers secure the benefit of cash for delivering low-income supported services, including any potential broadband component. PaPUC Reply Comments at 6.

¹²⁵ 47 C.F.R. § 54.409.

¹²⁶ PaPUC Reply Comments at 6-7.

¹²⁷ Smith Bagley Reply Comments at 15.

participation in a public assistance program.¹²⁸ However, the record is currently incomplete with regard to the issue or solutions to address the data privacy and security concerns. For example, states may have different laws governing privacy of proprietary customer data. Some Lifeline providers explicitly require the applicant to authorize the service provider or appropriate social service agencies to verify the applicant's eligibility.¹²⁹ However, it is not clear whether customers' authorization on the application form is sufficient for qualifying assistance program administrators to release the information to a Lifeline provider in all states.

52. AT&T argues that adopting a national PIN database could solve customers' concerns on privacy and security.¹³⁰ For example, customers could avoid having to share sensitive customer information related to their participation in various government programs with private communications service providers.¹³¹ Providers would no longer need to share customer information with each other to resolve questions over which company should properly claim particular Lifeline subscribers, if a USAC audit finds that certain subscribers were receiving Lifeline support from multiple companies.¹³² Some commenters, however, are skeptical about the proposed PIN database.¹³³ Commenters expressed concern about maintaining the confidentiality of personal identifying information of the applicants and how Lifeline applicants using self-certification would obtain PINs.¹³⁴

53. The Joint Board recommends that the Commission seek further comment to better understand the differences in state privacy and security laws concerning Lifeline eligibility data. If the Commission decides to adopt a national database, further comment should be solicited to explore how to construct an IT platform that could ensure data security while enabling convenient access for all Lifeline providers across the country. If the Commission decides to facilitate a national database, the Commission should provide guidance on how to ensure privacy and security of electronic records. In sum, the Joint Board recommends that the various concerns described above should be addressed before the Commission moves forward with implementation of a national database to certify and verify Lifeline consumers' eligibility.

54. *State databases.* The Joint Board also recommends that the Commission develop the record regarding the feasibility and potential advantages and/or disadvantages of regional and/or state databases as opposed to, or in addition to, a national database. The Joint Board recommends that the Commission seek comment on several key factors that parallel the critical issues outlined above for a

¹²⁸ NASUCA Reply Comments at 9; Nebraska PSC at 6; Smith Bagley Reply Comments at 15.

¹²⁹ For example, in Missouri, Lifeline applicants are required to sign an authorization allowing the appropriate federal, state, or local agency to confirm the household's participation in qualifying programs. See Missouri Code of State Regulations, 4 CSF 240-31.050(3). In Wisconsin, Lifeline applicants have to provide signed authorization for ETCs to access state databases on their behalf. See Wisconsin Response to Government Accountability Office Survey on Lifeline. AT&T's wireless Lifeline and Linkup programs require all applicants to consent to the release of the information on the application form. See <http://www.wireless.att.com/learn/articles-resources/community-support/lifeline-link-up.jsp#Washington>. Sprint Nextel Corporation also requires Lifeline applicants to authorize the company to access any records to verify the applicants' eligibility. See http://shop.sprint.com/en/services/calling/universal_lifeline_program.shtml.

¹³⁰ AT&T Comments at 7.

¹³¹ *Id.* at 10-11.

¹³² *Id.* at 13.

¹³³ FL PSC Comments at 6-7.

¹³⁴ *Id.*

national database. Specifically, administration, funding, privacy, and security are issues that the Joint Board believes need to be explored in advance of the Commission taking further action.

55. Currently, a few states have implemented variations of centralized state databases. Potential models were provided by California, Florida, Maryland, and Ohio.¹³⁵ Mandating each state to establish and administer a state database faces limitations in state resources and legal hurdles. Currently, not all states have an automatic enrollment program or an electronic database query system. Even among states utilizing automatic enrollment or an electronic database, some do not provide the service to wireless ETCs either because they do not have jurisdiction over wireless carriers or because the state laws exclude wireless carriers from participating in state Lifeline programs.¹³⁶ If the Commission were to require each state to maintain a Lifeline database, the mandate would present challenges for those states that do not already have a state Lifeline program or do not include all types of carriers in their state program. In some states, legislative approval or rulemaking at the state level may be necessary before these states could implement federal mandates. The resources needed to coordinate data input from different agencies and to maintain a state-wide electronic database are significant.

VI. OUTREACH

A. Background

56. Section 214(e)(1)(B) of the Act requires all ETCs to advertise the availability of services supported by universal service funds and the charges for such services “using media of general distribution.”¹³⁷ In the *Universal Service First Report and Order*, the Commission clarified that “eligible telecommunications carriers will be required to advertise the availability of, and charges for, Lifeline pursuant to their obligations under section 214(e)(1).”¹³⁸ Recognizing the critical importance of effectively publicizing the Lifeline and Link Up programs to low-income consumers and the resulting effect on the telephone penetration rate, the Commission took several opportunities over the years to highlight the importance of outreach. For example, in the June 2000 *Tribal Order*, the Commission amended sections 54.405 and 54.411 of the rules to require that ETCs publicize the availability of Lifeline and Link Up “in a manner reasonably designed to reach those likely to qualify for the service.”¹³⁹ The Commission chose not to prescribe specific, uniform methods for ETCs to follow in publicizing their low-income programs; rather, the Commission gave carriers the discretion to determine how best to reach

¹³⁵ See CPUC Comment; FL PSC Comments; MD PSC Comments; Ohio Commission Comments (providing specific information about the states’ programs).

¹³⁶ For example, Alaska, Virginia and Washington states have state Lifeline programs, but they exclude wireless ETCs from state verification and certification rules. *Lifeline and Link-Up Petitions for Declaratory Ruling and Requests for Waiver by US Cellular Corporation, et al.* WC Docket No. 03-109, Order and Declaratory Ruling, 25 FCC Rcd 1641, 1644, para. 6 (2010).

¹³⁷ 47 U.S.C. § 214(e)(1)(B).

¹³⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 8993, para. 407.

¹³⁹ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Western Wireless Corporation, Crow Reservation in Montana, Smith Bagley, Inc., Cheyenne River Sioux Tribe Telephone Authority, Western Wireless Corporation, Wyoming Cellco Partnership d/b/a Atlantic Mobile, Inc. Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12250, para. 78 (2000) (*Tribal Order*).

qualifying low-income subscribers within their respective service areas.¹⁴⁰

57. In the *2004 Lifeline and Link Up Order*, the Commission implemented more detailed guidelines to assist states and carriers in performing outreach to potential Lifeline and Link Up customers.¹⁴¹ Based on the recommendation of the Joint Board,¹⁴² the Commission adopted the following outreach guidelines: (1) states and carriers should utilize outreach materials and methods designed to reach households that do not currently have telephone service; (2) states and carriers should develop outreach advertising that can be read or accessed by any sizeable non-English speaking populations within a carrier's service area; and (3) states and carriers should coordinate their outreach efforts with governmental agencies/tribes that administer any of the relevant government assistance programs.¹⁴³ The Commission emphasized the importance of outreach programs, noting that effective outreach programs had been shown to improve Lifeline and Link Up participation in several instances.¹⁴⁴ Additionally, the Commission sought comment on whether to prescribe rules to govern advertisement of the Lifeline and Link Up programs.¹⁴⁵

58. In July 2005, the Lifeline Across America initiative was created as a nationwide effort to increase consumer awareness of the federal and state Lifeline and Link Up programs.¹⁴⁶ As part of this initiative, staff from the Commission, NARUC, and NASUCA formed a working group to further outreach efforts and increase Lifeline and Link Up subscribership.¹⁴⁷ In 2006, the working group helped to enact joint resolutions concerning Lifeline and Link Up carrier outreach and best practices at the NARUC and NASUCA annual conventions.¹⁴⁸ Additionally, in 2007, the working group published a report detailing its observations and recommendations as to best practices for Lifeline and Link Up outreach.¹⁴⁹ More recently, the National Broadband Plan suggested that the Commission should encourage state social service agencies to take a more active role in consumer outreach and provide such

¹⁴⁰ *Id.* at 12250, para. 79. The Commission did require that ETCs “identify communities with the lowest subscribership levels within its service territories and make appropriate efforts to reach qualifying individuals within those communities.” *Id.*

¹⁴¹ *2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8326, para. 45.

¹⁴² *2003 Recommended Decision*, 18 FCC Rcd at 6612, para. 51.

¹⁴³ *2004 Lifeline and Link Up Order*, 19 FCC at 8326-28, paras. 45-48.

¹⁴⁴ *Id.* at 8325, para. 42. An August 2000 report by the Telecommunications Industries Analysis Project demonstrated that “the Lifeline/Link-Up take rate almost tripled from 13.1% to 39.6% when states implemented outreach initiatives designed to increase telephone penetration and participation.” *Id.* In Maine, for example, successful and aggressive outreach helped the telephone penetration rate among low-income households to increase from 90.5% in March 1997 to 96.5% in March 2002. *Id.*

¹⁴⁵ *Id.* at 8333, para. 58.

¹⁴⁶ WORKING GROUP REPORT at 1.

¹⁴⁷ *Id.*

¹⁴⁸ Lifeline Across America, About Us, <http://www.lifeline.gov/aboutus.html> (last visited May 3, 2010); see CA-1 Resolution on Furthering Lifeline Participation Through Outreach, NARUC (Nov. 15, 2006), available at http://www.naruc.org/Resolutions/ca1_res_furthering_lifeline_participation_through_outreach.pdf; Resolution 2006-01: Increasing Participation in Lifeline and Link-Up Telephone Assistance Programs Through Additional and More Effective Public Outreach, NASUCA (Nov. 2006), available at http://www.nasuca.org/archive/Resolutions/NASUCA_Lifeline-Resolution_2006-01.doc.

¹⁴⁹ See generally WORKING GROUP REPORT.

agencies with educational materials that could be used in such efforts.¹⁵⁰

B. Discussion

59. *Outreach requirements for ETCs.* When it last considered this issue in 2003, the Joint Board found that effective outreach initiatives have the potential to greatly improve Lifeline and Link Up participation rates.¹⁵¹ Although the Commission issued detailed outreach guidelines in April 2004, Lifeline participation rates have not significantly improved in subsequent years. In 2009, the nationwide Lifeline participation rate was 36 percent and, in some states, less than 10 percent of eligible consumers participated in the program.¹⁵² Such statistics raise concerns that ETCs are not using effective low-income outreach methods, or that, in some instances, ETCs are neglecting low-income outreach altogether.¹⁵³ In the absence of enforceable rules, however, the Commission cannot ensure that ETCs are making adequate efforts to reach eligible low-income consumers.

60. The Joint Board therefore recommends that the Commission adopt mandatory outreach requirements for all ETCs that receive low-income support from the Universal Service Fund. These requirements would constitute a minimum floor for outreach requirements that must be undertaken by ETCs in both federal default and non-default states. If desired, states could supplement the federal requirements with additional outreach rules designed to better target their respective populations.¹⁵⁴ However, it is imperative that a baseline level of Lifeline and Link Up information be available to low-income consumers in all states.

61. Commenters such as TracFone and Verizon / Verizon Wireless suggest that mandatory outreach rules would make the Lifeline and Link Up programs more expensive and disincentivize carriers from serving low-income consumers.¹⁵⁵ The Joint Board is not persuaded, however, that this is the case. ETCs will necessarily advertise their products in the normal course of business.¹⁵⁶ In fact, advertising is a

¹⁵⁰ See National Broadband Plan at 172-173.

¹⁵¹ 2003 Recommended Decision, 18 FCC Rcd at 6611, para. 48.

¹⁵² See USAC, Lifeline Program Participation Data, <http://usac.org/li/about/participation-rate-information.aspx> (last visited Oct. 25, 2010).

¹⁵³ Several commenters assert that the existing outreach guidelines are insufficient to reach eligible low-income consumers. See, e.g., NHMC Comments at 2 (noting that “the current outreach initiatives have not been entirely successful in reaching their target recipients”); Consumer Groups Comments at 28-29 (“The fact that program participation rates range anywhere from 10 percent to 50 percent for the vast majority of states, means that outreach efforts have not been successful to date.”).

¹⁵⁴ See Consumer Groups Comments at 29-30; NASUCA Reply Comments at 16 (proposing that “the Commission . . . establish minimum requirements for outreach, which a carrier would be free to exceed”).

¹⁵⁵ See TracFone Comments at 11 (noting that “[i]ncreased outreach requirements, restrictions on offerings, and the other burdens contemplated throughout these proceedings, risk discouraging provider participation in Lifeline”); Verizon and Verizon Wireless comments at 11-12; cf. AT&T Comments at 17 (stating that “[w]hile it might be reasonable to ask Lifeline providers to post on their web sites Commission-supplied information about Lifeline discounts and to ensure that their customer service representatives are knowledgeable about these discounts, we do not believe the Commission should continue to rely on or require providers to advertise”); Smith Bagley Reply Comments at 20-21 (asserting that to the extent that ETCs are not meeting their outreach obligations, better enforcement, not more onerous requirements, is the solution).

¹⁵⁶ See Nebraska Public Service Commission Comments at 7 (“Carriers are in the best position to advertise as they already utilize advertisement in the normal course of business.”).

requirement of obtaining and maintaining ETC status.¹⁵⁷ As such, it is not apparent that it would substantially burden ETCs to include Lifeline and Link Up service offerings in the scope of their existing marketing efforts. Further, by expanding its advertising base to new consumers, an ETC can take advantage of marketing economies of scale, resulting in a lower cost per customer served.¹⁵⁸

62. As noted by several commenters, ETCs may employ a wide range of marketing methods to reach consumers.¹⁵⁹ While the Joint Board believes that mandatory outreach requirements are necessary, the requirements ultimately adopted by the Commission should provide ETCs with the flexibility to market their service offerings to eligible consumers in accordance with their respective business models. The Joint Board therefore recommends that the Commission seek comment on whether carriers, when seeking ETC designation, should be required to submit a marketing plan to the state or the Commission that outlines outreach efforts the carrier will use to reach eligible low-income consumers.¹⁶⁰ The Commission should also seek comment on how ETCs that have already been designated by states or the Commission could comply with any potential marketing plan requirement.

63. Additionally, the Joint Board recommends that the Commission seek comment on the issues to be addressed by a carrier's marketing plan. Responses to this question may draw on current carrier best practices. For example, the Commission should request comment on whether carriers seeking designation as low-income ETCs should address the following items:

- Publication on Internet home page: The carrier will have Lifeline and Link Up information clearly visible on its Internet home page, along with other available service offerings.
- Multiple outreach methods: The carrier will use multiple forms of outreach to reach eligible consumers. This could include (but would not be limited to) any combination of print media, broadcast media, Internet advertising, and marketing materials distributed at community centers and other community-based organizations.
- Outreach frequency: The carrier will perform outreach at a set frequency, in order to maximize the opportunities for eligible consumers to view and process the carrier's advertisements.
- Providing outreach materials to community institutions: The carrier will provide outreach materials to appropriate community institutions and educate those institutions, as needed, on the carrier's Lifeline and Link Up programs.
- Advertising in multiple languages: If the carrier serves a locality where a second language is predominant, the carrier must provide Lifeline and Link Up advertisements in that language,

¹⁵⁷ See 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).

¹⁵⁸ See Economies of Scale, Reference for Business, Encyclopedia of Business, 2nd Edition, <http://www.referenceforbusiness.com/encyclopedia/Eco-Ent/Economies-of-Scale.html> (last visited Oct. 13, 2010).

¹⁵⁹ See, e.g., Sprint Nextel Reply Comments at 10 (detailing the carrier's various outreach strategies); YourTel comments at 4 (describing a "pull strategy," where a carrier's marketing efforts "pull" consumers to the product).

¹⁶⁰ See 47 U.S.C. § 214(e)(2), (e)(6) (delegates to state commissions the primary responsibility for performing ETC designations; however, the Commission, upon request, can designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.").

in addition to English.¹⁶¹

- Clear and plain language: The carrier will use clear and plain language in its Lifeline and Link Up advertising.¹⁶²
- Annual certification: The carrier will file a notice once per year with the Commission stating what it has done in terms of Lifeline and Link Up outreach.
- Cooperative production and exposure: The extent to which literature and other advertising tools can be produced, used, and placed jointly by multiple ETCs.

64. The record also provides support for the role that community-based outreach can play in educating consumers about the Lifeline and Link Up programs. Nexus Communications, for example, “engages in extensive outreach efforts, including deploying mobile information centers directly to neighborhoods with high concentrations of qualifying consumers.”¹⁶³ Similarly, the National Hispanic Media Coalition believes it would be beneficial to require that ETCs “collaborate with state social service agencies, community organizations and churches that operate in target communities.”¹⁶⁴ At this juncture, the Joint Board recognizes that it may be beneficial to engage such entities in outreach efforts, but the Joint Board believes that more data is needed before it can recommend that the Commission mandate specific community-based outreach methods. For example, the Commission may wish to inquire about carrier best practices in this area. Accordingly, the Joint Board recommends that the Commission seek comment on additional community-based outreach methods that ETCs and states can use to reach eligible low-income consumers.

65. *Outreach requirements for states.* In the *2004 Lifeline and Link Up Order*, the Commission determined that it was not necessary to prescribe specific outreach requirements for states at that time.¹⁶⁵ The Joint Board believes that this position remains sound today and recommends that the Commission maintain advisory guidelines for states with respect to performing low-income outreach.

66. This is the case for several reasons. First, unlike carriers, states do not receive low-income support from the Universal Service Fund.¹⁶⁶ The Act requires that ETCs publicize their Lifeline and Link Up service offerings to eligible consumers; however, no such obligation exists for states.¹⁶⁷ Second, as noted by several commenters, states are well-positioned to supplement outreach efforts by ETCs.¹⁶⁸ State agencies often possess data, such as demographic information, that they can provide to

¹⁶¹ Consumer Advisory Committee Reply Comments at 12-13.

¹⁶² When seeking comment on this issue, the Joint Board recommends that the Commission specify that any “clear and plain language” requirement would not override state consumer protection laws, such as state Truth in Advertising requirements.

¹⁶³ Nexus Communications Comments at 4-5.

¹⁶⁴ NHMC Comments at 3.

¹⁶⁵ *Lifeline and Link Up Order*, 19 FCC Rcd at 8326, para. 44.

¹⁶⁶ See Benton Foundation et. al Comments at 8-9; NASUCA Reply Comments at 16.

¹⁶⁷ See 47 U.S.C. § 214(e)(1)(B); *Universal Service First Report and Order*, 12 FCC Rcd at 8993, para. 407; see also NASUCA Reply Comments at 16-17.

¹⁶⁸ See, e.g., NASUCA Reply Comments at 16 (noting that outreach should be a shared effort between carriers and states); Nebraska Public Service Commission Comments at 7 (“[C]oordination between state regulatory

(continued....)

ETCs as needed to best direct outreach efforts to unserved and underserved populations. Similarly, states can share information with one another, in order to gain a better understanding of best practices for conducting low-income outreach.¹⁶⁹ Additionally, state agencies may have relationships with local community organizations, such as homeless shelters or social service agencies, and can leverage those relationships to provide information on local ETCs' Lifeline and Link Up service offerings. Third, it is important to note that, unlike ETCs, states do not always have access to funds with which they can conduct low-income outreach.¹⁷⁰ The Joint Board recognizes that budgetary resources differ from state to state and that funding for marketing expenses may not be available in all instances. By maintaining advisory guidelines for states with respect to Lifeline and Link Up outreach, the Commission will ensure that states continue to supplement ETC outreach efforts in an economical way.

67. Based on the record, the Joint Board recommends that the Commission tailor the existing outreach guidelines to better clarify the role of states in performing low-income outreach. As noted above, the Joint Board recommends that these revised guidelines apply only to states, not to ETCs. Specifically, the Joint Board suggests that the Commission modify the existing outreach guidelines to contain the recommendations contained in the following paragraphs.

68. *Assisting ETCs in reaching unserved households.* The Joint Board recommends that states should assist ETCs in formulating methods to reach households that do not currently have telephone and/or broadband service. The Joint Board contemplates that states could aid ETCs in two primary ways, which the Commission may wish to include as part of any guideline it ultimately adopts. First, as several commenters suggest, states can identify appropriate community institutions to participate in public-private partnerships, and they can assist ETCs in coordinating with those institutions to maximize outreach opportunities.¹⁷¹ Building on this notion, states can also assist ETC outreach efforts by identifying unserved and underserved populations for whom outreach would be beneficial.¹⁷² Qwest, for example, states that as a percentage of its per-state customer base, the ETC's highest penetration of Lifeline enrollment is in the state of New Mexico.¹⁷³ In New Mexico, customers enrolling in LIHEAP may ask the New Mexico Human Services Department to share their eligibility information with the applicable local phone company(ies) for the purpose of being automatically enrolled in the Lifeline program.¹⁷⁴ The Joint Board foresees that such partnerships, if facilitated by the states, will help to

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commissions and state social service agencies to include information on Lifeline and Link Up programs along with information on other assistance programs is invaluable."); Florida Public Service Commission Comments at 3 (suggesting that the Commission should "encourage state public service commissions to work with their designated social service agencies to . . . distribute Link Up and Lifeline educational materials").

¹⁶⁹ Several states undertake their own outreach efforts, in addition to the outreach activities performed by carriers in those states. Alaska, for example, publicizes its Lifeline and Link Up programs through print advertising (i.e., a leaflet) and interaction with local community groups. *See* State Data. Florida conducts extensive Lifeline and Link Up outreach efforts, including the use of print advertisement, press releases, and outreach partnerships with federal and state agencies, local community groups, and non-profit organizations. *Id.*

¹⁷⁰ Iowa, for example, spent \$250 on Lifeline and Link Up outreach efforts in fiscal year 2009. At the opposite end of the scale, Wisconsin spent \$90,000 on outreach in fiscal year 2009. *See id.*

¹⁷¹ *See, e.g.*, Consumer Advisory Committee Reply Comments at 12-13; Media Action Grassroots Network Comments at 15.

¹⁷² United States Telecom Association Comments at 7.

¹⁷³ Qwest Communications Reply Comments at 3.

¹⁷⁴ *Id.*

increase awareness of and enrollment in the Lifeline and Link Up programs.

69. *Assisting ETCs in designing outreach materials.* Commenters assert that states can assist ETCs in designing outreach materials to reach unserved and underserved populations.¹⁷⁵ The Joint Board agrees, and recommends that the Commission adopt a guideline encouraging states to do as such. The Joint Board further recommends that the Commission identify specific ways in which states could assist with the creation of ETC outreach materials. For example, as the Nebraska Public Service Commission suggests, states can review ETC outreach materials to ensure that they are accurate, complete, and understandable.¹⁷⁶ This could include the use of clear and plain language, or even standardized language, to ensure that advertisements describe the Lifeline and Link Up programs in a simple, yet accurate, way. States can also assist carriers in identifying localities where it would be appropriate to advertise in a second language.¹⁷⁷

70. *Monitoring of ETC outreach efforts.* State review of ETC outreach efforts can help ensure that eligible consumers are reached in an effective and timely manner.¹⁷⁸ For instance, states may choose to have ETCs file a report that details the outreach efforts undertaken by the ETC in a set fiscal period. Alternatively, states could ask ETCs to file a certification describing the outreach efforts that the carrier intends to undertake on a going-forward basis. The Joint Board wants to ensure, however, that states maintain the flexibility to determine how best to review the outreach efforts of ETCs in their jurisdiction. Accordingly, the Joint Board recommends that the Commission adopt a guideline encouraging states to review the outreach efforts of ETCs in their geographic area to ensure that the promotion of Lifeline and Link Up service offerings is both effective and timely.

VII. OTHER ISSUES

A. Background

71. Throughout the *Referral Order*, the Commission requests recommendations from the Joint Board “to consider how the potential expansion of the low-income program to broadband would affect any of its recommendations.” The expansion of universal service to include broadband raises a number of overarching issues that impact future Lifeline funding for not only broadband services, but also existing voice and mobility services. Concerns have been raised that the referral fails to adequately deal with these issues.

72. The Joint Board reinforces those portions of the Joint Board’s *2007 Recommended Decision* dealing with the redefinition of supported services to include broadband and mobility services.¹⁷⁹ The *2007 Recommended Decision* includes the necessary legal underpinnings to justify

¹⁷⁵ See, e.g., Qwest Communications Reply Comments at 8 (“[T]he Commission should modify the existing requirement to ensure that providers and states have the necessary flexibility to learn from past outreach efforts and work together to design and implement more cost-effective outreach solutions.”).

¹⁷⁶ Nebraska Public Service Commission Comments at 7.

¹⁷⁷ See, e.g., California Public Utilities Commission Comments at 23 (noting that the CPUC advertises its Lifeline and Link Up programs in a variety of languages); Massachusetts Department of Telecommunications and Cable Reply Comments at 4 (MDTC states that it provides program application materials in multiple languages).

¹⁷⁸ See, e.g., Consumer Groups Reply Comments at 16 (stating that “at a minimum the states must have process and procedures to closely monitor the ETCs to ensure that they are conducting effective and sufficient outreach”).

¹⁷⁹ See *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (2007 Recommended Decision). The Commission put the *Recommended Decision* out for public comment on January 29, 2008. *High Cost Universal Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, (continued....)

modification of the definition of services supported by the Universal Service Fund. Specifically, the *2007 Recommended Decision* states:

The Joint Board now recommends that the nation's communications goals include achieving universal availability of mobility services (defined as wireless voice), universal availability of broadband Internet services, and voice services at affordable and comparable rates for all rural and non-rural areas.¹⁸⁰

73. On March 16, 2010, the Commission released a Joint Statement on Broadband stating that “[t]he nearly \$9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.”¹⁸¹ In addition, the National Broadband Plan which was delivered to Congress the same day, recommended that the Commission reform the Universal Service Fund, while aiming to keep the overall size of the Fund close to current levels, to support the provision of both voice and broadband communications in areas of the nation that would be unserved without such support or that depend on universal service support for the maintenance of such service. Such proposed reform was based, in part, on the Joint Board's *2007 Recommended Decision* to expand universal service support to broadband. Indeed, the Commission recently adopted a Notice of Proposed Rulemaking to create a Mobility Fund, which will seek to help overcome cost barriers to expanding advanced mobile wireless services, a recommendation in the Joint Board's *2007 Recommended Decision* which the National Broadband Plan endorsed.¹⁸² Moreover, in April, the Commission initiated a Notice of Inquiry and Notice of Proposed Rulemaking to begin to develop a detailed analytic foundation necessary for reforming the Universal Service Fund.¹⁸³ Below the Joint Board recommends that the Commission adopt an additional principle, pursuant to its authority under section 254(b)(7), specifically finding that universal service support should be directed where possible to networks that provide both advanced and voice services. Moreover, the Joint Board identifies specific issues the Commission should fully consider and resolve prior to reforming the Universal Service Fund.

B. Discussion

74. *Broadband issues.* The Joint Board must start its discussion of broadband issues by pointing out the obvious: “broadband” is not currently included in the definition of either “universal service” or “Lifeline.”¹⁸⁴ The Joint Board must also recognize that, nevertheless, the National Broadband Plan recommends support for broadband, as a replacement over time for existing legacy High Cost

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23 FCC Rcd 1531 (2008).

¹⁸⁰ *2007 Recommended Decision*, 22 FCC Rcd at 20478, para. 4.

¹⁸¹ *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, 25 FCC Rcd 3420, 3421 (2010).

¹⁸² *In re Universal Service Reform Mobility Fund*, WT Docket No. 10-208; Notice of Proposed Rulemaking, FCC 10-182 (rel. Oct. 14, 2010).

¹⁸³ See *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010).

¹⁸⁴ 47 C.F.R. § 54.101(a); 47 C.F.R. § 54.401(a)(3).

support.¹⁸⁵ Furthermore, the National Broadband Plan included recommendations for the Commission to facilitate broadband pilot programs for low-income customers, and as noted above, the establishment of a Mobility Fund to support infrastructure for mobility services in those areas that are not currently served.¹⁸⁶ These recommendations were based, in part, upon the Joint Board's *2007 Recommended Decision* that recognized the importance of broadband and mobility services for our nation.

75. In the almost three years that have passed since the Joint Board's *2007 Recommended Decision*, the importance of broadband services to consumers and our national economy has grown. In 2009, Congress directed the Commission to develop a National Broadband Plan to ensure that every American has "access to broadband capability."¹⁸⁷ The Joint Board believes that it is appropriate for the Universal Service Fund to support networks that provide broadband service, in addition to voice service. Thus, the Joint Board proposes that the Commission adopt an additional principle of universal service, pursuant to its authority under section 254(b)(7) of the Act. The Commission should specifically find that universal service support should be directed where possible to networks that provide advanced services, as well as voice services. Such a principle is consistent with section 254(b)(3) of the Communications Act. Historically, in light of the goals of ensuring that universal service support is "specific, predictable and sufficient," universal service support for high-cost areas has been targeted to support networks that deliver basic voice services, rather than networks that provide both advanced (*i.e.*, broadband) services and voice services, consistent with other universal service support principles.¹⁸⁸ This has been the case despite Congress's clear recognition of the need to promote the continued development of the Internet,¹⁸⁹ and to accelerate deployment of advanced telecommunications capability by, among other things, removing barriers to infrastructure investment. The Joint Board believes that universal service funding should recognize the importance of advanced services as well as voice services to consumers, including low-income consumers. An additional principle that emphasizes Congress' and the commissioners' commitment to providing access to advanced services, including broadband service, would serve the public interest.

76. Although the *Referral Order* requested that the Joint Board consider whether the extension of the Lifeline program to include broadband services would alter its recommendations in this Recommended Decision, it is difficult to consider whether any of the instant recommendations should be modified prior to the appropriate consideration of the broadband services that might be included in such an extension of the low-income program. Indeed, some members of the Joint Board would have preferred a more extensive referral on these issues, and at least one commenter noted that the Joint Board should have a more extensive role in the consideration of extending the Universal Service Fund's support to broadband.¹⁹⁰ At the same time, the Joint Board recognizes the need to ensure continued support for existing voice networks.

¹⁸⁵ See, e.g., NBP Recommendations 8.6 at 147 and 8.13 at 150.

¹⁸⁶ See, e.g., NBP Recommendations 8.6 at 148 and 8.15 at 151; see also *Wireline Competition Bureau Announces June 23, 2010 Roundtable Discussion to Explore Broadband Pilot Programs for Low-Income Consumers*, Public Notice, 25 FCC Rcd 7305 (2010).

¹⁸⁷ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

¹⁸⁸ 47 C.F.R. §§ 254(b)(2)-(3).

¹⁸⁹ See, e.g., 47 U.S.C. §230(b).

¹⁹⁰ The PaPUC notes that the referral's narrow focus on Lifeline and the low-income program detracts from the need to have the Joint Board, a board established pursuant to federal law, comprehensively consider major issues that are related to the National Broadband Plan. PaPUC Reply Comments at 3.

77. Neither the Commission nor this Joint Board can adequately address potential changes to create a Broadband Lifeline plan without initially determining the definition of the broadband services or functionalities to be supported, sources of funding, the funding and contribution rules, and the overall approach to using low-income support to achieve universal broadband service. In fact, the Joint Board would like to emphasize that, as the Commission moves forward with considering the National Broadband Plan's recommendations on these and other universal service related issues, there are many practical issues to be considered. They include, but are not necessarily limited to:

- Conceptually, how should "broadband" eligible for federal USF Lifeline support be defined and measured, including consideration of typical (actual) versus advertised upload and download speeds;
- Technology type and technology neutral funding mechanisms;
- Price, affordability, subscribership, and penetration;
- Broadband usage, when that usage is subject to some sort of data or usage cap;
- How best to ensure availability of broadband service in unserved and/or underserved areas;
- Terms and conditions for data plans that include some form of broadband Internet access or other broadband service; and
- Once broadband is defined and a determination is made as to what to support and how to provide that support, it would still be necessary to determine whether the Lifeline discount would be applied as a percentage or a fixed dollar discount off of some currently undefined price, or some other measure.

78. Furthermore, given the lack of a definition for the term "broadband" as a supported service, and how such service would be calculated and distributed, it would be extremely difficult, if not impossible, to comply with even the Commission's *de minimis* broadband-related requests that were included in the *Referral Order*.¹⁹¹ In fact, NASUCA points out in its comments that "it is difficult to comment on 'broadband Lifeline' because the details have not been fleshed out, adding further that reclassification is needed in order to ensure the legality of broadband Lifeline support."¹⁹² The sheer number of issues relevant to defining broadband creates a great deal of uncertainty. This uncertainty is a significant issue, in and of itself, because it makes it impossible to predict the impact of adding support for broadband or the recommendations for possible changes to eligibility, verification, and outreach, or to measure the impact of such changes to the overall size of the fund. However, as the Commission moves forward on the consideration of this *Recommended Decision*, the Joint Board emphasizes that the Commission needs to consider these broadband issues, including the various cost concepts that will be relied upon by USF policymakers, in recommending appropriate expansion of existing universal service funding to include broadband services.

79. *Wireless issues.* In addition, the Joint Board and numerous commenters express concern about the impact on the Universal Service Fund of designation of prepaid wireless carriers to only offer Lifeline service.¹⁹³ In particular, the Joint Board supports the further examination of those Lifeline

¹⁹¹ 2010 *Referral Order*, 25 FCC Red at 5088, 5089, 5091, paras. 24, 30, 35.

¹⁹² NASUCA Reply Comments at 18.

¹⁹³ See Consumer Groups Comments at 14-15, 27; NASUCA Comments at 3-4; NASUCA Reply Comments at 4; PaPUC Reply Comments at 7.

offerings that are offered at no cost to the subscriber. The relevant decisions to expand USF Lifeline funding to include prepaid wireless Lifeline-only carriers were made largely by the FCC in the context of various forbearance and waiver petitions and without advice or consultation from the Joint Board.¹⁹⁴ The most recent statistics for Lifeline funding show rapid Lifeline funding growth from approximately \$1.0 billion in 2009 to a projected \$1.4 billion in 2010.¹⁹⁵ Our concerns include the implications of demand for a service or product that is essentially free. When the Commission last considered the issue of free service for Lifeline customers, it was determined that the local residential rate charged to Lifeline-eligible Tribal members should not fall below a monthly minimum of \$1.00, even if the Lifeline credit exceeded the amount of their bill for local service.¹⁹⁶ The Commission should develop a record, and determine whether this requirement for a minimum monthly rate should be made applicable to all Lifeline subscribers and not just to eligible Tribal members.

80. In addition, numerous concerns have been raised regarding prepaid wireless Lifeline issues relating to certification and verification practices, and procedures and the need for minimum standards of service for Lifeline recipients that guarantee fair value for consumers who benefit from Lifeline funding.

81. Consumer Groups states, "There is an urgent need for the Commission to undertake a very detailed look at the pre-paid wireless Lifeline product and adopt basic minimum standards to ensure adequate value to the Lifeline consumers and to the ratepayers who subsidize the Universal Service Fund."¹⁹⁷ NASUCA, in its comments that are also supported by the Pennsylvania PUC,¹⁹⁸ CVM¹⁹⁹ and Consumer Groups,²⁰⁰ points out that the Commission should have referred the issue of adoption of minimum standards for prepaid wireless Lifeline services to the Joint Board.²⁰¹ NASUCA adopted a resolution calling for reform of the Lifeline program in June 2010 to establish minimum standards of service for prepaid wireless Lifeline, ensuring adequate value to prepaid Lifeline wireless customers and a heightened level of scrutiny of federal default rules.²⁰²

82. In addition to concerns expressed as to minimum service standards, others noted that there were other current issues relating to certification and verification of eligibility by prepaid wireless Lifeline providers. For example, the Massachusetts DTC notes a recent audit of TracFone Lifeline

¹⁹⁴ See, e.g., *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*); *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*) (designating TracFone as an ETC for its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia).

¹⁹⁵ See Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for Fourth Quarter 2010* (filed Aug. 2, 2010) (*4Q2010 Fund Size Projection Filing*) at 16-17.

¹⁹⁶ See 47 C.F.R. § 54.403(a)(4)(i).

¹⁹⁷ Consumer Groups Comments at 37.

¹⁹⁸ PaPUC Reply Comments at 7.

¹⁹⁹ CVM Comments at 2.

²⁰⁰ Consumer Groups Reply Comments at 3.

²⁰¹ NASUCA Comments at 2.

²⁰² *Id.* at 4-5.

customers, which revealed that only 51 percent of those sampled could be recertified for Lifeline eligibility.²⁰³ In the second and third quarters of 2009, 71,000 prepaid wireless customers were removed from the Florida Lifeline rolls through special verification procedures that have been implemented in Florida. Those procedures include dropping the Lifeline credit when a prepaid wireless phone fails to record any usage over a 60-day period.²⁰⁴

83. The Commission must consider all of these issues because they now have the potential to impact the viability of the entire fund, including achievement of our affordability mandates. It is not our intention through this recommendation to prejudge any of the concerns enumerated above since the Joint Board is clearly in support of the need for low-income support to achieve the goals of universal service. The Joint Board simply needs to express our concern and need for a thorough review as guardians of the significant federal and state dollars directed toward this purpose.

84. *Fund size.* Except for the impact of any proposed changes in eligibility that may be recommended by the Joint Board and then approved by the Commission, the issue of overall fund size is not a part of this referral. The Commission is well aware that the low-income fund grew by more than \$500 million over just the last two years -- from a level of \$822 million in 2008 to an estimated \$1.4 billion in 2010.²⁰⁵ If this average rate of growth of 30 percent per year continues, the low-income fund will reach \$2 billion within the next two years with no major changes in the existing program, and without even considering the potential unknown impact of Lifeline support for broadband customers. Citing the recent growth in the low-income fund, Verizon asserts that there is no demonstrable need to expand the eligibility for Lifeline or implement proposals that would make the Lifeline program bigger or more complicated.²⁰⁶

85. Modifying the definition of supported services to include broadband could, depending on the details of implementation, have significant implications on the potential overall federal USF fund size as well as the affordability of all services—both issues having considerable impact on consumers in general and low-income consumers in particular. The increased USF fund size also has interlinked implications that would affect the overall reform of both universal service and the reform of the crucial area of intercarrier compensation. The instant Lifeline referral excludes considerations of overall fund size or funding sources. If any single body has direct responsibility for properly presenting to the Commission needed changes in Lifeline programs to achieve the proper balance with the goals of universal service and the Telecommunications Act of 1996, then it must be the Federal-State Joint Board for Universal Service that includes appropriate representation for federal, state, and consumer stakeholders.

86. Other major factors that would play a significant role in determining the size of the fund could include some or all of the following (in no particular rank order):

- Modifying eligibility requirements over time;
- Violations of the “one per household” rule;
- Automatically enrolling or otherwise significantly increasing take rates for customers

²⁰³ MDTC Comments at, Appendix A, 13-14.

²⁰⁴ Bob Casey, Presentation to NARUC 2010 Winter Meetings at 18.

²⁰⁵ See USAC *4Q2010 Fund Size Projection Filing* at 16-17 and Appendix LI07 (Low Income Support Distributed by State in 2007 and through 1Q2010).

²⁰⁶ Verizon Reply Comments at 5-7.

deemed eligible;

- Adding support for broadband services; and
- Increasing, or even just retaining, existing average per-state levels of support for prepaid wireless providers, while more and more states certify prepaid wireless providers as ETCs.

87. California, the largest single state recipient of Lifeline funding, submitted significant comments in this docket regarding state experiences with the issues relating to consumer eligibility. The California PUC makes note of the extensive changes in its Lifeline program in recent years, including income documentation, a third party contract awarded to NECA (now Solix, Inc.) to establish procedures to ensure efficient processing of consumer applications and subsequent verification of eligibility, establishment of an interactive enrollment and verification of eligibility website, and electronic interfaces with carriers. The California procedures resulted in a significant reduction from the prior California Lifeline expenditures that were based primarily on self-certification.²⁰⁷

88. While estimates of fund size impacts resulting from specific modifications of existing rules may be relatively simple to develop, the overall fund impact from all of the proposals on the table requires a global view that exceeds the four corners of the current referral.

89. NASUCA believes that the low-income fund growth demands a more fundamental re-examination that goes beyond the mere review of the eligibility, verification, and outreach mechanisms. NASUCA references its own recently adopted resolution and brings forward the following issues with the advice that the Joint Board should recommend Commission action in these areas:²⁰⁸

- The requirement for carriers to offer discounted basic service while permitting Lifeline customers to purchase packages and bundles, and requiring carriers to apply the full federal Lifeline discount and any applicable state Lifeline discount to basic local service and to the price of any service package containing basic local service that they offer;
- Ensuring that Lifeline customers with packages are not disconnected at a significantly greater frequency than Lifeline customers without packages;
- Requiring any forbearance petition or petition for low-income ETC designation to include a complete description of the service to be offered;
- Considering establishing minimum standards of service for prepaid wireless Lifeline service that would apply to all prepaid wireless Lifeline services, facilities-based or not, and satisfy the public interest by providing adequate value for Lifeline recipients and comply with the universal service mandates of the Act;
- Adopting a minimum standard to ensure adequate value to prepaid Lifeline wireless customers from the service (i.e., minimum number of monthly minutes, maximum price for additional minutes and maximum price for text messages, etc.);
- A continued evaluation of appropriate federal default rules for ongoing support when there is no monthly billing, carrier contributions to state funds, quality of service obligations, double billing, protection from fraud, recertification, and audits; and
- Investigating whether the Lifeline discount should no longer be taken off the retail rate, but off some measure of wholesale or forward-looking cost, especially where

²⁰⁷ CPUC Comments at 3-7.

²⁰⁸ NASUCA Comments at 4-5.

the carrier's services are not price-regulated.

90. NASUCA also observes that the low-income portion of the federal USF has grown over time and that it has the potential of increasing to \$2.5 billion.²⁰⁹ NASUCA points out that the Commission placed a state-by-state cap on the high-cost funding for competitive ETCs where a similar growth had been observed. NASUCA does not deem such an action to be appropriate for the low-income fund. Fund size issues are policy matters that the Commission must deal with up front, preferably with the advice of the Joint Board, prior to embarking on new initiatives.

91. The Joint Board asks the FCC to develop a complete record on, and act upon, all of these issues as it moves forward in the future reform of the federal universal service funding mechanisms.

VIII. RECOMMENDING CLAUSE

92. For the reasons discussed herein, the Federal-State Joint Board on Universal Service, pursuant to sections 254(A)(1) and 410(c) of the Communications Act of 1934 as amended, recommends that the Commission adopt the recommendations set forth herein concerning the Universal Service Fund low-income programs.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁰⁹ NASUCA Comments at 3-4, and n. 10 (citing Billy Jack Gregg, "Determining the Potential Size of the Current USF Low-Income Fund and a Proposal to Mitigate the Impact of Adding Broadband as a Supported Service," Universal Consulting (February 2010)).

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN
APPROVING IN PART, CONCURRING IN PART**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109*

Six months ago the Commission requested that the Federal-State Joint Board on Universal Service (the "Joint Board") make recommendations to improve the Lifeline and Link Up programs, which serve to ensure that low-income consumers can obtain and maintain telephone service at affordable rates. Without this program, many consumers would not have phone service and as a result, would be disconnected and further isolated from participating in our society. The recommendations we make today are essential for improving the program, including making it more efficient so that our universal service dollars can be stretched even further.

With respect to its eligibility and verification recommendations, the Joint Board has identified certain issues that warrant additional comment so that we can fully understand the impact of our recommendations. It is prudent for the Commission to proceed in a judicious manner, fully weighing these issues prior to modifying its eligibility and verification rules so that they are uniformly applied across the states. Nonetheless, I believe that the Commission and states must work together to minimize waste, fraud and abuse in the program, and our rules should be adjusted as necessary to ensure that only eligible consumers are participating in the program. To that end, the exploration of a national database that would allow for real-time eligibility and verification checks through electronic processes is promising, and I encourage interested parties to continue working on this proposal. Such a database also has the potential to allow the program to better address and serve those populations living in group housing or in homeless shelters. I believe a collaborative process by all of the interested parties, including industry, consumer advocates, and federal and state governments, could lead to a more efficient program that better serves low-income consumers.

I am pleased that this Joint Board is building upon the work of the previous Joint Board in recommending that the Commission adopt an additional universal service principle pursuant to Section 254(b)(7), which states that support from the Universal Service Fund should be directed, where possible, to networks that are providing both broadband and voice services. Broadband has become an essential service, just like telephone service. As such, it is important that the limited resources available through the Fund be used to support networks that provide both broadband and voice services. The Commission should take up this issue and adopt this new principle in its upcoming consideration of the Universal Service Fund reform proceeding.

As an essential service, all households must not only have the ability to access broadband, they also need the ability to purchase it. Yet, we know that less than half of low-income Americans have subscribed to broadband. In addition, one-third of Americans who have not purchased broadband say they have not done so due to the expense of obtaining such service. As such, I believe the Commission should address low-income consumers' ability to use their Lifeline discounts for services or packages that include voice and broadband, as recommended in the National Broadband Plan, as soon as possible.

During this proceeding, we heard some concerns from states and consumer advocates about prepaid wireless Lifeline services, and in particular, the need to consider minimum service standards in order to protect consumers. The number of competitive service offerings for Lifeline products have increased, and in general, I believe that this is a positive development for low-income consumers. Such consumers can now choose from a variety of service offerings, and they can pick the one that best fits their needs. However, I am concerned that Lifeline consumers may not have all of the information they

need to compare and choose between Lifeline offerings by various providers. Thus, the Commission should consider whether a comparative guide for Lifeline consumers would be a useful tool. We could encourage the states to offer such guides, and Lifeline providers could be encouraged to submit the description of their Lifeline products to the states for inclusion in such guides. With respect to minimum service standards for Lifeline products, the Commission must be careful not to ignore the universal service principles of technological and competitive neutrality. The Commission should review whether the current state of competition for Lifeline products is insufficient to protect consumers, and then consider whether a minimum service standard should be applied for all Lifeline products.

Collaboration has been the engine of this Joint Board. While we may not see eye to eye on every detail in the proceeding, we all agree that the Joint Board's work is critical for the Universal Service Fund's success in achieving affordable telephone service for low-income consumers. My fellow members on the Joint Board and both the federal and state staffs have worked tirelessly to complete this Recommended Decision within the timeframe originally requested by the Commission. I have been told that six months for a Recommended Decision is incredibly fast for the Joint Board. I want to express my gratitude for *everyone's* tremendous efforts to work together as a team to accomplish our mission, and to do so on time. You each have taken on the role to work on the Joint Board, in addition to your full-time jobs. I know you often did your Joint Board work at night and on weekends. Thank you for your personal sacrifices and excellent contributions to the Joint Board's recommendations.

I have enjoyed collaborating and working with State Chairman Baum and my fellow Joint Board members Commissioner Capps, Commissioner Baker, Commissioner Landis, Board Member Burke, Chairman Cawley, and Senior Assistant Attorney General ffitch. You each have uniquely contributed to this Decision. Thank you for your dedication and commitment to public service.

In particular, I want to acknowledge and thank the Joint Board's staff. Our federal and state staff leads, Irene Flannery and Kay Marinos, respectively, provided excellent leadership on the issues before us and kept us on task. In addition, our team leaders conducted outstanding work and helped guide the analysis and recommendations on their respective issues with their staff teams—Beth McCarthy and Christine Aarnes on Eligibility, Rebekah Bina and Natelle Dietrich on Verification, and Jamie Susskind and Kerri DeYoung on Outreach. In addition, we would not have been able to accomplish the task before us without the participation and contribution of each and every staff member to whom I am also grateful. They are Karl Henry, George Young, Labros Pilalis, Kathy Hagans, Denise Parrish, Earl Poucher, Peter Pescosolido, John Ridgway, Robert Haga, Vicki Helfrich, Brad Ramsay, Joel Shifman, Lori Kenyon, Jing Liu, Angie Kronenberg, Jennifer Schneider, Margaret McCarthy, Christi Shewman, Brad Gillen, Sharon Gillett, Carol Matthey, Alex Minard, Patrick Halley, Lisa Gelb, Trent Harkrader, Cindy Spiers, Robert (Beau) Finley, Kimberly Scardino, and Charles Tyler.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART, CONCURRING IN PART**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109*

In today's Decision, the Joint Board takes some important steps to move us closer to our national goal of affordable access for all to the nation's communications networks by strengthening the Lifeline and Link-Up programs. On the heels of the wide-ranging and inclusive process that the FCC conducted to formulate the National Broadband Plan, I am proud to have had the opportunity to work again with this dedicated group of state and federal colleagues on the Joint Board whose hard work has produced this Decision. I particularly want to commend the leadership of the Joint Board, Joint Board Chair Mignon Clyburn and State Joint Board Chair Ray Baum, for all the effort they put into forging this document and managing the process, and all of the federal and state Commissioners whose input has been invaluable. Of course, our work would have been impossible without the long hours and excellent insight of all the federal and state staff. Collaboration and dialogue between federal and state partners in reform can and must continue as we move ahead to bring our Universal Service Fund and the intercarrier compensation system into the 21st century broadband world.

The principle of universal service – that all Americans, no matter who they are or where they live, should have access to reasonably comparable service at reasonably comparable rates – is a cornerstone of federal communications policy. The Lifeline and Link-Up programs help us meet that goal by getting and keeping low-income consumers connected. Since the FCC established the Lifeline program, telephone penetration rates for low-income households have increased from 80.1% to 89.7%. But what those statistics tell us is that millions of Americans remain without access to basic telephone service today.

I support the recommendations we make today that have the potential to increase participation in the Lifeline and Link-Up programs, in particular adopting mandatory outreach requirements for carriers participating in the programs. As I have said before, the potential of the low-income support programs is in large part linked with the success of our outreach efforts. We can build on the success that individual states have had with automatic enrollment when families sign up for other assistance programs by recommending it here as a best practice to other states. I believe that the information we could obtain by requiring all eligible carriers to submit their verification data to the Commission, USAC, and states would help us strengthen the impact of the low-income programs as well. At a time when the economic climate has left many American families in dire straits, I hope we will seriously consider raising the income eligibility criteria for consumers to 150% of the federal poverty guidelines. This could be a powerful tool as we renew our focus on the stubborn and persistent percentage of unconnected low-income Americans. I realize this raises important questions that must be addressed but the fact is our current economic distress has left many more of our citizens in need and they could benefit from this action.

We should also consider with some precision the extent to which prepaid wireless Lifeline service has helped the program achieve its mission, but I concur in part out of concern for isolating a particular technology and service plan in this Decision. I believe that those concerns raised here, especially in connection with the size of the Universal Service Fund writ large are appropriately examined in the context of comprehensive reform.

Finally, the Joint Board is once again expressing its support for broadband to be eligible for Universal Service. Since the last time the Joint Board took up this issue in 2007, the support – and need – for that change has only grown stronger. I would simply note here that the need for Universal Service support for broadband is one of many reasons I continue to urge Title II reclassification and our Decision

today does nothing to temper my support for that course of action. That said, I wholeheartedly support this renewed recommendation to add support for broadband as a Universal Service principle. As technology evolves, so too must the policies designed to help us achieve our constant goal: ensuring that all Americans, including low-income consumers, have access to services at just, reasonable, and affordable rates.

**STATEMENT OF
COMMISSIONER MEREDITH ATTWELL BAKER**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109*

The Lifeline and Link Up programs have been critical tools to providing low-income Americans with the means to afford basic telephone service and to connect to jobs, schools, and critical 911 services. I support the Joint Board's continued efforts to improve the administration and operation of these low-income programs and to ensure their long-term sustainability.

The low-income programs have almost doubled in size in the past five years from approximately \$800 million in 2005 to a projected \$1.4 billion this year. This increase is a positive indicator of the programs' success in connecting low-income households, but it also raises important questions about the programs' overall solvency and the risk of waste, fraud, and abuse. The low-income programs lack a central enrollment, verification, and audit functionality inhibiting the ability of the FCC and states to conduct needed oversight and program management.

The Recommended Decision focuses properly on these challenges within the current system and moves towards a more uniform and standardized structure in a manner respectful of our partner states' own programs and statutory provisions. One proposal in particular that merits additional study is the potential establishment of a national database for certification and verification. The Joint Board's overall focus on operational considerations is timely: we must ensure that we have stable programs both financially and operationally before we consider adding the complexity and cost of broadband support to our universal service program.

I am grateful that the Joint Board highlighted critical questions about overall fund size and the inherent challenges of extending universal service support to broadband services. Moving forward, the Joint Board has also provided clear guidance to the Commission as to our legal ability to fund broadband within our existing statutory authority. I support the recommendation to adopt an additional universal service principle, pursuant to section 254(b)(7), to target support to networks that provide advanced and voice services. This is an important step, particularly when coupled with the Joint Board's 2007 recommendation to include broadband as a supported service. I appreciate the efforts of both federal and state staff and the willingness of my colleagues on the Joint Board to work towards a consensus approach to shape the future of these important programs.

**STATEMENT OF
CHAIRMAN RAY BAUM
CONCURRING IN PART, DISSENTING IN PART**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109*

In 2007, the Joint Board took a fresh look at the high-cost component of the federal universal service fund and adopted several guiding principles. Among those principles were cost control, accountability, and state participation. Today, the Joint Board is focusing needed attention on the low-income fund and I believe the same principles should be applied here.

As the high-cost fund spiraled ever higher, the Joint Board recommended, and the FCC adopted, a cap on the amount of support available to competitive providers. Today it is the low-income fund's alarming growth rate that demands attention. In the past two years, the low-income fund has increased at an annualized rate of 30%. Left unchecked, the fund will easily reach \$2 billion within the next two years. To date, much of the attention given to the low-income program has been focused on increasing participation rates. In this referral, we were asked to consider widening eligibility requirements by making all states follow federal eligibility requirements as a minimum and by expanding the qualifying income levels. Given the recent efforts to relax the low-income fund requirements, and the stated desire to transition support to broadband services, it may be time to ask whether the program has sufficiently met its goals of enabling universal service. FCC data shows that 95.7 percent of all households in the country have phone service. Among low-income households, 90.4 percent have phone service, up from 80 percent when Lifeline was first established in 1985. Even among households with income under \$5000, 88 percent have phone service available. Rather than adopting less stringent income eligibility standards or forcing states to adopt expanded eligibility requirements, we should be focusing our efforts on determining why those customers who are currently eligible for support have chosen not to seek Lifeline service, and how to remove barriers to participation for eligible customers.

The tremendous growth rate of the low-income fund can be attributed to the FCC's granting of forbearance to wireless resellers, and the designation of new ETCs for the sole purpose of obtaining low-income support funds. Several of these ETCs offer prepaid wireless Lifeline services at no cost to the low-income consumer. This business model has arguably been successful in increasing Lifeline program participation rates among eligible low-income consumers. However, several states have reported that a significant number (nearly half in some cases) of the Lifeline customers of these new participants are not eligible to receive support. Providing public support to ineligible customers represents a waste of public support funds and is unacceptable. This waste not only harms the customers who pay into the low-income fund, but potentially denies needed support for those who are truly eligible. We must ensure there is accountability for those who benefit from the low-income fund.

I am disappointed that we did not offer specific recommendations for tougher eligibility verification standards, to be implemented now, to stem the waste, fraud and abuse that appears to be occurring. Taking more comments on the subject only prolongs the period before action will be taken. Meanwhile, the waste of support funds will likely continue. We should require that eligibility be based on participation in qualifying programs, and not on the household's income alone. We must maximize the amount of support funds that go to eligible low-income consumers and make sure that those customers are receiving those services from providers on just and reasonable terms that represent an efficient use of ratepayer dollars. I urge the Commission to act quickly and implement the measures necessary to stem this tide. States have taken the lead role in investigating and addressing these problems. The FCC must do the same and be forthcoming with the data necessary to determine whether the problems lie with all carriers, or just a very few.

The third guiding principle - state participation - could yield a large part of the solution. States such as California, Florida, Oregon, and others have been on the forefront of the battle against fraud, waste and abuse and ensuring only eligible consumers receive Lifeline support. Even if a national database were to be constructed to minimize such problems, state involvement would still be key to determining individual consumers' eligibility. While such a database would significantly decrease administrative costs for the carriers, it could not be successfully implemented without the efforts and diligence of the states where the benefiting consumers reside. Furthermore, the majority of states already provide matching state funds for Lifeline customers and therefore have a vested interest in the integrity of their funds and the welfare of their state residents. A partnership between the FCC and the states is the best way to ensure the integrity of the program. In states that are willing and capable of reviewing eligibility requirements, the FCC should be willing to pay its fair share of the costs. In states that cannot provide this assistance, the FCC should take reasonable steps to protect against waste, fraud, and abuse of the program.

In short, at this juncture, the Commission should focus on how to minimize the fraud, waste, and abuse in the current system in order to free up funds for those who are eligible to receive support, and to make funds available for the transition to broadband services without increasing the current funding level for the overall universal service fund.

More particularly, I concur in the concerns raised by Commissioner Landis in his separate statement as it relates to the potential impact of the growth of the low-income portion of the fund on the amount of support available to carriers that currently serve high cost rural areas and their customers under the high cost portion of the fund, as well as the other host of issues he raises that if not handled properly could hinder support of broadband deployment in those high cost areas. I also join in Commissioner Cawley's comments concerning the need to manage the impacts on the over-all size of the fund and the need for clarity in the regulatory treatment of broadband. Finally, I join in Commissioner Burke's separate statement in its entirety, and more particularly, as it relates to the need by the FCC to avoid creating a digital divide between urban and rural America.

**STATEMENT OF
COMMISSIONER LARRY S. LANDIS
CONCURRING IN PART, DISSENTING IN PART**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109*

While the Recommended Decision that is issued today has much to commend it, at least two aspects of the underlying Lifeline referral need to be further addressed: The absence of a clearly defined problem with regard to existing eligibility, verification, and outreach rules and procedures; and the absence of metrics or standards for determining when we have achieved success in solving those problems.

The underlying Lifeline referral (and, hence, the Recommended Decision) did not arise in a vacuum. That referral can only be understood as an extension of, and largely integrated with, the National Broadband Plan ("NBP") and related FCC documents, despite the fact that the NBP is intended as more road map than detailed policy document. This tight integration with the NBP has several important consequences. The potential consequences for RLECs and mid-size LECs is considerable, because the NBP does not confront either their important role in meeting the goal of enhancing broadband availability or the indirect harm that some of its proposed policies could do to those companies.

Too little attention has been paid to the financial health of RLECs (and mid-size companies) and the importance of existing High Cost support. The NBP contains a number of ambitious broadband deployment proposals that will require billions of dollars in new funding, likely significantly greater than projected, as required to bridge the Broadband Availability Gap (\$23.5 billion). Acknowledgment of the need for "significantly higher [amounts of funding] than the incremental calculation indicates" was included in a staff technical paper and a footnote in the USF NOI/NPRM. Had it been placed in the body of the NPRM instead, that would have allowed for a more robust debate of both the sources and uses of universal service funding, and whether sufficient funds remain to meet the legitimate ongoing needs of providers in rural, insular and high cost areas.

Thus far we have not fully identified the source of additional funding needed if Lifeline subscribership increases substantially (e.g., due to modifications to eligibility requirements and/or expanded outreach efforts). Setting aside the NBP, the RD itself notes that it would not be unreasonable to estimate that the size of the Low Income fund could grow to at least \$2 billion in the next few years, before including any growth attributable to adding support for broadband.

The NBP contains many recommendations and promises of additional broadband deployment efforts (in particular, the new **Connect America Fund**, which includes efforts to address the Broadband Availability Gap and other deployments to non-low-income households) coupled with the new **Mobility Fund**. However, the sources of funding are not always evident. The NBP solution, in too many cases, appears to be to repurpose money currently used in support of High Cost funding.

In general, there is a strong preference in the NBP in favor of wireless technologies and great optimism regarding the benefits that wireless technologies can provide, coupled with a lack of affirmation for the benefits that RLECs' and mid-size providers' wireline broadband access networks and in many cases, cable providers are already delivering to many locations.

Based upon a review of the NBP and other FCC documents, there will likely be new and expanded demands placed on universal service funding mechanisms over the next few years. Based on sometimes conflicting recommendations in the NBP, it appears that the FCC plans to dramatically revamp

or repurpose existing High Cost Fund support. Intercarrier compensation reform efforts are likely to result in the elimination or transformation of other USF components. The FCC has yet to address how the existing support will be used in the future, or whether the shifting of USF dollars away from traditional High Cost support will be linear over time.

While it is possible that the USF transformation, USF contributions, and/or intercarrier compensation reform NPRMs may provide answers to some of those questions, the action we take today could have implications, perhaps significant, for sizeable increases in USF support for Lifeline services, without a clear understanding of how those increases would be paid for, how the need for additional support would fit in with other new demands that will be placed on the fund, or additional sources of funding.

I am authorized to state that Commissioner John Burke of Vermont joins in this separate statement as I have joined with his. I also endorse and commend for review the separate statements of my fellow state members Chairman Ray Baum and Chairman James Cawley.

**STATEMENT OF
BOARD MEMBER JOHN D. BURKE
APPROVING IN PART, CONCURRING IN PART**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109*

I agree in part and concur in part with the Recommended Decision; the changes to the Lifeline Program that the Joint Board recommends today should help more eligible consumers take advantage of the program, while simultaneously improving verification efforts so that the benefits are not extended to unqualified customers.

I write this concurrence to highlight one issue. The Recommended Decision proposes that the Commission take comments on whether to change the income-eligibility threshold for lifeline qualification from the existing 135% of FPG to 150%. In isolation, this change may be reasonable. However, the Lifeline Program is only one of the uses of the overall Universal Service Fund. If the fund size is not increased, any growth in the Lifeline Fund will come at the expense of other uses of the Fund, and, in particular, expansion of the fund to include broadband services.

The NBP makes clear that broadband is becoming a vital service for consumers in this country. For this reason, there is little real doubt that the broadband will be included as an eligible service under the Fund. I support this result, but as we move forward in this direction, it is essential that we do so in a way that does not create a rural Digital Divide. At this time, it is not clear how much funding will be necessary to enable ubiquitous broadband, notwithstanding the Commission's estimates in the NBP. Existing broadband deployment is not fully known. The Commission's cost estimates are also based, in part, upon a wireless solution that may or may not deliver adequate broadband services, particularly in rural, high-cost states. Moreover, as section 254(b)(3) requires, services in rural areas must be reasonably comparable to those in urban areas, as must the rates for those services; the disparity between the service levels proposed in the NBP for urban and rural areas do not appear to meet this test. Further pressure on the fund arises from the need to maintain high-cost support for existing networks in areas that do not have broadband services available.

For these reasons, I am concerned that it will be very difficult to achieve the goals of the NBP with the redirection of existing funding allocations. Raising the income eligibility provisions of the Lifeline Program from 135% of FPG to 150% may place additional pressure on a fund that is already unlikely to be large enough to achieve its needs. Although I support the Recommended Decision's conclusion that the Commission should take comment on the increase, I cannot support actually making such a change unless the Commission can simultaneously assure adequate universal service funding for ubiquitous broadband services and rate that are reasonably comparable between rural and urban areas. I am authorized to state that Commissioner Landis of Indiana joins in this separate statement as I have joined with his. I have read and applaud as thoughtful and well worth contemplating the separate statements of my fellow state members, Commissioner Cawley and Chairman Baum.

**STATEMENT OF
CHAIRMAN JAMES H. CAWLEY
CONCURRING IN PART, DISSENTING IN PART**

***In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109***

I am in agreement with most of the consensus recommendations that have been reached in the present deliberations and the issued Recommended Decision (R.D.) of the Joint Board. I have been particularly impressed with the dedication with which Commissioner Clyburn and the FCC staff have labored to guide our deliberations and capture them in an articulate decision.

I feel compelled, however, to address both the rationale and the approach of the referral to the Joint Board, and the alternative approaches that I believe should have been followed, recognizing that the members and staff of the FCC, like state public utility regulators and their staff members, daily face difficult policy choices and criticism as they try in good faith to do the public's business. Nothing said here diminishes my respect, personally and professionally, for them.

The National Broadband Plan. The Referral Order on Lifeline and Link Up made abundantly clear that the present deliberations of the Joint Board, as well as a large number of other recent and pending FCC regulatory initiatives, were based on the FCC's National Broadband Plan (NBP) that was released on March 16, 2010.²¹⁰ As the NBP acknowledges, the U.S. Congress "directed the FCC to develop a National Broadband Plan ensuring that every American has 'access to broadband capability'."²¹¹ The NBP explicitly recommended the expansion of the "Lifeline and Link-Up programs by allowing subsidies provided to low-income Americans to be used for broadband."²¹²

Interestingly, however, the Recovery Act directed only the preparation of a report to be submitted to designated House and Senate committees within one year of enactment of the Act, not implementation of the report, which presumably was to await further congressional direction after submission of the report.²¹³ Indeed, the section requiring the plan had as its main purpose the creation of the Broadband Technology Opportunities Program, under the direction of "[t]he Assistant Secretary of Commerce for Communications and Information (Assistant Secretary), in consultation with the Federal Communications Commission (Commission)"²¹⁴ to stimulate the nation's economy by means of grants to be awarded by the end of fiscal year 2010 with assurances by grantees "that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award."²¹⁵ It is apparent from the structure and content of Section 6001 that subsection (k)'s requirement

²¹⁰ *In re Federal-State Joint Board on Universal Service Lifeline and Link Up*, (FCC Released May 4, 2010), CC Docket No. 96-45 and WC Docket No. 03-109, ¶ 1, at 1. See also FCC, *Proposed 2010 Key Broadband Action Agenda Items*, available at <http://www.broadband.gov/plan/broadband-action-agenda.html>.

²¹¹ FCC, *Connecting America: The National Broadband Plan*, (Washington, DC, March 16, 2010), at 3 and n.4 citing American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 (2009) (Recovery Act).

²¹² NBP, Executive Summary, at XIII. See also Referral Order, ¶ 12, at 6 and n.36 citing NBP at 172-173.

²¹³ Recovery Act, § 6001(k)(1)-(3).

²¹⁴ *Id.*, § 6001(a).

²¹⁵ *Id.*, § 6001(d)(2)&(3).

of a “national broadband plan,”²¹⁶ positioned as the eleventh subsection of thirteen and the only provision requiring action only by the FCC, was not the primary purpose of the section. Nor was the plan, unlike the grants program, apparently intended to provide an immediate stimulus to the economy, but rather as a necessary tool to provide longer term economic benefits should the decision be made to implement it.

Nevertheless, the FCC, under its existing statutory authority, has adopted an ambitious agenda of regulatory reforms based on the NBP and centered on the universal availability and adoption of affordable and technologically sufficient broadband access services. Although the NBP contemplates that these ambitious goals can be accomplished through the reforms of existing regulatory structures and mechanisms (largely through the redirection of the existing federal universal service fund (USF) resources), it acknowledges that congressional funding may also be needed in order to accelerate broadband deployment.²¹⁷ Furthermore, the NBP identifies the so-called “broadband availability gap” and acknowledges (despite the availability of Recovery Act funds from Section 6001’s Broadband Technology Opportunities Program) that “[o]ther government support is required to complete the task of connecting the nation to ensure that broadband reaches the highest-cost areas of the country,” and that closing the “broadband availability gap and connecting the nation will require a substantial commitment by states and the federal government alike.”²¹⁸

Aside from the NBP itself, the FCC staff recognized in its September 29, 2009 presentation that the cost of any national broadband plan varies widely depending on the definition of “broadband.”²¹⁹ These costs range from approximately \$20 billion for 1.5 mbps to \$350 billion for 100 mbps. A proposed speed in the 1-4 mbps range could cost from \$20 to \$35 billion. It is difficult to see how the current \$9 billion federal USF can implement any of these proposed national broadband definitions, even with repurposing the entire current USF.

The magnitude of the “broadband availability gap” and the congressional directive for the NBP as a tool for possible future economic recovery measures on the broadband front raise the fundamental question of whether the FCC should have adopted its very ambitious agenda of national and universal broadband deployment and availability in the absence of a more precise congressional mandate and accompanying federal appropriations. The NBP’s contemplated redirection of the federal USF will not be sufficient to overcome the “broadband availability gap,” and the structural design of the federal USF was not intended to accomplish such a purpose. Thus, the goal of universal broadband within the United States will require a *national* funding commitment that clearly goes well beyond the existing size of the federal USF.

Redefinition of “Universal Service.” Consequently, a national funding commitment for the universal deployment and availability of broadband access services at the retail level is absolutely necessary because, as the R.D. demonstrates, the FCC is proceeding with a redefinition of the universal service concept supported by the federal USF in accordance with its NBP. This redefined concept of the

²¹⁶ *Id.*, § 6001(k)(2).

²¹⁷ NBP at 151.

²¹⁸ NBP at 139 and NBP Exh. 8-D.

²¹⁹ FCC, September Commission Meeting, September 29, 2009, Slide No. 45, available at <http://reboot.fcc.gov/open-meetings/2009/september>.

supported universal service includes broadband. Under Section 254(c) of the federal Telecommunications Act of 1996, 47 U.S.C. § 254(c), recommendations regarding the redefinition of the universal service concept and the inclusion of a broadband component are both legally and substantively within the purview of the Joint Board. In its 2007 Recommended Decision, the Joint Board indicated its preference for “ubiquitous broadband access” and posited the proposition that “it should be eligible for support under Section 254, with the goal of making it available to all.”²²⁰ However, the 2007 R.D. did not consider the numerous, interlinked implications of including a supported broadband access service component into a properly redefined universal service concept. Such implications, including the potential for a substantial increase in the size of the overall federal USF, need to be recognized and addressed with the FCC’s overall federal USF reforms and contemplated redirection of the USF. A timely comprehensive referral to the Joint Board during the development of the NBP or shortly after its issuance would have been appropriate.

Instead, the Joint Board was given a very narrow directive on Lifeline and Link Up issues, which are certainly pressing and important but still only a subset of supported universal service. The resulting R.D. contains a possibly broader redefinition of universal service by adopting the principle that universal service funding should recognize the importance of advanced (e.g., broadband access services) as well as voice services to consumers, including low-income consumers. I fundamentally disagree with this approach because the issues of redefinition and their implications should receive a more encompassing and detailed examination by the Joint Board. Without a more comprehensive referral, the statutorily prescribed advisory role of the Joint Board, and the justified role of the states, is marginalized. Because the issues and the implications of redefining supported universal service with an appropriate broadband access service component are inextricably linked with the contemplated reforms of the federal USF and the interstate intercarrier compensation mechanisms, the Joint Board should be materially involved through all-inclusive FCC referrals.

There may be general agreement that some abstract broadband access service component should be part of supported universal service given the economic importance of broadband. There may also be a need for a broadband Lifeline/Link Up component to eligible end-user consumers. To do that, however, there is a need to decide, designate, and live with the specific details of such a broadband access service addition. The R.D. already echoes some of these concerns within the narrow confines of the Referral Order.²²¹ These concerns are equally applicable to the overarching issues of a redefined universal service that includes broadband.

The Role of the States. The inclusion of an appropriate broadband access service component in a supported universal service concept in general and in Lifeline in particular raises significant issues about the appropriate role of the states. Although the R.D. recognizes the significant role that the states play in the maintenance and enhancement of universal service inclusive of Lifeline and Link Up (where this role includes appropriate bi-jurisdictional regulatory oversight and enforcement), the limitations of the Referral Order leave unanswered the questions of a future state role when and where broadband access services are involved. At present, because of past FCC decisions, the states have a very limited regulatory oversight role over the provision of retail broadband access services. However, as the R.D.

²²⁰ *In re High-Cost Universal Service Support Federal-State Joint Board on Universal Service*, (Joint Board, released November 20, 2007), WC Docket No. 05-337, CC Docket No. 96-45, ¶¶ 61-62, at 16 (2007 R.D.).

²²¹ Other concerns that touch upon the potential availability of federal USF support for Internet Protocol or IP-based services such as voice over IP (VoIP), and for broadband access capable devices and related distribution programs, may also affect related and future policy decisions at the federal and state levels.

indicates, the states will continue to play a significant oversight and enforcement role in the provision of Lifeline and Link Up services to eligible end-user consumers. The potential addition of a broadband component to Lifeline – and to supported universal service in general – creates the question of whether the states will be able to exercise their traditional roles of consumer protection and appropriate oversight and enforcement in this area given the current absence of a proper and clear regulatory mandate. For example, it is unclear if the states will be given any mandate to deal with carrier refusals to provide broadband access services to Lifeline eligible end-user consumers, or with broadband access providers who claim federal USF support for superior, but actually substandard, levels of service to Lifeline end-user consumers. As the Statement of Commissioner Baum notes, the recent growth in the low-income portion of the federal USF is a serious concern, and the inclusion of a supported broadband access service component in Lifeline and Link Up will only aggravate this concern absent appropriate bi-jurisdictional regulatory oversight and enforcement.

Potential state intervention in such operational matters may take place if a state has designated a provider of broadband access services as an eligible telecommunications carrier (ETC) under Section 214(e)(2) of the Act, 47 U.S.C. 214(e)(2). However, such state intervention may result in litigation that can easily reach the federal level for resolution in view of the proposed reclassification of broadband access facilities and services. The R.D. recommends that the FCC adopt the additional principle of universal service, pursuant to its authority under Section 254(b)(7) of the Act, 47 U.S.C. § 254(b)(7), which provides additional flexibility to the FCC in view of the parallel proceeding regarding Title II common carrier reclassification of broadband access facilities and services.²²² It does not, however, provide any concrete guideposts for the future role of the states in this area.

The Title I vs. Title II Reclassification Debate. The Title II reclassification debate is becoming increasingly intertwined with the FCC's proposals on "network neutrality." I acknowledge that there are various technical, operational, and legal aspects that cannot keep these two issue areas completely and distinctly separate. However, it appears that the increased focus on "network neutrality" not only delays finality of the Title II common carrier reclassification debate, but it also causes great levels of uncertainty and delays the resolution of other long-standing priorities, such as the reform of the federal USF and intercarrier compensation as well as the proper classification of the IP-based services. Simply put, even if the FCC commences its planned initiatives on federal USF and intercarrier compensation reform, these initiatives will proceed on a "parallel track" with the intertwined mix of "Title II" and "network neutrality" with all the uncertainty and risks of delay that this approach entails.

The lack of certainty and finality also holds the potential of adversely affecting individual state reform efforts for intrastate intercarrier compensation and state-specific USFs. For example, although the FCC wisely has not preempted the states from assessing state-specific USF contributions to interconnected VoIP providers, a federal appellate court decision has clouded this issue²²³ and an FCC proceeding is still pending on this matter.²²⁴

Meanwhile, the state public utility commissions continue to grapple with a variety of issues that

²²² *In re Framework for Broadband Internet Service*, (FCC Released June 17, 2010) Notice of Inquiry, GN Docket No. 10-127; Further Inquiry, GN Docket No. 09-191, WC Docket No. 07-52, September 1, 2010.

²²³ *Vonage Holdings Corp. v. Nebraska Pub. Serv. Comm'n*, 564 F.3d 900 (8th Cir. 2009).

²²⁴ *Petition of the Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, FCC WC Docket No. 06-122, filed July 16, 2009.

arise under the federal Telecommunications Act of 1996 and applicable state law. Increasingly, however, these state decisions are made in the absence of FCC final rulings and guidance in crucial areas of regulatory importance. For example, the lack of finality in the long-standing IP-based services proceeding continues to have implications for intercarrier compensation disputes and the legitimate function and viability of state-specific USFs. Potentially also in doubt are interconnection arrangements between competing carriers as well as between carriers and other communications services providers.

Therefore, it is imperative that the FCC conclude its Title II reclassification proceeding as soon as possible. Fundamental questions on the "common carrier" aspects of the FCC's Title II inquiry must be answered. If the intertwined nature of "Title II" and "network neutrality" continues to delay such a decision, then the FCC should make a concerted effort to reach an immediate conclusion on the more fundamental aspects of its Title II inquiry and address the more intricate and stand-alone aspects of "network neutrality" at a later date.

I am afraid that unless there is a renewed focus, prioritization, and resolution of the fundamental aspects of the Title II proposal, any FCC initiatives on the structural reform of interstate intercarrier compensation and the federal USF will proceed in an environment of regulatory uncertainty for the FCC, the states, and many interested parties. Federal-State cooperation in the resolution of these matters is essential.

Inclusion of Broadband and the Size of the USF. The potential introduction of a yet undefined broadband access component in the Lifeline and Link Up supported services will create new and highly competing priorities for the existing federal USF dollars. It will also create a precedent that supports broadband for a discrete class of consumers that will be hard to deny to other consumers. The R.D. ascribes an historical focus of the High Cost Fund of the federal USF as supporting legacy networks that primarily provide traditional voice services. But it is common knowledge, especially for the rural ILEC recipients of High Cost Support, that the funds have been and continue to be utilized for the deployment of broadband networks and services. Furthermore, one of the NBP's goals is not only to increase the availability of broadband access services in the rural areas *but also to support the continuing provision of* broadband access services in currently served areas. The continuous upgrading of broadband network facilities and services by recipients of federal USF High Cost Support is fully consistent with the stated goals of the NBP regarding national broadband deployment. Because of the continuous technological transformation of the networks that regulated landline telecommunications carriers have deployed and continue to deploy, the distinction between legacy networks that provide traditional voice services and broadband networks that provide a new and ever changing mix of services has become increasingly blurred. This development makes the contemplated redirection of federal USF High Cost Support under the NBP and other regulatory initiatives of the Commission even more challenging.

In this respect, I share the concerns expressed in the Statement of Commissioner Landis on whether and how the federal USF will be able to accommodate many and competing priorities (and overcome the "broadband availability gap") while the FCC proceeds with its structural reform and redirection. These challenges may necessitate an unavoidable narrowing of the Commission's focus on certain NBP tasks and final resolution of other long-standing proceedings, especially interstate intercarrier compensation reform and completion of the IP-enabled services proceeding.

Increasing Eligibility from 135% to 150% of the Federal Poverty Guidelines. I agree completely with the Statement of Commissioner Burke on this subject. Until the effects of including broadband as a supported service are better known, it is wiser to redouble efforts to reach presently eligible low income customers than to diminish the dollars available to them by expanding the program to include others who are somewhat better off.

In conclusion, I understand the importance of the FCC's efforts to provide broadband in rural,

high cost areas and in lower income urban areas based upon my experience promoting that same policy in Pennsylvania. However, as a regulator from a net contributor state to the federal USF, I remain concerned about the cost to net contributor states, notwithstanding the need for a national broadband plan. Going forward, these considerations suggest a broader role for the Joint Board, which is composed of state members who remain convinced of the importance of maintaining a collegial Federal-State partnership.

**STATEMENT OF
SENIOR ASSISTANT ATTORNEY GENERAL SIMON FFITCH**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109*

The Lifeline program addressed in this Recommended Decision is a key part of the universal service framework. While 96 percent of US households currently have telecom service in the home, penetration rates for limited income households lag behind at just over 90 percent. Indeed, penetration rates are significantly below the 90 percent level in the lowest income bands. Looking only at national averages masks this gap in universality. We cannot say that we have universal service in the United States as long as these disparities exist.

Just as high cost support has been important in helping to ensure that infrastructure and service is available in rural, insular and costly-to-serve geographic areas, the Lifeline program is essential in making service affordable for unserved and underserved limited income populations throughout the country. This is especially important during this time of economic hardship for many Americans. The telephone is a true lifeline for connecting customers with job opportunities, educational options and essential medical care. Unfortunately, for a range of reasons, the Lifeline portion of USF support has not been used to its full potential. While overall, 36 percent of the eligible population takes advantage of the program, in over half the states participation rates are at or below, sometimes well below, 25 percent. The recommendations in this Recommended Decision regarding eligibility levels, verification, and outreach are intended to make the program more effective and make the best use of the funds available.

As this Recommended Decision discusses, a new challenge faced by the Lifeline program is the impact of prepaid wireless ETCs. Prepaid wireless Lifeline programs have represented the first significant improvement in utilization of the Lifeline program in many years. Penetration rates have improved significantly in some areas and these gains should not be overlooked. After all, increased availability of affordable telecommunications service is the fundamental purpose of USF low income support.

At the same time, the dramatic success of these programs has created new problems. The fund is under substantial pressure and legitimate questions have been raised by many commenters about ineligible participants, and the level of service provided by carriers in return for federal support. These are "consumer issues" as well. Because all consumers pay for Lifeline and are impacted by fund growth, both for Lifeline and the overall USF, consumers have a strong interest in making sure that eligibility standards are rigorously enforced and that ongoing verification of continued eligibility is effective. Consumers also should be confident that carriers that receive Lifeline USF support for prepaid wireless service are providing service of adequate value (e.g. minimum number of monthly minutes) and quality in return for those funds.

In the process of addressing these issues, however, it is important to remember that any major increase in participation in Lifeline, even if simply a result of better outreach, will put pressure on the fund. Moreover, increased participation in Lifeline, whether through prepaid wireless programs, addition of income eligibility, or just more awareness, is not by itself evidence of fraud, waste, and abuse. Lifeline cannot properly be viewed as "right sized" today if only one third, at most, of the people who could benefit are participating. No record was made in this proceeding of any general problems with fraud, waste, and abuse in the Lifeline program. There was anecdotal evidence of concern presented of ineligible participants benefiting from newer prepaid wireless programs. There was also evidence that states are aware of and are addressing this issue. The record before us did not establish what portion of

fund growth, if any, is due to fraud, waste, or abuse. The verification recommendations of this Recommended Decision are aimed in part at seeking additional ways to address and control problems in that area.

The control of USF fund growth is not simply a Lifeline problem, it is a USF-wide problem, as the Joint Board recognized in its 2007 Recommended Decision. Both the Joint Board Recommended Decision and the National Broadband Plan have recognized the need for reform of universal service support and movement towards that reform has now begun. There is broad agreement that the USF, as currently constructed, needs to be refocused to eliminate unneeded, duplicative, and expensive subsidy flows. The federal universal service has grown very significantly in recent years. USF surcharges have reached highs of as much as 15%. This imposes substantial burdens on telecommunications customers, and has reached the point where the size of the fund itself threatens to undermine the very goals the fund is designed to achieve by further diminishing the affordability of service. While Lifeline should not be immune from scrutiny, it would be unfair and inappropriate to now ask Lifeline eligible customers to bear the brunt of fund size concerns, when major problems have long been identified in other parts of the fund. Indeed, addressing those problems will help ensure that USF funding can be transitioned from where it is no longer necessary or appropriate, and can be properly targeted to the remaining areas of legitimate need, including the Lifeline program.

Finally, I think it is important that this RD recognizes in the "Other Issues" section that the Lifeline issues are only a part of a much larger picture. Ultimately, Lifeline issues, including Lifeline support for broadband service, will have to be resolved as a part of the overall approach to universal service policy.

APPENDIX A
LIST OF INITIAL COMMENTERS

<u>Commenter</u>	<u>Abbreviation</u>
Advocates for Basic Legal Equality, Inc.,	
Community Voice Mail National Crossroads Urban Center	
Disability Rights Advocates	
The Low Income Utility Advocacy Project	
Minnesota Legal Services Advocacy Project	
The National Consumer Law Center, On Behalf of Our	
Low-Income Clients	
New Jersey Shares	
Ohio Poverty Law Center	
Pro Seniors	
Salt Lake Community Action Program	
Texas Legal Services Center	
The Utility Reform Network	
Twin Cities Community Voicemail	Consumer Groups
AT&T Services, Inc.	AT&T
Benton Foundation, et al.	Benton
Community Voice Mail National Office	CVMN
Public Service Commission of the District of Columbia	DCPSC
Florida Public Service Commission	FPSC
Leap Wireless International, Inc.	
and Cricket Communications, Inc.	Cricket
Media Action Grassroots Network	MAG-Net
Missouri Public Service Commission	MoPSC
National Association of State Utility Consumer Advocates	NASUCA
National Hispanic Media Coalition	NHMC
Nebraska Public Service Commission	NPSC
Nexus Communications, Inc.	Nexus
Public Utilities Commission of Ohio	Ohio PUC
PR Wireless, Inc.	PR Wireless
Smith Bagley, Inc.	Smith Bagley
TracFone Wireless, Inc.	TracFone
United States Telecom Association	USTelecom
Verizon and Verizon Wireless	Verizon
YourTel America, Inc.	YourTel

**APPENDIX B
LIST OF REPLY COMMENTERS**

<u>Commenter</u>	<u>Abbreviation</u>
Advocates for Basic Legal Equality, Inc., Community Voice Mail National Crossroads Urban Center Disability Rights Advocates The Low Income Utility Advocacy Project Minnesota Legal Services Advocacy Project The National Consumer Law Center, On Behalf of Our Low-Income Clients New Jersey Shares Ohio Poverty Law Center Pro Seniors Salt Lake Community Action Program Texas Legal Services Center The Utility Reform Network Twin Cities Community Voicemail	Consumer Groups
AT&T, Inc.	AT&T
CTIA–The Wireless Association	CTIA
Consumer Advisory Committee	
GCI Communication, Inc.	GCI
Leadership Conference on Civil and Human Rights	
Massachusetts Department of Telecommunications and Cable	MDTC
National Association of State Utility Consumer Advocates	NASUCA
National Hispanic Media Coalition Media Action Grassroots Network Office of Communication of the United Church of Christ, Inc., Benton Foundation, and Access Humboldt	Public Interest Commenters
Nexus Communications, Inc.	Nexus
Norma J. Torres	
Pennsylvania Public Utility Commission	PaPUC
PR Wireless, Inc.	PR Wireless
Qwest Communications International Inc.	Qwest
Smith Bagley, Inc.	Smith Bagley
Sprint Nextel Corporation	Sprint
TracFone Wireless, Inc.	TracFone
Verizon and Verizon Wireless	Verizon Companies
YourTel America, Inc.	YourTel

CASE: UM 1437
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 308

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

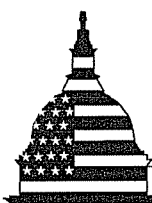
GAO

Report to Congressional Requesters

October 2010

TELECOMMUNICATIONS

**Improved
Management Can
Enhance FCC
Decision Making for
the Universal Service
Fund Low-Income
Program**



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October 2010

TELECOMMUNICATIONS

Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program



Highlights of GAO-11-11, a report to congressional requesters

Why GAO Did This Study

The Federal Communications Commission's (FCC) Low-Income Program, administered by the Universal Service Administrative Company (USAC) and supported by the Universal Service Fund (USF), provides low-income households with discounts on installation costs for new telephone service and monthly charges for basic telephone service. In this requested report, GAO examined (1) how program participation and support payments have changed over the last 5 years (2005-2009), and factors that may have affected participation; (2) the extent to which goals and measures are used to manage the program; and (3) the extent to which mechanisms are in place to evaluate program risks and monitor controls over compliance with program rules. GAO surveyed state public utility commissions; reviewed key policies, procedures, and rules; and interviewed agency officials and stakeholders.

What GAO Recommends

FCC should (1) clearly define performance goals and develop quantifiable measures that can be used to determine the program's success, (2) conduct a needs assessment and develop implementation and evaluation plans for the proposed low-income pilot programs, (3) conduct a robust risk assessment, and (4) implement a systematic process to consider audit results. FCC agreed with GAO's recommendations.

View GAO-11-11 or key components. View the results of the GAO survey online at GAO-11-13SP. For more information, contact Lorelei St. James, (214) 777-5719, St.JamesL@gao.gov.

Low-Income Program participation and support payments have increased since 2005 due to many factors. Program participation was stable from 2005 to 2008, from 6.9 million to 7.1 million participants, but increased to 8.6 million in 2009. Likewise, support payments were relatively stable from 2005 to 2008, from \$802 million to \$823 million annually, before increasing to approximately \$1 billion in 2009. The increases in 2009 were primarily due to the addition of a prepaid wireless service option in certain states, which allows program participants to obtain a free wireless handset and an allotment of free minutes each month. The Low-Income Program has no funding cap and USAC officials project its support payments to reach \$1.4 billion in 2010. They said participation and payments will likely continue to increase beyond 2010 as prepaid wireless service options become available in additional states.

FCC has taken limited steps to develop performance goals and measures for the Low-Income Program, however, these steps do not fully align with useful practices for developing successful goals and measures. While performance goals and measures specific to the Low-Income Program would enable FCC to more effectively manage the program and determine its success, FCC has not made developing such measures a priority and, as a result, has limited insight on the intent of the program and what it is accomplishing. FCC might conduct pilot programs as it considers expanding the Low-Income Program to include broadband service (high-speed Internet access), as proposed by the National Broadband Plan. For the broadband pilot programs, if conducted, it is important that FCC develop a needs assessment and implementation and evaluation plans to increase confidence in the results. If implemented properly, the pilot programs would enable FCC to improve its data collection for low-income households and could help facilitate program and policy decisions for the Low-Income Program in the future.

Although FCC and USAC have some mechanisms in place to identify and evaluate risks and monitor compliance with program rules, the Low-Income Program lacks key features of effective internal controls. FCC and USAC primarily use audit findings to monitor compliance with program rules. However, the number and scope of USAC's audits have been limited and there is no systematic process in place to review the findings of those audits that are conducted. Further, FCC and USAC have not conducted a risk assessment specific to the Low-Income Program that includes consideration of all program vulnerabilities, such as the possibility that multiple carriers may claim support for the same telephone line and that households may receive more than one discount, contrary to program rules. According to GAO standards, FCC should identify all risks to meeting the program's goals and objectives and have a process to systematically consider audit findings when assessing the effectiveness of its internal controls. Without these mechanisms, FCC and USAC may not be capturing and addressing programmatic risks and collecting information that could be leveraged to assess compliance with program rules and strengthen internal controls.

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Abbreviations

1996 Act	Telecommunications Act of 1996
APA	Administrative Procedure Act
Commission	Federal Communications Commission
E911	Enhanced 911
ETC	eligible telecommunications carrier
FCC	Federal Communications Commission
FFMIA	Federal Managers' Financial Integrity Act of 1982
IPIA	Improper Payments Information Act of 2002
Joint Board	Federal-State Joint Board on Universal Service
OMB	Office of Management and Budget
PSAP	Public Safety Answering Point
TLS	Toll Limitation Service
USAC	Universal Service Administrative Company
USF	Universal Service Fund

Telecommunications: Survey of State Public Utility Commissions (GAO-11-13SP), an e-supplement to GAO-11-11

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GAO

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United States Government Accountability Office
Washington, DC 20548

October 28, 2010

The Honorable Henry A. Waxman
Chairman
The Honorable John D. Dingell
Chairman Emeritus
The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Bart Stupak
Chairman
The Honorable Michael Burgess
Ranking Member
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives

The Honorable Greg Walden
House of Representatives

For many decades, federal policy has called for making affordable residential telephone service available to the greatest possible number of Americans—a policy known as “universal service.” This policy is carried out through the Federal Communication Commission’s (FCC or the Commission) universal service programs which are funded through the Universal Service Fund (USF), and include the Low-Income Program.¹ This program was created in the mid-1980s to promote telephone

¹The other programs supported by the USF are: (1) the High-Cost Program, which assists customers living in high-cost, rural, or remote areas through financial support to telecommunications carriers that operate in such areas; (2) the Schools and Libraries Program (commonly referred to as “E-rate”), which assists eligible schools and libraries in procuring telecommunications and Internet services, as well as internal connections and basic maintenance for such services; and (3) the Rural Health Care Program, which assists health care providers located in rural areas through discounts for telecommunications and Internet access services. Combined, the four USF programs provided about \$7 billion in support payments in 2009. While this report focuses on the Low-Income Program, we also have an ongoing review of the Rural Health Care Program. See related GAO products at the end of the report.

subscribership among low-income households. In 2009, the Low-Income Program provided approximately \$1 billion in support payments.

Traditionally, universal service policy and access to telecommunications services for low-income subscribers has centered on landline residential telephone service throughout the United States. However, telecommunications technology has advanced and new ways to access telecommunications services have been developed. For example, consumers today have more options to access telephone service than in the past, including cable, wireless, and broadband.² To expand the availability of Lifeline, which discounts local service, and to provide additional consumer choice, FCC has allowed certain prepaid wireless providers,³ to be granted limited designation as eligible telecommunications carriers (ETC)⁴ for the Low-Income Program in their licensed service areas. As new technologies continue to develop, the universal service policy will be challenged to define “access” to telecommunications services for low-income consumers. In particular, in 2009, FCC was mandated to develop a broadband plan that would “ensure that all people of the United States have access to broadband capability...”⁵ An FCC task force issued the plan in March 2010, with recommendations, among many other things, on how to reform the USF and modify the Low-Income Program to support broadband service.⁶ FCC

²The term “broadband” commonly refers to high-speed Internet access. Broadband enables consumers to receive information much faster than a dial-up connection and provides an “always on” connection to the Internet. Consumers can receive a broadband connection through a variety of technologies such as cable modem, digital subscriber line service, fiber, and satellite.

³Prepaid wireless service is any wireless telecommunications service that is activated in advance by payment for a finite dollar amount of service or for a finite number of minutes that terminate either upon use by any person or within a certain period of time following the initial purchase or activation, unless an additional payment is made.

⁴The Communications Act of 1934, as amended, provides that only an entity designated as an ETC shall be eligible for universal service low-income support. An ETC is a telecommunications carrier that is eligible to receive universal service support throughout the service area for which the designation is received. ETCs must offer the services supported by universal service using their own facilities or a combination of their own facilities and resale of another carrier’s services to each customer in its designated service area. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d)(1).

⁵American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, § 6001(k) (codified at 47 U.S.C. § 1305(k)).

⁶Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010) (National Broadband Plan).

has also initiated efforts to identify the legal approach that will best support its efforts to ensure universal access to affordable, high quality broadband services.⁷

We have previously reported on oversight and internal control mechanisms used by FCC to oversee other USF programs. For example, in our reviews of the USF E-rate program, we found weaknesses in the administration and operational framework and have recommended corrective actions to reduce fraud, waste, and abuse in the program.⁸ To begin addressing these and other concerns, FCC has taken preliminary steps, such as initiating a Universal Service Working Group, to assist in FCC's efforts to modernize and reform all universal service programs.

Given the importance of the USF to the nation's telecommunications policy, significant advances in telecommunications technology, and potential USF reform efforts, you asked us to review issues surrounding all the USF programs. This report focuses on the Low-Income Program and our objectives were to review (1) how program participation and support payments have changed in the last 5 calendar years (2005-2009) and what factors may have affected program participation, (2) the extent to which FCC uses performance goals and measures to manage the program, and (3) the extent to which the program has mechanisms in place to evaluate program risks and monitor controls over compliance with program rules.

To respond to these objectives, we reviewed key orders, reports, and program assessments from FCC and the Universal Service Administrative Company (USAC), the not-for-profit corporation that administers the Low-Income Program under a Memorandum of Understanding with FCC,⁹ and interviewed officials from both organizations and other stakeholders with knowledge of the program. The stakeholders were identified from a variety of sources and include academicians and think tanks,

⁷See *Framework for Broadband Internet Service*, Notice of Inquiry, 25 FCC Rcd 7866 (2010).

⁸See GAO, *Telecommunications: Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program*, GAO-05-151 (Washington, D.C.: Feb. 9, 2005); GAO, *Telecommunications: Long-Term Strategic Vision Would Help Ensure Targeting of E-rate Funds to Highest-Priority Uses*, GAO-09-253 (Washington, D.C.: Mar. 27, 2009); and GAO, *Telecommunications: FCC Should Assess the Design of E-Rate Program's Internal Control Structure*, GAO-10-908 (Washington, D.C.: Sept. 29, 2010).

⁹Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company, (September 2008).

telecommunications providers, third parties contracted to administer the program and related committees, and trade and industry groups. To develop an understanding of how the program works in specific locations, we conducted site visits in California, the District of Columbia, Florida, and Iowa. We chose these locations based on criteria such as the telephone subscribership rate of low-income households and the participation rate of eligible low-income households. During the visits, we interviewed officials from state public utility commissions, ETCs (wireline and wireless), consumer advocates, and other entities as applicable, as well as obtained pertinent documentation. In addition, we analyzed participation and disbursement data from USAC and identified key trends. We conducted testing to ensure the reliability of the data and reviewed the methodology used by USAC to estimate program participation rates. As a result, we determined that the data were sufficiently reliable for the purposes of this report. We also conducted a Web-based survey to gather information from state public utility commissions on how, if at all, roles and responsibilities vary by state; barriers to program participation, if any; advertising and outreach activities by state public utility commissions and ETCs; and internal control procedures. The survey was available online to officials in the 50 states and the District of Columbia on a secure Web site and our response rate was 100 percent. This report does not contain all the results from the survey. The survey and a more complete tabulation of the results can be viewed at GAO-11-13SP.

Finally, we reviewed the program's performance goals and measures and the mechanisms used by FCC and USAC to evaluate risk and monitor compliance with program rules. We compared this information against our guidance on useful practices for developing successful goals and measures and our standards for internal controls in the federal government, as well as Office of Management and Budget (OMB) guidance on internal controls.¹⁰

We conducted this performance audit from October 2009 through October 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for

¹⁰GAO, *Agency Performance Plans: Examples of Practices That Can Improve Usefulness to Decisionmakers*, GGD/AIMD-99-69 (Washington, D.C.: Feb. 26, 1999); GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999); and Office of Management and Budget, *Management's Responsibility for Internal Control*, Circular No. A-123 (Washington, D.C., Dec. 21, 2004).

our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. See appendix I for more information about our scope and methodology.

Background

The Nation's Universal Service Policy and the Low-Income Program Developed Over Time

The idea that communication services should be available “so far as possible, to all the people of the United States,”— has been a goal of telecommunications regulation since Congress enacted the Communications Act of 1934.¹¹ Efforts by FCC, state regulators, and industry to promote universal service generally began in the 1950s. Traditionally, universal service has meant providing residential customers with affordable access nationwide to basic telephone service.

In the mid-1980s, FCC changed the way local telephone companies recovered fixed costs and implemented a federal fee for telephone service paid by the subscriber. Though FCC found no evidence this fee would cause low-income consumers to cancel telephone service, it was nevertheless concerned about the below-average telephone subscribership rates of low-income households—80 percent compared to 92 percent for all households in 1984—and their ability to afford telephone service.¹² As a result, FCC initiated two programs to make telephone service affordable for low-income households: Lifeline, which discounts monthly service, and Link Up, which discounts the connection charges associated with telephone service installation.

Congress codified the nation's commitment to universal service and made significant changes to universal service policy through the telecommunications Act of 1996 (1996 Act).¹³ The 1996 Act provided

¹¹47 U.S.C. § 151.

¹²The first Lifeline program was instituted because of the concern that the new fee might drive low-income subscribers to cancel service. However, the focus of the program soon changed to an emphasis on active expansion, rather than mere preservation, of telephone service among low-income households. See Common Carrier Bureau, FCC, *Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms* (1996).

¹³Pub. L. No. 104-104, 110 Stat. 56 (1996).

explicit statutory support for federal universal service policy and directed FCC to establish a Federal-State Joint Board on Universal Service (Joint Board) to make recommendations to FCC on implementing universal service provisions of the 1996 Act.¹⁴ The 1996 Act also described universal service as an evolving level of telecommunications services the Commission should periodically review, taking into account advances in telecommunications and information technologies and services.¹⁵ In accordance with its definition of universal service, FCC found that basic telephone service must include, among other things, local usage, access to emergency service such as 911, access to operator services, access to long distance service, access to directory assistance, and toll limitation for qualifying low-income consumers.¹⁶

Further, the 1996 Act stated that every telecommunications carrier providing interstate telecommunications services was required to contribute to federal universal service, unless exempted by FCC. The contributions were to be equitable, nondiscriminatory, and explicit. In addition, FCC was authorized to require any other providers of interstate telecommunications to contribute if the public interest so required.¹⁷ Contributions are deposited into the USF, which was established by FCC in 1997 to meet the specific objectives and principles contained in the 1996 Act.¹⁸ Each quarter, FCC calculates a contribution rate for all contributors based on the needs of the universal service programs and assesses it as a percentage of the carriers' interstate revenue. In the second quarter of 2010,¹⁹ the contribution rate was a historically high 15.3 percent of

¹⁴47 U.S.C. § 254.

¹⁵47 U.S.C. § 254(c).

¹⁶See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (1997) (1997 Universal Service Order); 47 C.F.R. § 54.101(a).

¹⁷47 U.S.C. § 254 (d).

¹⁸FCC had originally created a Universal Service Fund in 1983 to help keep telephone rates reasonable in high-cost areas. See *MTS and WATS Market Structure*, Third Report and Order, 93 FCC 2d 241 (1983).

¹⁹In the third quarter of 2010, the contribution rate was 13.6 percent and it is projected to be 12.9 percent in the fourth quarter of 2010. See *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2010*, available at <http://www.universalservice.org/overview/filings> (filed April 30, 2010) (USAC Filing for Third Quarter 2010 Projections) and *Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2010*, available at <http://www.universalservice.org/overview/filings> (filed August 2, 2010) (USAC Filing for Fourth Quarter 2010 Projections).

carriers' interstate end user revenue. Carriers generally pass the cost of the USF contribution on to their customers, typically in the form of a line item on the monthly telephone bill. The Low-Income Program is one of two significant parts of the USF that remains uncapped, meaning that there is no limit to its growth.

Specific to the Low-Income Program, the 1996 Act expressed the principle that telephone rates should be affordable and that access should be provided to "low-income consumers" in all regions of the nation.²⁰ As a result, in its 1997 Universal Service Order, FCC made Lifeline and Link Up available in all states regardless of whether the states provided matching funds, required all ETCs to offer Lifeline service, and included toll limitation service.²¹

Since the passage of the 1996 Act, FCC has taken actions aimed at increasing participation in the Low-Income Program.

- In June 2000, FCC released the Tribal Order, which enhanced the federal Lifeline and Link Up programs to better serve residents living on or near federally recognized tribal lands and reservations.²²
- With its April 2004 order, and consistent with the Joint Board's recommendations, FCC aimed to increase participation in the Low-Income Program by expanding the federal default eligibility to include an income-based criterion of 135 percent of the federal poverty guidelines and

²⁰In the 1996 Act, Congress articulated a national goal that consumers in all regions of the nation, including low-income consumers, should have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas. 47 U.S.C. § 254 (b)(2), (3). See also *1997 Universal Service Order*, 12 FCC Rcd 8776, 8955, para. 335 (1997).

²¹Prior to 1996, the Lifeline discount was only available to residents of states that provided an intrastate discount that was then matched by a federally administered discount. Toll limitation was added to address the Joint Board observation that studies demonstrated that a primary reason subscribers lose access to telecommunications services is failure to pay long distance bills. See *1997 Universal Service Order*, 12 FCC Rcd 8776, 8980, para. 385 (1997). The U.S. Court of Appeals for the Fifth Circuit found that the Commission lacked jurisdiction to prohibit ETCs from disconnecting Lifeline customers for failure to pay toll charges. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 421-25 (5th Cir. 1999).

²²See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Mem. Op. and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000) (*Tribal Order*).

additional means tested programs.²³ According to FCC, at that time only one-third of eligible households were enrolled in Lifeline. In a staff analysis, included as an appendix to the order, FCC estimated that adding the income-based criterion could increase participation in Lifeline by approximately 1.2 million to 1.3 million households. The order also included outreach guidelines and revised verification and certification procedures.²⁴

- In 2005, FCC granted TracFone forbearance from the facilities requirement for ETC designation for Lifeline support only.²⁵ TracFone is a nonfacilities based, commercial mobile radio services (wireless) provider offering prepaid service. While FCC found that TracFone's universal service Lifeline offering (known as SafeLink Wireless) would provide a variety of benefits to Lifeline-eligible consumers including increased consumer choice, program participation, high-quality service offerings, and mobility, FCC did not quantify or estimate potential increases in participation and support payments for the Low-Income Program.²⁶

The Commission required TracFone to meet several conditions regarding access to 911 and enhanced 911 (E911). In addition, TracFone had to require its customers to self-certify at the time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; establish safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies

²³See *Lifeline and Link Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004).

²⁴The order required all consumers in all states qualifying under an income-based eligibility to provide supporting documentation and self-certify by signing a statement, under penalty of perjury, the number of individuals in the household and that the presented documentation accurately represents their annual household income. Eligible consumers in federal default states are required to self-certify by signing a statement, under penalty of perjury, that they are eligible for the Lifeline and Link Up programs based on their participation in a qualifying public assistance program. States that provide intrastate support for the Lifeline program are allowed to devise stricter measures as they deem appropriate. See 19 FCC Rcd at 8317, 8319-8322, paras. 23, 27-31 (2004).

²⁵Forbearance is relief from a provision of the 1996 Act or a commission rule if certain statutory criteria are met. See 47 U.S.C. § 160(c). Section 214(e) of the 1996 Act requires that ETCs offer service using its own facilities or a combination of its own facilities and resale of another carrier's services.

²⁶See *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*).

at the same address; and file with the Commission a plan outlining the measures TracFone would take to implement these conditions.²⁷

- In 2008, TracFone submitted its plan to meet the conditions for ETC designation status and was approved by FCC as an ETC in its licensed service areas for the purpose of receiving Lifeline support.²⁸ FCC later modified a condition imposed on TracFone regarding certification requirements to confirm that it provides customers with access to basic and E911 service.²⁹
- In a May 2010 order, the Commission asked the Joint Board to review the Commission's eligibility, verification, and outreach rules for the Lifeline and Link Up universal service programs, given among other things, the

²⁷Specifically, FCC required TracFone to: (1) provide its Lifeline customers with 911 and E911 access regardless of activation status and availability of minutes; (2) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, noncompliant handsets of existing customers who obtain Lifeline-supported service; (3) comply with conditions (1) and (2) as of the date it provides Lifeline service; (4) obtain a certification from each public-safety answering point (PSAP) where the carrier provides Lifeline service confirming that the carrier provides its customers with 911 and E911 access or self-certify that it does so if certain conditions are met; (5) require each customer to self-certify at time of service activation and annually thereafter that he or she is the head of household and receives Lifeline-supported service only from that carrier; (6) establish safeguards to prevent its customers from receiving multiple Lifeline subsidies from that carrier at the same address; (7) deal directly with the customer to certify and verify the customer's Lifeline eligibility; and (8) submit to the Wireline Competition Bureau a compliance plan outlining the measures the carrier will take to implement these conditions. See *TracFone Forbearance Order*, 20 FCC Rcd at 15098-99, 15104, paras. 6, 19.

²⁸The service areas were Alabama, Connecticut, Delaware, the District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, and Virginia. According to FCC, the relevant state commissions in these states lacked the jurisdiction to designate TracFone as an ETC. See *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al., Order*, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*). In states that have the jurisdiction to designate TracFone as an ETC, TracFone must file petitions for ETC designation with the relevant state commissions and is required to meet any of their conditions.

²⁹In March 2009, FCC modified a forbearance condition imposed on TracFone. Specifically, TracFone must request a certification from each PSAP where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service; however, if, within 90 days of TracFone's request a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area, TracFone may self-certify that it meets the basic and E911 requirements. See *TracFone Forebearance Modification Order*, 24 FCC Rcd 3375 (2009).

potential expansion of the Low-Income Program to broadband, as recommended in the National Broadband Plan.³⁰

Low-Income Program is Implemented Through Three Mechanisms

The Low-Income Program provides support for low-income consumers through three mechanisms: (1) Lifeline, (2) Link Up, and (3) Toll Limitation Service.

- Lifeline reimburses ETCs for discounting eligible customers' monthly bill for basic telephone service. The discount is available for only one telephone connection per household.³¹ Lifeline support is distributed in four tiers with varying discounts.³² According to our survey responses, in 2010, the maximum monthly Lifeline discount available to consumers—federal and intrastate discount combined—ranged from \$7 to \$38.50 per month; the average maximum discount was \$14.43 per month.³³
- Link Up reimburses ETCs for discounting either wireline or wireless service connection charges incurred when an eligible consumer starts service for the first time or at a new address.³⁴ An eligible consumer may

³⁰See *Federal-State Joint Board on Universal Service Lifeline and Link Up*, Order, 25 FCC Rcd 5079 (2010) (*Referral Order*). The Joint Board has sought comments on the questions presented in the Referral Order. See *Federal-State Joint Board on Universal Service Seeks Comments on Lifeline and Link Up Eligibility Verification, and Outreach Issued Referred to Joint Board*, Public Notice, 25 FCC Rcd 7551(2010).

³¹See 47 C.F.R. § 54.403; see also *Lifeline and Link Up*, 19 FCC Rcd at 8306, para. 4 (2004) (specifying that support for Lifeline subscribers is for "a single telephone line in their principal residence"); *1997 Universal Service Order*, 12 FCC Rcd at 8957, para. 341.

³²Tier 1 support is available to all eligible Lifeline subscribers and is equal to the incumbent ETC's actual federal tariffed subscriber line charge. The subscriber line charge and, therefore, Tier 1 support, is capped at \$6.50. Tier 2 support is equal to \$1.75 per month and is available if the carrier certifies that it will pass the full amount to its qualifying low-income consumers and if the carrier has received any nonfederal regulatory approvals necessary to implement the required rate reduction. Tier 3 support is equal to one-half the amount of any intrastate provided support or one-half the amount of any support provided by the carrier. Tier 3 support is capped at \$1.75 per month. Tier 4 support is available to eligible residents of tribal lands and may not exceed \$25 or bring the local residential telephone rate below \$1 per month. 47 C.F.R. § 54.403.

³³States with tribal populations included the tribal subsidy when reporting for this question. At the same time, some states provide more than the \$3.50, which would maximize the Tier 3 "matched" portion of the discount.

³⁴Link Up discounts cannot be applied to the cost of purchasing a wireless phone, prepaid wireless phone, or wiring inside a home.

only receive the Link Up discount once, unless that consumer moves to a new residence; consecutive discounts at the same address are not allowed. Eligible consumers pay one-half of the customary telephone connection charge with a maximum discount amount of \$30; an additional discount is available to eligible residents of tribal lands. Further, all eligible consumers can pay the balance of the connection fee on a deferred payment schedule.³⁵

- Toll Limitation Service (TLS) reimburses ETCs for providing toll blocking or toll control to eligible consumers at no cost to the customer. Toll blocking allows consumers to order a service that prevents the completion of outgoing toll calls. Toll control allows consumers to specify a limit on the amount of toll charges that can be incurred per billing cycle.³⁶

To provide Lifeline and Link Up, carriers must be designated as ETCs by their state commissions or FCC.³⁷ States have the primary responsibility for designating ETCs. In a situation where the telecommunications carrier is not subject to the jurisdiction of a state commission, FCC may designate the carrier as an ETC. In the states that do not have or choose not to assert jurisdiction over wireless carriers, FCC has the authority to designate wireless carriers as ETCs.

Low-Income Program Administration and Eligibility

FCC, USAC, state public utility commissions, and ETCs all have responsibilities in the administration of the Low-Income Program. Table 1 summarizes the general responsibility of each entity.

³⁵47 C.F.R. § 54.411.

³⁶47 C.F.R. § 54.403(c).

³⁷See 47 U.S.C. § 214(e); 47 C.F.R. § 54.201.

Table 1: General Responsibilities of Entities Involved in Low-Income Program Administration

Entity	Description
FCC	<ul style="list-style-type: none"> Set policy Make and interpret rules Provide oversight and outreach for the program Conduct and oversee audits of companies receiving money from the USF In the states with no intrastate Lifeline support, set eligibility criteria and develop certification and verification procedures Designate carriers as ETC
USAC	<ul style="list-style-type: none"> Day-to-day administration of the federal USF Bill and collect contributions from carriers Disburse payments Conduct audits of contributors and recipients Report to FCC at regular intervals with financial and programmatic information
State public utility commission	<ul style="list-style-type: none"> Designate carriers as ETCs In the states that provide intrastate Lifeline support, set eligibility criteria and develop certification and verification procedures
ETC	<ul style="list-style-type: none"> Submit forms for reimbursement of discounts offered to Low-Income Program recipients Advertise the availability of the program Certify applicant eligibility in some states Verify the continued eligibility of Lifeline subscribers

Source: GAO analysis of FCC and USAC information.

States that choose not to provide intrastate Lifeline support must adhere to eligibility criteria and administrative processes developed by FCC and are referred to as “federal default states.”³⁸ FCC authorized states that provide intrastate support to develop their own eligibility criteria and administrative processes—including reviewing applications, certifying eligibility, and verifying recipients’ continued eligibility for the Lifeline program.³⁹ As a result, eligibility criteria and the entity responsible for handling the administrative processes vary across states. (See app. II for more detail on Lifeline eligibility criteria and administrative processes and responsibilities.)

³⁸States that provide intrastate Lifeline support but choose to use the eligibility criteria and administrative processes developed by FCC are also referred to as “federal default states.”

³⁹See e.g., 47 C.F.R. §§ 54.409 (consumer qualification for Lifeline), 54.410 (certification and verification of consumer qualification for Lifeline), 54.415 (consumer qualification for Link Up), 54.416 (certification of consumer qualification for Link Up). States must base eligibility criteria solely on income or factors directly related to income. 47 C.F.R. §§ 54.409(a), 54.415(a).

Lifeline Service Options and Restrictions

Lifeline service options for low-income households vary across states. According to our survey, as of June 2010, wireless ETCs were eligible to offer Lifeline discounts in 48 states. However, in 13 of the 48 states with wireless ETCs, the state only provides the intrastate funded benefit to wireline customers, meaning that wireless customers in those states may receive a smaller discount than wireline customers. Additionally, at least one prepaid Lifeline option is available in 25 of the 48 states where wireless ETCs are eligible to participate in Lifeline.

Restrictions regarding the application of the Lifeline discount also vary across states. For instance, in some states, recipients of Lifeline support may not purchase additional telecommunications features, such as call-waiting or voicemail service, and continue to receive the Lifeline discounts. In addition, according to our survey, Lifeline recipients in 14 states may not apply the Lifeline discount to a bundled service offering⁴⁰ or other package that includes telephone service.

Program Participation and Support Payments Have Increased Primarily Due to the Addition of Prepaid Wireless as an Eligible Service, but Barriers to Participation Remain

⁴⁰For the purposes of this report, a bundled service offering is one that allows consumers to subscribe to packages that combine telephone service with internet access and/or television service.

While Program Participation and Payments Were Relatively Stable from 2005 to 2008, both Increased in 2009

Both participation in Lifeline (which we used as an indicator of overall participation in the Low-Income Program),⁴¹ and support payments to ETCs increased in 2009. As shown in figure 1, from calendar years 2005 through 2008, the total number of Lifeline participants was relatively stable—between 6.9 and 7.1 million annually—but increased to 8.6 million in 2009.⁴² Likewise, Low-Income support payments to ETCs were relatively stable from 2005 to 2008—between approximately \$802 and \$823 million annually.⁴³ However, due to increased program participation, support payments in 2009 increased to approximately \$1.025 billion, or 25 percent more than 2008 (see fig.1). USAC projects Low-Income support payments to reach approximately \$1.4 billion in 2010; this would result in a single-year 36 percent increase.⁴⁴ According to USAC, the Low-Income Program is currently the fastest growing universal service support program.

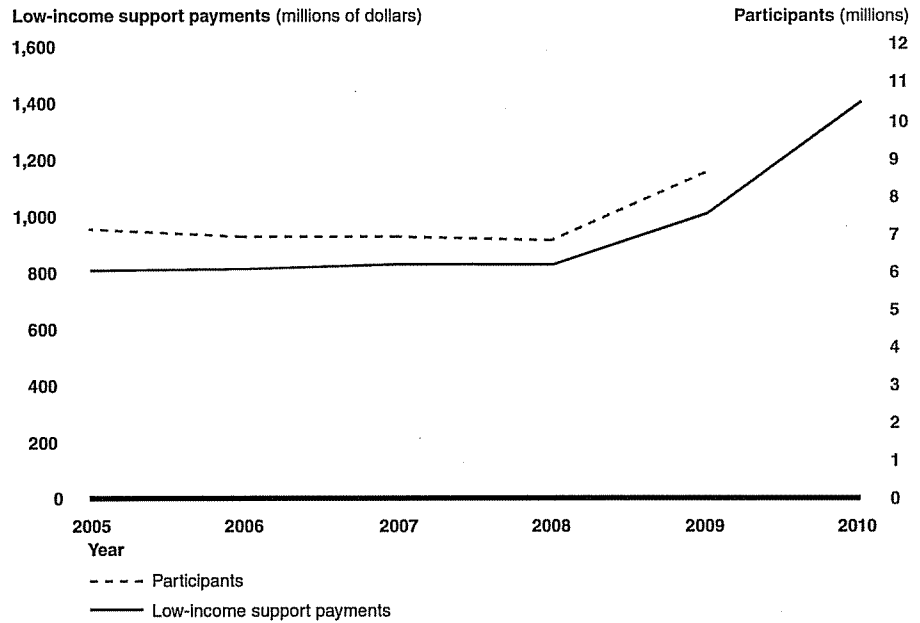
⁴¹We used Lifeline as an indicator of overall participation because it is the largest of the three Low-Income Program mechanisms and recurs on a monthly basis.

⁴²For program participation data for years 2005-2008, see *Universal Service Monitoring Report*, prepared for the Federal-State Joint Board on Universal (Data through August 2009), (Washington, D.C., 2009). Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A1.pdf (Sept. 10, 2010). For 2009 data, see Universal Service Administrative Company, *FCC Filings 2010, Third Quarter Appendices, LI08 - Lifeline Subscribership by State or Jurisdiction*.

⁴³For support payments for years 2005-2006, see *Universal Service Monitoring Report*, Prepared for the Federal-State Joint Board on Universal (Data through August 2009), (Washington, D.C., 2009). Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A1.pdf. (Sept. 10, 2010) For years 2007-2008, see Universal Service Administrative Company, *FCC Filings 2010, Fourth Quarter Appendices, LI07 - Low-Income Support Distributed by State*.

⁴⁴For 2009 support payments, see Universal Service Administrative Company, *FCC Filings 2010, Fourth Quarter Appendices, LI07 - Low-Income Support Distributed by State*. For the 2010 projection, see Universal Service Administrative Company, *First Quarter, Second Quarter, Third Quarter, and Fourth Quarter Appendices, LI01 - Low-Income Support Projected by State by Study Area 4Q2010*.

Figure 1: Total Number of Low-Income Support Payments and Lifeline Participants, Calendar Years 2005 – 2010^a



Source: GAO analysis of USAC data.

^aSupport payments projected by USAC for 2010; participation data were not available for 2010.

The estimated participation rate, or the percentage of eligible households believed to be receiving Lifeline support,⁴⁵ also increased from 28.6 percent in 2008 to 31.9 percent in 2009.⁴⁶ During that year, the estimated participation rate increased in 31 states and the District of Columbia. The following 11 states and the District of Columbia had increases of greater than 10 percent: Alabama, Alaska, Florida, Georgia, Louisiana, Massachusetts, Michigan, New Jersey, North Carolina, Tennessee, and Virginia.⁴⁷

⁴⁵USAC uses census data and other publicly available data to estimate the number of eligible households in each state, based on the state's eligibility criteria.

⁴⁶Historically, participation rates have varied across states. See app. III for participation rates across states in 2009.

⁴⁷Conversely, estimated participation rates declined in 19 states.

The Addition of Prepaid Wireless as an Eligible Service Was the Primary Factor to Increased Participation and Payments in 2009

According to USAC and FCC officials and other stakeholders, such as the Florida Public Service Commission, increases in Lifeline in 2009 were primarily due to the addition of free, prepaid wireless cell service by TracFone. Instead of discounting a monthly telephone bill for Lifeline service, TracFone's Lifeline service (SafeLink Wireless) converts the total amount of the USF subsidy into an allotment of free minutes each month. The company provides a free handset and offers an option of three calling plans that provide from 68 to 250 usage minutes per month with no contracts, recurring fees, or monthly charges.⁴⁸ Consumers may purchase additional usage minutes for \$0.20 per minute.⁴⁹

In 2009, TracFone provided Lifeline service in 19 states and the District of Columbia, all of which experienced an increase in their estimated Lifeline participation rate. In addition, TracFone served 9 of the 12 states (including the District of Columbia) that had a more than 10 percent increase in their estimated Lifeline participation rate. During 2009, TracFone received \$189.7 million in Low-Income support payments, accounting for approximately 18 percent of total Low-Income support payments and more than 90 percent of the increase in disbursements from 2008 to 2009.⁵⁰ According to TracFone officials, the company has always considered low-income consumers its customer base and, thus, has experience advertising and marketing to this population. They also told us that while other ETCs may advertise the availability of Lifeline services to comply with the program's requirements, TracFone's participation in the Lifeline program is an integral part of the company's business model and

⁴⁸TracFone's SafeLink program offers eligible consumers a choice of three monthly plans: (1) 68 minutes per month with carryover, short message service, and international long distance to more than 80 countries; (2) 125 minutes with carryover, short message service, and no international long distance; or (3) 250 minutes, short message service, no carryover and no international long distance. Some stakeholders said prepaid wireless offerings for Lifeline provide a viable option for eligible low-income households. Other stakeholders expressed concerns that because prepaid wireless offerings for Lifeline have a finite number of minutes, they do not provide the same quality of service as wireline and other wireless Lifeline offerings with unlimited minutes.

⁴⁹TracFone has committed to provide additional minutes for \$0.10 per minute to SafeLink customers in South Carolina and Washington D.C., when service is launched in those states. The number of additional minutes purchased by SafeLink Wireless customers is not tracked by FCC or USAC.

⁵⁰Universal Service Administrative Company, *FCC Filing 2010, Fourth Quarter Appendix, LI05-Annual Low-Income Support Amounts by State and Company-2007 through 1Q 2010*.

enrolling low-income customers is in the company's interest.⁵¹ Therefore, the company aggressively advertises SafeLink Wireless. According to TracFone officials, the company spent approximately \$2.4 million to advertise its Lifeline service in January 2010.

Overall, USAC officials expect Low-Income Program participation and support payments to continue to increase beyond 2010 because (1) TracFone is actively seeking ETC designation in additional states⁵² and (2) other companies, such as Virgin Mobile Wireless, are following the TracFone model and seeking regulatory authority from FCC and states to become eligible to participate in the Low-Income Program.⁵³

State Officials Attributed Some Participation Increases to Targeted Advertising and Outreach Efforts

State officials attributed some of the increase in program participation to their state's targeted advertising and outreach. Of the locations we visited, the state public utility commissions in California, Washington, D.C., and Florida take an active role in advertising and conducting outreach activities for the program. California officials attributed the state's high Lifeline participation, in part, to targeted outreach to low-income households. According to Florida officials, its outreach efforts are having a positive impact on program participation. Table 2 lists selected activities in each state we visited.

⁵¹FCC requires carriers to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service. See 47 C.F.R. §§ 54.405(b); 54.411(d). See also 47 U.S.C. § 214(e)(1)(B).

⁵²As of July 2010, TracFone had obtained ETC status to provide Lifeline in 25 states.

⁵³In 2009 FCC forbore from applying the facilities requirement to Virgin Mobile and granted Virgin Mobile limited designation as an ETC to receive universal service Lifeline support in its licensed areas in New York, North Carolina, Tennessee, and Virginia. See *Virgin Mobile Forebearance and Limited ETC Designation Order*, 24 FCC Rcd 3381 (2009). In 2010, FCC forbore from applying the facilities requirement to i-wireless; Head Start Telecom; Consumer Cellular, Inc.; Line Up, LLC; and Midwestern Telecommunications (FCC denied Midwestern's request to extend forbearance to Link Up). See, *i-wireless Forebearance Order*, 25 FCC Rcd 8784 (2010); *Head Start Telecom; Consumer Cellular, Inc.; Line Up, LLC; and Midwestern Telecommunications Forebearance Order*, 25 FCC Rcd 10510 (2010); *Conexions Forebearance Order*, FCC 10-178, 2010 FCC LEXIS 5963 (rel. Oct. 1, 2010) (FCC denied Conexions request to extend forbearance to Link-Up).

Table 2: Selected Advertising and Outreach Activities by States We Visited

State	Selected advertising and outreach activities
California	California requires ETCs to send all customers an annual notice that contains information about Lifeline. Since 2006, the state has hired a contractor to do marketing and outreach for the Lifeline program, which includes print, radio, and television advertisements for the program.
District of Columbia	District of Columbia requires ETCs to provide outreach information. In addition, the D.C. Department of the Environment is given a total of \$40,000 from the D.C. Universal Service Trust Fund to advertise the availability of Lifeline and three other utility discount programs.
Florida	Florida requires ETCs to advertise Lifeline in telephone directories and an annual bill supplement. In addition, ETCs must provide brochures, pamphlets, or other materials to each state and federal agency providing benefits to persons eligible for Lifeline.
Iowa	As a state that does not provide matching support (federal default state), Iowa is not heavily involved in advertising or outreach for the program.

Source: GAO analysis of state program information.

According to our survey of state public utility commissions, states and ETCs advertise in various ways, as shown in table 3.

Table 3: Advertising and Outreach Methods Used by States and ETCs

Advertising and outreach method	Number of states that reported using the advertising or outreach method	Number of states that reported ETCs using the advertising or outreach method
Print advertisements (pamphlets, bill inserts, posters, billboards)	28	44
Press releases	26	24
Outreach to community groups	25	32
Partnerships with nonprofit organizations	19	26
Newspaper	12	36
Radio	9	28
Television	7	25
Other	11	8

Source: GAO survey.

In addition to the efforts of states and ETCs, FCC and USAC also provide advertising and outreach assistance for the Low-Income Program. FCC developed outreach guidelines for states and ETCs to help improve program participation. To further address low estimated participation rates, USAC developed outreach activities that are targeted to states and ETCs and include speaking and exhibiting at industry events; information

in Web site postings; training sessions for ETCs; newsletters, brochures, outreach letters, and e-mail updates; and site visits to states.

Some Program Characteristics, Such as Automatic Enrollment, Expanded Eligibility Criteria, and Higher Discounts May Have Increased Participation

Some states and other stakeholders reported that automatic enrollment increases participation in Lifeline. Automatic enrollment uses an electronic interface between a state agency and a carrier to automatically enroll low-income individuals in Lifeline following enrollment in a qualifying public assistance program such as Medicaid or Supplemental Security Income. According to the research of one stakeholder we interviewed, automatic enrollment procedures are effective ways to increase program participation.⁵⁴ Through our survey, nine states reported using automatic enrollment for their Lifeline programs and two reported that plans were under way to develop an automatic enrollment system. According to Florida officials, implementation of the automatic enrollment process has had a significant impact on increased enrollment and provides the potential to reach greater numbers of eligible customers. In its 2004 order, FCC declined to require states to adopt automatic enrollment, in part, because of potential administrative, technological, and financial burdens on states and ETCs.⁵⁵ FCC is revisiting this issue and has asked the Joint Board whether automatic enrollment should be required in all states.⁵⁶ Further, the National Broadband Plan recommends FCC should encourage state agencies responsible for Lifeline and Link Up programs to coordinate with other low-income support programs to streamline enrollment for benefits using processes such as automatic enrollment.

Further, expanded eligibility criteria for Lifeline can potentially increase participation. For example, The Patient Protection and Affordable Care Act expands Medicaid in 2014 to a new nationwide eligibility threshold of 133 percent of the poverty level.⁵⁷ This is likely to expand the number of eligible consumers in some states, such as Montana, that have more restrictive criteria and use Medicaid as a qualifying program. In all states,

⁵⁴Daniel Ackerberg, Michael Riordan, Gregory Rosston, Bradley Wimmer, *Low-Income Demand for Local Telephone Service: Effects of Lifeline and Link Up*, August 2009.

⁵⁵See *Lifeline and Link Up, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd at 8318-8319, paras. 25-26 (2004).

⁵⁶See *Federal-State Joint Board on Universal Service Lifeline and Link Up*, Order, 25 FCC Rcd at 5086, para. 19 (2010) (*Referral Order*).

⁵⁷Pub. L. No. 111-148, 124 Stat. 119 (2010).

eligibility is linked to participation in one or more programs, such as Medicaid or the Supplemental Nutrition Assistance Program. Some researchers found that states that use a higher number of qualifying programs—meaning they provide more options for consumers to qualify for the program—have higher participation in Lifeline.⁶⁸ FCC has asked the Joint Board to review and recommend any necessary changes to the combination of federal and state rules that govern which consumers are eligible to receive Lifeline and Link Up discounts.⁶⁹

Higher discounts may also increase participation in the Lifeline program. According to FCC, states that have provided a relatively high level of Lifeline support⁶⁰ for telephone service for low-income consumers experienced an average increase in subscribership of 4.6 percentage points for low-income households from March 1997 to March 2009.⁶¹ In contrast, states that provided a relatively low level of Lifeline support experienced an average increase of 2.9 percentage points in telephone subscribership rates for low-income households over the same time period.⁶² Additionally, the Public Utility Research Center at the University of Florida found that greater Lifeline support led to higher participation rates.⁶³

⁶⁸Mark Burton, Jeffrey Macher, and John Mayo, "Understanding Participation in Social Programs: Why Don't Households Pick up the Lifeline?" *The B.E. Journal of Economic Analysis and Policy*, vol. 7, no. 1, (2007).

⁶⁹See 25 FCC Rcd 5079 (2010) (*Referral Order*).

⁶⁰FCC defined "full or high assistance" states as those that provided at least \$3.00 of state support to get federal matching support of at least \$1.50 per line per month. "Intermediate assistance" states were defined as those that provided between \$0.50 and \$3.00 of state support and receiving between \$0.25 and \$1.50 federal matching support per line per month. Finally, "basic or low assistance" states were defined as those that provided less than \$0.50 of state support, and receiving less than \$0.25 federal matching support per line per month.

⁶¹See Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, *Telephone Penetration By Income By State (Data through March 2009)*, (Washington, D.C., 2010).

⁶²See Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, *Telephone Penetration By Income By State (Data through March 2009)*, (Washington, D.C., 2010).

⁶³Lynne Holt and Mark Jamison, *Making Telephone Service Affordable for Low-Income Households: An Analysis of Lifeline and Link Up Telephone Programs in Florida*, University of Florida, Department of Economics, Public Utility Research Center Working Paper, (2006).

FCC's Proposed Addition of Broadband Service Could Increase Future Participation and Payments

Advantages and Disadvantages to FCC's Proposed Addition of Broadband Service to the Low-Income Program

Most states responding to our survey indicated that providing low-income consumers access to broadband would provide such benefits as improved access to the following:

- educational opportunities;
- employment opportunities; and
- social services.

However, states responding to our survey and other stakeholders we interviewed also indicated that there were disadvantages associated with adding broadband to the Low-Income Program. For instance, most states and other stakeholders responded that the following additional costs to the program or consumers would be a disadvantage.

- Carrier contributions to the USF, which are generally passed on to consumers, are likely to increase.
- Monthly service charges to consumers for broadband are higher compared to phone.
- The cost of obtaining hardware would remain a barrier for some low-income households.
- Program costs can grow indefinitely because there is no funding cap.

Further, some states indicated that adding broadband service to the Low-Income Program might present more potential for fraud, waste, and abuse in the program. One state reported that many states have limited oversight of broadband service which could increase the potential for the misuse of funds by ETCs. Another state reported that the inclusion of broadband service could provide customers with increased opportunities to abuse Lifeline discounts. The Joint Board also collected comments from interested parties regarding potential recommendations related to program eligibility, verification, and outreach for the Lifeline and Link Up programs and how the potential expansion of these programs to broadband would affect any of its potential recommendations. See *Federal-State Joint Board on Universal Service Lifeline and Link Up Order*, 25 FCC Rcd 5079, (2010) (*Referral Order*).

If broadband service were added to the Low-Income Program, participation and support payments might increase further. An FCC task force, through the National Broadband Plan, recommended extending low-income universal service support to broadband. Most states and other stakeholders, such as trade and industry groups, that we interviewed told us that the proposed addition of discounted broadband to the Low-Income Program may increase participation by making broadband more affordable for low-income households. However, an important consideration is that with no funding cap, Low-Income Program support payments can grow indefinitely.

**FCC, USAC, and States
Also Identified Factors
That May Have Created
Barriers to Participation**

Despite the advertising and outreach efforts in place, according to FCC, USAC, and states, some eligible households may not be aware of the Low-Income Program. According to FCC officials, this is in part due to the transitory lifestyle of some of the target population and the lack of specific advertising rules for ETCs to follow. While ETCs are required to advertise the program, FCC, as recommended by the Joint Board, elected not to require specific advertising and outreach procedures so states and ETCs could adopt specific standards and engage in outreach as they see fit. USAC officials told us that they are aware of instances in which some ETCs do not comply with FCC's general requirement to advertise the program.⁶⁴ In response to our survey of 51 state public utility commissions, 39 commissions reported lack of awareness as a barrier to enrolling eligible households in the program. California officials told us that even though information about the program is available in seven languages, the state has difficulty reaching and engaging some non-English-speaking populations.

Further, while FCC developed advertising guidelines for states and ETCs, the guidelines are not always aligned with our key practices for consumer education (see app. IV for more detail). For example, the guidelines do not address defining the goals and objectives of outreach efforts or establishing process and outcome metrics to measure the success of the effort. FCC has recognized the importance of effectively publicizing the programs and issued an order in 2010 asking the Joint Board to review Lifeline and Link Up, including the appropriateness of various outreach and enrollment programs.⁶⁵ However, the extent to which further FCC guidelines would have an effect on the program is unclear because while ETCs are required to comply with FCC's general requirement to advertise the program, states and ETCs are not required to follow FCC's advertising guidelines and the degree to which they use the guidelines is unknown.

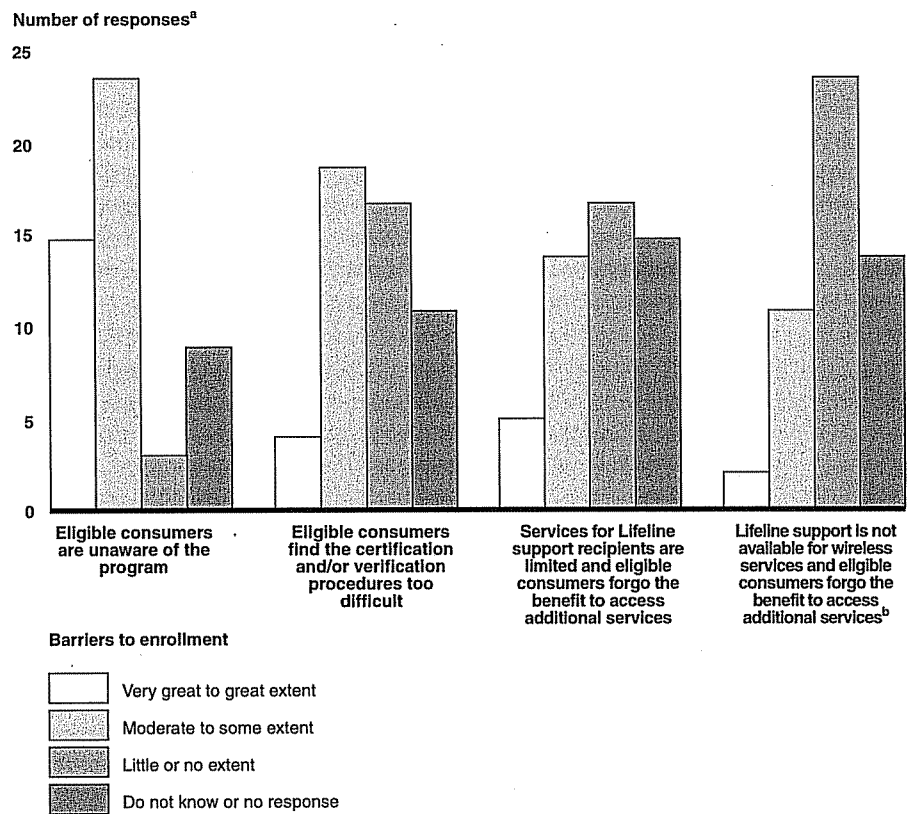
In addition to the lack of program awareness, in response to our survey the state public utility commissions also reported other barriers, though the extent varied, as shown in figure 2. Overall, the other stakeholders we

⁶⁴According to FCC officials, when USAC learns that carriers are not advertising the program, it generally contacts the carrier to remind it of FCC's advertising requirement and includes an article in a monthly newsletter to try and reinforce to all ETCs the requirement for carriers to advertise the Lifeline and Link Up programs.

⁶⁵See 25 FCC Rcd 5079, (2010) (*Referral Order*).

interviewed generally cited the same barriers as the state public utility commissions.

Figure 2: State Public Utility Commission Views on the Barriers to Enrolling Eligible Households in Lifeline



Source: GAO analysis of survey responses.

^aAdditional responses under "other" included pride and stigma with receiving government assistance.

^bWireless and prepaid wireless services are eligible for Lifeline support in some states, but not in others.

FCC Lacks Performance Data to Manage the Program, but Pilot Programs, if Properly Implemented, Could Provide Improved Data to Make Critical Program and Policy Decisions in the Future

FCC Has Taken Limited Steps to Develop Performance Goals and Measures for the Low-Income Program

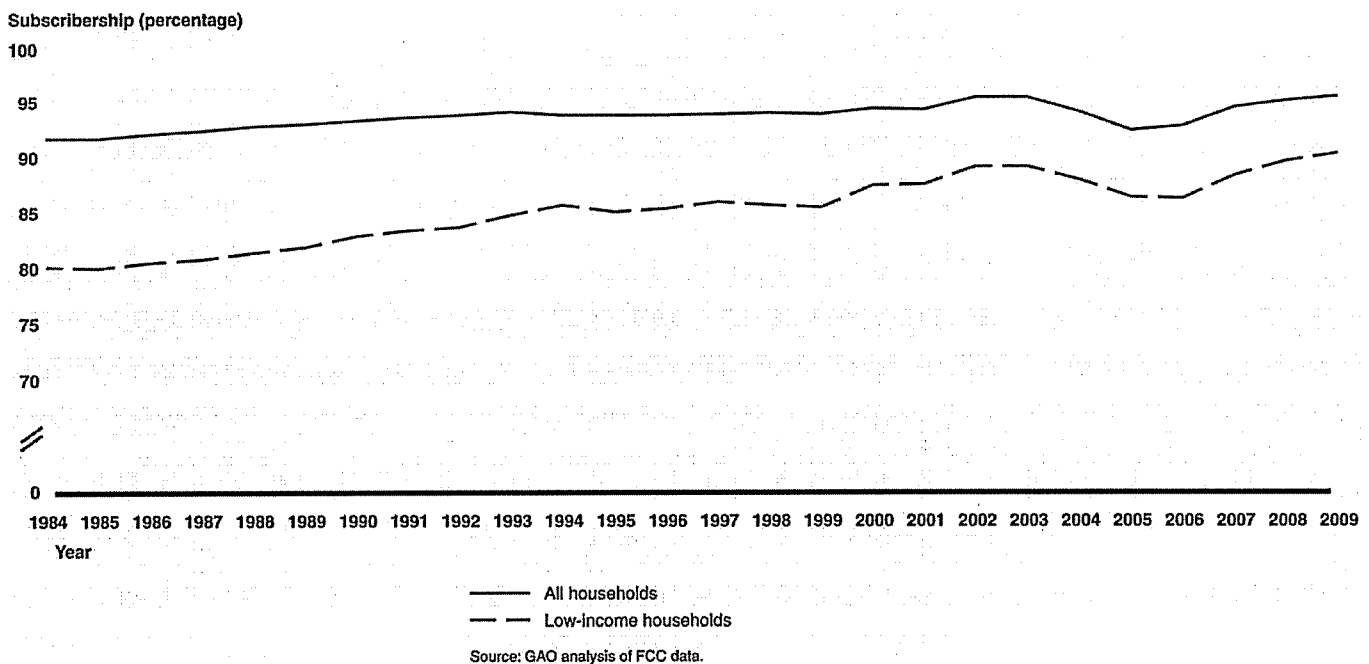
FCC's overarching goal for the Low-Income Program is to increase telephone subscribership among low-income consumers, but it has not quantified this goal.⁶⁶ As discussed in the following, FCC has taken some limited steps toward developing performance measures for its overarching goal and the program.

- FCC's annual report on telephone penetration by income, by state, which was first issued in 1998, also includes a related performance measure. To help evaluate the effects of federal and state Lifeline support mechanisms, the report includes telephone subscribership levels on a state-by-state basis for various income categories. The report is based on data from the Current Population Survey, which is conducted by the United States Commerce Department's Bureau of the Census. According to FCC, subscribership among low-income households has grown from approximately 80 percent in 1984, the year before FCC first established

⁶⁶See *Federal-State Joint Board on Universal Service, Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Report and Order, 22 FCC Rcd. 16372, 16394-16395, para. 50. (2007 Comprehensive Review Order).

Lifeline, to 90 percent in 2009, as shown in figure 3.⁶⁷ However, this measure is not linked to a quantitative goal regarding low-income subscribership and there is no understanding of how the Low-Income Program has contributed to the increase.

Figure 3: Telephone Subscribership of Low-Income Households Compared to All Households, 1984 – 2009



- In June 2005, FCC issued a Notice of Proposed Rulemaking in which it sought comment on establishing useful outcome, output, and efficiency measures for each of the universal service programs, including the Low-Income Program.⁶⁸ In the August 2007 Report and Order, FCC developed

⁶⁷Low-income households were defined as those households with an income below \$10,000 in March 1984 dollars. See Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, *Telephone Penetration By Income By State (Data through March 2009)*, (Washington, D.C., 2010). In addition, one research report estimated that low-income telephone subscribership would be 4.1 percentage points lower without Lifeline and Link Up. See Ackerberg, Riordan, Rosston, and Wimmer.

⁶⁸See *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, 20 FCC Rcd. 11308 (2005).

output and efficiency measures for the program which it collects from USAC on a quarterly basis, such as the number of connections supported (program participation).⁶⁹ FCC officials reported that it would continue to review this area and evaluate the effectiveness of the measures adopted. However, as of August 2010, FCC had not developed outcome measures or taken any action to review and evaluate the effectiveness of the output and efficiency measures because it noted that it did not have sufficient historical data from the measures to establish goals for them.

- FCC's *Fiscal Year 2009 Annual Performance Report*⁷⁰ and *Fiscal Year 2009 Summary of Performance and Financial Results*⁷¹ include accomplishments, such as taking steps to reduce improper payments, related to improving the administration and operation of the fund. Nevertheless, these accomplishments do not specifically address the Low-Income Program or how they have impacted the provision of universal service.

FCC's Efforts Provide Limited Insight to the Low-Income Program's Performance

Although FCC has a single overarching goal and has made efforts to develop measures, it has not developed and implemented specific outcome-based performance goals and measures for the program. Such performance goals and measures would be very beneficial to FCC in that they would enable FCC to assess changes, such as the addition of prepaid wireless, and more effectively manage the current and future direction of the program. FCC's Chairman says modernizing universal service programs to bring the benefits of broadband to all Americans is one of FCC's top priorities, but developing clear performance goals and measures for the Low-Income Program does not appear to be a priority. Furthermore, table 4 demonstrates that, to date, FCC's efforts generally do not align with useful practices we have identified for developing successful performance goals and measures.

⁶⁹The output and efficiency measures include number of program beneficiaries (ETC); number of low-income customers for each ETC receiving low-income support; number of connections supported; time to process support payments and authorize disbursements; average dollar amount awarded and median dollar amount awarded, per carrier; Low-Income Program data, on a quarterly basis, in Excel format, with total amounts rolled up; and total amount disbursed. See *2007 Comprehensive Review Order*, 22 FCC Rcd. 16372 (2007).

⁷⁰FCC, *Fiscal Year 2009 Annual Performance Report (October 1, 2008 – September 30, 2009)*, (Washington, D.C., 2010).

⁷¹FCC, *Fiscal Year 2009 Summary of Performance and Financial Results*, (Washington, D.C., 2010).

Table 4: Alignment of FCC Efforts with Useful Practices for Developing Successful Performance Goals and Measures

Practices to enhance performance goals	FCC's efforts	How FCC's efforts align with practice
Create a set of performance goals and measures that address important dimensions of a program's performance and balance competing priorities.	An overarching goal for the Low-Income Program exists—to increase subscribership among low-income consumers—but explicit performance goals and measures for how this is to be achieved and measured have not been established.	FCC's efforts do not align with this practice.
Use intermediate goals and measures to show progress or contribution to intended results.	FCC has begun to collect output data to develop performance measures for the Low-Income Program, such as the number of connections supported (program participation) and total amounts disbursed, but it has not yet determined the specific outcome-based goals of the program. Therefore, it is unclear how these output data will illustrate progress in meeting performance goals.	FCC's efforts do not align with this practice.
Include explanatory information on the goals and measures.	No effort reported.	FCC's efforts do not align with this practice.
Develop performance goals to address mission-critical management problems.	FCC issued a Report and Order in August 2007 which adopted measures to improve the management, administration, and oversight of the USF, including actions specific to the Low-Income Program, such as the number of connections supported (program participation) and total amounts disbursed. However, no performance goals were developed.	FCC's efforts somewhat align with this practice.
Show baseline and trend data for past performance.	While FCC began collecting quarterly data in August 2007, to establish a baseline for performance measures, because the Low-Income Program is in its 25th year, it is unclear if this data collection will adequately demonstrate past performance trends.	FCC's efforts somewhat align with this practice.
Identify projected target levels of performance for multiyear goals.	No targets reported.	FCC's efforts do not align with this practice.
Link the goals of component organizations to departmental strategic goals.	FCC's <i>Fiscal Year 2009 Annual Performance Report</i> and <i>Fiscal Year 2009 Summary of Performance and Financial Results</i> include accomplishments related to enhancing universal service, such as taking steps to reduce improper payments, but does not specifically address the Low-Income Program, or how it has impacted the provision of universal service.	FCC's effort somewhat align with this practice.

Source: GAO analysis of FCC efforts measured against key practices we have previously identified (GAO/GGD/AIMD-99-69).

FCC is considering restructuring the USF and expanding the Low-Income Program to include broadband service, as recommended by the National Broadband Plan. In the plan, the FCC task force acknowledged that “there is a lack of adequate data to make critical policy decisions regarding how to better utilize funding to promote universal service objectives...as it moves forward on reforms in the plan, it should enhance its data collection [regarding universal service objectives] and reporting to ensure that the nation’s funds are being used effectively to advance defined programmatic goals.”⁷² Further, FCC has acknowledged that as changes such as expanding the Low-Income Program to include broadband service are made to the USF, it may be necessary to develop new metrics for measuring the success of universal service policies.⁷³ Clearly articulated performance goals and measures are important to help ensure the Low-Income Program meets the guiding principles set forth by the Congress. These guiding principles include access to telecommunications and information services for all consumers. Outcome-based performance goals and measures will help illustrate to what extent, if any, the Low-Income Program is fulfilling the guiding principles set forth by the Congress.

Because there is limited information available on what the Low-Income Program in its current form is intended to accomplish, what it is accomplishing, and how well it is doing so, it remains unclear how FCC will be able to make informed decisions about the future of the program without this information. Moreover, as new technologies are developed and “access and strategies for affordability” are continually redefined, the performance and effectiveness of existing programs is important so that decision makers can design and target future programs to effectively incorporate new technologies, if appropriate.

⁷²FCC, *Connecting America: The National Broadband Plan*, (Washington, D.C., 2010), p. 144.

⁷³See Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, *Telephone Penetration By Income By State (Data through March 2009)*, (Washington, D.C., 2010) p. 2.

FCC Might Conduct Broadband Pilot Programs to Help Facilitate Future Decisions

The National Broadband Plan recommended extending low-income universal service support to broadband.⁷⁴ The plan also recommended that FCC facilitate pilot programs for low-income consumers that will “produce actionable information to implement the most efficient and effective long-term broadband support mechanism.”⁷⁵ The plan suggested that upon completion of the pilot programs, FCC should “report to Congress on such issues as whether hardware [such as computers] subsidies are a cost-effective way to increase adoption. After evaluating the results by looking at outputs such as total cost per subscriber, subscriber increases, and subscriber churn rate, FCC should begin full-scale implementation of a Low-Income Program for broadband.”⁷⁶

FCC’s efforts to develop the proposed pilot programs are in the beginning stages.

- In support of the National Broadband Plan, an FCC task force conducted a survey of 5,005 Americans in October and November 2009 in an effort to understand the state of broadband adoption and use, as well as barriers facing those who do not have broadband at home.⁷⁷ The subsequent report includes results and analysis specific to nonadopters among low-income households. This information was used in the National Broadband Plan to help support the recommendation to extend low-income universal service support to broadband.
- In June 2010, FCC’s Wireline Competition Bureau hosted a roundtable discussion to enable interested parties to discuss the design of pilot programs that would provide subsidies for broadband access to low-income consumers. Discussion topics included long-term goals for Lifeline

⁷⁴FCC, *Connecting America: The National Broadband Plan*, Recommendation 9.1 (Washington, D.C., 2010) p. 172. Some interested parties have questioned the need to subsidize broadband. For example the Pew Research Center’s Internet & American Life Project reported that by a 53 percent to 41 percent margin, Americans do not believe that the spread of affordable broadband should be a major priority and that non-Internet users are less likely than current users to say that the government should place a high priority on the spread of high-speed connections. See Aaron Smith, *Home Broadband 2010*, Pew Internet & American Life Project, (Washington, D.C., August, 2010).

⁷⁵FCC, *Connecting America: The National Broadband Plan*, Recommendation 9.1 (Washington, D.C., 2010). p. 172.

⁷⁶FCC, *Connecting America: The National Broadband Plan* (Washington, D.C., 2010) p. 173.

⁷⁷John Horrigan, *Broadband Adoption and Use in America (OBI Working Paper Series No. 1)*.

and Link Up for broadband, existing data and information sources, and scope and duration of the pilot programs.

- FCC asked the Joint Board to consider how the potential expansion of the Low-Income Program to broadband would affect any of its potential recommendations regarding program eligibility, verification, and outreach.⁷⁸ The review is to be completed by November 2010.

It is too early to assess FCC's efforts to develop the proposed pilot programs for low-income consumers. However, it is not too early to focus on two fundamental tools related to leading practices that we and others have identified as key to developing successful programs.

First, a needs assessment is important to both the design of new programs and the assessment of existing programs.⁷⁹ A primary purpose of a needs assessment is to identify services that may be lacking relative to some generally accepted standard. By establishing measures of comparison, program administrators can more accurately determine how well their programs are doing in meeting the needs of the targeted population of the program. We have previously reported that needs assessments should include the following characteristics:

- benchmarks to determine whether needs have changed or emerged,
- a framework to interpret the meaning of the needs assessment results,
- a plan to determine how needs assessment results will be prioritized in supporting resource allocation decisions, and
- integration of information on other resources available to help address the need.⁸⁰

Second, when conducting pilot programs, our past work has shown that agencies should develop sound implementation and evaluation plans. These plans should include data needs as part of the design of the pilot

⁷⁸See 25 FCC Rcd 5079 (2010) (*Referral Order*).

⁷⁹P.H. Rossi, M.W. Lipsey, and H.E. Freeman, *Evaluation: A Systematic Approach*, (Thousand Oaks, Calif., 2004).

⁸⁰GAO, *Military Personnel: Actions Needed to Achieve Greater Results from Air Force Family Needs Assessments*, GAO-01-80, (Washington, D.C.: Mar. 8, 2001).

itself and before implementation to increase confidence in results and facilitate decision making about broader application of the pilot program.⁸¹ Specifically, we have reported that well-developed implementation and evaluation plans include, at a minimum, the following key features

- identification of the necessary resources, including the responsible parties;
- well-defined, clear, and measurable objectives;
- criteria or standards for determining pilot program performance;
- clearly articulated methodology and a strategy for comparing the pilot results with other efforts;
- a clear plan that details the type and source of data necessary to evaluate the pilot, methods for data collection, and the timing and frequency of data collection;
- benchmarks to assess pilot success;
- detailed evaluation time frames, roles and responsibilities, and report planning;
- a detailed data-analysis plan to track the program's performance and evaluate the final results of the program; and
- data reliability plan to ensure the integrity of data collection, entry, and storage.⁸²

The broadband pilot programs, if conducted, provide FCC with an opportunity to improve its information on the telecommunication needs of and data collection for low-income households. Data on cost-effectiveness, such as cost per subscriber, will be especially important as

⁸¹GAO, *Limitations in DOD's Evaluation Plan for EEO Complaint Pilot Program Hinder Determination of Pilot Results*, GAO-08-387R (Washington, D.C.: February 2008).

⁸²See GAO, *Equal Employment Opportunity Commission, Sharing Promising Practices and Fully Implementing Strategic Human Capital Planning Can Improve Management of Growing Workload*, GAO-08-589 (Washington, D.C.: June 23, 2008), GAO, *Equal Employment Opportunity: DOD's EEO Pilot Program Under Way, but Improvements Needed to DOD's Evaluation Plan*, GAO-06-538, (Washington, D.C.: May 5, 2006), and GAO-08-387R.

the Low-Income Program is not capped and program participation and support payments are expected to continue to increase. A well-developed and documented evaluation plan would help FCC evaluate the telecommunication needs of low-income households and ensure that its evaluations will yield methodologically sound results to support effective program and policy decisions as FCC considers transitioning the program to broadband.

The Low-Income Program Has Established Some Mechanisms to Identify and Evaluate Risks and Monitor Compliance; However the Program Lacks Two Key Features of Effective Internal Controls

The Low-Income Program Has Some Mechanisms to Identify and Evaluate Risks and Monitor Compliance

USAC has assessed some of the risks and monitors compliance with some of the internal controls of the USF's four programs, including the Low-Income Program. These efforts are for the purposes of providing FCC and USAC management with information on the design and effectiveness of internal controls related to the balances and activities reported in its annual financial statements and include consideration of controls over programmatic operations and regulatory reporting and compliance. The risk assessments that have been performed and other control processes, such as reviews of each claim for reimbursement before payment is made, provide important information on vulnerabilities that exist in the internal control over program activities as well as opportunities for designing and implementing countermeasures to the identified risk.

In 2008, USAC hired an independent public accounting firm to review its internal control processes to comply with FCC's directive that it

implement an internal control structure consistent with the standards and guidance contained in OMB Circular A-123, Management Responsibility for Internal Control.⁸³ The review focused primarily on USAC's internal controls related to financial reporting for the USF. In September 2010, USAC officials told us that an internal team recently completed a review of key controls with respect to the Low-Income Program. These officials stated that a report on the results of this work was expected to be provided to management for review in the fall of 2010. In addition, since 2007, as part of their annual financial statement audit process, FCC and USAC have completed an annual risk assessment to identify areas of vulnerability to financial statement misstatement due to fraud and consider whether additional fraud countermeasures are required. In 2010, FCC identified 17 control measures to address the following risk categories related to the Low-Income Program: beneficiary fraud and disbursement and invoicing errors.

According to FCC officials, program risks are also identified and assessed through the rulemaking process under the Administrative Procedure Act.⁸⁴ When developing, modifying, or deleting a rule, FCC relies on public input collected during the rulemaking process. According to FCC officials, it was through this process that FCC identified and addressed the program risks associated with ETCs' failure to collect and preserve certification documents for Lifeline support recipients.

USAC also monitors program risks through various other processes and control activities, including review of each ETC claim submission and analysis of monthly payment data. For example, USAC reviews each ETC

⁸³The OMB Circular No. A-123 provides guidance to executive agencies on evaluating and reporting on their systems of internal controls, consistent with the requirements of section 3512(c), (d) of title 31, U.S. Code (commonly referred to as the Federal Managers' Financial Integrity Act of 1982 (FFMIA)), which requires agencies to establish and maintain effective internal control. The agency head must annually evaluate and report on the control and financial systems that protect the integrity of its federal program. Circular No. A-123 relies on GAO's standards for internal control in the federal government, which are promulgated pursuant to FFMIA. Office of Management and Budget, *Management's Responsibility for Internal Control*, Circular No. A-123 (Washington, D.C., Dec. 21, 2004).

⁸⁴FCC implements policy initiatives through the rule making process, a governmentwide process for creating rules or regulations that implement, interpret, or prescribe law or policy. The Administrative Procedure Act (APA) is the principal law governing how agencies make rules. Most federal rules are promulgated under the APA-established informal rule making process, which requires agencies to provide public notice of proposed rule changes, as well as to provide a period for interested parties to comment on the notices. 5 U.S.C. § 551 et seq.

claim submission and compares the information submitted to information provided with previous claims to identify possible errors that impact the claim payment. USAC also prepares memoranda each month from processed claim submissions that summarize and analyze payment data to, among other things, identify ETCs with substantial month-over-month changes in the amount of reimbursement requested.⁸⁶

In addition, USAC relies on audits as a key management tool to review carrier processes for compliance with program rules and to review the data underlying the carrier's reimbursement claims to test whether the carrier claimed the correct amount.⁸⁶ For example, through audits, USAC identified instances where ETCs were claiming the incorrect amount for providing toll limitation services. From 2003 to 2008, 41 performance audits were completed specific to the Low-Income Program.⁸⁷ Also, 60 audits were conducted in 2006 and 2007⁸⁸ that were used to develop a statistical estimate of error rates under the Improper Payments Information Act of 2002 (IPIA).⁸⁹

⁸⁶In its October 14, 2010, response to a draft of this report, USAC stated that it also conducts data validations of ETC's receiving program support in which staff obtain and review supporting documentation for amounts paid to selected carriers. In our subsequent discussions with USAC, we were told that this process was first completed in 2005 and is continuing in 2010—with 30 reviews under way; however, no reviews were conducted in 2007 or 2008.

⁸⁶In the September 2008 Memorandum of Understanding between FCC and USAC, FCC directed USAC to implement a comprehensive audit program (1) to ensure that USF monies were used for their intended purpose; (2) to verify that all USF contributors made the appropriate contributions; and (3) to detect and deter waste, fraud, and abuse. To this end, with regard to the Low-Income Program, USAC conducts performance audits of ETCs that receive monies from the Low-Income Program. Audits are conducted by USAC's Internal Audit Division.

⁸⁷These audits exclude four that were limited scope audits and three that assessed the ETC's compliance with FCC's Hurricane Katrina Order, *Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 16883 (2005).

⁸⁸These audits exclude one audit where the auditor was unable to reach a conclusion on the ETC's compliance with program rules.

⁸⁹Pub. L. No. 107-300; 116 Stat. 2350 (Nov. 26, 2002), as amended by the Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111-204, 124 Stat. 2224 (July 22, 2010). The IPIA requires federal agencies to review programs and activities they administer and identify those that may be susceptible to significant improper payments. For those programs or activities determined to be susceptible to significant improper payments, the agency must conduct an estimate, report the estimate to Congress, and, for programs and activities with estimated improper payments exceeding \$10 million, report on corrective actions taken to address the improper payments.

The Low-Income Program Lacks a Risk Assessment that Considers All Program Vulnerabilities and a Systematic Process for Considering Audit Results When Assessing Internal Controls

Although the assessments and activities described above provided mechanisms to identify some risks related to the Low-Income Program, FCC and USAC have not conducted a risk assessment specific to the Low-Income Program that includes consideration of all program vulnerabilities and associated consequences that could help identify opportunities to mitigate those risks. For example, FCC has not addressed a number of risks to the Low-Income Program, four of which are described below.

- In comments to FCC, USAC has stated that the current version of the form used by ETCs to make reimbursement claims from the USF does not provide USAC with enough information to perform validations crucial to preventing mistakes and abuse.⁹⁰ In raising this issue, it cited instances where both the wholesaler and reseller of a telephone connection made a claim for reimbursement from the USF, at which point, the USF is paying two companies for the same customer. Currently, USAC considers the existing program safeguards as insufficient to identify duplicate reimbursements. Consequently, to determine if this is occurring, USAC would have to audit the records of the two companies.
- Another risk is that consumers may be simultaneously receiving Lifeline discounts on a wireline and wireless phone, which is contrary to the program rules that specify one discount per household.⁹¹ In 2008, during a Low-Income Program-related performance audit of a wireless company, USAC for the first time compared the wireless carrier's subscriber list to the major wireline ETCs serving the area. USAC found several hundred instances of consumers receiving Lifeline support for both wireless and wireline accounts. USAC has sought guidance from FCC regarding how to recover the related disbursements and handle these findings. However, as of September 2010, FCC has not provided guidance on this issue.⁹² To determine the extent to which this is occurring on an ongoing basis, USAC would have to audit the records of the two companies because the ETCs do not have such information. According to our survey, 8 states have access to information that could help ensure that the household is receiving only one Lifeline subsidy. Representatives from 21 states

⁹⁰See Comments of the Universal Service Administrative Company in WC Docket No. 05-195 (*Comprehensive Review of the Universal Service Fund Management Administration*, Notice of Inquiry, 20 FCC 13583 (dated Nov. 13, 2008)), pp. 106-107.

⁹¹See *1997 Universal Service Order*, 12 FCC Rcd at 8957, para. 341.

⁹²FCC referred the issue of duplicate claims for support to the Joint Board in May 2010, and will await recommendations from the Joint Board before deciding how best to address the issue. See 25 FCC Rcd 5079 (2010) (*Referral Order*).

indicated that they were somewhat or very concerned about consumer fraud in the Lifeline program. In comments, several states indicated that there were limited controls in place to enforce the program requirement that households only receive one Lifeline discount.

FCC has asked the Joint Board to recommend changes regarding effective and efficient verification of customer eligibility, both at initial sign-up and periodically thereafter.⁹³ Further, The National Broadband Plan recommended that FCC consider the creation of a national centralized database as a mechanism to minimize fraud, waste, and abuse in the Low-Income Program. Five of the 8 states in which the entity that verifies consumers' continued eligibility have access to information to help ensure that the household is only receiving one Lifeline discount use a database.

- In comments to the FCC, the Florida Public Service Commission reported that the inclusion of prepaid wireless options in the Lifeline program presents the risk that these companies, which do not bill their customers monthly, can claim support for all subscribers without confirming that the person is still in possession of and is using the phone.⁹⁴ For example, in June 2010, there were several postings on Craigslist, the electronic bulletin board known for free local classified listings, advertising the sale of SafeLink products—the Lifeline service offered by TracFone. One state we visited is attempting to address this risk. In Florida, the state commission instituted a 60-day inactivity policy in which the prepaid wireless carrier in the state must contact the customer, via text message, voicemail, or letter, to confirm that the customer is still active and eligible for Lifeline support. If no response is received, the account must be deactivated. In the third quarter of 2009, one year after the prepaid wireless company was certified as an ETC in the state, approximately 8 percent or 33,000 customer accounts were deactivated due to 60-day inactivity. While a good first step, this mechanism still does not prevent the phone or minute allotment from being sold to ineligible consumers. As previously mentioned, FCC has asked the Joint Board to recommend changes regarding effective and efficient verification of customer eligibility.⁹⁵

⁹³See *Federal-State Joint Board on Universal Service; Lifeline and Link Up*, Order, 25 FCC Rcd 5079, (2010) (*Referral Order*).

⁹⁴See Comments of the Florida Public Service Commission in CC Docket No. 96-45 and WC Docket No. 03-109 (*Federal-State Joint Board on Universal Service*, Public Notice, 25 FCC Rcd 7551 (2010)), (dated July 15, 2010).

⁹⁵See *Federal-State Joint Board on Universal Service; Lifeline and Link Up*, Order, 25 FCC Rcd 5079, (2010) (*Referral Order*) p. 9.

- Another risk is that the results of ETC audits may not be adequately considered in assessing internal controls. FCC officials told us that completion in 2008 of the initial OMB Circular A-123 based internal control review of USAC's controls of the USF's four programs, including the Low-Income Program, was the equivalent to a comprehensive risk assessment. The 2008 review was focused primarily on financial reporting controls, and considered some aspects of programmatic operations and regulatory reporting and compliance of the four USF programs. However, the initial review was not specific to the Low-Income Program and was not designed to identify all risks to meeting the program's objectives. The update that is expected to be reported on in the fall of 2010 was also not designed to consider all aspects of the program's internal controls. For example, the report on the results of the 2008 review acknowledged that there are program risks associated with ETCs' self-certification of key information, such as subscriber eligibility and the accuracy of amounts claimed for reimbursement that were not addressed in the internal control review. The report also stated that ETC audits were the mechanism used by the USF programs, including the Low-Income Program, to mitigate these risks. Further, USAC's update of the 2008 review did not, among other things, consider the nature, scope, and extent of ETC audits or the results from these audits in assessing internal control.

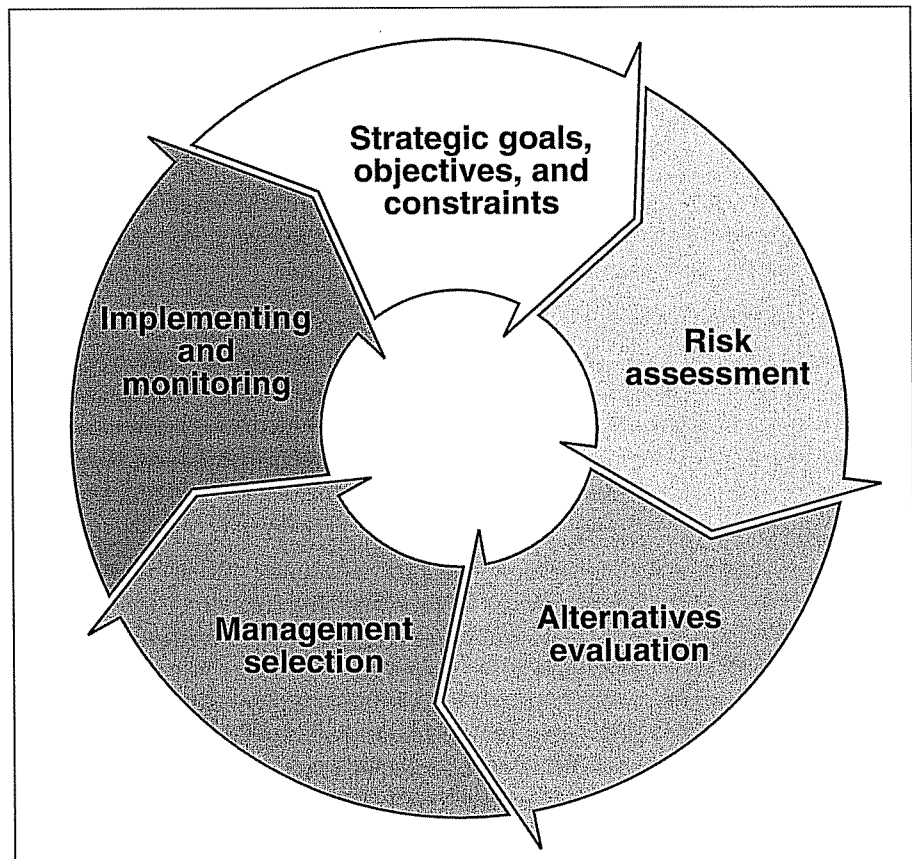
According to our standards for internal control, FCC should identify all risks to meeting the program's objectives and should consider all significant interactions between itself and other parties as well as internal factors at both the entity and activity level.⁹⁶ Without a risk assessment specific to the Low-Income Program that considers all vulnerabilities and consequences, some programmatic risks may not be identified, analyzed, and addressed. Moreover, managing risks can help target limited resources. We have previously described the purpose of risk management as identifying potential problems before they occur to mitigate adverse impacts.⁹⁷ Figure 4 depicts a risk management cycle representing a series of analytical and managerial steps, which are sequential, that can be used to assess risk, assess alternatives for reducing risks, choose among those alternatives, implement the alternatives, monitor their implementation, and continually use new information to adjust and revise the assessments

⁹⁶GAO/AIMD-00-21.3.1.

⁹⁷GAO, *Digital Television Transition: Increased Federal Planning and Risk Management Could Further Facilitate the DTV Transition*, GAO-08-43 (Washington, D.C.: Nov. 19, 2007).

and actions, as needed. The approach is dynamic and can be applied at various organizational levels.

Figure 4: Risk Management Framework



Source: GAO.

The limitations identified above increase the importance of the periodic audits of ETCs to provide after-the-fact detection information on ETC compliance with program rules and the effectiveness of USAC's internal controls. Audits conducted on ETCs have identified instances of noncompliance with program rules, including improper payments when ETCs sought reimbursement for discounts that were either calculated incorrectly, could not be adequately supported, or were provided to potentially ineligible subscribers. For example, we found that 76 percent

of the 41 performance audits reported findings of more than one claim for low-income support per household, which is contrary to program rules.

We analyzed reported audit findings and identified instances of repeat audit findings at ETCs that had been audited more than once from 2003 through 2008. According to USAC officials, each audit report is reviewed and the extent and causes of audit findings are analyzed.⁹⁸ However, USAC officials stated that they do not have a systematic process for considering the results of ETC audits when assessing the program's internal controls. As described above, each of the internal control reviews performed have, by design, excluded consideration of ETC audits in assessing internal control. A systematic process that considers ETC audits could help identify opportunities for improving internal controls. For example, improvements to controls could include modifications to the process used to identify questionable support claims; modifications to the nature, extent, or scope of ETC audits; and changes to the information required from ETCs for review prior to payment of claims.

We also analyzed payment data by state/territory and ETC to determine the scope of audit coverage accomplished by the audits performed⁹⁹ (see Figure 5). For our analysis we used support payments claimed by ETCs from 2002 to 2007—the period covered by the ETC audits that were performed.¹⁰⁰ We found that, considering the reliance placed on ETC audits and the results of those audits conducted to date, the number and scope of the ETC audits has been limited. For example, the 97 ETCs that have been audited represent approximately 5 percent of the more than 1,800 ETCs that participated in the Low-Income Program from 2002 to 2007.¹⁰¹ Further, the payments that were audited represented about 10 percent of the \$4.6 billion in payments during this 6-year period. In fact, more than 90 percent of the payments audited were made to only 14 of the

⁹⁸USAC summarized and analyzed the results of the 60 audits conducted in 2006 and 2007 that were used to develop a statistical estimate of error rates under the Improper Payments Information Act of 2002, but did not do the same for the other 41 performance audits conducted from 2003 through 2008.

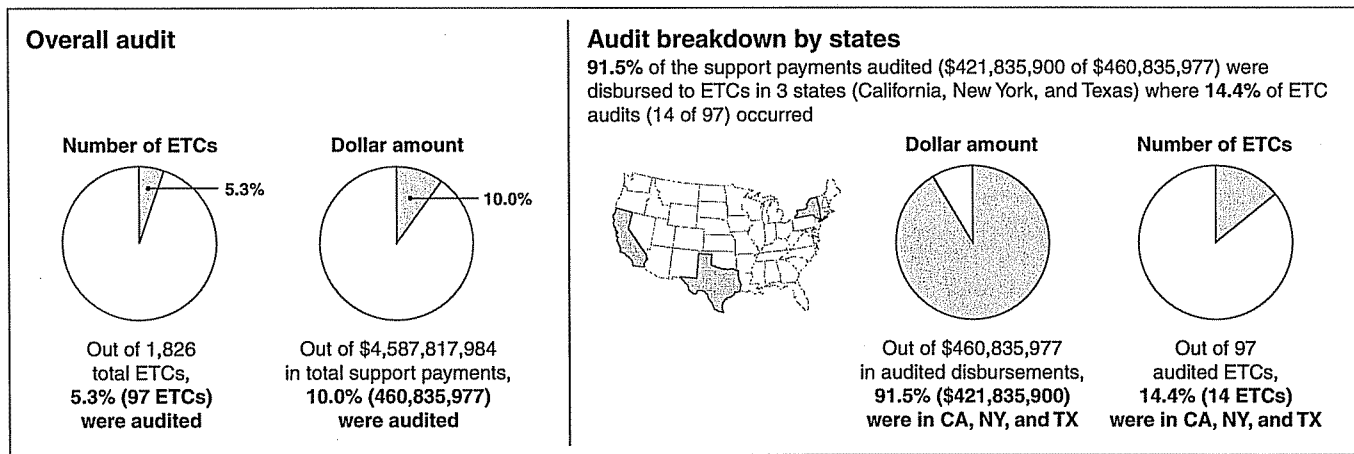
⁹⁹Included in our state-by-state analysis are the following U.S. territories: American Samoa, District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

¹⁰⁰USAC performed 101 audits on 97 ETCs from 2003 to 2008.

¹⁰¹The number of unique ETCs that participated in the Low-Income Program between 2002 and 2007 was 1,826; the number of ETCs participating in any single year during this period ranged from 1,418 to 1,804.

97 ETCs audited.¹⁰² Moreover, 19 states and territories with approximately 220 ETCs have never been audited.¹⁰³

Figure 5: Analysis of ETC Support Payments and Audit Coverage, 2002 - 2007



Source: GAO analysis of USAC data.

According to our internal control standards, audit findings should be considered when assessing the effectiveness of internal controls, including: determining the extent to which the continued effectiveness of the internal control is being monitored; assessing if appropriate policies and procedures exist; and assessing if they are properly maintained and periodically updated. Further, consideration should be given to potential program risks when establishing the scope and frequency of audits. Without a systematic process to analyze findings from audits that are of sufficient quantity and scope and appropriately targeted based on risk, FCC and USAC may not have information that could be leveraged to adequately assess compliance with program rules and strengthen the program's internal controls. As described in this report, there are vulnerabilities at the ETC, state, and program level for which a systematic process for conducting audits and considering audit results could help to identify.

¹⁰²These 14 ETCs were in the three states with the largest amount of support payments for this period—California, New York, and Texas.

¹⁰³These ETCs received payments totaling approximately 8 percent of total Low-Income support payments during this period.

As of July 2010, USAC was in the process of implementing a new audit and improper payment assessment approach for all of the USF programs. The new approach is designed to include separate programs for compliance audits and improper payment assessments. According to USAC officials, the compliance audits will be designed solely to evaluate USF beneficiary compliance with FCC rules and a separate process will be implemented for improper payment assessments to estimate the rate of improper payment associated with each of the USF programs. While we have not assessed the new approach, according to FCC officials, it will continue to enable FCC and USAC to identify program risks based on random selections of beneficiaries and payments stratified based on the amount of payments. However, it will be important for USAC to have a process for considering the results of these audits and assessments to identify opportunities for modifying the program's internal controls, including modifying the nature, extent, and scope of audits and improper payment assessments.

Conclusions

Clear and consistent program goals and performance measures, risk assessments, and the systemic consideration of audit results are key management tools to effectively manage any program, including the Low-Income Program. These tools help ensure that collective program funds are effectively targeted to meet the needs of the intended recipients. In the case of the Low-Income Program, effective use of the funds is particularly important given the rapid increases in technology that are redefining the options that consumers have to access telecommunication services. Not identifying the most cost-effective option may leave less funding that could be used to increase access for other low-income consumers, which is the underlying intent of universal service. Moreover, without key management information, FCC may be making current and future policy decisions without being fully informed on the performance of current programs and without information on the potential performance of broadband and future technologies as they become available. Lacking information on performance goals and measures may also limit FCC's ability to demonstrate that the program is helping to provide access to affordable telecommunication and information services to low-income consumers in all regions of the nation, one of the principles for universal service articulated in the 1996 Act. Furthermore, without setting performance goals and measures, particularly as new technologies are developed to access telephone services, FCC will not have information to judge the impact of these options on telephone subscribership rates for low-income households.

The National Broadband Plan recommended the addition of broadband as an eligible service for the Low-Income Program. FCC has initiated a Universal Service Working Group to assist in its efforts to modernize and reform all universal service programs to better support broadband and has taken initial steps to develop potential low-income pilot programs. A needs assessment and implementation and evaluation plans are critical elements for the proper development of pilot programs. Such assessments and plans will provide information on the telecommunication needs of low-income households, identify the most cost-effective options for low-income consumers, and help FCC effectively target funds based on data-driven information. The Low-Income Program has no funding cap and the addition of broadband and other future telecommunications technology without key management information and evaluation tools has the potential to further increase the cost to consumers who pay for the program through their telecommunications bills.

Recommendations for Executive Action

To improve the management and oversight of the Low-Income Program, we recommend that the Chairman of the FCC take the following three actions:

- clearly define specific performance goals of the program and subsequently develop quantifiable measures that can be used by Congress and FCC in determining the program's success in meeting its goals,
- conduct a robust risk assessment of the Low-Income Program, and
- implement a systematic process for considering the results of ETC audits and improper payment assessments in evaluating internal controls of the Low-Income Program.

If FCC conducts pilot programs as it considers adding broadband to the Low-Income Program, we recommend that the Chairman of the FCC take the following two actions:

- conduct an assessment of the telecommunication needs of low-income households to inform the design and implementation of the pilot programs, and
- develop implementation and evaluation plans for the pilot programs.

Agency Comments and Our Evaluation

We provided a draft of this report to FCC and USAC for their review and comment. Their full comments are reprinted in appendix V and appendix VI, respectively. In its written comments, FCC agreed with our recommendations. Specifically, FCC agreed that more work is needed to define specific performance goals of the program and develop quantifiable measures that can be used in determining the program's success. FCC recognized that the potential modification of the Low-Income Program to include broadband would be a significant change to the existing program and stated that the 2008 Performance Measures Notice of Inquiry¹⁰⁴ record may need to be updated so that quantifiable performance measures related to broadband-supported services under the Low-Income Program could be examined consistent with practices for developing successful performance goals and measures. With respect to the proposed Low-Income pilot programs, FCC recognized the importance of conducting an appropriate needs assessment accompanied by a sound implementation and evaluation plan consistent with the criteria we identified. FCC also stated that the Low-Income Program's internal controls would benefit from a risk assessment in which all vulnerabilities and consequences are considered and that it is committed to developing a systematic approach for considering the results of ETC audits and improper payment assessments in evaluating the program's internal controls. FCC stated that it intends to work closely with USAC to implement a risk assessment, as we recommended, and ensure that clear policies and procedures addressing a systematic review of internal controls based on audit findings are incorporated into USAC's written audit policies, procedures, and procurement.

In its written comments, USAC noted that it appreciated our recognition of the internal controls it has in place and that it will work with FCC to implement any orders or directives it may issue to implement our recommendations. USAC also provided additional information—that we reflected in our report—on processes used to validate, on a test basis, certain information provided by selected carriers.

USAC did not fully concur with our conclusion that FCC and USAC have not conducted a risk assessment specific to the Low-Income Program that considers all vulnerabilities. Among other things, USAC stated that the

¹⁰⁴ *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Notice of Inquiry, 23 FCC Rcd 13583 (2008) (2008 Performance Measures NOI).

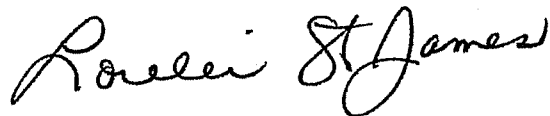
review performed by an independent public accounting firm in 2008 did assess and test specific internal controls for the Low-Income Program. We agree that some Low-Income Program internal controls were, in fact, assessed and tested; however, we determined that the review focused on the risks associated with financial reporting and not the Low-Income Program or its programmatic aspects. With respect to the internal control assessment that is being conducted by USAC's own staff and is in process as of October 2010, as stated in our report, this assessment also was not designed to identify and address specific Low-Income Program risks and vulnerabilities. No risk assessment that USAC has undertaken to date has been the type of risk assessment that we envision under the related recommendation we make in this report. Such an assessment would consider the existing design of the Low-Income program as a whole, including the roles of FCC, USAC, beneficiaries, and service providers; whether the design and mix of preventive and detective controls already in place for the Low-Income Program are appropriate; and whether there may be internal controls that are needed but not currently in place.

USAC also stated that it does not believe that the facts viewed in their full context support the conclusion that audit findings have not been used effectively by FCC and USAC to assess and modify internal controls used by USAC in administering the Low-Income Program. We disagree; and as stated in our report, we found that USAC does not have a formal systemic process in place to consider the results of audits when assessing the program's internal controls. We continue to believe that there are vulnerabilities at the ETC, state, and program level for which a systematic process for conducting audits and considering audit results could help identify. A systematic process to consider audit results is consistent with the objectives of internal controls in the federal government and FCC's and USAC's responsibilities to establish and maintain internal controls that appropriately safeguard program funding and resources. It will be important that efforts to implement the new audit approach that is now under way include processes for systematically considering the results of audits and assessments to identify opportunities for modifying the program's internal controls, including modifying the nature, extent, or scope of audits.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Chairman of the Federal Communications Commission, and the Acting Chief Executive Officer of the Universal

Service Administrative Company. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you have any questions about this report, please contact me at 214-777-5719 or stjamesl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Major contributors to this report are listed in appendix VII.



Lorelei St. James
Acting Director, Physical Infrastructure Issues

Appendix I: Scope and Methodology

To obtain background information on the administration of the program, we reviewed key orders, reports, and program assessments from the Federal Communications Commission (FCC) and the program's administrator, the Universal Service Administrative Company (USAC), and interviewed officials from both organizations regarding program and operational procedures; conducted a Web-based survey to gather information from each state public utility commission, including the District of Columbia; interviewed other stakeholders; and conducted site visits. The survey was available online to officials in the 50 states and the District of Columbia on a secure Web site and our response rate was 100 percent. This report does not contain all the results from the survey. The survey and a more complete tabulation of the results can be viewed at GAO-11-13SP. The stakeholders, listed in table 5, were identified from a variety of sources, including our previous work and by other experts in telecommunications. The site visits—to California, the District of Columbia, Florida, and Iowa—were chosen to provide detailed analyses of programs with varying characteristics. We chose these locations based on criteria such as the telephone subscribership rate of low-income households and the participation rate of eligible low-income households. During the site visits, we interviewed officials from the state public utility commission, the state consumer advocate, ETCs (wireline and wireless), and other entities as applicable. We also obtained pertinent supporting documentation.

Because this was not a sample survey, it has no sampling errors. However, the practical difficulties of conducting any survey may introduce errors, commonly referred to as nonsampling errors. For example, difficulties in interpreting a particular question, sources of information available to respondents, or data entry and analysis can introduce unwanted variability into the survey results. We took steps in developing the questionnaire, collecting data, and analyzing these data to minimize such nonsampling errors. For example, prior to administering the survey, a GAO survey specialist designed the questionnaire in collaboration with GAO subject matter experts. We also pretested the questionnaire with members of the Public Utilities Commission of three states and the District of Columbia. On the basis of the findings from pretests, we modified our questionnaire to ensure that the questions were relevant, clearly stated, and easy to comprehend. To ensure adequate response rates, we sent e-mail reminders and conducted follow-up telephone calls with nonrespondents. When the data were analyzed, a second independent data analyst checked all computer programs for accuracy. Since this was a Web-based survey, respondents entered their answers directly into the electronic

Appendix I: Scope and Methodology

questionnaires, eliminating the need to key data into a database, thereby minimizing errors.

To determine the extent to which program participation and expenditures have changed in the last 5 years and what factors may have affected program participation and support payments, we analyzed participation and disbursement data from USAC and identified key trends including projections for 2010. We conducted testing to ensure the reliability of the data and reviewed the methodology used by USAC to estimate program participation rates. As a result, we determined that the data were sufficiently reliable for the purposes of this report. In addition, we interviewed FCC and USAC officials, as well as other stakeholders. We conducted site visits, as described above, to obtain opinions regarding program elements associated with participation and barriers to participation, if any. We also obtained opinions regarding the effect, if any, of prepaid wireless options on program participation. In addition, we conducted a Web-based survey of state public utility commissions, as described above, to gather information about barriers to program participation, if any, and advertising and marketing activities by state commissions and ETCs. Finally, we compared FCC's guidelines for advertising the program and assessed them against our key practices for consumer education planning.

To determine FCC's performance goals and measures used to manage the program, we reviewed the Telecommunications Act of 1996 and other relevant legislation as well as FCC documentation, including rules, orders, strategic plans, performance and accountability reports, and FCC's Memorandum of Understanding with USAC. In addition, we interviewed FCC and USAC officials to determine how these goals and measures were developed. Finally, we reviewed FCC's performance goals and measures for the program and compared them with our guidance on key attributes of successful performance goals and measures.

To identify the mechanisms FCC and USAC used to identify and evaluate risk and monitor compliance with program rules, we reviewed relevant FCC and USAC documents, including comments for the record, fraud risk assessments, and audit reports, and interviewed officials from both entities. During our site visits and through our Web-based survey, we identified related program risks and processes used at the state level to certify and verify consumer eligibility and concerns. Finally, we compared FCC's and USAC's mechanisms to assess and evaluate risk and monitoring compliance with program rules against our internal control standards and Office of Management and Budget guidance on internal controls.

Appendix I: Scope and Methodology

We conducted this performance audit from October 2009 through October 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Table 5: Individuals and Organizations Interviewed

Category	Name
Academicians and think tanks	John Mayo, Professor of Economics, Business and Public Policy
	Public Utility Research Center, University of Florida
	Stanford Institute for Economic Policy Research
	Technology Policy Institute
Federal and state entities	California Division of Ratepayer Advocate
	California Public Utilities Commission
	D.C. Department of the Environment, Energy Office
	D.C. Office of People's Counsel
	D.C. Public Service Commission
	Federal Communications Commission
	Florida Department of Children and Families
	Florida Office of Public Counsel
	Florida Public Service Commission
	Iowa Office of Public Counsel
Iowa Public Utility Commission	
Telecommunication providers	AT&T
	AT&T – California
	Fort Mojave Telecommunications, Inc.
	Gila River Telecommunications, Inc.
	Iowa Telecom (Windstream)
	Mescalero Apache Telecommunications, Inc.
	Qwest Communications
	Sebastian Corporation (holding company for Kerman Telephone and Forest Hill Telephone companies in California)
	South Slope Cooperative Communications Company
	Sprint/Nextel
	TracFone Wireless
Verizon Communications	

Appendix I: Scope and Methodology

Category	Name
Third party administrators and related committees	Verizon Communications Florida—Regulatory Affairs
	Rolka Loube Saltzer Associates
	Solix (previously known as NECA)
	Universal Service Administrative Company
	USAC High Cost and Low Income Committee, Low Income Representative (Ellis Jacobs)
	USAC High Cost and Low Income Committee, State Consumer Advocates (Wayne Jortner)
Trade and industry groups	USAC High Cost and Low Income Committee, State Telecommunications Regulators Representative (Anne C. Boyle)
	CTIA - The Wireless Association
	National Association of Regulatory Utility Commissions
	National Telecommunications Cooperative Association
	National Tribal Telecommunications Association
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)	

Source: GAO.

Appendix II: Lifeline Eligibility Criteria and Administrative Processes and Responsibilities

FCC authorized states that provide intrastate Lifeline support to develop their own eligibility criteria and administrative processes for the program—including reviewing applications, certifying eligibility, and verifying recipients' continued eligibility for the Lifeline program. As a result, eligibility and administrative processes vary across states that provide intrastate Lifeline support.¹

Of the 39 states that provide intrastate Lifeline support, 36 allow consumers to qualify for the Lifeline program based on participation in a low-income assistance program; the number of programs that confer eligibility for the Lifeline program varies by state. For instance, in Montana, the only program that confers eligibility for the Lifeline program is Medicaid. In Alaska, 10 programs confer eligibility, including Federal Public Housing Assistance, Supplemental Nutrition Assistance Program (formerly Food Stamps), Low Income Home Energy Assistance Program, Alaska Adult Public Assistance, and Head Start (under the income qualifying provision).

States that provide intrastate Lifeline support can also set the income eligibility threshold. Twenty-two of the 39 states that provide intrastate Lifeline support allow consumers to qualify for the program based on income alone.² In 8 states, households may earn up to 135 percent of the federal poverty guideline and be eligible for the Lifeline program.³ In 2 states the income eligibility threshold is less than 135 percent of the federal poverty guidelines, and in 11 states it is greater.⁴

Further, FCC determined that states that provide intrastate support also have the discretion to determine their own administrative processes, which also vary across states (see table 6).

¹See e.g., 47 C.F.R. §§ 54.409 (consumer qualification for Lifeline), 54.410 (certification and verification of consumer qualification for Lifeline), 54.415 (consumer qualification for Link Up), 54.416 (certification of consumer qualification for Link Up). States must base eligibility criteria solely on income or factors directly related to income. 47 C.F.R. §§ 54.409(a), 54.415(a).

²In New Jersey, only consumers 65 or over may qualify for the program based on income alone.

³In 2009, the federal poverty guideline for a family of three was \$18,310.

⁴One state reported that it did not know the income eligibility threshold.

**Appendix II: Lifeline Eligibility Criteria and
Administrative Processes and Responsibilities**

Table 6: Lifeline Administrative Processes in States that Provide Intrastate Lifeline Support

Administrative process	Number of states^a
<i>Process in place to certify eligibility based on program participation</i>	32
Self-certification under penalty of perjury	16
Presentation of documentation of enrollment in a qualifying low-income assistance program	25
Automatic enrollment of eligible consumers	9
<i>Process in place to certify eligibility based on income</i>	19
Self-certification under penalty of perjury	6
Presentation of documentation of income	19
Automatic enrollment of eligible consumers	3
<i>Verifying continued eligibility of Lifeline support recipients</i>	
Random audits of Lifeline support recipients	14
Periodic submission of supporting documents (annual recertification or reverification)	20
Annual self-certification	12
Online verification system using databases of public assistance program participants or income reports	13
Verification of a statistically valid sample of Lifeline support recipients	17
<i>Conduct Lifeline-related audits of eligible telecommunications carriers (ETC)</i>	10

Source: GAO survey.

^aNumbers do not sum to 39 because some states do not have a process in place and some states have more than one process in place.

In addition, for the same reason, the entity responsible for executing the process also varies across states as seen in table 7.

Table 7: Lifeline Program Administrative Responsibilities in States that Provide Intrastate Lifeline Support

Administrative process	Responsible entity^a			
	State Public Utility Commission	ETC	Other state agency	Third-party administrator^b
Processing Lifeline applications	7	23	12	4
Certifying applicants' eligibility on the basis of program participation	6	13	13	2
Certifying applicants' eligibility on the basis of income	2	10	7	4
Verifying that recipients continue to be eligible for the Lifeline program	4	26	10	4

Source: GAO survey.

**Appendix II: Lifeline Eligibility Criteria and
Administrative Processes and Responsibilities**

^aNumbers do not sum to 39 because some states do not have a process in place and some states have more than one entity responsible for a given process.

^bSome states contract with third-party administrators to perform certain administrative processes of the program.

For those states that choose not to provide intrastate Lifeline support, FCC developed eligibility criteria and administrative processes for the Lifeline program to which these states must adhere. These states are referred to as “federal default states.”⁵ To be eligible for the Lifeline program in these states, consumers must participate in one of seven low-income assistance programs—Federal Public Housing Assistance, Supplemental Nutrition Assistance Program (formerly Food Stamps), Low Income Home Energy Assistance Program, Medicaid, National School Lunch Program’s free lunch program, Supplemental Security Income, and Temporary Assistance for Needy Families—or have household income at or below 135 percent of the federal poverty guidelines.⁶ Households living in tribal areas have an expanded list of tribal-based programs that also confer eligibility for the Lifeline program.

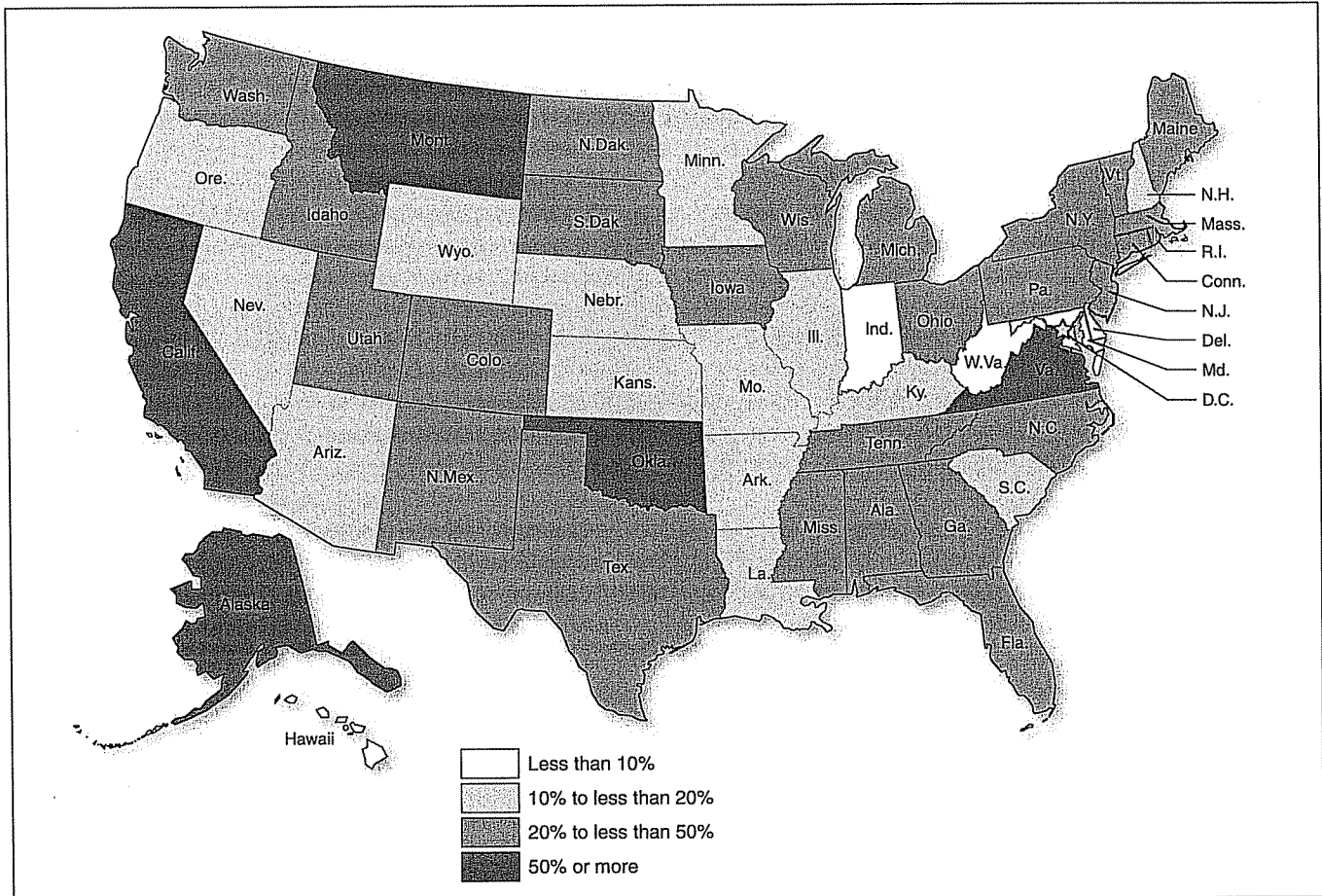
In federal default states, the ETC is responsible for processing applications, certifying applicants’ eligibility for the program based on program and income criteria, and verifying the recipients’ continued eligibility for the program.

⁵States that provide intrastate Lifeline support but choose to use the eligibility criteria and administrative processes developed by FCC are also referred to as “federal default states.”

⁶See 47 C.F.R. § 54.409.

Appendix III: Estimated Lifeline Participation Rates Among Eligible Households by State in 2009

Figure 6: Estimated Lifeline Participation Rates Among Eligible Households by State in 2009



Source: USAC, Map Resources (map).

Appendix IV: Alignment of FCC Outreach Guidelines with Our Key Practices for Consumer Education

FCC requires ETCs to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service. In its 2004 Order, FCC adopted a recommendation from the Federal-State Joint Board on Universal Service¹ to provide outreach guidelines to states and ETCs to help improve program participation. Below is a summary of the guidelines:

- states and ETCs should utilize outreach materials and methods designed to reach households that do not currently have telephone service;
- states and ETCs should develop outreach advertising that can be read or accessed by any sizeable non-English speaking population within a carrier's service area; and
- states and ETCs should coordinate their outreach efforts with government agencies/tribes that administer any of the relevant government assistance programs.

While FCC has developed advertising guidelines for states and ETCs, the guidelines are not always aligned with our key practices for consumer education, as shown in table 8.

¹See Lifeline and Link Up, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 8302 (2004) (*2004 Lifeline and Link Up Order*); Federal-State Joint Board on Universal Service, *Recommended Decision*, 18 FCC Rcd 6589 (2003) (*Recommended Decision*).

Appendix IV: Alignment of FCC Outreach Guidelines with Our Key Practices for Consumer Education

Table 8: Alignment of FCC Outreach Guidelines with Key Practices for Consumer Education

Key practice	Description	How FCC's guidelines align with practice
Define goals and objectives	Define the goals of the communication campaign, e.g., to increase awareness or motivate a change in behavior. Define the objective that will help the campaign meet those goals.	FCC's guidelines do not align with this practice. FCC's guidelines do not address defining the goals and objectives of outreach efforts of states and ETCs.
Analyze the situation	Analyze the situation, including any competing voices or messages, related market conditions, and key dates or timing constraints. Review relevant past experiences and examples to identify applicable "lessons learned" that may help guide efforts.	FCC's guidelines somewhat align with this practice. The guidelines are based on and include lessons learned that were identified by the Joint Board when it sought comment on whether more extensive consumer education and outreach efforts were necessary to increase participation in Lifeline/Link Up. However the guidelines do not suggest that states and ETCs analyze the situation, including any competing voices or messages, related market conditions, and key dates or timing constraints.
Identify stakeholders	Identify and engage all the key stakeholders who will be involved in communications efforts. Clarify the roles and responsibilities of each stakeholder, including which entities will lead overall efforts.	FCC's guidelines somewhat align with this practice. At the time FCC established its outreach guidelines, it identified several entities with which state commissions and ETCs should coordinate their outreach efforts, including social service agencies, community centers, public schools, and private organizations that may serve low-income individuals. However, the guidelines do not address clarifying the roles and responsibilities of each stakeholder, including which entities will lead overall efforts.
Identify resources	Identify available short- and long-term budgetary and other resources.	FCC's guidelines do not align with this practice. In its guidelines, FCC did not direct state commissions or ETCs to identify available short- and long-term budgetary and other resources available for outreach efforts.

Appendix IV: Alignment of FCC Outreach Guidelines with Our Key Practices for Consumer Education

Key practice	Description	How FCC's guidelines align with practice
Research target audiences	Conduct audience research, such as dividing the audience into smaller groups of people who have relevant needs, preferences, and characteristics, as well as measuring audience awareness, beliefs, competing behaviors, and motivators. Also, identify any potential audience-specific obstacles, such as access to information.	<p>FCC's guidelines somewhat align with the practice.</p> <p>FCC recommended that states and ETCs develop outreach materials that can be accessed by a sizeable non-English speaking population within the carrier's service areas and establish a toll-free call center where questions could be answers in the consumers' native language. It also recommended that these materials and other outreach efforts be accessible to consumers with sight, hearing, and speech disabilities. However, in its guidelines, FCC did not suggest that state commissions or ETCs to undertake efforts to measure the target population's awareness of the program or to identify the beliefs, competing behaviors, or motivators of the target population.</p>
Develop consistent, clear messages	Determine what messages to develop based on budget, goals, and audience research findings. Develop clear and consistent audience messages; test and refine them.	<p>FCC's guidelines do not align with this practice.</p> <p>The guidelines do not address the development of clear and consistent messages based on budget, goals, and audience research findings nor testing and refining of the messages.</p>
Identify credible messenger(s)	Identify who will be delivering the messages and ensure that the source is credible with audiences.	<p>FCC's efforts align with this practice.</p> <p>FCC's guidelines suggest that states and ETCs coordinate their outreach efforts with governmental agencies/tribes that administer any of the relevant government assistance programs. Further, the guidelines state that cooperative outreach among those most likely to have influential contact with low-income individuals will help target messages about the program to the low-income community.</p>
Design media mix	Plan the media mix to optimize earned media (such as news stories or opinion editorials) and paid media (such as broadcast, print, or Internet advertising). Identify through which methods (e.g., advertising in newsprint ads), how often (e.g., weekly or monthly), and over what duration (e.g., 1 year) messages will reach audiences.	<p>FCC's efforts somewhat align with this practice.</p> <p>In its guidelines, FCC identified the various outreach methods and materials that could be used to reach households that do not currently have phone service. However, FCC did not suggest designing a plan of the appropriate media mix over any given period of time that would dictate when and how these methods would be used.</p>

Appendix IV: Alignment of FCC Outreach Guidelines with Our Key Practices for Consumer Education

Key practice	Description	How FCC's guidelines align with practice
Establish metrics to measure success	Establish both process and outcome metrics to measure success in achieving objectives of the outreach campaign. Process metrics assure the quality, quantity, and timeliness of the contractor's work. Outcome metrics evaluate how well the campaign influenced the attitudes and behaviors of the target audience(s) that it set out to influence.	FCC's efforts do not align with this practice. FCC's guidelines do not address establishing process and outcome metrics to measure success in achieving objectives of an outreach campaign.

Source: GAO analysis of FCC's outreach guidelines measured against key practices we have previously identified.(GAO-08-43).

Appendix V: Comments from the Federal Communications Commission



Federal Communications Commission
Washington, D.C. 20554

October 14, 2010

Lorelei St. James
Acting Director, Physical Infrastructure
U.S. Government Accountability Office
Dallas Field Office
1999 Bryan Street, Suite 2200
Dallas, TX 75201

Dear Ms. St. James:

Thank you for the opportunity to review the draft Government Accountability Office (GAO) Report regarding assessment of the management of the Universal Service Fund Low-Income program. The Low-Income program is designed to promote the goals of section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), that telephone service be affordable to low-income consumers by providing universal service funds to reduce the price consumers pay for basic telephone service.¹ The Low-Income program accomplishes this in primarily two ways. First, the Commission's Lifeline program lowers the cost of monthly service for eligible consumers by providing support directly to service providers on behalf of consumer households.² Second, the Link Up program provides a one-time discount on the initial installation fee for telephone service.³ As a result of this funding, the Low-Income program has helped increase low-income telephone subscribership from 80.1 percent in 1984 to 89.7 percent in 2008.⁴ The Low-Income program continues to improve in reaching and assisting consumers who are unable to afford access to telephone service. In particular, the Commission expects to distribute approximately \$1.29 billion in low-income support during calendar year 2010, which will assist over 9.5 million low-income consumers - an increase of almost 3 million in three years - in obtaining access to telephone service.⁵

The Commission is dedicated to achieving the universal service goals of section 254 of the Act, and therefore welcomes suggestions on making additional improvements to the Low-Income program. In its draft report, the GAO offers four recommendations to improve the Low-Income program. First, the GAO recommends that the Commission clearly define specific performance goals of the program and subsequently develop quantifiable measures that can be used in determining the program's success in meeting its goals.⁶ Next, the GAO recommends the Commission conduct a robust risk assessment of the

¹ See 47 U.S.C. § 254(b)(1) ("Quality services should be available at just, reasonable and affordable rates").

² Generally, the Lifeline program provides eligible consumers with a discount on monthly charges for basic local landline or wireless telephone service. See 47 C.F.R. § 54.401.

³ Generally, the Link Up program provides a reduction in the charge for initiating telecommunications service at a consumer's principal place of residence. See 47 C.F.R. § 54.411.

⁴ See *Federal-State Joint Board on Universal Service, 2009 Universal Service Monitoring Report*, CC Docket Nos. 96-45, 98-62, at 2-2, available at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0830/DOC-295442A4.pdf.

⁵ See Universal Service Administrative Company, *Low-Income Receipt and Disbursement Report* (Sept. 2010); Universal Service Administrative Company, *Universal Service Fund Performance Measurements* (July 30, 2010).

⁶ Government Accountability Office, *Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program*, at 40 (Oct. 2010) (GAO Draft Report).

Appendix V: Comments from the Federal Communications Commission

Low-Income program.⁷ Third, the GAO recommends that the Commission implement a systematic process for considering the results of eligible telecommunications carrier (ETC) audits and improper payment assessments in evaluating internal controls of the Low-Income program.⁸ In addition to these recommendations, the GAO also recommends that, if the Commission establishes any pilot programs to examine funding broadband under the Low-Income program, the Commission first conduct a needs assessment and develop implementation and evaluation plans.⁹

We appreciate GAO's recognition of the Commission's efforts to date in developing performance measures for the Low-Income program and agree more work is needed to define specific performance goals of the program and develop quantifiable measures that can be used in determining the program's success.¹⁰ To build upon its efforts, in 2008, the Commission released a Notice of Inquiry (*2008 Performance Measures NOI*) seeking comment on whether the Commission should take steps to more clearly define the goals of the USF programs, including the Low-Income program.¹¹ In so doing, the Commission sought comment on whether it should develop specific quantifiable goals beyond the policies enumerated in section 254 of the Act.¹² In addition, the Commission sought comment on establishing long-term performance goals and whether such measures should be tied to implicit social welfare objectives.¹³

Since the record closed in response to the *2008 Performance Measures NOI*, other developments have occurred concerning potential changes in the policies and rules for the Low-Income program, which may warrant updating this proceeding. Specifically, in 2009, Congress directed the Commission to develop a National Broadband Plan to ensure every American has "access to broadband capability."¹⁴ Congress also required that this plan include a detailed strategy for achieving affordability and maximizing use of broadband to advance "consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes."¹⁵ The National Broadband Plan, released in March 2010, makes a variety of recommendations to change the Low-Income program, including modifying the Low-

⁷ GAO Draft Report at 40.

⁸ *Id.* at 41.

⁹ *Id.*

¹⁰ *See id.* at 24-27. For example, in the Commission's Memorandum of Understanding with the Universal Service Administrative Company (USAC), greater clarity in administration and management of the USF were established. *See Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company*, at 1 (Sept. 2008) (*FCC/USAC MOU*). As part of this, the Commission established performance measures and goals for the USF and USAC. For example, USAC is required to submit quarterly data concerning the number of Low-Income program beneficiaries, number of connections supported, average time it takes to process support payments, and average (mean) monthly dollar amount disbursed per eligible carrier. *FCC/USAC MOU* at 53.

¹¹ *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Notice of Inquiry*, WC Dkt. No. 05-195, 23 FCC Rcd 13583, 13590, para. 22 (*2008 Performance Measures NOI*)

¹² *2008 Performance Measures NOI*, 23 FCC Rcd at 13590, para. 22.

¹³ *2008 Performance Measures NOI*, 23 FCC Rcd at 13591, para. 25.

¹⁴ *See Connecting America: The National Broadband Plan*, at xi (rel. Mar. 16, 2010) (National Broadband Plan), available at, <http://www.broadband.gov/download-plan/>.

¹⁵ *See id.*

Appendix V: Comments from the Federal
Communications Commission

Income program to fund broadband services in order to make these services more affordable for low-income households.¹⁶

Recognizing, among other things, that the potential modification of the Low-Income program to include broadband would be a significant change to the existing program, in May 2010, the Commission asked the Federal-State Joint Board on Universal Service (Joint Board) to review the Commission's eligibility, verification, and outreach rules for the Lifeline and Link Up universal service programs.¹⁷ Specifically, the Commission asked the Joint Board to recommend any changes to these aspects of the Lifeline and Link Up programs that may be necessary, given significant technological and marketplace changes since the current rules were adopted, based on consideration of: (1) the combination of federal and state rules that govern which customers are eligible to receive discounts through the Lifeline and Link Up programs; (2) best practices among states for effective and efficient verification of customer eligibility, both at initial customer sign-up and periodically thereafter; (3) appropriateness of various outreach and enrollment programs; and (4) the potential modification of the Low-Income program to support broadband, as recommended in the National Broadband Plan.¹⁸ In its May 2010 *Referral Order*, the Commission also asked the Joint Board to consider how the potential modification of the low-income program to support broadband would affect any of its recommendations regarding changes to the Commission's eligibility, verification, and outreach rules for the Lifeline and Link Up universal service programs. The Commission asked the Joint Board to submit its recommended decision within 6 months, by November 4, 2010.¹⁹

Accordingly, we believe the *2008 Performance Measures NOI* record may need to be refreshed in response to any future modification of the Low-Income programs to include broadband; the Joint Board's forthcoming recommendations to the Commission; and the Commission's actions in response to the Joint Board's recommendations. In doing so, quantifiable performance measures related to broadband supported services under the Low-Income program should be examined consistent with the "practices to enhance performance goals," as provided by GAO.²⁰

We also welcome GAO's recognition of the Commission's conscientious efforts to date in developing internal control structures to safeguard the integrity of the Low-Income program.²¹ Specifically, as GAO states, progress has been made in assessing risk in the program related to financial reporting pursuant to Office of Management and Budget Circular No. A-123, compliance with program rules, key program controls related to disbursement and invoicing, and Low-Income certification documents.²² Despite these efforts, GAO has recognized that the internal control structure of the Low-Income program can be further improved. We agree. In particular, as GAO's recommendation suggests, the Low-Income program's internal controls would benefit from a holistic risk assessment in which the

¹⁶ *Id.* at 172-173.

¹⁷ See *Federal-State Joint Board on Universal Service Lifeline and Link Up*, CC Dkt. No. 96-45, Order, 25 FCC Red 5079, 5080, para. 30 (*Referral Order*); National Broadband Plan at 172-173.

¹⁸ *Id.*

¹⁹ The Federal-State Joint Board on Universal Service, established pursuant to the 1996 Act, provided recommendations to implement the universal service provisions and continues to provide recommendations regarding universal service at the Commission's discretion. The Joint Board is comprised of FCC Commissioners, State Utility Commissioners, and a consumer advocate representative. See 47 U.S.C. § 410(c), 254(a)(1).

²⁰ GAO Draft Report at 40.

²¹ See *id.* at 18-19.

²² See *id.* at 31-32.

**Appendix V: Comments from the Federal
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Commission considers all vulnerabilities and consequences.²³ Such a risk assessment should be designed to provide a critical examination of the entire Low-Income program to determine if modifications to business practices and internal controls are necessary to cost-effectively address programmatic risks.²⁴ As in the past, the Commission intends to work closely with the Universal Service Administrative Company (USAC) and provide the appropriate directives concerning the implementation of this risk assessment. Further, the Commission is committed to use this risk assessment to examine ways to improve the Low-Income disbursement and invoicing processes. For example, a robust risk assessment will provide the opportunity to ensure USAC is disbursing one discount per low-income household, as required under program rules.²⁵ The assessment could also provide an opportunity to improve program forms to ensure that both a wholeseller and reseller do not make dual claims for reimbursement for the same supported customer.²⁶

As GAO recommends, the Commission is also committed to developing a systematic approach for considering the results of eligible telecommunications carrier (ETC) audits and improper payment assessments in evaluating internal controls of the Low-Income program.²⁷ Consistent with this recommendation, the Office of Managing Director (OMD) regularly reviews beneficiary audit findings per guidance set forth in the Office of Management and Budget Circular A-50 and the Commission's own internal directive.²⁸ This process includes: (1) reviewing USAC's management response to an audit; (2) reviewing USAC's planned corrective action and implementation plan; and (3) providing an OMD response and Wireline Competition Bureau response where necessary.²⁹ Also, in order for OMD to consider a finding closed, USAC provides OMD with supporting documentation to prove action has been taken. The corrective actions are summarized and monitored on a monthly basis and USAC provides OMD with a status update of all open findings and recommendations. Going forward, GAO's recommendations will support the Commission's efforts to make additional improvements in this area and to provide opportunities for modifying the program's internal control structures, including modifying the nature, extent, and scope of audits and improper payments.³⁰ OMD will work with USAC to ensure that clear policies and procedures addressing a systematic review of internal controls based on beneficiary audit findings are incorporated into USAC's written audit policies, procedures, and procurement. Further, OMD will renew its efforts to see that meaningful performance measures are developed for USAC's senior executives that reflect USAC leadership's responsibility for effectively and efficiently targeting and addressing risks in the Low-Income and other programs.

Finally, the National Broadband Plan recommended that the Commission facilitate Low-Income pilot programs to determine which parameters most effectively increase broadband adoption among low-income consumers.³¹ As identified by GAO, the Commission is still contemplating this

²³ See *id.* at 36.

²⁴ Office of Management and Budget, *Management's Responsibility for Internal Control*, Circular No. A-123 (Dec. 21, 2004).

²⁵ See *Federal-State Joint Board on Universal Service*, Dkt. No. 96-45, Report and Order, 12 FCC Rcd 8776, at 8947, para. 341 (1997) (*Universal Service First Report and Order*); GAO Draft Report at 33.

²⁶ See GAO Draft Report at 33.

²⁷ See *id.* at 41.

²⁸ See Office of Management and Budget, *Audit Follow-up*, Circular A-50 (Sept. 29, 1982); FCC Directive, *FCCINT*, 1013.1C.

²⁹ See *id.*

³⁰ See GAO Draft Report at 39.

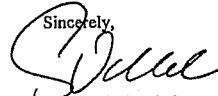
³¹ See National Broadband Plan at 173.

**Appendix V: Comments from the Federal
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recommendation.³² As consideration of the recommendation evolves, the Commission recognizes the importance of conducting an appropriate needs assessment accompanied by a sound implementation and evaluation plan consistent with the criteria identified by GAO.³³

Once again, we appreciate GAO's recommendations and look forward to working with you on this in the future.

Sincerely,



Steven VanRoekel
Managing Director

³² See GAO Draft Report at 28.

³³ See *id.* at 28-29.

Appendix VI: Comments from the Universal Service Administrative Company

USAC
Universal Service Administrative Company

Karen Majcher
Vice President
High Cost and Low Income Division

Via Electronic Mail

October 14, 2010

Lorelei St. James
Acting Director, Physical Infrastructure Issues
U.S. Government Accountability Office
Dallas Field Office
1999 Bryan Street, Suite 2200
Dallas, TX 75201

Re: Response to Draft Report to Congressional Requestors on Management of the
Universal Service Fund Low Income Program

Dear Ms. St. James:

This letter responds to the draft Government Accountability Office's (GAO's) Report, dated September 23, 2010, to Congressional Requestors, titled: "Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program." The Universal Service Administrative Company (USAC) would like to recognize the professional work of the GAO staff on this project. USAC submits this response to the GAO draft report.

The federal Universal Service Low Income Program is administered by USAC. The Federal Communications Commission (FCC or the Commission) is responsible for the overall management, oversight and administration of the Low Income Program and the Universal Service Fund (USF), including all policy decisions.¹ The GAO's draft report focuses on the following issues: (1) the need for performance goals and measures for the Low Income Program; (2) a needs assessment and implementation plans for Low Income broadband pilot programs; (3) a robust risk assessment for the Low Income Program; and (4) a systematic process for evaluating Low Income Program audit results. The GAO found that its recommendations were necessary to ensure the integrity of the Low Income Program.

Low Income Program Performance Goals and Measures

GAO's first recommendation is that the Commission should clearly define performance goals for the Low income Program and develop quantifiable measures that can be used by Congress and the FCC to determine the program's success in meeting its goals. USAC,

¹ See 47 C.F.R. § 54.702.

**Appendix VI: Comments from the Universal
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as the administrator of the Low Income Program, will work with the FCC to implement any orders or directives it may issue concerning Low Income Program performance goals and measures.

Low Income Broadband Pilot Programs

GAO's second recommendation is that the Commission should conduct a needs assessment of the telecommunications needs of low income households to utilize in the design and implementation of any broadband pilot programs focused toward low income households. The GAO also recommends the FCC develop implementation and evaluation plans for such proposed pilot programs that may be used to develop future policy decisions for the Low Income Program. USAC, as the administrator of the Low Income Program, will work with the FCC to implement any orders or directives it may issue concerning Low Income broadband pilot program(s).

Risk Assessment for the Low Income Program

GAO's third recommendation is that the Commission should conduct a robust risk assessment specific to the Low Income Program that considers all program vulnerabilities. The GAO's draft report states that the Commission and USAC have not conducted such a risk assessment and explains that such an assessment could help identify risks to the Low Income Program and provide opportunities for mitigating those risks. USAC partially concurs with this conclusion. USAC, as the administrator of the Low Income Program, will work with the FCC to implement any orders or directives it may issue for a formal risk assessment of the Low Income Program.

USAC appreciates the GAO's recognition of the internal controls USAC has in place. USAC operates consistent with an extensive set of internal controls that are designed to safeguard the Low Income Program and the USF, promote administrative efficiency, and reduce the possibility of errors that could result in waste, fraud or abuse in the Low Income Program or the USF. It is important to note that USAC's internal controls primarily govern the internal procedures used by USAC to administer the Low Income Program. For example, USAC reviews each Low Income Program support claim filed on the FCC Form 497. USAC compares an ETC's current support claim to the information the company previously submitted to identify possible errors and substantial changes in the ETC's monthly support claims. USAC staff follows its internal procedures in reviewing and processing Low Income Program support claims. However, given the limited amount of data collected from ETCs on the current FCC Form 497, USAC's internal procedures cannot determine whether the ETC has claimed support for the appropriate number of Lifeline subscribers, or whether multiple ETCs have concurrently claimed Low Income Program support for the same subscriber. One way to verify this information would be to revise the FCC Form 497 to authorize USAC to collect additional information from ETCs.

USAC also believes that the GAO's conclusion that USAC has not conducted any risk assessments specific to the Low Income Program is too narrow. In 2008, the independent

**Appendix VI: Comments from the Universal
Service Administrative Company**

public accounting firm Grant Thornton, LLP (Grant Thornton) completed an extensive review of USAC's internal controls. Grant Thornton reviewed USAC's financial reporting internal controls to ensure compliance with OMB Circular A-123, Management Responsibility for Internal Control, and assessed and tested specific Low Income Program controls associated with the administration of the program. Grant Thornton identified only one control deficiency in USAC administration of the Low Income Program.² USAC's internal controls team recently completed (in 2010) an assessment of Low Income Program internal controls. The draft report is almost finalized and identifies no major control deficiencies in the Low Income Program.

USAC's role as administrator and auditor of the Low Income Program make it uniquely situated to identify significant risks, such as those cited in the GAO's draft report (e.g., duplicate support claims made by wholesale and resale ETCs, duplicate support claims made by wireline and wireless ETCs), which were revealed as the result of USAC-conducted beneficiary audits. USAC has also conducted risk assessments to target risk factors associated with beneficiary compliance with Low Income Program rules. USAC and the FCC will work together to continue to identify and mitigate risks to the Low Income Program. As noted above, USAC will work with the FCC to implement any orders or directives it may issue for conducting a formal risk assessment for the Low Income Program.

Systematic Audit Review

The GAO's final recommendation is that the Commission should implement a systematic process for considering the results of ETC audits and improper payment assessments in evaluating internal controls of the Low Income Program. USAC partially concurs with this recommendation. USAC, as the administrator of the Low Income Program, will work with the FCC to implement any orders or directives it may issue for conducting a systematic review of audit findings and results.

USAC does not believe that the facts viewed in their full context support the conclusion that audit findings have not been used effectively by FCC and USAC to assess and modify internal controls used by USAC in administering the Low Income Program. USAC carefully reviewed and analyzed the audit findings after the conclusion of Round 1 of the FCC Office of Inspector General (OIG) USF audit program. The results of the analysis of the 60 FCC OIG USF audit program Round 1 Low Income Program beneficiary audits demonstrated that most of the non-compliant auditee findings were not the result of deficiencies in USAC's internal controls.

While the Low Income Program was not included in Rounds 2 or 3 of the FCC OIG USF audit program, USAC's Internal Audit Division (IAD) has continued to conduct targeted audits of Low Income Program beneficiaries, as it has done since 2003. Beginning in 2011, Low Income Program beneficiaries are scheduled to be included in USAC's new

² Grant Thornton found that there was no evidence of review of the quarterly High Cost and Low Income projections. USAC has rectified this by creating a checklist that shows that the projections have been reviewed.

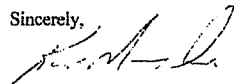
Appendix VI: Comments from the Universal
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Beneficiary Compliance Audit Program (BCAP). BCAP, developed in conjunction with the FCC, will be the next large scale audit initiative of beneficiaries receiving Low Income Program support. To complement BCAP, USAC also developed in conjunction with the Commission's Office of Managing Director a new Payment Quality Assurance (PQA) program. PQA is designed to review the accuracy of recent USF disbursements. This review identifies improper payments and is completed more expeditiously than the prior FCC OIG USF program audits. In addition, USAC regularly conducts in-depth data validations (IDVs) of ETCs receiving Low Income Program support in which staff obtains and reviews a carrier's underlying documentation to validate support claims submitted on the FCC Form 497.

Since 2006, all audit findings and follow-up actions (such as monetary recovery, admonishment, referral to the Commission, or appeal) are recorded in USAC's internal audit tracking system. USAC provides the Commission with reports on a regular basis so that the Commission is aware of audit findings and the action USAC took in response to the findings. USAC also carefully reviews findings identified in audits and the IDVs to determine common issues related to beneficiary compliance with the Commission's rules. USAC uses this information to target its education and outreach efforts. For example, USAC regularly addresses Low Income Program common audit findings in its monthly *High Cost and Low Income Newsletter*, its quarterly High Cost and Low Income regional training sessions, in webinars, and on USAC's website. In this manner, USAC attempts to make ETCs aware of the common errors and compliance issues that are identified through audits and IDVs and provides best practices and other tips to assist ETCs in avoiding these audit findings. Once the first year of BCAP audits are completed, USAC will conduct an assessment of the audit findings similar to the assessment performed on the FCC OIG USF audit program rounds and will use the data to further target its education and outreach efforts addressing beneficiary compliance.

USAC appreciates the opportunity to submit its response to GAO's draft report on the Low Income Program.

Sincerely,



Karen Majcher
Vice President, High Cost and Low Income Division

Appendix VII: GAO Contact and Staff Acknowledgments

GAO Contact

Lorelei St. James, (214)777-5719 or stjamesl@gao.gov

Staff Acknowledgments

In addition to the contact named above, Sally Moino and Robert Owens (Assistant Directors), Joanna Chan, Derrick Collins, Benjamin Gant, Natasha Guerra, Stuart Kaufman, Scott McNulty, Sara Ann Moessbauer, Josh Ormond, Amy Rosewarne, Mindi Weisenbloom, and Jessica Wintfeld made key contributions to this report.

Related GAO Products

Telecommunications: FCC Should Assess the Design of the E-Rate Program's Internal Control Structure. GAO-10-908. Washington, D.C.: September 29, 2010.

Telecommunications: Long-Term Strategic Vision Would Help Ensure Targeting of E-rate Funds to Highest-Priority Uses. GAO-09-253. Washington, D.C.: March 27, 2009.

Telecommunications: FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program. GAO-08-633. Washington, D.C.: June 13, 2008.

Telecommunications: Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program. GAO-05-515. Washington, D.C.: February 9, 2005.

Telecommunications: Federal and State Universal Service Programs and Challenges to Funding. GAO-02-187. Washington, D.C.: February 4, 2002.

Schools and Libraries Corporation: Actions Needed to Strengthen Program Integrity Operations before Committing Funds. GAO/T-RCED-98-243. Washington, D.C.: July 16, 1998.

Telecommunications: Court Challenges to FCC's Universal Service Order and Federal Support for Telecommunications for Schools and Libraries. GAO/RCED/OGC-98-172R. Washington, D.C.: May 7, 1998.

Telecommunications: FCC Lacked Authority to Create Corporations to Administer Universal Service Programs. GAO/T-RCED/OGC-98-84. Washington, D.C.: March 31, 1998.

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CASE: UM 1437
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 309

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

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
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109

NOTICE OF PROPOSED RULEMAKING

Adopted: March 3, 2011

Released: March 4, 2011

Initial Comment Date: April 21, 2011

Reply Comment Date on Sections IV, V (Subsection A), VII (Subsection B & D): May 10, 2011

Reply Comment Date on the Remaining Sections: May 25, 2011

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker issuing separate statements.

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I. INTRODUCTION

1. Lifeline and Link Up are a critical part of the Commission's universal service mission, ensuring that we implement Congress's directive to ensure the availability of basic communications services to all Americans, including low-income consumers.¹ For more than two decades, Lifeline and Link Up (together, "Lifeline/Link Up" or "the program") have helped tens of millions of Americans afford basic phone service, providing a "lifeline" for essential daily communications as well as emergencies. But recent technological, market, and regulatory changes have put increasing strain on the program. Today, we begin to comprehensively reform and modernize the Lifeline and Link Up program. Building on proposals from the National Broadband Plan,² as well as recent recommendations from the Federal-State Joint Board on Universal Service ("Joint Board") and the Government Accountability Office (GAO),³ the reforms proposed here will significantly bolster protections against waste, fraud, and abuse; control the size of the program; strengthen program administration and accountability; improve enrollment and outreach efforts; and support pilot projects that would assist the Commission in assessing strategies to increase broadband adoption, while not increasing overall program size.

2. Our effort is consistent with the Commission's ongoing commitment to re-examine and modernize all components of USF to increase accountability and efficiency, while supporting broadband deployment and adoption. The Commission has already made important strides in this area: We have modernized our E-rate program so schools and libraries can get faster Internet connections and access 21st century learning tools.⁴ We have proposed changes to our rural health care program so patients at rural clinics can benefit from broadband-enabled care such as remote consultations with specialists anywhere in the country.⁵ And we have proposed a Mobility Fund and a Connect America Fund to spur the build out of broadband networks, both mobile and fixed, in areas of the country that are uneconomic to serve.⁶

3. The Commission has not systematically re-examined Lifeline/Link Up since the passage

¹ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act); see also 47 U.S.C. § 254(b)(1), (3) (services should be available at "affordable" rates and "consumers in all regions of the nation, including low-income consumers, . . . should have access to telecommunications and information services").

² See FEDERAL COMMUNICATIONS COMMISSION, OMNIBUS BROADBAND INITIATIVE, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2010) (NATIONAL BROADBAND PLAN), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf.

³ *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Recommended Decision, 25 FCC Rcd 15598 (Jt. Bd. 2010) (2010 Recommended Decision); U.S. GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, GAO 11-11, TELECOMMUNICATIONS: IMPROVED MANAGEMENT CAN ENHANCE FCC DECISION MAKING FOR THE UNIVERSAL SERVICE FUND LOW-INCOME PROGRAM (2010) (2010 GAO REPORT).

⁴ *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762 (2010) (*E-rate Sixth Report and Order*).

⁵ *Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Notice of Proposed Rulemaking, 25 FCC Rcd 9371 (2010) (*Rural Health Care NPRM*).

⁶ See *Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, para. 487 (rel. Feb. 9, 2011) (*USF/ICC Transformation NPRM*); *Universal Service Reform, Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010).

of the 1996 Act.⁷ During this period, consumers have increasingly turned to wireless service, and Lifeline/Link Up now provides many participants discounts on wireless phone service. In the last several years, Lifeline/Link Up has grown significantly, from an inflation-adjusted \$667 million in 2000⁸ to \$1.3 billion in 2010,⁹ with new participation by firms, such as pre-paid wireless providers, that focus on serving low-income consumers. The time has come to review the program holistically, address the risks and challenges it now presents, and ensure that it is on a firm footing to efficiently and effectively achieve its statutory purpose.

4. Accordingly, last year the Commission asked the Joint Board to recommend reforms focused on eliminating waste, fraud, and abuse; controlling costs; and improving program performance and accountability.¹⁰ In response, the Joint Board recommended that the Commission: (1) encourage automatic enrollment as a best practice for all states; (2) adopt uniform minimum verification procedures and sampling criteria that would apply to all ETCs in all states; (3) allow states to utilize different and/or additional verification procedures so long as these procedures are at least as effective in detecting waste, fraud, and abuse as the uniform minimum required procedures; (4) require all ETCs in all states to submit the data results of their verification sampling to the Commission, the states, and the Universal Service Administrative Company and make the results publicly available; and (5) adopt mandatory outreach requirements for all ETCs that receive low-income support and maintain advisory guidelines for states with respect to performing low-income outreach.¹¹ We seek comment on the Joint Board's recommendations here. The Wireline Competition Bureau has also taken a number of steps to combat waste, fraud, and abuse, including requiring one provider to contact annually all of its Lifeline subscribers to ensure those customers are only receiving one benefit per household¹² and requiring another provider to remove customers from its Lifeline roster if they do not use their phones for sixty days.¹³ And late last

⁷ In 2000, the Commission established enhanced benefits for households on Tribal lands. *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12231-32, paras. 42-43 (2000) (*Tribal Order*). In 2004, the Commission made a number of discrete changes to the program, including changing eligibility criteria for qualifying households in certain states and adopting outreach guidelines for carriers, but did not examine the overall program structure. See *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004) (*2004 Lifeline and Link Up Order/FNPRM*).

⁸ See Universal Service Administrative Company, Quarterly Administrative Filings for 2001, Second Quarter (2Q), Appendices at LI04 (filed Jan. 15, 2001) (USAC 2Q 2001 FILING), available at <http://usac.org/about/governance/fcc-filings/2001/quarter2/default.aspx>. Adjustments for inflation were calculated using the Bureau of Labor Statistics' Consumer Price Index Inflation Calendar. See http://www.bls.gov/data/inflation_calculator.htm (last visited Mar. 1, 2011).

⁹ This figure is based on USAC disbursements in 2010, which may be adjusted by true-ups. See UNIVERSAL SERVICE ADMINISTRATIVE COMPANY, QUARTERLY ADMINISTRATIVE FILINGS FOR 2011, SECOND QUARTER (2Q), APPENDICES AT M04 (filed Jan. 31, 2011) (USAC 2Q 2011 FILING), available at <http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx>.

¹⁰ See *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order, 25 FCC Rcd 5079, 5079, para. 1 (2010) (*2010 Joint Board Referral Order*).

¹¹ *2010 Recommended Decision*, 25 FCC Rcd at 15599, para. 2.

¹² *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*).

¹³ *Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, District of (continued....)*

year, the GAO issued a report with recommendations for program reforms,¹⁴ which also inform our proposals here.

5. This Notice of Proposed Rulemaking (NPRM) puts forward a set of proposals to reform and modernize Lifeline/Link Up, including recommendations of the Joint Board, GAO, and the National Broadband Plan.

6. We begin by proposing specific performance goals for the program, and metrics to measure its performance in advancing the universal service objectives established by Congress. We then propose immediate steps to address waste, fraud, and abuse and to bolster mechanisms to detect and deter rule violations. In particular, we propose to strengthen our rules and improve the incentives of program participants to ensure that the program does not provide multiple, duplicative discounts to the same residential address. We also propose to eliminate reimbursement for certain services, including initiation fees that may be inflated or selectively applied only to low-income households. To reduce waste by ensuring that the program supports only communications services that consumers actually use, we propose to eliminate funding for services that go unused for more than sixty days. We seek comment on expanding oversight, including through more extensive audits. We also seek comment on a proposal to impose an annual funding cap on Lifeline/Link Up, either temporarily—until implementation of the reforms proposed in this Notice—or permanently.

7. This NPRM also addresses the unique situations facing residents on Tribal lands, who historically have had phone penetration substantially below the national average. We propose to clarify eligibility requirements for low-income Tribal households, and to permit Tribal enrollment based on participation in the Food Distribution Program on Indian Reservations.

8. This NPRM also seeks comment on a number of proposals to streamline and improve overall program administration. We ask whether the current system—in which responsibility for enrolling customers and ensuring their continued eligibility is split among carriers, state agencies, and third-party administrators—provides the right framework for prudent management of public resources and effective program administration. We propose to require all states to utilize the same baseline eligibility requirements that exist in our federal rules, which could streamline enrollment and facilitate verification of ongoing eligibility, and seek comment on allowing states to use eligibility standards that supplement the minimum federal uniform standards. Consistent with the recommendation of the Joint Board, we propose uniform national standards for the minimum verification of ongoing customer eligibility to stay enrolled in Lifeline and seek comment on whether states should be permitted to impose additional verification requirements beyond that federal standard. We also seek comment on a proposal to use an automated information management system to prevent duplicate claims for support, provide real-time electronic verification of consumer eligibility, and provide a means of ongoing verification of eligibility.

9. We also ask how the program should be modernized in light of significant marketplace changes in the last fifteen years. We seek to develop a record on what basic services the program should support, and we seek comment on whether the current framework for determining reimbursement levels remains appropriate in an environment when many service offerings are not rate regulated.

10. We also propose reforms to put Lifeline/Link Up on a more solid footing to achieve Congress's goal of addressing the 21st century challenge of helping low-income households adopt

(Continued from previous page)

Columbia, Delaware, New Hampshire; WC Docket No. 09-197, Order, DA 10-2433, at para. 24 (rel. Dec. 29, 2010) (*Virgin Mobile 2010 ETC Order*)

¹⁴ See 2010 GAO REPORT at 3.

broadband. Although access to affordable voice service remains vital to consumers,¹⁵ supporting basic voice service alone may no longer be adequate to meet the basic communications needs of low-income Americans. Broadband is becoming an essential communications platform. Broadband can help working parents stay involved in their child's education, enroll in and complete a distance-learning class to improve professional skills, and complete everyday tasks like paying bills and shopping for necessities. Broadband can help children in inner-city neighborhoods and remote rural towns access high-quality online educational content that might not otherwise be available to them. Broadband can help the unemployed search for jobs and apply for job postings, many of which are simply not available offline.

11. But many low-income Americans cannot afford a home broadband connection. Our 2010 Broadband Consumer Survey found that while 93 percent of households with incomes greater than \$75,000 have broadband at home, only 40 percent of adults with household incomes less than \$20,000 have broadband at home.¹⁶ And consumers cited cost as a primary obstacle to adoption.¹⁷ This gap in broadband adoption is significantly greater than the gap in telephone penetration rates.¹⁸ While Lifeline and Link Up have significantly narrowed the telephone subscribership gap between low-income households and the national average, a new divide has emerged for broadband.

12. Consistent with our statutory obligation to ensure access to quality, affordable communications, we seek comment on proposals to ensure Lifeline and Link Up meet the modern communications needs of low-income consumers. In particular, we propose that eligible households be permitted to use Lifeline discounts on bundled voice and broadband service offerings. We also seek comment on how best to design a broadband pilot program that will help inform the Commission's inquiry into meeting the 21st century communications needs of low-income consumers.

II. BACKGROUND

13. *History.* Universal service has been a national objective since the Communications Act of 1934, in which Congress stated its intention to "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."¹⁹ In 1996, Congress codified the Commission's and the states' commitment to advancing the availability of telecommunications services to all

¹⁵ See Letter from Mitchell F. Brecher, Greenberg Traurig, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109, Enclosure 2 (filed Dec. 7, 2010) (TracFone Dec. 7, 2010 *Ex Parte* Letter) (providing statements of Catholic Charities USA and the Hispanic Federation discussing the importance of the Lifeline program).

¹⁶ See John B. Horrigan, PhD, *Broadband Adoption and Use in America* 13, Exhibit 1 (Fed. Comm. Comm'n, OBI Working Paper Series, Working Paper No. 1, 2010) (*Broadband Adoption and Use in America*), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf.

¹⁷ *Broadband Adoption and Use in America* at 5; see also U.S. DEP'T OF COMMERCE, NAT'L TELECOMM. & INFO. ADMIN., DIGITAL NATION: EXPANDING INTERNET USAGE 5 (2011) (NTIA DIGITAL NATION), available at http://www.ntia.doc.gov/reports/2011/NTIA_Internet_Use_Report_February_2011.pdf (presenting a more up-to-date, but less detailed, analysis of the reasons why consumers have not adopted broadband at home and finding cost to be the most important factor among Internet users who do not have broadband at home, but finding "don't need/not interested" the leading reason among consumers who do not use the Internet anywhere).

¹⁸ As of March 2009, 90% of low-income households subscribed to telephone service in their home, compared to a national average of 96 percent. See *Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Table 2-2 (2010) (*2010 Universal Service Monitoring Report*), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1230/DOC-303886A4.pdf; see *infra* paras. 25-27 (trends).

¹⁹ 47 U.S.C. § 151 (creating the Federal Communications Commission).

Americans, and established principles upon which the Commission shall base policies for the preservation and advancement of universal service.²⁰ Among other things, Congress articulated national goals that services should be available at “affordable” rates and that “consumers in all regions of the nation, including low-income consumers, . . . should have access to telecommunications and information services.”²¹

14. Lifeline was originally implemented in 1985 to ensure that the increase in local rates that occurred in the aftermath of the breakup of AT&T would not put local phone service out of reach for low-income households. Support for low-income households has long been a partnership between the states and the federal government, and the universal service program historically was administered in cooperation with state regulators through the ratemaking process.²² The program originally was designed to allow companies to be made whole for foregone revenues associated with discounts provided to eligible Lifeline/Link Up consumers. The program was never intended to provide a profit for service providers.

15. The program was revised and expanded after passage of the Telecommunications Act of 1996, based on recommendations of the Joint Board.²³ After the 1996 Act, all states participated in the program, and the level of federal Lifeline/Link Up support increased. The Commission broadened participation to all Eligible Telecommunications Carriers (ETCs), making the provision of Lifeline service a condition of being an ETC.²⁴ The program is administered by the Universal Service Administrative Company (USAC) under Commission direction, although many key attributes of the program still are implemented at the state level.

16. Funding is not provided directly to the low-income consumers it benefits. Rather, ETCs provide discounts to eligible households and receive reimbursement from the Universal Service Fund for the provision of such discounts.²⁵ Today, Lifeline provides discounts of up to \$10 on monthly telephone

²⁰ 47 U.S.C. § 254(b).

²¹ See 47 U.S.C. § 254(b)(1),(3); see also 47 U.S.C. § 151.

²² In particular, the Commission waived the federal subscriber line charge – which enabled telephone companies to increase local rates – in those states which provided some level of matching support. The Commission originally established the Lifeline and Link Up programs pursuant to its general authority under sections 1, 4(i), 201, and 205 of the Communications Act of 1934. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8952-53, para. 329 (1997) (subsequent history omitted) (*Universal Service First Report and Order*).

²³ See *Universal Service First Report and Order*, 12 FCC Rcd at 8952, paras. 326-28. The Joint Board is comprised of FCC commissioners, state utility commissioners, and a consumer advocate representative. See 47 U.S.C. §§ 254(a)(1), 410(c).

²⁴ Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations. 47 U.S.C. § 214(e)(2); see *Tribal Order*, 15 FCC Rcd at 12255, para. 93. Section 214(e)(6) directs the Commission to, on request, designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.” 47 U.S.C. § 214(e)(6); see *Tribal Order*, 15 FCC Rcd at 12255, para. 92.

²⁵ Carriers file FCC Forms 497 to receive reimbursement for providing Lifeline/Link Up support to eligible subscribers. USAC, Low Income, Step 6: Submit Lifeline and Link Up Worksheet, <http://usac.org/li/telecom/step06/default.aspx> (last visited Mar. 1, 2011). ETCs may file their Forms 497 on either a monthly or quarterly basis, and are reimbursed by USAC on a monthly basis. *Id.*; USAC, Low Income, Step 7: Payment Process and Status, <http://usac.org/li/telecom/step07/default.aspx> (last visited Mar. 1, 2011).

charges,²⁶ and Link Up provides a discount of up to \$30 on the cost of commencing telephone service for qualifying low-income households.²⁷ These amounts may be supplemented by additional funding provided from state universal service funds in some states. Discounts are available for one telephone line, either fixed (typically wireline) or mobile (wireless), per eligible household.

17. *Characteristics of the Marketplace.* Much of the structure of the current program reflects its origins, even though the communications marketplace has changed dramatically in the last fifteen years. When the program was first established, mobile phones did not exist as a consumer product, only incumbent telephone companies provided local telephone service, and the program was designed for carriers whose rates were regulated. Today, consumers have various options for fixed or mobile voice services, many of which are not rate regulated. Mobile phone service is vastly more prominent than even a few years ago—more than 25 percent of adults in the general population live in households with only wireless phones, while 40 percent of 18-24 year olds have “cut the cord.”²⁸ Furthermore, consumers today often purchase packages of services that allow them to call anywhere in the country, with no additional charge for long distance calling.

18. *Bifurcated Federal and State Responsibilities.* The current federal-state structure of the program presents challenges in managing the program’s size and preventing waste, fraud, and abuse. Although Lifeline/Link Up is a federal program, its administration varies significantly among the states for such key questions as who is eligible for benefits, how eligible consumers are enrolled, what certifications of eligibility are required, and how ongoing eligibility is verified.

19. States that do not maintain their own low-income programs are known as federal default states. There currently are ten default states (eight states and two territories).²⁹ The remaining states do not follow all federal rules.

20. Discounts are available to households that qualify as “low-income,” but there is no uniform national definition for that term. Instead, when the Commission implemented the 1996 Act, it chose not to disturb the framework already in place under which states with their own programs determined qualifications for Lifeline. States must base eligibility criteria solely on income or factors directly related to income, but within that general rule states take varying approaches.³⁰ For instance, of the twenty-two states that allow participation based on income alone, some have established an income threshold that is higher than the Commission’s, which enables more low-income households to enroll,

²⁶ As discussed *infra*, Lifeline support amounts vary from state to state, depending on various factors affecting the tiers of support established in section 54.403 of the Commission’s rules. For eligible consumers living on tribal lands, the monthly discount is up to \$25. See *infra* Section IX.A.2.

²⁷ In addition, carriers may be reimbursed for their provision of Toll Limitation Service to eligible households, which enables those consumers to obtain toll blocking or toll control at no cost. 47 C.F.R. § 54.403(c).

²⁸ STEPHEN J. BLUMBERG AND JULIAN V. LUKE, CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR HEALTH STATISTICS, WIRELESS SUBSTITUTION: EARLY RELEASE OF ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY, JANUARY - JUNE 2010 2-3 (2010) (WIRELESS SUBSTITUTION SURVEY), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.pdf>.

²⁹ The current federal default states are Delaware, Hawaii, Indiana, Iowa, Louisiana, New Hampshire, North Dakota, South Dakota, American Samoa, and the Northern Mariana Islands. See Universal Service Administrative Company (USAC) website, Low Income, Frequently Asked Questions, <http://www.universalservice.org/li/tools/frequently-asked-questions/faq-lifeline-linkup-order.aspx#q1> (last visited Mar. 1, 2011).

³⁰ See 47 C.F.R. §§ 54.409 (consumer qualification for Lifeline), 54.410 (certification and verification of consumer qualification for Lifeline), 54.415 (consumer qualification for Link Up), 54.416 (certification of consumer qualification for Link Up). States must base eligibility criteria solely on income or factors directly related to income. 47 C.F.R. §§ 54.409(a), 54.415(a).

while others have established a lower threshold.³¹

21. The Commission's eligibility criteria encompass households at or below 135 percent of the federal poverty guidelines, and households that participate in various income-based public-assistance programs, such as Medicaid, Food Stamps, and Federal Public Housing Assistance.³² As shown below in Chart 1, a family of three would be eligible to receive low-income benefits under the Commission's rules if total household income were less than \$25,016 per year.

Chart 1

135% of Federal Poverty Guidelines in 48 Contiguous States & D.C. ³³	
Persons in Family or Household	Income Threshold
1	\$ 14,702
2	\$ 19,859
3	\$ 25,016
4	\$ 30,173

22. Practices also differ from state to state regarding how the program is administered. In the federal default states, and in many states that have their own low-income program, ETCs are responsible for processing applications, certifying that applicants are eligible for benefits, and verifying ongoing eligibility.³⁴ In other states, some or all of these functions may be performed by the state public utility commission, another state agency, or a third-party administrator.³⁵

23. Administrative processes to mitigate waste, fraud and abuse are also inconsistent. For

³¹ 2010 GAO REPORT at 50.

³² 47 C.F.R. § 54.409(b). If a consumer's eligibility is based on income, the consumer must provide acceptable documentation of income eligibility including, among other things, the prior year's state, federal, or tribal tax return and a current income statement from an employer. 47 C.F.R. §§ 54.410(a)(2), 54.416.

³³ Annual Update of the U.S. Dep't. of Health and Human Servs. Poverty Guidelines, 76 Fed. Reg. 3,367, 3,637-38 (Jan. 20, 2011).

³⁴ See 47 C.F.R. §§ 54.409, 54.410, 54.415, 54.416. In contrast, consumers seeking social service benefits from other federal programs such as the Low Income Home Energy Assistance Program (LIHEAP), Temporary Assistance for Needy Families (TANF), or the Supplemental Nutrition Assistance Program (SNAP) typically file an application with a state social services office, which then verifies the consumer's eligibility for the program. See, e.g., Nevada Division of Welfare, Energy Assistance Program – How to Apply, https://dwss.nv.gov/index.php?option=com_content&task=view&id=120&Itemid=286 (last visited Mar. 1, 2011); Virginia Department of Social Services, Temporary Assistance for Needy Families, <http://www.dss.virginia.gov/benefit/tanf/index.cgi> (last visited Mar. 1, 2011); Oregon Department of Human Services, SNAP Applicant and Recipient Information, <http://www.oregon.gov/DHS/assistance/foodstamps/snap-info.shtml#apply> (last visited Mar. 1, 2011).

³⁵ As of a 2006 survey conducted by the National Regulatory Research Institute, in twelve states the program was administered by the public utility commission, in twelve states the program was administered by another state agency, in eight states the program was administered by a third party, and in six states the program was administered by the telecommunications carrier. For instance, California, Oklahoma and Texas use a third party administrator to perform these functions. In Montana, the Department of Public Health and Human Services certifies and verifies eligibility, while the public utility commission sets the discount and approves tariff rates for Lifeline service. NATIONAL REGULATORY RESEARCH INSTITUTE (NRRRI), STATE UNIVERSAL SERVICE FUNDING MECHANISMS: RESULTS OF NRRRI'S 2005-2006 SURVEY 55, Table 34 (2006) (NRRRI STUDY).

instance, while twenty-two states permit enrollment based on income, not all require documentation of income. Six states permit self-certification of income under penalty of perjury. Fourteen states conduct random audits of Lifeline recipients, while ten states conduct audits of ETCs.³⁶

24. Carriers offering Lifeline services in the ten federal default states must verify annually the continued eligibility of a statistically valid random sample of their Lifeline subscribers.³⁷ According to GAO, seventeen of the other states require verification of a statistically valid sample of low-income households, and thirteen have an online verification system that uses databases from public assistance programs or income reports.³⁸ Only federal default states and a handful of other states require ETCs to submit the results of annual verifications to USAC,³⁹ providing the Commission with an incomplete picture of whether there is waste, fraud and abuse in the program.

25. *Trends.* There is significant variation among the states in the percentage of eligible households participating in the program, which may be due to state eligibility requirements, the extent of outreach, the process for enrolling customers, the number and type of ETCs in the state, support levels, and other factors.⁴⁰ In 2009, 8.6 million eligible households participated in Lifeline nationwide, which represented 33 percent of the 25.7 million low-income households at the time.⁴¹ Chart 2 below illustrates the variation in estimated participation rates among the states.

³⁶ 2010 GAO REPORT at 51, Table 6.

³⁷ 47 C.F.R. § 54.410(c)(2). In a February 2010 declaratory ruling, the Commission found that when a state commission mandates Lifeline support, but does not impose certification and verification requirements on certain carriers within the state, the affected carriers must follow federal default certification and verification requirements. *Lifeline and Link Up; Petitions for Declaratory Ruling and Requests for Waiver by US Cellular Corporation, et al.*, WC Docket No. 03-109, Order and Declaratory Ruling, 25 FCC Rcd 1641, 1645, para. 9 (2010).

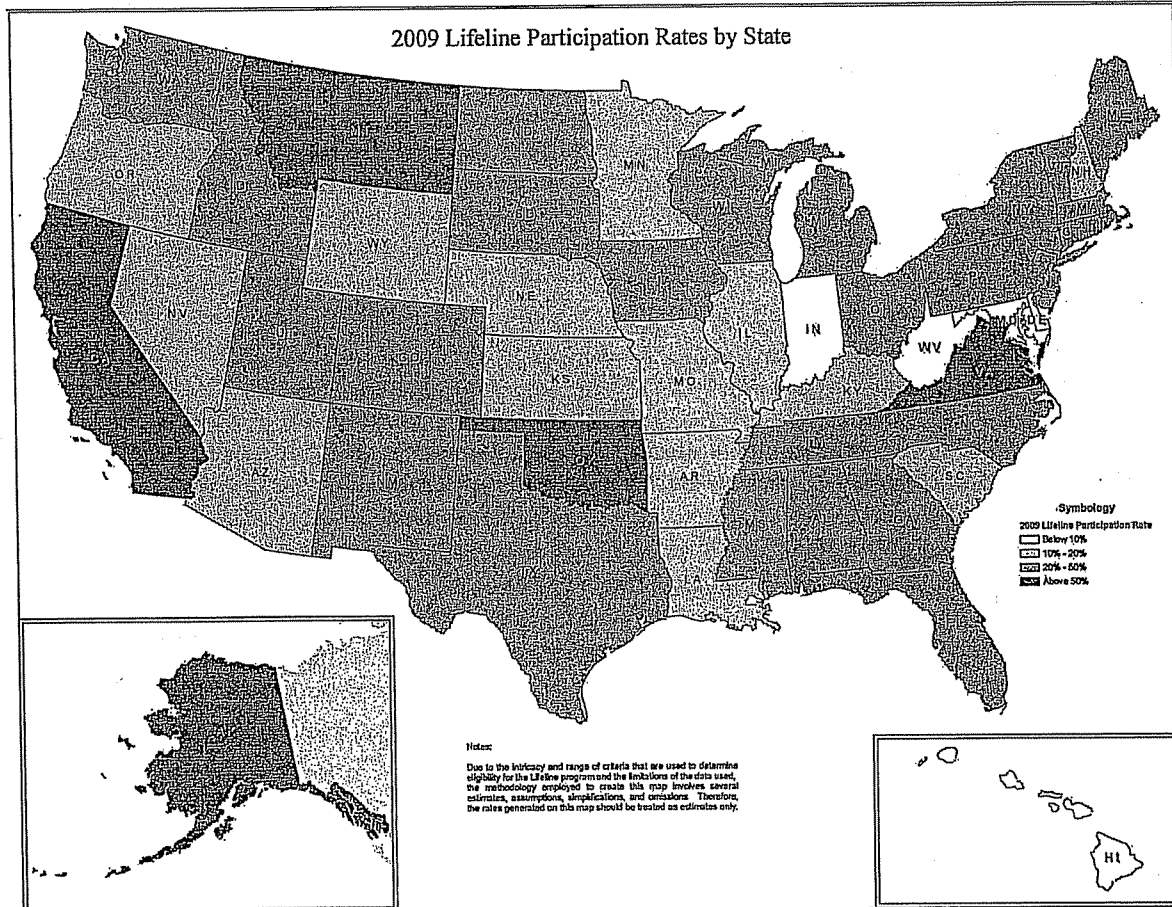
³⁸ 2010 GAO REPORT at 51.

³⁹ Non-default states that require ETCs to submit their verification results to USAC include Alabama, Arkansas, Arizona, New York, North Carolina, Pennsylvania, and West Virginia.

⁴⁰ See NATIONAL BROADBAND PLAN at 172 (citing Mark Burton et al., *Understanding Participation in Social Programs: Why Don't Households Pick up the Lifeline?*, 7 B.E. J. ECON. ANAL. & POL'Y 57 (2007), available at <http://faculty.msb.edu/jtm4/Papers/BEJEAP.2007.pdf>; Janice A. Hauge et al., *Whose Call Is It? Targeting Universal Service Programs to Low-Income Households' Telecommunications Preferences*, 33 TELECOMM. POL'Y 129, 136-38 (2009), available at http://warrington.ufl.edu/purc/purcdocs/papers/0805_Hauge_Whose_Call_Is.pdf).

⁴¹ See 2010 *Universal Service Monitoring Report* at Table 2.1; see also USAC 2009 Lifeline Participation Rate Data, <http://www.usac.org/li/about/participation-rate-information.aspx> (last visited Mar. 1, 2011).

Chart 2



26. Telephone subscribership among low-income Americans has grown significantly since 1984. Eighty percent of low-income households had telephone service in 1984, compared to a national average of 92 percent at that time. The gap has narrowed considerably since the inception of Lifeline/Link Up: As of March 2009, 90 percent of low-income households subscribed to telephone service in their home, compared to a national average of 96 percent.⁴² Moreover, states with higher dollar amounts of Lifeline support exhibited higher growth in phone subscribership from 1997 to the

⁴² 2010 *Universal Service Monitoring Report* at 2-2. The Commission's current telephone subscription penetration rate is based on the Census Bureau's Current Population Survey (CPS), which does not specifically break-out wireless, VoIP, or over-the-top voice options available to consumers. FEDERAL COMMUNICATIONS COMMISSION, WIRELINE COMPETITION BUREAU, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, TELEPHONE SUBSCRIBERSHIP IN THE UNITED STATES 1 (2010) (WCB SUBSCRIBERSHIP REPORT). The specific questions asked in the CPS are: "Does this house, apartment, or mobile home have telephone service from which you can both make and receive calls? Please include cell phones, regular phones, and any other type of telephone." And, if the answer to the first question is "no," this is followed up with, "Is there a telephone elsewhere on which people in this household can be called?" If the answer to the first question is "yes," the household is counted as having a telephone "in unit." If the answer to either the first or second question is "yes," the household is counted as having a telephone "available." *Id.* at 3.

present.⁴³

27. The amount of support has also grown significantly. The program provided \$1.3 billion in support in 2010,⁴⁴ compared to an inflation-adjusted \$221 million in support to low-income households in 1997.⁴⁵ The initial growth in Lifeline/Link Up after the implementation of the 1996 Act was due in large part to the expansion of the program to all fifty states and the increased level of support provided compared to levels prior to the 1996 Act.⁴⁶ In 2000, the Commission provided enhanced support to households on Tribal lands.⁴⁷ The program continued to grow between 2001 and 2004 due in part to increases in the federal subscriber line charge, which determines Lifeline support levels.⁴⁸ Meanwhile, over the years, wireless companies increasingly sought ETC designations, providing additional options for Lifeline service. In the last several years, a number of pre-paid wireless providers have become Lifeline-only ETCs,⁴⁹ fiercely competing for the business of low-income consumers by marketing “free”

⁴³ States that have provided a full or high level of Lifeline support for telephone service for low-income consumers experienced an average growth in telephone penetration rates for low-income households of 4.6% from March 1997 to March 2009. The states are divided into three groups: “Full or High Assistance” states providing at least \$3.00 of state support to get federal matching support of at least \$1.50 per line per month; “Intermediate Assistance” states providing between \$0.50 and \$3.00 of state support, and receiving between \$0.25 and \$1.50 federal matching support per line per month; “Basic or Low Assistance” states providing less than \$0.50 of state support, and receiving less than \$0.25 federal matching support per line per month. See *2010 Universal Service Monitoring Report* at 6-8. In contrast, during the same time period, states that provided a basic or low level of Lifeline support experienced an average increase in telephone penetration rates of only 2.9%.

⁴⁴ This figure is based on USAC estimates. See UNIVERSAL SERVICE ADMINISTRATIVE COMPANY, QUARTERLY ADMINISTRATIVE FILINGS FOR 2011, SECOND QUARTER (2Q), APPENDICES AT M04 (filed Jan. 31, 2011) (USAC 2Q 2011 FILING), available at <http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx>.

⁴⁵ See *2010 Universal Service Monitoring Report* at Chart 2-2. Adjustments for inflation were calculated using the Bureau of Labor Statistics’ Consumer Price Index Inflation Calendar. See http://www.bls.gov/data/inflation_calculator.htm (last visited Mar. 1, 2011).

⁴⁶ Support levels grew from an inflation-adjusted \$231 million in 1996 to \$621 million in 1998, the first year after implementation of section 254. See *2010 Universal Service Monitoring Report* at Chart 2-2.

⁴⁷ In 2010, \$101 million was provided to households on Tribal lands (estimated based on annualizing claims for the first 9 months of 2010). 2Q USAC filing appendix LI07 – Low Income Support Distributed by State in 2007 through 3Q2010, available at: <http://www.usac.org/about/governance/fcc-filings/2011/Q2/LI07%20%20Low%20Income%20Support%20Distributed%20by%20State%20in%202007%20and%20through%203Q2010.xls>.

⁴⁸ Support levels grew from an inflation-adjusted \$819 million in 2002 to \$927 million in 2004. See *2010 Universal Service Monitoring Report* at Chart 2-2.

⁴⁹ See, e.g., *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*); *TracFone ETC Designation Order*, 23 FCC Rcd at 6206; *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*; *Petition for Designation as an Eligible Telecommunications Carrier in the State of New York*; *Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*; *Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of North Carolina*; *Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) (*Virgin Mobile Forbearance Order*); *Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, WC Docket No. 09-197, Order, 25 FCC Rcd 8784 (2010) (*i-wireless Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; Federal-State Joint Board on Universal Service; Head Start Petition for Forbearance; Consumer Cellular Petition for Forbearance; Midwestern Telecommunications Inc. Petition for Forbearance; Line Up, LLC Petition for Forbearance*, WC Docket No. 09-197, CC Docket No. 96-45, Order, 25 FCC Rcd 10510 (2010) (*Global* (continued....))

phone service.⁵⁰ This development has expanded choices in many states for low-income consumers who may have been unlikely to subscribe to wireline voice service,⁵¹ but it has also led to significant growth in the fund. Pre-paid wireless ETCs now account for one-third of all Lifeline reimbursements.⁵²

III. ESTABLISHING PROGRAM GOALS AND MEASURING PERFORMANCE

28. As we move forward to reform and modernize the Commission's low-income support mechanisms, we seek comment on the program's performance goals, consistent with our statutory obligations, and on how best to measure the program's performance in achieving those goals.

29. In establishing performance goals, we are guided in the first instance by the Act. Section 254(b) outlines the principles upon which the Commission and the Joint Board are to base policies for the "preservation and advancement of universal service." These principles include the notion that quality services should be available at "just, reasonable and affordable" rates, and that consumers in all regions of the nation, including low-income consumers, should have access to telecommunications and information services that are reasonably comparable to services in urban areas at reasonably comparable rates.⁵³ The statute specifies that there should be specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service. Section 254(c)(1) of the Act also sets forth certain criteria that we should consider when deciding what services are eligible for universal service support, including the extent to which those services are "essential to education, public health, or public safety;" and "consistent with the public interest, convenience, and necessity."⁵⁴

30. Historically, the primary goal for the Lifeline/Link Up program has been to facilitate the availability of affordable phone service to low-income households. Over time, telephone penetration rates for low-income consumers have increased, although they still remain below the national average and a six percent gap has remained relatively stable in recent years.⁵⁵

31. In 2007, the Commission took initial steps to improve the management of the low-income

(Continued from previous page)
Forbearance Order).

⁵⁰ For example, TracFone noted that the initial SafeLink Wireless offering was 68 free minutes per month until a competitor offered 200 free minutes, to which TracFone responded with its 250-minute offer. See TracFone Dec. 7, 2010 *Ex Parte* Letter, at 5.

⁵¹ NATIONAL BROADBAND PLAN at 173. According to some, mobile phones are becoming more essential than landline phones for low-income consumers. See, e.g., Janice A. Hauge, Eric P. Chiang & Mark A. Jamison, *Whose Call is It? Targeting Universal Service Programs to Low-Income Households' Telecommunications Preferences*, 33 TELECOMM. POL'Y 129, available at <http://ssrn.com/abstract=1324281>. Pre-paid wireless offerings are often ideal for low-income or unemployed/under-employed consumers because they enable consumers to better manage expenses. See, e.g., Nexus TracFone Link Up Comments, at Attach. 1, 6 (Declaration of August Ankum and Olesya Denney, QSI Consulting).

⁵² See USAC 2Q 2011 FILING, Appendices at LI04 (Quarterly Low Income Disbursement Amounts by Company (4Q2010)), available at <http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx>.

⁵³ See 47 U.S.C. § 254(b)(1),(3).

⁵⁴ See 47 U.S.C. § 254(c)(1)(A),(D).

⁵⁵ We note, however, that the disparity in penetration rates for low-income households living on Tribal lands compared to the national average has been significantly higher. See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, GAO 06-189, TELECOMMUNICATIONS: CHALLENGES TO ASSESSING AND IMPROVING TELECOMMUNICATIONS FOR NATIVE AMERICANS ON TRIBAL LANDS 2 (2006) (2006 GAO REPORT), available at <http://www.gao.gov/new.items/d06189.pdf>.

program by adopting measures of efficiency and effectiveness.⁵⁶ At that time, however, the Commission concluded that it did not have sufficient data to determine appropriate performance goals.⁵⁷ In 2010, GAO noted that while the Commission had developed performance measures, it had not quantified its goal of increased telephone subscribership among low-income households.⁵⁸ GAO also noted the importance of developing baseline and trend data for past performance, and of identifying target performance levels for multi-year goals.

32. Clear performance goals and measures should enable the Commission to determine not just whether federal funding is used for intended purposes, but whether that funding is accomplishing the program's ultimate objectives.⁵⁹ We now propose to establish explicit performance goals in order to provide a basis for determining whether Lifeline/Link Up is successfully promoting and advancing the availability of quality services at just, reasonable, and affordable rates for low income consumers.⁶⁰

33. Consistent with the Act and GAO's recommendations, we seek comment on three specific goals and related performance measures for the Lifeline/Link Up program.

34. We propose that our first performance goal be to preserve and advance the availability of voice service for low-income Americans.⁶¹ We note the vital role that voice telephony continues to play for consumers, particularly for public safety and public health. We propose to define "availability" of voice service for purposes of Lifeline/Link Up to mean that low-income households have access to that service. We propose to adopt a goal of eliminating any difference in the availability of voice service for low-income consumers compared to non-low-income consumers.

35. We seek comment on how to measure availability of voice services for low-income

⁵⁶ In 2007, the Commission noted the goal of increasing phone service subscribership among low-income households. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-6, 02-60, 03-109, CC Docket Nos. 96-45, 97-21, Report and Order, 22 FCC Rcd 16372, 16394-95, para. 50 (2007) (*2007 Comprehensive Review Order*).

⁵⁷ *2007 Comprehensive Review Order*, 22 FCC Rcd at 163955, para. 51. The Commission noted that it would continue to evaluate the effectiveness of the performance measures adopted for the low-income program by monitoring the number of program beneficiaries (carriers), the number of low-income customers for which each carrier receives/low-income support, and the number of connections supported. The Commission committed to looking at other measurements as well, such as the time it takes USAC to process support payments and authorize disbursements, the average (mean) and median support amount awarded per carrier, and total amount of support disbursed. The Commission also required USAC to report annually to the Commission on the Lifeline annual verification results filed by Qwest, Verizon, and AT&T. *Id.* at 16395, para. 52.

⁵⁸ 2010 GAO REPORT at 24.

⁵⁹ The Government Performance and Results Act (GPRA) of 1993 established statutory requirements for federal agencies to engage in strategic planning and performance measurement. *See* Government Performance and Results Act of 1993, Public Law No. 103-62. GPRA is intended to improve efficiency and effectiveness of federal programs through the establishment of specific goals for program performance. *Id.* GPRA requires federal agencies to: (1) develop strategic plans with long-term, outcome-related goals and objectives; (2) develop annual goals linked to the long-term goals; and (3) measure progress toward the achievement of those goals in annual performance plans and report annually on their progress in program performance reports. *See* 5 U.S.C. § 306; 31 U.S.C. §§ 1115 – 1116.

⁶⁰ 47 U.S.C. §254(b)(1).

⁶¹ *See* 47 U.S.C. § 254(b); *see also* Qwest Communications Comments, WC Docket No. 05-195 (filed Nov. 14, 2008).

households. The Commission has historically measured telephone penetration, which measures voice service subscriptions, as a proxy for availability.⁶² We propose to establish as an outcome measure the difference between voice service subscribership rates for low-income households eligible for the Lifeline and Link Up program and voice service subscribership rates for the households in the next higher income level as defined in the CPS.⁶³ Based on the most recent information this would suggest a target subscribership rate for low-income households of 96.9 percent, which is the subscribership rate for households with incomes in the \$35,000-\$39,999 range.⁶⁴ We seek comment on whether we should use another measure of availability.⁶⁵ We seek comment on how we should define "low-income household" for the purpose of this performance goal in light of the differing eligibility standards that exist today from state to state. For instance, for simplicity, should we use 135% of the Federal Poverty Guidelines for a family of four as the threshold for monitoring program performance? We seek comment on whether we should instead compare subscribership rates for eligible low-income households with some other measure, such as the mean or median subscribership rate for all non-low income households.

36. We propose as our second performance goal to ensure that low-income consumers can access supported services at just, reasonable, and affordable rates.⁶⁶ We have concluded in the past that the concept of affordability has both an absolute and a relative component.⁶⁷ The absolute component takes into account whether an individual has enough money to pay for a service, and the relative component takes into account whether the cost of a service would require a consumer to spend a disproportionate amount of his or her income on that service.⁶⁸ Comparing subscribership or adoption rates among low-income households to nationwide subscribership and adoption rates may be useful in evaluating whether supported services are available to low-income households and affordable in absolute terms, but those comparisons may not be dispositive in evaluating whether low-income households can afford those services in relative terms.⁶⁹ We seek comment on whether an appropriate performance measure for this goal would be to compare the percentage of low-income household income spent on a voice service to the percentage of household income spent on voice service for the next highest income range as identified by the Bureau of Labor Statistics.

37. As our third performance goal, we propose to ensure that our universal service policies provide Lifeline/Link Up support that is sufficient but not excessive to achieve our goals.⁷⁰

⁶² See WCB SUBSCRIBERSHIP REPORT at 1-3.

⁶³ WCB SUBSCRIBERSHIP REPORT at Table 4.

⁶⁴ *Id.*

⁶⁵ See *Modernizing the FCC Form 477 Data Program, Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Review of Wireline Competition Bureau Data Practices*, WC Docket Nos. 11-10, 07-38, 08-190, 10-132, Notice of Proposed Rulemaking, FCC 11-14, paras. 32-33, 77 (rel. Feb. 8, 2011) (*Broadband Data NPRM*).

⁶⁶ See 47 U.S.C. § 254(b)(1). When the Commission initially implemented the 1996 Act, it noted that a variety of factors may impact affordability of phone service, including non-rate factors such as income levels, cost of living, population density, and the size of the customer's local calling area. *Universal Service First Report and Order*, 12 FCC Rcd at 8840-42, paras. 114-17.

⁶⁷ *Universal Service First Report and Order*, 12 FCC Rcd at 8837-38, para. 110.

⁶⁸ *Id.* at 8837-38, para. 110.

⁶⁹ *Id.* at 8839, para. 113.

⁷⁰ See 47 U.S.C. § 254(b)(5).

Administering USF requires balancing competing demands, recognizing that increased demand for funds imposes a greater contribution burden on consumers and businesses. As we have noted previously, the principles outlined in section 254 require us to ensure that quality services are affordable for all consumers but we must also be “mindful of the effects that expanded universal service mechanisms may have on consumers.”⁷¹ This goal includes ensuring that the Lifeline/Link Up program is accountable and fiscally responsible, with support disbursed efficiently and effectively only to those who need it.

38. In the *Connect America Fund Notice*, we sought comment on measuring the relative contribution burden on consumers over time, defined as total inflation-adjusted expenditures of the Fund each year, divided by the number of American households.⁷² We seek comment here on whether a similar measure would be appropriate for Lifeline/Link Up, specifically tracking whether the inflation-adjusted Lifeline/Link Up expenditure per American household is increasing or decreasing over time. In 2010, the contribution burden for Lifeline/Link Up was equivalent to approximately \$0.95 per U.S. household per month.⁷³

39. We also recognize that a key component of achieving our goal of providing support that is sufficient but not excessive is to protect the universal service fund against waste, fraud, and abuse. That benefits consumers and keeps rates more affordable for all consumers by reducing the need to collect funds for the program that are not appropriately utilized. We propose a number of rule changes in this Notice that would reduce waste, fraud, and abuse in the program. We seek comment on whether we should establish as a performance measure keeping erroneous payments in the program below a specified level, for instance by reducing levels of ineligible recipients to a specified percentage.⁷⁴

40. We also seek comment on appropriate efficiency metrics. For example, is there a way to measure increases in the percentage of low-income household subscribership relative to the amount of funding spent per household receiving Lifeline/Link Up? We seek comment on this and other measures of efficiency.

41. Although we are committed to taking all necessary steps to eliminate reduce waste, fraud, and abuse, we also recognize the potential negative impact of increased government regulatory burden, especially on small companies, of some of the measures that can assist in detecting and deterring waste, fraud and abuse. We seek comment on how best to balance these competing interests.

42. We seek comment on whether these three goals and associated performance measures are appropriate for the Lifeline/Link Up program and ask that commenters consider the reform proposals below in light of the proposed goals and performance measures outlined here. Are there additional or

⁷¹ See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd at 8845-46, para. 125; see also *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4087, para. 28 (2010) (*Tenth Circuit Remand Order*) (stating that “if the universal service fund grows too large, it will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country”).

⁷² *USF/ICC Transformation NPRM*, FCC 11-13, at para. 487.

⁷³ This figure is derived by dividing the total projected disbursements for Lifeline/Link Up for 2010 (\$1.3 billion) by the total number of households with telephone service (113.6 million). See USAC 2Q 2011 FILING, Appendices at M04, available at <http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx>; see also WCB SUBSCRIBERSHIP REPORT at Table 1. We note that contributions to USF are assessed on services provided to businesses as well as residential households; this calculation includes business contributions to the USF, so the amount per month on the phone bills of individual households is less.

⁷⁴ See generally <http://paymentaccuracy.gov/> (showing the level of improper payments made by federal agencies for various programs since 2009) (last visited Mar. 1, 2011).

alternative goals and performance measures that we should consider? To the extent that these three goals and performance measures, or any others that the Commission may adopt, may be in tension with each other, commenters should suggest how we should prioritize among competing goals.

43. Last month we sought comment on whether broadband should be a supported service. If broadband becomes a supported service, should we adopt a performance goal of advancing the availability of broadband to low-income households? Analogous to our proposal in the voice context, we seek comment on whether the Commission should establish as an outcome measure the difference between the broadband penetration rates for low-income households and non-low-income households in the next higher income level as defined in the CPS, if broadband becomes a supported service. Should we consider broadband usage in addition to broadband adoption? Unlike voice service, there is a much larger gap in penetration rates for broadband between low-income households and the general population. Should we establish a specific numerical target for narrowing that gap over a particular time period?

44. If Lifeline is modernized to support broadband, how should we measure affordability for broadband? Should we measure affordability separately for voice, broadband, and bundled offerings? We seek comment on what data we would need to monitor the program's progress if we were to adopt such a performance measure, and the least burdensome means of obtaining such data.⁷⁵

45. We invite commenters to propose additional or alternative goals and measures for the program. We also seek comment on how our performance measures should take into account the actions of other governmental agencies, such as state regulators, that may impact the Commission's ability to meet its universal service goals. We note that developing the record on these issues is consistent with GAO's suggestions.⁷⁶

IV. IMMEDIATE REFORMS TO ELIMINATE WASTE, FRAUD, AND ABUSE

46. We are committed to eliminating waste, fraud, and abuse in Lifeline/Link Up, and to identifying and penalizing program violations when they occur. We recognize that the recent expansion in program demand, as well as marketplace developments, present increased concerns about potential waste and misconduct. We propose to strengthen our rules to more rigorously ensure that the program subsidizes no more than one subscription per eligible residential address, and to improve audits of the program. We also propose rule changes to ensure that carriers are reimbursed only for the provision of Lifeline services to current customers. Finally, we propose to modify our rules to the extent that they offer unnecessary reimbursement to carriers for expenses that may be inflated or unjustified. The continued success of Lifeline/Link Up depends on targeting support to those who qualify, and ensuring that support does not extend beyond the confines of our rules.

A. Duplicate Claims

1. Background

47. To achieve the statutory goal of providing telecommunications access to low-income subscribers, while at the same time controlling the growth of the universal service fund and preventing waste, fraud, and abuse, both the Commission and the Joint Board have consistently stated that Lifeline support is limited to a single line per residence.⁷⁷ In a series of orders granting wireless ETCs forbearance

⁷⁵ See *Broadband Data NPRM*, FCC 11-14, at para. 103.

⁷⁶ See 2010 GAO REPORT at 30.

⁷⁷ *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8306 para. 4 (2004) ("Lifeline provides low-income consumers with discounts of up to \$10.00 off the monthly cost of telephone service for a single telephone line in their principal residence."); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8957 para. 341 (1997) (continued...)

from other program rules, the Commission required those ETCs to take specific steps to further compliance with this requirement. Specifically, the Commission required each wireless ETC granted forbearance to obtain certifications from Lifeline customers at the time of service activation and annually thereafter that they receive Lifeline service from that ETC only, and to establish safeguards to prevent customers from receiving multiple Lifeline subsidies from that ETC at the same address.⁷⁸

48. Recently, however, evidence has come to light suggesting that in many cases multiple ETCs are seeking reimbursement for Lifeline service provided to the same residence. For example, an audit by USAC found a significant duplication rate between certain ETCs in two states.⁷⁹ In response to that finding, on January 21, 2011, the Commission's Wireline Competition Bureau sent a letter to USAC providing direction for resolving duplicate Lifeline claims.⁸⁰ On February 22, 2011, a group of industry associations filed a petition for reconsideration and request for stay of the January 21st letter.⁸¹

49. In addition, parties have raised concerns about the scope and enforceability of the single line per residence rule. In 2009, TracFone Wireless filed a letter requesting that the Commission clarify the scope of the rule as applied to group living facilities, such as nursing homes, and the Commission sought comment on that request.⁸² In their petition for reconsideration and request for stay of the Bureau's January 21, 2011 letter to USAC, the industry associations acknowledge evidence of duplicate claims,⁸³ but contend that the Commission has never promulgated a legally binding one line per household rule.⁸⁴

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(*First Report and Order*) ("qualifying subscribers may receive assistance for a single telephone line in their principal residence"); *Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, CC Docket No. 96-45, WC Docket No. 03-109, 2010 WL 4390131, para. 34 (Joint Board 2010) ("the Joint Board agrees with commenters that suggest it is important to verify whether Lifeline recipients are receiving support in compliance with the Commission's one Lifeline-supported line per household rule"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 18 FCC Rcd 6589, 6592 para. 4 (Joint Board 2003) ("Lifeline provides low-income consumers with monthly discounts on the cost of receiving telephone service for a single telephone line in their principal residence.").

⁷⁸ See *Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3387, 3392, paras. 12, 25; *TracFone Forbearance Order*, 20 FCC Rcd at 15099, 15103, paras. 6, 18.

⁷⁹ USAC Independent Auditor's Report, Audit No. LI2009BE006 (December 3, 2010) (TracFone Audit).

⁸⁰ Letter from Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to Richard Belden, Chief Operating Officer, Universal Service Administration Company, DA 11-110 (Wireline Comp. Bur. 2011), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DA-11-110A1.pdf.

⁸¹ See *Petition for Reconsideration of the Wireline Competition Bureau's January 21, 2011 Letter to the Universal Service Administrative Company*, CC Docket No. 96-45, WC Docket No. 03-109 (Feb. 22, 2011) (*Petition for Reconsideration*); *Request for Stay of the Wireline Competition Bureau's January 21, 2011 Letter to the Universal Service Administrative Company*, CC Docket No. 96-45, WC Docket No. 03-109 (February 22, 2011) (*Request for Stay*).

⁸² See *Comment Sought on TracFone Request for Clarification of Universal Service Lifeline Program "One-Per-Household" Rule As Applied to Group Living Facilities*, WC Docket No. 03-109, Public Notice, 24 FCC Rcd 12788 (Wireline Comp. Bur. 2009) (*"One-Per-Household" Public Notice*).

⁸³ See *Request for Stay*, Declaration of Dewey E. Alexander III, Director Product Marketing, AT&T Services, at para. 3 (noting a USAC finding that in one state, more than 30,000 Lifeline subscribers were receiving support from both AT&T and another ETC) (AT&T Affidavit).

⁸⁴ See *Petition for Reconsideration* at 12-13.

50. The Lifeline/Link Up program provides support for “a single telephone line in a Lifeline subscriber’s principal residence.”⁸⁵ As previously noted, when the program rules were initially adopted, most customers had only one option for telephone service: their incumbent LEC’s wireline service. Today, most low-income households have a choice of voice service from one or more wireline providers and potentially multiple mobile wireless providers.⁸⁶ These expanded service offerings create greater risks that multiple Lifeline discounts may be provided to a single residence. Notwithstanding existing program protections, including verification and certification requirements,⁸⁷ a subscriber may apply for and obtain universal service support from more than one provider, either knowingly or unwittingly. The risk of consumers inadvertently obtaining duplicate supported services is aggravated by the fact that some Lifeline providers brand their program offerings with names that do not necessarily make clear that the offerings are supported by Lifeline, e.g., “Assurance” or “SafeLink Wireless.” As a result, consumers may not be aware that they are improperly obtaining duplicate benefits for a given residence. In addition, multiple carriers may seek reimbursement for services provided to a single subscriber, potentially unaware that a supported service is duplicative.

51. Competition among ETCs offering Lifeline-supported services in the same service territory has also exacerbated the potential for duplicative support. For example, with a pre-paid wireless service offering, the consumer pays for service in advance and does not receive a monthly bill at a fixed address. This may make it difficult to determine whether the Lifeline support for the pre-paid service is being provided to an address that is also receiving another Lifeline-subsidized service. Although the Commission has taken significant steps to mitigate this risk,⁸⁸ concerns remain about supporting multiple Lifeline services when the customer is not associated with a specific residential address.

2. Discussion

52. We propose rules that will reduce the likelihood that residents of a single address will

⁸⁵ 2004 Lifeline and Link Up Order/FNPRM, 19 FCC Rcd at 8306, para. 4; see also *Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341. A similar requirement applies to Link Up. See 47 C.F.R. § 54.411(a)(1).

⁸⁶ The Commission’s 2010 Telephone Trends Report indicates nearly 60% of households have both a landline and a wireless telephone. FEDERAL COMMUNICATIONS COMMISSION, WIRELINE COMPETITION BUREAU, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, TRENDS IN TELEPHONE SERVICE at Table 7.4 (2010) (TRENDS IN TELEPHONE SERVICE), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf. The Universal Service Monitoring Report also shows that telephone penetration rates for low-income households was 90.4% in March 2009 as compared with 88% in March 2004. 2010 *Universal Service Monitoring Report* at 2-2; *Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Table 2-2 (2005), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-262986A4.pdf. CTIA reports that wireless penetration across the United States is approximately 93% in June 2010 as compared with 11% in June 1995. CTIA Media, Industry Info, U.S. Wireless Quick Facts, available at http://www.ctia.org/media/industry_info/index.cfm/AID/10323 (last visited Mar. 1, 2011) (CTIA Quick Facts).

⁸⁷ See 47 C.F.R. §§ 54.409, 54.410. For example, currently, certification rules applicable in federal default states require consumers that receive income-based support to provide certification under penalty of perjury as to their qualification to receive support and as to the number of individuals in their household. See 47 C.F.R. § 54.410(b).

⁸⁸ The Commission has conditioned forbearance from the facilities requirement for limited ETC designation upon the carrier requiring its customers to self-certify at time of service activation and annually thereafter that they are head of household and receive Lifeline-supported service only from that carrier. See *TracFone Forbearance Order*, 20 FCC Rcd at 15095; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3381.

receive more than one subsidized service through the program.⁸⁹ We understand that there may be reasons to create limited exceptions to the one-per-residential-address rule that we propose in Section V. In this proceeding, we plan to develop a full record to craft appropriately narrow exceptions to application of this proposed rule. We intend to consult with ETCs, Tribal communities, the states, and other interested parties to devise a rule that maximizes the number of Americans with access to communications services, but also protects the fund from waste, fraud, and abuse.

53. In addition, it may be necessary for the Commission to take action on an interim basis while this proceeding is pending to address immediately the harm done to the Fund by USAC reimbursing ETCs for duplicate claims.⁹⁰ The purpose of the Lifeline program is to provide telecommunications access to low-income subscribers. Recent audit results indicate there is a risk that a significant number of Lifeline consumers may be unnecessarily and improperly receiving support for more than one service per residential address.⁹¹ To address the problem of wasteful, duplicate Lifeline support, it may soon be necessary to adopt interim rules in this area while the record develops on the issues on which we are seeking comment.

54. To ensure that Lifeline support is limited to the amount necessary to provide access to telecommunications service for low-income subscribers, we propose several approaches to address duplicative support. We propose to adopt a new section 54.408 and to adopt several amendments to sections 54.400, 54.405, and 54.410 that would facilitate the enforcement of a one-per-residential address limitation.⁹² We also propose to amend section 54.410 to require ETCs to submit to USAC unique household-identifying information for every supported household to help determine whether two or more ETCs are providing Lifeline-supported service to the same residential address.⁹³ We also propose remedies to address situations in which a consumer has received duplicate support and to deter such abuses. These proposals are a first step in deterring waste, fraud, and abuse, and we recognize there may be other appropriate actions that would take longer to implement, such as the creation of a database.

55. With these proposed rules, we seek to create incentives for carriers to avoid requesting support for duplicative services, and to impose penalties for those who continue to do so. We also seek to ensure that our rules protect subscribers' privacy and service providers' proprietary business information.

56. *Measures To Assist in Detecting Duplicate Claims.* A unique household identifier may be helpful to ensure that a residential address does not receive more than one subscription that is subsidized by the program. Specifically, we seek comment on amending section 54.410 by requiring ETCs to provide such information as customer names, addresses, social security numbers (either the full number or the last four digits), birthdates, or other unique household-identifying information to USAC on their Forms 497.⁹⁴ Would the benefits of requiring subscribers to provide such information outweigh the burdens, including possibly deterring some households from applying for benefits?

57. We seek comment on the best way to accomplish this efficiently and effectively

⁸⁹ See discussion *supra* Section IV.A (One-Per-Residence); discussion *infra* paras. 167-69 (One-per-residential address certification and verification); see also Appendix A.

⁹⁰ See discussion *supra* paras. 48-51.

⁹¹ See TracFone Audit; AT&T Affidavit.

⁹² See Appendix A, 47 C.F.R. §§ 54.400, 54.405, 54.408, 54.410.

⁹³ See Appendix A, 47 C.F.R. § 54.410; see also discussion of Tribal households at *infra* paras. 119-20.

⁹⁴ See Appendix A, 47 C.F.R. §§ 54.400, 54.405, 54.410.

consistent with privacy statutes, such as the Electronic Communications Privacy Act (ECPA)⁹⁵ and section 222 of the Communications Act.⁹⁶ For example, what information could an ETC be required to provide to USAC on its Form 497 that would ensure that a household is not receiving multiple subsidized subscriptions at the residence? What measures could USAC put in place to ensure compliance with ECPA or other applicable laws, such as requiring ETCs first to obtain subscriber consent to share information?⁹⁷ To the extent that use of customer proprietary network information (CPNI) is needed to ensure that a subscriber at a single residential address is not receiving multiple subsidized subscriptions, how do commenters suggest we ensure compliance with section 222 of the Communications Act and our implementing rules?⁹⁸ Are there other laws we need to consider and address? We also seek comment on how best to address any other concerns about privacy, security, or proprietary data issues resulting from collection of this data.⁹⁹ To streamline enforcement, we propose to require all ETCs to provide USAC with data in a consistent electronic format to facilitate USAC's detection of duplicate claims. We seek comment on the burdens this would impose on carriers participating in the program.

58. *Remedies To Address Duplicate Claims.* On January 21, 2011, the Wireline Competition Bureau provided guidance to USAC on how to resolve duplicate subsidies when more than one ETC seeks support from USAC for the same subscriber.¹⁰⁰ We propose to amend section 54.405 to codify this guidance.¹⁰¹ We propose that when a duplicate subsidy is discovered, USAC is to notify the ETCs to discontinue including the duplicate subscriber in their list of subscribers for which the ETCs are claiming Lifeline support on the FCC Form 497.¹⁰² ETCs must notify the subscriber by phone, and in writing where possible, and explain that the subscriber has 30 days to select one Lifeline provider or face de-enrollment from the program. Once the subscriber selects a single Lifeline provider for the household by signing a new certification, the chosen ETC must so notify USAC and the other ETC. The selected ETC may then seek reimbursement for the subscriber going forward, while the other ETC must de-enroll the household from its Lifeline service and may not seek reimbursement for that subscriber going forward.¹⁰³ We seek comment on this proposal.

⁹⁵ 18 U.S.C. § 2702(a)(3) (prohibiting a provider of "electronic communication service to the public" from divulging a "record or other information pertaining to a subscriber" to any governmental entity unless otherwise permitted by ECPA).

⁹⁶ 47 U.S.C. § 222.

⁹⁷ See 18 U.S.C. § 2702(c)(2) (permitting a provider to divulge a record or other information pertaining to a subscriber "with the lawful consent of the customer or subscriber"); 47 U.S.C. § 222(c)(1).

⁹⁸ 47 U.S.C. § 222(a) (imposing on every carrier a "duty to protect the confidentiality of proprietary information"), (c)(1) (restricting use or disclosure of CPNI "[e]xcept as required by law or with the approval of the customer"), (d)(2) (permitting a carrier's use and disclosure of CPNI "to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services").

⁹⁹ *Id.*; see also Sprint Joint Board Reply Comments at 5; Database discussion *infra* Section VII.D at paras. 220-21.

¹⁰⁰ Letter from Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to Richard Belden, Chief Operating Officer, Universal Service Administration Company, DA 11-110 (Wireline Comp. Bur. Jan. 21, 2011), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DA-11-110A1.pdf.

¹⁰¹ See Appendix A, 47 C.F.R. § 54.405.

¹⁰² *Id.*

¹⁰³ However, a customer may choose to re-enroll in the low-income program with the non-chosen ETC's Lifeline program at a later point in time. See 47 C.F.R. § 54.405(c), (d) (requiring 60 days notice for termination).

59. Several ETCs and trade associations have suggested an alternative duplicate resolution process to the Commission.¹⁰⁴ Under their proposal, USAC would send written notification, approved by the Commission, to all subscribers it identifies as receiving duplicate Lifeline subsidies. Such notice would require them to select one Lifeline provider from a list of providers on a form, which the subscriber would send back to USAC within 30 days.¹⁰⁵ USAC would, in turn, notify the affected ETCs about the written notification to the subscriber, and the ETCs would continue to provide Lifeline-supported service to the subscriber and seek reimbursement from the Fund until the USAC resolution process is complete.¹⁰⁶ When USAC receives a completed form from the customer with its selection, it would notify only the ETC not selected by the subscriber, and that ETC would be required to de-enroll the subscriber from its Lifeline service. Under this proposal, if USAC does not receive a completed form from the customer, USAC would be instructed to either notify both ETCs to de-enroll the subscriber, or contact the subscriber by phone to determine the subscriber's provider selection.¹⁰⁷ We seek comment on this proposal. Specifically, we seek comment on the advantages and disadvantages of USAC notifying the subscribers receiving duplicate support, as opposed to requiring ETCs to do so. Would subscribers be more or less likely to respond to an inquiry from USAC (an entity they likely are unfamiliar with) as opposed to their service provider? Would the form that USAC sends to the subscriber include every ETC serving the area or just the two ETCs involved with the request for duplicative support? To what extent would implementation of such a proposal increase administrative costs for USAC, and thereby impact the size of the Fund?

60. In the alternative, we could adopt a rule that when duplicate payments are identified, ETCs must notify the customer that they have 30 days to select a single ETC to provide Lifeline service going forward. If the customer makes a timely selection, the carrier not selected will no longer receive Lifeline support for that customer. If the customer fails to make a timely selection, the carrier that has provided continuous Lifeline service to the customer for the longest period of time would continue to receive Lifeline support and the other carrier would no longer receive support for that customer. We seek comment on this proposal.

61. We also seek comment on whether consumers receiving duplicative support should be de-enrolled in Lifeline after violating the one-per-residential-address requirement one or more times. After more than one duplicate subsidy is discovered, should the consumer listed as the subscriber, or the entire household, be de-enrolled from Lifeline? If de-enrollment is temporary, for how long should the exclusion from the program last? If permanently, on what basis? Should we deny eligibility only if there is evidence of intent to violate the "single support per residential address" provision, or if this is not the subscriber or household's first such violation? Should we impose stricter penalties on a consumer or household with multiple violations? Should we impose stricter penalties on a household receiving more than two Lifeline/Link Up subsidies? Should we first provide an opportunity for the subscriber to demonstrate that the household's dual enrollment was due to an inadvertent mistake or misunderstanding of applicable requirements? What information would need to be collected and maintained by USAC in

¹⁰⁴ Letter from United States Telecom Association, CTIA, Independent Telephone and Telecommunications Alliance, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Rural Cellular Association, AT&T, Western Telecommunications Alliance, CenturyLink, Qwest, Tracfone Wireless, Inc, Windstream Communications, Inc and Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109 (February 15, 2011) (*ETC Duplicate Letter*).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

order to ensure that certain subscribers are prohibited from participating in the program in the future? If we do not permanently or temporarily bar such subscribers, what would be an appropriate remedy? Finally, we seek comment on the potential impact on the telephone penetration rate among low-income households if this proposal were adopted.

62. We also propose a mechanism for reimbursing the Universal Service Fund in the event of duplicate claims. Our rules currently direct USAC to suspend or delay discounts, offsets, and support amounts provided to a carrier if the carrier fails to provide adequate verification of those discounts, offsets, or support amounts upon reasonable request, or "if directed by the Commission to do so."¹⁰⁸ We propose that USAC be required to seek recovery for funds from all ETCs with duplicates for the applicable period—*i.e.*, if one or more individual residing at the same address have been obtaining Lifeline support from two or more providers simultaneously, USAC would be required to seek recovery from all implicated providers for all support received during the period of duplicative service, which we propose to define as the period beginning at the time a duplicate is identified until the time at which it can be demonstrated that the consumer or household is no longer receiving duplicate benefits. This approach would create appropriately strong incentives for providers to take measures to ensure that they are not seeking excessive support. We note that in this situation support would have been provided in contravention of our "single support per residential address" rule, and thus, arguably, neither ETC should have received support during the period of duplicative support. Further, if the customer does not reply to the notice and is terminated from Lifeline by both ETCs, we propose that USAC recover all Lifeline support sought for that subscriber from both ETCs for the period of time between when the duplicate was first identified to the point at which the customer is terminated from the Lifeline program. We seek comment on this proposal. We also seek comment on, alternatively, requiring that USAC seek recovery only from the ETC that is not chosen by the consumer for the period of time over which duplicate Lifeline support was provided. We seek comment on this proposal. Further, we seek comment on whether we should enable ETCs to avoid reimbursement obligations if they demonstrate responsible efforts to avoid duplicative funding. What would those efforts be and how could they be shown? Should we establish certain minimum safeguards that could act as a safe harbor for ETCs? Should we restrict recovery only upon a showing of negligence by the ETC? Should the ETCs be permitted to seek reimbursement for any recovered funds from the subscriber? For all of the above proposals, and any other approaches suggested by commenters, we seek comment on how we should determine the period of duplicative coverage.

63. *Addresses.* Several stakeholders have noted that customers have not been permitted to obtain Lifeline or Link Up service when using a P.O. Box as their mailing address.¹⁰⁹ Rather, ETCs have required applicants seeking support to provide a unique residential address. This practice has been used to ensure that the subscriber is eligible for supported service and is not receiving more than one subsidized service. We note that the other information we propose to collect—such as name, birth date, and social security number—are unique to individuals but do not fully address concerns that different members of the same household are receiving subsidized service. In contrast, address information might be particularly suitable to prevent that situation. We seek comment on whether to codify as a rule the current practice of requiring unique residential addresses, in order to assist both ETCs and USAC in determining whether an applicant is already receiving Lifeline- or Link Up-supported services. Under such a rule, ETCs would be required to collect the residential addresses of their Lifeline and Link Up applicants before they provided discounted service. Even if a customer receives mail at a P.O. Box, the customer would have to provide a residential address to which its service would be tied.

¹⁰⁸ 47 C.F.R. § 54.707.

¹⁰⁹ See, e.g., City of Cambridge TracFone One-Per-Household Clarification Comments at 2; NNEDV TracFone One-Per-Household Clarification Reply Comments at 2; SBI TracFone One-Per-Household Clarification Comments at 4-5; POTS TracFone One-Per-Household Clarification Comments at 2.

64. We seek comment on this proposal. Are there circumstances where a residential address could not be provided? Are there privacy concerns that we should take into account when requiring customers to provide a residential address? How should we treat transient applicants who do not have a fixed address, or consumers who use rural route addresses, for whom there may be no other U.S. Postal Service address?¹¹⁰ Is there substitute information that we should require in the event that no residential address is available?

B. Pro Rata Reporting Requirements

65. *Background.* An ETC may receive Lifeline program support only for active subscribers. If a customer stops receiving service from the ETC, or if the customer no longer satisfies the eligibility criteria, the ETC is not eligible for support for that customer.¹¹¹ ETCs submit FCC Form 497 to USAC when seeking reimbursement for eligible consumers.¹¹² Form 497 includes a line for ETCs to report pro rata funds for Lifeline customers who enrolled or disconnected during the month. The instructions for Line 9 of FCC Form 497 currently state: "If claiming partial or pro-rata dollars, check the box on line 9. Enter the dollar amount (if applicable) for all partial or pro-rated subscribers."¹¹³

66. Some ETCs have asserted that these instructions are ambiguous. For example, some ETCs contend that they are permitted, but not required, to report, and seek pro rata recovery for, customers that did not subscribe for the full month. They claim that the phrasing in Form 497 ("If claiming partial or pro rata dollars") indicates that such submissions are optional, and does not require the ETC to report partial or prorated subscribers. Some ETCs, including Qwest and Verizon, argue that reporting partial-month subscription data would be overly burdensome.¹¹⁴ USAC has sought Commission guidance on this issue.¹¹⁵

67. *Discussion.* We propose to codify the rule that all ETCs must report partial or pro rata dollars when claiming reimbursement for Lifeline customers who receive service for less than a month.

¹¹⁰ See *infra* paras. 119-20 (application of the One-Per-Residence Rule in Tribal Communities).

¹¹¹ See, e.g., 47 C.F.R. § 54.405(c).

¹¹² See FCC Form 497, available at http://www.universalservice.org/_res/documents/li/pdf/Form-497-FCC-OMB-USAC-NO-calculations.pdf.

¹¹³ See FCC Form 497, available at http://www.universalservice.org/_res/documents/li/pdf/Form-497-FCC-OMB-USAC-NO-calculations.pdf.

¹¹⁴ See Qwest Communications Reply Comments, WC Docket No. 03-109 (filed April 23, 2010); see also Verizon and Verizon Wireless Comments, WC Docket No. 03-109 (filed April 9, 2010).

¹¹⁵ See Letter from Richard A. Belden, Chief Operating Officer, Universal Service Administrative Company to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 03-109 (filed Feb. 23, 2010) (*USAC Letter*). Specifically, USAC notes that audits of the low-income program have identified carriers that have not prorated requests for Lifeline support amounts for customers whose Lifeline service is initiated or terminated mid-month, and asks the Commission what recovery action, if any, USAC should take against an ETC that has failed to pro-rate support claims for partial-month Lifeline customers. See USAC Letter at 1-2; see also *Comment Sought on AT&T Request for Review of a Decision of the Universal Service Administrative Company Concerning Audit Findings Relating to the Low-Income Program*, WC Docket No. 03-109, Public Notice, 24 FCC Rcd 7679 (2009); *Comment Sought on AT&T Request for Review of a Decision of the Universal Service Administrative Company Concerning Audit Findings Relating to the Low-Income Program*, WC Docket No. 03-109, Public Notice, 23 FCC Rcd 13497 (2008); *Comment Sought on Qwest Request for Review of a Decision of the Universal Service Administrative Company Concerning Audit Findings Relating to the Low-Income Program*, WC Docket No. 03-109, Public Notice, 23 FCC Rcd 7845 (2008); *Comment Sought on AT&T Request for Review of a Decision of the Universal Service Administrative Company Concerning FCC Form 497*, WC Docket No. 03-109, Public Notice, 23 FCC Rcd 6407 (2008).

Such a rule would ensure that all ETCs comply with the requirement that support may only be claimed for active subscribers, and thereby minimize waste of Lifeline funds. Carriers routinely bill customers for partial months, and should have the capacity in their billing systems to determine whether a customer is a Lifeline subscriber for the full billing period. We seek comment on our proposal.

C. Eliminating Reimbursement for Toll Limitation Service

68. *Background.* Toll limitation services (TLS) include both toll blocking, which prevents the placement of all long distance calls for which the subscriber would be charged, and toll control, which limits to a preset amount the long-distance charges a subscriber can incur during a billing period.¹¹⁶ In the *Universal Service First Report and Order*, the Commission required ETCs to provide TLS to low-income subscribers. At the time, consumers typically purchased long distance service separately from local service, and rates for long distance were considerably higher than they are today.¹¹⁷ The Commission was concerned at the time about studies demonstrating that the primary reason subscribers lost access to telephone service was failure to pay long distance bills.¹¹⁸

69. Our rules currently allow Lifeline support to compensate ETCs for the costs of offering toll limitation service at no charge to eligible low-income consumers.¹¹⁹ ETCs' recovery of costs for providing TLS to Lifeline consumers is based on the costs that ETCs would otherwise not incur if they did not provide TLS to a given customer.¹²⁰

70. *Discussion.* We propose amending our rules to eliminate Lifeline support for the costs of providing TLS to Lifeline customers. This rule, adopted more than a decade ago, may have outlived its usefulness, given reductions in long-distance calling rates. We also note that there is great variance in TLS costs claimed by ETCs seeking reimbursement, ranging from \$0 to \$36 per Lifeline customer per month.¹²¹ Such variance may be due in part to the ambiguity of our rule governing TLS support, which states that support for TLS will be equal to the ETC's incremental costs, but does not define incremental TLS costs eligible for Lifeline reimbursement. It is unclear, however, whether providing TLS imposes *any* incremental costs on carriers, since a number of ETCs do not seek any reimbursement for TLS costs, despite providing TLS to their subscribers.¹²² Moreover, the wide variance in support sought by ETCs suggests that some may be inflating their true costs. Elimination of Lifeline support for TLS could save the program roughly \$23 million in 2011,¹²³ which, in turn, could be used to conduct pilot programs to

¹¹⁶ 47 C.F.R. § 54.400(d).

¹¹⁷ Section 271 of the Telecommunications Act of 1996 prohibited the regional Bell operating companies (RBOCs) from offering most long-distance services until the Commission found that they had opened their local market to competition. See 47 U.S.C. § 271. Between 1999 and 2003, the Commission found that each of the RBOCs had satisfied the statutory criteria and accordingly was eligible to compete in the long-distance market. See TRENDS IN TELEPHONE SERVICE at 9-3. Since then, "the distinctions between the two markets have become blurred as customers acquired the ability to select among competing carriers" for all markets. See *id.* at 9-2.

¹¹⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 8980, para. 385.

¹¹⁹ 47 C.F.R. § 54.403(c).

¹²⁰ *Id.*

¹²¹ See Letter from Karen Majcher, Vice President, Universal Service Administrative Company to Trent Harkrader, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 96-45 (filed Feb. 25, 2011).

¹²² *Id.*

¹²³ USAC 2Q 2011 FILING, at 17.

provide broadband support or otherwise utilized to provide eligible households with Lifeline discounts.¹²⁴ We seek comment on this proposal. In the alternative, should we adopt a flat amount of reimbursement for TLS, and if so, what would be an appropriate amount?

D. Customary Charges Eligible for Link Up

71. *Background.* Link Up support reimburses wireline and wireless ETCs for the revenue they forgo in reducing their customary charge for commencing telecommunications service and in deferring charges assessed for commencing service.¹²⁵ Link Up provides qualifying consumers with discounts of up to \$30.00 of the initial costs of installing a single telecommunications connection at a consumer's principal place of residence;¹²⁶ qualifying residents of Tribal lands are eligible for additional Link Up support.¹²⁷ A consumer may not receive more than one Link Up discount and may be eligible for Link Up again only upon a change of his or her principal place of residence.¹²⁸

72. Link Up disbursements vary across ETCs and are not proportionate to Lifeline reimbursements.¹²⁹ In December 2010, TracFone filed a Petition for Declaratory Ruling with the Commission seeking a ruling that ETCs are not eligible to receive Link Up reimbursements from the federal Universal Service Fund unless the ETC imposes on all of its customers a customary charge for commencing telecommunications service.¹³⁰ TracFone notes that providing Link Up subsidies for activation charges that are not routinely imposed on customers violates the purpose of the Link Up program and constitutes a waste of USF funds.¹³¹ Several commenters agree, and suggest that the only charges eligible for Link Up reimbursement should be charges imposed on all customers, rather than charges fabricated by carriers for the purpose of receiving USF.¹³²

73. *Defining Customary Charge.* We seek to eliminate any incentive or opportunity for carriers to impose charges on program participants in order to increase universal service support, as that would represent a waste of funds. We therefore propose to amend our rules to define "customary charge for commencing telecommunications service" as the ordinary initiation charge that an ETC routinely

¹²⁴ See *infra* Section IX.B.3 (Broadband Pilot).

¹²⁵ 47 C.F.R. §§ 54.411, 54.413. Most pre-paid wireless ETCs do not receive Link Up support. See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15098, para. 6 (2005).

¹²⁶ 47 C.F.R. § 54.411.

¹²⁷ See 47 C.F.R. § 54.411(a)(3).

¹²⁸ 47 C.F.R. § 54.411(c).

¹²⁹ For example, some ETCs are receiving a significant amount of Link Up while other ETCs with similar Lifeline expenditures are not. See USAC 2Q 2011 FILING, Appendices at LI04 (Quarterly Low Income Disbursement Amounts by Company (4Q2010)), available at <http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx> (showing that Link Up disbursements vary significantly by ETCs and do not correspond with the amount of Lifeline support sought by the ETCs).

¹³⁰ *TracFone Wireless Inc. Petition for Declaratory Ruling*, WC Docket No. 09-197, CC Docket No. 96-45 (filed Dec. 1, 2010) (*TracFone Link Up Petition*) (arguing that at least one ETC is imposing a customary charge only on low income consumers but not other consumers).

¹³¹ *Id.* at 8-9.

¹³² AT&T TracFone Link Up Petition Comments at 3 (agreeing that an ETC cannot impose a service activation fee on low-income consumers only); Budget PrePay, Inc and Great Call, Inc. TracFone Link Up Petition Comments at 3-4; Ohio TracFone Link Up Petition Comments at 3.

imposes on all customers within a state.¹³³ We seek comment on our proposed amendment.

74. We also propose that Link Up rules make clear that activation charges that are waived, reduced, or eliminated when activation is accompanied by purchase of additional products, services, or minutes are not customary charges eligible for universal service support. TracFone's petition indicates that it supports this proposal, but other ETCs disagree, arguing that there are legitimate reasons for an ETC to waive customary activation charges for low-income consumers, including compliance with some state requirements.¹³⁴ For instance, some commenters suggest we create an exception to the proposed rule in instances where a state commission has ordered ETCs to waive the remainder of the connection charge not reimbursed by USF.¹³⁵ We seek comment on whether, if we amend our rules as described, we should recognize exceptions for certain categories or types of fee waivers or reductions.

75. We also seek to develop a record regarding the prevalence of situations in which ETCs seek reimbursement for connecting the same customer more than one time, at the same location. For example, if a customer's service was disconnected for non-payment, do ETCs ever impose another connection charge to resume service to that address? Do they do so frequently, or as a matter of course? How would we evaluate whether such charges are reasonable? We seek comment on whether our rules should be clarified to prohibit ETCs from seeking more than one Link Up subsidy for the same customer at the same location.

76. We seek comment on whether our Link Up rules should be further amended to address concerns with waste, fraud and abuse in this area. For example, one commenter suggests that we require each ETC to certify that its activation charge is equally applicable to all customers.¹³⁶ We seek comment on whether such a certification process would effectively prevent waste, and how burdensome such a certification requirement would be. In addition, we seek comment on whether we should adopt a rule that prohibits resellers from imposing a connection charge on consumers when the underlying wholesale provider has not assessed a similar connection charge on the reseller.

77. *Link Up Support Amount.* Historically, incumbent telephone companies incurred costs in initiating service, such as the cost of visiting the housing unit to physically connect a telephone line to initiate service. In contrast, today, service initiation in virtually all instances for both wireless and wireline providers is done remotely via software, with the actual costs of installation likely to be significantly lower than several decades ago.

78. Our rules specifying Link Up amounts have not been updated to reflect the changes in the industry that have occurred relating to service initiation. We seek comment on what the typical service initiation fee is for non-Lifeline subscribers and ask whether we should reduce the current \$30 cap on Link Up support to some lower figure.

79. Our current rules specify that ETCs may receive Link Up support for the revenue they forgo in reducing their customary charge for commencing telecommunications service.¹³⁷ In order to receive Link Up support, ETCs are required to keep accurate records of the revenues they forgo in reducing their customary charge for commencing service.¹³⁸ The forgone revenues for which the ETCs

¹³³ See Appendix A at 47 C.F.R. § 54.400(e).

¹³⁴ *Id.*

¹³⁵ AT&T TracFone Link Up Petition Comments at 3; Competitive Eligible Telecommunications Carriers TracFone Link Up Petition Comments at 4.

¹³⁶ Budget PrePay, Inc. and GreatCall, Inc. TracFone Link Up Petition Comments at 4.

¹³⁷ 47 C.F.R. § 54.413.

¹³⁸ *Id.*

may receive reimbursement shall include only the difference between the carrier's customary connection and the charges actually assessed to the participating low-income consumer. Moreover, the reduction shall be half of the customary charge or \$30, whichever is less.¹³⁹ As discussed above, there is concern that some ETCs may be inflating connection charges in an effort to collect money from the Fund. In order to make Link Up reimbursement more transparent and limit potential waste of funds, we seek comment on whether we should require all ETCs seeking Link Up reimbursement to submit cost support to USAC for the revenues they forgo in reducing their customary charges. Since ETCs are required to keep accurate records of the revenues they forgo for Link Up, it may not be too burdensome to require the ETCs to submit such data to USAC. We seek comment on this proposal and whether there are alternative ways to ensure that Link Up reimbursement is based on actual revenues forgone as a result of connecting low-income consumers. We also seek comment on what underlying costs may be recovered through Link Up. For instance, should Link Up be provided for costs associated with marketing and customer acquisition, or limited to costs associated with activating a phone line or establishing a billing relationship?

E. Customer Usage of Lifeline-Supported Service

1. Background

80. ETCs receive Lifeline support on a per-subscriber basis. As discussed above, ETCs may therefore have incentives to delay notifying USAC promptly when a subscriber has discontinued service. Pre-paid wireless ETCs do not assess a monthly charge on customers and, therefore, do not bill their customers for Lifeline-supported service, even though they report such lines to USAC for reimbursement. The pre-paid wireless ETC thus could potentially continue to receive Lifeline support for a customer who abandoned the service months before.¹⁴⁰ Moreover, because the pre-paid wireless ETC does not receive monthly payment from the subscriber, it may not even be aware when the subscriber has discontinued service. Even carriers that assess monthly charges may also have disincentives to identify discontinued customers in a timely fashion.¹⁴¹ The Universal Service Fund should not be used to provide Lifeline support to ETCs to subsidize customers who are not utilizing supported communications services.

81. Some states have imposed "non-usage" procedures on pre-paid wireless ETCs.¹⁴² These

¹³⁹ 47. C.F.R. § 54.411(a)(1).

¹⁴⁰ There are many reasons why a consumer may not use his or her Lifeline-supported service. For example, some customers may have lost or abandoned their wireless devices, or may lack a readily accessible source of electricity to charge the device. In other cases, the consumer may have given or sold the phone to another person, in violation of the ETCs' terms of service.

¹⁴¹ For example, if a wireline ETC charges \$12 a month for Lifeline service, and receives \$10 from the USF and \$2 from the subscriber, if the universal service payment compensates the ETC for its costs of providing service to that subscriber, it still would be financially advantageous for the ETC to report the subscriber as active, even if the subscriber does not pay his bills.

¹⁴² See, e.g., *Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Wisconsin*, 9385-TI-100, Wisconsin Public Service Commission Final Decision, May 21, 2009 (*Wisconsin Non-Usage Order*); *Application of Nexus Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia for the Limited Purpose of Offering Wireless Lifeline and Link Up Service to Qualified Households* (Docket No. 19664), *Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in Georgia for the Limited Purpose of Offering Lifeline Service to Qualified Households* (Docket No. 26282), Georgia Public Service Commission Order Amending ETC Designations, October 20, 2010 (*Georgia Non-Usage Order*); *Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Kansas for the Limited Purpose of Offering Lifeline Service to Qualified Households*, Docket No. 09-TFWZ-945-ETC, Kansas State Corporation Commission Order Granting in Part and (continued....)

procedures are designed to minimize payments from the Universal Service Fund for enrolled Lifeline customers who are no longer using the service.¹⁴³ Both TracFone and Virgin Mobile have implemented a policy of de-enrolling Lifeline customers who have not used their wireless phones for 60 days.¹⁴⁴

2. Discussion

82. We want to ensure that Lifeline support is used for the benefit of low-income subscribers that are actually using the supported service,¹⁴⁵ and we propose to amend our rules to prevent ETCs from obtaining Lifeline support for inactive consumers. Specifically, we propose to prohibit ETCs from seeking reimbursement from the Universal Service Fund for any Lifeline customer who has failed to use his or her service for 60 consecutive days.¹⁴⁶ We seek comment on whether a customer's failure to use service for a specific period of time may reasonably demonstrate, or serve as a proxy for, service discontinuation. If so, we seek comment on whether 60 days is a reasonable period, or whether the period of inactivity should be shorter (e.g., 30 days) or longer (e.g., 90 days).

83. The proposed rule is intended to (1) prevent subsidies going to ETCs for customers that are not using the service; and (2) eliminate incentives that carriers might have to ignore or fail to report that a customer has (or appears to have) discontinued service. We do not seek to penalize subscribers for non-usage, and our proposed rule would not affect the terms or conditions of service that might exist between the ETC and the customer. Nor do we propose to require ETCs to disconnect subscribers for non-usage. We recognize that some customers may use their telephones sparingly, for emergencies or occasional communication. To protect consumers, we propose to require ETCs to alert customers if the ETC imposes any obligation to use service during a specified period of time in order to maintain subsidized service. We seek comment on how ETCs can best inform their Lifeline customers of any requirement to use the phone during a specified period of time. We also seek comment on whether our proposed rules could affect access to 911 services, and if so, how we can ensure that consumers maintain access to emergency services. We note that the Commission's rules require commercial mobile radio service (CMRS) providers subject to the Commission's 911 rules to transmit all wireless 911 calls, including those from non-service initialized phones, to Public Safety Answering Points (PSAPs).¹⁴⁷ We do not seek to modify this rule and our proposed rule would still require ETCs to transmit a Lifeline customer's wireless 911 calls, even if the ETC is no longer providing service to that customer.

84. Although the concern that ETCs may continue to count subscribers that have stopped using service appears greatest with respect to pre-paid wireless service, those concerns are not limited to pre-paid wireless service. We seek comment on whether the rules we propose in this subsection should be limited to particular types of service, or should apply to all types of service.

85. *Minimum Consumer Charges.* In the *2010 Recommended Decision*, the Joint Board

(Continued from previous page)

Denying in Part Amended Application of TracFone for Designation as ETC for Limited Purpose of Offering Lifeline Service to Qualified Households, December 14, 2010 (*Kansas Non-Usage Order*).

¹⁴³ See *Wisconsin Non-Usage Order*; *Georgia Non-Usage Order*; *Kansas Non-Usage Order*.

¹⁴⁴ *Virgin Mobile 2010 ETC Order*, DA 10-2433, at para. 24 (requiring Virgin Mobile to adopt a 60-day usage requirement); Letter from Mitchell F. Brecher, Counsel to TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Oct. 22, 2010).

¹⁴⁵ *Wisconsin Non-Usage Order* at 8; *Georgia Non-Usage Order* at 2; *Kansas Non-Usage Order* at 6.

¹⁴⁶ GAO recognized this general approach as one step toward improving the integrity of the Lifeline program. 2010 GAO REPORT at 36.

¹⁴⁷ See 47 C.F.R. § 20.18(b).

expressed concern about consumers receiving Lifeline service offerings that are offered at no cost to the subscriber.¹⁴⁸ In particular, the Joint Board raised concerns about prepaid wireless ETCs, which do not provide a monthly bill and, in some cases, provide handsets and service at no charge to consumers.¹⁴⁹ The Joint Board recommended that, to guard against waste, fraud, and abuse in the Lifeline program, the Commission consider whether a minimum monthly rate should be paid by all Lifeline subscribers, including eligible Tribal subscribers.¹⁵⁰

86. We seek comment on how best to prevent waste of universal service funds without creating unnecessary obstacles for low-income households to obtaining vital communications services. For instance, one option would be to adopt a rule requiring all ETCs in all states to collect some minimum monthly amount from participating households.¹⁵¹ If we were to adopt such a rule, what should that monthly amount be—e.g., \$1 or some other amount? Alternatively, should we consider requiring ETCs to assess a monthly fee on all Lifeline consumers equivalent to half of the customary monthly Lifeline charges or half of the maximum subsidy provided for under our rules, whichever is less? Would either of these requirements, if adopted, appropriately balance the need to guard against waste, fraud, and abuse in the Lifeline program by ensuring that low-income households have the incentive to make appropriate use of their Lifeline-supported services, with the need to avoid deterring eligible consumers from participating in the program?

87. Another option would be to require ETCs to collect some amount, such as \$10 or \$15, on a one-time basis from each Lifeline household prior to commencing Lifeline service.¹⁵² Such a rule could create appropriate incentives to ensure that Lifeline consumers genuinely want phone service and should deter situations in which Lifeline-supported service has been activated on a phone that is unused or improperly transferred to third parties.

88. Would either of these proposals create an unreasonable barrier to enrollment for households that need support but cannot afford to pay any fee? What would be the proper amount of financial contribution from low-income consumers that would appropriately balance our dual objectives of deterring waste, fraud, and abuse, while enabling those in need to obtain phone service? Should this amount vary based on the income of the qualifying low-income household?

89. We seek comment on the administrative burdens for ETCs of a requirement to collect a minimal amount, such as \$1 per month, from participating consumers. We acknowledge that in other, non-Lifeline contexts, carriers may choose not to bill their customers monthly, and it may not be cost-effective to send a bill to collect such a small amount. Should we allow ETCs to collect a monthly fee on a bi-monthly basis? If we were to adopt a program-wide monthly fee requirement, should we explicitly prohibit carriers from waiving the fee? How can we adopt an approach that is technologically neutral and can be implemented easily by ETCs with diverse business models?

90. *Application of Minimum Charge to Tribal Consumers.* The Commission's rules currently

¹⁴⁸ 2010 Recommended Decision, 25 FCC Rcd at 15626-27, para. 79.

¹⁴⁹ *Id.* See, e.g., Assurance Wireless Lifeline Program, Program Description, <http://www.assurancewireless.com/Public/MorePrograms.aspx> (last visited Mar. 1, 2011); SafeLink Wireless, Lifeline/SafeLink Fact Sheet, <https://www.safelinkwireless.com/EnrollmentPublic/benefits.aspx> (last visited Mar. 1, 2011).

¹⁵⁰ 2010 Recommended Decision, 25 FCC Rcd at 15626-27, para. 79.

¹⁵¹ See *id.*

¹⁵² We note that while a consumer may obtain Link-Up support for service installation, the fund only pays half of that charge, up to \$30. If, for instance, the carrier were to charge \$60 to initiate service, the consumer would be paying \$30 and the fund would be paying \$30.

require that the basic local residential rate for Tier 4 subscribers (*i.e.*, eligible low-income households residing on Tribal lands) may not fall below \$1 per month.¹⁵³ We have learned anecdotally that some carriers do not currently collect the \$1 from their Tribal customers. While the Commission's current rules specify what the carrier must charge the Tribal subscriber, they do not explicitly require the ETC to collect such amounts, thereby allowing ETCs to waive the \$1 per month fee.¹⁵⁴

91. If we adopt a proposal to require all ETCs to collect a minimum monthly fee from subscribers, we seek comment on whether to amend section 54.403(a)(4)(i) of the Commission's rules to specifically require a \$1 monthly payment to be provided by each participating household to their ETC. Would this proposal, if adopted, adequately balance our objective of ensuring affordable service for eligible Tribal consumers while also guarding against waste, fraud, and abuse in the Lifeline program?

92. How would any of these proposals impact subscribership for low-income households on Tribal lands, which continue to lag significantly behind subscribership for the nation as a whole?

F. De-Enrollment Procedures

93. We propose rules requiring ETCs to de-enroll their Lifeline customers or households from the program under specified circumstances. Specifically, we propose to require ETCs to de-enroll their Lifeline subscribers when: (1) the subscriber is receiving duplicate support and fails to select one ETC in the allotted time after being notified of a duplicate claim; (2) the subscriber does not use his or her Lifeline-supported service for 60 days and fails to confirm continued desire to maintain the service; or (3) the customer does not respond to the eligibility verification survey. Under our proposed rules, the subscriber would receive notice that they could be de-enrolled from the program if they did not take action by a specified date. Should that time frame be 60 days?

94. Some ETCs have argued that section 54.405(d) of our rules requires that they give customers 60-days' notice prior to terminating their Lifeline benefits.¹⁵⁵ In addition, some state laws may require similar notice provisions.¹⁵⁶ The notice provisions currently set forth in section 54.405(d) of our rules are tied to consumer eligibility for Lifeline, and are not applicable to situations involving subscriber non-responsiveness as a result of a duplicate claim or non-usage of the Lifeline service. For administrative simplicity, should the same time frame be adopted for mandatory de-enrollment in the circumstances described above, or should we adopt a shorter period, such as de-enrollment within a 30-day period? We seek comment on our proposal to require ETCs to de-enroll Lifeline subscribers involved in the three scenarios described above. Would a shorter period be consistent with specific state notification requirements that may exist in non-default states? To the extent that commenters object to our proposal for mandatory de-enrollment, they should offer specific alternative solutions to protect the fund against waste, fraud, and abuse.

G. Audits

95. *Background.* Audits are an essential tool for the Commission and USAC to ensure program integrity and to detect and deter waste, fraud, and abuse. Commission rules authorize USAC to conduct audits of carriers that receive USF monies, and to suspend payments in situations where the carrier has failed to provide adequate verification for those discounts.¹⁵⁷ The 2008 FCC-USAC

¹⁵³ 47 C.F.R. § 54.403(a)(4)(i).

¹⁵⁴ See 47 C.F.R. § 54.403(a)(4).

¹⁵⁵ *ETC Duplicate Letter* at 5.

¹⁵⁶ *Id.*

¹⁵⁷ 47 C.F.R. § 54.707.

Memorandum of Understanding requires USAC to conduct audits, including audits of Fund beneficiaries,¹⁵⁸ in accordance with generally accepted government auditing standards, as required by section 54.702(n) of our rules.¹⁵⁹ USAC's audit program consists of audits by USAC's internal audit division staff as well as audits by independent auditors under contract with USAC.¹⁶⁰

96. In a 2009 Executive Order regarding Improper Payments Information Act (IPIA) of 2002, President Obama stated that when making payments to program beneficiaries, federal government agencies "must make every effort to confirm the right recipient is receiving the right payment for the right reason at the right time."¹⁶¹ Consistent with this directive and guidance from the Office of Management and Budget, in 2010 the Commission directed USAC to implement a new initiative, Payment Quality Assurance, to improve both the IPIA assessment program and compliance audit programs of the Universal Service Fund. For the low-income program alone, the FCC directed USAC to undertake 600 IPIA assessments (Payment Quality Assurance or PQA assessments) and 48 compliance audits (Beneficiary/Contributor Audit Program or BCAP audits).¹⁶² USAC has already initiated 11 Lifeline and

¹⁵⁸ See Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company, at 7 (Sept. 9, 2008) (*2008 FCC-USAC MOU*), available at <http://www.fcc.gov/omd/usac-mou.pdf>; see also Letter from Dana R. Shaffer, Deputy Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Oct. 13, 2010), available at <http://www.fcc.gov/omd/usac-letters/2010/101310CPA-USAC.pdf>.

¹⁵⁹ 47 C.F.R. § 54.702(n).

¹⁶⁰ In addition, in the past, the Commission's OIG has conducted audits of USF program beneficiaries. See Office of Inspector General, Semiannual Report to Congress, October 1, 2009 through March 31, 2010 at 17-20. In a February 12, 2010, letter to USAC, OMD directed USAC to separate its two audit objectives into distinct programs – one focused on Improper Payments Information Act ("IPIA") assessment and the second on auditing compliance with all four USF programs. Improper Payments Information Act of 2002, Pub. L. No. 107-300, 116 Stat. 2350 (2002). In addition to providing guidance on the implementation of the IPIA assessment program and compliance audit program, the letter informed USAC that OMD would assume responsibility for oversight of USAC's implementation of both programs. Letter from Steven Van Roekel, Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Feb. 12, 2010), available at <http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf>.

¹⁶¹ President Obama further emphasized that the federal government must intensify efforts to eliminate payment error while "continuing to ensure that Federal programs serve and provide access to their intended beneficiaries." Executive Order No. 13,520, 74 Fed. Reg. 62,201 (Nov. 20, 2009) (IPIA Executive Order); Letter from Steven Van Roekel, Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Feb. 12, 2010) (*FCC IPIA Letter*), available at <http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf>; Letter from Steven Van Roekel, Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Oct. 13, 2010), available at <http://www.fcc.gov/omd/usac-letters/2010/101310CPA-USAC.pdf>.

¹⁶² *FCC IPIA Letter*; OFFICE OF MGMT. & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, OMB CIRCULAR A-123, MANAGEMENT'S RESPONSIBILITY FOR INTERNAL CONTROL (2004). The Compliance Audit program is known as Beneficiary/Contributor Compliance Audit Program. The IPIA assessment program was developed with the following objectives: (1) separately cover all four USF programs; (2) measure the accuracy of the Administrator's payments to program applicants; (3) evaluate the eligibility of program applicants who have received payments; (4) include high-level testing of information obtained from program participants; and (5) tailor scope of procedures to ensure reasonable cost while meeting IPIA requirements for sample size and precision. The compliance audit program was developed with the following objectives: (1) cover all four programs and contributors; (2) tailor audit type and scope to program risk elements, size of disbursement, audit timing and other specific factors; (3) keep costs reasonable in relation to overall program disbursements, amount disbursed to beneficiary being audited, and USF administrative costs; (4) spread audits throughout the year; and (5) retain capacity and capability for targeted and risk-based audits. See *FCC IPIA Letter* at 2, 4.

Link Up BCAP compliance audits in 2011.

97. *Discussion.* Waste, fraud, and abuse in the universal service program jeopardizes the availability of funds for supported services and imposes unjustifiable costs on carriers and ratepayers. We therefore seek to ensure there is a focused and effective system for identifying and deterring program abuse. We seek comment on ways to improve the current low-income audit program in light of growing concerns about such issues as duplicate payments and consumer ineligibility.¹⁶³ In particular, we seek comment on ways to improve the audit process to reduce improper payments and assess risks. In doing so, how can audits be targeted to better uncover the scope of errors associated with improper payments? What additional measures should be taken to mitigate the potential for program violations?¹⁶⁴ Are there additional measures or incentives, beyond those that currently exist, that we should implement to encourage people to report abuses? Should we impose additional penalties, beyond de-enrollment from the program, to discourage program abuse?

98. With the growth of newly designated ETCs in a number of states, there may be a need for a more rigorous audit program to provide assurance that new participants have established adequate internal controls to meet their obligations. For that reason, we propose that all new ETCs be audited after the first year of providing Lifeline-supported service. We seek comment on the appropriate geographic scope of the initial audit. How should such audits be designed to ensure that any problem areas are easily and thoroughly identified? Most audits examine an ETC's compliance with a wide variety of Commission requirements. Should initial audits focus on a smaller number of more important requirements, and if so, which ones? Although we seek comment on more rigorous, focused audits for new program participants, we note that we will also continue to direct USAC to conduct random audits to ensure ongoing compliance with our rules.¹⁶⁵

99. We also seek comment on how to improve the Commission's directive to USAC to establish a systematic approach to assessing internal controls and learning from audit findings.¹⁶⁶ For example, we propose that negative audit findings above a specified dollar threshold, or impacting a specific percentage of an ETC's Lifeline customers, trigger shorter intervals between audits, an expanded audit for the company at issue, and/or an additional audit the following year in the relevant study area. What should that dollar threshold be? Would the cost associated with such audits outweigh the benefits that would accrue? What follow-up should the Commission require of USAC in light of negative Lifeline/Link Up audit findings?

100. We also seek comment on appropriate Commission responses to multiple findings of non-compliance, including repeated non-compliance above the specified thresholds or multiple findings

¹⁶³ The 2010 GAO Report also expressed concern about the increased risk of waste, fraud, and abuse due to consumers simultaneously receiving Lifeline discounts on both a wireline and wireless phone. 2010 GAO REPORT at 35.

¹⁶⁴ Whistleblower Protection Act of 1989, Pub. L. No. 101-12, 103 Stat. 16 (codified at 5 U.S.C. §§ 1211-1219, 1221, 1222, 3352).

¹⁶⁵ See, e.g. 47 C.F.R. §§ 54.413(b), 54.417 (specifying recordkeeping requirements for ETCs seeking universal service Lifeline and Link Up reimbursement).

¹⁶⁶ Letter from Steven Van Roekel, Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Jan. 25, 2011), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0210/DA-11-128A1.pdf; Letter from Steven Van Roekel, Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Oct. 13, 2010), available at <http://www.fcc.gov/omd/usac-letters/2010/101310CPA-USAC.pdf>.

of non-compliance with Lifeline or Link Up requirements in a single audit.

101. The Commission's rules already direct USAC to "suspend or delay discounts, offsets and support amounts provided to a carrier if the carrier fails to provide adequate verification of discounts, offsets and support amounts provided upon reasonable request."¹⁶⁷ Should we establish a threshold (either aggregate dollar amount or percentage of support payments) that would automatically result in a freeze on future payments from the program until the carrier remediates identified issues? Under what circumstances should we consider revoking an ETC's grant of forbearance or designation as an ETC? We seek comment on other consequences that should result from negative audit findings.

102. In 2005, the Commission sought comment on subjecting all USF recipients to independent audits, but ultimately did not adopt any such requirement.¹⁶⁸ In light of increased concerns about potential waste, fraud, and abuse in the program, we again seek comment on whether to require some or all ETCs in the program to engage an independent firm to assess compliance with the program's requirements. If we were to impose such a requirement, how often should we require the review (e.g., annually, or every few years)? Should all ETCs that participate in the program be subject to the requirement, or only some? If we were to limit this requirement to only certain ETCs, what would be the appropriate criteria for imposing such a requirement? For example, we might impose the requirement on ETCs that have been found to have committed violations in the past, that receive more than a particular amount of program support, or that have experienced significant increases in program support. Audits paid for by the ETCs could create a self-policing environment that would guard against waste, fraud, and abuse, but would also impose an expense on providers. We seek comment on the advantages and disadvantages of such a system, and on the burden of such a requirement on different carriers, including small ETCs. Commenters should discuss whether a lack of negative audit findings, or alternatively, proof of resolution of all negative findings, should impact the scope or frequency of future audits. We also seek comment on what type of audit engagements should be required, if we were to adopt such a requirement. If we were to adopt such a requirement, we propose to mandate that covered ETCs provide audit reports to the FCC, USAC, and relevant states, and that the FCC and USAC should be deemed authorized users of such reports.

¹⁶⁷ 47 C.F.R. § 54.707.

¹⁶⁸ In the *2005 Program Management NPRM*, the Commission sought comment on whether recipients of funds from any or all of the support mechanisms should be subject to an independent audit requirement that would be paid for by the recipients, and, if so, whether only recipients above a set amount of USF support in a given fiscal year should be subject to this requirement. See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Lifeline and Link-Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-6, 02-60, 03-109, CC Docket Nos. 96-45, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308, 11340, para. 77 (2005) (*2005 Program Management NPRM*). The Commission also sought comment on the costs of such audits; the appropriate scope and methodology of targeted independent audits that would be performed at the recipients' expense; and whether, in the event that waste, fraud, or abuse was detected, recipients that were not required to pay for their audits should be required to reimburse USAC or the Commission for the cost of the audit, or to pay other penalties. See *id.* at 11340-41, para. 77. The Commission has previously required regulated entities to obtain an independent auditor to confirm compliance with statutory or regulatory obligations, such as our cost allocation rules and rules requiring the Bell Operating Companies to have separate affiliates upon entry into the long-distance marketplace.

V. CLARIFYING CONSUMER ELIGIBILITY RULES

A. One-Per-Residence

1. Background

103. As previously noted, the Commission has stated that eligible consumers may receive universal service low-income support for “a single line in their principal residence.”¹⁶⁹ This requirement historically was intended to target support where it was needed most and to maximize the number of Americans with access to the telephone network. In practice, this requirement has been implemented by providing one Lifeline/Link Up discount per residential address. This practice reflects the fact that in the immediate wake of the 1996 Act, the program provided support predominantly for wireline service.

104. The Commission promulgated rules under the 1996 Act that enabled competitive wireless and wireline carriers to be designated as ETCs eligible for federal universal service support.¹⁷⁰ Since that time, the marketplace has changed significantly, with a wide array of wireline and wireless services that compete with traditional incumbent LECs. As of June 2010, 93 percent of Americans subscribed to wireless phone services,¹⁷¹ and more than 25 percent of households were wireless-only.¹⁷² This increase in wireless subscriptions comes in tandem with a rise in the telephone penetration rates among low-income consumers, many of whom use wireless service.¹⁷³ In recent years, the Commission and states have designated several wireless carriers as ETCs for the purpose of providing Lifeline support.¹⁷⁴ These designations have enabled carriers to provide a variety of competitive services to low-income consumers in several states. The emergence of competing carriers and multiple services has enhanced consumer choice, and led to an increase in the average number of monthly minutes included in a Lifeline wireless plan at no charge to the consumer, from about 60 minutes in 2008 to 250 minutes today.¹⁷⁵

105. But the increasing availability of wireless Lifeline services has also made it more difficult to limit low-income support to a single line per residence. While a fixed wireline connection is often shared by all household residents, mobile service is more often used on an individual basis. It is now common for non-Lifeline consumers that can afford to do so to purchase both wireline and wireless telephone services, and each member of a residential household may have his or her own wireless phone.¹⁷⁶ With greater availability of services from wireless Lifeline providers comes increased

¹⁶⁹ 2004 Lifeline and Link Up Order, 19 FCC Rcd at 8306, para. 4; *Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341.

¹⁷⁰ See *Universal Service First Report and Order*, 12 FCC Rcd at 8969-73, paras. 364-72; *infra* section IX.C (Eligible Telecommunications Carrier Requirements).

¹⁷¹ See CTIA Quick Facts, http://www.ctia.org/media/industry_info/index.cfm/AID/10323 (last visited Mar. 1, 2011).

¹⁷² See WIRELESS SUBSTITUTION SURVEY at 1.

¹⁷³ See WCB SUBSCRIBERSHIP REPORT at 1, Chart 4, Table 4; see also *supra* note 86 and paras. 26-27 (providing background information illustrating the growth in wireless penetration, particularly in low-income households).

¹⁷⁴ See *infra* section IX.C (eligible telecommunications carrier requirements).

¹⁷⁵ Compare, e.g., *TracFone Wireless, Inc.'s Petition for Waiver of 47 C.F.R. § 54.403(a)(1)*, CC Docket No. 96-45, at 9 (filed May 4, 2009) (noting that TracFone's past offerings of between 55 and 68 free minutes per month to Lifeline customers), with Letter from F.J. Pollak, President and Chief Executive Officer, TracFone Wireless, Inc., to Hon. Julius Genachowski, Chairman, Federal Communications Commission, CC Docket No. 96-45, at 1 (filed Aug. 30, 2010) (noting that TracFone now offers 250 free minutes per month to Lifeline customers).

¹⁷⁶ See *supra* note 86 (stating that nearly 60% of households have both a wireless and a wireline telephone).

likelihood that a residence may receive Lifeline-supported telephone service from multiple sources.¹⁷⁷ And carrier practices of providing handsets to program participants at no cost and marketing Lifeline-supported services under different trade names increases the likelihood that a household and even a particular individual may sign up for multiple Lifeline services. New service features, such as calling plans that include additional handsets at no additional charge, also present challenges for the application of our existing requirements.

2. Discussion

106. In this NPRM, we propose to adopt a one-per-residential address requirement in section 54.408 of our rules.¹⁷⁸ We seek comment on whether codifying this requirement as "one-per-residence" would aid in administration of the requirement by providing a bright line that could be determined by reference to external sources. The Commission has not codified any definition of a "household" for purposes of Lifeline and Link Up, and various qualifying programs may utilize different definitions of households. We also note that in other contexts, consumers seeking benefits from state or other federal assistance programs may undergo a more robust process to qualify for benefits, such as an interview by social service agencies to determine eligibility, which may provide an additional level of assurance that the applicant in fact complies with relevant program criteria. We seek to adopt a rule that provides a bright line that is easy for USAC and ETCs to administer.

107. The one-per-residential address rule that we propose to adopt is consistent with our existing single-line per residence requirement.¹⁷⁹ But some ETCs dispute the validity of the single-line-per residence limitation,¹⁸⁰ which raises concern that they are not adhering to an existing requirement that is designed to minimize waste, fraud and abuse; target support where it is needed most; and maximize the number of Americans with access to communications services. As noted above, it may be necessary for the Commission to take action on an interim basis while this proceeding is pending to address concerns with USAC reimbursing ETCs for duplicate claims.¹⁸¹

108. We understand that there may be situations – such as residents of commercially zoned buildings, those living on Tribal lands, and group living facilities – where application of the one-per-residential address rule may produce unintended consequences that would deprive deserving low-income consumers of the support that they otherwise would be entitled to. We encourage ETCs, Tribal Communities, the states and other interested parties to provide input on a rule that maximizes the number of Americans with access to communications services, but also protects the fund from waste, fraud and abuse.

109. We seek comment on how best to achieve the purposes for which the single line per residence requirement was designed. We propose to maintain this longstanding requirement, which

¹⁷⁷ In 2008, the Commission first designated a wireless reseller as a limited ETC for the purpose of receiving Lifeline support. *See TracFone ETC Designation Order*, 23 FCC Rcd at 6206. That reseller, TracFone, offers handsets and wireless service at no cost to qualifying low-income households. Other ETCs have followed suit, and low-income households now benefit from a number of competitive offerings. *See, e.g., Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3381.

¹⁷⁸ Appendix A at 47 C.F.R. § 54.408.

¹⁷⁹ *See 2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8306, para. 4 (specifying that support for Lifeline subscribers is for "a single telephone line in their principal residence"); *see also Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341.

¹⁸⁰ *Petition for Reconsideration* (arguing that the Commission has never adopted a generally-applicable one-per-household rule).

¹⁸¹ *See discussion supra* paras. 48-51.

balances our statutory obligation to ensure that low-income consumers have access to phone service at reasonable rates and to ensure that support is sufficient, but not excessive.¹⁸² We seek comment below on how to define a “residential address” for the purposes of the Lifeline and Link Up programs. We also seek comment on how best to interpret the one-per-residential address restriction in light of current service offerings and in the context of group living arrangements or other situations that may pose unique circumstances.”¹⁸³

110. In addition, we seek input on whether a different approach would better serve the needs of low-income consumers in light of our statutory obligations, as well as the changing communications marketplace. We note that several commenters in the Joint Board proceeding suggested that the Lifeline/Link-Up program should provide support for one wireless service per eligible adult, rather than one service per residential address, with some suggesting that would be in keeping with the statutory principle that low-income consumers should have access to services that are reasonably comparable to the services enjoyed in urban areas.¹⁸⁴ This approach would take into account the fact that telephone use has changed since we first implemented the 1996 Act. Fifteen years ago, wireless service was not a mainstream consumer offering; today, 93 percent of the general population has wireless service.¹⁸⁵ At the same time, providing support to each low-income adult rather than to each residential address could significantly increase the size of the program. Would allowing support for one wireless subscription per eligible adult be inconsistent with our statutory obligation to ensure that support is sufficient, but not excessive?¹⁸⁶ We seek comment on whether the benefit that wireless service affords low-income consumers outweighs concerns associated with growth of the fund. If the funding dedicated to the program were capped, as discussed more fully below, a one-per-adult rule would likely mean that a much smaller benefit would be available to each program participant than under a one-per-residential address rule. We seek comment on these issues.

¹⁸² See 47 U.S.C. § 254(b)(1), (3), (5).

¹⁸³ In an October 2009 Public Notice, the Bureau sought comment on how to apply the one-per-household rule in the context of group living facilities, such as assisted-living centers, Tribal residences, and apartment buildings. See *One-Per-Household* Public Notice, 24 FCC Rcd at 12788; Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109 (filed July 17, 2009). We seek to refresh the record on the issues raised in the *One-Per-Household Public Notice* and seek comment on other related issues.

¹⁸⁴ See, e.g., GCI TracFone One-Per-Household Clarification Comments at 7; SBI TracFone One-Per-Household Clarification Comments at 12 (stating that “[r]eplacing the one-per-household rule with eligibility standards that permit a single household to receive Lifeline assistance for more than one telephone, subject to appropriate certification requirements, would be more in keeping with the Commission’s commitment and more reflective of the choices and opportunities that consumers expect in today’s telecommunications marketplace”); MFY Legal Services TracFone One-Per-Household Clarification Comments at 2-3 (recommending that the Commission “change the identification of households within private apartment buildings so that each qualified household, including single individuals who may live with roommates, is able to apply for and receive Safelink service”); NASUCA TracFone One-Per-Household Clarification Comments at 2 (agreeing that the Commission “should revisit its position and clarify that a person or a family may constitute a household and need telecommunications service, without having a private home or apartment”); AT&T TracFone One-Per-Household Clarification Comments at 1-2 (stating that ETCs should be permitted to provide Lifeline services to any qualifying individual residing in a group living facility).

¹⁸⁵ See CTIA Quick Facts, http://www.ctia.org/media/industry_info/index.cfm/AID/10323 (last visited Mar. 1, 2011).

¹⁸⁶ See 47 U.S.C. § 254(b)(5).

a. Defining "Residence"

111. We propose a rule in section 54.408 to limit program support to a single subscription per U.S. Postal Service address, and seek comment on whether this approach would promote affordable access to telephone service consistent with the goals of section 254.¹⁸⁷ Under this proposal, where unrelated individuals and/or families share a U.S. Postal Service address, such individuals and/or families would be limited to one subscription for that "residence."¹⁸⁸ We seek comment on whether this approach best serves program goals. The program was established to ensure that all consumers, even those of limited means, would have a "lifeline"—a basic telephone service to connect them to the rest of society. Supporting one service at each residential address may effectively fulfill this goal, and may also help prevent waste and abuse of program resources. Moreover, this approach may be more administratively feasible than other options for defining who is eligible for support, such as family-based definitions that require an accurate determination of whether people living together are independent or related.

112. Pursuant to this proposal, upon receiving an application for Lifeline support, an ETC could use the U.S. Postal Service residential address as a proxy to determine whether the ETC is already providing Lifeline support to that address. If so, the ETC would reject the application for support. Additionally, as discussed *infra*, we propose to require that Lifeline subscribers initially certify when applying for service, and thereafter verify annually, that they are receiving support for only one line per residential address (defined for these purposes as all of the persons who reside at a unique U.S. Postal Service address).¹⁸⁹

113. We recognize that there may be some residences for which there is no unique U.S. Postal Service address. For example, we understand that there are apartment buildings where the residents live separately, but their units lack distinct identifiers and mail is delivered to and distributed by a single point of contact such as the building manager. Similarly, when multiple persons or families share a residence, unique addresses may not be available. Customers in rural areas may share a rural route address. We seek comment on what actions could be taken in such situations to ensure that Lifeline and Link Up benefits are available to eligible consumers. Is there other information that a carrier could collect to verify that the residence does not already receive support from the program? Alternatively, if one subsidized service were available for such locations, would that satisfy the congressional goal of ensuring affordable access to telephone service?

114. As noted above, some customers rely on a P.O. Box rather than a U.S. Postal Service residential address. How should we determine eligibility in those situations? Should we require ETCs to collect additional verifying information, and if so, what?

115. Our rules also limit support to the subscriber's principal residence.¹⁹⁰ We seek comment on how to ensure that a subscriber does not obtain support at more than one location. We propose that each subscriber provide unique identifying information (as discussed in Section IV) to prevent the same subscriber from receiving support at multiple locations. We seek comment on this proposal. We also seek comment on whether we should require subscribers to certify that the address provided is their

¹⁸⁷ See Appendix A, 47 C.F.R. § 54.408(a)(1).

¹⁸⁸ See *id.* To the extent that the Lifeline/Link Up provider could demonstrate that an applicant possesses a distinct unit number, as would be the case for individuals residing in an apartment building, for example, this would be sufficient to establish a unique address.

¹⁸⁹ See *infra* paras. 167-69 (One-per-residential address certification and verification).

¹⁹⁰ See Appendix A, 47 C.F.R. § 54.408(a)(2).

principal residence, in order to receive Lifeline and Link Up support.¹⁹¹

116. We seek comment on whether our U.S. Postal Service address-based proposal should be modified to accommodate different types of living situations, and if so, how. For example, should the proposed definition of "residential address" be modified to accommodate certain living arrangements? Should there be an exception for unrelated adult roommates or multiple families sharing a residence? Should we allow more than one discount per residence in the case of multi-generational families, for example if the low-income family includes an eligible adult child or elderly relative? Commenters that propose a different definition of "residence" from the one we propose above, or exceptions to that definition, should explain how the Commission could ensure, in administratively feasible ways, that support is being provided appropriately, however that term is defined.

b. Application of the One-Per-Residence Rule to Commercially Zoned Buildings

117. Although the Commission's rules provide low income support for residential customers, the Commission has learned of instances where otherwise eligible applicants have been denied Lifeline and Link Up service because they live in facilities that are zoned for commercial, rather than residential use. This may occur, for example, when individuals reside in single-room occupancy buildings, lodging houses, rooming houses, shelters, and other group quarters.¹⁹² This appears to be a particular problem in urban areas.¹⁹³

118. We seek comment on how we can ensure that consumers have access to low-income support even if they reside in a commercially-zoned location. We note that commercial residences tend to be group living facilities rather than individual residences. If the Commission adopted special rules for group living facilities, would those rules resolve concerns about providing support to eligible subscribers who live in commercially-zoned areas? Are there additional steps we should take to verify that Lifeline and Link Up subsidies are not being provided to commercial entities?

c. Application of the One-Per-Residence Rule in Tribal Communities

119. On some Tribal lands, several households may occupy a single housing unit.¹⁹⁴ We seek comment on whether we should adopt a special definition of "residence" on Tribal lands that will ensure that Lifeline and Link Up service is provided to eligible consumers. For example, to the extent there are multi-generational families sharing a residence in Tribal communities, should there be an exception to our proposed one-per-residence rule? How can the Commission ensure that the program does not provide duplicative support to households on Tribal lands? In order to craft a rule that appropriately takes into account conditions on Tribal lands, we seek additional information about housing arrangements in Tribal areas.

120. Some commenters responding to the "*One-Per-Household*" Public Notice state that residents of Tribal Lands frequently lack unique U.S. Postal Service addresses, and instead receive mail at

¹⁹¹ See *id.*

¹⁹² See, e.g., Manhattan Legal Services TracFone One-Per-Household Clarification Comments at 2; NCLC TracFone One-Per-Household Clarification Comments at 4-5; NNEDV TracFone One-Per-Household Clarification Reply Comments at 2; MDTC TracFone One-Per-Household Clarification Reply Comments at 3 n.9.

¹⁹³ See Manhattan Legal Services TracFone One-Per-Household Clarification Comments at 2; NCLC TracFone One-Per-Household Clarification Comments at 4-5.

¹⁹⁴ See, e.g., NCLC TracFone One-Per-Household Clarification Reply Comments at 6; SBI TracFone One-Per-Household Clarification Comments at 6, 10.

communal P.O. boxes.¹⁹⁵ We thus seek comment on how to apply the “one-per-residence” rule to Tribal lands if we were to adopt the proposal generally to define residential address on the basis of a U.S. Postal Service address. Given the very low telephone penetration rate on Tribal lands, we do not want our rules to impose barriers to consumers or households living on Tribal lands that are eligible for, and desperately need, Lifeline discounts. At the same time, we must act as responsible stewards of the Fund. If the Commission were to exempt Tribal members from providing a unique U.S. Postal Service address, what measures should the Commission adopt to guard against the possibility of waste, fraud, and abuse?

d. Ensuring Access for Residents of Group Living Quarters

121. Some commenters have suggested that the Commission should consider how better to ensure that the program is effectively serving low-income residents of group living quarters, such as residential facilities for seniors or for victims of domestic violence.¹⁹⁶ We seek comment on how eligibility should be defined for residents of group living quarters, including the effects on eligibility when a resident moves out of a group living facility, and what measures are necessary to prevent waste, fraud, and abuse.¹⁹⁷

122. Under the proposed rule, related or unrelated, living together at a single postal address, residents of a group living facility—which could be dozens or even hundreds of individuals—would be eligible for only a single Lifeline supported service. Is this approach adequate to ensure availability of basic communications services to all Americans, including low-income consumers, as section 254 requires? If not, how should the program support service to low-income consumers residing in group living facilities? Should the program provide support to each separate and unrelated individual or family (e.g., a married couple living together at a nursing home) living in group facilities?

123. Alternatively, should we create an exception to our proposed one-per-residence rule for eligible consumers in a group living facility to obtain Lifeline or Link Up service?¹⁹⁸ Is there an

¹⁹⁵ See SBI TracFone One-Per-Household Clarification Comments at 4-5.

¹⁹⁶ See, e.g., Florida PSC & OPC TracFone One-Per-Household Clarification Comments at 3; NCLC TracFone One-Per-Household Clarification Comments at 5; HAP TracFone One-Per-Household Clarification Comments at 2; Manhattan Legal Services TracFone One-Per-Household Clarification Comments at 1-2; MDTC TracFone One-Per-Household Clarification Reply Comments at 4; NASUCA TracFone One-Per-Household Clarification Comments at 2; SBI TracFone One-Per-Household Clarification Comments at 2; TracFone TracFone One-Per-Household Clarification Reply Comments at 7; NNEDV TracFone One-Per-Household Clarification Reply Comments at 2; GCI TracFone One-Per-Household Clarification Comments at 6; AT&T TracFone One-Per-Household Clarification Comments at 1-2; MFY Legal Services TracFone One-Per-Household Clarification Comments at 2. The U.S. Census Bureau defines “group living quarters” as:

[a] place where people live or stay, in a group living arrangement, that is owned or managed by an entity or organization providing housing and/or services for the residents. This is not a typical household-type living arrangement. These services may include custodial or medical care as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other.

2010 Decennial Census Local Update of Census Addressees (LUCA) Program, Frequently Asked Questions February 2008, www.census.gov/geo/www/luca2010/luca_faq.htm#WhatistheCensusBureaudefinitionofagroupquarters (last visited Mar. 2, 2011). Some examples of group quarters include: nursing homes; hospitals with long-term care facilities; dormitories for workers; religious group quarters; and shelters. *Id.*

¹⁹⁷ 2010 Recommended Decision, 25 FCC Rcd at 15602, para. 12.

¹⁹⁸ See, e.g., AT&T TracFone One-Per-Household Clarification Comments at 1-2; Florida PSC & OPC TracFone One-Per-Household Clarification Comments at 3-4; GCI TracFone One-Per-Household Clarification Comments at 6; Manhattan Legal Services TracFone One-Per-Household Clarification Comments at 1-2; MDTC TracFone One-Per-Household Clarification Comments at 2; MFY Legal Services TracFone One-Per-Household Clarification Comments at 2. The U.S. Census Bureau defines “group living quarters” as:
(continued....)

administratively feasible way to approach this challenge that also provides protections against waste, fraud, and abuse? For instance, should we require the administrator of group living facilities to certify to ETCs and/or USAC the number of separate and unrelated individuals or families in the facility? In that situation, the facility would be responsible for applying for Lifeline/Link Up support on behalf of its residents.¹⁹⁹ Under this approach, how could our rules ensure verification of the income eligibility of the subscribers for which a group facility is seeking support? Should the facility be required to provide the ETC documentation of the residents' eligibility?

124. Should we require that consumers residing in group facilities provide certification from facility staff that corroborates applicants' residence in a group living facility, as well as information about the number and types of persons served by the facility? Should the Commission set different eligibility criteria for permanent and temporary residents of group living facilities?²⁰⁰

125. We seek comment on the feasibility of making Lifeline funding available to agencies or non-profit organizations that are able to provide communications services to residents of group living facilities.²⁰¹ As the Joint Board acknowledged, such institutions do not qualify as ETCs eligible for support, and we therefore seek comment on the application of section 254(e) of the Act, which limits the recipients of universal service support to ETCs.²⁰² If funding were made available to such organizations, what if any additional measures would be needed to guard against waste, fraud, and abuse? For example, in a situation where the applicant lacks a residential or mailing address, how would the ETC verify the customer's initial and ongoing eligibility for Lifeline services?

B. Tribal Lifeline Eligibility

126. It is well established that federally recognized Tribes have sovereignty, and exercise jurisdiction over their members and territory with the obligation to "maintain peace and good order,

(Continued from previous page)

Per-Household Clarification Reply Comments at 4; NASUCA TracFone One-Per-Household Clarification Comments at 2; NCLC TracFone One-Per-Household Clarification Comments at 8; NNEDV TracFone One-Per-Household Clarification Reply Comments at 2; TracFone TracFone One-Per-Household Clarification Reply Comments at 7; SBI TracFone One-Per-Household Clarification Comments at 12.

¹⁹⁹ See, e.g., City of Cambridge – CoC TracFone One-Per-Household Clarification Comments at 3 (proposing that a group living quarters would apply for a "waiver" of the one-per-household policy by filing a form with ETCs establishing its group facility status. Thereafter, "residents at the named facility would be entitled to receiving Lifeline telephone service, as if they had their own private residence."); cf. Ohio Commission TracFone One-Per-Household Clarification Comments at 10 (proposing that the FCC consider providing each group living facility with a phone with a specified number of minutes per month to be allocated between the residents of the facility).

²⁰⁰ See, e.g., Benton Joint Board Comments at 6; Consumer Advisory Committee Joint Board Reply Comments at 9-10; Ohio Commission Joint Board Comments at 7; Smith Bagley Joint Board Comments at 4; Smith Bagley Joint Board Reply Comments at 8; TracFone Joint Board Comments at 4-5. Certain commenters acknowledged the unique challenges faced by residents of group housing. Benton, the Consumer Advisory Committee, and Consumer Groups assert that low-income support should be extended to residents of group housing, though not necessarily automatically. Benton Joint Board Comments at 6; Consumer Advisory Committee Joint Board Reply Comments at 9; Consumer Groups Joint Board Comments at 12-14; Consumer Groups Joint Board Reply Comments at 5; FPSC Joint Board Comments at 4.

²⁰¹ 2010 *Recommended Decision* at 15602, para. 12. Pursuant to section 254(e) of the Act, only eligible telecommunications carriers may receive universal service funding. 47 U.S.C. § 254(e). Thus, to the extent that we adopt a proposal permitting non-profit group living facilities to apply for Lifeline and Link Up discounts on their residents' behalf, Lifeline and Link Up support could be distributed to the eligible telecommunications carrier which, in turn, would provide billing discounts to the group living facility.

²⁰² See 47 U.S.C. § 254(e).

improve their condition, establish school systems, and aid their people” within their jurisdictions.²⁰³ In 2000, the Commission formally recognized Tribal sovereignty in its *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*.²⁰⁴ The federal government also has a trust relationship with Indian Tribes, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions.²⁰⁵ Consistent with this relationship, the Commission, in its June 2000 *Tribal Order*, adopted measures to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native Tribal communities.²⁰⁶ Accordingly, in the *Tribal Order*, the Commission modified its rules to create enhanced Lifeline and Link Up programs intended to provide access to telecommunications services for low-income consumers living on Tribal lands.²⁰⁷

127. *Income-based eligibility.* The Commission’s current rules regarding Tribal eligibility for Lifeline support have been subject to differing interpretations. Specifically, ETCs, USAC, and Tribal groups have indicated there has been inconsistency and confusion among federal default and non-default states regarding whether residents of Tribal lands may qualify for participation in the program based on income, even though there is language in Commission orders so indicating.²⁰⁸

128. We propose to revise sections 54.409(a) and 54.409(c) to more clearly reflect that residents of Tribal lands are eligible for Lifeline and Link Up support based on: (1) income; (2) participation in any Tribal-specific federal assistance program identified in our rules; or (3) any other program identified in subsection 54.409(b) of our Lifeline and Link Up rules.²⁰⁹ We seek comment on

²⁰³ *Policies to Promote Rural Radio Service and to Streamline Allotments and Assignment Procedures*, MB Docket No. 09-52, First Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 1583, 1585 (2010) (*Rural Radio Order*) (internal citations omitted).

²⁰⁴ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080 (2000) (*Tribal Policy Statement*).

²⁰⁵ See, e.g., *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942) (citing *Cherokee Nation v. State of Georgia*, 30 U.S. 1 (1831)); *United States v. Kagama*, 118 U.S. 375 (1886); *Choctaw Nation v. United States*, 119 U.S. 1 (1886); *United States v. Pelican*, 232 U.S. 442 (1914); *United States v. Creek Nation*, 295 U.S. 103 (1935); *Tulee v. State of Washington*, 316 U.S. 681 (1942); The Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450 (2006).

²⁰⁶ See generally *Tribal Order*.

²⁰⁷ See *Tribal Order*, 15 FCC Rcd at 12219-12252, paras. 20-85. Enhanced Lifeline support, otherwise known as Tier 4 support, provides up to an additional \$25 per month in federal Lifeline support to eligible low-income consumers living on Tribal lands, as long as that amount does not bring the basic local residential telephone rate below one dollar. See 47 C.F.R. § 54.403(a)(4). Enhanced Link Up support provides up to an additional \$70 in federal Link Up support to eligible low-income consumers living on Tribal lands. See 47 C.F.R. § 54.411(a)(3).

²⁰⁸ See Letter from Melissa E. Newman, Vice President Federal Regulatory, Qwest Communications International, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 03-109 (filed Dec. 16, 2010) (Qwest Dec. 16, 2010 *Ex Parte* Letter); Letter from Darrell Gerlaugh, Board of Directors, Gila River Telecommunications, Inc., to Geoffrey Blackwell, Chief, Office of Native Affairs and Policy, Federal Communications Commission, WC Docket No. 03-109 (filed Feb. 24, 2011) (Gila River Feb. 24, 2011 *Ex Parte* Letter); Letter from Susie Allen, Member, Colville Business Council, The Confederated Tribes of the Colville Reservation, to Rebekah Bina, Attorney Advisor, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 03-109 (filed Feb. 25, 2011) (Colville Feb. 25, 2011 *Ex Parte* Letter). See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rule Making, CC Docket No. 96-45, 18 FCC Rcd 10958, 10970-71, paras. 23-24 (2003) (*Second Tribal Order*).

²⁰⁹ See Appendix A, 47 C.F.R. § 54.409.

this proposal.

129. *Program-based eligibility.* Under section 54.409 of the Commission's rules, participation in the federal Food Stamp Program (or the Supplemental Nutrition Assistance Program (SNAP) as it is currently named), qualifies residents of Tribal lands for Lifeline/Link Up support.²¹⁰ The Lifeline/Link Up rules do not, however, grant eligibility based on participation in the Food Distribution Program on Indian Reservations (FDPIR), a federal program that provides food to low-income households living on Indian reservations, and to Native American families residing in designated areas near reservations and in the State of Oklahoma.²¹¹ As discussed more fully below, eligible residents of Tribal lands for the purposes of the Lifeline/Link Up program are qualifying low-income households on a reservation, where "reservation" is defined as any federally-recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, and Alaska Native regions.²¹²

130. The service and eligibility criteria for FDPIR are similar to those of SNAP, and are based on income levels that must be recertified on a periodic basis.²¹³ A household may not participate in both FDPIR and SNAP, and any given reservation could have certain households participating in FDPIR and others participating in SNAP.²¹⁴ Approximately 276 tribes currently receive benefits under FDPIR,²¹⁵ suggesting that there are households on Tribal lands that are not be served by the Lifeline/Link Up program simply because they have chosen to receive FDPIR benefits instead of SNAP benefits. Further, we understand that Tribal elders, a particularly vulnerable population, often seek FDPIR benefits rather than SNAP benefits.²¹⁶ As such, allowing residents on Tribal lands to qualify for low-income support based on participation in FDPIR is consistent with the purpose of the current tribal eligibility criteria, furthers the goal of providing access to telecommunications services by low-income households on Tribal lands, and the goal of targeting those in the greatest need.

131. Accordingly, we propose to amend section 54.409(c) of the Commission's rules to allow program eligibility for residents of Tribal lands participating in FDPIR.²¹⁷ We seek comment on this proposal. We also seek comment on whether there are any other federally- or Tribally-administered, income-based assistance programs, such as those focused on the elderly, which should be included in our

²¹⁰ See 47 C.F.R. § 54.409. See also United States Department of Agriculture, Supplemental Nutrition Assistance Program (SNAP), Eligibility Criteria, http://www.fns.usda.gov/snap/applicant_recipients/eligibility.htm (last visited Mar. 4, 2011).

²¹¹ See United States Department of Agriculture, FD Programs, About FDPIR, http://www.fns.usda.gov/fdd/programs/fdpir/about_fdpir.htm (last visited Dec. 20, 2010); see also Food Distribution Fact Sheet, October 2010, available at <http://www.fns.usda.gov/fdd/programs/fdpir/pfs-fdpir.pdf> (last visited Mar. 3, 2011).

²¹² See 47 C.F.R. § 54.400(e); see also *supra* paras. 129 (discussing the definition of Tribal lands).

²¹³ Food Distribution Fact Sheet, October 2010, available at <http://www.fns.usda.gov/fdd/programs/fdpir/pfs-fdpir.pdf> (last visited Mar. 3, 2011); see also FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., FOOD DISTRIBUTION ON INDIAN RESERVATIONS, NET MONTHLY INCOME STANDARDS, FNS HANDBOOK EXHIBIT M (2010), http://www.fns.usda.gov/fdd/hdbks-instruct/FNS501-Changes/ExhibitM_FY2011.pdf; see also United States Department of Agriculture, Food & Nutrition Service, Supplemental Nutrition Assistance Program, Eligibility, http://www.fns.usda.gov/snap/applicant_recipients/eligibility.htm (last visited Mar. 2, 2011).

²¹⁴ Gila River Feb. 24, 2011 *Ex Parte* Letter.

²¹⁵ See *supra* note 211 (Food Distribution Fact Sheet); see also U.S. Department of the Interior, Bureau of Indian Affairs, What We Do, <http://www.bia.gov/WhatWeDo/index.htm> (last visited Mar. 2, 2011).

²¹⁶ Colville Feb. 25, 2011 *Ex Parte* Letter.

²¹⁷ See Appendix A, 47 C.F.R. § 54.409.

program eligibility rules for residents of Tribal lands.

132. *Location-based conditions.* In the *Tribal Order*, the Commission defined the terms “Tribal lands,” “reservation,” and “near reservation” for the purposes of establishing eligibility for the Tribal Lifeline and Link-Up programs.²¹⁸ Specifically, the Commission modified its rules to provide support to individuals residing on “any federally recognized Indian [T]ribe’s reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims settlement Act (85 Stat. 688), and Indian allotments,”²¹⁹ as well as those residing in “those areas or communities adjacent or contiguous to reservations that are designated as such by the Department of Interior’s Commissioner of Indian Affairs, and whose designations are published in the Federal Register.”²²⁰

133. In its August 2000 *Tribal Stay Order and Further Notice*, however, the Commission stayed implementation of the Tribal Lifeline and Link Up programs as they applied to qualified low-income households “near reservations.”²²¹ The Commission noted that, after its adoption of the definition of “Tribal lands” in the *Tribal Order*, it learned that the term “near reservation,” as defined by the Bureau of Indian Affairs (BIA), might include “wide geographic areas that do not possess the characteristics that warranted the targeting of enhanced Lifeline and Link[-]Up support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership.”²²² Accordingly, in its *Tribal Stay Order and Further Notice* and its May 2003 *Second Tribal Order*, the Commission sought comment on how to identify geographic areas adjacent to reservations that share similar characteristics with the reservations.²²³ Since then, the Commission has not taken further action regarding the definition of “near reservation,” and currently provides enhanced low-income support only to those living on, not near, Tribal lands.

134. We now propose to amend section 54.400(e) of our rules to remove the term and definition of “near reservation,” as its inclusion in the rules creates confusion.²²⁴ We also propose to adopt a new rule section 54.402 to adopt a designation process for those Tribal groups and communities seeking designation as Tribal lands under the Commission’s rules.²²⁵ We seek comment on this proposal. The designation process we propose is consistent with the process recently proposed by the Commission in the *Rural Radio Service Second R&O*.²²⁶ That Order addresses the definitions of “Tribal lands” and

²¹⁸ See *Tribal Order*, 15 FCC Rcd at 12217-19, paras. 16-19; see also 47 C.F.R. § 54.400(e).

²¹⁹ *Tribal Order*, 15 FCC Rcd at 12218, para. 17 (defining “reservation”).

²²⁰ *Id.* (defining “near reservation”).

²²¹ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 17112, 17112-13, para. 1 (2000) (*Tribal Stay Order and Further Notice*).

²²² *Id.* at 17113, para. 3.

²²³ *Id.* at 17114-15, paras. 5-6; *Second Tribal Order*, 18 FCC Rcd at 10974-77, paras. 33-38. In the *Second Tribal Order*, the Commission also declined to adopt changes to the definition of “reservation” made by the BIA, noting that “[t]o alleviate the potential for ongoing administrative uncertainty . . . any future modifications to the definition of ‘reservation’ or ‘near reservation’ will take effect in the context of the universal service programs only upon specific action by the Commission.” *Second Tribal Order*, 18 FCC Rcd at 10967, para. 17.

²²⁴ See Appendix A, 47 C.F.R. § 54.400(c).

²²⁵ See Appendix A, 47 C.F.R. § 54.402.

²²⁶ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, MB Docket No. 09-52, FCC 11-28 at paras. 6-11 (rel. Mar. 3, 2011) (*Rural Radio Service Second R&O*).
(continued....)

“near reservation areas” for the purpose of determining whether a radio station application seeking to serve a Tribal community of license is a “licensable community” that qualifies for special consideration.²²⁷ The Commission adopted a process whereby an applicant seeking to establish eligibility may submit any probative evidence of a connection between a defined community or area and the Tribe itself.²²⁸ We propose to adopt a similar process for Tribal groups and communities seeking to receive Lifeline and Link Up support, but whose land is not defined by section 54.400(e).²²⁹ Use of such a process would serve the public interest by affording flexibility to Tribes in non-landed situations, particularly given that the circumstances of such Tribes are so varied.

135. We propose to delegate authority to resolve such designations to the Wireline Competition Bureau. We propose that such a request to designate an area as a Tribal land for purposes of Lifeline and Link Up should be formally requested by an official of a federally recognized Tribe who has proper jurisdiction. The request should explain why the communities or areas associated with the Tribe do not fit the definition of Tribal lands set forth in the Commission’s Lifeline/Link Up program rules, but which are regions so Native in their character or location, as to support the purpose of providing enhanced Tribal Lifeline/Link Up program support.²³⁰ A showing should also detail how providing program support to the area would aid the Tribe in serving the needs and interests of its citizens in that community, and thus further the Commission’s goals of providing Tribal support. Most probative would be evidence that a Tribe delivers services to the area at issue. However, the Tribe could offer other evidence, including the federal government’s provision of services to Tribal members in the identified area. Probative evidence might also include a showing that the Census Bureau defines the area as a Tribal service area that is used by agencies like the Department of Housing and Urban Development.²³¹ Further, persuasive evidence of a nexus between a community and a Tribe might also include showings that a Tribal government has a defined seat, such as a headquarters or office, in the area, combined with evidence that Tribal citizens live and/or are served by the Tribal government in the area at issue. A Tribe might also provide evidence that a majority of members of the Tribal council or board live within a certain radius of the area. An applicant might also show that more than 50 percent of Tribal members live exclusively in the geographical area. Additionally, tribes might provide other indicia of a connection, such as Tribal institutions (e.g., hospitals or clinics, museums, businesses) or activities (e.g., conferences, festivals, fairs). We seek comment on any other factors that could help determine whether a geographical area is predominantly Tribal, such that low-income residents in the area should receive the benefits of enhanced Tribal program support.

136. In addition to the showing required, it is important that an applicant seeking to take advantage of enhanced Tribal program support set forth a clearly defined area to be covered. The need for such a demonstration is in line with the purposes of enabling Tribes to serve their citizens, to perpetuate Tribal culture, and to promote self-government. In evaluating such requests, we propose to delineate the “Tribal Lands” equivalents as narrowly as possible and view most favorably proposals that

(Continued from previous page)

²²⁷ *Rural Radio Service Second R&O* at paras. 6 n. 13, 7 n.19. The Media Bureau’s decision to adopt a waiver process is informed by the comments of a few parties. *Id.* at para. 8; *see also* Koahmic Broadcast Corporation Comments, MB Docket No. 09-52 (filed May 4, 2010); Native Public Media & National Congress of American Indians Comments, MB Docket No. 09-52 (filed May 4, 2010) (NPM/NCAI Comments); Catholic Radio Association Comments, MB Docket No. 09-52 (filed May 4, 2010).

²²⁸ *Rural Radio Service Second R&O* at paras. 9-10.

²²⁹ See Appendix A, 47 C.F.R. § 54.400(c).

²³⁰ See Appendix A, 47 C.F.R. §§ 54.403(a)(4), 54.409(c).

²³¹ See NPM/NCAI Comments at 8-10.

describe narrowly defined Tribal lands, to enable the provision of services to Tribal citizens rather than to non-Tribal members living in adjacent areas or communities. We seek comment on this proposal.

137. *ETC Designation on Tribal lands.* Additionally, we acknowledge that carriers serving households residing on Tribal lands could benefit from greater clarity regarding the ETC designation process for Tribal lands. However, as this issue has broader applicability beyond just the Lifeline/Link Up program, the corresponding issues and request for comment are addressed in the Office of Native Affairs and Policy's *Native Nations Notice of Inquiry*.²³² For example, the *Notice of Inquiry* seeks comment on how specific an ETC designation including Tribal lands should be, particularly for carriers seeking designation for the sole purpose of participating in the Lifeline program.²³³ The *Notice of Inquiry* also seeks comment on the nature of consultation with Tribal governments that should be included in the ETC designation process and whether carriers and Tribal governments should be required to file a proposed plan to serve with the Tribal lands.²³⁴ Finally, the *Notice of Inquiry* seeks comment on whether varying amounts of Lifeline support should be available on Tribal lands.²³⁵ We also seek comment on these issues and on the Lifeline program proposals contained in the *Native Nations Notice of Inquiry*.

138. *Self-Certification of Tribal land residence.* Section 54.409(c) of the Commission's rules require that ETCs offering Lifeline services to residents of Tribal lands must obtain the consumer's signature on a document certifying that the consumer receives benefits from at least one of the qualifying programs and lives on a reservation.²³⁶ On April 25, 2008, Qwest Communications International Inc. (Qwest) filed a request for review of certain USAC audit findings.²³⁷ The USAC audit found that, among other things, Qwest provided Tier 4 support for subscribers who were not residing on eligible Tribal lands and did not provide Tier 4 support to subscribers who were eligible residents of Tribal lands.²³⁸ Qwest asked the Commission to find that USAC erred when it concluded that Qwest is inappropriately seeking enhanced Lifeline support for customers that do not reside on Tribal lands.²³⁹ Qwest argued that it has fulfilled its obligation to ascertain whether a customer lives on a reservation by obtaining a signed certifications stating that the customer lives on a reservation.²⁴⁰ USAC responded that Qwest should establish additional controls.²⁴¹ The Commission sought comment on the Qwest Petition in 2008.²⁴²

²³² See *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, FCC 11-30 at paras. 23-32 (rel. Mar. 4, 2011) (*Native Nations NOI*).

²³³ *Native Nations NOI* at paras. 28-29.

²³⁴ *Native Nations NOI* at paras. 30.

²³⁵ *Native Nations NOI* at paras. 32.

²³⁶ See 47 C.F.R. § 54.409(c).

²³⁷ *Request for Review by Qwest Communications International, Inc. of the Decision of the Universal Service Administrator*, WC Docket No. 03-109 (filed Apr. 25, 2008) (*Qwest Petition*).

²³⁸ See *Qwest Petition* at Attachment 3 (Results of Low Income Limited Review of Qwest Colorado, at 10-11, Finding 4) and Attachment 4 (Results of Low Income limited Review of Qwest Idaho, at 11-12, Finding 4).

²³⁹ *Qwest Petition* at 6-9.

²⁴⁰ *Id.*

²⁴¹ *Qwest Petition* at Attachment 3 (Results of USAC 2006 Low Income Limited Review of Qwest Colorado, Finding 4).

²⁴² See *Comment Sought on Qwest Request for Review of a Decision of the Universal Service Administrative Company*, WC Docket No. 03-109, Public Notice, 23 FCC Rcd 7845 (Wireline Comp. Bur. 2008) (*Qwest Public Notice*).

139. As discussed above, Tribal land addresses are often not straightforward.²⁴³ AT&T and the US Telecom Association (USTelecom) filed comments supporting Qwest, stating that the Commission did not intend ETCs to take additional steps beyond obtaining a self-certification, to determine whether an applicant lives on Tribal lands.²⁴⁴ Alltel Communications, LLC (Alltel, which subsequently was acquired by Verizon), Rural Cellular Corporation (Rural Cellular), and Smith Bagley, Inc. (SBI) also filed reply comments supporting Qwest.²⁴⁵ Alltel acknowledged that Tribal lands are historically underserved areas in which residents and experience very low telephone penetration rates.²⁴⁶ Alltel argued that an increased burden on ETCs to verify Tribal residency would not improve service on Tribal lands, but would only serve to discourage ETCs from serving these areas as conducting additional verification procedures is very challenging due to the unique living arrangements and identification practices of many Tribes.²⁴⁷ For example, the Rosebud Sioux Tribe acknowledged that there are no physical addresses on the Rosebud Indian Reservation.²⁴⁸ Additionally, the Spirit Lake Tribe stated that all mail sent to the reservation is addressed to P.O. Boxes or General Delivery.²⁴⁹

140. We propose to amend section 54.409(c) of the Commission's rules to disallow self-certification of income or program eligibility for residents of Tribal lands receiving Lifeline/Link Up support, consistent with our proposal below to require all Lifeline/Link Up recipients to provide proof of income or participation in a qualifying program.²⁵⁰ We propose to require a consumer receiving low-income support and living on Tribal lands to show documented proof of participation in an eligible program or eligibility based on income, like all other low-income consumers as there do not appear to be unique reasons why Tribal households should be exempt from a general requirement to produce documentation of qualification for program support. We seek comment on this proposal.

141. We do, however, recognize there may be challenges in verifying Tribal residency due to unique living arrangements on Tribal lands, and therefore maintain the self-certification requirement as to Tribal land residence.²⁵¹ We propose to clarify that receipt of self-certification of residence on Tribal lands, along with documentation of income or participation in an eligible program, is sufficient documentation for an ETC to provide enhanced Lifeline support. The current rules do not require the ETC to establish further verification processes or controls to ascertain that the customer is a Tribal

²⁴³ See Tribal Addresses discussion *supra* at paras. 119-20.

²⁴⁴ See AT&T Comments, WC Docket No. 03-109, at 2-4 (filed Jun. 16, 2008); United States Telecom Association Comments, WC Docket No. 03-109, at 7-9 (filed Jun. 16, 2008).

²⁴⁵ See Alltel Communications, LLC Reply Comments, WC Docket No. 03-109 (filed Jul. 1, 2008) (Alltel Reply Comments); Rural Cellular Corporation Reply Comments, WC Docket No. 03-109, at 2-3 (filed Jul. 1, 2008) (Rural Reply Comments); Smith Bagley Reply Comments, WC Docket No. 03-109, at 2-3 (filed Jul. 1, 2008) (SBI Reply Comments).

²⁴⁶ See Alltel Reply Comments. As of 2006, the telephone penetration rate on Tribal lands in the lower 48 states was about 67.9% and in Alaska Native villages was about 87%. See 2006 GAO REPORT; see also FEDERAL COMMUNICATIONS COMMISSION, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, TELEPHONE SUBSCRIBERSHIP ON AMERICAN INDIAN RESERVATIONS AND OFF-RESERVATION TRUST LANDS (2003).

²⁴⁷ Alltel Reply Comments at 1, 3-4, Attachment (stating that multiple customers often identify a common billing address or P.O. Box which may be outside the reservation boundaries).

²⁴⁸ See Alltel Reply Comments at Attachment.

²⁴⁹ See Alltel Reply Comments at Attachment (this tribe also acknowledged that it does not have access to a 911 system).

²⁵⁰ See Appendix A, 47 C.F.R. § 54.409(c).

²⁵¹ See Appendix A, 47 C.F.R. § 54.409(c)(2).

member or lives on Tribal lands before providing enhanced Lifeline support.²⁵² We seek comment on this proposed clarification.²⁵³

VI. CONSTRAINING THE SIZE OF THE LOW-INCOME FUND

142. *Background.* The Commission has a statutory obligation to create specific, predictable, and sufficient universal service support mechanisms.²⁵⁴ As noted in the National Broadband Plan, unconstrained growth of the Universal Service Fund would jeopardize universal service by increasing the contribution burden on American consumers and businesses, thereby discouraging adoption and use of communications services.²⁵⁵ Certain USF programs are capped, including the schools and libraries and rural health care support mechanisms.²⁵⁶ With the implementation of the interim competitive ETC cap for the high-cost program in 2008, the only major components of the fund that remain uncapped are the low-income program and the interstate common line support mechanism in the high-cost program, which provided \$1.7 billion in 2010 to rate-of-return carriers in rural, Tribal, and insular areas and has been growing. The *Connect America Fund Notice* sought comment on limiting the total size of the high-cost program and on capping interstate common line support.²⁵⁷

143. As noted above, the size of the low-income program has grown significantly in recent years, from a roughly inflation-adjusted \$667 million in 2000 to \$1.3 billion in 2010.²⁵⁸ According to GAO's recent report, the low-income fund grew in 2009 primarily due to the emergence of pre-paid wireless, Lifeline-only ETCs.²⁵⁹ USAC projects that the low-income program fund will be \$1.5 billion in 2011.²⁶⁰ In its recent *2010 Recommended Decision*, the Joint Board recommended that the Commission develop a full record on the recent growth in low-income program support.²⁶¹

144. *Discussion.* We are mindful of the impact of the growth in the program on the consumers and businesses that ultimately support USF through fees on their phone bills. As we undertake

²⁵² However, the ETC is still required to adopt a process for verification of income or program eligibility. See Verification discussion *supra* Section VII.B.

²⁵³ We note that should we adopt these proposals, there are other outstanding issues preventing the complete resolution of the *Qwest Petition* during this proceeding.

²⁵⁴ See 47 U.S.C. §§ 254(b)(5).

²⁵⁵ See NATIONAL BROADBAND PLAN at 149 (Recommendation 8.11); see also *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477, 20484, para. 25 (Jt. Bd. 2007) (*2007 Recommended Decision*).

²⁵⁶ See, e.g., 47 C.F.R. § 32.9000 (defining mid-sized incumbent local exchange carrier with annual revenue indexed for inflation as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index (GDPCPI)); *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18781, para. 36 (2010) (*E-Rate Sixth Report and Order*) (amending Commission rules to index the E-rate program funding cap to the rate of inflation on a going-forward basis).

²⁵⁷ *USF/ICC Transformation NPRM*, FCC 11-13, at paras. 394-97.

²⁵⁸ Adjustments for inflation were calculated using the Bureau of Labor Statistics' Consumer Price Index Inflation Calendar. See http://www.bls.gov/data/inflation_calculator.htm (last visited Mar. 2, 2011).

²⁵⁹ 2010 GAO REPORT at Exec. Summary. As discussed above, pre-paid wireless Lifeline service now accounts for one-third of Lifeline support.

²⁶⁰ See USAC 2Q 2011 FILING, at 16.

²⁶¹ See *Joint Board Recommended Decision*, 25 FCC Rcd at 15630, para. 91.

comprehensive reform and modernization of USF, we are committed to controlling costs and constraining the overall size of the Fund.²⁶² Many of the proposals contained herein to eliminate waste, fraud, and abuse and improve program administration could reduce expenditures and the size of the program. For example, eliminating duplicate claims and tightening our rules on customary charges eligible for Link Up support should result in reduced expenditures. We note that fund growth is not necessarily indicative of waste, fraud, and abuse.²⁶³ We recognize that demand for low-income support fluctuates based on a number of factors, including changes in qualifying assistance programs and macroeconomic conditions. We also note that the program has an ultimate cap in that only a defined population of eligible low-income households may participate in the program, and support is limited to a maximum of \$10 per month per household (other than on Tribal lands). We seek comment generally on how to balance these principles, while retaining our commitment to enabling households in economic distress to obtain access to essential communications services.²⁶⁴

145. In light of concerns about the growth of Lifeline/Link Up, we seek comment on a proposal to cap the size of the Lifeline/Link Up program, for example at the 2010 disbursement level of \$1.3 billion.²⁶⁵ We ask whether and how a capped fund could continue to ensure telephone access for low-income households²⁶⁶ and support potential expansion for broadband as discussed below.²⁶⁷ We seek comment on whether any cap should be permanent or temporary, perhaps lasting for a set period of years or until the implementation of structural reforms proposed in this Notice.

146. If the Commission were to cap the program, either as an interim measure or permanently, what would be an appropriate cap level? How should such a level be determined? For example, should it be higher or lower than the 2010 size of the program? Should a cap be indexed to inflation, similar to other USF program funds subject to caps, or adjusted based on unemployment rates?²⁶⁸ We seek comment on whether there should be exceptions to a cap. For example, should low-income support for eligible residents of Tribal lands be exempt, given the very low telephone penetration rate on Tribal lands, as well as the unique circumstances and challenges faced by residents of Tribal lands?²⁶⁹ If we were to

²⁶² As we stated in the *USF/ICC Transformation NPRM*, the Commission “plans to be guided by the following four principles [including] . . . Control the size of USF as it transitions to support broadband, including by limiting waste and inefficiency.” See *USF/ICC Transformation NPRM*, FCC 11-13, para. 10.

²⁶³ See *2010 Recommended Decision*, 25 FCC Rcd at 15647-48 (statement of Senior Assistant Attorney General ffitich).

²⁶⁴ As the United States Court of Appeals for the Fifth Circuit held in *Alenco*, “[t]he agency’s broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service.” *Alenco Commc’ns, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000) (*Alenco*). The *Alenco* court also found that “excessive funding may itself violate the sufficiency requirements.” *Id.* at 620. The United States Court of Appeals for the Tenth Circuit has stated that “excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in [section] 254(b)(1).” *Qwest Comm’ns Int’l Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005).

²⁶⁵ This figure is based on USAC estimates. See USAC 2Q 2011 FILING, Appendices at M04.

²⁶⁶ The Commission has had a long-standing commitment to providing support that is sufficient but not excessive. See *Tenth Circuit Remand Order*, 25 FCC Rcd at 4088, para. 29 (concluding that a determining the sufficiency of support must also take into account the Commission’s generally applicable responsibility to be a prudent guardian of the public’s resources); see also discussion *supra* Section III (discussing the balancing of these objectives).

²⁶⁷ See *infra* Section IX.B (The Transition to Broadband).

²⁶⁸ See, e.g., 47 C.F.R. § 32.9000; *E-Rate Sixth Report and Order*, 25 FCC Rcd at 18781, para. 36.

adopt a cap, should that cap be adjusted, for instance, if national or local unemployment exceeded a specified level?

147. We also seek comment on the appropriate way to administer a cap. Is a national cap more efficient, or would a state-by-state cap be a more equitable way to administer the Low Income program fund? As noted above, the Act contemplates achieving reasonably comparable access in all regions of the country.²⁷⁰ Should regional differences be accounted for under a cap?²⁷¹

148. If the Commission were to cap the program, we may also need to implement methods for prioritizing support among potential recipients. Should current participants in the program receive priority funding within a capped system? Alternatively, should funding be available on a first-come, first-served basis after a specified date for re-enrollment in the program? If so, given that disbursements vary monthly, how could ETCs be notified when the cap had been reached? If a participant loses services for any reason, such as non-use, should that participant necessarily receive funding upon re-enrollment, or would that person potentially have to wait until the next funding year? Should monthly benefits be reduced to ensure that all eligible households that seek to participate in the program can do so, even if they would receive a smaller benefit than program participants currently receive? We seek comments on these issues and other practical and operational issues that would need to be addressed if the program were capped.

149. If the Commission adopts a rule capping the low-income fund, should that cap be maintained if the Commission decides to support broadband with program funds? Would the inclusion of broadband necessitate different a different approach to prioritizing benefit allocations?

VII. IMPROVING PROGRAM ADMINISTRATION

150. In this section, we seek comment on how to improve key aspects of the current administration of Lifeline/Link Up, consistent with our goals of reducing waste, fraud, and abuse and modernizing the program. As discussed above, the Commission has historically provided considerable discretion to the states to administer key aspects of the program, such as eligibility, enrollment, and ongoing verification of eligibility. In order to bolster oversight of this federal program, we propose a core set of federal eligibility, certification, and verification requirements that would apply in all states, while seeking comment on allowing states to adopt additional measures that could complement the federal standards. Specifically, we propose to eliminate the option of self-certifying eligibility and to require all consumers in all states to present documentation of program eligibility when enrolling. We propose to increase sample sizes for ongoing verification and to require ETCs in all states to submit verification data to USAC and the Commission.

151. We also seek comment on ways to reduce barriers to participation in the program by service providers and low-income households, specifically through the use of coordinated enrollment with other social service assistance programs and the development of a national database that could be used for enrollment and verification of ongoing eligibility. These proposals are intended to improve

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²⁶⁹ In imposing an interim cap on one component of the high-cost fund, the Commission created an exception for competitive ETCs serving tribal lands. *In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket 96-45, Order, 23 FCC Rcd 8834 (2008).

²⁷⁰ See *supra* Section III (Establishing Program Goals and Measuring Performance) (citing 47 U.S.C. § 254(b)(1), (3)).

²⁷¹ See *supra* para. 36 (noting that affordability has both an absolute and a relative component).

administrative efficiency, improve service delivery, and protect and improve program access for eligible beneficiaries.²⁷²

A. Eligibility Criteria for Lifeline and Link Up

152. *Background.* As discussed, eligibility requirements for the Lifeline and Link Up programs vary from state to state. Currently, Lifeline and Link Up eligibility is based upon participation in certain means-tested programs and, in some states, upon income. The federal default Lifeline and Link Up eligibility criteria—which apply in eight states and two territories—require consumers to either: (1) have a household income at or below 135 percent of the Federal Poverty Guidelines;²⁷³ or (2) participate in at least one of a number of federal assistance programs.²⁷⁴ Our rules allow the 42 remaining states with their own Lifeline and Link Up programs flexibility in establishing their own eligibility criteria.

153. During its most recent deliberations, the Joint Board recommended that the Commission seek comment on whether to adopt for all states uniform minimum income- and program-based eligibility standards.²⁷⁵ Although the Joint Board supports the concept of minimum uniform eligibility requirements, it acknowledges the need to explore more fully the potential burdens and benefits.²⁷⁶

154. *Discussion.* We propose to amend our rules to require all states to utilize, at a minimum, the program criteria currently utilized by federal default states.²⁷⁷ We further propose to allow states to maintain existing state-specific eligibility criteria that supplement the federal criteria. Currently, some states' criteria are more permissive than the federal criteria.²⁷⁸ For example, Georgia extends program eligibility to senior citizens participating in low-income discount plans offered by local power and gas

²⁷² We note that in other contexts, the federal government is working to improve the delivery of federal assistance programs administered through state and local governments or where federal-state cooperation is beneficial. See Partner4Solutions, The Partnership Fund for Program Integrity Innovation, <http://www.partner4solutions.gov/>. The Partnership Fund for Program Integrity Innovation was established by the Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, 123 Stat. 3034 (to be codified as scattered statutes).

²⁷³ 47 C.F.R. § 54.409(b). Based on the current federal poverty guidelines for the 48 contiguous states and Washington, DC, annual income of 135% of the guidelines is \$14,702 for a one-person household or family; \$19,859 for a two-person household or family; \$25,016 for a three-person household or family; and \$30,173 for a four-person household or family. Annual Update of the U.S. Dep't. of Health and Human Servs. Poverty Guidelines, 76 Fed. Reg. 3,367, 3,637-38 (Jan. 20, 2011).

²⁷⁴ Federal programs qualifying consumers for the low-income program are: Medicaid; Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamps; Supplemental Security Income (SSI); Federal Public Housing Assistance; Low-Income Home Energy Assistance Program (LIHEAP); National School Lunch Program's free lunch program; and Temporary Assistance for Needy Families (TANF). Low-income consumers living on Tribal lands may qualify by participation in one of several additional assistance programs: Bureau of Indian Affairs general assistance; Tribally-administered TANF; or Head Start (only those meeting its income-qualifying standards). See 47 C.F.R. § 54.409(c).

²⁷⁵ 2010 Recommended Decision, 25 FCC Rcd at 15601, paras. 8-9.

²⁷⁶ *Id.*

²⁷⁷ See 47 C.F.R. § 54.409(a), (b).

²⁷⁸ See Georgia Public Service Commission – Lifeline Assistance Program & Link-Up Georgia, http://www.psc.state.ga.us/consumer_corner/cc_telecom/advisory/lifeline.asp (last visited March 1, 2011); see also Florida Public Service Commission – Lifeline Assistance and Link-Up Florida Brochure, <http://www.floridapsc.com/utilities/telecomm/lifeline/engbrochure.aspx> (last visited March 1, 2011); Kansas Corporation Commission – Kansas Lifeline Program, <http://www.kcc.state.ks.us/pi/lifeline.htm> (last visited March 1, 2011).

companies.²⁷⁹ If we were no longer to allow states to utilize these existing state-specific eligibility criteria, current subscribers would become ineligible for Lifeline benefits, which could result in considerable consumer disruption. We seek comment on whether, going forward, states should be able to impose additional permissive eligibility criteria they deem appropriate, so long as these additional eligibility criteria are reasonably tied to income and the state in question provides additional monetary support to supplement the federal support.²⁸⁰ We recognize that more permissive eligibility criteria could increase the number of Lifeline subscribers, and seek comment on how to strike the right balance between national uniformity and state flexibility to address local circumstances. We further seek comment on the nature and magnitude of the potential impact, costs, and benefits of imposition of our proposed minimum eligibility requirements.²⁸¹

155. Today, ETCs operating in multiple states have to develop state-specific policies and procedures to assure compliance with state-specific program eligibility requirements. More uniform eligibility requirements could potentially lead to more streamlined and effective enrollment of eligible consumers, while lessening regulatory burdens on service providers. Moreover, as we explore cost-effective ways to strengthen the process of certification and validation of household eligibility,²⁸² more uniform requirements could also lessen administrative costs for the program and facilitate more effective monitoring and auditing. We ask whether requiring all states to utilize the federal eligibility criteria would simplify ETC processes for enrolling eligible households and verifying ongoing eligibility.

156. Would establishing a federal baseline of eligibility criteria place any burdens upon the states? What administrative changes would be required in those states where enrollment and ongoing verification of eligibility functions are performed by a state governmental agency or third-party administrator? Would any such burdens be justified by the benefits of a minimum uniform system? From the perspective of states or service providers, what are the benefits or burdens of maintaining the current system in which requirements vary from state to state? We ask whether allowing states to maintain and add permissive eligibility criteria beyond any minimum uniform criteria would prevent existing eligible Lifeline customers from losing Lifeline support. Finally, we ask whether a federal baseline of eligibility criteria would increase program participation.

157. In its *2010 Recommended Decision*, the Joint Board also recommended that we seek comment on raising the program's income eligibility criteria of 135 percent or below of Federal Poverty Guidelines to 150 percent or below of the FPGs.²⁸³ We seek comment on raising the federal income threshold for program participation to 150 percent or below of the Federal Poverty Guidelines. Some federal programs linked by the low-income program, such as LIHEAP, already have a 150 percent threshold.²⁸⁴ A number of commenters in the Joint Board proceeding urged that the income eligibility standard be increased in 150 percent.²⁸⁵ The FPG formula has been criticized as dated and inaccurate,

²⁷⁹ Georgia Public Service Commission – Lifeline Assistance Program & Link-Up Georgia, http://www.psc.state.ga.us/consumer_corner/cc_telecom/advisory/lifeline.asp (last visited March 1, 2011).

²⁸⁰ See 47 C.F.R. § 54.409(a); see also *2010 Recommended Decision*, 25 FCC Rcd at 15601, paras. 8-9.

²⁸¹ *2010 Recommended Decision*, 25 FCC Rcd at 15601, paras. 8-9; see *infra* Section VII.D (seeking comment on the development and implementation of a centralized database, including the costs of constructing and maintaining a database).

²⁸² See *infra* Section VII.D.2 (database).

²⁸³ *2010 Recommended Decision*, 25 FCC Rcd at 15601, para. 10.

²⁸⁴ Benton Joint Board Comments at 5-6.

²⁸⁵ See, e.g., NASUCA Joint Board Comments at 7.

with the Consumer Groups noting that some studies have suggested income levels for economic “self-sufficiency” at 161 percent of the poverty level.²⁸⁶ In 2004, the Commission sought comment on whether the income-based criteria for federal default states should be increased to 150 percent of the Federal Poverty Guidelines. At that time, the Commission presented a staff analysis that concluded that raising the income threshold might only have minimal on telephone penetration rates, but could result in many new Lifeline subscribers, potentially resulting in an additional \$200 million in demand for Lifeline.²⁸⁷ We seek to update the record on this issue. We also seek comment on lowering the threshold from the current level (135 percent of the FPG).

B. Certification and Verification of Consumer Eligibility for Lifeline

158. The applicability of federal and state rules governing initial certification and ongoing verification of consumers’ eligibility for support currently depends on whether the customer resides in a federal default state or non-federal default state.²⁸⁸ Accordingly, ETCs providing service in multiple states may be required to comply with various state and/or federal certification and verification procedures.²⁸⁹ “Certification” refers to the initial determination of eligibility for the program; “verification” refers to subsequent determinations of ongoing eligibility.²⁹⁰

159. We believe it is time to take a fresh look at these rules, taking into account both our experience with the program over the past 15 years and the many changes in service offerings since the program began. Our analysis is informed by the Joint Board’s Recommended Decision, and by the recent GAO review of the program.²⁹¹ According to GAO, some states find that consumers are deterred from enrolling by the difficulty of certification and verification procedures.²⁹² GAO also notes that there are risks associated with the self-certification of subscriber eligibility and the accuracy of amounts claimed by ETCs for reimbursement.²⁹³ Our proposals are intended to improve the integrity of the program by improving federal requirements and introducing greater consistency throughout the country. We seek to balance the need to ensure that the program supports only intended beneficiaries, with the need for administratively workable requirements that do not impose excessive burdens or costs.

²⁸⁶ Consumer Groups Joint Board Comments at 7-8.

²⁸⁷ 2004 Lifeline and Link Up Order, 19 FCC Rcd at 8332-8333, Appendix K.

²⁸⁸ See generally 47 C.F.R. §§ 54.410(a), (c). As explained above, states with their own low-income programs may establish their own eligibility, certification, and verification requirements and are referred to as “non-federal default states.” States without their own low-income programs must follow the federal eligibility, certification, and verification requirements and are referred to as “federal default states.” See Eligibility discussion at *supra* paras. 152-53.

²⁸⁹ See 47 C.F.R. § 54.410(c)(1),(2). A few states face even more complicated verification procedures due to the limitation of their jurisdiction over certain carriers. The Commission recently concluded that when a state commission mandates Lifeline support but does not impose certification and verification requirements on certain carriers within the state, the affected carriers must follow federal default criteria for certification and verification purposes. See *Lifeline and Link-Up*, WC Docket No. 03-109, Order and Declaratory Ruling, 25 FCC Rcd 1641, 1641, 1645, paras. 1, 9 (2010) (*Lifeline Declaratory Ruling*).

²⁹⁰ See Verification discussion at *supra* paras. 160-66; see also 2010 Recommended Decision, 25 FCC Rcd at 15606-15611, paras. 23-34.

²⁹¹ See generally 2010 Recommended Decision, 25 FCC Rcd at 15606-11, paras. 23-34; 2010 GAO REPORT at Figure 2, Appendix II, Table 7 (Administrative Processes and Responsibilities).

²⁹² See 2010 GAO REPORT at 23, Figure 2.

²⁹³ See 2010 GAO REPORT at 37.

1. Background

160. *Initial certification.* Currently, in order to qualify for service through the program, a consumer must first demonstrate that he or she meets eligibility criteria established under either federal or state rules. Pursuant to our rules, the eligibility criteria are based “solely on income or on factors directly related to income.”²⁹⁴

161. Section 54.409(d) of the Commission’s rules permits consumers in federal default states to prove eligibility for Lifeline by either: (1) self-certifying that they are eligible for Lifeline support based on participation in certain federal programs; or (2) providing documentation showing that they meet the income threshold requirements set forth in our rules.²⁹⁵

162. Certification practices vary among the non-federal-default states. According to GAO, 16 states permit self-certification under penalty of perjury, 25 states require documentation of enrollment in a qualifying program, and 9 states have in place automatic enrollment of eligible consumers.²⁹⁶

163. *Verification of continued eligibility.* Currently, in the federal default states, ETCs must annually verify the continued eligibility for a statistically valid random sample of their customers.²⁹⁷ Specifically, those subscribers that are sampled must present or submit a copy of their Lifeline-qualifying public assistance card and self-certify under penalty of perjury that they continue to participate in that program. Subscribers qualifying based on income must present documentation of income, and self-certify the number of individuals in the household and that the documentation presented accurately represents their household income. ETCs are required to retain copies of the self-certifications (but not the underlying documentation of income).

164. Currently, each non-federal-default state may adopt its own method for verifying continued eligibility. According to GAO, 14 states conduct random audits of Lifeline recipients, 20 states require periodic submission of supporting documents, 13 states require an annual self-certification, 13 states use an online verification system using databases of public assistance participants or income reports, and 17 states conduct verification by confirming the continued eligibility of a statistically valid sample of Lifeline recipients.²⁹⁸

165. This variability across states is potentially problematic for consumers, ETCs, and the Commission. State-by-state differences can complicate ETC compliance and USAC auditing, confuse consumers who may be more transient in residence than the general population, and increase the potential for abuse. Additionally, as more fully described below, the Commission currently has access to verification results only from the federal default states and a handful of states that voluntarily offer their verification results,²⁹⁹ giving the Commission an incomplete view of verification results and what improvements can be made to decrease the potential for waste, fraud, and abuse.

166. The Joint Board recommended that the Commission adopt a “floor,” or minimum set of

²⁹⁴ 47 C.F.R. § 54.409(a); *see also* 47 C.F.R. §§ 54.409(b), (c); 54.515.

²⁹⁵ 47 C.F.R. § 54.409(d)(1), (2).

²⁹⁶ 2010 GAO REPORT at 51.

²⁹⁷ 47 C.F.R. § 54.410(c).

²⁹⁸ 2010 GAO REPORT at 51.

²⁹⁹ In addition to the federal default states, the following non-federal-default states require ETCs to submit their verification results to USAC: Alabama, Arkansas, Arizona, New York, North Carolina, Pennsylvania, and West Virginia.

requirements, for verification procedures, upon which the states may impose additional procedures.³⁰⁰ The Joint Board noted that uniform, minimum verification procedures and sampling criteria could help resolve the current confusion and practical difficulties that have arisen from inconsistent methods.

2. Discussion

167. *One-per-residential address certification and verification.* We propose to amend section 54.410 of our rules to require that all ETCs obtain a certification when initially enrolling a subscriber in Lifeline that only one Lifeline service will be received at that address.³⁰¹ We also propose to amend section 54.410 of our rules to require that all ETCs obtain a certification from every subscriber verified during the annual verification process that the subscriber is receiving Lifeline support for only one line per residence.³⁰² Requiring "one-per-residence" certification initially at sign-up and then on an ongoing basis should highlight and remind the consumer that support is available for only one line per residence and reduce inadvertent program violations. We seek comment on these proposals.

168. The form used for such certification shall explain in clear and simple terms that this federal benefit is available for only one line per residence, and that consumers are not permitted to receive benefits from multiple providers. Further, the certification form shall contain language stating that violation of this requirement would constitute a violation of the Commission's rules and may constitute the federal crime of fraud, which will be prosecuted to the fullest extent. We seek comment on this proposal and ask whether there is any other language that should be required on the form.

169. We propose that compliance with the one-per-residence rule shall be verified annually, using the same procedures and forms described above. Annual one-per-residence verification results should be reported along with the sampling data to USAC and the Commission, as discussed more fully below. Finally, any subscriber indicating they are receiving more than one subsidy per address shall be de-enrolled pursuant to the process for duplicates described above.³⁰³ Any non-responders shall also be de-enrolled pursuant to the termination process identified in our rules.³⁰⁴ We seek comment on these proposals.

170. *Modifying certification procedures.* We propose to amend section 54.409(d)(1) to eliminate the self-certification option and require all consumers in all states to present documents to establish eligibility for the program. We are concerned that the self-certification process does not provide adequate assurance that support is being provided only to qualifying customers. Self-certification offers minimal protection against those intentionally seeking to defraud the program and fails to exclude customers that are not eligible to participate but simply misunderstand the eligibility requirements. This proposal would reduce the number of ineligible consumers in the program and reduce opportunities for waste, fraud, and abuse.

171. We seek comment on this proposed rule change to eliminate self-certification for program eligibility. Will the rule change help identify and eliminate ineligible consumers from enrolling

³⁰⁰ 2010 Recommended Decision, 25 FCC Rcd at 15607, 15608, paras. 26, 28.

³⁰¹ See Appendix A, 47 C.F.R. § 54.410.

³⁰² See Appendix A, 47 C.F.R. § 54.410; see also 2010 Recommended Decision, 25 FCC Rcd at 15610-11, para. 34. Note that pre-paid wireless ETCs, such as TracFone and Virgin Mobile, are already subject to such a requirement. *TracFone ETC Designation Order*, 23 FCC Rcd at 6214-15, para. 21; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3392, para. 25; *i-Wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *Global Forbearance Order*, 25 FCC Rcd at 10517, para. 16

³⁰³ See Duplicate Claims discussion at *supra* section IV.A.2.

³⁰⁴ See 47 C.F.R. § 54.405(c), (d).

in the program? To the extent that any commenter opposes this proposed change, we encourage alternative suggestions that we could implement quickly to reduce opportunities for ineligible customers to participate in the program. We seek comment on whether this proposed change would present an undue burden on ETCs and/or consumers.

172. We also propose to amend section 54.409(d)(3) to require that a consumer notify the ETC within 30 days if the consumer has knowledge that he or she no longer qualifies for Lifeline program support.³⁰⁵ A consumer would be required to notify its carrier upon knowledge that they no longer meet the income criteria, no longer participate in a qualifying program, are receiving duplicate support, or otherwise no longer qualify for program support. We seek comment on this proposal.

173. *Modifying annual verification procedures.* We are concerned that although the current sampling methodology for federal default states may provide some insights into the percentage of ineligible subscribers for a given ETC, we are concerned that it may not adequately protect the program from waste, fraud, and abuse as it does not result in de-enrollment of all ineligible subscribers.

174. We propose changes to our annual verification procedures in three areas. First, consistent with the Joint Board's recommendation, we propose to amend section 54.410 of the Commission's rules to adopt a uniform federal rule to serve as a minimum threshold for verification sampling. Second, we propose to require ETCs to de-enroll from the program consumers who decline to respond to an ETC's verification attempts. Third, consistent with the Joint Board recommendations, we propose uniform procedures for the collection and submission of verification data across all states. We seek comment on these proposals and ask whether there are other verification issues for which we should consider adopting a set of uniform procedures. We also seek comment how these proposals would impact existing ETC compliance plans for specific wireless providers.

175. We propose that these uniform minimum standards apply to all ETCs in all states regardless of any variances in state eligibility criteria. We recognize that individual states may have state-specific Lifeline programs, and therefore may have concerns that are not applicable to ETCs in all states. Therefore, we propose that states be allowed to implement additional verification procedures beyond the uniform minimum required procedures to accommodate those differences. We seek comment on this proposal. We also seek comment on whether there are any state verification processes that would be useful to adopt as a minimum uniform verification requirement to be applicable in all states.

176. The Joint Board also recommended that "states be allowed to utilize different and/or additional verification procedures so long as those procedures are at least as effective in detecting waste, fraud, and abuse as the uniform minimum required procedures."³⁰⁶ We seek comment on this proposal. For commenters that support this option, how, if at all could the Commission monitor whether different state procedures are "at least as effective" as the federal standards? Would this proposal adequately address our concerns about the administrative burdens created by inconsistent standards among states?

177. *Uniform sampling methodology.* We propose to amend section 54.410 of the Commission's rules to establish a uniform methodology for conducting verification sampling that would apply to all ETCs in all states and provide additional protections against waste, fraud and abuse.³⁰⁷

178. As noted above, the Commission's rules require ETCs in federal default states to implement procedures to verify annually the continued eligibility of a statistically valid random sample of

³⁰⁵ See Appendix A, 47 C.F.R. § 54.409(c)(3).

³⁰⁶ 2010 Recommended Decision, 25 FCC Rcd at 15608, para. 28.

³⁰⁷ See Appendix A, 47 C.F.R. § 54.410.

Lifeline consumers and provide findings to USAC.³⁰⁸ The Commission has previously specified that the size of annual samples should be based on a number of factors, including the number of Lifeline subscribers served by the ETC and the previously estimated proportion of Lifeline subscribers served that are “inappropriately taking” Lifeline service.³⁰⁹ The Joint Board recommended that the Commission reconsider the equation used to calculate acceptable sample sizes, suggesting that current samples are not large enough to reveal the percentage of ineligible consumers receiving support.³¹⁰ The Joint Board also stated that a uniform minimum standard for conducting the “statistically valid random sample” would help ensure accuracy, improve consistency among the sampling data, and assist in analyzing regional and national verification issues.³¹¹

179. There are several potential issues with our current sampling methodology. First, although our calculation method is designed so that poor results from prior years require an ETC to sample a larger number of customers in following years, the current methodology assumes that no more than six percent of customers would be found ineligible in any given year.³¹² As such, the tables that many ETCs use to determine the number of customers they must survey do not contemplate a situation in which more than six percent of customers are found ineligible.³¹³ To illustrate the point, the minimum number of customers surveyed increases as the number found ineligible in the previous year increases from zero to fifty percent. However, because our instructions set a “cut off” of six percent ineligible, an ETC with 400,000 Lifeline subscribers (half of whom were estimated to be ineligible) would only need to survey 244 customers.³¹⁴ As such, some ETCs may be sampling too few customers for their annual verification survey results to be statistically valid.

180. Second, our current methodology creates little incentive for the ETCs to obtain responses from all consumers in the sample; the only consequence for non-response is to de-enroll an admittedly small number of consumers in the sample population. The penalties for non-response largely fall on the subscriber (who may lose service despite eligibility), while there is little incentive for the ETC to educate customers about the importance of a prompt response.

181. Third, a statistically valid sample by definition provides only a basis for estimating the total number of ineligible consumers for a particular ETC; it does not result in de-enrollment of *all* (or even most) ineligible subscribers for that ETC. A hypothetical example illustrates the problem: if the annual verification survey estimates that half of a large ETC’s customers are ineligible in one year, the ETC need only survey 0.27% of its customers the following year.³¹⁵ In other words, if an ETC has

³⁰⁸ See 47 C.F.R. § 54.410(c)(2). The recent GAO Report states that 17 states conduct verification through a statistically valid sample of Lifeline support recipients. See 2010 GAO REPORT at Table 6 (the report does not identify the methodology used by the states); see also 2010 Recommended Decision, 25 FCC Rcd at 15609, para. 31 n.72.

³⁰⁹ See Appendix B (Sample Size Table); see also 2004 Lifeline and Link Up Order, 19 FCC Rcd at 8365, Appendix J-1.

³¹⁰ 2010 Recommended Decision, 25 FCC Rcd at 15608-09, para. 30.

³¹¹ 2010 Recommended Decision, 25 FCC Rcd at 15608-09, para. 30.

³¹² See Appendix B (“In all instances, the estimated proportion P should never be less than .01 or more than .06.”).

³¹³ See Appendix B.

³¹⁴ *Id.*

³¹⁵ For illustrative purposes, we focus on ETCs with a large number of Lifeline subscribers (400,000 or more) in a state. For these ETCs, the minimum sample size is $2.706 * P * (1 - P) / .000625$, where P is the percentage of customers found ineligible in the previous survey. Because that formula may overestimate the statistically necessary sample size for smaller ETCs, the Commission also has provided another formula for these ETCs that adjusts for size. (continued....)

400,000 Lifeline subscribers and half (or 200,000) were estimated to be ineligible, the ETC would only need to survey 1,082 Lifeline customers the following year for the sample to be statistically valid (and assuming the same ineligibility rate, would then de-enroll no more than half, or 541, of the sampled customers for ineligibility). In short, the current methodology fails to identify the ineligibles who are not part of the sample.³¹⁶

182. Given these potential issues, we propose to amend section 54.410 of the Commission's rules to establish a uniform methodology to be used by all states for determining minimum verification sample sizes to provide additional protections against waste, fraud and abuse.³¹⁷ Specifically, we set forth two alternative proposals for determining how many Lifeline customers an ETC must survey each year. The first alternative is a sample-and-census proposal, which would allow an ETC to sample its customers so long as the rate of ineligibility among responders to the survey is below a fixed threshold. If that ineligibility rate exceeds the threshold, however, the ETC would be required to take a census of all customers. The second alternative is to modify the current formula used in the federal default states and apply it uniformly to all states. Both alternative proposals are intended to address the three issues with our current sampling methodology, but in distinct ways. We describe each alternative below and invite comment on the relative advantages and disadvantages of these two alternatives.

183. We describe the possible implementation of the sample-and-census approach by providing an example using 5 percent as the threshold for a full census: Each year, ETCs would sample enough customers so that at least 300 customers respond to the verification survey; if the lower bound of the confidence interval for the estimate of ineligible subscribers is at or above 5 percent of total respondents, then the ETC would be required to take a census of all Lifeline customers that year and verify that each and every customer is eligible to participate in the Lifeline program. We seek comment on each component of the sample-and-census approach: (1) the minimum number of customers that must respond to the survey for each ETC, (2) the threshold rate that would determine when the number of ineligible respondents is unacceptably high, and (3) the census requirement to remove ineligible customers from Lifeline's rolls if that threshold is crossed.

184. First, we seek comment on the appropriate minimum number of respondents needed for an accurate sample. We note that under our current rules, an ETC with 400,000 Lifeline subscribers in a given state is required to sample no more than 244 customers, while an ETC with 10,000 subscribers is required to sample no more than 238 customers, and an ETC with 500 subscribers is required to sample no more than 164 customers. Our objective is to establish a minimum required number of respondents that would provide sufficient assurance that the results of the sample are indicative of the population at large, regardless of the expected margin of error. As set forth more fully in Appendix C, a sample size of 300 would have a margin of error no greater than 5.7 percent, regardless of the number of ineligibles ultimately identified. Thus, for instance, if there were 300 respondents, and the survey identified a 10 percent ineligibility rate, that would suggest the actual eligibility rate in the entire subscriber base is somewhere between 6.6 percent and 13.4 percent. Should we consider a larger or smaller sample size based on the number of Lifeline customers an ETC has in a state? Reducing the required number of respondents for smaller ETCs could result, for example, in sizably larger margins of error. On the other

(Continued from previous page)

Specifically, the minimum sample size for ETCs with fewer than 400,000 Lifeline customers per state is $N/(1+\{[N-1]/(2.706*P*(1-P).000625)\})$, where P is the percentage of customers found ineligible in the previous survey and N is the number of Lifeline customers the ETC currently has. *2004 Lifeline and Link Up Order/FNPRM*, 19 FCC Rcd at 8366, Appendix J-2 and J-3.

³¹⁶ However, the Commission does have the means to identify ineligible subscribers that are not part of statistical survey, including but not limited to the use of audits.

³¹⁷ See Appendix A, 47 C.F.R. § 54.410.

hand, a uniform number of respondents applicable to all ETCs could require smaller ETCs to survey all or most of their Lifeline customers each year, which could be burdensome. Such a requirement also could pose burdens to the extent that not all of the surveyed subscribers respond to the survey. Our goal is to establish a minimum number of respondents that is expansive enough to fully understand the scope of violations and de-enroll those who are ineligible, but that does not impose unnecessary costs on the program or on ETCs. We seek comment on how to appropriately balance the costs and benefits associated with implementing a standard minimum number of respondents, including the burdens that may be imposed on consumers as well as ETCs.

185. Next, we seek comment on the threshold rate that would be used to determine when the number of ineligible customers found in the survey warrants a full census. For these purposes, we distinguish between Lifeline subscribers that fail to respond to a verification attempt and those that are affirmatively found to be ineligible.³¹⁸ The example above set the threshold at 5% of respondents. Is this threshold appropriate? If not, what should be the triggering threshold? Should the threshold be higher in recognition of the fact that program rules allow a subscriber to remain in the program for a period of sixty days after becoming ineligible?³¹⁹ Should it be lower, in order to further reduce waste, fraud, and abuse?³²⁰ In the same vein, should we establish an analogous threshold for the percentage of customers who do not respond to the ETC's verification survey? In other words, is there a level of non-responsiveness that should be deemed acceptable?³²¹ If so, how could the Commission determine that threshold? If non-response rates exceed a specified threshold, should that level of non-response also trigger a full census, or are less burdensome measures to verify subscriber eligibility more appropriate.

186. Finally, we seek comment on the census component, i.e. on the requirement that an ETC must verify the eligibility of all Lifeline customers in a state if the ineligibility rate of survey respondents exceeds the threshold. Should an ETC be required to conduct the census immediately, i.e., within a specified number of months of completing the survey, or the following year (in place of the annual verification sample)? If the number of ineligible respondents found during the census exceeds the threshold rate, should the ETC be required to conduct another census the following year in lieu of a statistically valid sample? Should an ETC whose ineligibility rate exceeds the threshold be required to perform a census of all Lifeline customers each year until the ETC can establish that fewer than 5 percent of respondents are ineligible?

187. Should we establish another, higher threshold of ineligibility that would trigger a proceeding to determine whether that ETC's ability to participate in the Lifeline program should be revoked? For example, if two censuses in a row show that more than 10% of a particular ETC's Lifeline customers are ineligible, would that be evidence that the ETC has failed to implement adequate internal controls to assure compliance with Commission rules to such degree that it would be appropriate to

³¹⁸ In addition to non-responders, should we exclude Lifeline customers who are no longer eligible for the program, have received a notice of termination, and are within the 60-day termination window? See 47 C.F.R. § 54.405(d). If so, how should we treat such customers and how would an ETC determine when a particular customer lost eligibility?

³¹⁹ We note that a higher threshold may be appropriate in the context of the Lifeline program since Lifeline subscribers have 60 days to de-enroll if they lose eligibility (and the survey may occur during this 60-day window for some subscribers). See 47 C.F.R. § 54.405.

³²⁰ Under the Improper Payments Information Act of 2002, that if more than 2.5% of payments for a given federal program are erroneous, then a program is deemed "at risk," and the federal government is required to take steps to reduce the level of improper payments. See Payment Accuracy, <http://paymentaccuracy.gov> (last visited Mar. 2, 2011).

³²¹ 2010 Recommended Decision, 25 FCC Rcd at 15609, para. 31.

revoke that ETC's designation to receive federal Lifeline and Link Up support? If so, what would be the effect on subscribers receiving service from the offending ETC? For example, should subscribers be offered an automatic transfer to a different ETC or be required to re-enroll?

188. In the alternative, we seek comment on how to modify the current formula used in federal default states and applying that revised formula in all states. We propose to eliminate the current cap on the estimated ineligibility rate of 6 percent. Should we require a larger sample size that would gradually increase the number of customers that an ETC must survey each year when a specified level of ineligibility is found? We recognize that a statistically valid sample is likely sufficient when the percentage of customers found ineligible is very low and the sample size is sufficiently large.³²² But if the number of ineligible subscribers (including those that do not respond to the verification survey) becomes significant, should ETCs be required to verify eligibility of a proportionately larger number of customers than necessary for a statistically valid sample, to provide increasing incentives for the ETC to root out any potential waste, fraud, and abuse? We seek comment on potential modifications to the existing formula to better comport with our goals for revising the annual verification sampling procedures of ETCs.

189. We seek comment on both alternative proposals. To what extent would each proposal address the potential issues with today's methodology? Each proposal would eliminate the 6 percent "cut-off" that may distort the statistical reliability of today's sampling methodology. Each could incentivize ETCs to educate their customers and increase the response rates of customers—the sample-and-census proposal would do so by putting the onus on ETCs to get a sufficient number of respondents, while a modified formula potentially could allow smaller verification surveys the following year if more customers respond to the verification survey. The first proposal includes a method for weeding out ineligible customers when one year's survey suggests that the number of ineligible customers is unacceptably high. Under the second approach, it could take several years to more fully identify ineligible subscribers for a given ETC and in the meanwhile, ineligible consumers would continue to receive support in contravention of our rules. We also acknowledge while our current statistical sampling methodology may work well for ETCs with a large number of subscribers, there is a risk of highly uncertain results for ETCs with small Lifeline subscriber populations.

190. We seek comment on these two proposals. We also seek comment on alternative proposals. Are there other ways to modify the current federal methodology to improve it as we seek to make that the uniform minimum federal standard in all states? We also seek comment on methods used by non-federal default states to select a sample of subscribers that might provide a model for a uniform federal standard. What sample size and confidence intervals are used by the various states that require statistical sampling?

191. *Procedures to be followed after sampling.* When an ETC samples its customers, there are three possible outcomes: (1) some subscribers will not respond; (2) some respondents are eligible; and (3) other respondents are ineligible.

192. We propose to require ETCs to de-enroll from the program consumers who decline to respond to the ETC's verification attempts. Our rules require ETCs in all states and territories to terminate Lifeline service if the carrier has a reasonable basis to believe that a subscriber no longer

³²² See Appendix C (Verification Sample Size and Margin of Error). Under the Improper Payments Information Act of 2002, a program is "at risk" if the erroneous payment rate exceeds 2.5% and the total amount of erroneous payment is greater than \$10 million. Improper Payments Information Act of 2002, Pub. L. No. 107-300, 116 Stat. 2350.

satisfies the qualifying criteria.³²³ Codifying the specific requirement that they be de-enrolled for non-response in our rules would further protect the program from waste, fraud, and abuse. ETCs conducting verification surveys typically receive responses from only some of the consumers surveyed. We note that ETCs already routinely de-enroll customers that do not respond to the ETC's verification efforts, so this rule would not impose significant burdens on ETCs. We seek comment on this proposal.

193. *Collection and submission of verification sampling data.* Under current rules, the Commission has access to verification results only from ETCs in federal default states and in a handful of states that require ETCs to submit information annually to USAC.³²⁴ The Joint Board noted that gathering the same minimal data from all states would provide the Commission a more complete picture of how the Lifeline program is utilized, and would help identify regional and national verification issues.³²⁵ A more comprehensive data set would also allow the Commission to continue refining its rules and policies to reduce waste, fraud, and abuse in the program. We propose to require all states to submit verification sampling data to USAC. We seek comment on this proposal.

194. Consistent with the Joint Board's recommendation, we seek comment on whether verification results submitted to USAC and the Commission should be shared with all states.³²⁶ The Joint Board also points out that making aggregate verification results available to the public could better inform interested parties about whether universal service funds are being used for their intended purposes.³²⁷ Accordingly, we seek comment on whether the Commission should periodically publish aggregated verification results. Finally, we seek comment on whether information relating to any other Lifeline or Link-Up eligibility criteria should be gathered by ETCs and submitted to USAC and the Commission during the certification and verification processes.

195. *Certification and verification best practices.* Consistent with the Joint Board's recommendation, we seek comment on states' certification and verification practices.³²⁸ The Joint Board noted that it received limited information regarding state certification and verification practices.³²⁹ More comprehensive data on states' practices would assist the Commission with establishing appropriate uniform minimum standards. Therefore, we seek to build the record regarding best practices for certifying and verifying household eligibility. We encourage states, ETCs, Tribal governments, consumer groups, and others to provide us with their experiences with different certification and verification procedures, and to identify those that could be adopted as uniform minimum standards for all states.

196. In particular, we seek data on how program eligibility is verified in particular states, how frequently verification is required, by whom verification is conducted, and the scope of the verification process (e.g., the proportion of subscribers that are sampled). We also seek data on whether states impose different verification responsibilities on different types of carriers. For example, we understand that in

³²³ 47 C.F.R. § 54.405(c),(d). This may also include non-responders. See Appendix B; *Deadline for Annual Lifeline Verification Surveys and Certifications*, WC Docket No. 03-109, Public Notice, 25 FCC Rcd 7272, 7277, para. 8 (Wireline Comp. Bur. 2010) (*Verification Public Notice*).

³²⁴ The following non-federal-default states require ETCs to submit their verification results to USAC: Alabama, Arkansas, Arizona, New York, North Carolina, Pennsylvania, and West Virginia. Given that there are 10 federal-default states, this means USAC currently receives verification results for a total of 17 states and territories.

³²⁵ *2010 Recommended Decision*, 25 FCC Rcd at 15607-08, para. 27.

³²⁶ *2010 Recommended Decision*, 25 FCC Rcd at 15608, para. 29.

³²⁷ *2010 Recommended Decision*, 25 FCC Rcd at 15607-08, para. 27.

³²⁸ *2010 Recommended Decision*, 25 FCC Rcd at 15608, para. 29.

³²⁹ *2010 Recommended Decision*, 25 FCC Rcd at 15610, para. 33.

some states Lifeline-only pre-paid wireless carriers may be subject to verification requirements different from other types of carriers.³³⁰

197. *Certification and verification responsibilities and cost.* Consistent with the Joint Board's 2010 Recommended Decision, we seek to develop a fuller record on who should be certifying and verifying continued eligibility.³³¹ In the federal default states ETCs perform these functions, while in other states, third-party administrators or social services agencies may perform them. Comprehensive data on certification and verification responsibilities and costs would assist the Commission in determining the most appropriate entity to certify and verify Lifeline consumers' eligibility. Specifically, as suggested by the Joint Board, we seek comment on the costs of requiring ETCs, states, or third-parties to undertake certification and verification procedures.³³²

198. Requiring ETCs to verify eligibility by interacting with consumers may present challenges, including consumers' hesitancy to provide personal information to ETCs.³³³ We also note that to the extent an ETC is seeking to build a Lifeline customer base, it may not have the same incentives to verify continued eligibility for benefits as would a neutral third party or government agency. Additionally, federal, state, or Tribal agencies administering qualifying programs may be able to provide more reliable and more accurate information than consumers for verifying program or income eligibility.³³⁴ Therefore, we seek comment on whether ETCs should continue to be responsible for conducting eligibility certification and verification directly with Lifeline consumers, and on how income-based eligibility can be verified if not directly through the consumer. Further, we seek comment on the relative merits of relying upon ETCs, state agencies, Tribal governments, or other third-party entities to conduct initial certification and subsequent verification of eligibility. We seek comparisons of state practices or procedures, including how various practices have impacted the number of ineligible subscribers and duplicates, and other forms of waste, fraud, and abuse.

C. Coordinated Enrollment

1. Background

199. Coordinated enrollment is a mechanism that allows consumers to enroll in the Lifeline and Link Up programs at the same time they enroll in a qualifying public assistance program. The Commission has encouraged coordinated enrollment as a best practice since the 2004 Lifeline and Link Up Order. The National Broadband Plan recommended that the Commission encourage state agencies responsible for Lifeline and Link Up to streamline enrollment for benefits, and suggested the use of unified online applications for social services.³³⁵ In its 2010 Recommended Decision, the Joint Board affirmed that coordinated enrollment should be encouraged as a best practice.³³⁶

200. Several states use coordinated enrollment to allow ETCs to confirm in near real-time

³³⁰ See NASUCA Joint Board Reply Comments at 14 (identifying that FL requires verification every 60 days for some pre-paid wireless carriers); see also generally *TracFone ETC Designation Order*; *TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*; *i-Wireless Forbearance Order*; *Global Forbearance Order* (identifying the federal requirements imposed on pre-paid wireless carriers).

³³¹ 2010 Recommended Decision, 25 FCC Rcd at 15609-10, para. 32.

³³² *Id.*

³³³ *Id.*

³³⁴ See *id.*

³³⁵ NATIONAL BROADBAND PLAN at 175.

³³⁶ 2010 Recommended Decision, 25 FCC Rcd at 15604, para. 18.

whether a potential customer is eligible for support.³³⁷ Coordinated enrollment is distinct from “automatic” or “automated” enrollment, in which a state automatically enrolls eligible consumers in the Lifeline program when such consumers subscribe to phone service.³³⁸ Unlike automatic or automated enrollment, coordinated enrollment requires eligible consumers to affirmatively choose to enroll in the Lifeline program.

2. Discussion

201. We agree with the Joint Board’s recommendation that coordinated enrollment should be encouraged as a best practice by the states.³³⁹ Coordinated enrollment can provide an important protection against fraud because eligibility is certified by the appropriate state or Tribal agency. We also agree with the Joint Board and many commenters that there are certain administrative, technological, and funding issues associated with coordinated enrollment. We seek comment on whether mandating coordinated enrollment would be appropriate, though we note that the record is not yet well developed on this issue. We seek further information about the costs and benefits of coordinated enrollment. We also seek to understand what if any steps the Commission might take to facilitate coordinated enrollment in all states.³⁴⁰

202. *Administrative issues.* We seek to build on the information we have collected from states and Tribal governments that are developing electronic interfaces to administer the Lifeline/Link Up program through coordinated enrollment. In the Joint Board proceeding, a few states provided detailed information regarding their coordinated enrollment best practices. For example, California explained that it moved from an automatic enrollment system to a system that pre-qualifies eligible consumers who must then affirmatively accept the service.³⁴¹ Additionally, the GAO Report noted that states in its survey found that using various types of automatic enrollment procedures has a positive impact on reaching and enrolling eligible consumers.³⁴² We seek comment on ways to ensure that coordinated enrollment provides fair and equivalent access to all providers of Lifeline service in a state,³⁴³ how to provide prompt and accurate notification of customer eligibility to carriers,³⁴⁴ and whether and how to ensure that a coordinated enrollment program would not prevent eligible consumers from qualifying under the income

³³⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 18 FCC Rcd 6589, 6608, para. 38 (Jt. Bd. 2003) (2003 Recommended Decision); see also LIFELINE ACROSS AMERICA WORKING GROUP, REPORT OF THE FCC/NARUC/NASUCA WORKING GROUP ON LIFELINE AND LINK-UP: “LIFELINE ACROSS AMERICA” 6 (2007), <http://www.lifeline.gov/LLLUReport.pdf> (WORKING GROUP REPORT). In its Report, the Working Group cited Iowa, New Mexico, New Jersey, New York, North Dakota, and Washington as states utilizing automatic enrollment in some fashion. WORKING GROUP REPORT at 6, 10; see also 2010 GAO REPORT at 19.

³³⁸ Nebraska PSC Joint Board Comments at 4-5.

³³⁹ *Id.*

³⁴⁰ CPUC Joint Board Comments at 13-14; PRWI Joint Board Comments at 11, PRWI Joint Board Reply Comments at 15; Smith Bagley Joint Board Comments at iii and at 9-10; Smith Bagley Joint Board Reply Comments at 14 (suggesting that current economic conditions and state budgetary problems appear to make an automatic enrollment mandate impractical unless sources of federal funding could be identified).

³⁴¹ CPUC Joint Board Comments at 7.

³⁴² 2010 GAO REPORT at 19.

³⁴³ TracFone Joint Board Comments at 7.

³⁴⁴ *Id.* at 6.

criteria.³⁴⁵ We also seek comment on how many and which states and Native Nations would require changes in state or Tribal laws to effectuate coordinated enrollment.

203. *Technological issues.* Individual states or Tribal governments may face unique technological circumstances and burdens that make it impractical or unduly burdensome to implement coordinated enrollment. For example, the ability of a state or Tribal government to implement coordinated enrollment may depend upon the capabilities of existing data processing equipment, software, and data communication networks. We seek comment on these burdens and seek detailed information on the technological hurdles that states or Tribal governments would face, and how these challenges can be overcome. How many states and Tribal governments would need to upgrade or add data processing equipment, software, data networks, or other technology solutions in order to implement coordinated enrollment?

204. *Funding issues.* We are aware that there could be significant costs associated with coordinated enrollment, including the costs of safeguarding consumers' privacy and security, administering the program, and developing and maintaining software and equipment.³⁴⁶ How have states that have implemented coordinated enrollment funded associated costs? If the Commission were to mandate coordinated enrollment, should states and Tribal governments be required to provide all of the necessary funding, or should the Universal Service Fund bear some of those costs, and if so, what portion? We ask states that have developed or are developing coordinated enrollment programs to provide data on the associated costs. We also seek comment on the overall cost savings, if any, associated with coordinated enrollment, and on any other benefits that arise from coordinated enrollment. For example, have coordinated enrollment procedures helped states or Tribal governments better target benefits to intended beneficiaries? We ask for comment on the extent to which coordinated enrollment might lead to increased participation in the low income program. We seek comment on whether coordinated enrollment would reduce fraud if participants were required to use a coordinated enrollment process in order to obtain benefits. We encourage commenters to quantify, to the extent possible, the magnitude of any administrative costs and potential savings of coordinated enrollment.

D. Database

1. Background

205. The measures we propose above to reduce waste, fraud, and abuse could be implemented quickly to strengthen the program, but we are also interested in more comprehensive improvements. In particular, a national database or information management system could substantially reduce burdens on consumers, ETCs, states, and USAC; eliminate the need to certify eligibility on a state-by-state basis; and help identify program violations. Some argue that a national database may be the only effective method for protecting the program against waste, fraud, and abuse.³⁴⁷

206. The National Broadband Plan recommended that the Commission explore the steps necessary to implement a centralized database for online certification and verification of low-income

³⁴⁵ Commenters to the *Joint Board Referral Order* expressed concern that coordinated enrollment would capture only those eligible consumers participating in federal assistance programs, but not low-income households that do not participate either by choice or due to other factors. See PRWI Joint Board Comments at 10; Smith Bagley Joint Board Reply Comments at 14. MoPSC points out the need to attempt to avoid reluctance on the part of federal agencies to allow any parties direct access to their data bases. MoPSC Joint Board Comments at 5.

³⁴⁶ Consumer Groups Joint Board Comments at 15; CPUC Joint Board Comments at 13-14; FL PSC Joint Board Comments at 4-5; PaPUC Joint Board Comments at 5; PaPUC Joint Board Reply Comments at 5-6.

³⁴⁷ Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Dec. 14, 2010) (Verizon Dec. 14, 2010 *Ex Parte* Letter).

households based on numerous proposals in the record.³⁴⁸ Similarly, the Joint Board encouraged the Commission to further explore the implications of creating or supporting some type of eligibility database.³⁴⁹ Many ETCs, state commissions, and consumer advocates also support the implementation of a database.³⁵⁰

207. We propose to create a national database to verify consumer eligibility, track verification and check for duplicates to ensure greater program accountability. We seek to develop a robust record on the development and implementation of a centralized database, including comments on who should administer the database; whether there should be one national database or multiple regional or state databases; what functions the database should include; the costs of constructing and maintaining a database and what funding sources should be used to defray those costs; and how data security and privacy issues should be addressed.

2. Discussion

208. *Administration.* We seek comment on who should administer the program database. Should USAC be the primary administrator of a centralized system, or should the Commission select another third-party to administer the database? Is a governmental agency in a better position to safeguard consumers' highly sensitive information, such as household income, than a third-party?³⁵¹ Several commenters note that state social service agencies interact most closely with the program's target population, and may be most competent to deal with low-income households' sensitive documents.³⁵² What models or best practices are there in other contexts for social service programs?

209. *Functionality.* We have heard from several ETCs that a national database may be the

³⁴⁸ See NATIONAL BROADBAND PLAN at 173; see also Nebraska Public Service Commission Comments, GN Docket Nos. 09-47, 09-51, 09-137, at 9 (filed Dec. 7, 2009) (suggesting "the Commission should work with states to develop an accurate system that could be administered either at a central location or as a cooperative arrangement between states and the Universal Service Administrative Company for eligibility and verification of low-income participants"); NASUCA Comments, GN Docket Nos. 09-47, 09-51, 09-137, at 35 (filed Dec. 7, 2009) (suggesting that "a universal database could be created to trap 'double-dippers'" who seek to obtain Lifeline-supported service from two different providers).

³⁴⁹ 2010 Recommended Decision, 25 FCC Rcd at 15611-12, para. 36.

³⁵⁰ See, e.g., AT&T Joint Board Comments; CPUC Joint Board Comments; CTIA Joint Board Reply Comments; FPSC Joint Board Comments; MAG-Net Joint Board Comments; NASUCA Joint Board Comments; Nexus Joint Board Comments; NPSC Joint Board Comments; Ohio PUC Joint Board Comments; Qwest Joint Board Reply Comments; Smith Bagley Joint Board Comments; TracFone Joint Board Comments; US Telecom Joint Board Comments; Verizon Joint Board Comments; YourTel Joint Board Comments; see also Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109 (filed Dec. 7, 2010) (TracFone Dec. 7, 2010 *Ex Parte* Letter); Verizon Dec. 14, 2010 *Ex Parte* Letter; Letter from Matt Connolly, Special Projects Manager, YourTel America, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109 (filed Dec. 10, 2010) (YourTel Dec. 10, 2010 *Ex Parte* Letter).

³⁵¹ Verizon, for example, noted that California and Texas already have state-contracted Lifeline administrators. See Verizon Dec. 14, 2010 *Ex Parte* Letter.

³⁵² Letter from Genevieve Morelli, Counsel, Emerios, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 03-109, dated December 16, 2010 (Emerios Dec. 16, 2010 *Ex Parte* Letter); Letter from Genevieve Morelli, Counsel, Emerios, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 03-109, dated December 16, 2010 (Emerios Jan. 4, 2011 *Ex Parte* Letter).

best means to protect against waste, fraud, and abuse.³⁵³ We seek comment on how we can create and implement a database that would enable efficient enrollment by households in the program, but also guard against waste, fraud and abuse. For example, AT&T proposes a national PIN database that would answer two questions: 1) has a consumer been deemed eligible by the state; and 2) is the consumer already receiving Lifeline discounts? Under AT&T's proposal, states would assume responsibility for determining consumer eligibility and assigning a PIN that would be provided in blocks to various states by USAC. ETCs would access the database and be able to determine and change the status of a consumer.³⁵⁴

210. We seek comment on what functions should be served by a centralized database and the priorities for implementation. We are interested in understanding whether there are databases or systems used to facilitate other government-supported programs that can serve as models.

211. First, we seek comment on the functionality that should be included in any information system that facilitates enrollment certification, and ongoing verification of eligibility. For example, how could a system simplify the certification process and provide real-time electronic verification of consumer eligibility?³⁵⁵ How can we ensure that the database provides ongoing verification of consumer eligibility?³⁵⁶ In addition, we seek comment on the type of information that the database would need to contain regarding a consumer's current Lifeline enrollment status.³⁵⁷ How would ETCs access eligibility information? CGM notes that Wisconsin provides real-time certification of customer eligibility at the time of enrollment.³⁵⁸ Could Wisconsin's system provide a model for a nationwide database?

212. In addition, we seek comment on whether a nationwide database could efficiently and effectively facilitate ongoing verification of customer eligibility. We seek comment on how a database would receive updates on changes in consumers' eligibility from appropriate social service agencies so that eligibility for Lifeline could be monitored in a timely manner.³⁵⁹ For example, if a database is linked to a federal or state system that contains information regarding customer enrollment in a qualifying program and the subscriber becomes ineligible in that qualifying program sometime after enrolling in Lifeline, how would the system notify the ETC that the subscriber is no longer eligible for Lifeline? Would the system alert the ETCs on a periodic basis or every time a subscriber drops out of the qualifying program? We seek comment on the procedures ETCs would follow when a subscriber becomes

³⁵³ Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T Services, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109, at 4 (filed Sept. 24, 2010) (AT&T Sept. 24, 2010 *Ex Parte* Letter); TracFone Dec. 7, 2010 *Ex Parte* Letter; Verizon Dec. 14, 2010 *Ex Parte* Letter.

³⁵⁴ Letter from Mary L. Henze, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 03-109 (filed Feb. 18, 2011) (AT&T Feb. 18, 2011 *Ex Parte* Letter).

³⁵⁵ See *supra* Section VII.B (Certification and Verification of Consumer Eligibility for Lifeline).

³⁵⁶ See *supra* Section VII.A (Eligibility Criteria for Lifeline and Link Up).

³⁵⁷ PRWI Joint Board Comments at 10.

³⁵⁸ Letter from Steven A. Augustino, Counsel, CGM, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 03-109, (filed Dec. 9, 2010) (CGM Dec. 9, 2010 *Ex Parte* Letter). CGM is a software development firm that designs, develops, and delivers software systems and outsourced solutions to service providers, including competitive and incumbent wireline providers and wireless providers.

³⁵⁹ Stakeholders have reported on their experience using different state systems and processes, such as Texas, California, and Florida, that utilize different methods for updating consumer eligibility information. See Letter from David J. Redl, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Jan. 13, 2011) (CTIA Jan. 13, 2011 *Ex Parte* Letter); Verizon Dec. 14, 2010 *Ex Parte* Letter.

ineligible. For example, would the subscriber be given a grace period to secure alternative service once de-enrolled in Lifeline? How, if at all, could a database be updated to reflect changes in income eligibility?³⁶⁰

213. We also seek comment on whether a national database would resolve the issue of annual verification by providing an effective means of verifying customer eligibility monthly, quarterly, or annually? How could a nationwide database accommodate the differences in state Lifeline practices, which include varying Lifeline eligibility criteria and verification mechanisms?³⁶¹ Additionally, we seek comment on the impact a national database would have on carriers' administrative burden.³⁶²

214. Second, we seek comment on the functionality required to eliminate duplicate claims for support³⁶³ and generally guard against waste, fraud, and abuse.³⁶⁴ Stakeholders have stated that a national database could eliminate fraudulent and duplicate claims for Lifeline support by performing a pre-qualification address verification.³⁶⁵ Currently, only Texas has a database that can identify duplicate claims, but the database does not allow ETCs to determine immediately if a household is enrolled in another program.³⁶⁶ Rather, ETCs must wait to hear from the system administrator whether the potential household is being served by another ETC. Because the Texas database is not updated in real-time, stakeholders report that there is significant lag-time in signing up customers.³⁶⁷ Is it necessary or desirable to update the database on a real-time basis?

215. Third, we seek comment on how the database would be populated and by whom. Some commenters have pointed out that a national database populated by the states as well as ETCs could simplify the certification process by providing accurate and up-to-date information on eligibility.³⁶⁸ Other commenters explain that state social service agencies are best situated to provide these inputs.³⁶⁹ We seek comment on what authority the Commission has to require state social service agencies to provide inputs in the database. We seek comment on who should be charged with populating the database.

216. A national database would need to have the ability to normalize or standardize data into a common format in order to account for variations in consumer- or ETC-provided data fields, especially addresses. What entity or entities would be responsible for populating a national database with the necessary customer eligibility information? Would ETCs populate the database for all customer data, and if that is the responsibility of ETCs, should we impose different deadlines for completion depending on the number of Lifeline subscribers for each ETC. Would a phased implementation schedule be an appropriate way to populate such a national database? If we were to adopt such an approach, what

³⁶⁰ AT&T Joint Board Reply Comments at 3-4; Nebraska PSC Joint Board Comments at 6.

³⁶¹ AT&T Joint Board Comments at 3.

³⁶² CPUC Joint Board Comments at 17; Smith Bagley Joint Board Reply Comments at 10.

³⁶³ See *supra* Section IV.A (Duplicate Claims).

³⁶⁴ See *supra* Section IV (Immediate Measures to Eliminate Waste, Fraud, and Abuse).

³⁶⁵ See, e.g. AT&T Joint Board Comments at 14; FL PSC Joint Board Comments at 3; Leap Joint Board Comments at 6; Sprint Joint Board Reply Comments at 5; see also Emerios Dec. 16, 2010 *Ex Parte* Meeting.

³⁶⁶ TracFone Dec. 7, 2010 *Ex Parte* Letter.

³⁶⁷ *Id.*

³⁶⁸ CGM Dec. 9, 2010 *Ex Parte* Letter; Emerios Dec. 16, 2010 *Ex Parte* Letter; Emerios Jan. 4, 2011 *Ex Parte* Letter.

³⁶⁹ Emerios Dec. 16, 2010 *Ex Parte* Letter; Emerios Jan. 4, 2011 *Ex Parte* Letter.

threshold should we establish to determine when different providers are required to participate, and should that be based on the size of the ETC (total subscribers) or the number of low-income subscribers it has?

217. Fourth, we seek comment on the system requirements of a national database. For example, Emerios noted that a database must be flexible enough to allow for consumers to easily switch between providers,³⁷⁰ and CTIA points out that a database should include enough fields so that if the fund supports other services in the future that the database would remain relevant and useful.³⁷¹ We seek comment on these issues as well as other matters implicated by a national database.

218. *Costs and Funding.* We seek comment on the best way to fund and maintain a national database. Should database administration be funded completely or partially from the Universal Service Fund?³⁷² Alternatively, if fees are assessed on ETCs to fund a national database, should fees be assessed on a per Lifeline-applicant basis, per instance of accessing the database (per "dip" into the database), or both? Emerios estimates that a centralized database would cost approximately \$1 per application to administer.³⁷³ CGM and YourTel suggest that ETCs pay \$.05 - \$.10 per dip.³⁷⁴ How many "dips" would be expected per year? Is there some other ETC assessment mechanism that would be more appropriate, such as a one-time flat fee? Verizon suggests that California's model of funding a third-party administrator using a customer-billed surcharge is an effective strategy.³⁷⁵ Are there examples of funding for program participation databases in other contexts that could serve as a model?³⁷⁶

219. We seek comment on what costs the states might incur if a national database were established. For example, what costs would be associated with set-up, continuous operation, and updating of appropriate state databases that may be used for state low-income programs, as well as establishing appropriate telecommunications and information links and electronic data interfaces (EDIs) with a national database. Additionally, would existing state databases need to be modified in order to be compatible with a national database and at what cost? Could a national database have the inherent capability to perform seamless data protocol conversions while interacting with the state databases? The existing proposals have not addressed how the related non-recurring and recurring costs would be allocated among the individual states, the national/federal level, and ETCs.³⁷⁷ However, as Emerios points out, states could be incentivized to connect to an existing national database because of the reduced costs of interfacing with a single database rather than potentially interacting with numerous providers.³⁷⁸ Thus, even in the absence of a state mandate to interface with a national database, states may find moving towards automation to be fiscally sound. Alternatively, are there federal agencies with which we could partner to populate consumer eligibility data?

³⁷⁰ Emerios Dec. 16, 2010 *Ex Parte* Letter; Emerios Jan. 4, 2011 *Ex Parte* Letter.

³⁷¹ CTIA Jan. 13, 2011 *Ex Parte* Letter.

³⁷² AT&T Joint Board Comments at 9-10; AT&T Joint Board Reply Comments at 3-4.

³⁷³ See Emerios Jan. 4, 2011 *Ex Parte* Letter, at 4.

³⁷⁴ CGM Dec. 9, 2010 *Ex Parte* Letter.

³⁷⁵ Verizon Dec. 14, 2010 *Ex Parte* Letter.

³⁷⁶ For example, we note that Medicaid utilizes the Medicaid Management Information System (MMIS) which encompasses one criteria for eligibility for Lifeline and Link Up. See Medicaid Management Information Systems (MMIS) Overview, <https://www.cms.gov/MMIS>; see also 47 C.F.R. § 54.409(b).

³⁷⁷ PaPUC Joint Board Reply Comments at 6-7.

³⁷⁸ Emerios Dec. 16, 2010 *Ex Parte* Letter; Emerios Jan. 4, 2011 *Ex Parte* Letter.

220. *Data Security and Privacy Issues.* We note that the privacy-based limitations on the government's access to customer information in Title II of Electronic Communications Privacy Act (ECPA), section 222 of the Communications Act, and our implementing rules and the privacy provisions of the Cable Act, may be implicated by collection of the data discussed here.³⁷⁹ We seek comment on whether any of these pre-existing regulatory or statutory requirements would impose any restrictions on the storage by a database administrator of customer eligibility, certification, and verification data. We seek comment on how best to address these concerns. We ask commenters to suggest ways in which a database could comply with any such requirements, and how could it be set up both to get useful data and to minimize the burden on consumers and reporting entities? Are the concerns alleviated if consumers provide information directly to the Commission, or if the ETC obtains consumer consent through a waiver at the time of enrollment? If the latter, what steps could the Commission take to ensure that consumers have provided consent? How could the Commission address any other privacy issues, and any other legal impediments to the creation and maintenance of such a database? Are there other databases that have been constructed that could serve as a model for developing a database for Lifeline/Link Up? Specifically, we seek input from the states that have developed similar databases on how best to achieve our goal of allowing ETCs to access relevant data while protecting consumers' privacy.

221. We note that different states have different laws governing privacy of consumer data. We seek comment to better understand the differences in state privacy and security laws concerning the program eligibility data. We also seek comment to explore how to construct an IT platform that could ensure data security while enabling convenient access for all Lifeline providers across the country. Emerios points out that having a single platform, populated by ETCs, which all states can access, decreases the risk of security breaches by reducing the number of portals for inputting sensitive information.³⁸⁰ Would a national database be a more effective way to ensure consumer privacy than requiring individual ETCs to gather documentation establishing household eligibility?³⁸¹

222. *State/Regional Database.* We also seek comment regarding the feasibility and potential advantages and disadvantages of regional and state databases as opposed to, or in addition to, a national database. We seek comment on several key factors that parallel the critical issues outlined above for a national database, such as administration, cost and funding, privacy, and data security issues. We are interested in the advantages and disadvantages of these possible models.³⁸² Consistent with the goal of preventing waste, fraud, and abuse, where a state has taken steps to automate the process to streamline or enhance eligibility and certification procedures and/or to prevent duplicate claims, we propose to require all ETCs operating in that state to utilize that state-managed process. We seek comment on this proposal.

E. Electronic Signature.

223. Section 54.409(d) requires carriers to "obtain [a] consumer's signature on a document certifying under penalty of perjury" that the consumer meets certain Lifeline eligibility requirements.³⁸³ Section 54.410 requires carriers to verify continued eligibility by surveying consumers who must prove their continued eligibility and "self-certify under penalty of perjury" to certain requirements relevant to

³⁷⁹ See, e.g., 18 U.S.C. § 2510; Electronic Communications Act (ECPA), tit. II (Stored Communications Act (SCA)), 18 U.S.C. § 2701 et seq. (2006); Cable Communications Policy Act of 1984 (the Cable Act), 47 U.S.C. § 551 et seq. (2006); 47 U.S.C. § 222.

³⁸⁰ Emerios Dec. 16, 2010 *Ex Parte* Letter; Emerios Jan. 4, 2011 *Ex Parte* Letter.

³⁸¹ See, e.g., AT&T Joint Board Reply Comments at 10-11; TracFone Joint Board Comments at 7.

³⁸² See AT&T Joint Board Reply Comments at 10-11; TracFone Joint Board Comments at 7.

³⁸³ 47 C.F.R. § 54.409(d).

continued eligibility.³⁸⁴ Virgin Mobile has requested to enroll Lifeline consumers online by allowing applicants to electronically sign the application and to enroll customers by telephone using an Interactive Voice Response (IVR) system, which records and saves by phone an applicant's certification of eligibility.³⁸⁵

224. The Electronic Signatures in Global and National Commerce Act (E-Sign Act)³⁸⁶ and Government Paperwork Elimination Act³⁸⁷ make clear that electronic signatures have the same legal effect as written signatures. We propose to allow consumers to electronically sign the "penalty of perjury" requirements of sections 54.409(d) and 54.410 of the Commission's rules. Because there is no general Commission rule on use of electronic signatures, we seek comment on the rules defining and guidelines for accepting electronic signatures for Lifeline enrollment, certification, and verification. For example, should sections 54.409(d) and 54.410 be amended to make clear that electronic signature is an acceptable "signature on a document" as required by the rules? We seek comment on how we can ensure that ETCs maintain copies of the household certifications in the event of duplicates or other questions concerning compliance with our rules.

225. We seek comment on whether an IVR telephone system is an acceptable method to verify a consumer's signature under sections 54.409(d) and 54.410 of the Commission's rules.³⁸⁸ Unlike section 54.410, section 54.409(d) specifically requires a signature by an eligible consumer, and we seek comment on whether an interactive voice response (IVR) telephone system satisfies the signature requirement of the rules. We note that the Commission has allowed the use of automated processes in other instances requiring verification by adopting rules specifically authorizing the use of such automated processes.³⁸⁹ How would ETCs satisfy the recordkeeping requirements of section 54.417 using an IVR telephone system?³⁹⁰

VIII. CONSUMER OUTREACH & MARKETING

226. Section 214(e)(1)(B) of the Act requires ETCs to advertise the availability of services supported by universal service funds "using media of general distribution."³⁹¹ Over the years, the Commission has highlighted the importance of outreach to low-income consumers,³⁹² including by adopting outreach guidelines in its *2004 Lifeline and Link Up Order*.³⁹³

³⁸⁴ 47 C.F.R. § 54.510.

³⁸⁵ Letter from Peter Lurie, Virgin Mobile USA, L.P., to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 09-197 (filed March 4, 2010).

³⁸⁶ 15 U.S.C. §§ 7001-7004 (2006).

³⁸⁷ 44 U.S.C. § 3501-20 (2006).

³⁸⁸ 47 C.F.R. §§ 54.409(d), 54.410.

³⁸⁹ See, e.g., 47 C.F.R. § 64.1120 (allowing automated third party verification of a subscriber's preferred carrier change).

³⁹⁰ 47 C.F.R. § 54.417 (requiring ETCs to maintain the documentation required in §§ 54.409(d) and 54.410(b)(3) for as long as the consumer receives Lifeline service from that ETC.).

³⁹¹ 47 U.S.C. § 214(e)(1)(B).

³⁹² *Tribal Order*, 15 FCC Rcd at 12250, para 78.

³⁹³ These outreach guidelines are: (1) States and carriers should utilize outreach materials and methods designed to reach households that do not currently have telephone service; (2) states and carriers should develop outreach advertising that can be read or accessed by any sizeable non-English speaking populations within a carrier's service area; and (3) states and carriers should coordinate their outreach efforts with governmental agencies/tribes that (continued....)

227. Advertising the availability of discounted services available to low-income households falls into two related categories: outreach and marketing. Outreach entails increasing public awareness of the program, while marketing relates to how ETCs describe and sell their USF-supported products to consumers. The Commission wants to ensure that eligible consumers are made aware of the availability of Lifeline and Link Up and seeks comment below on effective outreach methods to low-income households. Moreover, as discussed below, some ETCs are energetically marketing Lifeline- and Link Up-supported products. We seek comment on whether we should impose marketing guidelines on ETCs to ensure that consumers fully understand the benefit being offered, which may help prevent the problem of duplicate support.

228. In its *2010 Recommended Decision*, the Joint Board looked at both outreach and marketing and urged the Commission to adopt mandatory outreach requirements for all ETCs that receive low-income support from the Universal Service Fund.³⁹⁴ In support, the Joint Board cited USAC data showing that, in 2009, only 36 percent of eligible consumers participated in Lifeline.³⁹⁵ Based on this statistic, the Joint Board expressed concern that current outreach is ineffective or that some ETCs are neglecting low-income outreach altogether.³⁹⁶ The Joint Board also recommended that the Commission review carrier best practices on community-based outreach,³⁹⁷ clarify the role of the states in performing low-income outreach,³⁹⁸ including working with ETCs to formulate methods to reach households that do not currently have telephone and/or broadband service,³⁹⁹ and monitor ETCs' outreach efforts.⁴⁰⁰ With respect to marketing, the Joint Board encouraged the Commission to provide ETCs with the flexibility to market their service offerings to eligible consumers in accordance with their respective business models, and recommended that the Commission seek comment on whether ETCs should be required to submit a marketing plan to the state or Commission describing outreach efforts.⁴⁰¹

229. *Outreach to Households Without Telephone Service.* In 2004, the Commission adopted an outreach guideline recommended by the Joint Board that states and carriers utilize materials and methods designed to reach low-income households that do not currently have telephone service. In its *2010 Recommended Decision*, the Joint Board recommended that states should assist ETCs in two primary ways in formulating methods to reach households that do not currently have telephone and/or broadband service.⁴⁰² First, states can identify appropriate community institutions to participate in public-private partnerships.⁴⁰³ Second, states can assist ETC outreach efforts by identifying unserved and

(Continued from previous page)

administer any of the relevant government assistance programs. *2004 Lifeline and Link Up Order*, 19 FCC Rcd. at 8326-28, paras. 45-48.

³⁹⁴ *2010 Recommended Decision*, 25 FCC Rcd at 15619, para. 60.

³⁹⁵ *Id.* at 15618-19, para. 59 n.152.

³⁹⁶ *Id.* at 15618-19, paras. 59-60.

³⁹⁷ *Id.* at 15621, para. 64.

³⁹⁸ *Id.* at 15622, para. 67.

³⁹⁹ *Id.* at 15622, para. 68.

⁴⁰⁰ *2010 Recommended Decision*, 25 FCC Rcd at 15623, para. 70.

⁴⁰¹ *Id.* at 15620-21, paras. 62-63.

⁴⁰² *Id.* at 15622, para. 68.

⁴⁰³ *Id.*

underserved populations for whom outreach would be beneficial.⁴⁰⁴

230. We seek comment on the efficacy of current efforts by states and ETCs to reach low-income consumers without phone service, and what more can be done to improve outreach, particularly in states where adoption of phone service is below the national average. We seek examples of public-private partnerships that have been effective in reaching low-income households without phone service. In addition, we would like to better understand how state social service agencies or public utility commissions identify unserved populations in their states, and whether and how they could share such information with ETCs operating within their states. We also seek comment on the role of Tribal governments and organizations in identifying and reaching out to members of their communities who lack telephone service and could benefit from Lifeline and Link Up. Moreover, we are interested in any data regarding whether outreach to low-income households results in increased telephone penetration rates.

231. *Outreach to Non-English Speaking Populations.* The Commission has encouraged states and carriers to use advertising that can be read or accessed by any sizable non-English speaking populations within the ETC's service area.⁴⁰⁵ The Joint Board also emphasized the importance of outreach to non-English speaking communities in its *2010 Recommended Decision*.⁴⁰⁶ We seek comment on whether current outreach efforts to non-English speaking communities by states and ETCs are effective, or whether more should be done in this area. As discussed in more detail below, we seek information on community-based partnerships or initiatives that have been effective in educating non-English speaking populations about the Lifeline/Link Up program.

232. *Role of the States and Outreach with Government Assistance Programs.* Since 2004, the Commission has urged states and carriers to coordinate their outreach efforts with governmental agencies that administer any of the relevant government assistance programs.⁴⁰⁷ The Commission's 2004 outreach guidelines make clear that states play an important role in working with ETCs to advertise the availability of Lifeline supported services.⁴⁰⁸ Recently, the National Broadband Plan noted that requiring ETCs to conduct Lifeline outreach may not be the most effective way to reach underserved, low-income populations.⁴⁰⁹ Rather, the Broadband Plan suggested that state social service agencies should take a more active role in consumer outreach by making Lifeline and Link-Up applications routinely available when the agencies discuss other assistance programs with consumers.⁴¹⁰ A few ETCs have pointed out that social service agencies are in a much better position than ETCs to approach potential consumers with information about Lifeline-assisted programs.⁴¹¹

233. We seek comment on what steps this Commission could take to encourage state and Tribal social service agencies to take a more active role in reaching potential Lifeline-eligible consumers going forward. For example, should we encourage the states to distribute to low income consumers comparative guides detailing the competitive Lifeline offerings available in their states?⁴¹² We seek

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.* at 15618, para 57.

⁴⁰⁶ *2010 Recommended Decision*, 25 FCC Rcd at 15620-21, para. 63.

⁴⁰⁷ *2004 Lifeline and Link Up Order*, 19 FCC Rcd. at 8328, para 48.

⁴⁰⁸ *2004 Lifeline and Link Up Order*, 19 FCC Rcd. at 8326-8327, para. 45-46.

⁴⁰⁹ NATIONAL BROADBAND PLAN at 172-173.

⁴¹⁰ *Id.*

⁴¹¹ Qwest Dec. 16, 2010 *Ex Parte* Letter; Verizon Dec. 14, 2010 *Ex Parte* Letter.

⁴¹² *2010 Recommended Decision*, 25 FCC Rcd at 15631-32 (statement of Commissioner Clyburn).

comment on who should bear the cost associated with state outreach efforts, and whether outreach costs should come out of the Universal Service Fund. And we ask commenters to identify any best practices in the area of state outreach. We also inquire whether coordinating outreach with government assistance programs should be the preferred method of outreach, as opposed to imposing mandatory outreach requirements on ETCs.

234. *Outreach by ETCs.* As noted above, the Commission has not imposed mandatory outreach obligations on ETCs, but rather adopted outreach guidelines in 2004 designed to encourage states and carriers to work together to educate consumers about Lifeline-assisted programs.⁴¹³ The Joint Board's *2010 Recommended Decision* recommended that the Commission adopt mandatory outreach requirements for all ETCs that receive low-income support from the Universal Service Fund.⁴¹⁴ Looking at the current Lifeline participation rate, the Joint Board expressed concern that ETCs may not be doing enough to promote their Lifeline offerings to low-income households.⁴¹⁵ The Joint Board also recommended that the Commission seek comment on whether ETCs should be required to submit a marketing plan to the state or Commission outlining their outreach efforts.

235. We seek comment on whether we should impose specific outreach requirements on ETCs, as recommended by the Joint Board. If the Commission were to adopt mandatory requirements, what should those requirements be? Would a uniform national rule be effective in achieving program goals, and what burdens would such a rule place on ETCs? In response to the Recommended Decision, Qwest argues that ETC advertisements do not necessarily result in more customers enrolling in the program, and that the better approach is for the state or social services agencies to promote the program.⁴¹⁶ TracFone notes that it spent \$41 million on advertising in 2010 to promote its Lifeline-supported SafeLink product, which included targeted marketing and advertisements in community newspapers.⁴¹⁷ We seek to develop a fuller record on this issue, as suggested by the Joint Board. We are interested in understanding what are the most effective outreach methods to reach consumers, and how the Commission could evaluate the impact of outreach methods over time.

236. *Community-Based Outreach.* In its *2010 Recommended Decision*, the Joint Board noted that community-based outreach may be an effective means to reach low-income households and encouraged the Commission to collect data on best practices in this area.⁴¹⁸ We ask ETCs, community-based organizations, and other interested parties to highlight community-based outreach that has been successful in educating low-income households about the Lifeline program. For example, we seek comment on the role of Tribal governments and other Tribal organizations in reaching low-income households on Tribal lands.

237. *Marketing and Uniform Language to Describe Lifeline.* Some ETCs market their Lifeline-supported products under a trade name. For example, TracFone offers Lifeline-supported service under the name SAFELINK WIRELESS®, while Virgin Mobile's competing offering is Assurance Wireless. Some eligible consumers may not understand that these products are Lifeline-supported offerings, and therefore may not realize they are violating our prohibition against having more than one Lifeline-supported service per household. To prevent consumer confusion and reduce the number of

⁴¹³ *2004 Lifeline and Link Up Order*, 19 FCC Rcd. at 8326-8329, paras. 45-49.

⁴¹⁴ *2010 Recommended Decision* at 15619, para. 60.

⁴¹⁵ *Id.* at 15618-19, para. 59.

⁴¹⁶ Qwest Dec. 16, 2010 *Ex Parte* Letter

⁴¹⁷ TracFone Dec. 7, 2010 *Ex Parte* Letter, at 6.

⁴¹⁸ *2010 Recommended Decision*, 25 FCC Rcd at 15621, para. 64.

consumers receiving duplicate support, we seek comment on whether we should require all ETCs to include language in the name of their service offering or in description of the service to make clear that the offering is supported by Lifeline. Should ETCs be required to expressly identify the service as a Lifeline-supported product in all advertising and outreach to consumers? Would it inhibit effective marketing by ETCs to require such language on the product name, potentially reducing competition for Lifeline-supported services? We seek comment on whether the other actions we propose in this Notice to eliminate waste, fraud, and abuse alleviate the need to set policies related to the marketing of Lifeline services to consumers.

238. We also seek comment on whether ETCs should be required to include in all marketing and advertising materials for Lifeline-supported offerings clear and prominent language explaining that consumers are entitled to only one Lifeline subsidy per household. Should the Commission develop model language that would be required for ETCs to use, or that would be a safe harbor for ETCs to use? If so, what should that language be? We request that ETCs provide us with the language they currently use to describe their Lifeline and Link Up service offerings.

IX. MODERNIZING THE LOW INCOME PROGRAM TO ALIGN WITH CHANGES IN TECHNOLOGY AND MARKET DYNAMICS

A. The Current Lifeline Program

1. Voice Services Eligible for Discounts

239. *Background.* The telecommunications marketplace has changed dramatically since the Commission created the current Lifeline program in 1997. In contrast to 1997, today incumbent telephone companies typically offer consumers packages that combine both local and long distance calling into a single plan. Some of these plans are structured so that a consumer pays a single rate regardless of whether their call is to a local or long distance number. Over the last decade, the wireless industry has migrated to packages that offer a bucket of minutes for a set price, with no distinction between local and long distance calling. Indeed, many wireless ETCs offer plans eligible for the Lifeline discount that also include nationwide calling.⁴¹⁹ From the consumer's perspective, distinctions between local and long distance calling are increasingly disappearing.

240. Currently, all ETCs must make available to qualifying low-income households certain enumerated services as part of their Lifeline service offerings, as defined by section 54.401.⁴²⁰ These Lifeline supported services consist of a "retail local service offering" with specific functionalities including, for example, access to public switched networks, emergency services, operator services, and directory assistance.⁴²¹ Additionally, according to the definitions of "universal service" and "Lifeline"

⁴¹⁹ See, e.g., Assurance Wireless, <http://www.assurancewireless.com/Public/MorePrograms.aspx> (stating that Assurance Wireless offers "[s]ervice within [a] nationwide coverage area reaching more than 275 million people") (last visited Mar. 1, 2011); Cellular One, Lifeline and Link Up, <http://www.cellonation.com/lifeline.php> (offering free in-state long distance for calls completed within the home calling area) (last visited Mar. 1, 2011); U.S. Cellular, Lifeline Plans, <http://www.uscellular.com/plans/lifeline/index.html> (offering free nationwide calling to subscribers purchasing the Lifeline Tribal lands/Oklahoma Calling Plan) (last visited Mar. 1, 2011).

⁴²⁰ 47 C.F.R. § 54.405(a).

⁴²¹ 47 C.F.R. §§ 54.101, 54.401(a). Our rules require Lifeline-supported services to offer the following functionalities:

- (a) Voice grade access to the public switched network;
- (b) Local usage;
- (c) Dual tone multi-frequency signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;

(continued....)

adopted in the 1997 *Universal Service First Report and Order*, an ETC providing program support to a customer is currently reimbursed only for discounts provided on the costs of monthly basic, local telephone service.⁴²²

241. On February 8, 2011, the Commission released the *USF/ICC Transformation Notice*, which, among other things, sought comment on modifying the definition of the supported services in section 54.101.⁴²³ As the Notice explains, the Commission originally chose to define supported services in functional terms, rather than as tariffed services, in order to promote competitive neutrality and provide greater flexibility.⁴²⁴ However, due to marketplace changes, the *USF/ICC Transformation Notice* sought comment on simplifying how we describe the core functionalities and on defining them by a single term: "voice telephony service."⁴²⁵

242. *Discussion.* In light of the marketplace changes noted above, it is also an appropriate time to evaluate the definition of "Lifeline" to ensure it is keeping pace with the basic connectivity needs of low-income consumers. We question whether Lifeline should continue to be defined as "basic local service." As noted above, distinctions between local and long distance calling are becoming irrelevant in light of flat rate service offerings that do not distinguish between local and toll calls. Is the "local" qualifier outdated in light of marketplace changes? How should we define "basic" voice telephony for purposes of the Lifeline and Link Up programs?

243. We propose, consistent with the *USF/ICC Transformation Notice*, to amend the definition of "Lifeline" in section 54.401 to provide support for a set of defined functionalities known as "voice telephony service."⁴²⁶ This amended definition may provide simplicity for ETCs who provide and advertise Lifeline services, and will ensure consistency across universal service support mechanisms.

244. We seek comment on this proposal. Should this definition of voice telephony service encompass the nine functionalities currently specified in section 54.401? Is there any reason to modify the functionalities to be provided to ensure quality service for low-income customers? As noted by the Commission in the *USF/ICC Transformation Notice*, with respect to the performance characteristics for voice telephony service, "voice grade access" to the public switched network is defined in section 54.101 of the Commission's rules as "a functionality that enables a user of telecommunications services to

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- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange service;
- (h) Access to directory assistance; and
- (i) Access to toll limitation.

⁴²² See 47 C.F.R. § 54.401(a) (defining "Lifeline" as "a retail local offering" providing specified functionalities to eligible low-income consumers); see also *Universal Service First Report and Order*, 12 FCC Rcd at 8780, 8952, paras. 2, 328 (stating that, in implementing the universal service program, the Commission's goals include a commitment to "maintain rates for basic residential service at affordable levels" and that "that Lifeline consumers should have the benefit of certain basic services and policies").

⁴²³ See *USF/ICC Transformation NPRM*, FCC 11-13, at paras. 95-97 (citing 47 C.F.R. § 54.101(a)).

⁴²⁴ *Id.* at para. 95.

⁴²⁵ See *id.* at paras. 96-97.

⁴²⁶ See Appendix A, 47 C.F.R. § 54.401(a)(3). Because we are merely proposing to consolidate all currently supported services for the Lifeline program under one new term, "voice telephony service," we need not consider whether these consolidated services should be part of the definition of supported services. 47 U.S.C. § 254(c)(1)(A)-(D).

transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz.⁴²⁷ Is this definition appropriate for Lifeline households? How should we define services supported by Lifeline in a way that is technologically neutral and can evolve over time as technologies used to deliver voice service change in the years ahead?

2. Support Amounts for Voice Service

a. Background

245. The benefit from the federal Lifeline program can vary by household depending on a number of factors. As noted above, the amount of federal Lifeline support that a household receives depends in part on the state and (if applicable) Tribal land in which the household is located. Moreover, the amount the household actually pays for phone service depends on the price charged by the carrier for offering the service and the type of service plan the carrier offers to which the discount is applied. The net result is that households end up paying significantly different amounts for their Lifeline-supported service depending on their chosen carrier and the state in which they reside, and in some cases do not pay for that service at all.

246. Under the current rules, there are four tiers of federal Lifeline support, each of which must be passed directly from the ETC to the qualifying low-income consumer in the form of discounts on the consumer's monthly bill.⁴²⁸ All eligible subscribers receive Tier 1 support, which provides a monthly discount equal to the incumbent local exchange carrier's Subscriber Line Charge, which today is capped at \$6.50.⁴²⁹ Tier 2 support provides an additional \$1.75 per month in federal support, available in all states.⁴³⁰ Tier 3 support provides one-half of the subscriber's state Lifeline support amount, up to a maximum of \$1.75 per month.⁴³¹ Only subscribers residing in a state that has established its own Lifeline program may receive Tier 3 support, assuming that the ETC has all necessary approvals to pass on the full amount of this total support in discounts to subscribers.⁴³² Finally, Tier 4 support provides eligible subscribers living on Tribal lands up to an additional \$25 per month towards reducing basic local service rates, but the rules specify that the discount cannot bring the subscriber's rate for basic local service below \$1.⁴³³

⁴²⁷ *USF/ICC Transformation NPRM*, FCC 11-13, at para. 86 (citing 47 C.F.R. § 54.101(a)(1)).

⁴²⁸ See 47 C.F.R. § 54.403; see also *Universal Service First Report and Order*, 12 FCC Rcd at 8971, para. 368.

⁴²⁹ See 47 C.F.R. § 54.403(a)(1). The SLC is a flat, monthly charge that incumbent local exchange carriers assess directly on end users of telecommunications service to recover a portion of their revenue assigned to the interstate jurisdiction. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd. 3752, 3767, para. 35 n. 81 (2002). USAC, Step 1: Lifeline Support, <http://usac.org/li/telecom/step01/lifeline.aspx> (last visited Mar. 1, 2011).

⁴³⁰ 47 C.F.R. § 54.403(a)(2). When adopting Tier 2 support in 1997, the Commission sought to increase subscribership in those states that previously did not participate in the program. See *Universal Service First Report and Order*, 12 FCC Rcd at 8962-64, paras. 350-53.

⁴³¹ 47 C.F.R. § 54.403(a)(3). When adopting Tier 3 support in 1997, the Commission sought to increase subscribership and encourage states to provide matching discounts to eligible consumers. See *Universal Service First Report and Order*, 12 FCC Rcd at 8963-64, para. 353. We are aware that some states do not actually provide matching state discounts through explicit support, but rather mandate that the carrier reduce its rates by such amounts to qualify for Tier 3 support.

⁴³² See 47 C.F.R. § 54.403(a)(3).

⁴³³ 47 C.F.R. § 54.403(a)(4).

247. Significant marketplace changes have occurred since the Commission adopted the Lifeline support tiers. Notably, most non-ILEC ETCs do not assess SLCs on their subscribers, and their rates are not regulated by the Commission and/or the states.⁴³⁴ Therefore, it is unclear whether an ILEC's SLC continues to be an appropriate metric for determining the amount of support that should be provided to a non-ILEC ETC that serves a low-income household. Moreover, to varying degrees, local rates for incumbent wireline telephony companies have been deregulated.⁴³⁵ Finally, the fact that numerous carriers are seeking designation as Lifeline-only ETCs, including prepaid wireless carriers and prepaid wireline carriers, suggests that the current structure of the program may present an attractive business opportunity for firms that employ different business models than traditional wireline carriers. As a result, it is unclear whether the aggregate amount of support or the tiered structure of support provided to an ETC for serving a low-income household and for the provision of Lifeline support should remain the same as they were in the past and whether they should remain the same for all types of carriers. Rather than just offsetting the rates paid by consumers, subsidies in an unregulated marketplace could reduce price competition and benefit providers more than consumers.⁴³⁶ Similarly, providing the same level of support for services offered over different technology platforms may result in over-subsidizing some technologies and under-subsidizing others.

b. Discussion

248. We seek comment on whether there is a more appropriate reimbursement framework than the current four-tier system for determining federal support amounts for the program that will provide support for low-income households that is sufficient, but not excessive, consistent with section 254.⁴³⁷ Should the low-income tiers of support be modified in light of the marketplace changes that have occurred since the *Universal Service First Report and Order*? Such a change could be an important step toward reducing waste in the Lifeline program. How can the Commission ensure that low-income households can continue to benefit from the expanded array of service offerings, including pre-paid

⁴³⁴ See 47 C.F.R. §§ 69.104, 69.152(d)(1), 69.152(q). The Commission acknowledged this in the *Universal Service First Report and Order*, but ultimately opted to require that all ETCs pass Lifeline discounts in the amount of the SLC through to eligible consumers. See *Universal Service First Report and Order*, 12 FCC Rcd at 8970-71, paras. 366-67. The Commission "acknowledge[d] that the distribution of support to non-ILEC carriers cannot be achieved simply by waiving the SLC, as [c]arriers other than ILECs do not participate in the formal separations process that our rules mandate for ILECs and hence do not charge SLCs nor distinguish between the interstate and intrastate portion of their charges and costs." *Id.* at 8970, para. 366. The Commission concluded, however, that "[t]he interstate portion of ILECs' rates to recover loop costs is, almost without exception, greater than the amount of the SLC cap for residential subscribers; we are therefore confident that this amount is a reasonable proxy for the interstate portion of other eligible telecommunications carriers' costs." *Id.* at 8970-71, para. 367.

⁴³⁵ See, e.g., KAN. STAT. ANN. § 66-2005 (2009); Texas Util. Code Ann. § 52.201 (Vernon 2007); Ohio Substitute Senate Bill No. 162 (Sept. 2010), available at http://www.legislature.state.oh.us/bills.cfm?ID=128_SB_162; Press Release, Virginia State Corporation Commission, SCC Approves Partial Deregulation of Verizon Local Telephone Services (Dec. 14, 2007), http://www.scc.virginia.gov/puc/comp/v_exch/c_verdereg_07.aspx; Phillip Rawls, *Alabama Phone Deregulation Increases Jan. 1 as PSC Loses Control over 4 Companies*, BIRMINGHAM NEWS, Dec. 31, 2010, http://blog.al.com/wire/2010/12/alabama_phone_deregulation_inc.html.

⁴³⁶ See, e.g., Scott Wallsten, Technology Policy Institute, *The DTV Coupon Program: A Boon to Retailers, not Consumers*, Sept. 15, 2008, http://www.techpolicyinstitute.org/files/the_dtv_coupon_program.pdf (*DTV Coupon Program Paper*) ("Because consumers pay \$0 with the coupon for any box priced \$40 or less, retailers have little incentive to reduce the price below \$40. An analysis of converter box prices at retailers around the country suggests that the coupon program has increased the price of converter boxes by \$21 - \$34.").

⁴³⁷ See 47 U.S.C. § 254(b)(5) (universal service support should be "sufficient" to preserve and advance universal service); see also *Alenco Commc'ns., Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) ("excessive funding may itself violate the sufficiency requirements of the Act.").

wireless service, while ensuring that universal service funds are primarily benefiting consumers, rather than the carriers that serve those consumers?

249. Given the growth of the program in recent years, it is vital that the Commission ensure that funds are distributed in a targeted and meaningful way. In particular, we seek comment on whether it makes sense to continue to tie Lifeline support amounts to the federal subscriber line charge, which may not be the appropriate metric of whether service is affordable to a low-income household. Should we adopt a different framework for carriers that do not charge a subscriber line charge, or that do not allocate their costs between the intrastate and interstate jurisdictions?⁴³⁸ Is there an amount that would better ensure affordable service for eligible households? What might be the appropriate reimbursement structure be in the future, when voice service is provided as an application over broadband networks, potentially at no additional cost to the consumers?

250. We also seek comment on whether to maintain Tiers 2 and 3 of Lifeline support as, currently set forth in the Commission's rules. Should consumers be entitled to a higher or lower baseline federal support amount, justifying a change in the amount of available Tier 2 support? Similarly, should the Commission raise or lower the amount of federal matching support that is available under Tier 3? Finally, does \$25 remain a reasonable additional reimbursement rate for consumers receiving enhanced Tribal support pursuant to Tier 4? Does providing such a flat amount effectively create a price floor for carriers serving Tribal lands, even though it may be possible in some instances to serve eligible households at a lower cost (*i.e.*, for less than \$25 per month)?⁴³⁹ We emphasize that in asking this question we are not seeking to limit benefits for low-income households, but rather looking at ways to restructure support levels to create incentives for carrier efficiency.

251. If the Commission were to create a new reimbursement structure for carriers providing Lifeline service to low-income households, should the reimbursement mechanism be different for wireless and wireline ETCs, based on their potentially divergent costs for providing service? Would there be any reason to adopt a different framework for pre-paid wireless providers as opposed to post-paid? Should the Commission maintain a tiered reimbursement structure? If so, what costs should be used as the basis for setting a support amount? Would adoption of a single, uniform flat discount amount without

⁴³⁸ We note that TracFone filed a petition for rulemaking and a waiver request in 2009 that raised some of these issues. In its petition for rulemaking, TracFone sought to amend the definition of Tier One Lifeline support as defined in section 54.403(a)(1). *TracFone Wireless, Inc.'s Petition for Waiver of 47 C.F.R. § 54.403(a)(i)*, CC Docket No. 96-45, Petition (filed May 4, 2009) (*TracFone Tier 1 Petition*). On March 30, 2009, the Commission released a public notice seeking comment on TracFone's petition for rulemaking. Public Notice, Report No. 2885, RM-11526 (rel. March 30, 2009), <http://fjallfoss.fcc.gov/ecfs/document/view?id=6520204555>. TracFone requested that the Commission detach Tier One support from the SLC in effect for the ILEC and allow all ETCs to receive the maximum available (\$6.50 per household) in all service areas. *TracFone Tier 1 Petition* at 7-10. Additionally, TracFone requested that the Commission require ETCs claiming the maximum Tier One amount because of the rule amendment to provide an additional, unreimbursed \$3.50 in Lifeline benefits per month. *Id.* Two parties commented on the proceeding. YourTel, a small carrier based in Missouri and a participant in the Lifeline program, concurred with TracFone that Tier One support should be disconnected from the SLC. *See YourTel TracFone Tier One Petition Comments* at 1. YourTel contended that the current Tier One support system is "no longer valid in today's wireline environment where niche carriers have higher costs." *Id.* The Independent Telephone & Telecommunications Alliance (ITTA) disagreed, and stated that the Tier One support "is intended to be a proxy for interstate loop costs, and relies upon the determination that the SLC represents a fair approximation of that amount." ITTA *TracFone Tier One Petition Comments* at 4. We hereby incorporate TracFone's petition into our instant proceeding and seek further comment on these issues.

⁴³⁹ *Cf. DTV Coupon Program Paper*, at 1.

tiers be appropriate?⁴⁴⁰ Would a percentage discount rate, subject to an overall dollar cap, better assist low-income households in securing the best retail rates offered by their chosen ETC? In the alternative, should we establish national parameters of a basic Lifeline service, and require ETCs to specify the minimum price per household they would accept to provide such service? We seek comment on these alternatives.

3. Minimum Service Requirements for Voice Service

252. *Background.* As part of the ETC designation process, a carrier applying for designation must show that it offers local usage comparable to that offered by the incumbent LEC.⁴⁴¹ In June 2010, the National Association of State Utility Consumer Advocates (NASUCA) adopted a resolution that raised concerns about “free” Lifeline calling plans offered by various wireless ETCs. In particular, NASUCA identified three areas of concern: First, that such plans have resulted in substantial growth of the Lifeline program, without a “necessary assurance of adequate value provided to the Lifeline customer,” or a demonstration that these plans make efficient use of Lifeline funds; second, that such plans include limited usage minutes and require subscribers needing additional minutes to purchase those minutes from the carrier; and third, that it is not evident whether such calling plans offer local usage comparable to available ILEC Lifeline calling plans.⁴⁴² The NASUCA resolution recommended that the Commission consider establishing minimum standards of service for pre-paid wireless Lifeline service to ensure value for Lifeline consumers, as well as efficient use of universal service dollars.⁴⁴³ The Joint Board, in its *2010 Recommended Decision*, urged the Commission to investigate the impact of designation of prepaid wireless providers on the program, noting that several commenters have suggested that minimum service requirements should be imposed upon prepaid wireless ETCs.⁴⁴⁴

253. *Discussion.* We seek comment on the advantages and disadvantages of adopting minimum standards for all ETCs offering Lifeline service. In the section above, we asked whether we should establish national parameters for a basic Lifeline service. Accordingly, if we were to adopt minimum service requirements for Lifeline-only ETCs, what should those requirements be? Should we establish a set minimum number of monthly minutes to be included in ETCs’ Lifeline service offerings, and if so, what would be an appropriate number of minutes?⁴⁴⁵ Should we establish a minimum number

⁴⁴⁰ See, e.g., Letter from Jamie M. Tan, Director, Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109 (filed Dec. 9, 2010) (AT&T Dec. 9, 2010 *Ex Parte* Letter) (recommending that the Commission simplify the current rules for providing Lifeline support payments by providing a reimbursement mechanism that is not tied to ILECs’ SLC charges); AT&T’s ETC Proposal, *infra* note 533.

⁴⁴¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6380, para. 20 (2005) (*ETC Designation Order*).

⁴⁴² National Association of State Utility Consumer Advocates, Resolution 2010-02, Calling for Reform of the Lifeline Program, Including Reform for Prepaid Wireless Lifeline Services, at 2-3 (June 15, 2010) (*NASUCA Resolution*).

⁴⁴³ *NASUCA Resolution* at 4.

⁴⁴⁴ *2010 Recommended Decision*, 25 FCC Rcd at 15627, para. 80 (citing Consumer Groups Joint Board Comments at 37).

⁴⁴⁵ We note that several pre-paid wireless, Lifeline-only ETCs, such as TracFone and Virgin Mobile, include several hundred minutes per month in their Lifeline service offerings. See SafeLink Wireless, <http://www.safelinkwireless.com> (last visited Mar. 2, 2011) (showing that TracFone, through its Lifeline service SafeLink Wireless, provides 68 minutes at a minimum, with options for 125 and 250 minutes); see also Assurance Wireless, <http://www.assurancewireless.com> (last visited Mar. 2, 2011) (showing that Virgin Mobile, through its (continued....))

of free long-distance calls? Is there a need for service quality standards when consumers often have the choice of several Lifeline providers? We seek comment on whether the Commission should impose minimum service requirements on all ETCs, as opposed to just wireless ETCs, and how we could impose standards that are technologically neutral. We note that wireless providers offer the benefits of mobility and often additional features and functionality, such as voicemail, caller ID, and call waiting, at no extra charge. Similarly, low-income households that select Lifeline offerings from wireless providers may have the ability to call distant family members and friends without incurring toll charges. Can uniform minimum standards be developed for all technologies, or is there a benefit to having standards tailored to different technologies? What are the relevant attributes or features that should be standardized across Lifeline offerings?

254. We also seek comment on the relevant costs and benefits associated with setting minimum standards of service. We note that minimum standards of service could increase the costs of Lifeline service to ETCs and could thus provide a disincentive for additional carriers to seek ETC status for the program. Would minimum standards deter companies from seeking ETC designation? Would high minimum standards make Lifeline offerings more attractive to low-income households, and thereby increase demand for the program?

4. Support for Bundled Services

255. *Background.* As noted above, our rules provide for Lifeline discounts on “basic, local service,” but do not address whether such discounts may be applied to bundled offerings that include basic local voice service. As noted above, section 54.401 of the Commission’s rules provides that Lifeline supported services consist of a “retail local service offering” with specified functionalities.⁴⁴⁶ It is not clear from the rule, however, whether the consumer may apply his or her Lifeline discount to reduce the cost of calling plans that include additional service components in addition to basic, local calling. Similarly, section 54.403(b) of the Commission’s rules sets out how Lifeline support discounts are passed through to consumers.⁴⁴⁷ Pursuant to that rule, ETCs that charge federal SLCs or equivalent federal charges apply Tier 1 federal Lifeline support to waive the federal SLC for Lifeline consumers.⁴⁴⁸ Any additional support received (*i.e.*, from Tiers 2 through 4) is then applied to reduce the consumer’s intrastate rate.⁴⁴⁹ ETCs that do not charge federal SLCs or equivalent federal charges must “apply the Tier [1] federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate” for the services they provide.⁴⁵⁰ Our rules, however, do not define the parameters of a lowest-cost plan or specify the types of service plans that are eligible for Lifeline support.

256. Some states have enacted policies to clarify whether Lifeline support may be used to reduce the cost of expanded service voice offerings that include optional features or bundled combinations of other services. Among these states, however, there is no uniform approach.⁴⁵¹ Several

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Lifeline service Assurance Wireless, provides 250 minutes per month at a minimum, with options for 500 and 1000 minutes).

⁴⁴⁶ 47 C.F.R. § 54.401(a).

⁴⁴⁷ See 47 C.F.R. § 54.403(b).

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ See NRRI STUDY at 49, Table 30.

states permit consumers to apply their monthly discounts to the basic voice plan of their choice, including enhanced service plans. Oregon and Texas, for example, have policies mandating that ETCs offer Lifeline discounts on all service plans that include a basic voice component.⁴⁵² On the other hand, according to an October 2010 GAO report, ETCs in 14 states do not currently permit consumers to apply the Lifeline discount to a bundled service offering or package that includes telephone service.⁴⁵³

257. The National Broadband Plan observed a wide variance in statewide Lifeline participation rates.⁴⁵⁴ Among other things, the Plan attributed the varied participation rates to differing “restrictions on consumers’ ability to apply the Lifeline discount to certain types of services.”⁴⁵⁵ The Plan recommended that the Commission and states should permit Lifeline customers to apply their Lifeline discounts on all calling plans with a local voice component, including bundled service packages.⁴⁵⁶ By so doing, the Plan stated, the Commission would make bundled offerings, including those that include broadband, more affordable for low-income households.⁴⁵⁷

258. *Discussion.* We seek comment on amending the Commission’s rules to adopt a uniform federal requirement that Lifeline and Link Up discounts may be used on any Lifeline calling plan offered by an ETC with a voice component, including bundled service packages combining voice and broadband, or packages containing optional calling features. We note that section 254(f) of the Act bars states from adopting regulations that are inconsistent with the rules established by the Commission to preserve and advance universal service.⁴⁵⁸

259. In a number of states where ETCs are not precluded by state requirements from allowing consumers to apply their Lifeline discounts to the purchase of bundled packages or optional services, many carriers – including large carriers like Sprint Nextel, Verizon Wireless, and AT&T Mobility – limit Lifeline offerings to basic voice service.⁴⁵⁹ We seek comment on whether to adopt a national rule that would require all ETCs to offer Lifeline and Link Up discounts on all of their service plans with a voice component. Under such a rule, ETCs could be required to apply federal Lifeline support to reduce the cost of any calling plan or package selected by an eligible low-income household that allows local calling, rather than offering a discount only on the carrier’s lowest tariffed or otherwise generally available residential rate plan. However, each eligible household’s Lifeline discount would be capped at the

⁴⁵² Or. Admin. R. 860-033-0010 (2009); Tex. Admin. Code tit. 16, § 26.412(e)(6)-(7); see also *Petition of Sprint Spectrum L.P. for a Declaratory Ruling that the Kansas Corporation Commission’s October 2, 2006 Order in Docket 06-GIMT-446-GIT, Violates Federal Law*, WC Docket Nos. 03-109 and 07-138 (filed June 8, 2007) (challenging an order of the Corporation Commission of the State of Kansas, which modified the state’s Lifeline rules to require that ETCs allow Lifeline customers to choose a calling plan and apply the Lifeline discount to the plan selected by the customer).

⁴⁵³ 2010 GAO REPORT at 13.

⁴⁵⁴ See NBP at 172 (Recommendation 9.1) (noting that “some states have participation rates of more than 75% and others have rates less than 10%”).

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.*

⁴⁵⁸ See 47 U.S.C. § 254(f). States may, however, choose to supplement the federal Lifeline rules by establishing their own state low-income universal service programs and requirements that do not conflict with federal universal service regulations. *Id.*

⁴⁵⁹ See lifelinesupport.org, www.lifelinesupport.org (last visited Mar. 2, 2011) (searchable database listing Lifeline and Link Up services available by each ETC in a state).

amount the subscriber would have received if it had selected a basic voice plan. Additionally, we seek comment on requiring all ETCs to permit eligible households to apply the Link Up discount amounts set forth in section 54.411(a) of the Commission's rules to any service plan with a voice component. As with the Lifeline program, each eligible household's Link Up discount could be capped at the amount the household would have received pursuant to the Commission's rules if it had selected a basic voice plan.

260. We seek comment on whether amending our rules in this way would further the statutory principle that consumers have access to quality services at "just, reasonable, and affordable rates."⁴⁶⁰ Restrictions on use of Lifeline discounts, whether imposed under state law or by an ETC, may preclude a significant number of eligible low-income households from the expanded service options available in the marketplace, such as packages that include broadband or data service. Further, as compared to carriers' basic plans, bundled packages of services may offer better value for Lifeline and Link Up consumers.⁴⁶¹

261. We seek to develop a fuller record on current ETC practices regarding the provision of Lifeline discounts on bundled offerings. To what extent do ETCs currently offer Lifeline and/or Link Up discounts on plans that include bundles of services or optional calling features? If so, what services are Lifeline and Link Up consumers permitted to purchase? We also seek comment on the extent to which specific states mandate that ETCs allow the application of Lifeline and/or Link Up discounts to expanded service plans. Is there any evidence that Lifeline and Link Up participation rates have been positively affected by policies requiring the extension of program discounts to the purchase of bundled packages and optional services? Where available, commenters are encouraged to submit supporting documentation of ETC or state practices along with any written submissions.

262. We seek comment on the potential administrative and practical consequences of amending our rules in this fashion. What changes to internal back office systems (e.g., for ordering service and billing) would be required to implement such a rule, and what costs would that impose on ETCs? How long would it take to implement such a change? If we were to adopt such a rule, should ETCs be obligated to offer a Lifeline discount on all of their service plans, including premium plans and packages? Conversely, are there certain service plans or packages that ETCs should not be required to make available to consumers seeking to apply Lifeline discounts? Should consumers be prohibited from applying a Lifeline discount to bundled offerings that contain a video component?

263. Would allowing consumers to choose from an array of expanded packages create a greater likelihood that Lifeline and Link Up consumers may be unable to pay for the remaining portion of their chosen calling plan and therefore risk termination of voice service? What are the options for reducing that risk? If we were to adopt such a rule, one option would be to require ETCs to offer methods of managing usage (whether minutes of use or data) that otherwise would yield higher monthly charges beyond the monthly fee. For instance, Lifeline consumers could elect to set maximum usage amounts for themselves that may not be exceeded per billing cycle.⁴⁶² We seek comment on the feasibility of this

⁴⁶⁰ 47 U.S.C. § 254(b)(1).

⁴⁶¹ For example, a recent Commission study found that consumers who receive broadband bundled with other services pay an average of \$8.55 less per month than those customers who purchase stand-alone broadband service. See *Broadband Adoption and Use in America* at 15.

⁴⁶² In October 2010, the Commission issued a Notice of Proposed Rulemaking proposing rules that would require mobile service providers to provide usage alerts and information to consumers in avoiding unexpected charges on their bills. See *Empowering Consumers to Avoid Bill Shock, Consumer Information and Disclosure*, CG Docket No. 10-207, CG Docket No. 09-158, Notice of Proposed Rulemaking, 25 FCC Rcd 14625 (2010) (*Bill Shock Notice*). The Commission noted that approximately 10% of all wireless billing rate complaints filed at the Commission relate to voice, text, or data overages, along with overages due to roaming. In addition, the U.S. Government Accountability Office (GAO) found that 34% of wireless subscribers had experienced unexpected charges on their wireless bills. *Bill Shock Notice*, 25 FCC Rcd at 14626, para. 2.

proposal. What capabilities exist today, or are anticipated in the near term, for carriers to assist Lifeline consumers in managing their service usage?⁴⁶³ What would be the administrative burdens and costs for a carrier if it were required to offer this to Lifeline subscribers?⁴⁶⁴

264. We seek comment on how we can identify and measure the potential benefits of this proposal. As residential broadband usage becomes more common, many companies have begun offering consumers the option to purchase broadband as part of a "bundled package" that provides a combination of voice, data, and video services to the customer, delivered over a shared infrastructure.⁴⁶⁵ As noted above, compared to carriers' basic plans, bundled packages of services may offer better value for consumers.⁴⁶⁶ Would this proposal, if adopted, be likely to make broadband more affordable for low-income households and stimulate broadband adoption by low-income households?

265. We also seek comment on how we can identify and measure the potential costs of this proposal. For example, would this proposed rule change be likely to have an impact on the size of the universal service fund? What are the potential costs to carriers (e.g., administrative costs) in complying with the proposed rule? Finally, are there any potential costs to consumers associated with the proposed rule? To the extent that it is available, commenters are encouraged to submit supporting data along with any written submissions.

B. The Transition to Broadband

1. Background

266. Over the last decade, the communications landscape has been transformed by the advent of broadband. Access to broadband is increasingly important for all Americans to actively participate in our economy and our society. Broadband can serve as a platform for educational, economic and social opportunities. It can also minimize socioeconomic disparities. However, despite the potential opportunities available through broadband, many low-income Americans simply cannot afford a home broadband connection. There is a broadband adoption gap in the United States, with low-income households among those being left behind.⁴⁶⁷ Our 2010 Broadband Consumer Survey found that 93 percent of households with incomes greater than \$75,000 have broadband at home, only 40 percent of adults with household incomes less than \$20,000 have broadband at home, and non-adopters cite cost as the primary obstacle to adoption.⁴⁶⁸

267. Research suggests that increasing broadband adoption could significantly increase national productivity and growth.⁴⁶⁹ Nearly 100 million Americans have not adopted broadband, and there is evidence that adoption is growing slowly.⁴⁷⁰ Cost appears to be the leading obstacle to low-

⁴⁶³ See *Bill Shock Notice*, 25 FCC Rcd at 14634-35, para. 20.

⁴⁶⁴ 47 C.F.R. § 54.403(c).

⁴⁶⁵ See NATIONAL BROADBAND PLAN at 149.

⁴⁶⁶ See *supra* note 463 (citing *Broadband Adoption and Use in America*).

⁴⁶⁷ NATIONAL BROADBAND PLAN at 167.

⁴⁶⁸ NATIONAL BROADBAND PLAN at 172; *Broadband Adoption and Use in America* at 7; see *supra* para. 21, Chart 1 (detailing the household income levels, based on the Federal Poverty Guidelines, sufficient to establish eligibility for the Lifeline program); see also NTIA DIGITAL NATION at 5 (presenting a more up-to-date, but less detailed, analysis of the reasons that consumers have not adopted broadband at home and finding cost to be the most important factor as to why consumers do not have broadband at home).

⁴⁶⁹ NTIA DIGITAL NATION at 5.

⁴⁷⁰ The Pew Internet Home Broadband 2010 Report finds that the broadband adoption in the United States has (continued....)

income Americans adopting broadband;⁴⁷¹ the lack of digital literacy is another major factor.⁴⁷² Closing the adoption gap and accelerating broadband adoption, particularly among low-income Americans, will require significant effort, primarily by the private sector. But the Lifeline/Link Up program may be able to play an important if limited role in this effort, by enabling public-private partnerships to help tackle our national adoption challenge. Utilizing Lifeline/Link Up to reduce the cost of broadband for low-income Americans could help increase broadband adoption.

268. Closing the broadband adoption gap may be more difficult than closing the gap in telephone penetration because the barriers to broadband adoption are more complex. In addition to the cost of service and the cost of acquiring a computer or other Internet-access device, which some research suggests may be the leading barrier to adoption, the National Broadband Plan noted that almost two-thirds of non-adopters cite another reason, such as lack of digital skills, as the main reason for not adopting broadband at home.⁴⁷³ In contrast, consumers generally do not need any special skills to understand how to make a phone call; a telephone is often much less expensive than a computer, laptop, or other Internet access device; and monthly subscription fees for basic telephone service may be less than the fees for broadband.

269. The National Broadband Plan suggested that creating the conditions necessary to promote broadband adoption and increase utilization would require a range of activities conducted by a variety of stakeholders. Among other things, the Plan recognized the need to form partnerships across stakeholder groups to increase broadband adoption and utilization.⁴⁷⁴

270. There are some ongoing efforts to address the broadband adoption gap at the federal, state, and local level.⁴⁷⁵ As part of the Broadband Technology Opportunities Program (BTOP), the National Telecommunications and Information Administration provided approximately \$450 million in one-time grants to help develop sustainable broadband adoption initiatives and public computing centers across the country.⁴⁷⁶ Several private corporations and non-profits are also engaged in broadband adoption efforts, either on their own or in partnership with other stakeholders. For example, in 2001, Hewlett-Packard provided grant funding and other resources to the Southern California Tribal Chairman's

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slowed dramatically in the last year. See PEW RESEARCH CENTER, PEW INTERNET AND AMERICAN LIFE PROJECT, HOME BROADBAND 2010 REPORT 2 (2010) (HOME BROADBAND 2010 REPORT) available at <http://www.pewinternet.org/Reports/2010/Home-Broadband-2010.aspx>.

⁴⁷¹ NATIONAL BROADBAND PLAN AT 168; see also HOME BROADBAND 2010 REPORT at 10 (noting that a fifth of non-adopters cite cost as a barrier).

⁴⁷² NATIONAL BROADBAND PLAN at 168.

⁴⁷³ NATIONAL BROADBAND PLAN at 170; see also *Broadband Adoption and Use in America* at 5.

⁴⁷⁴ NATIONAL BROADBAND PLAN at 171.

⁴⁷⁵ See *Roundtable Discussion to Explore Broadband Pilot Programs for Low-Income Consumers*, Public Notice, WC Docket No. 03-109, 25 FCC Rcd 7305 (Wireline Comp. Bur. 2010) (announcing roundtable); see also *Details for Low-Income Pilot Program Roundtable Discussion*, Public Notice, WC Docket No. 03-109, 25 FCC Rcd 7947 (Wireline Comp. Bur. 2010) (providing agenda) (*Roundtable Agenda Public Notice*); Webcast of Wireline Competition Bureau, Low-Income Pilot Program Roundtable Discussion (Jun. 23, 2010), <http://reboot.fcc.gov/video-archives> (Roundtable Discussion) (identifying getconnectedtoday.com, the Cox Santa Barbara program, and initiatives by LEAP/Cricket, Charter, and others).

⁴⁷⁶ As of February 2011, NTIA had awarded approximately \$200 million in one-time grants to support public computing centers, and \$250 million to help develop sustainable broadband adoption initiatives. See Grants Awarded: Broadband USA – NTIA, <http://www2.ntia.doc.gov/awards> (last visited Mar. 2, 2011).

Association (SCTCA) to help launch the Tribal Digital Village (TDV). The Tribal Digital Village provides infrastructure as well as training and online content to 15 American Indian Reservations in San Diego and southern Riverside counties.⁴⁷⁷ A BTOP grant awarded to ZeroDivide in 2010 provided funding for additional equipment and support for community anchor institutions as well as computer skills and awareness training.⁴⁷⁸ We also note that, as a voluntary commitment in its recent transaction involving NBC Universal, Inc., Comcast Corporation agreed to make broadband available to low-income households for less than \$10 per month, and making personal computers, netbooks, and other computer equipment available at a purchase price below \$150.⁴⁷⁹

271. To help address the cost barrier faced by many low-income households unable to afford broadband, the National Broadband Plan recommended that Lifeline/Link Up be modernized to support broadband.⁴⁸⁰ The Joint Board also recognized the importance of broadband to low-income households in its *2010 Recommended Decision*.⁴⁸¹ The Joint Board proposed that the Commission adopt an additional universal service principle pursuant to its authority under section 254(b)(7) of the Act, that "universal service support should be directed where possible to networks that provide advanced services, as well as voice services."⁴⁸² In the *USF/ICC Transformation Notice*, the Commission proposed to adopt the Joint Board's recommended principle and sought comment on whether to expand the definition of "universal service" to make broadband a supported service.⁴⁸³

272. The National Broadband Plan and the Joint Board also identified several practical issues that the Commission should consider when assessing whether and how to include broadband as a supported service under the program, including, among other things, how "broadband" should be defined and measured for universal service purposes, how best to ensure broadband availability in unserved and underserved areas, and how to structure a Lifeline discount for broadband services.⁴⁸⁴ The *USF/ICC Transformation Connect America Fund Notice* sought comment on how to define broadband for purposes of the high-cost program, but expressly reserved the right to adopt different performance requirements for Lifeline/Link Up.

273. Recognizing the complexities of modernizing the low-income support mechanisms for broadband while ensuring that universal service funds are used efficiently, the National Broadband Plan

⁴⁷⁷ Tribal Digital Village Broadband Adoption Program, Executive Summary, available at http://www.zerodivide.org/sites/default/files/5507_TD.V.pdf (last visited Mar. 3, 2011); see also Tribal Digital Village, <http://www.sctdv.net/> (last visited Mar. 2, 2011).

⁴⁷⁸ See BroadbandUSA, Connecting America's Communities, ZeroDivide Fact Sheet, available at http://www2.ntia.doc.gov/files/grantees/fact_sheet_-_zerodivide_tribal.pdf (last visited Mar. 3, 2011); Press Release, ZeroDivide, ZeroDivide Receives Stimulus Funding to Increase Broadband in Native American Communities (Aug. 18, 2010), available at http://www.zerodivide.org/ntia/zerodivide_funding_native_american_tribal_communities (last visited Mar. 3, 2011).

⁴⁷⁹ See *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.; For Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Memorandum Opinion and Order, FCC 11-4, at para. 233 (rel. Jan. 18, 2011).

⁴⁸⁰ NATIONAL BROADBAND PLAN at 172.

⁴⁸¹ See NATIONAL BROADBAND PLAN at 169, Box 9.1 ("Broadband Means Opportunity"); *2010 Recommended Decision* at 15624-25, paras. 74-75.

⁴⁸² See *2010 Recommended Decision* at 15625, para. 75; see also *2007 Recommended Decision*, 22 FCC Rcd at 20477 (discussing the redefinition of supported services to include broadband and mobility services).

⁴⁸³ See *USF/ICC Transformation NPRM*, FCC 11-13, at paras. 63, 65.

⁴⁸⁴ *2010 Recommended Decision* at 15625-26, para. 77.

recommended that the Commission begin transitioning Lifeline to support broadband by facilitating pilot programs to test different program design elements.⁴⁸⁵ More recently, in its review of the Lifeline and Link Up program, the GAO highlighted the importance of developing a needs assessment for the design of any new programs and to determine whether existing programs are meeting the needs of the targeted population.⁴⁸⁶ The GAO also noted that agencies should develop implementation and evaluation plans when conducting pilot programs to increase confidence in the results of such programs.⁴⁸⁷

274. The Commission hosted a roundtable discussion last summer to solicit input on pilot programs to integrate broadband as a supported service under the program.⁴⁸⁸ Participants discussed a number of critical issues, including goals for supporting broadband through the low-income program, the importance of addressing barriers in addition to the cost of service, what existing data and information is available on broadband service and adoption for low-income individuals, and pilot program mechanics and operation.⁴⁸⁹ Participants in the roundtable discussion and other stakeholders have suggested that they are exploring ways to conduct low-income broadband pilot projects.⁴⁹⁰

2. Support for Broadband

275. The Commission seeks comment on revising the definition of "Lifeline" to ensure it is keeping pace with the needs of low-income households, consistent with the statutory principle that "consumers in all regions of the country, including low-income consumers . . . should have access to telecommunications and information services."⁴⁹¹ Lifeline/Link Up does not currently support broadband. We seek comment on whether the Commission should amend the definition of Lifeline to explicitly allow support for broadband.

276. As noted above, the Commission has sought comment in the *USF/ICC Transformation Notice* on whether to make broadband a supported service and has sought comment on extending universal service support to broadband. If the Commission does not make broadband a supported service, what would be the legal basis for our authority to support broadband in the Lifeline and Link Up program? If the Commission makes broadband a supported service, what are the associated practical and operational challenges that we would need to address when expanding Lifeline support to broadband? For example, how should a broadband Lifeline service be defined and measured? Should Lifeline support be available on services that do not meet whatever speed threshold the Commission ultimately adopts for

⁴⁸⁵ NATIONAL BROADBAND PLAN at 173.

⁴⁸⁶ 2010 GAO REPORT at 30. See Letter from Julius Genachowski, Chairman, Federal Communications Commission to the Honorable Joseph I. Lieberman, Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate (Feb. 2, 2011) (agreeing with the GAO recommendation to conduct a needs assessment)(Commission Senate Letter).

⁴⁸⁷ 2010 GAO REPORT at 30-31.

⁴⁸⁸ See Roundtable Discussion.

⁴⁸⁹ See Roundtable Agenda Public Notice; Roundtable Discussion.

⁴⁹⁰ See Letter from Jonathan Banks, Senior Vice President, Law and Policy, United States Telecom Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket Nos. 09-47, 09-51, 09-137 (filed Jan. 25, 2010) (USTA Jan. 25, 2010 *Ex Parte* Letter); Letter from Kelley Dunne, CEO, One Economy Corporation, and Ken Eisner, Managing Director, OE Ventures, to Hon. Julius Genachowski, Chairman, Federal Communications Commission, Docket No. 03-109 (filed Feb. 10, 2011) (One Economy Broadband Pilot Proposal); see also North Carolina Economic Development Center, E-NC Lite-Up Program, http://www.e-nc.org/public/nc_lite_up (last visited Mar. 2, 2011).

⁴⁹¹ See 47 U.S.C. § 254(b)(1),(3); see also 47 U.S.C. § 151.

purposes of setting infrastructure deployment requirements under the Connect America Fund? For instance, some parties have suggested that for purposes of Lifeline, consumers should be free to choose to use discounts on services that provide 768 kbps or 1.5 Mbps downstream, rather than being forced to use the discount only on higher-speed offerings.⁴⁹² Should there be any minimum performance requirements for Lifeline broadband offerings?

277. What would be the appropriate framework for determining support levels for broadband services, given that the price of the retail service is not regulated at either the federal or state level? We are mindful of the need to ensure that contributions to our universal service support mechanisms do not jeopardize our ability to promote quality services at affordable rates for all consumers. How should we balance these competing goals as we consider modernizing Lifeline and Linkup to support broadband?

278. If broadband is made a supported service, should we impose any terms and conditions on the Lifeline support that is available for broadband? For example, should there be any limitations on the types of services that are offered as part of a Lifeline plan? We sought comment above on whether low-income households should be able to use their Lifeline discounts on any plan with a voice component; should ETCs similarly be required to offer Lifeline discounts on all broadband plans, or just some? We note that several wireless ETCs currently offer text messaging services as part of their Lifeline calling plans.⁴⁹³ Should consumers be permitted to select "data only" Lifeline plans? Is there a risk that low-income households might incur excessive charges for data plans, absent some form of data or usage cap? We note that some Lifeline consumers already subscribe to broadband services.⁴⁹⁴ We ask that ETCs provide any data they may have regarding broadband subscribership among current Lifeline recipients. We also recognize that our analysis of these questions may depend, in part, on what we learn from the broadband pilots described below.

3. Broadband Pilot

279. We propose to set aside a discrete amount of universal service funds reclaimed from eliminating inefficiencies and/or waste, fraud, and abuse to create a pilot program to evaluate whether and how Lifeline/LinkUp can effectively support broadband adoption by low-income households. A broadband pilot program could help us gather comprehensive and statistically significant data about the effectiveness of different approaches in making broadband more affordable for low-income Americans and providing support that is sufficient but not excessive.⁴⁹⁵ This data could assist the Commission in considering the costs and benefits of various approaches prior to using Lifeline to support broadband on a permanent basis. We recognize that the ultimate success of using Lifeline funds to support broadband may hinge on the sufficiency and effectiveness of preliminary testing conducted through a pilot program. As identified by the GAO, the Commission has recognized the importance of developing an assessment

⁴⁹² See, e.g., Cox Communications Comments, GN Docket Nos. 09-47, 09-51, 09-137, at 12 (filed Dec. 7, 2009); AT&T's ETC proposal, *infra* note 533; Hughes Network Systems, LLC and WildBlue Communications, Inc., Joint Reply Comments, GN Docket No. 09-51, at 7 (filed July 21, 2009).

⁴⁹³ See, e.g., GCI, Lifeline Rural Wireless Service, <http://wireless.gci.com/catalog/lifeline-rural-p-154.html> (offers unlimited text messaging with all calling plans) (last visited Mar. 2, 2011); SafeLink Wireless Raises the Lifeline Offering: New York, <http://www.cell-phone-plans.net/blog/cell-phones/safelink-wireless-raises-the-lifeline-offering-new-york/> (detailing TracFone's new Lifeline plans that include one text message in exchange for one minute of provided voice service) (last visited Mar. 2, 2011).

⁴⁹⁴ Cf. *Broadband Adoption and Use in America* at 7 (stating that 40 percent of low-income Americans with annual household incomes at \$20,000 or below have broadband).

⁴⁹⁵ See *supra* paras. 37-41 (proposing, as a performance goal, to ensure that Lifeline/Link Up provides support that is sufficient, but not excessive).

of the telecommunications needs of low-income households to inform the design and implementation of broadband pilot programs.⁴⁹⁶

280. *Scope of the Pilot Program.* We propose using the pilot program to fund a series of projects that would test different approaches to providing support for broadband to low-income consumers across different geographic areas. The projects could also try to take into account unique barriers faced by certain groups of low-income non-adopters such as Tribal communities or Americans for whom English may be a second language. While individual projects might involve only one type of provider or technology, the overall objective would be to design a pilot program that would be competitively and technologically neutral.

281. We propose structuring the pilot program as a joint effort among the Commission, one or more broadband providers, and/or one or more non-profit institutions or independent researchers with experience in program design and evaluation.⁴⁹⁷ The pilot also could include participation from other stakeholders such as private foundations; non-profits experienced in outreach and digital literacy training; desktop computer, laptop, or mobile device manufacturers or retailers; and state social service or economic development agencies. We seek comment on these proposals to structure the pilot program as a joint effort among a variety of stakeholders focused on conducting a series of projects to test different approaches to providing support. We expect that the projects would test several variations on program design, including experimenting with different techniques to combine discounts on service and/or hardware with efforts to address other barriers to broadband adoption such as digital literacy.

282. Consistent with our historic role in providing support for services and not equipment,⁴⁹⁸ we seek comment on funding projects that would test variations in the monthly discount for broadband services, including variations on the discount amount, the duration of the discount (limited or unlimited, phased-down over time or constant), and the treatment of bundled services. We also propose to test variations in Linkup-like discounts to reduce or eliminate installation fees, activation fees, or similar upfront charges associated with the initiation of service. We seek comment on these proposals.

283. We propose to require at least some pilot participants to either offer hardware directly or partner with other entities to provide the necessary devices as a condition of participating in the pilot program. The cost of customer equipment necessary to access the Internet (including computers or other devices) has been shown to be a major barrier to adoption, particularly for low-income households.⁴⁹⁹ Some stakeholders have suggested that the cost of Internet-enabled devices poses a significant burden on an ETC's ability to provide affordable broadband to low-income consumers.⁵⁰⁰ It would be valuable for pilot projects to test variations in discounts to reduce the cost of hardware, including discounts for air cards or modems. Because we intend to evaluate the impact of ETCs' providing different types of discounts on hardware versus not providing any discount, some consumers would not be offered

⁴⁹⁶ Commission Senate Letter.

⁴⁹⁷ The National Broadband Plan highlighted the importance of forming partnerships across multiple stakeholder groups and simultaneously addressing multiple barriers to adoption which may include cost of service, cost of hardware, digital literacy and many others. NATIONAL BROADBAND PLAN at 170-71.

⁴⁹⁸ See 47 C.F.R. §§ 54.101(a), 54.401(a)(3).

⁴⁹⁹ See Robert D. Atkinson, The Information Technology and Innovation Foundation, *Policies to Increase Broadband Adoption at Home* (Nov. 2009), available at <http://www.itif.org/files/2009-demand-side-policies.pdf> (*Broadband Adoption Report*).

⁵⁰⁰ Letter from David Cohen, Vice President, Policy, US Telecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 03-109, at 2 (February 23, 2011) (US Telecom Broadband Pilot Proposal).

discounted hardware. If we require some applicants for pilot program funding to offer discounted hardware, should all applicants be required to agree to do so even though we do not expect all consumers to receive discounts? We seek comment on these proposals.

284. We propose that applicants for pilot program funding should be prepared to experiment with different approaches to overcoming digital literacy barriers, other non-cost barriers to adoption, and variations in other program design elements that may help the Commission implement a permanent support mechanism. The National Broadband Plan and subsequent research identified the lack of digital literacy among low-income Americans as a major barrier to broadband adoption.⁵⁰¹ Skills such as being able to use a computer or other Internet-enabled device to retrieve and interpret information or to communicate and collaborate with other users, and even such fundamental steps as navigating a website and creating a username and password, may pose significant difficulties for many consumers. Any program seeking to effectively increase adoption of broadband may need to address this barrier. We specifically seek comment on what subset of the following additional program design elements should be tested:

- Training methods;
- Outreach methods;
- Contract terms;
- Product offerings/service restrictions or requirements (such as establishing minimum or maximum speed offerings for consumers participating in the pilot); and/or
- Administration/enrollment methods such as automated enrollment through low-income housing facilities or other social service entities.

We also seek comment on how the Commission should take into account elements beyond its control, such as programs or services provided by the private sector, other governmental agencies, or non-profits in conjunction with support provided as part of a broadband Lifeline and Link Up program.

285. We intend for the pilot program as a whole to test the impact of these varying factors; we are not suggesting that each project funded through the pilot test every variable of interest to the Commission. We seek comment on this proposal. We also ask commenters to consider how many settings of key variables should be tested for each program design element (e.g. discount amount, duration of the discount). How many households should participate to test each element and variation in a way suitable for generalizing to a large scale program? Should all elements be tested simultaneously, or should they be sequenced in some manner?

286. We note that the goal of the pilot program is to conduct experiments to collect information that would help inform future policy decisions. The pilot is not intended to have an immediate impact on low-income consumers on a large-scale. Similarly, the structure and rules governing pilot projects may differ in important ways from rules that the Commission may ultimately adopt to expand Lifeline to support broadband.

287. *Pilot Program Funding.* We seek comment on how much money should be allocated to support discounts on broadband and administrative costs associated with the pilot projects. Because the goal of the pilot program is to conduct test projects that would produce meaningful data by experimenting with different program design elements, we believe that only a relatively small sample size is needed to

⁵⁰¹ NATIONAL BROADBAND PLAN at 174; see NTIA DIGITAL NATION, at 9 (noting that level of education is a strong predictor of broadband use among adults).

develop statistically valid results.⁵⁰² Depending on the parameters assessed by different pilot programs, the program may be able to gather statistically valid data from a smaller number of participating households.

288. Consistent with our over-arching objective of ensuring fiscal responsibility, we propose to fund the pilot projects by utilizing at least some of the savings from the proposal to eliminate reimbursement for Toll Limitation Services, as well as some of the savings realized by eliminating waste, fraud, and abuse from the program.⁵⁰³ USAC's most recent projections forecast total annual 2011 TLS support of approximately \$23 million.⁵⁰⁴ Are there other funding sources available that we should consider in implementing these pilot programs? Should we require entities applying for pilot program funding to contribute some sort of matching funds or in-kind contribution?

289. *Duration of Pilot Program.* Commenters have recommended pilot programs ranging from six months to multiple years.⁵⁰⁵ USTelecom suggested, for instance, that a period of 18 to 24 months would be needed to produce "meaningful data that would permit the Commission to thoughtfully design a permanent program."⁵⁰⁶ We seek comment on the appropriate duration of a pilot program. Commenters who suggest schedules should explain the relative advantages and disadvantages of specific lengths of time.⁵⁰⁷

290. At the Commission's broadband pilot roundtable, several parties suggested that it might be appropriate to provide subsidies only for a limited period of time to address the initial adoption hurdle of realizing the benefit of broadband.⁵⁰⁸ If some of the variables tested include variations on the length of time that a subsidy is available or a reduction in the amount of subsidy over time, for how long would researchers need to follow subscribers after the reduction to test whether adoption outcomes stay the same, or whether consumers drop service when the subsidy is eliminated or reduced?

291. *Role of the States.* We seek comment on the role that states should play in any pilot program integrating broadband service into the low-income program. For instance, could states assist in identifying target populations or assist in administration? Are there services or funding support that states are uniquely situated to provide in a broadband pilot program? How should low-income universal service support for broadband be integrated into other federal, state, regional, private, or non-profit programs that help address barriers to broadband adoption?

292. *Consumer Eligibility To Participate in Pilot Projects.* We propose using the Lifeline

⁵⁰² See US Telecom Broadband Pilot Proposal at 3; see also e-NC Authority, http://www.e-nc.org/public/nc_lite_up (describing pilot program targeting only 270 households).

⁵⁰³ See *supra* Section IV (Immediate Reforms to Eliminate Waste, Fraud, and Abuse).

⁵⁰⁴ USAC 2Q 2011 FILING, at 17.

⁵⁰⁵ See, e.g., Letter from Christopher Savage, Counsel, Nexus Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 03-109; CC 96-45 at 2 (Nexus Communications Broadband Pilot Proposal) (proposing a 6 month pilot); Michigan Public Service Commission Comments, WC Docket No. 03-109, at 5 (filed Nov. 26, 2008) (encouraging the Commission to extend by 2 years a pilot program originally proposed for 3 years if the pilot is successful).

⁵⁰⁶ USTelecom Broadband Pilot Proposal at 1.

⁵⁰⁷ Some stakeholders have expressed concern about delaying a wide-scale launch of a low-income support mechanism for broadband while the Commission conducts further analysis by facilitating pilot programs or through other means. At the same time, others have warned about the dangers of impatience and suggested that it would take at least two to three years to evaluate the results of a well-run pilot. See Roundtable Discussion.

⁵⁰⁸ See Roundtable Discussion.

eligibility rules currently in effect in federal default states as a uniform set of consumer eligibility requirements to be used in all pilot projects. We believe uniform eligibility rules will lower administrative costs associated with the pilots and help the Commission more easily compare results from different pilot projects. Is there any reason to allow some pilot projects to deviate from the federal default rules? For example, should the Commission consider funding a pilot project that tested the impact of more stringent or more lenient eligibility requirements to help assess the potential impact such requirements might have? Alternatively, are there reasons that the Commission should consider pilot projects that limit eligibility to a more narrowly defined group of households currently eligible under the federal default rules, such as households with children participating in the National School Lunch Program?⁵⁰⁹

293. *Eligibility To Apply for Funding for Proposed Pilot Projects.* We seek comment on whether funding for the pilot program should be limited to ETCs or whether non-ETCs could be eligible to receive funding during the pilot. Several commenters have suggested eligibility for funding for broadband pilots, or any broadband Lifeline support, should be independent from the traditional ETC requirements established under section 214 of the Act.⁵¹⁰ Could we forbear from our current ETC requirements to allow non-ETCs (e.g. broadband providers who are not ETCs or non-providers) to participate in the pilot? Forbearance from our ETC requirements may encourage participation by a greater number of broadband providers. What are the advantages and disadvantages of having a larger number of providers seek funding for pilot projects?

294. We propose to allow non-ETCs (e.g., non-providers) to submit applications for pilot funding provided they have identified ETCs, which would receive the support disbursements, as partners. We believe allowing non-ETCs to apply for funding may increase participation by allowing ETCs to rely on other entities to help with pilot program administration. This approach may also encourage more multi-stakeholder partnerships designed to simultaneously address multiple barriers to adoption. We seek comment on this proposal.

295. We also seek comment on limiting program participation to ETCs that partner with entities approved by the NTIA's State Broadband Data & Development (SBDD) Program. The SBDD program, led by state entities or non-profit organizations working at their direction, facilitates the integration of broadband and information technology into state and local economies.⁵¹¹ The program awarded a total of \$293 million to 56 grantees or their designees and the grantees use this funding to support the use of broadband technology.⁵¹² Among other objectives, these state-created projects use the grants to research and investigate barriers to broadband adoption and created state and local task forces to expand broadband access and adoption. ETCs could work with the SBDD grantees and other stakeholders to develop pilot projects that integrate federal universal service support into a state's existing or planned adoption efforts. The potential benefits of encouraging ETCs to partner with these SBDD grantees to participate in this pilot program are numerous: Each of the grantees was selected by a state

⁵⁰⁹ Letter from Steven F. Morris, National Cable & Telecommunications Association, GN Docket No. 09-51, WC Docket No. 05-337, CC Docket No. 96-45 (filed Dec. 4, 2009).

⁵¹⁰ See, e.g., AT&T's ETC Proposal, *infra* note 533; *Supporting Broadband Access for Users of Video and IP-Based Communications who are Deaf, Hard of Hearing, Late-Deafened, or Deaf-Blind, or who have a Speech Disability*, WC Docket No. 03-109, CC Docket No. 96-45, at 23 (filed Oct. 30, 2008); AT&T Comments, WC Docket No. 96-45, WC Docket No. 03-109, at 53 (filed Nov. 26, 2008); Qwest Communications Comments, GN Docket Nos. 09-47, 09-51, 09-137, at ii-iii (filed Dec. 7, 2009).

⁵¹¹ State Broadband Data & Development Program: BroadbandUSA – NTIA, <http://www2.ntia.doc.gov/SBDD> (last visited February 28, 2011).

⁵¹² *Id.*

government that may be well positioned to develop targeted, state-specific adoption approaches; many of the grantees have experience with training, outreach, and surmounting barriers to adoption; and such a pilot could leverage the work already conducted by NTIA, such as the due diligence it performed on the grantees and ongoing program oversight over those grantees. We seek comment on limiting eligibility in the pilot program only to ETCs that are partnering with SBDD grantees. Is there another group of federal or state program grantees that we should consider including in the pilot?

296. *Proposals.* We propose to require entities interested in applying for pilot program funding to submit specific information about the proposed project, such as applicant information, including any and all private or corporate partners or investors; a detailed description of the program, including length of operation; product offerings and service restrictions; discount or discounts provided, the duration of the discounts; treatment of bundled services; whether discounts would reduce or eliminate installation fees, activation fees, or other upfront costs; how to address (if at all) the cost of hardware, including aircards, modems, laptops, desktops, or other mobile devices;⁵¹³ training and outreach; testing; identification of costs associated with implementing the program, including equipment and training costs; how the project complies with relevant program rules, adequately protects against waste, fraud, and abuse, and achieves the goals of the program discussed above. We also propose to require applicants to provide a brief description of how their program would help inform the Commission's future decision-making related to providing low-income support to broadband on a nationwide basis. We seek comment on this process for submission of pilot proposals.

297. *Pilot Evaluation.* We seek comment on how to evaluate the results of pilot projects and what reporting requirements should be adopted for pilot participants. How could the Commission evaluate whether approaches tested during the pilot program further the proposed goal of providing affordable broadband service? Should one goal of the pilot be to test the impact of the project's approach on increasing adoption? For instance, should we assess the total number of new adopters; new adopters as a percentage of eligible program participants; the number of program participants as a percentage of eligible participants; average percentage of participants' discretionary income spent on discounted broadband service through the pilot relative to the national average percentage of household discretionary income spent on broadband? How could we evaluate the relative impact of the service discount compared to other potential factors that may be tested, such as the provision of training or equipment? We propose that the Commission also seek to develop information about the cost per participant and cost per new adopter through the pilot program. This information could assist the Commission in assessing the costs and benefits of particular approaches to whether broadband should be supported, and if so, how. We seek comment on this proposal and whether there are other types of data that the Commission should review to evaluate whether a given approach would provide support that is sufficient but not excessive.

298. We seek comment on other types of information the Commission should consider when assessing projects funded through the pilot program. For instance, how best can the Commission evaluate program administration costs and the feasibility of expanding any given test project to a national scale?

299. *Delegation of Authority.* We propose to delegate authority to the Wireline Competition Bureau to select pilot participants and take other necessary steps to implement the proposed program. We seek comment on this proposal.

300. *Previously Submitted Proposals.* A number of entities have developed and submitted ideas for different types of broadband low-income pilots.⁵¹⁴ For instance, US Telecom explains that an efficient broadband pilot program design should include three components: research; program design and

⁵¹³ See Roundtable Discussion.

⁵¹⁴ US Telecom Broadband Pilot Proposal; Nexus Communications Broadband Pilot Proposal; One Economy Broadband Pilot Proposal.

implementation; and evaluation.⁵¹⁵ Nexus Communications proposes that a broadband pilot be conducted in four different cities using “smart phones” that would enable the Commission to obtain real-word data with regard to community response to four different pricing and service arrangements.⁵¹⁶ One Economy proposes two distinct pilot programs, one involving a 4G public private partnership and another one involving a reverse auction design.⁵¹⁷

301. We seek comment on these proposals. We ask commenters to identify how these proposals could be improved or altered and to explain how any measures that they suggest are consistent with our proposed goals of ensuring just, reasonable, and affordable service and providing support that is sufficient but not excessive.

302. Finally, as discussed above, a number of other broadband adoption programs are currently underway, and other stakeholders have suggested that they may conduct their own projects on these issues. We are interested in learning more about the status of these projects and what data we can gather from those efforts. Is there information or data that the Commission is uniquely positioned to gather? What data can the Commission rely on outside sources to collect, and how could it design pilots to complement any private sector research efforts? Can the Commission gather sufficient information from existing adoption programs to inform its policies sufficiently to implement a long-term low-income support for broadband program without launching Lifeline and Link Up pilots? We welcome information from industry, academic institutions, governmental agencies, and other stakeholders that could assist in our evaluation of strategies to extend Lifeline to broadband.

C. Eligible Telecommunications Carrier Requirements

303. *Background.* Section 254(e) of the Act limits universal service support, including Lifeline and Link Up support, to ETCs designated under section 214(e) of the Act.⁵¹⁸ Section 214 of the Act, in turn, requires that ETCs use their own facilities, at least in part, to provide services supported by universal service and requires carriers to engage in a two-stage “redefinition” process before carriers may serve certain rural service areas.⁵¹⁹ When Congress first adopted—and the Commission first interpreted—these requirements, the focus was on participation by ETCs in the Commission’s high-cost program and the need to encourage ETCs to invest in infrastructure to cover new areas and reduce the risk of cream skimming.⁵²⁰ In this section, we seek comment on whether those requirements remain necessary and in the public interest for participants in the Commission’s program. We also consider whether these requirements should be modified if we modernize the program to support broadband.

304. Since 2005, the Commission has granted forbearance eight times to carriers seeking to participate in the Lifeline program without using their own facilities to provide service.⁵²¹ In each case,

⁵¹⁵ US Telecom Broadband Pilot Proposal.

⁵¹⁶ Nexus Communications Broadband Pilot Proposal.

⁵¹⁷ One Economy Broadband Pilot Proposal.

⁵¹⁸ 47 U.S.C. § 254(e).

⁵¹⁹ 47 U.S.C. § 214(e)(1)(A) (requiring an ETC to “offer the services that are supported by Federal universal service support mechanisms . . . either using its own facilities or a combination of its own facilities and resale of another carrier’s services”), 214 (e)(5) (defining service areas for ETCs); 47 C.F.R. § 54.207 (establishing the process carriers must use to redefine a rural service area).

⁵²⁰ See, e.g., *Universal Service First Report and Order*, 12 FCC Rod at 8861–76, 8880–83, paras. 150–80, 186–91.

⁵²¹ See *TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*; *Telecommunications Carriers Eligible for Universal Service Support*; *Federal-State Joint* (continued....)

the Commission has concluded that the use of a carrier's own facilities when participating in the Lifeline program is not necessary to ensure just and reasonable rates or to protect consumers and is in the public interest so long as the carrier granted forbearance fulfills certain conditions.⁵²² And in each case, the reseller seeking to participate in the Commission's Lifeline program has gone through the same process: filing a forbearance petition with the Commission and responding to comments and concerns about that petition; filing a compliance plan with the Wireline Competition Bureau and responding to comments and concerns about that plan; and filing ETC designation petitions with the Commission or the states and responding to another round of comments and concerns. This multi-stage process may take years to complete, costing companies time and money and placing a not insignificant burden on Commission resources.

305. The National Broadband Plan recommended that any broadband provider meeting criteria established by the Commission – whether wired or wireless, fixed or mobile, terrestrial or satellite – should be eligible to participate in Lifeline/Link Up.⁵²³ In the *Connect America Fund Notice*, we sought comment on whether the Commission should establish Lifeline-only ETCs, in the event it extends support to broadband.

306. *Discussion.* We seek comment on whether the Commission should forbear from applying the Act's facilities requirement to all carriers that seek limited ETC designation to participate in the Lifeline program.⁵²⁴ Should every wireless reseller be eligible to become an ETC so long as it fulfills the conditions we have previously imposed as conditions of forbearance?⁵²⁵ If so, should the Commission adopt rules codifying the conditions rather than imposing them on a case-by-case basis?

307. Some of those conditions previously imposed on resellers may have some benefit even if applied to facilities-based carriers that participate in the Lifeline program, such as the condition that carriers directly deal with their customers (rather than use a third-party intermediary, like a retailer).⁵²⁶ Should the Commission adopt any of these conditions as rules that would apply to all ETCs that participate in the Lifeline program? Other conditions—such as the requirement to provide appropriate

(Continued from previous page)

Board on Universal Service; Conexions Petition for Forbearance, WC Docket No. 09-197, CC Docket No. 96-45, Order, 25 FCC Rcd 13866 (2010) (*Conexions Forbearance Order*).

⁵²² See, e.g., *Conexions Forbearance Order*, 25 FCC Rcd at 13868–72, paras. 8-20.

⁵²³ NATIONAL BROADBAND PLAN at 173.

⁵²⁴ 47 U.S.C. § 160(a) (“[T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier . . . or class of telecommunications carriers” in certain circumstances.”).

⁵²⁵ See, e.g., *i-wireless Forbearance Order*, 25 FCC Rcd at 8788, 8790, paras. 11, 16 (conditioning forbearance on i-wireless (1) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (2) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the customer, noncompliant handsets of existing customers who obtain Lifeline-supported service; (3) complying with conditions (1) and (2) as of the date it provides Lifeline service; (4) obtaining a certification from each public safety answering point (PSAP) where the carrier seeks to provide Lifeline service confirming that the carrier provides its customers with 911 and E911 access or self-certifying that it does so if certain conditions are met; (5) requiring each customer to self-certify at time of service activation and annually thereafter that he or she is the head of household and receives Lifeline-supported service only from that carrier; (6) establishing safeguards to prevent its customers from receiving multiple Lifeline subsidies from that carrier at the same address; (7) dealing directly with the customer to certify and verify the customer's Lifeline eligibility; and (8) submitting to the Wireline Competition Bureau a compliance plan outlining the measures the carrier will take to implement these conditions).

⁵²⁶ See, e.g., *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16.

access to 911 and E911—may be applicable to facilities-based carriers that use their own facilities only in part.⁵²⁷ Should the Commission adopt such conditions as rules that would apply to ETCs that use other carriers' facilities to offer access to emergency services? In short, what rules should the Commission adopt if it forbears from the facilities requirement for a class of carriers?⁵²⁸

308. More broadly, should the Commission consider issuing blanket forbearance for other purposes? For example, several carriers have requested forbearance from the facilities requirement for purposes of participating in the Commission's Link Up program, but the Commission has thus far found that no carrier has shown that such forbearance would be in the public interest.⁵²⁹ Would blanket forbearance from the facilities requirement for this purpose, taking into account the differences between the Lifeline and Link Up programs, be in the public interest? What rules would be necessary to ensure that any such forbearance protects consumers, is in the public interest, and would not encourage waste, fraud, and abuse of universal service funds?

309. Other carriers have requested forbearance from the Act's redefinition process as applied to low-income-only ETCs.⁵³⁰ Should the Commission consider forbearing from this process for a class of carriers, and if so, what rules and conditions would be necessary to protect the public interest?

310. AT&T has proposed that the Commission adopt an entirely new ETC regulatory framework. Specifically, AT&T argues that we should allow all providers of voice and broadband services to provide Lifeline discounts on a competitively neutral basis where they offer service.⁵³¹ Under this proposal, we would establish a "Lifeline Provider" registration process whereby provider participation is not tied to the existing section 214 requirements or ETC designations, and not necessarily mandatory. Under this framework, each provider of eligible voice and broadband Internet access service, including resellers and wireless providers, would be eligible to provide Lifeline discounts to qualifying households in the areas where the provider offers the service.⁵³²

311. Consistent with this alternative approach, AT&T proposes that the Commission abolish the current Lifeline tier support structure set forth in section 54.403 of our rules and replace it with a flat, fixed-dollar discount amount that could be applied to the retail price of one eligible voice service and one eligible broadband service.⁵³³ Similarly, AT&T proposes a flat discount approach to Link-Up. AT&T's ETC proposal also includes a recommendation that we automate program eligibility and verification processes and procedures, which is discussed in more detail above in the Database section of this Notice.

⁵²⁷ See, e.g., *id.* at 8788, para. 11.

⁵²⁸ For example, the Wireline Competition Bureau recently conditioned Virgin Mobile's designation as a Lifeline-only ETC in certain states on voluntary commitments Virgin Mobile made to implement procedures to guard against waste, fraud, and abuse of its Lifeline service. See *Virgin Mobile 2010 ETC Order*, 25 FCC Rcd at 17805, para. 24. Should any of the conditions imposed in that order become rules for all carriers that receive forbearance?

⁵²⁹ See, e.g., *i-wireless Forbearance Order*, 25 FCC Rcd at 8791-92, para. 21.

⁵³⁰ See, e.g., *NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b)*, WC Docket No. 09-197 (filed Mar. 5, 2010); *Crickit Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197 (filed Jun. 21, 2010).

⁵³¹ Letter from Jamie M. Tan, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 03-109, GN Docket Nos. 09-51, 09-47, 09-137 (filed Dec. 22, 2009) (AT&T's ETC Proposal).

⁵³² *Id.*

⁵³³ *Id.* See *supra* paras. 245-47 for a discussion on lifeline support amounts and the current tiered Lifeline support structure.

312. We seek comment on AT&T's proposal, which would enable all providers of voice and broadband services to offer Lifeline discounts to eligible low-income households. In particular, we ask commenters to address: (1) Whether the current ETC designation process should be revised for Lifeline providers and, if so, how; (2) whether current ETCs should be able to opt out of providing Lifeline services; (3) whether it should be mandatory or optional for ETCs to participate in the Lifeline program; (4) whether consumers should be entitled to a single discount off of a single service or whether consumers should be allowed to receive multiple Lifeline discounts on multiple services, (e.g. voice and broadband); (5) how this new regulatory framework would be administered; (6) what processes and procedures would be necessary to support this new framework; (7) what additional steps the Commission should take to guard against waste, fraud, and abuse in the program if additional providers offering multiple services were to participate in the program; (8) the legal basis for adopting such a proposal; (9) whether there are any issues we would need to account for in terms of transition to this type of model, such as service contracts; and (10) how this proposal would impact the states, including their current roles associated with granting ETCs authority to operate in their states and overseeing their performance.

X. OTHER MATTERS

313. We propose to eliminate section 54.418 of our rules, which required ETCs to notify low-income consumers of the DTV transition. This rule is now obsolete given the completion of the DTV transition. We seek comment on this proposal.

XI. PROCEDURAL MATTERS

314. The proposed rules are attached as Appendix A. In addition to the changes discussed above, the proposed rules include non-substantive changes to the rules applicable to the program. We seek comment on such changes.

A. Paperwork Reduction Act Analysis

315. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.⁵³⁴ In addition, pursuant to the Small Business Paperwork Relief Act of 2002,⁵³⁵ we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."⁵³⁶

B. Initial Regulatory Flexibility Analysis

316. As required by the Regulatory Flexibility Act of 1980, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document.⁵³⁷ The IRFA is set forth in Appendix E. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on or before the dates indicated on the first page of this Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁵³⁸ In addition, the

⁵³⁴ Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

⁵³⁵ Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002).

⁵³⁶ See 44 U.S.C. § 3506(c)(4).

⁵³⁷ See 5 U.S.C. § 603.

⁵³⁸ See 5 U.S.C. § 603(a).

Notice and IRFA (or summaries thereof) will be published in the Federal Register.⁵³⁹

C. Ex Parte Presentations

317. The rulemaking this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵⁴⁰ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.⁵⁴¹ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.⁵⁴²

D. Comment Filing Procedures

318. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

319. In addition, one copy of each paper filing must be sent to each of the following: (i) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-

⁵³⁹ *Id.*

⁵⁴⁰ 47 C.F.R. §§ 1.1200-1.1216.

⁵⁴¹ 47 C.F.R. § 1.1206(b)(2).

⁵⁴² 47 C.F.R. § 1.1206(b).

B402, Washington, DC 20554; Web site: www.bcpiweb.com; phone: 1-800-378-3160; (ii) Kimberly Scardino, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5-B448, Washington, DC 20554; e-mail: Kimberly.Scardino@fcc.gov; and (iii) Charles Tyler, Telecommunications, Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5-A452, Washington, DC 20554, e-mail: Charles.Tyler@fcc.gov.

320. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

321. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C., 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its website: www.bcpiweb.com, by e-mail at fcc@bcpiweb.com, by telephone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563.

322. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules.⁵⁴³ We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

323. For further information, contact Kimberly Scardino at (202) 418-1442 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

XII. ORDERING CLAUSES

324. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 201-205, 214, 254, 403, and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 214, 254, 403, 410(c), this Notice of Proposed Rulemaking IS ADOPTED.

325. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁴³ See 47 C.F.R. § 1.49.

APPENDIX A

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 C.F.R. Part 54 as follows:

PART 54 - UNIVERSAL SERVICE

1. The authority citation for Part 54 continues to read as follows:

Authority: 47 U.S.C. §§ 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.101 by removing subsection (a)(9), to read as follows:

§ 54.101 Supported services for rural, insular and high cost areas.

(a) Services designated for support. The following services or functionalities shall be supported by federal universal support mechanisms:

(1) *****

(2) *****

(3) *****

(4) *****

(5) *****

(6) *****

(7) *****

(8) *****

(9) [Reserved]

3. Amend § 54.400 by revising subsection (e), adding new subsections (b) and (e), eliminating subsections (b), (c), and (d), and re-designating (b), (c), (d), and (e), to read as follows:

§ 54.400 Terms and Definitions.

(a) *Qualifying low-income consumer.* A "qualifying low-income consumer" is a consumer who meets the qualifications for Lifeline, as specified in § 54.409, and complies with the one-per-residence limitation, as specified in § 54.402.

(b) *Duplicate support.* Duplicate support exists when (1) two or more ETCs are receiving Lifeline or Link Up support for the same residential address at the same time; or (2) an ETC is receiving two or more Lifeline or Link Up support reimbursements for the same residence at the same time.

(c) *Eligible resident of Tribal lands.* An "eligible resident of Tribal lands" is a "qualifying low-income consumer," as defined in paragraph (a) of this section, living on a reservation or on Tribal lands designated as such by the Commission. A "reservation" is defined as any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments. "Tribal lands" also shall mean any land designated as Tribal lands by the Commission for purposes of this subpart pursuant to the designation process in §54.402.

(d) *Income.* *****

(e) *Customary charge for commencing telecommunications service.* A "customary charge for commencing telecommunications service" is the ordinary charge an ETC routinely imposes on all customers within a state to initiate service. Such a charge is limited to an actual charge assessed on all customers to initiate service with that ETC. A charge imposed only on Lifeline and/or Link Up customers to initiate service is not a customary charge for commencing telecommunications service. Activation charges waived, reduced, or eliminated with the purchase of additional products, services, or minutes are not customary charges eligible for universal service support.

4. Amend § 54.401 by removing subsection (c), revising subsections (a)(3), to read as follows:

§ 54.401 Lifeline defined.

(a) As used in this subpart, Lifeline means a retail local service offering:

(1) *****

(2) *****

(3) That provides voice telephony service as specified in § 54.101(a);

(b) [Reserved]

(c) [Reserved]

(d) *****

(e) *****

5. Add new § 54.402, to read as follows:

§ 54.402 Tribal lands designation process. The Commission may designate specific areas as Tribal lands for purposes of this subpart for areas or communities that fall outside the boundaries of a designated reservation, but which maintain the same characteristics as those defined. A request for designation must be formally requested by an official of a federally recognized Tribe who has proper jurisdiction and must be filed pursuant to the Commission's rules. Good cause for the designation may be shown by: (1) providing evidence of a nexus between the area or community and the Tribe, such as identifying an area in which the federal government delivers services to Tribal citizens; (2) detailing how program support to the area would aid the Tribe in serving the needs and interests of its citizens in that community and further the Commission's goals of providing Tribal support. The region or community areas associated with the Tribe, as outlined and described in a grant of designation request, shall be considered Tribal lands for the purposes of this Subpart.

6. Amend Section 54.403 by removing subsection (c), revising subsections (a) and (b), and adding a new subsection (c), to read as follows:

§ 54.403 Lifeline support amount.

(a) The federal Lifeline support amount for all eligible telecommunications carriers shall equal:

(1) *****

(2) *****

(3) *****

(4) *Tier Four.* Additional federal Lifeline support of up to \$25 per month will be made available to an eligible telecommunications carrier providing Lifeline service to an eligible resident of Tribal lands, as defined in § 54.400(c), to the extent that the eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tier-Four amount to qualifying eligible residents of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required

rate reduction, to the extent that: *****

(b) *Maximum Lifeline Support Amount.*

(1) For a qualifying low-income consumer who is not an eligible resident of Tribal lands, as defined in §54.400(c), the federal Lifeline support amount shall not exceed \$3.50 plus the tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service, as determined in accordance with §69.104 or §69.152(d) and (q) of this chapter, whichever is applicable.

(2) For an eligible resident of Tribal lands, the federal Lifeline support amount shall not exceed \$28.50 plus that same End User Common Line charge.

(3) For a qualifying low-income consumer who purchases a bundled service package or a service plan that includes optional calling features, the federal Lifeline support amount shall not exceed the maximum Lifeline support amount as determined in accordance with § 54.403(b)(1) or (b)(2) of this subpart, whichever is applicable.

(c) *Application of Discount Amount.* Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier-One federal Lifeline support to waive the federal End-User Common Line charges for Lifeline consumers. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce the cost of any eligible residential Lifeline service plan or package selected by a qualified low-income consumer that provides voice telephony service with the performance characteristics listed in § 54.101(a), and charge Lifeline consumers the resulting amount.

7. Amend § 54.405 by adding subsections (e), and revising subsection (c), to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

(c) *Termination for Ineligibility.* *****

(e) *De-enroll for disqualification.* Notwithstanding § 54.405(c) of this section, notify Lifeline subscribers of impending termination of Lifeline service if the subscriber fails (1) to respond to notifications regarding duplicate support; (2) to respond to ETC verification attempts made pursuant to § 54.410(d) or (3) to use the supported service during a 60-day period. ETCs shall provide the subscriber 30 days following the date of the impending termination letter in which to demonstrate that Lifeline service shall not be terminated. ETCs shall terminate the Lifeline service if the subscriber fails to demonstrate that Lifeline service shall not be terminated. ETCs shall not seek Lifeline reimbursement for the subscriber during the 30-day period.

8. Amend § 54.407 by revising subsection (b) and (d), to read as follows:

§ 54.407 Reimbursement for offering Lifeline.

(a) *****

(b) The eligible telecommunications carrier may receive universal service support reimbursement for each qualifying low-income consumer who has used the supported service to initiate or receive a voice call within the last 60 days.

(c) *****

(d) The eligible telecommunications carrier seeking support must report partial or pro rata dollars when claiming reimbursement for discounted services to low-income consumers who receive service for less than a month.

9. Add new § 54.408, to read as follows:

§ 54.408 One-per-residence.

(a) Lifeline and Link Up support is limited to one Lifeline discount and/or one Link Up discount per billing residential address.

(1) *Billing Residential address.* For purposes of the Lifeline and Link Up programs, a "billing residential address" is a unique residential address recognized by the U.S. Postal Service address.

(2) Lifeline and Link Up support is available only to establish service at the qualifying low-income consumer's primary residential address. The consumer must initially certify at enrollment that the consumer's billing residential address of record is his or her primary residential address.

(b) To be considered an eligible consumer for the purposes of Lifeline and Link Up support, a consumer must meet the criteria set forth in section §54.409 of the rules.

10. Amend § 54.409 by adding subsection (c)(3) and (d), revising subsections (a), (c) and (d), eliminating subsections (b) and (d), and re-designating subsections (b), (c), (c)(3) and (d), to read as follows:

§ 54.409 Consumer qualification for Lifeline.

(a) To qualify to receive Lifeline service, a consumer's household income, as defined in § 54.400(d), must be at or below 135% of the Federal Poverty Guidelines, or a consumer must participate in one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance (Section 8); Low-Income Home Energy Assistance Program; National School Lunch Program's free lunch program; or Temporary Assistance for Needy Families.

(b) A consumer that is an eligible resident of Tribal lands, as defined by § 54.400(c) or § 54.402, shall be a "qualifying low-income consumer," as defined by 54.400(a), and shall qualify to receive Tiers One, Two, and Four Lifeline support if the consumer's residence: (1) has income that meets the threshold established in § 54.409(a) or participates in one of the federal assistance programs identified in § 54.409(a); or (2) participates in one of the following Tribal-specific federal assistance programs: Bureau of Indian Affairs general assistance, Tribally administered Temporary Assistance for Need Families (TANF); Head Start (but only those households meeting its income qualifying standard); or Food Distribution Program on Indian Reservations (FDPIR). Such qualifying low-income consumer shall also qualify for Tier Three Lifeline support if the carrier offering the Lifeline service is not subject to the regulations of the state and provides carrier-matching funds, as described in § 54.403(a)(3).

(c) Each eligible telecommunications carrier providing Lifeline service to a qualifying low-income

consumer pursuant to paragraphs (a) or (b) of this section must obtain that consumer's signature on a document certifying under penalty of perjury that:

- (1) The consumer's residence receives benefits from one of the programs listed in § 54.409 (a) or (b) of this section, and that the consumer presented documentation of program participation, as described in 54.410(b), which accurately represents the program participation of the consumer's residence; or the consumer's residence meets the income requirement of § 54.409 (a) of this section, and that the consumer presented documentation of income, as described in §§ 54.400(f), 54.410(a), which accurately represents the consumer's income; and
- (2) If an eligible resident of Tribal lands, that the consumer lives on a reservation or Tribal lands, as defined in §54.400(c) and § 54.402; and
- (3) The consumer will notify the carrier within 30 days if that consumer ceases to participate in the program or programs, if the consumer's income exceeds 135% of the Federal Poverty Guidelines, or if the consumer otherwise ceases to meet the criteria for receiving program support.

11. Amend § 54.410 by revising subsections (a) and (c), adding new subsections (b), (d), and (e), eliminating subsections (a)(1), (a)(2), (c)(1), and (c)(2), and re-designating subsections (b), (c), (c)(1) and (c)(2), to read as follows:

§ 54.410 Certification and Verification of Consumer Qualification for Lifeline.

(a) *Certification of income qualification.* Prior to enrollment in Lifeline, consumers qualifying for Lifeline under an income-based criterion must present documentation of their income and certify that they will be receiving support for only one Lifeline discount per residence. By six months from the effective date of these rules, eligible telecommunications carriers in all states must implement certification procedures to document consumer-income-based eligibility for Lifeline prior to a consumer's enrollment if the consumer is qualifying under the income-based criterion specified in §54.409(a). Acceptable documentation of income eligibility includes the prior year's state or federal tax return, current income statement from an employer or paycheck stub, a Social Security statement of benefits, a Veterans Administration statement of benefits, a retirement/pension statement of benefits, an

Unemployment/Workers' Compensation statement of benefits, federal notice letter of participation in General Assistance, a divorce decree, child support, or other official document. If the consumer presents documentation of income that does not cover a full year, such as current pay stubs, the consumer must present the same type of documentation covering three consecutive months within that calendar year.

States that mandate state Lifeline support may impose additional standards on eligible telecommunications carriers operating in their states to ensure compliance with the state Lifeline program.

(b) Certification of program qualification. Consumers qualifying for Lifeline under a program-based criterion must present documentation of their household participation in a qualifying program and certify that they will be receiving support for only one Lifeline discount per residence prior to enrollment in Lifeline. By six months from the effective date of these rules, eligible telecommunications carriers in all states must implement certification procedures to document consumer-program-based eligibility for Lifeline prior to a consumer's enrollment if the consumer is qualifying under the program-based criterion specified in §54.409(a) and (b). Acceptable documentation of program eligibility includes the prior year's statement of benefits from the program, program participation documents, federal notice letter of participation in the program, or other official document. If the consumer presents documentation of program participation that does not cover a full year, such as current program benefits, the consumer must present the same type of documentation covering three consecutive months within that calendar year.

States that mandate state Lifeline support may impose additional standards on eligible telecommunications carriers operating in their states to ensure compliance with the state Lifeline program.

(c) Self-certifications. After income and program based certification procedures are implemented, eligible telecommunications carriers are required to make and obtain certain self-certifications, under penalty of perjury, related to the Lifeline program. Eligible telecommunications carriers must retain records of all self-certifications.

(1) An officer of the eligible telecommunications carrier must certify that the eligible telecommunications carrier has procedures in place to review income and program documentation and that, to the best of his or her knowledge, the carrier was presented with documentation of the consumer's income qualification

or program participation.

(2) Lifeline and Link Up subscribers must initially certify at enrollment and during continued verification that they are receiving support for only one line per residence, consistent with the one-per-residence limitation as specified in § 54.408.

(3) Consumers qualifying for Lifeline under an income-based criterion must certify the number of individuals in their residence on the document required in § 54.409(c).

(d) *Verification of Continued Eligibility.* Consumers qualifying for Lifeline shall be required to verify continued eligibility on an annual basis. By six months from the effective date of these rules, eligible telecommunications carriers in all states shall implement procedures to verify annually the continued eligibility of a statistically valid sample [TBD] of their Lifeline subscribers for continued eligibility.

(1) Eligible telecommunications carriers shall require each customer to certify that they are receiving support for only one line per residence. Eligible telecommunications carriers may verify directly with a state that particular customers continue to be eligible by virtue of participation in a qualifying program or income level. To the extent eligible telecommunications carriers cannot obtain the necessary information from the state, they may verify directly with the customers.

(2) All eligible telecommunications carriers will be required to provide the results of their verification efforts to the Commission and the Administrator on the Annual Lifeline Certification and Verification Form (currently OMB 3060-0819) by August 31 each year. Eligible telecommunications carriers shall submit data to the Commission and Administrator regarding consumer qualifications for eligibility, including program-based and income-based eligibility, the number of customers that qualify based on income and program participation, the number of subscribers that qualify for each eligible program, the number of non-responders, and the number of customers de-enrolled and in the process of being terminated or de-enrolled. Eligible telecommunications carriers shall submit each customer name, address, and number of individuals in the customer's residence for those customers qualifying based on income criterion.

(e) *Preventing and Resolving Duplicate Support.* ETCs shall provide the Administrator with their Lifeline

and Link Up customer names, addresses, social security numbers, and/or other unique residence-identifying information as specified in the form and format requested on the Form 497 for the purpose of preventing and resolving situations involving duplicate support.

12. Amend Section 54.413 by revising subsection (b), to read as follows:

§ 54.413 Reimbursement for revenue forgone in offering a Link Up program.

(a) *****

(b) In order to receive universal service support reimbursement for providing Link Up, eligible telecommunications carriers must keep accurate records of the revenues they forgo in reducing their customary charge for commencing telecommunications service, as defined in § 54.400(e), and for providing a deferred schedule for payment of the charges assessed for commencing service for which the consumer does not pay interest, in conformity with § 54.411. *****

13. Amend Section 54.415 by revising subsections (a) and (c), eliminating subsection (b), and redesignating subsections (a) and (b), to read as follows:

§ 54.415 Consumer qualification for Link Up.

(a) The consumer qualification criteria for Link Up shall be the criteria set forth in § 54.409(a).

(b) Notwithstanding paragraph (a) of this section, the consumer qualification criteria for an eligible resident of Tribal lands, as defined in § 54.400(c) and § 54.402, shall qualify to receive Link Up support.

14. Amend Section 54.416 to read as follows:

§ 54.416 Certification of consumer qualification for Link Up.

Consumers qualifying under income-based or program-based criteria must present documentation of their qualification prior to enrollment in Link Up consistent with the requirements set forth in §§ 54.410(a) and

(b).

15. Amend Section 54.417 by revising subsections (a) and (b), to read as follows:

§ 54.417 Recordkeeping requirements.

(a) ***** eligible telecommunications carriers must maintain the documentation required in §§ 54.409(c) and 54.410(c) for as long as the consumer receives Lifeline service *****

(b) ***** To the extent such a reseller provides discounted services to low-income consumers, it is obligated to comply with the eligible telecommunications carrier requirements listed in this Subpart.

16. Amend Section 54.418 by eliminating this subsection as moot.

§ 54.418 [Reserved]

APPENDIX B

Current Verification Methodology

Statistically Valid Sample

Eligible Telecommunications Carriers (ETCs) subject to the federal default criterion will be required to verify the continued eligibility of a statistically valid sample of their Lifeline customers. The size of a statistically valid sample, however, varies based upon many factors, including the number of Lifeline subscribers (N) and the previously estimated proportion of Lifeline subscribers inappropriately taking Lifeline service (P).

For the first year that ETCs verify subscribers' continued eligibility, all ETCs should assume that the proportion P of subscribers inappropriately taking Lifeline service is .01, if there is no evidence to assume a different proportion. In subsequent years, ETCs should use the results of samples from previous years to determine this estimated proportion. In all instances, the estimated proportion P should never be less than .01 or more than .06.

For ETCs with large numbers of Lifeline subscribers (more than 400,000), a statistically valid sample size must be calculated pursuant to the following formula:¹

$$\text{Sample Size} = 2.706 * P * (1 - P) / .000625.$$

For ETCs with 400,000 Lifeline subscribers or less, the above formula could yield a sample size that is larger than needed to be statistically valid.² To simplify the calculation of a statistically valid sample, a table of sample sizes based on two variables N (number of Lifeline subscribers) and P (previously estimated proportion of Lifeline subscribers inappropriately taking Lifeline service) is provided below. Various numbers of Lifeline subscribers N are listed in the left-most column. Various previously estimated proportions P are listed on the first row. To determine the sample size, find the box that matches your number of Lifeline subscribers N and proportion P.

If the number of Lifeline subscribers is not listed and/or the proportion is not listed, ETCs should use the next higher number for N and/or P that is in the table, i.e. always round up to the next higher value for N and/or P. For example, if 3.8 percent of 9,500 Lifeline subscribers inappropriately took Lifeline service, the ETC would use a sample size of 164 (value using 10,000 customers and proportion .04). Because the adjustment for the number of Lifeline subscribers is *de minimus* above 400,000 Lifeline subscribers, ETCs with more than 400,000 Lifeline subscribers must use the above formula to calculate the sample size.

All ETCs must provide the estimated proportion for their samples to the Administrator, i.e., the proportion of sampled subscribers inappropriately taking Lifeline service.

¹ The values 2.706 and .000625 in this formula are mandated by OMB. See Office of Management and Budget, Memorandum M-03-13 (May 21, 2003).

² Sample sizes for ETCs with 400,000 Lifeline subscribers or less are calculated pursuant to the following formula: sample size = $N / (1 + \{[N-1]/n\})$. N is the number of Lifeline subscribers and $n = 2.706 * P * (1 - P) / .000625$, where P is the previously estimated proportion of Lifeline subscribers inappropriately taking Lifeline service. ETCs may choose to calculate their sample sizes using these formulas.

Sample Size Table
Previously Estimated Proportion of Subscribers
Inappropriately Taking Lifeline Service (P)³

(N) Number of Lifeline Subscribers	0.01	0.015	0.02	0.025	0.03	0.035	0.04	0.045	0.05	0.055	0.06
400,000	43	64	85	106	126	146	166	186	206	225	244
100,000 ⁴	43	64	85	105	126	146	166	186	206	225	244
90,000	43	64	85	105	126	146	166	186	205	224	244
70,000	43	64	85	105	126	146	166	186	205	224	243
60,000	43	64	85	105	126	146	166	185	205	224	243
30,000	43	64	85	105	125	146	165	185	204	223	242
20,000	43	64	85	105	125	145	165	184	204	223	241
15,000	43	64	84	105	125	145	164	184	203	222	240
10,000	43	64	84	104	124	144	164	183	202	220	238
9,000	43	64	84	104	124	144	163	182	201	220	238
8,000	43	63	84	104	124	144	163	182	201	219	237
7,000	43	63	84	104	124	143	162	181	200	218	236
6,000	43	63	84	104	123	143	162	180	199	217	235
5,000	43	63	83	103	123	142	161	179	198	215	233
4,000	42	63	83	103	122	141	160	178	196	213	230
3,000	42	63	83	102	121	139	158	175	193	209	226
2,000	42	62	81	100	119	136	154	170	187	202	218
1,500	42	61	80	99	116	133	150	166	181	196	210
1,000	41	60	78	96	112	128	142	157	171	184	196
900	41	60	78	95	111	126	140	154	168	180	192
800	41	59	77	94	109	124	138	151	164	176	187
700	41	59	76	92	107	121	134	147	159	170	181
600	40	58	74	90	104	118	130	142	154	164	174
500	40	57	73	88	101	113	125	136	146	155	164
400	39	55	70	84	96	107	118	127	136	144	152

³ For the first year of verification, ETCs should assume that this percentage is .01, if there is no evidence to assume a different percentage. In subsequent years, ETCs should use the results of samples from previous years to determine this estimated percentage.

⁴ Sample sizes for ETCs with less than 400,000 Lifeline subscribers are calculated pursuant to the following formula: $\text{sample size} = N / (1 + \{(N-1)/n\})$. N is the number of Lifeline subscribers; n is $(2.706 * P * (1 - P)) / .000625$, where P is the estimated percentage of Lifeline subscribers inappropriately taking Lifeline service. ETCs may choose to calculate their sample sizes using these formulas.

(N) Number of Lifeline Subscribers (cont'd)	0.01	0.015	0.02	0.025	0.03	0.035	0.04	0.045	0.05	0.055	0.06
300	38	53	66	79	89	98	107	115	122	129	135
200	36	49	60	70	78	85	91	97	102	106	110
150	34	45	54	62	69	74	79	83	87	90	93
120	32	42	50	57	62	66	70	73	76	78	81
100	30	39	46	52	56	60	63	65	68	69	71
90	29	38	44	49	53	56	59	61	63	64	66
80	28	36	41	46	49	52	54	56	58	59	60
70	27	34	39	42	45	48	49	51	52	54	55
60	25	31	35	39	41	43	44	46	47	48	48
50	23	28	32	34	36	37	39	40	40	41	42
40	21	25	27	29	31	32	32	33	34	34	34
35	20	23	25	27	28	28	29	30	30	30	31
30	18	21	22	24	24	25	26	26	26	27	27
25	16	18	19	20	21	21	22	22	22	23	23
20	14	15	16	17	17	18	18	18	18	18	19
17	12	14	14	15	15	15	16	16	16	16	16
15	11	12	13	13	13	14	14	14	14	14	14
13	10	11	11	12	12	12	12	12	12	12	12
11	9	10	10	10	10	10	10	10	10	11	11
10	8	9	9	9	9	9	9	10	10	10	10
9	8	8	8	8	8	9	9	9	9	9	9
8	7	7	7	8	8	8	8	8	8	8	8
7	6	6	7	7	7	7	7	7	7	7	7
6	5	6	6	6	6	6	6	6	6	6	6
5	5	5	5	5	5	5	5	5	5	5	5
4	4	4	4	4	4	4	4	4	4	4	4
3	3	3	3	3	3	3	3	3	3	3	3
2	2	2	2	2	2	2	2	2	2	2	2
1	1	1	1	1	1	1	1	1	1	1	1

APPENDIX C

Proposed Verification Methodology

The following charts identify the number of responders and margins of error based on an estimated ineligibility percentage (e.g. of the previous year). The charts have been calculated using a 95% confidence interval. The white portions of the table identify our proposed threshold rule and the shaded portions of the tables provide the information for alternative thresholds, on which we seek comment.

SAMPLE SIZE¹

		Minimum Number of Responders for Verification Given the Margin of Error and Estimated Ineligibility Percentage									
		Ineligibility Percentage									
		5%	10%	15%	20%	25%	30%	35%	40%	45%	50%
Margin of Error	1%	1825	3458	4899	6147	7203	8068	8740	9220	9508	9604
	2%	457	865	1225	1537	1801	2017	2185	2305	2377	2401
	3%	203	385	545	683	801	897	972	1025	1057	1068
	4%	115	217	307	385	451	505	547	577	595	601
	5%	73	139	196	246	289	323	350	369	381	385

MARGIN OF ERROR³

		Margin of Error for Verification Given the Minimum Number of Responders and Estimated Ineligibility Percentage									
		Ineligibility Percentage									
		5%	10%	15%	20%	25%	30%	35%	40%	45%	50%
Minimum Number of Responders	100	4.3%	5.9%	7.0%	7.8%	8.5%	9.0%	9.3%	9.6%	9.8%	9.8%
	200	3.0%	4.2%	4.9%	5.5%	6.0%	6.4%	6.6%	6.8%	6.9%	6.9%
	300	2.5%	3.4%	4.0%	4.5%	4.9%	5.2%	5.4%	5.5%	5.6%	5.7%
	400	2.1%	2.9%	3.5%	3.9%	4.2%	4.5%	4.7%	4.8%	4.9%	4.9%
	500	1.9%	2.6%	3.1%	3.5%	3.8%	4.0%	4.2%	4.3%	4.4%	4.4%

¹ This chart provides the number of responders required based on a designated ineligibility percentage and margin of error. For example, if the Commission wanted to ensure that the ineligibility rate does not exceed 5%, with the margin of error no more than 1%, the ETC would need to obtain 1,825 eligible responders.

² We note that these charts are based on the number of actual responders during verification and not the number surveyed. If the number surveyed does not result in the number of actual responders shown in the chart, more customers would need to be surveyed until the correct number of responders was reached.

³ This chart provides the margin of error that would exist based on a designated ineligibility percentage and the number of responders. For example, if an ETC had an estimated ineligibility percentage of 5%, and received 300 responders from a survey, this would represent a 2.5% margin of error in its verification survey.

APPENDIX D

List of Commenters

**Comments and Reply Comments in Response to the
TracFone Petition for Declaratory Ruling on Universal Service Issues**
WC Docket Nos. 09-197, 03-109
(TracFone Link Up Petition)

Commenter	Abbreviation
AT&T, Inc.	AT&T
Budget Prepay, Inc. and GreatCall, Inc.	Budget PrePay GreatCall
Competitive Eligible Telecommunications Carriers	CETCs
Nexus Communications, Inc.	Nexus
Ohio Public Utilities Commission of Ohio	Ohio
Reply Commenter	Abbreviation
National Association of State Utility Consumer Advocates	NASUCA
Nexus Communications Inc.	Nexus Communications
TracFone Wireless, Inc.	TracFone

**Comments and Reply Comments in Response to the
Federal-State Joint Board on Universal Service, Lifeline and Link Up Referral Order**
CC Docket No. 96-45; WC Docket No. 03-109
(Joint Board)

Commenter	Abbreviation
Advocates for Basic Legal Equality, Inc., Community Voice Mail National Crossroads Urban Center Disability Rights Advocates The Low Income Utility Advocacy Project Minnesota Legal Services Advocacy Project The National Consumer Law Center, On Behalf of Our Low-Income Clients New Jersey Shares Ohio Poverty Law Center Pro Seniors Salt Lake Community Action Program Texas Legal Services Center The Utility Reform Network Twin Cities Community Voicemail	Consumer Groups
AT&T Services, Inc.	AT&T
Benton Foundation, et al.	Benton
California Public Utilities Commission	CPUC
Community Voice Mail National Office	CVMN
Public Service Commission of the District of Columbia	DCPSC
Florida Public Service Commission	FPSC
Leap Wireless International, Inc. and Cricket Communications, Inc.	Cricket
Media Action Grassroots Network	MAG-Net
Missouri Public Service Commission	MoPSC

National Association of State Utility Consumer Advocates
 National Hispanic Media Coalition
 Nebraska Public Service Commission
 Nexus Communications, Inc.
 Public Utilities Commission of Ohio
 PR Wireless, Inc.
 Smith Bagley, Inc.
 TracFone Wireless, Inc.
 United States Telecom Association
 Verizon and Verizon Wireless
 YourTel America, Inc.

NASUCA
 NHMC
 NPSC
 Nexus
 Ohio PUC
 PR Wireless
 Smith Bagley
 TracFone
 USTelecom
 Verizon
 YourTel

Reply Commenter

Advocates for Basic Legal Equality, Inc.,
 Community Voice Mail National Crossroads Urban Center
 Disability Rights Advocates
 The Low Income Utility Advocacy Project
 Minnesota Legal Services Advocacy Project
 The National Consumer Law Center, On Behalf of Our
 Low-Income Clients
 New Jersey Shares
 Ohio Poverty Law Center
 Pro Seniors
 Salt Lake Community Action Program
 Texas Legal Services Center
 The Utility Reform Network
 Twin Cities Community Voicemail
 AT&T, Inc.
 CTIA--The Wireless Association
 Consumer Advisory Committee
 GCI Communication, Inc.
 Leadership Conference on Civil and Human Rights
 Massachusetts Department of Telecommunications and Cable
 National Association of State Utility Consumer Advocates
 National Hispanic Media Coalition
 Media Action Grassroots Network
 Office of Communication of the United Church of Christ, Inc.,
 Benton Foundation, and Access Humboldt
 Nexus Communications, Inc.
 Norma J. Torres
 Pennsylvania Public Utility Commission
 PR Wireless, Inc.
 Qwest Communications International Inc.
 Smith Bagley, Inc.
 Sprint Nextel Corporation
 TracFone Wireless, Inc.
 Verizon and Verizon Wireless
 YourTel America, Inc.

Abbreviation

Consumer Groups
 AT&T
 CTIA
 GCI
 MDTC
 NASUCA
 Public Interest Commenters
 Nexus
 PaPUC
 PR Wireless
 Qwest
 Smith Bagley
 Sprint
 TracFone
 Verizon Companies
 YourTel

**Comments and Reply Comments in Response to the
TracFone Wireless, Inc.'s Petition for Waiver of 47 C.F.R. § 54.403(a)(i)
CC Docket No. 96-45
(TracFone Tier 1 Petition)**

Commenter

Independent Telephone & Telecommunications Alliance
National Assn. of State Utility Consumer Advocates
Oregon Public Utility Commission
Sprint Nextel Corporation
YourTel America, Inc.

Abbreviation

ITTA
NASUCA
Oregon PUC
Sprint
Yourtel

Reply Commenter

National Association of State Utility Consumer
Advocates
Pennsylvania Public Utility Commission
TracFone Wireless, Inc.

Abbreviation

NASUCA
PaPUC
TracFone

**Comments and Reply Comments in Response to the
TracFone Request for Clarification of Universal Service Lifeline Program "One-Per-Household" Rule
as Applied to Group Living Facilities
WC Docket No. 03-109
(TracFone One-Per-Household Clarification)**

Commenter

American Public Communications Council
AT&T Inc.
City of Cambridge, MA & Cambridge Continuum of Care
East Side SRO Legal Services Project
Florida Public Service Commission and Florida
Office of Public Counsel
General Communication, Inc.
Homeless Advocacy Project
Manhattan Legal Services NYC
Miriam's Kitchen
MFY Legal Services
National Assn. of State Utility consumer Advocates
National Consumer Law Center
Part of the Solution, Inc.
Public Utilities Commission of Ohio
Smith Bagley, Inc.
Washington Legal Clinic for the Homeless, Inc.

Abbreviation

APCC
AT&T
City of Cambridge - CoC

Florida PSC & OPC
GCI
HAP

NASUCA
NCLC
POTS
Ohio Commission
SBI

Reply Commenter

GCI Communication, Inc. d/b/a
GCI Communication Corp and GCI
Massachusetts Department of Telecommunications and Cable
National Consumer Law Center and
Greater Boston Legal Services
National Network to End Domestic Violence

Abbreviation

GCI
MDTC

NCLC/GBLS
NNEDV

Public Utility Commission of Oregon
TracFone Wireless, Inc.

OPUC
TracFone

APPENDIX E

Initial Regulatory Flexibility Analysis

1. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking.¹ Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Notice of Proposed Rulemaking:

2. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254.⁴ On May 8, 1997, the Commission adopted rules that reformed its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.⁵ Among other programs, the Commission adopted a program to provide discounts that make basic, local telephone service affordable for low-income consumers.⁶

3. This *Notice of Proposed Rulemaking* (NPRM) is one in a series of rulemaking proceedings designed to implement the National Broadband Plan's (NBP) vision of improving and modernizing the universal service programs.⁷ In this NPRM, we propose and seek comment on comprehensive reforms to the universal service low-income support mechanism. We propose and seek comment on a package of reforms that address each of the major recommendations by the Universal Service Joint Board regarding the low-income program.⁸ We also propose a series of recommendations in accordance with a report on the program by the Government Accountability Office (GAO).⁹

4. Specifically, we propose and seek comment on the following reforms and modernizations that may be implemented in funding year 2011 (January 1, 2011 to December 31, 2011): (1) strengthening the Commission's rules to ensure that the low-income program subsidizes no more than one service per eligible residential address; (2) reducing waste, fraud, and abuse by addressing duplicate claims, subscriber reporting, and de-enrollment procedures; (3) streamlining and improving program

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612 has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ 47 U.S.C. § 254.

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rod 8776, paras. 326-328 (1997).

⁶ *See id.*

⁷ *See* NATIONAL BROADBAND PLAN.

⁸ *2010 Recommended Decision*.

⁹ *See* U.S. GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, GAO 11-11, TELECOMMUNICATIONS: IMPROVED MANAGEMENT CAN ENHANCE FCC DECISION MAKING FOR THE UNIVERSAL SERVICE FUND LOW-INCOME PROGRAM (2010).

administration through the establishment of uniform eligibility, verification, and certification requirements; and (4) establishing a centralized database for reporting.

B. Legal Basis:

5. This *Notice of Proposed Rulemaking*, including publication of proposed rules, is authorized under sections 1, 2, 4(i)-(j), 201(b), 254, 257, 303(r), and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 254, 257, 303(r), 503, 1302.¹⁰

C. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply:

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹³ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁴ Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.¹⁵ A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁶ Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹⁷ The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹⁸ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹⁹ We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."²⁰ Thus, we estimate that most governmental jurisdictions are small.

¹⁰ 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 254, 257, 303(r), 503, 1302.

¹¹ 5 U.S.C. § 603(b)(3).

¹² 5 U.S.C. § 601(6).

¹³ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

¹⁴ Small Business Act, 15 U.S.C. § 632.

¹⁵ See Small Business Administration, Office of Advocacy, Frequently Asked Questions, <http://www.sba.gov/advocacy/7495> (last visited March 2, 2011).

¹⁶ 5 U.S.C. § 601(4).

¹⁷ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁸ 5 U.S.C. § 601(5).

¹⁹ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

²⁰ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau (continued....)

1. Wireline Providers

7. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²¹ Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.²² Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.²³ Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.²⁴

8. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁵ Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.²⁶ According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.²⁷ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer

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data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

²¹ 13 C.F.R. § 121.201, NAICS code 517110.

²² See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

²³ See *id.*

²⁴ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>. (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...", choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

²⁵ 13 C.F.R. § 121.201, NAICS code 517110.

²⁶ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>. (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...", choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

²⁷ See *Trends in Telephone Service* at Table 5.3.

employees and 186 have more than 1,500 employees.²⁸ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.²⁹ In addition, 72 carriers have reported that they are Other Local Service Providers.³⁰ Seventy of which have 1,500 or fewer employees and two have more than 1,500 employees.³¹ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

9. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³² Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.³³ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.³⁴ Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.³⁵ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

10. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁶ Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁷ Census Bureau data for 2007, which now supersede 2002 Census data, show that there were 3,188 firms in this category that operated for the entire year. Of the total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more.³⁸ Thus

²⁸ See *id.*

²⁹ *Id.*

³⁰ See *id.*

³¹ See *id.*

³² 13 C.F.R. § 121.201, NAICS code 517110.

³³ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector..." choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

³⁴ See *Trends in Telephone Service* at Table 5.3.

³⁵ See *id.*

³⁶ 13 C.F.R. § 121.201, NAICS code 517110.

³⁷ *Id.*

³⁸ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector..." choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." (continued....)

under this category and the associated small business size standard, the majority of these interexchange carriers can be considered small entities.³⁹ According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees.⁴⁰ Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

11. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴¹ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.⁴² Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁴³ Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.⁴⁴ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

12. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁵ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.⁴⁶ Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data,⁴⁷ 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

(Continued from previous page)

Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers" (last visited March 2, 2011).

³⁹ *Id.*

⁴⁰ *Trends in Telephone Service* at Table 5.3.

⁴¹ 13 C.F.R. § 121.201, NAICS code 517911.

⁴² U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector..." choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited March 2, 2011).

⁴³ *See Trends in Telephone Service* at Table 5.3.

⁴⁴ *Id.*

⁴⁵ 13 C.F.R. § 121.201, NAICS code 517911.

⁴⁶ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector..." choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited March 2, 2011).

⁴⁷ *See Trends in Telephone Service* at Table 5.3.

13. *Pre-paid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for pre-paid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁸ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.⁴⁹ Thus under this category and the associated small business size standard, the majority of these pre-paid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of pre-paid calling cards.⁵⁰ Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.⁵¹ Consequently, the Commission estimates that the majority of pre-paid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

14. *800 and 800-Like Service Subscribers.*⁵² Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵³ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.⁵⁴ Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.⁵⁵ According to our data, at of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or

⁴⁸ 13 C.F.R. § 121.201, NAICS code 517911.

⁴⁹ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector..." choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited March 2, 2011).

⁵⁰ See *Trends in Telephone Service* at Table 5.3.

⁵¹ See *id.*

⁵² We include all toll-free number subscribers in this category, including those for 888 numbers.

⁵³ 13 C.F.R. § 121.201, NAICS code 517911.

⁵⁴ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector..." choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited March 2, 2011).

⁵⁵ *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

fewer small entity 866 subscribers. We do not believe 800 and 800-Like Service Subscribers will be effected by our proposed rules, however we choose to include this category and seek comment on whether there will be an effect on small entities within this category.

2. Wireless Carriers and Service Providers

15. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

16. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.⁵⁶ Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.⁵⁷ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁵⁸ For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.⁵⁹ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.⁶⁰ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁶¹ Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

17. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.⁶² The SBA has approved these

⁵⁶ U.S. Census Bureau, 2007 NAICS Definitions: Wireless Telecommunications Categories (except Satellite), <http://www.census.gov/naics/2007/def/ND517210.HTM> (last visited March 2, 2011).

⁵⁷ U.S. Census Bureau, 2002 NAICS Definitions: Paging, <http://www.census.gov/epcd/naics02/def/NDEF517.HTM> (last visited March 2, 2011); U.S. Census Bureau, 2002 NAICS Definitions: Other Wireless Telecommunications, <http://www.census.gov/epcd/naics02/def/NDEF517.HTM> (last visited March 2, 2011).

⁵⁸ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁵⁹ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector..." choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517210 in the left column for "Wireless Telecommunications Carriers (except Satellite)") (last visited March 2, 2011).

⁶⁰ See *Trends in Telephone Service* at Table 5.3.

⁶¹ See *id.*

⁶² *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

definitions.⁶³ The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

18. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules.⁶⁴ The second has a size standard of \$25 million or less in annual receipts.⁶⁵

19. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."⁶⁶ Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.⁶⁷ Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.⁶⁸ Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

20. The second category, i.e., All Other Telecommunications, comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry."⁶⁹ For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.⁷⁰ Of this total, 2,347 firms had annual receipts of under \$25

⁶³ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

⁶⁴ 13 C.F.R. § 121.201, NAICS code 517410.

⁶⁵ 13 C.F.R. § 121.201, NAICS code 517919.

⁶⁶ U.S. Census Bureau, 2007 NAICS Definitions, Satellite Telecommunications, <http://www.census.gov/naics/2007/def/ND517410.HTM> (last visited March 2, 2011).

⁶⁷ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...", choose "Information." Under "Subject Series," choose "EC0751SSSZ4: Receipts Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517210 in the left column for "Satellite Telecommunications") (last visited March 2, 2011).

⁶⁸ *Id.*

⁶⁹ U.S. Census Bureau, 2007 NAICS Definitions, All Other Telecommunications, <http://www.census.gov/naics/2007/def/ND517919.HTM> (last visited March 2, 2011).

⁷⁰ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...", choose "Information." Under "Subject Series," choose "EC0751SSSZ4: Receipts Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517919 in the left column for "All Other Telecommunications") (last visited March 2, 2011).

million and 12 firms had annual receipts of \$25 million to \$49,999,999.⁷¹ Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

21. *Common Carrier Paging.* The SBA considers paging to be a wireless telecommunications service and classifies it under the industry classification Wireless Telecommunications Carriers (except satellite). Under that classification, the applicable size standard is that a business is small if it has 1,500 or fewer employees. For the general category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.⁷² Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.⁷³ The 2007 census also contains data for the specific category of Paging “that is classified under the seven-number North American Industry Classification System (NAICS) code 5172101.”⁷⁴ According to Commission data, 291 carriers have reported that they are engaged in paging or messaging service. Of these, an estimated 289 have 1,500 or fewer employees, and 2 have more than 1,500 employees.⁷⁵ Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging Third Report and Order, the Commission developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁷⁶ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁷⁷ The SBA has approved these small business size

⁷¹ *Id.*

⁷² U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ5: Employment Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517210 in the left column for “Wireless Telecommunications Carriers (except Satellite)”) (last visited March 2, 2011).

⁷³ 13 C.F.R. § 121.201, NAICS code 517210.

⁷⁴ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ5: Employment Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 5172101 in the left column for “Paging”) (last visited March 2, 2011). In this specific category, there were 248 firms that operated for the entire year in 2007. Of that number 247 operated with fewer than 100 employees and one operated with more than 1000 employees. Based on this classification and the associated size standard, the majority of paging firms must be considered small.

⁷⁵ See *Trends in Telephone Service* at Table 5.3.

⁷⁶ *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997).

⁷⁷ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, Small Business Administration (Dec. 2, 1998).

standards.⁷⁸ An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.⁷⁹ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

22. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).⁸⁰ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁸¹ According to the *2008 Trends Report*, 434 carriers reported that they were engaged in wireless telephony.⁸² Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.⁸³ We have estimated that 222 of these are small under the SBA small business size standard.

3. Internet Service Providers

23. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,⁸⁴ which has an SBA small business size standard of 1,500 or fewer employees.⁸⁵ The latter are within the category of All Other Telecommunications,⁸⁶ which has a size standard of annual receipts of \$25 million or less.⁸⁷ The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.⁸⁸ That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.⁸⁹ Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999.⁹⁰ Consequently, we estimate that the

⁷⁸ *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Red 10030, paras. 98-107 (1999).

⁷⁹ *Id.* at 10085, para. 98.

⁸⁰ 13 C.F.R. § 121.201, NAICS code 517210.

⁸¹ *Id.*

⁸² See *Trends in Telephone Service* at Table 5.3.

⁸³ *Id.*

⁸⁴ U.S. Census Bureau, 2007 NAICS Definitions: Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM> (last visited March 2, 2011).

⁸⁵ 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

⁸⁶ U.S. Census Bureau, 2007 NAICS Definitions: All Other Telecommunications, <http://www.census.gov/naics/2007/def/ND517919.HTM> (last visited March 2, 2011).

⁸⁷ 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

⁸⁸ U.S. Census Bureau, 2002 NAICS Definitions: Internet Service Providers, Web Search Portals, and Data Processing Services, <http://www.census.gov/epcd/naics02/def/NDEF518.HTM> (last visited March 2, 2011).

⁸⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," at Table 4, NAICS code 518111 (issued Nov. 2005).

⁹⁰ An additional 45 firms had receipts of \$25 million or more.

majority of ISP firms are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

24. The reporting and recordkeeping requirements in this NPRM could have an impact on both small and large entities. Though the impact may be more financially burdensome for smaller entities, we believe the impact of such requirements is outweighed by their corresponding benefits to entities and consumers. Further, these requirements are necessary to ensure that the statutory goals of section 254 of the Telecommunications Act of 1996 are met without waste, fraud, or abuse.

25. The Commission proposes several reporting, recordkeeping, and compliance requirements for the low-income program. We propose that Eligible Telecommunications Carriers (ETCs) seeking support would extend their reporting to the Universal Service Administrative Company (USAC) to include reporting of subscribers' partial participation. Further, we propose de-enrollment procedures to reduce waste in the program. We also propose to retain the existing verification requirements for federal default states and extend these requirements to the remainder of states.

26. *Duplicate Claims and One-Per-Residential Address.* The Commission proposes several reporting and recordkeeping requirements to reduce the likelihood that a residential address will receive more than one subsidized service through the low-income program. Specifically, we propose an information solicitation and submission process to enable USAC to identify duplicate claims of support and violations of the proposed rules, which, if adopted, will help USAC determine whether two or more ETCs are providing Lifeline-supported service to the same residential address.⁹¹ ETCs would be required to solicit identifying residential address information and certification from Lifeline subscribers. ETCs would then submit this data to USAC. Under the proposal, USAC would then notify ETCs of any duplicate claims of support. ETCs would also be required to notify customers with duplicate Lifeline service by phone and in writing when possible that the subscriber must select one Lifeline provider or face termination from the program. The selected ETC would then notify USAC as well as any other ETC providing Lifeline service to the customer.

27. *Line 9 Reporting.* To help ensure that ETCs seek reimbursement only for active Lifeline subscribers, the Commission proposes to require ETCs to report partial or pro rata dollars when claiming reimbursement on Form 497. Compliance with the proposed rule would require ETCs to report the number of subscribers beginning or terminating Lifeline service mid-month as well as the length of service provided during that month to each partial-month subscriber, which is similar to ETCs' billing of partial-month service to non-Lifeline consumers.

28. *De-Enrollment Procedures and Customer Usage Requirements.* As part of the effort to reduce waste in the program, and in accordance with the proposed one-per-residential address codification, the Commission proposes to require ETCs to de-enroll their Lifeline subscribers who: (1) select another ETC after being notified of a duplicate claim; and (2) subscribers who do not use their phone for 60 days. Compliance with the proposed de-enrollment procedures would require ETCs to monitor whether a Lifeline phone was used during any 60-day period. After de-enrollment, the ETC would need to notify USAC of the de-enrollment. USAC could then pursue recovery actions against the ETC for past inappropriate support.

29. *Verification.* The Commission's rules currently require ETCs in federal default states to implement procedures to verify annually the continued eligibility of a statistically-valid random sample of Lifeline subscribers and to provide the results to USAC. We propose to extend these standards to all

⁹¹ See Appendix A for Proposed Rules.

states. Furthermore, in accordance with the proposed one-per-residential address requirement, we propose to require ETCs to verify consumer certifications upon enrollment and annually thereafter.

30. *Service Deposit or Minimum Service Fee.* Though we do not propose any rules on a service deposit for commencing Lifeline service or a minimum service fee for maintaining service, we seek comment on whether such rules would balance the competing needs of program efficacy with program efficiency. Specifically, we seek comment as to whether requiring ETCs to bill consumers would pose a disproportionate burden upon small entities, especially those, like pre-paid wireless resellers, that do not currently bill their consumers on a monthly basis.

31. *Database.* We propose a comprehensive reform to the low-income program: we recommend the creation of a centralized database for online certification and verification of low-income subscribers. In the NPRM, we seek comment on which entity or entities would be best suited to create and maintain such a database. Compliance with requirements associated with a centralized database would include reporting of information solicited from Lifeline subscribers for the purposes of certifying and verifying their eligibility.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁹²

33. In this NPRM, we make a number of proposals that may have an economic impact on small entities that participate in the universal service low-income support mechanism. Specifically, as addressed above, we seek comment on: (1) mitigating duplicate claims of service through increased reporting to USAC, in accordance with the proposed one-per-residential address rule; (2) requiring the reporting of consumers' partial-month Lifeline participation; (3) establishing clear de-enrollment procedures; and (4) establishing a uniform verification regime. If adopted, these proposals will help USAC and ETCs reduce waste, fraud, and abuse in the low-income support mechanism.

34. In seeking to minimize the burdens imposed on small entities where doing so does not compromise the goals of the universal service mechanism, we have invited comment on how these proposals might be made less burdensome for small entities.⁹³ We again invite commenters to discuss the benefits of such changes on small entities and whether these benefits are outweighed by resulting costs to ETCs that might also be small entities. We anticipate that the record will reflect whether the overall benefits of such programmatic changes would outweigh the burdens on small entities, and if so, commenters will suggest alternative ways in which the Commission could lessen the overall burdens on small entities. We encourage small entities to comment.

35. We have taken the following steps to minimize the impact on small entities. First, to ease the administrative burden on applicants, we propose an approach that minimizes reporting requirements by appropriating Form 497 for further information collection rather than creating an additional form. In accordance with the E-Sign Act,⁹⁴ we propose to allow consumers to sign their certifications

⁹² 5 U.S.C. § 603.

⁹³ See *supra* para. 315.

⁹⁴ 15 U.S.C. §§ 7001-7004 (2006).

electronically, eliminating significant reporting and mailing burdens currently placed on all entities. In order to minimize the impact on ETCs, including small entities, we have placed the burden of checking addresses for duplicate claims upon USAC, rather than ETCs. Furthermore, in an effort to make verification simpler for all ETCs, we have proposed uniform rules of eligibility and verification. Most significantly, however, we contemplate a phased structure for reporting to a centralized database: large entities would begin populating the proposed database initially, with small entities following suit after a period of time during which the process will be made less burdensome when possible.

F. Federal Rules that May Duplicate, or Conflict with Proposed Rules:

36. None.

STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI

Re: *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*,
WC Docket No. 03-109, *Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-18

Today we propose to reform and modernize the Lifeline/Link-Up program – to make it more efficient and effective, and to determine how best to meet our national goal of broadband adoption by all Americans.

Since Lifeline was created in 1985 and Congress codified it in the Telecommunications Act of 1996, the program has drawn broad bipartisan support and helped millions of low-income households afford phone service.

But the world has changed considerably since then, and the Lifeline/Link-Up program has not kept pace. Major technological, market, and regulatory changes – including the Commission's decision in 2005 to allow prepaid wireless resellers to offer Lifeline service – have created new challenges and pressures on the program, as well as new opportunities for consumers.

Yet the Commission has not comprehensively reexamined the program, or implemented clear performance goals or sufficiently robust protections against waste, fraud, and abuse. Every Lifeline/Link-Up dollar that today gets spent on duplicate service, ineligible participants, or other waste or inefficiencies is a dollar that could go to helping more low-income Americans connect.

And Lifeline/Link-Up has grown more rapidly over the past few years, increasing the contribution burden on consumers and businesses throughout the country, which can undermine our universal service goals. Increases in the contribution burden are particularly concerning for the tens of millions of Americans at or near the poverty line who pay for phone service but don't participate in Lifeline.

That's why we asked the Federal-State Joint Board on Universal Service to examine the Lifeline/Link-Up program and evaluate a host of issues related to the program's performance and administration. Late last year, the Joint Board reported back with a series of important and thoughtful recommendations for reform and modernization.

The NPRM we adopt today puts forward these recommendations, as well as proposals from the Government Accountability Office, from the National Broadband Plan, and from a number of private-sector stakeholders.

The NPRM proposes three main types of reforms:

First, we propose immediate reforms to eliminate waste, fraud, abuse, and other misspending in the program – including proposals to eliminate duplicate support to a single household and preventing carriers from obtaining support for consumers that haven't used their service in months. We also propose to establish a National Accountability Database, administered by an independent third party, to ensure that multiple carriers are not getting Lifeline/Link-Up support to serve the same household, and that only eligible households are participating in the program.

Second, we propose to make the program more accountable – that means accountability for consumers who benefit from the program, carriers that receive support, and government. To do this, we propose reforms like establishing concrete performance goals for the program, and stepping up oversight.

Third, we seek comment on measures – including capping the size of the program – to prevent over-burdening the consumers and businesses that contribute to the Universal Service Fund.

These reforms will provide Lifeline/Link-Up clear goals and robust safeguards, and put the program on a sound footing.

And in the interim, while we're seeking comment on these reforms, we will work to ensure that consumers are not misusing the program and that the companies that receive Lifeline/Link-Up support are living up to their responsibilities to combat waste, fraud, and abuse, including taking adequate precautions to prevent duplicate support.

As we reform Lifeline/Link-Up to be a leaner, more efficient, and more effective program, we're also making sure the program meets consumer needs in the broadband age. Broadband is at least as crucial to full participation in our economy and society in the 21st century as telephone service was in the 20th. We know that increasing broadband adoption is essential for generating economic growth and improving our global competitiveness; a 2009 McKinsey study suggests that a 10% increase in broadband penetration could increase annual GDP by more than \$200 billion in a country with an economy the size of ours in the United States.

Broadband is also crucial for advancing national priorities like education – think of online courses and digital textbooks, and health care – think of two-way video consultations with medical specialists. It's crucial for finding a job, as job postings have moved online, and for landing a job, as companies increasingly require basic digital skills.

Despite the importance of broadband for everyone, more than half of low-income Americans – about 60% – don't have broadband in their homes. Fewer than half of African Americans, Latinos, and Americans without a high school diploma have broadband. And as we heard this morning, fewer than 10% of Native Americans households are online. Especially at a time when countries like South Korea boast broadband adoption rates higher than 90 percent, that's simply not good enough.

Accelerating broadband adoption is one of our great national challenges. But it's not an easy problem to solve. The National Broadband Plan identified a number of major barriers. Many non-adopters lack the digital literacy needed to adopt and use broadband – they don't know how to use a computer or how to navigate a webpage. Many non-adopters don't think broadband is relevant to them or can improve their lives. And affordability is a core obstacle, particularly for low-income Americans. The FCC has been working on a number of initiatives to overcome these barriers and increase broadband adoption and use.

Today, we propose an important step toward this goal: Pilot programs, funded with savings from reforms, to determine how Lifeline/Link-Up can best be used to increase broadband adoption and use among low-income consumers. We'll be looking broadly for the best ideas for accountable, efficient, metrics-based initiatives that will move the needle on broadband adoption.

As we move forward, we should be realistic. Lifeline/Link-Up won't solve the adoption challenge by itself. We need to harness e-government, and think creatively about how different parts of the public sector – federal, state, and local – can be part of the solution.

Government cannot, and should not, meet this challenge alone. Success is going to require sustained attention and effort from broadband providers, technology companies, nonprofit groups, educators, and parents, as well as policymakers.

I'd like to acknowledge and praise existing private efforts and challenge companies to do more in this area. This is as much a win-win as anything I've seen. Every new broadband subscriber helps that subscriber, the company offering service, and our economy and global competitiveness. I look forward to working with a broad range of stakeholders to meet our broadband adoption challenge.

I'd like to thank my fellow Commissioners, who worked together to improve and shape the Notice. I also want to thank the staff, particularly the staff of the Wireline Competition Bureau, for their outstanding work preparing this item.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*,
WC Docket No. 03-109, *Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-18

Connecting low income consumers is a central pillar of this Commission's Universal Service mission. All our people need access to the wonders of communications—and I always underline that word “all.” We can no longer afford to have digital divides between the haves and have-nots. Until each and every citizen of this great country is connected—urban or rural, living on tribal lands or in distressed inner cities, whether they are rich or poor, whether or not they are members of our disabilities communities—our work remains unfinished.

Our Lifeline and Linkup programs help ensure that Americans who need it most have affordable access to the nation's communications networks. Today, that has to mean support for affordable broadband access. The Commission has rightly begun to transition our Universal Service focus across all our programs to the advanced communications services that the digital age requires. Whether it's applying for a job or accessing a public assistance program, doing homework or caring for our health, broadband becomes with each passing day more essential—a basic prerequisite for participation in the social and economic life our nation. Low-income consumers simply cannot afford to wait for the benefits of broadband. As this item points out, only 40% of households earning less than \$20,000 a year have broadband – compared to a 93% adoption rate for households making more than \$75,000 annually. And we know that cost is a primary barrier to broadband adoption. Disparities that dramatic cry out for immediate action.

At the same time, we must acknowledge that there is still work to be done to ensure that all Americans have access to basic voice service. Almost 10% of low-income households nationally lack telephone service. And I would hazard that many of our distinguished guests from Indian country today could tell us first-hand how much remains to be done on this score. The low-income programs have been historically underutilized and although there has been recent growth in the program, in 2009 only 36% of eligible consumers participated in Lifeline. So I'm pleased that this item builds on the recommendations of the Federal-State Joint Board on Universal Service with regard to outreach and coordinated enrollment when consumers are signing up for other assistance programs. These proposals can potentially expand the reach of the low-income support programs, which is critical as long as telephone penetration rates for low-income households consistently lag behind the rest of the nation.

I certainly support looking for program savings and action to ensure that carriers that are receiving support are doing so in compliance with our rules to prevent waste, fraud and abuse. This item also identifies areas where the program needs to be modernized, such as by updating the rules on toll limitation services reimbursement. I appreciate that as we ask how to enforce the one-per-household rule designed to prevent duplicative support, we acknowledge that some low-income consumers have living situations where a residential address is not a good proxy for a household. I hope any duplicative support or outdated support we do recover is used to expand the benefits of advanced communications to low-income consumers. These savings should be used to provide funding for the proposed broadband pilot programs, which can be an important first step on what I hope is an accelerated transition to a low-income program that helps all Americans reach our national broadband goals.

Our challenge is to close the stubborn and persistent gap of low-income Americans who remain without even basic voice service while transforming the program to provide support for the advanced telecommunications services that all Americans need in order to compete in the 21st century economy. That's a tall order—and that is why I am concerned that this item contemplates capping low-income

support. As we tee up proposals about how to provide support for broadband, capping today's program would be at best imprecise. How can we intelligently cap a program when we don't know how much meeting the challenge is going to cost? At worst, we risk compromising the future of low-income Americans who may never be connected without Lifeline.

My thanks to all the staff in the Bureau whose efforts went into today's item. I also want to acknowledge the Federal-State Joint Board members and staff whose work informed this NPRM. I look forward to working with all these good folks, with my colleagues here, and with all stakeholders in the months ahead.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

RE: *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*,
WC Docket No. 03-109, *Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-18

If I've learned one thing in my nearly five years on the Commission, it is that our work on universal service reform is a bit like painting the Golden Gate Bridge: a project that is always underway and never seems to end. During my time here, I have advocated for a comprehensive review of all of the programs with a primary goal being curbing the growth of expenditures. As such, today's initiation to revamp the Lifeline/Linkup program is a critical part of our overall reform efforts, and I commend the Chairman for launching this Notice of Proposed Rulemaking.

The original goal of the Lifeline/Linkup program was a noble one: to provide an opportunity for Americans with limited means to stay connected to the rest of the world through basic phone service. This program has improved many lives by not only allowing for everyday communications, but it has also helped save lives by allowing consumers to place emergency calls.

Nonetheless, we cannot ignore the fact that the size of the Lifeline/Linkup program has steadily and dramatically increased. In 1997, the total support for the program was \$162 million, and in 2010 it had risen to \$1.3 billion. This trend is unsustainable. It is encouraging to see that this proceeding attempts to examine and address waste, fraud and abuse within this program. It seems that policymakers often speak of "waste, fraud and abuse" when attempting to create efficiencies in government programs to the point where that term has become hackneyed and virtually meaningless. Today, however, the FCC is actually doing something specific to reverse some troubling trends. For instance, the Notice: seeks comment on ways to ensure duplicate support is not provided; explores ways to prevent companies from receiving funds for inactive customers; and asks for the public's advice on possibly imposing a uniform federal standard as a minimum threshold for verifying continued eligibility. Also, regarding duplicate claims, I am supportive of efforts the Chairman may have to find ways to curb excess and inappropriate spending.

I thank the hard-working staff in the Wireline Competition Bureau for their dedication to this Notice, and I look forward to discussing these issues with all of my colleagues and the various stakeholders. It is my hope that we can move forward in a fiscally prudent and thoughtful way.

STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN

RE: *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-18

For many years, fulfilling the basic communications needs of low-income consumers has been a priority for our nation. Since 1985, the Lifeline and Link Up programs have ensured millions of low-income Americans access to affordable telephone service. This not only permits these consumers the means to stay connected to friends and family, it also offers them the ability to make doctor's appointments, and call 911 in an emergency. By ensuring that low-income consumers have access to a phone in their homes, our nation has provided every American—no matter their financial circumstance—the lifeline they need to communicate with the rest of the world. For those consumers who are struggling to meet basic needs, such as food and shelter, these programs truly are making a difference. Many would go without phone service, but for these programs. And given the economic downturn over the last several years, it is not surprising that the fund has grown.

We have seen numerous changes in the marketplace since the implementation of the Lifeline and Link Up programs. Notably, mobile wireless service has grown significantly, and competitive Lifeline products are now available, allowing low-income consumers the ability to choose from various phone options. Today, access to high-speed Internet service has become essential for Americans to communicate with one another. As a result, it is appropriate for the Commission to revisit the current structure of the Lifeline and Link Up programs. We must ensure that they are efficient, effective, and address the modern communications needs of our nation's low-income citizens.

While these programs have helped many consumers afford telephone service, not all needs have been addressed. As my friends from the Tribal Nations are fully aware, basic phone service still lags significantly on Tribal Lands as compared to the rest of the country. Today's NPRM builds upon the recommendations made by the Federal-State Joint Board on Universal Service last November, as well as the National Broadband Plan last March. The Commission's consideration of these recommendations is essential for modernizing and improving the programs. By ensuring that only eligible consumers participate in the programs, that the annual verification requirements are effective, and that we minimize duplicative services to households, we likely can extract some efficiencies in the programs that could be used to further address the voice and broadband needs of low-income consumers.

I am encouraged by our full exploration in this Notice of the use of an electronic database that would permit real-time checks on consumer eligibility and participation in the Lifeline and Link Up programs. Such a database has the potential to offer us savings in the long run—savings that could be used to further address the needs of low-income consumers. It is very appropriate that this Commission work towards a broadband-based solution that all Lifeline and Link Up providers could rely upon to make these programs more efficient and effective.

I am also pleased that we are asking some very basic questions in this Notice, such as how much support truly is required for both the initiation of voice service through Link Up, and the monthly benefit that Lifeline provides. Where we can identify savings, those funds could be used to begin addressing and supporting the broadband needs of low-income consumers which we know are significant. Less than half of low-income Americans have subscribed to broadband, and one-third of Americans who have not purchased broadband, say they have not done so due to the expense of obtaining such service.

We also know that for those consumers who are struggling to pay for their basic needs, there is very little discretionary income left to afford broadband service. One analyst recently noted that 40% of

U.S. households have just \$100 of disposable income, after paying for their food, shelter, and transportation. Yet broadband service is just as much a necessity today, as phone service was when the Commission established the Lifeline and Link Up programs 26 years ago. Without broadband at home, it is more difficult for citizens to look for a new job and interact with government services. Indeed, some government agencies only offer their services to consumers via the Internet.

For these reasons, over the last year, I have repeatedly stated that we must fully focus on our nation's broadband adoption gap. I believe that we will not successfully bridge this gap for low-income consumers if we don't address the affordability issue. Given the expansive modern communications needs of low-income Americans, we would be on a fool's errand if we think that we can address both voice and broadband requirements, while simultaneously capping the fund. To be clear, I don't subscribe to the belief that the Fund will meet all of these needs, even if it is not capped. I believe it will take both the public and private sectors to address these issues. I am hopeful that with the discounts providers already offer to low-income consumers, along with the broadband pilot projects proposed herein, and with the flexibility of consumers to use their Lifeline discount for bundled voice and broadband services, we can find effective solutions to bridge the digital divide for most low-income Americans.

This is not an easy task, but I challenge every Lifeline and Link Up provider, every broadband provider, and all other interested stakeholders, including Congress, the states, consumer advocates, and public interest groups, to help us find the most effective solutions for improving the current Lifeline and Link Up programs for voice service, and to stretch the programs' dollars even further, so that we can cover broadband services. I also wish to praise those broadband providers that have recognized the significant need of low-income consumers and have started their own adoption programs, and I hope that they continue to share their work with us. By learning what has and has not been successful, we can better address the modern communications needs of *all* Americans.

STATEMENT OF
COMMISSIONER MEREDITH ATTWELL BAKER

RE: *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*,
WC Docket No. 03-109, *Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-18

The Commission's low-income programs provide the means for 8.6 million Americans to afford basic telephone service, and the ability to reach public safety, schools, and employers. I support our effort to reform these important programs to ensure their long-term sustainability. This item is an appropriate and timely follow-up to last month's review of our high-cost programs, and an important step forward in implementing the Joint Board's November Recommended Decision.

The themes here mirror closely the challenges and opportunities we face with the high-cost fund. To put these programs on a stronger foundation both operationally and financially, we need to take a comprehensive look at these programs to evaluate whether they are effective, fiscally responsible, as well as whether they properly reflect today's consumer demands and market realities.

Operationally, I believe the Commission has let critical questions about program eligibility linger too long, and I am happy to see us take affirmative steps to update these programs and curb waste, fraud, and abuse. As we work together collectively on reform, we need carriers receiving low-income support today to act as responsible partners in the interim minimizing any wasteful or duplicative expenditures.

Our reforms must also reflect the need for greater fiscal discipline in accomplishing our mission. Much like the high-cost fund, the low-income programs have grown significantly. In the past ten years, these programs have more than doubled from \$577 million to over \$1.3 billion today. I support our efforts to address the need for real cost containment, and to recognize that—in difficult economic times—escalating contribution burdens on consumers can create their own affordability challenges undermining our efforts.

We are also beginning our dialogue on how to update these programs to support broadband. I appreciate that we are looking before leaping on broadband funding. By all metrics, adoption of broadband for low-income Americans lies well below the national average, and this poses an important challenge for all of us. The promising news is that the gap is beginning to shrink. Broadband adoption for those making between \$15,000 and \$25,000 a year has jumped from 24 percent in October 2007 to over 42 percent last year. There is obviously still much to do, and our low-income programs are a potentially untapped resource to help. Moving forward with broadband pilot programs appears to be the right next step. Adoption is not a one-size-fits-all challenge and affordability is but one of the core challenges we must face. Indeed, those making between \$15,000 and \$25,000 a year identify relevance as the primary impediment to adoption (44.3 percent), affordability is a distant second (27 percent). More money alone will not solve this problem.

CASE: UM 1437
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 310

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

COM/JB2/tcg

Date of Issuance 11/23/2010

Decision 10-11-033 November 19, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own
Motion to Review the
Telecommunications Public Policy
Programs.

Rulemaking 06-05-028
(Filed May 25, 2006)

**DECISION ADOPTING FORWARD LOOKING MODIFICATIONS
TO CALIFORNIA LIFELINE IN COMPLIANCE WITH
THE MOORE UNIVERSAL TELEPHONE SERVICE ACT**

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**DECISION ADOPTING FORWARD LOOKING MODIFICATIONS
TO CALIFORNIA LIFELINE IN COMPLIANCE WITH
THE MOORE UNIVERSAL TELEPHONE SERVICE ACT**

1. Summary

In 2006, the Commission opened this Rulemaking to evaluate whether California's universal service public policy programs should be updated to reflect changes in the telecommunications industry. Through this Rulemaking, the Commission set out to reform California LifeLine in order to guarantee high-quality communication services were affordable and widely available to all. This decision adopts a new methodology for providing LifeLine support to consumers and in doing so ensures that the Commission will continue to monitor impacts on ratepayers, make sure that the basic rate remains just and reasonable, and that the LifeLine rate remains affordable.

This decision recognizes significant technological and regulatory changes in the telecommunications industry and the flexibility of the statutory structure underlying the Moore Universal Telephone Service Act,¹ which we now refer to as the California LifeLine Program (California LifeLine or LifeLine).² Our work over the past four years to evaluate whether and how to reform California LifeLine has proved quite prescient as the pace of change that drove the rulemaking has only increased since 2006. Consumers have accelerated their use of communication options that have never been subject to traditional utility regulation and have not participated in the California LifeLine Program. A

¹ The formal name specified in Pub. Util. Code § 871 for the program which has come to be known as the "California LifeLine Program."

² The entire program is established in Pub. Util. Code §§ 871-884.

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challenge for the Commission is how to make those communication services that consumers are choosing available to LifeLine customers. This decision clarifies that non-traditional carriers may participate and offer their services to consumers eligible for California LifeLine.

This decision targets reforms to the most pressing problems confronting the California LifeLine Program and adopts the following changes to the program:

- "De-links" California LifeLine from the AT&T basic rate structure in order to ensure ongoing compliance with Section 874 of the Public Utilities Code, and determines that a Specific Support Amount methodology is the best option to continue to meet the goals of the Moore Act and our overall universal service goals.
- Sets a Specific Support Amount at 55 percent of the highest basic rate of the State's URF carriers of last resort. Each carrier will receive the Specific Support Amount (with some exceptions), and the initial Specific Support amount shall be set at \$11.50, effective July 1, 2011.
- Each carrier's LifeLine rate will be capped at no more than 50 percent of its basic service rate.
- Each carrier may reset its LifeLine rate on an annual basis. Each carrier's LifeLine rate will be calculated by subtracting the Specific Support amount and any applicable Federal Lifeline and Linkup subsidy from its basic rate.
- Caps the current California LifeLine rate at \$6.84 for the next two years for most customers.
- Eliminates the current price floor and allows carriers to charge customers less than AT&T's 2006 basic service rates.

However, this decision also requires carriers offering LifeLine to charge LifeLine customers at least \$5 per month (exclusive of tribal customers receiving federal Tier 4 subsidy).

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- Expands the LifeLine program to include data services for consumers that receive wireless equipment through the CPUC's Deaf and Disabled Telecommunications Program (DDTP).
- Allows non-traditional carriers, such as wireless carriers and voice over internet protocol (VoIP) companies, to participate in the California LifeLine program consistent with current requirements. This decision establishes a separate phase to consider implementation changes needed to facilitate participation in LifeLine for non-traditional carriers, including data services for DDTP – eligible consumers, wireless carriers, and other non-traditional carriers.
- Eliminates excess payments to carriers for administration, bad debt, and to make up for forgone Federal support.

2. Background

On April 14, 2006, the Staff of the Commission's Telecommunications³ and Strategic Planning⁴ Divisions published a comprehensive report on the Public Policy Programs, which described each program and the need for review. On April 25 and 26, 2006, the Assigned Commissioner convened two workshops to take comment from interested parties on the scope and objectives of this proceeding.⁵

On May 25, 2006, the Commission opened this rulemaking to conduct a comprehensive review of its Telecommunications Public Policy Programs – California LifeLine, Payphone Programs, Deaf and Disabled

³ Now known as the Communications Division.

⁴ Now known as the Policy & Planning Division.

⁵ The workshops occurred on April 25 and 26, 2006, and were well-attended.

5.1.2.4. Setting a Price Floor for California LifeLine Rates

Setting a Specific Support option raises the question of whether a price floor is still necessary for basic rates, as well as whether there should be a separate minimum price for LifeLine service. In maintaining a basic rate price floor in D.06-08-030, the Commission was concerned that funding for the California LifeLine Program would be unpredictable given the potential fluctuation in carrier draws.¹⁹¹ The Commission was also concerned about the need to address the potential for dramatic swings in end-user surcharges.¹⁹² In a competitive marketplace, we do not see any reason to maintain the current price floor on 1MR and 1FR service, and our experience over the past few years has dissuaded us of concerns that carrier draws would be unpredictable. Accordingly, we remove this last price floor on 1MR and 1FR service so that carriers can charge customers less than AT&T's 2006 basic service rates.

However, for purposes of the California LifeLine Program, it makes sense to adopt a price floor of \$5 for the program so that every customer is contributing some amount to LifeLine, and to help moderate the price fluctuations among the different carriers. We believe that the LifeLine customer should be invested in the purchase of phone service to understand that there is a cost associated with it. Thus, the Commission shall limit California LifeLine support paid to carriers

¹⁹¹ D.06-08-030, *mimeo.* at 152.

¹⁹² *Id.*

to the lesser of the Specific Support Amount or the amount that results in the California LifeLine subscriber having a \$5.00 monthly rate.¹⁹³

A similar limitation applies to subscribers of regular measured service (1MR) such that the support paid to carriers is the lesser of the Specific Support Amount or the amount that results in the California LifeLine subscriber having a \$2.50 monthly rate. Enhanced Federal Lifeline may further reduce rates for qualifying low-income individuals living on tribal lands.

5.2. Voluntary Participation in California LifeLine for Non-Traditional Carriers

In initiating this OIR, we acknowledged that our programs need to evolve to keep up with changing technology.¹⁹⁴ We have heard significant support from consumers for continuing to allow voluntary participation of wireless carriers in California LifeLine.¹⁹⁵ We pursued this issue through the scoping memo, proposing a fixed benefit approach, and plan to consider this issue in a subsequent phase of this proceeding.¹⁹⁶ Comments did not support undertaking such a two-step process.¹⁹⁷

¹⁹³ The Commission will similarly adjust the resulting LifeLine rate amount to the lesser of \$5.00 or the half the lowest reported basic rate on an annual basis. Pub. Util. Code § 874.

¹⁹⁴ Rulemaking on the Commission's Own Motion to Review the Telecommunications Public Policy Programs 06-05-028 at 2 (R.06-05-028).

¹⁹⁵ See, R.06-05-028 Public Participation Hearings Volumes 1-3 (Sept. 25, 2006, Oct. 26, 2006, and Nov. 3, 2006).

¹⁹⁶ Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding at 7 (July 13, 2007).

¹⁹⁷ See, e.g., Cox Opening ACR Comments at 2-5 (October 3, 2008), AT&T Opening ACR Comments at 2 (October 3, 2008) ("This proceeding's record also contains

Footnote continued on next page