

**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
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Advancing Broadband Availability Through Digital Literacy Training	)	WC Docket No. 12-23
	)	

**REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING**

**Adopted: January 31, 2012**

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By the Commission: Chairman Genachowski issuing a statement; Commissioner Clyburn approving in part, concurring in part and issuing a statement; Commissioner McDowell approving in part, concurring in part, dissenting in part and issuing a statement.

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**I. INTRODUCTION**

1. In this Order, we comprehensively reform and begin to modernize the Universal Service Fund’s Lifeline program (Lifeline or the program). Building on recommendations from the Federal-State Joint Board on Universal Service (Joint Board), proposals in the National Broadband Plan, input from the Government Accountability Office (GAO), and comments received in response to the Commission’s

March 2011 Notice of Proposed Rulemaking,<sup>1</sup> the reforms adopted in this Report and Order (Order) substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund (USF or the Fund). We take these significant actions, while ensuring that eligible low-income consumers who do not have the means to pay for telephone service can maintain their current voice service through the Lifeline program and those who are not currently connected to the networks will have the opportunity to benefit from this program and the numerous opportunities and security that telephone service affords.

2. This Order is another step in the Commission's ongoing efforts to overhaul all USF programs to promote the availability of modern networks and the capability of all American consumers to access and use those networks. Consistent with previous efforts, we act here to eliminate waste and inefficiency, increase accountability, and transition the Fund from supporting standalone telephone service to broadband.<sup>2</sup> In June 2011, the Commission adopted the *Duplicative Program Payments Order*, which made clear that an eligible consumer may only receive one Lifeline-supported service, established procedures to detect and de-enroll subscribers receiving duplicative Lifeline-supported services, and directed the Universal Service Administrative Company (USAC) to implement a process to detect and eliminate duplicative Lifeline support—a process now completed in 12 states and expanding to other states in the near future.<sup>3</sup> Building on those efforts, the unprecedented reforms adopted in today's Order could save the Fund up to an estimated \$2 billion over the next three years, keeping money in the pockets

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<sup>1</sup> *Federal-State Joint Board on Universal Service et al.*, CC Dkt. No. 96-45 *et al.*, Recommended Decision, 25 FCC Rcd 15598 (Jt. Bd. 2010) (*2010 Joint Board Recommended Decision*); FEDERAL COMMUNICATIONS COMMISSION, OMNIBUS BROADBAND INITIATIVE, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2010) (NATIONAL BROADBAND PLAN), available at <http://www.broadband.gov/plan>; 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); *Lifeline and Link Up Reform and Modernization et al.*, WC Dkt. No. 11-42 *et al.*, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011) (*NPRM or Lifeline and Link Up NPRM*). See also *infra* Appendices E & F listing comments and replies.

<sup>2</sup> See *Joint Statement on Broadband*, GN Dkt. No. 10-66, Joint Statement on Broadband, 25 FCC Rcd 3420 (2010). The Commission has already made important strides in this area: the Commission has modernized the E-rate program, by enabling schools and libraries to get faster Internet connections at lower cost. *Schools and Libraries Universal Service Support Mechanism et al.*, CC Dkt. No. 02-6 *et al.*, Sixth Report and Order, 25 FCC Rcd 18762 (2010) (*E-rate Sixth Report and Order*). The Commission has established a Connect America Fund (CAF) to spur the build out of broadband networks, both mobile and fixed, in areas of the country that are uneconomic to serve. See *Connect America Fund et al.*, WC Dkt. No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order and FNPRM*), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 8, 2011) (and consolidated cases). The Commission has proposed changes to the 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. *Rural Health Care Universal Service Support Mechanism*, WC Dkt. No. 02-60, Notice of Proposed Rulemaking, 25 FCC Rcd 9371 (2010) (*Rural Health Care NPRM*).

<sup>3</sup> *Lifeline and Link Up Reform and Modernization et al.*, Report and Order, WC Dkt. No. 11-42 *et al.*, 26 FCC Rcd 9022 (2011) (*2011 Duplicative Program Payments Order*); Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to D. Scott Barash, Acting Chief Executive Officer, Universal Service Administrative Company (USAC), WC Dkt. Nos. 11-42 *et al.*, 26 FCC Rcd 9022 (Wireline Comp. Bur. Jun. 21, 2011) (*June Guidance Letter*); Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to D. Scott Barash, Acting Chief Executive Officer, Universal Service Administrative Company (USAC), WC Dkt. No. 11-42 *et al.*, DA 11-1986 (2011) (*December Guidance Letter*).

of American consumers that otherwise would have been wasted on duplicative benefits, subsidies for ineligible consumers, or fraudulent misuse of Lifeline funds.

3. These savings will reduce growth in the Fund, while providing telephone service to consumers who remain disconnected from the voice networks of the twentieth century. Moreover, by using a fraction of the savings from eliminating waste and abuse in the program to create a broadband pilot program, we explore how Lifeline can best be used to help low-income consumers access the networks of the twenty-first century by closing the broadband adoption gap. This complements the recent *USF/ICC Transformation Order and FNPRM*, which reoriented intercarrier compensation and the high-cost fund toward increasing the availability of broadband networks, as well as the recently launched *Connect to Compete* private-sector initiative to increase access to affordable broadband service for low-income consumers.

4. To make the program more accountable, the Order establishes clear goals and measures and establishes national eligibility criteria to allow low-income consumers to qualify for Lifeline based on either income or participation in certain government benefit programs. The Order adopts rules for Lifeline enrollment, including enhanced initial and annual certification requirements, and confirms the program's one-per-household requirement. The Order simplifies Lifeline reimbursement and makes it more transparent. The Commission adopts a number of reforms to eliminate waste, fraud and abuse in the program, including creating a National Lifeline Accountability Database to prevent multiple carriers from receiving support for the same subscribers; phasing out toll limitation service (TLS) support; eliminating Link Up support except for recipients on Tribal lands that are served by eligible telecommunications carriers (ETCs) that participate in both Lifeline and the high-cost program;<sup>4</sup> reducing the number of ineligible subscribers in the program; and imposing independent audit requirements on carriers receiving more than \$5 million in annual support. These reforms are estimated to save the Fund up to \$2 billion over the next three years. As part of these reforms we establish a savings target of \$200 million in 2012 versus the program's status quo path in the absence of reform, create a mechanism for ensuring that target is met, and put the Commission in a position to determine the appropriate budget for Lifeline in early 2013 after monitoring the impact of today's fundamental overhaul of the program and addressing key issues in the Further Notice of Proposed Rulemaking (*FNPRM*), including the appropriate monthly support amount for the program. Using savings from the reforms, the Order establishes a Broadband Adoption Pilot Program to test and determine how Lifeline can best be used to increase broadband adoption among Lifeline-eligible consumers. We also establish an interim base of uniform support amount of \$9.25 per month for non-Tribal subscribers to simplify program administration.

## II. BACKGROUND

5. *Procedural History.* Ensuring the availability of communications services for low-income households has long been a partnership among, and a significant priority for, the states, the federal government, and the private sector.<sup>5</sup> In May 2010, the Commission sought the Joint Board's input

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<sup>4</sup> Throughout this document, "Tribal lands" include 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, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, Pub. L. No. 67-34, 42 Stat. 108, *et. seq.*, as amended (1921). This definition is consistent with the definition of Tribal lands recently adopted in our order establishing the Connect America Fund. *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 197. We accordingly amend the current definition of Tribal lands for purposes of the low-income program in section 54.400(e).

<sup>5</sup> 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* (continued....)

on the Commission's program rules governing eligibility, verification, and outreach.<sup>6</sup>

6. In its *2010 Joint Board Recommended Decision*, 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 those procedures are at least as effective in detecting waste, fraud, and abuse as the uniform federal procedures; (4) require ETCs to submit the data results of their verification sampling to the Commission, the states, and USAC and make the results available to the public; and (5) adopt mandatory outreach requirements for all ETCs that receive low-income support.<sup>7</sup> Additionally, the Joint Board asked the Commission to seek further comment on whether the current eligibility requirements of household income at or below 135 percent of the federal poverty guidelines should be raised to 150 percent; the costs and benefits of minimum uniform eligibility requirements; the costs and benefits of database certification and verification of eligibility; whether to expand the program to include broadband; and whether a minimum monthly rate should apply to all Lifeline subscribers.<sup>8</sup> The Joint Board also recommended that the Commission adopt a principle pursuant to its section 254(b)(7) authority "that universal service support should be directed where possible to networks that provide advanced services, as well as voice services."<sup>9</sup>

7. In March 2011, the Commission incorporated the Joint Board's recommendations in a comprehensive rulemaking to reform and modernize Lifeline.<sup>10</sup> In addition to the specific recommendations and issues raised by the Joint Board, the Commission sought public comment on a number of additional ways to strengthen the program, including establishing performance goals for the program, strengthening the program's audit regime, granting blanket forbearance from the Act's facilities requirement, establishing a flat rate of reimbursement, reforming TLS and Link Up support, and expanding Tribal Lifeline eligibility.<sup>11</sup>

8. Subsequently, the Wireline Competition Bureau (Bureau) issued a public notice in August 2011 to develop a more complete record on certain issues raised in the rulemaking proceeding, including reforming the current verification methodology to better protect against waste, fraud, and abuse; limiting the availability of Lifeline support to one discount per residential address; ensuring that only eligible costs are supported by Link Up; and determining whether and how the program could effectively

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*Service*, CC Dkt. No. 96-45, Report and Order, 12 FCC Rcd 8776, 8952-53, para. 329 (1997) (subsequent history omitted) (*Universal Service First Report and Order*).

<sup>6</sup> The Commission asked the Joint Board to recommend any changes to these aspects of the program given significant technological and marketplace changes since the current rules were adopted. Specifically, the Commission asked the Joint Board to review: (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) the appropriateness of various outreach and enrollment programs; and (4) the potential expansion of the low-income program to broadband, as recommended in the National Broadband Plan. See *Federal-State Joint Board on Universal Service et al.*, CC Dkt. No. 96-45 *et al.*, 25 FCC Rcd 5079 (2010) (*2010 Joint Board Referral Order*).

<sup>7</sup> See generally *2010 Joint Board Recommended Decision*.

<sup>8</sup> See *id.*

<sup>9</sup> *Id.*, at 15625, para. 75.

<sup>10</sup> See generally *Lifeline and Link Up NPRM*.

<sup>11</sup> *Id.* at 26 FCC Rcd at 2782-86, 2793-96, 2800-03, 2863-64, 2811-15, paras 28-45, 65-79, 95-102, 306-309, 126-41.

support broadband adoption by low-income households.<sup>12</sup>

9. The Commission adopted the additional universal service principle recommended by the Joint Board in the *USF/ICC Transformation Order and FNPRM*.<sup>13</sup> In addition, the Commission revised the definition of the supported service to be “voice telephony services.”<sup>14</sup>

10. Since the release of the *NPRM*, we have made significant improvements to the administration of the program to reduce waste. As noted above, the Commission’s *2011 Duplicative Program Payments Order* made clear that an eligible consumer may only receive one Lifeline-supported service,<sup>15</sup> established procedures to detect and de-enroll subscribers with duplicate Lifeline-supported services, and directed USAC to implement a process to detect and eliminate duplicative Lifeline support—a process completed in 12 states which will expand to cover a majority of states over the course of this year.<sup>16</sup> In addition, we have worked closely with the states and the Administrator, USAC, to strengthen enforcement and oversight of Lifeline.<sup>17</sup>

11. *History and Purpose of Low-Income Program.* Universal service has been a national objective at least since the enactment of 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.”<sup>18</sup>

12. The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T. Its initial purpose was to ensure that any increase in local rates that occurred following major changes in the marketplace would not put local phone service out of reach for low-income households and result in service disconnections.<sup>19</sup> At the time, the Commission was concerned that the implementation of subscriber line charge (SLC) would force low-income consumers to drop voice service, which, the Commission found, had “become crucial to full participation in our society and economy[,] which are increasingly dependent upon the rapid exchange of information.”<sup>20</sup> The program made carriers whole

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<sup>12</sup> *Further Inquiry Into Four Issues in the Universal Service Lifeline and Link Up Reform and Modernization Proceeding*, Public Notice, WC Dkt. No. 11-42 *et al.*, 26 FCC Rcd 11098 (Wireline Comp. Bur. Aug. 5, 2011) (*Lifeline and Link Up Public Notice*).

<sup>13</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 43-45. Section 254(a)(2) of the Act requires the Commission to act on recommendations of the Federal-State Joint Board on Universal Service within one year. See 47 U.S.C. § 254(a)(2). In this Order, we are acting on the remaining recommendations in the *2010 Joint Board Recommended Decision*.

<sup>14</sup> *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 77.

<sup>15</sup> *2011 Duplicative Program Payments Order*, 26 FCC Rcd at 9026, para. 7 (amending sections 54.401 and 54.405 to codify the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time).

<sup>16</sup> *Id.* at 9030-31, paras. 15-16.

<sup>17</sup> See Letter from Chairman Julius Genachowski, Chairman, Federal Communications Commission, to State Commissioners, WC Dkt. No. 11-42 (Dec. 12, 2011).

<sup>18</sup> 47 U.S.C. § 151 (creating the Federal Communications Commission).

<sup>19</sup> *MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission’s Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985) (*MTS and WATS Market Structure Report and Order*).

<sup>20</sup> *Id.* at 942, para. 11. (“We adopt the Joint Board’s recommendation concerning measures to offset the effect of subscriber line charges on low income houses. In this regard, we agree with their conclusion that the proposed subscriber line charges should not have an adverse effect on universal service.”).

after waiving the SLC for low-income consumers.<sup>21</sup> Link Up was established to offset the high, non-recurring charges assessed by incumbent local exchange carriers for commencing telephone service.<sup>22</sup>

13. In 1996, Congress codified the Commission's and the states' commitment to advancing the availability of telecommunications services to all Americans, and established principles upon which "the Commission shall base policies for the preservation and advancement of universal service."<sup>23</sup> 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."<sup>24</sup> Based on recommendations of the Joint Board, the Commission revised and expanded the Lifeline program after passage of the Telecommunications Act of 1996 (1996 Act).<sup>25</sup> After implementation of the 1996 Act, all states participated in the program and the level of federal Lifeline/Link Up support steadily increased.<sup>26</sup>

14. Since the 1996 Act, the program has been administered by USAC under Commission direction, although many key attributes of the program are implemented at the state level, including consumer eligibility, ETC designations, outreach, and verification. Moreover, ETCs have been integral in the offering of the program to low-income consumers. Lifeline support is passed on to the subscriber by the ETC, which provides discounts to eligible households and receives reimbursement from the Universal Service Fund for the provision of such discounts.<sup>27</sup> Lifeline now provides a discount to non-Tribal subscribers averaging \$9.25 per month for telephone charges, and Link Up provides a discount of up to \$30 on the cost of commencing telephone service for qualifying low-income households.<sup>28</sup> For residents

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<sup>21</sup> See *id.*

<sup>22</sup> See *MTS and WATS Market Structure et al.*, CC Dkt. No. 78-72 *et al.*, Recommended Decision and Order, 2 FCC Rcd 2324, 2332, para. 68 (1987) (*MTS and WATS Market Structure Recommended Decision and Order*).

<sup>23</sup> 47 U.S.C. § 254(b).

<sup>24</sup> See 47 U.S.C. § 254(b)(1),(3); see also 47 U.S.C. § 151.

<sup>25</sup> 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 state consumer advocate representative. See 47 U.S.C. §§ 254(a)(1), 410(c).

<sup>26</sup> See Universal Service Administrative Company, 1Q 2012 Filing, Appendices at LI 06 (Historical Data Support Amounts Claimed by ETCs Each Month - January 1998 through June 2011), available at <http://www.usac.org/about/governance/fcc-filings/2012/quarter-1.aspx>.

<sup>27</sup> Carriers file FCC Forms 497 to receive reimbursement for providing support to eligible subscribers. See Universal Service Administrative Company, Low-Income, Step 6: Submit Lifeline and Link Up Worksheet, <http://usac.org/li/telecom/step06/default.aspx> (last visited Feb. 1, 2012). ETCs may file their Forms 497 on either a monthly or quarterly basis, and are reimbursed by USAC on a monthly basis. These disbursements may be based on a projection for the prior month's support. Universal Service Administrative Company, Low-Income, Step 7: Payment Process and Status, <http://usac.org/li/telecom/step07/default.aspx> (last visited Feb. 1, 2012). In order to promote greater accuracy in low-income program payment-processing, the Commission's Office of the Managing Director (OMD) directed USAC to propose an administrative process for disbursing low-income support to ETCs based on verified claims for reimbursement, rather than projected claims. In response, USAC developed and filed a proposed plan to disburse support to ETCs based on actual claims, rather than projections. In September 2011, the Wireline Competition Bureau sought comment on USAC's proposal. See *Inquiry into Disbursement Process for the Universal Service Low Income Program*, WC Dkt. No. 11-42 *et al.*, Public Notice, 26 FCC Rcd 13131 (Wireline Comp. Bur. 2011); Erratum (rel. Oct. 3, 2011) (*Lifeline Disbursement Public Notice*).

<sup>28</sup> See Letter from Karen Majcher, Vice President, High Cost and Low Income Division, Universal Service Administrative Company, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, (filed Jan. 10, 2012) (*USAC 2011 Support Amounts Letter*) (stating that the (continued....))



of Tribal lands, Lifeline provides an additional \$25 discount on monthly telephone charges, and Link Up provides up to an additional \$70 discount on the cost of commencing telephone service for low-income households.<sup>29</sup> These amounts may be supplemented by additional funding provided from state universal service funds in some states.

15. Evidence suggests that Lifeline has been instrumental in increasing the availability of quality voice service to low-income consumers. Indeed, many low-income consumers have stated in our record that without a Lifeline subsidy, they would be unable to afford service.<sup>30</sup> They have also noted the hardships they would face without access to phone service.<sup>31</sup> Telephone subscribership among low-income Americans has grown significantly since the Lifeline program was initiated in 1984. Eighty percent of low-income households had telephone service in 1984, compared to 95.4 percent of non-low-income households.<sup>32</sup> Since the inception of Lifeline, the gap between telephone penetration rates for low-income and non-low-income households has narrowed from about 12 percent in 1984 to 4 percent in 2011.<sup>33</sup> Moreover, states that provide higher monthly Lifeline subsidies per household exhibited greater growth in phone subscribership from 1997 to the present.<sup>34</sup>

16. There is also evidence that Lifeline has increased the penetration rate of voice service by keeping low-income consumers connected to the network.<sup>35</sup> As shown in Chart 1, the gap in penetration

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vast majority of Lifeline subscribers receive support in the \$8-10 range with an average amount of \$9.25 in September 2011). In addition, ETCs may be reimbursed for the incremental costs of their provision of Toll Limitation Service to eligible households. 47 C.F.R. § 54.403(c).

<sup>29</sup> See 47 C.F.R. §§ 54.403(a)(4) (Lifeline); 54.411(a)(3) (Link Up).

<sup>30</sup> The Commission received many letters from Lifeline subscribers, which have been placed in the record of this proceeding, expressing their need for Lifeline as their only connection to family, health care providers, and work opportunities. One disabled Lifeline subscriber in Tennessee describes her Lifeline service as exactly that – a “lifeline”: “I have a 17-year old daughter with Down Syndrome. We help each other everyday [sic]. I do the thinking and she does what she can understand...[Lifeline] provides me a way to contact help if something happens and my daughter doesn’t understand what we might need help for... but she does understand if I tell her ‘Mommy needs the phone.’ ... it gives me peace of mind to know I can always call for help.”

<sup>31</sup> *Id.*

<sup>32</sup> See FEDERAL COMMUNICATIONS COMMISSION, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, UNIVERSAL SERVICE MONITORING REPORT at text accompanying table 3.2 (2011) (2011 MONITORING REPORT) (where “low-income” is defined as households making \$9,999 or less), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db1229/DOC-311775A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1229/DOC-311775A1.pdf).

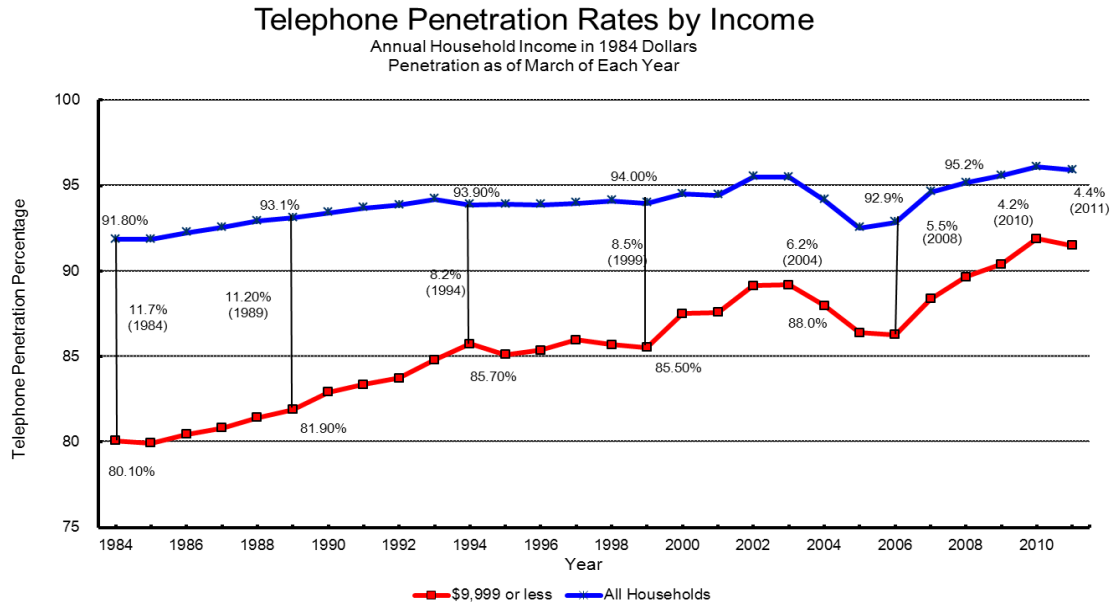
<sup>33</sup> The Commission’s telephone subscription penetration rate is based on the Census Bureau’s Current Population Survey (CPS). The specific questions asked in the CPS are: “Does this house, apartment, or mobile home have telephone service from which you can both make and receive calls? Please 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.” FEDERAL COMMUNICATIONS COMMISSION, WIRELINE COMPETITION BUREAU, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, TELEPHONE SUBSCRIBERSHIP IN THE UNITED STATES at 2 (Dec. 2011) (2011 WCB SUBSCRIBERSHIP REPORT).

<sup>34</sup> See 2011 MONITORING REPORT at Chart 3.12.

<sup>35</sup> See Letter from Matthew Brill, Counsel, Cricket, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Dec. 1, 2011) (noting that, in any given month, a substantially smaller percentage of Cricket’s Lifeline subscribers deactivate their accounts—as compared to Cricket’s non-Lifeline subscribers and arguing that “this disparity confirms that the Lifeline subsidy has a significant positive impact on the (continued....)

rates between households earning less than \$10,000 and all households has steadily narrowed since the inception of Lifeline. When consumers are able to only intermittently remain on the network, they are not fully connected to society and the economy because, among other things, they are unable to apply for and receive call-backs for jobs or reach important social services, health care, and public safety agencies on a constant basis. The Commission has found that the low-income program “provide[s] the best source of assistance for individuals to obtain and *retain* universal service, and, therefore, help maintain and improve telephone subscribership”<sup>36</sup> and fulfill our obligations under section 254 of the Act.

Chart 1<sup>37</sup>



17. There are substantial benefits to increasing the availability of communications services, including both voice and broadband service, for low-income Americans. As an initial matter, all consumers, not just low-income consumers, receive value from the network effects of widespread voice and broadband subscribership.<sup>38</sup> Moreover, voice service remains a prerequisite for full participation in our economy and society.<sup>39</sup> Those consumers without affordable, quality voice services are at a

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ability of Cricket’s low-income subscriber base to maintain continuous access to the PSTN.”) (Cricket Dec. 1 *ex parte* Letter).

<sup>36</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8845, para. 124 (emphasis added).

<sup>37</sup> 2011 MONITORING REPORT at Table 3.2 (for 1997 to 2011 data); 2011 WCB SUBSCRIBERSHIP REPORT at Table 6.14 (for 1984-1996 data). In FCC statistical reports, “low-income” is defined as those subscribers earning \$9,999 or less in 1984 dollars. See 2011 MONITORING REPORT AT 3-12. \$9,999 in 1984 dollars is equal to \$21,780 in 2011 dollars. See *id.* at Table 3.3.

<sup>38</sup> See One Economy Comments at 12 (“While individuals will discover personal socioeconomic gains from adoption of broadband, a population of broadband adopters will lead to significant progress around strengthening educational outcomes, increasing innovation and entrepreneurship, reducing healthcare costs, and improving the efficiency of government services.”).

<sup>39</sup> See, e.g., Letter from Olivia Wein, National Consumer Law Center, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Aug. 26, 2011) (NCLC Aug. 26 *ex parte* Letter) (continued....)

disadvantage in accessing social and economic resources and opportunities. Voice service allows consumers to connect with public safety and health care resources.<sup>40</sup> As many commenters note, voice service is particularly important for low-income consumers, who often must juggle multiple jobs and interviews for new employment as well as keep in contact with social service agencies.<sup>41</sup> As noted by several members of Congress, “a cell phone can literally be a Lifeline for families and provide low-income families, in particular, the means to empower themselves.”<sup>42</sup> If quality voice service is not affordable, low-income consumers may subscribe to voice service at the expense of other critical necessities, such as food and medicine, or may be unable to purchase sufficient voice service to obtain adequate access to critical employment, health care, or educational opportunities.<sup>43</sup> And if low-income consumers initially subscribe to phone service, but intermittently lose access because they cannot consistently pay for the service, many of the benefits for individuals and the positive externalities for the economy and society will be lost.

18. Access to affordable, robust broadband service is equally important.<sup>44</sup> As stated in the *USF/ICC Transformation Order and FNPRM*, “[a]ll Americans should have access to broadband that is capable of enabling the kinds of key applications [that drive broadband adoption] . . . including education (e.g., distance/online learning), health care (e.g., remote health monitoring) and person-to-person communications (e.g., VoIP or online video chat with loved ones serving overseas).” Indeed, the evidence indicates that increased broadband adoption and usage increases educational and economic outcomes for low-income consumers.<sup>45</sup> As one commenter argues, “broadband access is a prerequisite of

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(noting that “access to phone service is a necessity in modern times.”); Letter of Dr. George Korn, Rainbow/Push Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (arguing that “[w]ithout phone service, the most basic processes and activities become difficult, limiting options and possibilities for the poor and pushing them to the fringe of society.”).

<sup>40</sup> Alaska Commission Reply Comments at 9 (noting the importance of voice service for public safety); Letter from Professor David Super, Georgetown Law, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 3-4 (filed Nov. 7, 2011) (Prof. Super Nov. 7 *ex parte* Letter); *see also MTS and WATS Market Structure Report and Order*, 50 Fed. Reg. at 941 (“Significant increases in the price of basic telephone service could isolate many of the elderly and poor by depriving them of the ability to obtain medical and police assistance or communicate with family and friends.”).

<sup>41</sup> *See, e.g.*, NCLC Aug. 26 *ex parte* Letter at 1 (noting that “phone service is key to helping low-income consumers find work, housing, access and maintain contact with health care professionals and education providers, accessing emergency services, as well as remaining connected to support networks such as family and friends and community services.”).

<sup>42</sup> Letter from Senators Robert Menendez, Kirsten E. Gillibrand, Sherrod Brown, and & Jeanne Shaheen, to Hon. Julius Genachowski, Chairman, Federal Communications Commission, OL Dkt. No. 11-9 (filed Sept. 13, 2011).

<sup>43</sup> *See generally* Prof. Super Nov. 7 *ex parte* Letter; *see also* Letter from Debra R. Berlyn, Chairperson, Federal Communications Commission Consumer Advisory Committee, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 3 (noting the importance of the low income program to “ease connections” to health care, education and potential employers).

<sup>44</sup> *See, e.g.*, One Economy Comments at 33; AT&T Reply Comments, Attachment (Attach.) at 1 (“access to broadband leads to improved education, better health care delivery and other societal advances.”).

<sup>45</sup> *See, e.g.*, AT&T Reply Comments, Attach. at 1; MAG-Net Comments, Attach. A at 4 (“In some low-income areas where laptops or netbook-like devices and home broadband connections have been provided to children, and the technology was thoughtfully integrated into learning and instruction, research shows positive effects on student academic performance, engagement, and attitude.”).

social and economic inclusion.<sup>46</sup> However, the latest census data indicates that there is a substantial gap in broadband adoption by income.<sup>47</sup> The Commission has recognized this challenge and has started to help narrow the adoption gap.<sup>48</sup> *Connect to Compete* is a private-sector initiative through which the largest cable companies will be offering low-cost broadband to families with school-aged children receiving free school lunches.<sup>49</sup> These actions, while important, are only first steps in addressing the adoption gap that low-income consumers face, and we continue to encourage and support those programs that are well underway. In this Order, we adopt an additional approach—a pilot program to explore the most effective way to modernize the Lifeline program to provide low-income consumers access to broadband service.

19. *Role of the States.* Currently, the program operates under a patchwork of state and federal requirements. Within the framework established by the 1996 Act and the *Universal Service First Report and Order*, each state administers its own program, which has provided the states the freedom to experiment and to develop new ways of making the program more effective and efficient. Although Lifeline is a federal program, its administration varies significantly among the states, including on key policies such as eligibility and verification. There is significant variation among the states in the percentage of eligible households participating in the program, which may be due to differing state eligibility and verification requirements, the extent of outreach, the process for enrolling subscribers, the number and type of ETCs in the state, support levels, and other factors.<sup>50</sup>

20. *Lifeline Providers & Subscribers.* The telecommunications marketplace has changed significantly over the last fifteen years, with a wide array of wireline and wireless services that compete with traditional incumbent telephone companies to provide voice service<sup>51</sup> When the program was first established in the 1980s, mobile phones and voice over internet protocol (VoIP) did not exist as a retail 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.

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<sup>46</sup> MAG-Net Comments at 2.

<sup>47</sup> U.S. DEP'T OF COMMERCE, ECONS. & STATISTICS ADMIN. & NAT'L TELECOMM. & INFO. ADMIN., EXPLORING THE DIGITAL NATION: HOME BROADBAND INTERNET ADOPTION IN THE UNITED STATES 8, available at [http://www.ntia.doc.gov/files/ntia/publications/esa\\_ntia\\_us\\_broadband\\_adoption\\_report\\_11082010\\_1.pdf](http://www.ntia.doc.gov/files/ntia/publications/esa_ntia_us_broadband_adoption_report_11082010_1.pdf) (Nov. 2011) (EXPLORING THE DIGITAL NATION).

<sup>48</sup> See, e.g., *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Dkt. No. 10-110, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4211, 4219, paras. 35-37 (2011); *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4333, para. 233 (2011).

<sup>49</sup> Press Release, Federal Communications Commission, FCC “Connect to Compete” Tackle Barriers to Broadband Adoption (Nov. 9, 2011), available at <http://www.fcc.gov/document/fcc-and-connect-compete-broadband-fact-sheet> (detailing private/non-profit partnership providing qualifying families with \$9.95 monthly broadband service and reduced price equipment).

<sup>50</sup> 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](http://warrington.ufl.edu/purc/purcdocs/papers/0805_Hauge_Whose_Call_Is.pdf)).

<sup>51</sup> The Commission promulgated rules under the 1996 Act that enabled competitive wireless and wireline carriers to be designated as ETCs eligible to receive federal universal service support. See *Universal Service First Report and Order*, 12 FCC Rcd at 8969-73, paras. 364-72.

21. As the telecommunications industry has evolved, so too has the program. Beginning in 2005, the Commission permitted on a case-by-case basis non-facilities based providers, including prepaid wireless carriers, to obtain low-income support from the Universal Service Fund.<sup>52</sup> Since 2006, the program has experienced a measurable shift in support distribution. In 2010, competitive providers (the vast majority of which are mobile wireless providers) received nearly 55 percent of total program support.<sup>53</sup> Wireless Lifeline enrollment has greatly increased, consistent with the same trend toward wireless service in the general population. The Commission recently found that 92 percent of Americans subscribed to mobile phone service.<sup>54</sup> More than 30 percent of adults in the general population live in households with only wireless phones,<sup>55</sup> while more than 45 percent of 18-24 year olds have “cut the cord.”<sup>56</sup> Wireless services have taken on particular importance to low-income consumers, who are more likely to reside in wireless-only households than consumers at higher income levels.<sup>57</sup>

22. Low-income consumers currently qualify for the program through various means, depending upon which state the consumer resides. They either can certify or demonstrate that they are enrolled in specific assistance programs or that their annual income falls below a specified percentage of the Federal Poverty Guidelines (FPG). As shown in Table 1 below, the qualifying income threshold for Lifeline varies depending on size of the household and the particular qualifying income threshold for that state. In eight states and two territories, households with income at or below 135 percent of the Federal Poverty Guidelines are eligible. In twelve states and the District of Columbia, households with income at 150 percent of the FPG are eligible. Other states, including Oregon, do not permit enrollment based on income; in these states, consumers may enroll only if they are enrolled in certain other public benefits programs.

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<sup>52</sup> See *Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Dkt. No. 96-45 *et al.*, WC Dkt. No. 09-197, Order, 25 FCC Rcd 8784 (2010) (*i-wireless Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petitions for Designation as an Eligible Telecommunications Carrier in the State of Alabama et al.*, WC Dkt. No. 09-197, Order, 25 FCC Rcd 17797 (2010) (*Virgin Mobile 2010 ETC Order*); *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A) et al.*, CC Dkt. No. 96-45, Order, 24 FCC Rcd 3381 (2009) (*Virgin Mobile Forbearance Order*); *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance*, CC Dkt. No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*). These carriers are not eligible to receive high-cost support.

<sup>53</sup> 2011 MONITORING REPORT at 2-9.

<sup>54</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 et al.*, Fifteenth Report, WT Dkt. No. 10-133, 26 FCC Rcd 9664, para 168 (2011).

<sup>55</sup> See STEPHEN J. BLUMBERG & JULIAN V. LUKE, CENTERS FOR DISEASE CONTROL, NATIONAL CENTER FOR HEALTH STATISTICS, WIRELESS SUBSTITUTION: EARLY RELEASE OF ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY, JANUARY – JUNE 2011, at 1 (2011), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201106.pdf>.

<sup>56</sup> *Id.* at 2-3.

<sup>57</sup> See *id.* at 3 (finding that adults living in or near poverty were more likely than higher income adults to be living in wireless-only households). 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.

Table 1 – Federal Poverty Guidelines<sup>58</sup>

Persons in Family or Household	Annual Income of 135 percent FPG	Annual Income of 150 percent FPG
1	\$14,702	\$16,336
2	\$19,859	\$22,066
3	\$25,016	\$27,796
4	\$30,173	\$33,526

23. The Lifeline-eligible population has increased significantly over the past decade. Since 1999, real median household income in the U.S. has declined by 7.1 percent, while households at the bottom of the income scale have seen their income decline by 12.1 percent.<sup>59</sup> In 2010, 46.2 million Americans were living in poverty, defined as living at or below the benchmark established in the FPG, compared to 31.6 million in 2000.<sup>60</sup> As household income has declined and more carriers have offered Lifeline-supported service, the program has experienced significant growth.<sup>61</sup> In the absence of today's Order, which manages the size of the Fund in part by establishing a savings target, the program would provide an estimated \$2.4 billion in support in 2012;<sup>62</sup> that compares to an inflation-adjusted \$582 million it provided in 1998 when five million subscribers participated in the program.<sup>63</sup> The initial growth in the program 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 monthly per household support compared to levels prior to the 1996 Act.<sup>64</sup> In 2000, the Commission began providing enhanced support to households on Tribal lands.<sup>65</sup> The program continued to grow between 2001 and 2004 due, in part, to increases in the federal subscriber line charge, to which Lifeline support levels have historically been tied.<sup>66</sup> Meanwhile, over the years, wireless companies increasingly sought ETC designations, providing additional options for and reaching more low-income consumers with Lifeline service. Since 2005, a number of pre-paid wireless providers have become Lifeline-only ETCs,<sup>67</sup> competing for low-income subscribers by marketing telephone

<sup>58</sup> Annual Update of the HHS Poverty Guidelines, 76 Fed. Reg., 3637-38 (Jan. 20, 2011).

<sup>59</sup> UNITED STATES CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2010, at 5 (Sept. 2011), available at <http://www.census.gov/prod/2011pubs/p60-239.pdf>.

<sup>60</sup> *Id.* at 62.

<sup>61</sup> Other factors have also contributed to growth in the program – for instance, some subscribers have received duplicate support and some may have received the subsidy even though they were not eligible.

<sup>62</sup> See *infra* note 956.

<sup>63</sup> See 2011 MONITORING REPORT at Table 2.1. 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](http://www.bls.gov/data/inflation_calculator.htm) (last visited Feb. 2, 2012).

<sup>64</sup> See 2010 UNIVERSAL SERVICE MONITORING REPORT at Chart 2-2.

<sup>65</sup> See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Dkt. No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000) (*2000 Tribal Lifeline Order*). In 2010, \$102.7 million was provided to households on Tribal lands. 2011 MONITORING REPORT at Table 2.2.

<sup>66</sup> 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.

<sup>67</sup> See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15095; *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc., Petition for Designation as an Eligible Telecommunications Carrier in New York et al.*, (continued....)

service that provides a specified number of minutes at no charge to the consumer.<sup>68</sup> This development has expanded choices in many states for low-income consumers, who now have greater access to mobile services than a decade ago,<sup>69</sup> but it has also led to significant growth in the Fund in the last several years, and has likely contributed to the increasing telephone penetration rate of consumers making less than \$10,000 a year.<sup>70</sup> Pre-paid wireless ETCs now account for more than 40 percent of all Lifeline support.<sup>71</sup> Link Up support has also increased significantly—approximately 230 percent over the last three years. USAC projects that it will distribute \$180 million in Link Up support to ETCs in 2012 compared to \$122.9 million in Link Up disbursements in 2011 and \$37.2 million in 2008.<sup>72</sup> It is against this backdrop that we institute the reforms below to ensure that qualifying low-income consumers can access the voice and broadband networks of this nation to fulfill Congress' goal of providing universal service, and the Commission's goal of modernizing the program, while safeguarding it from waste, fraud, and abuse and constraining the growth of the Fund to make it more efficient and effective to better serve consumers.

### III. PERFORMANCE GOALS AND MEASURES

24. In the *Lifeline and Link Up NPRM*, the Commission recognized that “[c]lear 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.”<sup>73</sup> The GAO previously noted in 2010 that while the Commission had adopted some performance measures for the low-income program, it had not quantified its goal of increasing telephone

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Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*); *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3381.

<sup>68</sup> 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 per month offer. See Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attach. at 5 (filed Dec. 7, 2010) (*TracFone Dec. 7 Ex Parte Presentation*).

<sup>69</sup> NATIONAL BROADBAND PLAN at 173. According to some, mobile phones are becoming more essential than landline phones for low-income consumers. See, e.g., Hauge *et al.*, *supra* note 50, at 2. Pre-paid wireless offerings are often preferred by 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).

<sup>70</sup> See *supra* Chart 1.

<sup>71</sup> See Universal Service Administrative Company, 1Q 2012 Filing, Appendices at LI04 (Quarterly Low-Income Disbursement Amounts by Company (3Q2011)), available at <http://www.usac.org/about/governance/fcc-filings/2012/quarter-1.aspx>. For the first three quarters of 2011, two ETCs that operate as prepaid wireless resellers, TracFone, and Virgin Mobile, together account for 40.8% of program support as of year end 2011. See *id.*

<sup>72</sup> See Universal Service Administrative Company, 1Q Filing, Fund Size Projections for First Quarter 2012, at 19 (Nov. 2, 2011), available at <http://www.usac.org/about/governance/fcc-filings/2012/Q1/1Q2012%20Quarterly%20Demand%20Filing.pdf> (detailing that USAC projects total annual 2012 Link Up support to be approximately \$183.48 million); *USAC 2011 Support Amounts Letter* at 3; 2011 Monitoring Report at Table 2-2.

<sup>73</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2783, para 32. In 2007, the Commission adopted measures to improve the efficiency and effectiveness of the program and noted that the key goal of the Lifeline program was to increase phone service subscribership among low-income households. The Commission did not, however, adopt comprehensive performance goals for the Low Income program at that time because it did not have sufficient data available to determine what those goals should be. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight et al.*, WC Dkt. No. 05-195 *et al.*, Report and Order, 22 FCC Rcd 16372, 16394-95, paras. 50-51 (2007) (*2007 Comprehensive Review Order*).

subscribership among low-income households and had not developed and implemented specific outcome-based performance goals and measures for the program.<sup>74</sup> In the *Lifeline and Link Up NPRM*, the Commission sought comment on program goals and measures related to ensuring low-income Americans have access to voice and broadband service while minimizing the size of the program.<sup>75</sup>

25. Clear performance goals and measures will enable the Commission to determine whether Lifeline is being used for its intended purpose and is accomplishing the program's objectives. We adopt the following performance goals for both voice and broadband, as well as associated measurements, reflecting our ongoing commitment to preserve and advance universal service: (1) ensure the availability of voice service for low-income Americans; (2) ensure the availability of broadband service for low-income Americans; and (3) minimize the contribution burden on consumers and businesses.

26. While we adopt separate goals for voice and broadband service today, we are mindful of the emergence of voice capability offered as an application over broadband service.<sup>76</sup> A significant and growing number of consumers are subscribing to broadband service in the home and for mobile devices. Some consumers also are using over-the-top voice offerings such as Skype and Google Voice, with their broadband connections for some, if not all, of their voice service needs.<sup>77</sup> As the market evolves towards "voice as an application" over broadband service, we believe it is appropriate for the Commission to examine in the future whether it is appropriate to retain separate goals for voice and broadband service.

#### **A. Ensure the Availability of Voice Service for Low-Income Americans**

27. *Goal.* We adopt as our first goal ensuring the availability of voice service for low-income Americans. We find that this goal helps effectuate Congress's universal service directives in sections 254(b)(1) and 254(b)(3) of the 1996 Act that quality services should be available at affordable rates and to consumers throughout the nation.<sup>78</sup>

28. We note that "availability" of voice service includes, but is a broader concept than, the physical deployment of voice networks. Consistent with the Commission's proposals in the *Lifeline and Link Up NPRM*, we find that voice service is only available to low-income consumers to the extent that it is affordable.<sup>79</sup>

29. *Measurements.* We will evaluate progress towards our first goal by measuring the extent to which low-income consumers are subscribing to voice service, based on the Census Bureau's Current

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<sup>74</sup> 2010 GAO REPORT at 24-26.

<sup>75</sup> See *Lifeline and Link Up NPRM*, at 2783, 2786, paras. 34, 43-45.

<sup>76</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 750.

<sup>77</sup> See *id.* at n.1320 (noting that the transition to bill and keep will result in the development and extension of a "wide range of IP calling services" including Google Voice and Skype, "a process that may ultimately result in the sale of broadband services that incorporate voice at a zero or nominal charge").

<sup>78</sup> 47 U.S.C. § 254(b)(1), (b)(3); see also *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2780, para 29 (noting that Section 254 includes principles that "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").

<sup>79</sup> In the NPRM, we proposed availability and affordability as separate goals. See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2784, 2785-86, paras. 36, 42, 43. There was substantial support in the record for both concepts (See, e.g. Consumer Groups Comments at 13-14, GCI Comments at 13-14.) We agree with commenters that both concepts are important, but find that ensuring voice service is affordable is a component of ensuring it is available.



Population Survey (CPS) penetration data.<sup>80</sup> We find that subscription rates are a reasonable proxy for availability generally. Because subscription rates show the extent to which low-income consumers subscribe to voice service, they provide a reasonable indication that service is in fact available – *i.e.*, sufficiently robust and affordable and there are sufficient networks in place – to serve those consumers.<sup>81</sup>

30. We therefore adopt as an outcome measure for our first goal the voice service penetration levels of low-income households.<sup>82</sup> Progress towards our goal of ensuring the availability of voice service to low-income consumers will be indicated by a narrowing of the difference between this outcome measure and the voice service penetration levels of non-low-income households. We conclude that comparing penetration levels for low-income households and the “next-highest income” bracket is the correct approach to evaluating the extent to which the Lifeline program is succeeding in mitigating the effects of low income as a barrier to telephone service subscription.<sup>83</sup>

31. There are several plausible ways of defining “low-income” and the “next-highest income” bracket. For example, “low-income” could be defined as households at 0 to 135 percent of the FPG, and the “next-highest income” bracket could be households at 135 to 175 percent of the FPG (which

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<sup>80</sup> We note that, under CPS’s survey methodology, all consumers of voice service, including those consumers who may only subscribe to broadband along with “over the top” VoIP service, would be counted as having voice service “available.” See 2010 WCB SUBSCRIBERSHIP STUDY.

<sup>81</sup> See *USF-ICC Transformation Order and FNRPM*, FCC 11-161 at para. 50 (“The first performance goal we adopt is to preserve and advance voice service.... As a performance measure for this goal, we will use the telephone penetration rate, which measures subscription to telephone service. The telephone penetration rate has historically been used by the Commission as a proxy for network deployment and, as a result, will a consistent measure of the programs’ effects.”). Consumers, including low-income consumers, may not subscribe to a service if it is not of sufficiently high quality and does not provide the features that they need, because consumers face transaction costs in obtaining even free Lifeline service.

<sup>82</sup> Some ETCs and other commenters argue that, pursuant to the Commission’s first goal, the Commission should promote and measure the availability of voice service for every person, not just every household. See GCI Comments at 13; Cricket Comments at 2. However, because we adopt a one-per-household rule below and the census data is only available on the household level, we decline to adopt this approach.

<sup>83</sup> The record reflects disagreement regarding the standard the Commission should use for a comparison of penetration rates. While there is some support for the Commission’s proposal in the *Lifeline and Link Up NPRM* to compare the voice penetration rates of low-income households eligible for low-income support with penetration rates of households in the next highest income group, others suggest a different approach. For example, some commenters argue for a comparison of the voice penetration rate for low-income households to the penetration rate for all other households. Compare GCI Reply Comments at 11-12 (“GCI and others support the FCC’s proposal to establish, as an outcome measure of the first performance goal (availability), the difference between voice service subscribership rates for low-income households eligible for the Lifeline and voice subscribership rates for the households in the next higher income level”) with Consumer Groups at 15 (arguing that the Commission should compare the penetration rate of low-income consumers to all other consumers). We do not adopt a comparison of the penetration rates of low-income households to all other households because we believe such a measurement would not be consistent with our goals. Penetration rates for the highest income households are significantly higher than the penetration rates of households between, for example, 135 percent and 175 percent of the poverty line. See 2011 MONITORING REPORT at Chart 3.2. Therefore, the average penetration rate of all households above 135 percent of the poverty line is higher than the average penetration rate for households between 135 percent and 175 percent of the poverty line. If the Commission compared and adopted as an outcome measure the equalization of the penetration rates of low-income households to all other households, the low-income penetration rate target would always be higher than penetration rate for households in the next higher income bracket. Such an outcome measure would imply that Commission favors higher telecommunications penetration for low-income consumers than for the next highest income group. No party argued explicitly for such an approach and we do not believe that it is consistent with our goal to ensure the availability of voice service for low-income Americans.

may include some Lifeline subscribers) or households at 175 percent to 200 percent of the FPG (which would be less likely to include Lifeline subscribers). We recognize that there may be trade-offs with any approach adopted. We therefore delegate authority to the Bureau to define “low-income” and the “next highest income” bracket for the purpose of comparing penetration rates that balances the goal of accurately measuring the impact of the Lifeline program with administrative feasibility.<sup>84</sup>

32. We decline to adopt the take rate of the program as the outcome measure for our goal of ensuring voice service availability to low-income consumers.<sup>85</sup> The goal of the program is to increase the availability of voice service, which we will measure through the extent to which low-income consumers subscribe to phone service. This measure is more directly relevant to this goal than the take-rate of the Lifeline program.<sup>86</sup>

### **B. Ensure the Availability of Broadband Service for Low-Income Americans**

33. *Goal.* As we recently did for the high-cost fund in the *USF/ICC Transformation Order and FNPRM*, we establish an express broadband service goal for Lifeline, in addition to Lifeline’s voice service goal. We adopt as our second program performance goal ensuring the availability of broadband service for low-income Americans. We find that this goal implements Congress’s directives in sections 254(b)(2) and (b)(3) that all consumers, including low-income consumers, should have access to information services, and is consistent with the Recovery Act and the National Broadband Plan’s recommendations.<sup>87</sup> There is also substantial support in the record for this goal.<sup>88</sup> It also implements Congress’s direction in section 706 of the Telecommunications Act of 1996 that we “utiliz[e] ...

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<sup>84</sup> We conclude that it is important to measure telephone penetration for low-income consumers on Tribal lands in light of the unique needs of those consumers and the fact that telephone penetration on Tribal lands has historically lagged telephone penetration for the nation as a whole. However, we do not adopt a separate measurement for low-income penetration on Tribal lands at this time because the necessary data is not available from the Census Bureau. For example, the current yearly Census survey sample size on Tribal lands is not sufficiently large to produce a statistically significant penetration rate for Tribal lands for low-income consumers or the “next highest” income bracket. We expect the Bureau to continue to monitor the available Tribal lands telephone penetration data. If data is sufficient to create a statistically valid estimate of low-income penetration and the “next highest” income bracket on Tribal lands becomes available, we direct the Bureau to establish a separate measurement for progress towards our first goal with respect to Tribal lands. We also direct the Bureau to publish Tribal penetration data in its statistical reports to the extent that such information is reliable and statistically significant.

<sup>85</sup> See, e.g., IN URC Comments at 9 (arguing for the importance of increasing the take rate).

<sup>86</sup> Lifeline take rates may change because of exogenous factors (such as business model and marketing by Lifeline operators) that are unrelated to the design or implementation of the program. See Letter from Dr. George Korn, Communications Consultant, Rainbow PUSH Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (filed Sept. 23, 2011) (Rainbow PUSH Sept. 23 *ex parte* Letter) (noting that “45 million Americans are currently receiving food stamps. This equates to an increase of 64% percent since January 2008”). Take rates also increase with the size of the benefit available under the program, and Lifeline provides a relatively small benefit compared to other programs, indicating that at least some consumers will not sign up due to transaction costs. See Hauge *et al.*, *supra* note 50, at 8-9.

<sup>87</sup> 47 U.S.C. § 254(b)(2), (b)(3); 47 U.S.C. 1305; American Recovery and Investment Act of 2009 § 6001(b)(3), 47 U.S.C. § 1305(b)(3) (noting that the purpose of the broadband technology opportunities program is to, among other things, to provide funding to organizations “to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations”); *Broadband Plan* at XIII (noting a key goal of the plan is to ensure low-income Americans can afford broadband); Chapter IX (Adoption and Utilization).

<sup>88</sup> See, e.g., NASUCA Comments at 8-10; *cf.* Consumer Groups Comments at 16; GCI Comments at 18, 21; NJ DRC Comments at 8.

regulating methods that remove barriers to infrastructure investment.”<sup>89</sup>

34. For broadband to be “available” to a low-income consumer, a broadband network (or networks) must have been deployed to the consumer, and the broadband service offered over the network must be affordable and provide a sufficient level of robustness (e.g., bandwidth) to meet basic broadband needs. Many low-income consumers cannot subscribe to fixed or mobile broadband because it is not affordable or does not provide the features that they believe they need at a price they can afford.<sup>90</sup> Some low-income consumers, including some residing on Tribal lands, cannot subscribe to fixed or mobile broadband because such services are not available in their communities.<sup>91</sup> This understanding of the goal that we adopt today is consistent with the plain meaning of “available” and is consistent with (although distinct from) our findings in our recent *Broadband Progress Reports*, in which we have observed that an inquiry into availability requires us to examine more than strict physical deployment.<sup>92</sup>

35. *Measurements.* As with our first goal, as an outcome measure of the availability of broadband service to low-income consumers, we adopt the broadband penetration rate of low-income consumers, *i.e.* the extent to which low-income consumers are subscribing to broadband. Progress towards our goal of ensuring the availability of broadband service to low-income consumers will be indicated by a narrowing of the difference between this outcome measure and the broadband service penetration levels of non-low-income consumers in the “next highest income” bracket. Also consistent with our first goal, we delegate authority to the Bureau to define the “low-income” and the “next-highest income” brackets for the purpose of comparing broadband penetration rates in a way that balances accuracy with administrative feasibility.<sup>93</sup> We decline to adopt alternative or additional measures for this goal at this time for the same reasons discussed above with respect to voice service.<sup>94</sup>

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<sup>89</sup> 47 U.S.C. § 1302(a). As discussed in paragraph 332, *infra*, we do expect federal support for low-income consumers’ purchase of broadband services to remove barriers to infrastructure investment.

<sup>90</sup> See, e.g., John Horrigan, Federal Communications Commission, Omnibus Broadband Initiative, *Broadband Adoption and Use in America* 3-7 (OBI Working Paper No. 1, 2010) (*Broadband Adoption and Use in America*), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296442A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf).

<sup>91</sup> See *Improving Communications Services for Native Nations*, CG Dkt. No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, 2673, para. 1 (2011) (*Native Nations NOI*).

<sup>92</sup> See 2011 *Seventh Broadband Progress Report*, 26 FCC Rcd at 8020-21, paras. 18-20.

<sup>93</sup> We note that NTIA, in cooperation with the Census Bureau, currently publishes information on broadband penetration by income level. See EXPLORING THE DIGITAL NATION, *supra* note 47. We also note that the Census Bureau, in consultation with the Commission, is developing questions regarding broadband adoption for possible inclusion in the American Community Survey starting in 2013. See Proposed Information Collection; Comment Request; The American Community Survey 2013 Content Changes and Internet Response Mode, 76 Fed Reg. 81474 (Dec. 28, 2011). The ACS currently collects information on income level and the Bureau, may, as necessary, analyze the broadband data sets in context with other social, housing, and economic data available from the ACS.

<sup>94</sup> As with telephone penetration, we conclude that it is important to measure broadband penetration for low-income consumers on Tribal lands in light of the unique needs of those consumers and the fact that broadband penetration on Tribal lands has historically lagged broadband penetration for the nation as a whole. However, we do not adopt a separate measurement for low-income broadband penetration on Tribal lands at this time because, as with telephone penetration, the necessary data is not available from the Census Bureau or NTIA. If data sufficient to create a statistically valid estimate of low-income broadband penetration and the “next highest” income bracket on Tribal lands becomes available, we direct the Bureau to establish a separate measurement for progress towards our second goal with respect to Tribal lands. We also direct the Bureau to publish Tribal broadband penetration data in its statistical reports to the extent that such information is reliable and statistically significant.

36. As with our first goal, we do not find that it is appropriate at this time to establish a minimum standard of robustness or measure the extent to which low-income consumers are purchasing broadband service which meets such a standard. This approach is consistent with the purpose of the Lifeline program, namely to offset the cost of services purchased by low-income consumers, rather than the network provider's cost to construct a network.<sup>95</sup> In the *USF/ICC Transformation Order and FNPRM*, the Commission adopted a speed benchmark for fixed broadband provided by CAF recipients. The purpose of the benchmark is to ensure that the fixed networks funded will be *capable* of providing a particular level of service, but carriers can offer, and consumers can purchase, a lower (or higher) level of fixed or mobile broadband service if they so choose.<sup>96</sup> As part of the broadband pilot program described below, we will collect information regarding affordability and the robustness of broadband available to low-income consumers. We will revisit whether standards for the robustness for service broadband for low-income households are appropriate when we have a better understanding of the factors driving broadband adoption among low-income consumers.

### C. Minimize the Contribution Burden on Consumers and Businesses

37. *Goal.* We adopt as our third program performance goal minimizing the contribution burden on consumers and businesses. This goal is consistent with our longstanding recognition that our efforts to advance universal service must be balanced against the universal service contribution burden on all consumers, particularly those consumers who are just above the threshold of “low-income” that we adopt as a uniform floor for the program in this Order.<sup>97</sup> Indeed, as the Commission has found and the courts have recently reiterated, if the universal service burden is too high, the affordability of service will be placed in jeopardy, undermining the very purpose of the universal service program.<sup>98</sup>

38. Consistent with this third goal, at this time, we decline to distinguish between fixed and mobile services in our goals of ensuring the availability of voice and broadband service to low-income Americans. The Lifeline program is designed to ensure that low-income Americans remain connected to essential communications while minimizing the contribution burden on all other Americans so that the broader goals of universal service are not jeopardized. While low-income consumers may derive utility from both fixed and mobile services, we find that our combined goals are best satisfied by ensuring that Lifeline affords consumers a choice to determine which of the communications offerings is essential for them—either fixed or mobile service.<sup>99</sup>

39. *Measurements.* In the *Lifeline and Link Up NPRM*, the Commission sought comment on several metrics to measure progress towards increasing the efficiency of the program and the elimination

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<sup>95</sup> See *MTS and WATS Market Structure Report and Order*, 50 Fed. Reg. at 941-42 (noting that the purpose of the Lifeline program is to offset the cost of an increased SLC on low-income consumers).

<sup>96</sup> See *USF/ICC Transformation Order*, FCC 11-161, at para. 94.

<sup>97</sup> For example, the burden of a particular contribution factor is greater on a household between 135 percent and 175 percent of the federal poverty guidelines than on a household at 300 percent of the federal poverty guidelines.

<sup>98</sup> See, e.g., *Vermont Pub. Serv. Bd. v. Fed. Comm'n Comm'n*, 661 F.3d 54, 65 (D.C. Cir. 2011) (finding that, in the context of section 254, “as the Commission rightly observed, it has a responsibility to be a prudent guardian of the public’s resources.”); *Universal Service First Report and Order*, 12 FCC Rcd at 8845-46, para. 125; see also *High-Cost Universal Service Support et al.*, CC Dkt. No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4087, para. 28 (2010) (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.”).

<sup>99</sup> We believe that the *USF/ICC Transformation Order and FNPRM* will increase the reach of fixed and mobile networks to ensure that both are physically available to consumers. Without such availability, low-income consumers would have limited choice between fixed or mobile service.

of waste.<sup>100</sup> We find the measures outlined below are appropriate to measure progress towards our third goal and adopt them.

40. First, the Commission sought comment on whether it should measure the burden the program places on all consumers over time by measuring the inflation-adjusted Lifeline/Link Up expenditure per American household.<sup>101</sup> We note that we recently adopted a similar measure with respect to the high-cost program in the *USF/ICC Transformation Order and FNPRM*.<sup>102</sup> We adopt the proposed measure, which will divide the total inflation-adjusted expenditures of the low-income program each year by the number of American households and express the measure as a monthly dollar figure. This calculation will rely on publicly available data and will therefore be transparent and easily verifiable. Through this measure and the similar measures adopted in the *USF/ICC Transformation Order and FNPRM*, we will be able to determine whether the overall universal service contribution burden is increasing or decreasing for the typical American household.<sup>103</sup>

41. Second, the Commission sought comment on whether it should monitor the extent to which the actions we take in this Order will eliminate waste, fraud, and abuse—factors that increase the burden on contributors without a countervailing benefit.<sup>104</sup> In the NPRM, the Commission proposed establishing an erroneous payments benchmark and focusing on keeping erroneous payments below that benchmark.<sup>105</sup> Commenters disagree on whether such a benchmark is appropriate.<sup>106</sup> We expect that the duplicates database adopted in this Order will eliminate a substantial amount of payments to ineligible and duplicative subscribers.<sup>107</sup> It is appropriate to measure the extent of savings from elimination of these duplicative payments. We delegate authority to the Bureau to determine the detailed design and implementation of this calculation.

42. Third, the Commission inquired whether there is a way to measure increases in the percentage of low-income voice subscribership relative to the amount of funding spent per household receiving a Lifeline subsidy.<sup>108</sup> Such a comparison would be an appropriate measure to determine if Lifeline funding is being used consistent with our third goal. We will make such a comparison by examining the relationship between the aggregate spending on the low-income program and changes in low-income penetration rates. We delegate to the Bureau the authority to determine the detailed design

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<sup>100</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2785, paras. 38-41.

<sup>101</sup> *See id.* at 2785, para. 38.

<sup>102</sup> *See USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para 58.

<sup>103</sup> For example, in 2010, this was \$0.95 per household per month. *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2785, para. 38.

<sup>104</sup> *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2875, para 39.

<sup>105</sup> *See id.*

<sup>106</sup> *See* GCI Comments at 16 (“The FCC’s proposed performance measure suggests that the FCC should conclude that funding is excessive if the number or percentage of ineligible subscribers surpasses a certain threshold—even though the ETCs that provide Lifeline service have no choice when it comes to providing service to consumers who self-certify their eligibility and also cannot tell if individual consumers subscribe from more than one provider.”); NJ DRC Comments at 16.

<sup>107</sup> Consumer Cellular Comments at 6 (“Most importantly, all of the Commission’s goals—to maximize the value of the fund to low income consumers, to maximize the efficiency of fund administration, and to eliminate the potential for waste, fraud, and abuse—can be realized as the natural and expected consequence of expeditiously moving to implement the database described in Section VII of the NPRM.”).

<sup>108</sup> *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2785, para 40.

and implementation of this calculation.

43. Using the adopted goals and measures, the Commission will, as required by the Government Performance and Results Act (GPRA), monitor the performance of our low-income program as we implement the changes outlined in this Order.<sup>109</sup> If the program is not meeting these performance goals, we will consider corrective actions. Likewise, to the extent that the adopted measures do not help us assess program performance, we will revisit them as well. We recognize that the many rule changes and reforms in this Order may affect the ongoing utility of these goals and measures. We therefore may need to adjust the goals and measurements adopted here once the Commission, consumers, ETCs, and other stakeholders have had experience with the revised rules.

#### IV. VOICE SERVICES ELIGIBLE FOR DISCOUNTS

44. *Background.* In 1997, pursuant to section 254 of the Act, the Commission established nine services supported by the federal universal service mechanisms, including the low-income program.<sup>110</sup> In light of the changes in technology and in the marketplace, the Commission sought comment in the *USF/ICC Transformation NPRM* on simplifying the core functionalities of the supported services into the overarching concept, “voice telephony service.”<sup>111</sup> Subsequently, in the *Lifeline and Link Up NPRM*, the Commission sought comment on similarly amending the definition of “Lifeline” supported services in section 54.401 to provide support for “voice telephony service.”<sup>112</sup>

45. In the *USF/ICC Transformation Order and FNPRM*, the Commission eliminated its former list of nine supported services and amended section 54.101(a) of its rules to specify that “voice telephony service” is supported by the federal universal service mechanisms.<sup>113</sup> The Commission found this to be a more technologically neutral approach that focuses on the functionality offered, and not on the specific technology used to provide the supported service, while allowing services to be provided over any technology platform.<sup>114</sup> In adopting the new definition of “voice telephony,” the Commission eliminated certain services and functionalities from the list of supported services, consistent with its findings regarding the evolution of the marketplace.<sup>115</sup>

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<sup>109</sup> If the Commission identifies an outcome as a “priority goal,” then it must review progress quarterly. Otherwise performance must only be reviewed annually. See 31 U.S.C. §§ 1116, 1120-1121, *as amended by* GPRA Modernization Act of 2010, Pub. L. No. 111-352 §§ 4-5 (2010). Agencies are currently working with OMB to define their priority goals, which will be published in February 2012.

<sup>110</sup> 47 U.S.C. § 254(c)(1); 47 C.F.R. §§ 54.101(a)(1)-(9), 54.401(a)(3). At that time, the Commission defined the supported services in functional terms to encompass voice grade access to the public switched network; local usage; dual tone multi-frequency (DTMF) 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 to qualifying low-income consumers. See *Universal Service First Report and Order*, 12 FCC Rcd 8776 at 8810, para. 61.

<sup>111</sup> *Connect America Fund et al.*, WC Dkt. No. 10-90 *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 4554, 4590, para. 96 (2011).

<sup>112</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2843, paras. 239, 243.

<sup>113</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 78.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at para. 77 & n.114. To more clearly reflect the Commission’s intent to specify the attributes of “voice telephony” in the new definition, the Commission subsequently further revised section 54.101 on its own motion to eliminate language stating that voice telephony service “include[s] certain functionalities” to eliminate the possibility that the list could be interpreted as non-exhaustive. See *Connect America Fund et al.*, WC Dkt. No. 10-90 *et al.*, Order on Reconsideration, FCC 11-189, para. 3, n. 8 (rel. Dec. 23, 2011) (*USF/ICC Transformation Order* (continued...))

46. In 2005, the Commission concluded that an applicant seeking ETC designation by the Commission must demonstrate that it offers local usage comparable to that offered by the incumbent LEC.<sup>116</sup> In its *2010 Joint Board Recommended Decision*, the Joint Board urged the Commission to consider prepaid wireless Lifeline issues, including the need for minimum standards of service for Lifeline recipients.<sup>117</sup> Additionally, the National Association of State Utility Consumer Advocates (NASUCA) adopted a resolution recommending that the Commission consider establishing minimum standards of service for pre-paid wireless Lifeline service, expressing concerns that “free” Lifeline calling plans offered by some wireless ETCs include limited usage minutes and require subscribers needing additional minutes to purchase those minutes from the carrier, and indicating that it is not evident whether such calling plans offer local usage comparable to available incumbent carriers’ calling plans.<sup>118</sup> Accordingly, the Commission sought comment on adopting minimum standards for *all* ETCs offering Lifeline service.<sup>119</sup>

47. *Discussion.* We now update the definition of Lifeline to be consistent with our newly revised definition of the supported service as “voice telephony service.”<sup>120</sup> As we recently noted in the *USF/ICC Transformation Order and FNPRM*, voice telephony may be provisioned over broadband (IP-enabled) networks.<sup>121</sup> By updating the definition, we allow carriers to provide service using new technologies that will result in additional options and benefits to Lifeline consumers. At this time, we do not find it necessary to require ETCs that offer service at no charge to Lifeline subscribers to adhere to additional service requirements.

48. Consistent with our recent amendment to section 54.101, eligible Lifeline telephony services therefore must provide voice grade access to the public switched telephone network or its functional equivalent; minutes of use for local service provided at no additional charge to end users;<sup>122</sup> access to emergency 911 and enhanced 911 service to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and toll limitation at no charge to qualifying low-income consumers subject to the requirements and limitations discussed more fully

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on *Reconsideration*).

<sup>116</sup> *Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45, Report and Order, 20 FCC Rcd 6371, 6380, para. 20 (2005) (*ETC Designation Order*).

<sup>117</sup> *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15627, para. 80.

<sup>118</sup> 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*).

<sup>119</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2817, para. 253 (inquiring whether the Commission should establish national parameters for a basic Lifeline service).

<sup>120</sup> See *USF/ICC Transformation Order on Reconsideration*, FCC 11-189 at para. 3. In response to the *Lifeline and Link Up NPRM*, some commenters supported amending the definition of Lifeline to provide support for “voice telephony service.” See Cricket Comments at 15-16; Florida PSC Comments at 29.

<sup>121</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 63 (explaining how consumers are increasingly obtaining voice services over broadband networks as well as over traditional circuit switched telephone networks).

<sup>122</sup> We note that the Vermont Public Service Board has filed a Motion for Clarification regarding this aspect of the definition adopted in the *USF/ICC Transformation Order and FNPRM*, which will be addressed after receipt of public comment on this petition. See Vermont Public Service Board Motion For Clarification, WC Dkt. No. 10-90 *et al.*, at 3 (filed Dec. 28, 2012).

below.<sup>123</sup> As explained in the *USF/ICC Transformation Order and FNPRM*, this approach simply shifts to a technologically neutral approach by defining supported services in functional terms, ensuring that voice service can be provided over any platform.<sup>124</sup> Under this revised definition of Lifeline, we expect low-income consumers will receive the same quality voice service that they receive today.<sup>125</sup>

49. In the *USF/ICC Transformation Order and FNPRM*, the Commission noted that many providers do not distinguish between local and long distance usage, and concluded that carriers may satisfy the obligation to provide local usage via service offerings that bundle local and long distance minutes. We conclude this finding is also applicable to Lifeline service offerings.<sup>126</sup> We therefore conclude that it is appropriate to eliminate the “local” qualifier from the current definition of Lifeline,<sup>127</sup> and we amend section 54.401 of our rules as provided in Appendix A of this Order.<sup>128</sup> We also note that, as discussed more fully below, ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.<sup>129</sup> We make both of these changes in recognition of the changing way services are provided in today’s marketplace.

50. While we applaud the work the states have done to require pre-paid ETCs to offer a minimum set of monthly minutes, we do not find it necessary to impose minimum federal service standards. To the extent possible, service standards should be determined by the communications marketplace.<sup>130</sup> Based on the record, the market is increasing the number of minutes that pre-paid

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<sup>123</sup> See *infra* section VII.B (discussing the requirements and limitations of toll limitation service).

<sup>124</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 77-78.

<sup>125</sup> See Windstream *USF/ICC Transformation NPRM* Comments at 20 (urging Commission to amend the definition of supported services to focus on functionality offered, not the specific technology used to provide supported services). Some commenters, however, argue that the term “voice telephony” is too vague, and that such a modification may result in a lower standard of voice service despite the fact that many consumers already receive voice service over broadband networks. See Alaska Commission Reply Comments at 8-9 (arguing that redefining the currently supported services could lead to lower standards for voice services); NASUCA Comments at 26-27 (stating that the term “voice telephony” is unnecessarily vague); NJ DRC Comments at 24; compare AT&T *USF/ICC Transformation NPRM* Comments at 10 (noting that circuit-switched networks are rapidly yielding to packet-switched networks, which offer voice as well as other types of services as demonstrated through significant increase in VoIP subscriptions).

<sup>126</sup> See revised section 54.401(a) of the Commission rules (defining Lifeline as amended in this Order).

<sup>127</sup> Distinctions between local and long distance calling are becoming irrelevant in light of flat rate service offerings that do not distinguish between local and long distance calling. *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2844, para. 242; FL PSC Comments at 29 (supporting amendment to replace “basic local service” with the term “voice telephony service” based on changes in the marketplace); but see OH PUC Comments at 23 (supporting redefining Lifeline and maintaining “local” qualifier in the new definition).

<sup>128</sup> See *USF/ICC Transformation Order on Reconsideration*, FCC 11-189, para. 3. Revised section 54.401(a)(3) states: “That provides voice telephony service to subscribers as provided in § 54.101(a).”

<sup>129</sup> See *infra* section VII.B. In the event a Lifeline-only ETC provides to subscribers a set amount of “all distance” minutes whereby the subscriber can make local or toll calls without incurring additional charges, that Lifeline-only ETC does not meet the “facilities” requirement of section 214(e)(1)(a) if the only facilities used enables a subscriber to access a call center to purchase additional minutes when the set amount of all distance minutes are exhausted. Likewise, if the subscriber must purchase additional minutes to make international calls, such facilities used by the ETC to permit the subscriber to purchase additional international minutes cannot be relied upon to meet the facilities requirement of section 214.

<sup>130</sup> See Sprint Comments at 17; see also TracFone Comments at 40.



wireless ETCs are offering. For example, TracFone initially provided approximately 68 minutes of airtime per month to subscribers, but due to competition from other providers, it now provides up to 250 minutes a month. As soon as another wireless ETC began offering Lifeline programs that included 200 free monthly minutes, TracFone reassessed its offerings and added a new 250 minute calling plan.<sup>131</sup> TracFone notes that within days of announcing its revised calling plan, competing ETCs increased their service offerings to include 250 minutes.<sup>132</sup> Our determination not to impose minimum federal service requirements is consistent with the *USF/ICC Transformation Order and FNPRM*, where we noted that the Commission has never prescribed a minimum amount of local access minutes, and therefore declined to do so in that Order.<sup>133</sup> The Commission will monitor service levels and if necessary, reassess the need to establish minimum service requirements for Lifeline providers.<sup>134</sup> While we do not adopt minimum service requirements for any ETCs offering Lifeline service, we expect all ETCs to continue to offer low-income subscribers innovative and sufficient service plans.

## V. SUPPORT AMOUNTS FOR VOICE SERVICE

51. *Background.* In the *Lifeline & Link Up NPRM*, the Commission sought comment on whether there is a more appropriate reimbursement framework than the current four-tier system for determining federal support amounts for Lifeline.<sup>135</sup> The Commission asked whether it should 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.<sup>136</sup>

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<sup>131</sup> See TracFone Comments at 40.

<sup>132</sup> See *id.*

<sup>133</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 78 n.115.

<sup>134</sup> Given both the Commission and states' shared interest in this matter, we encourage federal and state staff to continue to share information regarding ETCs matters, including ETC service levels. Section 54.401(d) requires newly designated ETCs to provide information to USAC demonstrating that their Lifeline plan meets the requirements of the Lifeline rules prior to receiving reimbursement. We amend section 401(d) to specify more clearly that newly designated ETCs must provide information to USAC about their Lifeline service plans prior to receiving reimbursement. In the event ETCs choose to offer, as an additional option to low income consumers, the Lifeline discount to other retail service offerings, including bundles, that are available to the general public, ETCs are not required to submit the terms and conditions of each such retail service offering to the Commission or USAC, but rather may provide links to public websites outlining the terms and conditions of such plans. In addition, as set forth more fully below, *see supra* section XI.C, we require all ETCs to submit annually information regarding the terms and conditions of the Lifeline plans for voice telephony service offered specifically to qualified low income consumers through the program during the previous year, including the number of minutes provided and whether there are additional charges to the consumer for service including minutes of use and/or toll calls.

<sup>135</sup> See *Lifeline & Link Up NPRM*, 26 FCC Rcd at 2846, para. 248; *see* 47 C.F.R. § 54.403.

<sup>136</sup> See *Lifeline & Link Up NPRM*, 26 FCC Rcd at 2847, para. 249. 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 Dkt. No. 96-45, Petition (filed May 4, 2009) (*TracFone Tier One 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 One 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. (continued....)

52. Lifeline was originally implemented in 1985 to ensure that the federal Subscriber Line Charge (SLC), imposed in the aftermath of the breakup of AT&T, would not put local phone service out of reach for low-income households. Since its inception, the amount of support has been tied to the SLC, a flat monthly charge that incumbent local exchange carriers assess on their subscribers to recover some of their network costs assigned to the interstate jurisdiction. Support levels for competitive ETCs are based on the SLC of the incumbent carriers in the relevant service area.

53. Lifeline support today consists of four tiers, each of which must be passed directly from the ETC to the qualifying low-income consumer in the form of discounts off the subscriber's monthly service.<sup>137</sup> All ETCs receive Tier One support for each qualifying consumer, which equals the incumbent local exchange carrier's Subscriber Line Charge, capped at \$6.50.<sup>138</sup> Tier Two support provides an additional \$1.75 per month in federal support, which is available in all states and made available to the ETC if it certifies with USAC that it will pass through the full amount of support to qualifying consumers.<sup>139</sup> Tier Three support provides an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of \$1.75 per month in federal support, if the ETC passes through the full amount of support to the consumer.<sup>140</sup> Finally, Tier Four support provides eligible subscribers living on Tribal lands up to an additional \$25 per month towards reducing basic local service rates.<sup>141</sup> In September 2011, non-Tribal Lifeline subscribers received an average monthly benefit of \$9.25.<sup>142</sup>

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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.

<sup>137</sup> See 47 C.F.R. § 54.403; see also *Universal Service First Report and Order*, 12 FCC Rcd at 8971, para. 368. The amount the household pays for phone service depends on the price charged by the carrier for Lifeline service and the amount of federal Lifeline support that a household receives, which in turn depends in part on the state and (if applicable) Tribal land in which the household is located. Some ETCs, such as TracFone and Virgin Mobile, offer service at no charge to customers. The net result is that households pay significantly different amounts for their Lifeline-supported service dependent upon their Lifeline carrier and in which state they reside.

<sup>138</sup> 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. Not all ILECs are at the \$6.50 cap and the SLC varies among ILECs. *Federal-State Joint Board on Universal Service*, CC Dkt. 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 Feb. 2, 2012).

<sup>139</sup> 47 C.F.R. § 54.403(a)(2). When adopting Tier Two 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.

<sup>140</sup> 47 C.F.R. § 54.403(a)(3). When adopting Tier Three 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 understand that some states do not provide matching state discounts through explicit support, but rather mandate that the carrier reduce its rates by such amounts to qualify for Tier Three support.

<sup>141</sup> 47 C.F.R. § 54.403(a)(4).

<sup>142</sup> See *USAC 2011 Support Amounts Letter*. Support ranges from a low of \$4.25 per month to a high of \$10.00 per month. See *id.*

54. *Discussion.* In order to simplify administration of the program and revise our rules in light of current marketplace conditions, we now change the Lifeline reimbursement structure for non-Tribal support and seek further comment in the *FNPRM* on the establishment of an appropriate amount for Lifeline reimbursement. Here, on an interim basis, we replace Tiers One, Two and Three with a uniform flat-rate reimbursement.<sup>143</sup>

55. As an initial matter, we find that an incumbent telephone company's SLC is no longer the appropriate metric for determining the amount of Lifeline reimbursement.<sup>144</sup> In particular, the prices consumers face in the marketplace are what determine affordability and adoption decisions, not the network costs of the incumbent LEC (the original basis for the SLC).

56. In addition, since the Commission adopted the tiered structure of support in 1997 and revised it in 2000,<sup>145</sup> significant marketplace changes have occurred. Many low-income consumers take Lifeline service from competitive ETCs, who do not assess SLCs on their subscribers and whose cost structures are wholly unrelated to the SLC.<sup>146</sup> The majority of Lifeline support is provided to wireless carriers, whose rates are not regulated by the Commission or the states, and who do not participate in jurisdictional separations.<sup>147</sup>

57. For wireless ETCs, Lifeline support is determined by the SLC of the ILEC in the area they serve. Given that wireless ETCs typically serve a state with multiple ILECs, it is administratively burdensome for both the ETC and USAC to determine the correct amount of Tier 1 support. As commenters note, the variation in the SLC makes it difficult for ETCs to offer rates that apply nationwide or even to determine the Lifeline discount for a given consumer.<sup>148</sup> For example, in Florida, wireless carriers such as TracFone and T-Mobile must submit a weighted average of the SLCs that their subscribers would face if service were purchased from their local ILEC for Tier One reimbursement.<sup>149</sup> This administrative burden causes wireless carriers to incur significant costs in ascertaining ILEC SLCs across the ETC's service area.

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<sup>143</sup> See, e.g., Cincinnati Bell Comments at 13-14; COMPTTEL Comments at 25; CTIA Comments at 18-19; OH PUC Comments at 26; AT&T Comments at 3-4, 6; Cricket Reply Comments at 13; Sprint Reply Comments at 2, 12.

<sup>144</sup> See, e.g., Cincinnati Bell Comments at 13-14; COMPTTEL Comments at 25; CTIA Comments at 18-19; OH PUC Comments at 26; AT&T Comments at 3-4; Cricket Reply Comments at 13; Sprint Reply Comments at 2, 12. See *TracFone Tier One Petition*; YourTel Comments on TracFone Tier One Petition at 1. But see MI PSC Comments at 10; NASUCA Comments at 28.

<sup>145</sup> *Universal Service First Report and Order*, 12 FCC Rcd 8776 at para. 367; *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12302-03.

<sup>146</sup> UNIVERSAL SERVICE ADMINISTRATIVE COMPANY, 2010 ANNUAL REPORT 13, available at <http://usac.org/about/governance/annual-reports/2010.html>. See 47 C.F.R. §§ 69.104, 69.152(d)(1), 69.152(q). The Commission acknowledged that non-incumbents do not charge SLCs 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.

<sup>147</sup> 47 U.S.C. § 332.

<sup>148</sup> Cincinnati Bell Comments at 13-14; COMPTTEL Comments at 25; Cricket Nov. 22 *ex parte* Letter at 1. Commenters also point out that the tiered structure complicates comparison of Lifeline plans. CTIA Comments at 19; AT&T Comments at 10.

<sup>149</sup> See Universal Service Administrative Company, 1Q 2012 Filing, Appendices at LI 10 (Tier One Amounts Reported by All Companies - 2Q2011), available at <http://www.usac.org/about/governance/fcc-filings/2012/quarter-1.aspx>.

58. Given this evolution, there are two aspects of reimbursement that must be changed to better reflect the realities of the telecommunications marketplace: the structure of the reimbursement mechanism, be it tiered or flat, and the level of reimbursement. We do not have a basis in the record before us to determine at this time the appropriate total level of Lifeline support that should be provided to each low-income consumer to meet our universal service goals established above. However, we agree with commenters that the current structure based on the SLC and Tiers One through Three is administratively burdensome and would benefit from simplification. Therefore, we eliminate Tiers One, Two and Three and replace them with a flat rate. Currently, Tier One support, which is equivalent to the relevant SLC, ranges from \$2.24 per month to \$6.50 per month, while Tier Two support ranges from \$0 to \$1.75 per month, with the vast majority of ETCs receiving the maximum Tier Two support.<sup>150</sup> Tier Three support ranges from \$0 to \$1.75 and the average combined support is \$9.25. Therefore, on an interim basis, beginning with April 2012 disbursements, we set the flat rate to the current average amount of non-Tribal Lifeline support provided today, *i.e.*, \$9.25 per line per month.<sup>151</sup> This flat rate will be provided for all subscribers equally, regardless of whether they subscribe to wireline or wireless Lifeline service, and will significantly simplify administration for ETCs.<sup>152</sup> In the attached *FNPRM*, we seek comment on what amount of support should be provided to ETCs over the long term.

59. In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether Tier Four support is reasonable or whether it creates a price floor for carriers serving Tribal lands.<sup>153</sup> We received little comment on whether Tier Four support is sufficient, excessive, or insufficient. In light of the limited record on this issue, we decline to make any changes to Tier Four support (*i.e.*, support for low-income consumers residing on Tribal lands) (hereinafter Tribal Lands support) or its structure at this time. Therefore, subscribers who receive Tribal Lands support will continue to receive Tribal Lands support plus the interim flat rate in lieu of Tiers One, Two and Three support.

## VI. CONSUMER ELIGIBILITY & ENROLLMENT

60. In the *2010 Joint Board Recommended Decision*, the Joint Board recommended that the Commission adopt uniform minimum verification procedures and sampling criteria that would apply to all ETCs in all states and that the Commission seek comment on adopting uniform minimum program- and income-based eligibility criteria for ETCs in all states.<sup>154</sup> In light of the Joint Board's recommendations and the record before us, we adopt uniform eligibility criteria applicable in all states. We codify a rule limiting Lifeline support to a single discount per household and adopt policies to assist in the implementation of this rule. We modify the Lifeline certification rules to adopt a uniform set of requirements that will increase consistency in certification practices across states and encourage accountability by consumers and ETCs. We also replace the current methodology employed by ETCs to annually verify consumer eligibility with an annual self-certification of continued eligibility that will serve as a minimum threshold process to be performed in all states. We take several steps to advance the availability of Lifeline and Link Up support for low-income consumers living on or near Tribal lands. We will also continue to encourage coordinated enrollment while placing restrictions on automatic

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<sup>150</sup> *USAC 2011 Support Amounts Letter*.

<sup>151</sup> We chose \$9.25 per line per month based on September Lifeline reimbursement data from USAC, which is the latest month in which all ETCs sought reimbursement for Lifeline. We note that this amount is \$0.07 higher than the average 2010 reimbursement amount set forth in the 2011 Monitoring Report at Table 2.3.

<sup>152</sup> We note that some ETCs will receive more support under a flat rate of \$9.25 per month, and some will receive less. See 2011 MONITORING REPORT at Table 2.3 (showing a range of support by state.) Regardless, we do not expect that the interim flat rate reimbursement of \$9.25 per month to increase the size of the Fund.

<sup>153</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2847, para. 250.

<sup>154</sup> See *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15601, 15607, paras. 8-9, 26.

enrollment consistent with our measures to eliminate waste. Finally, in order to further modernize the program, we permit the use of electronic signatures, including interactive voice responses, for the purposes of consumer certification.

61. The specific eligibility and certification requirements adopted below are a minimum floor for determining and verifying consumer eligibility for the federal Lifeline program. The rules we adopt in this Order are a core set of requirements necessary to make the program more accountable and to ensure that the program operates efficiently and effectively. State commissions may include additional qualifying eligibility criteria and impose additional certification requirements that they believe are necessary to ensure that ETCs are using support consistent with the statute and our implementing regulations, so long as those additional reporting requirements do not create burdens that thwart achievement of the objectives of our universal service policies and regulations, including those set forth in this Report and Order, or otherwise conflict with federal law.

#### A. Uniform Eligibility Criteria

62. *Background.* Today, eligibility requirements for the Lifeline program vary from state to state.<sup>155</sup> Lifeline eligibility is based upon participation in certain means-tested programs and, in most states, upon income. The federal default Lifeline eligibility criteria—which apply in eight states and two territories (*i.e.*, “federal default states”)—require consumers to either: (1) have a household income at or below 135 percent of the Federal Poverty Guidelines;<sup>156</sup> or (2) participate in at least one of a number of federal assistance programs.<sup>157</sup> Commission rules currently permit the District of Columbia and the 42 remaining states and three territories with their own programs to establish their own eligibility criteria, provided that qualification criteria are based solely on income or factors directly related to income.<sup>158</sup> Many states have adopted eligibility criteria very similar to the federal default criteria,<sup>159</sup> but some states have not.<sup>160</sup> This current patchwork of eligibility criteria means that consumers in some states qualify for

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<sup>155</sup> Compare Washington Telephone Assistance Program, <http://www.utc.wa.gov/consumers/telephone/Pages/telephoneAssistanceProgram.aspx> (last visited Feb. 2, 2012), with 47 C.F.R. § 54.409(b), (c) (federal default eligibility criteria). The State of Washington’s Telephone Assistance Program uses a mix of federal (SNAP, TANF, Supplemental Security Income) and state eligibility criteria (Medical Assistance, Refugee Assistance, DSHS Chore Services, Community Options Program, and General Assistance).

<sup>156</sup> See 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 percent 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. For each additional member of a household above four, \$5,157 is added, so for an eight-person household, the maximum annual income would be \$50,801. 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).

<sup>157</sup> 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 also 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).

<sup>158</sup> 47 C.F.R. §§ 54.409, 54.415.

<sup>159</sup> Currently, every state, with the exception of Idaho, Virginia, Colorado, and Montana, uses at least four of the seven programs utilized by the federal default states.

<sup>160</sup> For example, Oregon and Colorado do not have income-based Lifeline eligibility, while Ohio sets income eligibility at 150% of the Federal Poverty Guidelines. Oregon Telephone Assistance Program, <http://www.oregon.gov/PUC/rspf/otap.shtml> (last visited Feb. 2, 2012); Colorado Department of Human Services, (continued....)

Lifeline support while similarly situated consumers in states without those same qualifying criteria may not be eligible for federal support.

63. In the *2010 Joint Board 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.”<sup>161</sup> During its deliberations, the Joint Board recommended that the Commission seek comment on whether to adopt uniform federal minimum income- and program-based eligibility standards that would apply in all states, provided that the impact of uniformity is reasonable.<sup>162</sup> The Joint Board noted that uniform eligibility requirements could be burdensome on some states in terms of cost and administration, but recognized that such uniformity could simplify ETC certification of consumer eligibility and may increase program participation.<sup>163</sup> The Joint Board also recommended that the Commission seek comment on raising the program’s income eligibility criterion of 135 percent or below of FPG to 150 percent or below of FPG.<sup>164</sup>

64. In the *Lifeline and Link Up NPRM*, the Commission proposed a core set of federal eligibility requirements that would apply in all states, and sought comment on permitting states to adopt additional measures that could complement the federal standards.<sup>165</sup> As recommended by the Joint Board, the Commission also sought comment on raising the minimum income eligibility to 150 percent.<sup>166</sup>

65. *Discussion.* We amend our rules to require all states to utilize, at a minimum, the income and program criteria currently utilized by federal default states.<sup>167</sup> In so doing, we establish baseline eligibility requirements on top of which states may adopt additional program or income criteria to address the unique circumstances facing consumers in their states.<sup>168</sup>

66. Uniform eligibility criteria would simplify the development of an eligibility database, an important tool in preventing ineligible consumers from enrolling in the federal program.<sup>169</sup> Moreover, together with an eligibility database, uniform eligibility criteria will facilitate the auditing process because

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Low-Income Telephone Assistance, <http://www.colorado.gov/cs/Satellite/CDHS-SelfSuff/CBON/1251589753838> (last visited Feb. 2, 2012); OH PUC Comments at 15.

<sup>161</sup> *2010 Joint Board Referral Order*, 25 FCC Rcd at 5081, para. 6.

<sup>162</sup> *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15601, paras. 8-9.

<sup>163</sup> *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15601, paras. 8-9.

<sup>164</sup> *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15601, para. 10.

<sup>165</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2820-21, paras. 152-56.

<sup>166</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2821-22, para. 157.

<sup>167</sup> See 47 C.F.R. § 54.409(a), (b).

<sup>168</sup> For example, if a state wishes to adopt participation in a certain federal or state assistance program not included in the Commission’s list of eligible programs, the state may do so, provided the program is based on income or factors directly related to income. See Georgia Public Service Commission – Lifeline Assistance Program & Link-Up Georgia, [http://www.psc.state.ga.us/consumer\\_corner/cc\\_telecom/advisory/lifeline.asp](http://www.psc.state.ga.us/consumer_corner/cc_telecom/advisory/lifeline.asp) (last visited Feb. 2, 2012); see also Florida Public Service Commission – Lifeline Assistance and Link-Up Florida Brochure, <http://www.floridapsc.com/utilities/telecomm/lifeline/engbrochure.aspx> (last visited Feb. 2, 2012); Kansas Corporation Commission – Kansas Lifeline Program, <http://www.kcc.state.ks.us/pi/lifeline.htm> (last visited Feb. 2, 2012); 47 C.F.R. § 54.409 (permitting “narrowly targeted qualification criteria that are based solely on income or factors directly related to income”).

<sup>169</sup> COMPTTEL Comments at 19.

all ETCs will operate under a set of baseline rules.<sup>170</sup> There is also widespread support for uniformity of eligibility criteria from various consumer groups, states, and ETCs.<sup>171</sup> Commenters, including consumer advocates and ETCs, agree that uniformity ensures that consumers in all states have comparable access to the program.<sup>172</sup> Currently, ETCs operating in multiple states have to develop state-specific policies and procedures to ensure compliance with state-specific program eligibility requirements, but with uniform eligibility requirements, consumers will face more streamlined enrollment procedures, while there would be fewer regulatory burdens on service providers.<sup>173</sup>

67. A few state commissions that commented oppose uniform eligibility criteria.<sup>174</sup> For example, two state commissions note that state laws may need to be changed due to adoption of uniform eligibility requirements.<sup>175</sup> One state commission argues that a uniform federal floor of eligibility criteria could place a financial burden on states that have stricter eligibility criteria than the federal default states.<sup>176</sup> We believe that such a burden, while not quantified in the record, may be overstated. It is important to note that such a burden would only fall on states that choose to allocate state funds for Lifeline support, which are then matched through federal Tier Three support.<sup>177</sup> Thus, a state would only be burdened insofar as the state has its own Lifeline fund and adoption of uniform eligibility criteria increases enrollment in that state.<sup>178</sup> For example, if a state does not currently include the Low-Income Home Energy Assistance Program (LIHEAP) as a program conferring Lifeline eligibility, our adoption of a uniform floor of eligibility would immediately render that state's LIHEAP customers eligible for Lifeline, provided those subscribers were not already enrolled in another qualifying program. If a state were to find that uniformity increases demand on its own state fund, it could adjust its state Lifeline support per household without increasing its overall fund size, among other options. The potential for increased costs to states from our adopting uniform eligibility criteria are further diminished by the fact that many Lifeline-only ETCs, including TracFone and Virgin Mobile, do not take from state funds.<sup>179</sup>

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<sup>170</sup> COMPTTEL Comments at 19-20.

<sup>171</sup> AARP Comments at 5-6; Benton/PK/UCC Comments at 5; CA PUC Reply Comments at 6-7; CenturyLink Comments at 16-18; COMPTTEL Comments at 18-19; Conexions Comments at 8; Consumer Groups Reply Comments at 6-8; Cricket Comments at 11-12; CTIA Comments at 18-19; DC PSC Comments at 4-5; GCI Comments at 45-46; NASUCA Comments at 20-22; NJ DRC Reply Comments at 26; OH PUC Comments at 14; Alaska Commission Reply Comments at 12-13.

<sup>172</sup> See, e.g., COMPTTEL Comments at 18-19; Conexions Comments at 8; AARP Comments at 6.

<sup>173</sup> CenturyLink Comments at 16 (“Standard minimum criteria should enable easier program administration across multiple states.”); Cricket Comments at 11 (“Cricket fully supports this proposal, which would create greater consistency in eligibility and verification requirements nationally. It also would help to eliminate ambiguities in certain state regulatory frameworks and streamline the administration of Low-Income support programs by ETCs.”); CTIA Comments at 18.

<sup>174</sup> FL PSC Comments at 19; MI PSC Comments at 7; MS PSC Comments at 13; OR PUC Comments at 2.

<sup>175</sup> The Oregon Commission states that “changes in income qualification levels (such as the suggested increase from 135 percent to 150 percent of federal poverty guidelines) will require changes in Oregon law.” OR PUC Comments at 2; see also MI PSC Comments at 7 (arguing that some states, including Michigan, have laws regarding eligibility and compliance with uniformity would necessitate burdensome legislative changes).

<sup>176</sup> OR PUC Comments at 2.

<sup>177</sup> 47 C.F.R. § 54.403(a)(3).

<sup>178</sup> We note that most states and territories, with the exceptions of Colorado, Montana, Idaho, and Virginia, maintain eligibility criteria very similar to or more permissive than the federal default criteria.

Therefore, we conclude that the benefits of uniformity of eligibility criteria outweigh any potential costs to states.<sup>180</sup>

68. We decline at this time to adopt a uniform national rule mandating that households with 150 percent of the FPG be eligible for Lifeline/Link Up. The record was mixed on this proposal.<sup>181</sup> We conclude that we should evaluate the impact of the other changes we adopt today before taking steps that could increase program demand.

## **B. One-Per-Household**

69. We take several steps to more effectively target low-income support by codifying a one-per-household requirement, while creating a framework that will more clearly delineate the obligations and expectations for both qualifying households and ETCs. First, we codify a rule limiting Lifeline support to a single subscription per household and define “household.” Second, recognizing that there are instances where multiple households (i.e., families) reside at the same address we implement procedures to enable applicants in such circumstances to demonstrate at enrollment that other Lifeline recipients residing at the same address are a separate household. Third, we adopt a requirement that, prior to providing service to a consumer, an ETC must obtain that consumer’s permanent residential address, unless they only have a temporary address. Fourth, we codify additional protections to be implemented by those ETCs that serve consumers without a permanent residential address, in order to assist ETCs in more easily verifying such consumers’ continued eligibility for the program. Fifth, we clarify that Lifeline is available to otherwise eligible low-income consumers residing in areas zoned as “commercial” if the consumer certifies at enrollment that the address of record provided by the consumer is his or her residential address.

### **1. Background**

70. The Commission previously has stated that eligible low-income consumers may receive low-income support for “a single line in their principal residence.”<sup>182</sup> 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. Commonly known as the “one-per-household” limitation, in practice this requirement has been implemented by providing one Lifeline discount per residential address.<sup>183</sup>

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<sup>179</sup> Some states do not have or do not assert jurisdiction over wireless carriers, and some states do not have state funds; therefore some ETCs receive Tier Three support by providing additional service to the subscriber provided that “the carrier certifies to the Administrator that it will pass through the full amount of Tier Three support [up to \$3.50] to its qualifying low-income consumers.” 47 C.F.R. § 54.403(a)(3). Additionally, some ETCs choose not to accept state funds due to attached conditions and ease of administration.

<sup>180</sup> In furtherance of our goal of uniformity, we clarify that participants in Medicaid, a qualifying means-tested assistance program, are eligible for Lifeline even if their Medicaid participation consists solely of assistance in payment of Medicare Part B premiums.

<sup>181</sup> AARP Comments at 6; Benton/PK/UCC Comments at 5; Budget/GreatCall/PR Comments at 6; Conexions Comments at 8; Consumer Groups Reply Comments at 7; Cox Comments at 9; Keep USF Fair Comments at 2; MAG-Net Comments at 13-14; OH PUC Comments at 15; Open Access Comments at 2-3. *But see* One Economy Comments at 16-17; OR PUC Comments at 2; USTelecom Comments at 8.

<sup>182</sup> *Lifeline and Link Up*, WC Dkt. No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8306, para. 4 (2004) (*2004 Lifeline and Link Up Order and FNPRM*); *Universal Service First Report and Order*, 12 FCC Rcd 8776 at 8957, para. 341.

<sup>183</sup> Some parties dispute that the Commission has ever adopted a one-per-household requirement. *See, e.g.*, CTIA Comments at 13-16; GCI Comments at 37; AT&T PN Comments at 3. We disagree. As discussed in greater detail below, the aforementioned orders, *see infra* para. 76, established such a principle.



71. Beginning in 2005, the Commission has on a case-by-case basis permitted non-facilities-based providers, including prepaid wireless carriers, to obtain low-income support from the Universal Service Fund.<sup>184</sup> When designating certain non-facilities-based wireless carriers as Lifeline-only ETCs, the Commission has directed those carriers to establish safeguards to comply with the one-per-household rule, including requiring Lifeline consumers to self-certify under penalty of perjury upon service activation and then annually thereafter that they are the head of household and only receive Lifeline supported service from that carrier.<sup>185</sup> The greater availability of Lifeline services from a variety of providers has increased the likelihood that a residence may receive more than one Lifeline-supported telephone service.<sup>186</sup> Thus, notwithstanding existing program protections, including certification and verification requirements,<sup>187</sup> low-income consumers may be obtaining more than one Lifeline service per household, either knowingly or unwittingly.

72. In the *Lifeline and Link Up NPRM*, the Commission proposed to adopt a one-per-residential address requirement that would limit program support to a single subscription per residence, with “residence” defined as a U.S. Postal Service address.<sup>188</sup> The Commission also sought comment in the NPRM on how best to apply its proposed one-per-residence rule in non-traditional living situations, such as group living facilities and Tribal communities, in order to ensure that Lifeline is available to such consumers but also to prevent instances of duplicative support.<sup>189</sup>

73. In June 2011, the Commission codified a prohibition on qualifying individual consumers receiving more than one Lifeline subsidy at a given time.<sup>190</sup> In August 2011, the Bureau sought additional

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<sup>184</sup> See *i-Wireless Forbearance Order*, 25 FCC Rcd at 8784; *Virgin Mobile 2010 ETC Order*, 25 FCC Rcd at 17797; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3381; *TracFone Forbearance Order*, 20 FCC Rcd at 15095.

<sup>185</sup> See, e.g., *Telecommunications Carriers Eligible for Universal Service Support, Federal-State Joint Board on Universal Service, Conexions Petition for Forbearance*, WC Dkt. No. 09-197, CC Dkt. No. 96-45, Order, 25 FCC Rcd. 13866, 13871, para. 17 (2010) (*Conexions ETC Order*); *Telecommunications Carriers Eligible for Universal Service Support, Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier*, WC Dkt. No. 09-197, Order, 25 FCC Rcd. 17797, 17804, para. 20 (2010) (*Virgin Mobile ETC Order*).

<sup>186</sup> Beginning in May 2011, the Commission asked USAC to begin conducting state-specific in-depth data validations (IDVs) after USAC audits undertaken in the course of ongoing oversight over the Low Income Program revealed that multiple ETCs were seeking reimbursement for Lifeline service provided to the same individual, and in some instances, to more than one individual living in the same residence. See *2011 Duplicative Program Payments Order*, 26 FCC Rcd at 9022. Adoption of a rule clarifying the one-per-household policy will similarly advance our efforts to eliminate duplicative Lifeline payments and guard against waste, fraud, and abuse.

<sup>187</sup> 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 self-certify 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). Prior to designating a wireless carrier as a Lifeline-only ETC, the Commission has required each carrier to take specific steps to further comply with the single supported service per household rule and establish safeguards to prevent consumers from receiving Lifeline-supported service from multiple ETCs. See *i-Wireless Forbearance Order*, 25 FCC Rcd at 8784, 8790, para. 16; *Virgin Mobile 2010 ETC Order*, 25 FCC Rcd at 17797, 17804, para. 21; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3381, 3387, 3392, paras. 12, 25; *TracFone Forbearance Order*, 20 FCC Rcd at 15095, 15103-04, para. 18. These requirements are only applicable to Lifeline-only ETCs designated as such by the Commission, and not state-designated Lifeline ETCs.

<sup>188</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2805-08, paras. 106-16.

<sup>189</sup> See *id.* at 2707-10, paras. 113-14, 116-25.

<sup>190</sup> *2011 Duplicative Program Payments Order*, 26 FCC Rcd at 9026, para. 7.

comment on limiting Lifeline support to one discount per residential address.<sup>191</sup>

## 2. Discussion

74. As an initial matter, we reiterate that under no circumstances may a single consumer receive more than one Lifeline-supported service.<sup>192</sup> We also now codify a rule limiting Lifeline support to a single subscription per household.<sup>193</sup> We define “household” in a manner consistent with the definition used in the Low-Income Home Energy Assistance Program, as “any individual or group of individuals who are living together at the same address as one economic unit.”<sup>194</sup> For the purposes of this rule, an economic unit consists of all adult individuals contributing to and sharing in the income and expenses of a household.<sup>195</sup> In light of extensive comment received in response to the *Lifeline and Link Up NPRM* and the *Lifeline and Link Up Public Notice*, we believe that a one-per-household rule defined as an economic unit is a reasonable way to ensure that voice and broadband service are available to low-income consumers while minimizing the contribution burden on consumers and businesses.<sup>196</sup>

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<sup>191</sup> See *Lifeline and Link Up Public Notice*.

<sup>192</sup> *2011 Duplicative Program Payments Order*. In this Order, we move the codified restriction from section 54.401(a) to revised section 54.409(c).

<sup>193</sup> For commenters supporting a one-per-household rule, see, e.g., Cricket Comments at 8-9; Benton/PK/UCC Comments at 4; Consumer Groups Reply Comments at 4-5; CA PUC Reply Comments at 3, 5; LCCHR Comments at 8; NHMC Reply Comments at 1, 3.; Sprint Reply Comments at 1, 8; Letter from John T. Nakahata, Counsel, GCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Jan. 13, 2012) (GCI Jan. 13 *ex parte* Letter).

<sup>194</sup> The U.S. Department of Health and Human Services establishes eligibility for the Low-Income Home Energy Assistance Program. See 42 U.S.C. § 8622(5). See, e.g., Benton/PK/UCC Comments at 4; Consumer Group Comments at 18-19; LCCHR Comments at 8; USTelecom Comments at 20.

<sup>195</sup> For the purposes of the rule we adopt today, “adults” are persons eighteen years of age or older, and children living with their parents or legal guardians are considered to be part of their parent or guardian’s household. A household may include related and unrelated persons. If a low-income consumer has no/minimal income, but lives with someone else who provides financial support to him/her, the low-income consumer should be considered to be part of that person’s household. An economic unit consists of adults contributing to and sharing in the income and expenses of a household. Examples of persons living together at an address that may constitute separate economic units are multi-generational families living together (e.g., parents living with their adult children) or unrelated adult roommates. See, e.g., Letter from John T. Nakahata, Counsel, GCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at Attach. (filed Jan. 23, 2012) (GCI Jan. 23 *ex parte* Letter); U.S. Department of Agriculture, Food & Nutrition Service (FNS), Women, Infants and Children (WIC) Prescreening Tool, Household Size, available at <https://stars.fns.usda.gov/wps/pages/household.jsf> (stating that a “household” is everyone who lives in a home (including children) and shares income and household expenses (bills, food, etc.). They may be related or unrelated) (last visited Feb. 2, 2012); see also Committee on National Statistics, Division of Behavioral and Social Sciences and Education, National Research Council of the National Academies, Estimating Eligibility and Participation for the WIC Program: Final Report at 51-52 (Michele Ver Ploeg and David M. Betson, eds., 2003), available at [http://www.nap.edu/openbook.php?record\\_id=10804&page=52](http://www.nap.edu/openbook.php?record_id=10804&page=52); Nebraska Health & Human Services, Nebraska WIC Program, Family Size/Economic Unit Determination, WIC Procedure Manual, Volume 1 (Clinic Services & Management), Section D, (1999), available at <http://dhhs.ne.gov/publichealth/Documents/section%20D%20page%204%20Family%20Size%20Determination.pdf>; California WIC Program Manual, Certification, Eligibility Requirement, Determination of Income Eligibility, WIC 210-03 (2009), available at <http://www.cdph.ca.gov/programs/wicworks/Documents/WPM/WIC-WPM-210-03.pdf>.

<sup>196</sup> There is a wide variety of practices among Lifeline providers today. See, e.g., Letter from John T. Nakahata, Counsel, GCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Nov. 23, 2011) (GCI Nov. 23 *ex parte* Letter) (stating that GCI currently employs a nuclear family approach to a one-per-household limitation under which a consumer is not eligible for service if either anyone else residing (continued....))

75. A one-per-household limitation is also consistent with our prior determination that eligible consumers may receive universal service low-income support for “a single line in their principal residence,”<sup>197</sup> as well as other existing Lifeline program rules. For example, today, in those states where eligibility is permitted based on a percentage of income above the FPG, consumers may qualify for Lifeline based on income level by demonstrating that their household income is at or below 135 percent of the FPG.<sup>198</sup> Similarly, as several commenters observe,<sup>199</sup> most of the underlying public assistance programs on which consumers rely to meet the Lifeline eligibility criteria also are based on a “household unit.”<sup>200</sup> Because use of the household unit is already well-established, we believe that a one-per-household rule is a reasonable extension of our current program rules, and is unlikely to cause confusion among consumers and ETCs.

76. We disagree with those parties who dispute that the Commission has ever adopted a one-per-household requirement.<sup>201</sup> We believe that the Commission, in prior orders, has established such a requirement for the Lifeline program.<sup>202</sup> We acknowledge, however, that this rule has not been a model of clarity in the past and may have caused unnecessary confusion among consumers and ETCs. We thereby remedy this issue today by codifying the one-per-household requirement in our Lifeline program rules.

77. We also take steps to anticipate and resolve instances where multiple households reside at the same address. In cases where multiple households reside at an address, including in Tribal communities and group living facilities, program applicants must affirmatively certify that other Lifeline recipients residing at that address are part of a separate household, *i.e.*, a separate economic unit that does not share income and expenses.<sup>203</sup> The *Lifeline and Link Up Public Notice* noted that at least one ETC

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at the consumer's physical address has Lifeline-supported wireline service, or anyone in the consumer's nuclear family (defined as spouse and minor children) has Lifeline-supported wireless service); Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, enclosure at 6 (filed Nov. 10, 2011) (TracFone Nov. 10 *ex parte* Letter) (stating that TracFone currently limits its Lifeline enrollment to “one-per-residence”). A codified one-per-household rule as described above will make the Fund size more predictable because all ETCs will be adhering to the same rule.

<sup>197</sup> 2004 *Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd at 8306, para. 4; *Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341.

<sup>198</sup> Section 54.400(f) of the Commission's rules defines “income” for the purposes of establishing income-based eligibility for Lifeline as “all income actually received by all members of the household.” 47 C.F.R. § 54.400(f). *See also* Annual Update of the 2011 U.S. Department of Health & Human Services Poverty Guidelines, 76 Fed. Reg. 3,367, 3,637-38 (Jan. 20, 2011) (Federal Poverty Guidelines).

<sup>199</sup> *See, e.g.*, AT&T PN Comments at 2; CTIA Reply Comments at 10; Consumer Groups Comments at 19-20; Benton Foundation Comments at 4; LCCHR Comments at 8.

<sup>200</sup> Some examples of federal benefit programs that define “household” or “family” for the purpose of establishing eligibility include the Low-Income Home Energy Assistance Program (LIHEAP), Supplemental Nutrition Assistance Program (SNAP), National School Lunch Program (NLSP), Food Distribution Program on Indian Reservations (FDPIR), and Section 8 Public Housing Assistance.

<sup>201</sup> *See, e.g.*, CTIA Comments at 13-16; GCI Comments at 37.

<sup>202</sup> *See 2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd 8302 at 8306, para. 4; *Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341.

<sup>203</sup> *See* Letter from Mitchell F. Brecher, Greenberg Traurig, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed June 1, 2011) (TracFone June 1 *ex parte* Letter); *see also, e.g.*, CA PUC Reply Comments at 2 (noting that California permits Lifeline support in situations where multiple, qualified households reside at the same address); Cox PN Comments at 14-15; Letter (continued....)

already has procedures in place to comply with a one-per-household limitation in situations where multiple consumers claim the same U.S. Postal Service address, and sought comment on whether to require ETCs to implement similar processes to ensure compliance with a one-per-household rule.<sup>204</sup> Generally, this process allows the ETC to provide Lifeline service to multiple qualified residents at an address and also comply with the one-per-household limitation. However, some commenters responding to the Public Notice raised concerns about such an “escalation” process, arguing that the low-income consumers’ applications will typically be rejected and the consumer must initiate a dispute resolution process with the ETC to reverse that decision.<sup>205</sup> Thus, we find that it is preferable to implement procedures to enable applicants to demonstrate at the outset that any other Lifeline recipients residing at their residential address are part of a separate household. This will minimize burdens in resolving disputes, making it easier for consumers to enroll in the program.

78. As explained below in the database section, upon receiving an application for Lifeline support, all ETCs must check the duplicates database to determine whether an individual at the applicant’s residential address is currently receiving Lifeline-supported service.<sup>206</sup> The ETC must also search its own internal records to ensure that it does not already provide Lifeline-supported service to someone at that residential address. If nobody at the residential address is currently receiving Lifeline-supported service, the ETC may initiate Lifeline service after determining that the household is otherwise eligible to receive Lifeline and obtaining all required certifications from the household. If the ETC determines that an individual at the applicant’s residential address is currently receiving Lifeline-supported service, the ETC must take an additional step to ensure that the applicant and the current subscriber are part of different households. To enable applicants to make this demonstration, the ETC must require applicants to complete and submit to the ETC a written document, to be developed by USAC as discussed below, containing the following: (1) an explanation of the Commission’s one-per-household rule; (2) a check box that an applicant can mark to indicate that he or she lives at an address occupied by multiple households; (3) a space for the applicant to certify that he or she shares an address with other adults who do not contribute income to the applicant’s household and share in the household’s expenses or benefit from the applicant’s income, pursuant to the definition we adopt here today; and (4) the penalty for a consumer’s failure to make the required one-per-household certification (*i.e.*, de-enrollment).<sup>207</sup> All ETCs must collect the completed document upon initial program enrollment from those consumers who apply for Lifeline using a residential address that the ETC determines is already

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from Sindy Y. Yun, Staff Counsel, California Public Utilities Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. Nos. 11-42 *et al.*, Attach. A, at 5 (filed June 28, 2011) (California PUC Resolution T-17321, discussing California’s Lifeline “roommate rule”) (CA PUC June 28 *ex parte* Presentation).

<sup>204</sup> *Lifeline and Link Up Public Notice*, 26 FCC Rcd at 11102, para. 2(a)(ii).

<sup>205</sup> *See, e.g.*, Consumer Groups PN Comments at 5; Benton PN Comments at 16; *cf.* Consumer Advocates PN Comments at 8-9.

<sup>206</sup> The one-per-household rule we adopt today applies to all ETCs, whether designated as such by a state or by the Commission.

<sup>207</sup> For ease of administration, the ETC may also choose to provide pre-populated options for applicants to initial to provide further explanation about their address being occupied by multiple households (*e.g.*, share a home with relatives that do not share income or expenses, live with an adult roommate who does not share in the applicant’s income or expenses, applicant resides in a group housing facility). We expect that it will be advantageous for ETCs to begin gathering such information, as it will assist them in more easily populating the duplicates database, once it is implemented.

receiving Lifeline-supported service.<sup>208</sup>

79. We direct USAC, within 30 days of the Order's publication in the Federal Register, to develop and submit to the Bureau a form consistent with the above requirements to assist ETCs in providing Lifeline to low-income households sharing an address. Additionally, within 30 days of this Order's publication in the Federal Register, USAC should develop print and web materials to be posted on USAC's website that both USAC and ETCs can use to educate consumers about the one-per-household rule.<sup>209</sup> By requiring applicants to provide this information as part of the initial program sign-up process, we will alleviate delays in the enrollment process, as it is less likely that an application will be rejected due to multiple households sharing an address and will reduce the burden on the part of both the consumer and the ETC. Additionally, this process will assist persons living at an address shared by multiple households to select the telephone service of their choice, wireless or wireline, without encountering unreasonable barriers due to not being the "first resident" at an address to apply for Lifeline.<sup>210</sup>

80. We decline to adopt the one-per-residential address rule proposed in the NPRM in part because it would be inappropriate to exclude otherwise eligible consumers solely because they lack a unique residential address.<sup>211</sup> Consumers may live in residences for which there is no unique U.S. Postal Service address or where multiple persons or families share a residential address, and this may be particularly common for low-income consumers.<sup>212</sup> Based on the record before us, we decline to adopt a rule that would potentially have the unintended consequence of excluding low-income consumers from participation in Lifeline.<sup>213</sup> In contrast, by codifying the one-per-household requirement, we will enable

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<sup>208</sup> Thus, the first low-income consumer applying for Lifeline at a given address will not need to provide a one-per-household worksheet to the ETC. As described in the Certification section, below, ETCs must also obtain a certification from each consumer that he or she complies with the one-per-household requirement. *See supra* section VI.C (Certification of Consumer Eligibility for Lifeline). This certification must be provided by each Lifeline subscriber at initial enrollment and annually thereafter. *See supra* para. 120. In the event that a Lifeline subscriber joins a household that also obtains Lifeline (*i.e.*, becomes part of that economic unit), that subscriber will no longer be entitled to the Lifeline benefit. For example, if an adult Lifeline subscriber moves in with his or her parents, who also obtain Lifeline, and becomes a part of the parents' economic unit, only the subscriber's parents would be entitled to continue receiving Lifeline benefits.

<sup>209</sup> For example, USAC should develop a tool similar to WIC's that helps consumers to determine if they are eligible for Lifeline. *See, e.g.*, U.S. Department of Agriculture, Food and Nutrition Service (FNS), Women, Infants and Children (WIC) Prescreening Tool, Household Size, <https://stars.fns.usda.gov/wps/pages/household.jsf#> (last visited Jan. 30, 2012); U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program Prescreening Eligibility Tool, <http://www.snap-step1.usda.gov/fns/> (last visited Jan. 30, 2012).

<sup>210</sup> Commenters state that ETCs have interpreted the Commission's existing "one-per-household" rule by providing one Lifeline discount per residential address; thus, in some cases, only one resident at an address shared by multiple households has been able to obtain Lifeline service. *See, e.g.*, Fletcher School Reply Comments at 6. MFY Legal Services Reply Comments at 2.

<sup>211</sup> *See* Amvensys Comments at 6; GCI Reply Comments 2 at 2; MAG-Net Reply Comments at 6-8; NATOA Comments at 3; NHMC Reply Comments at 3; AT&T Comments at 17; Consumer Groups Comments at 18-19; YourTel Comments at 3.

<sup>212</sup> *See, e.g.*, GCI Comments at 38; NHMC Reply Comments at 3; Consumer Groups Comments at 19-20; State of Alaska Reply Comments at 2; Letter from James E. Dunstan, Brian Tagaban & W. Greg Kelly, Navajo Nation Telecommunications Regulatory Authority (NNTRC), to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 5 (filed Jan. 20, 2012) (NNTRC Jan. 20 *ex parte* Letter).

<sup>213</sup> Commenters provided numerous examples of these living situations, including: unrelated adults living together; multiple families living together; and multi-generational families living together; residents of Tribal lands; as well as group living facilities, such as nursing homes, domestic abuse shelters, and persons occupying commercially zoned (continued...)

eligible low-income consumers, including consumers in non-traditional living situations, to receive Lifeline support.

81. Several commenters recommend that the Commission adopt a rule allowing for one Lifeline-supported service per consumer, which they assert is the best means to ensure the availability of telephone service for low-income consumers.<sup>214</sup> Other commenters advocate for adoption of a more limited “one-per-person rule,” for example recommending that we adopt such a rule only for residents of Tribal lands or group living facilities.<sup>215</sup> In support of a one-per-person rule, such commenters point to the increasing wireless penetration rate, as well as the varied living situations of low-income consumers.<sup>216</sup> They state that although the increasing availability of wireless Lifeline services has increased consumer choice, it has also made it more difficult to enforce a one-per-household or one-per-residence requirement.<sup>217</sup> Such commenters also point out that the challenges in applying the Commission’s existing one-per-household policy have been exacerbated by the fact that some residences, such as those on Tribal lands, lack a unique U.S. Postal Service address.<sup>218</sup> Other commenters point to the potential public safety impact of a rule permitting only one Lifeline-supported service per household

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facilities. *See, e.g.*, GCI Reply Comments at 10; LCCHR Comments at 8; COMPTTEL Comments at 16; Sprint Comments at 11-12; MAG-Net Reply Comments at 9; Verizon Reply Comments at 5; MA DTC Comments at 7; YourTel Comments at 2; Cricket Reply Comments at 10; MI PSC Comments at 6; MFY Legal Services Reply Comments at 2.

<sup>214</sup> *See, e.g.*, GCI Comments at 39-40; COMPTTEL Comments at 15; NALA/PCA Comments at 2; NHMC Reply Comments at 1, 3; Budget/GreatCall/PR Comments at 9-10. In response to the *Lifeline and Link Up Public Notice*, a few commenters mistakenly stated that the Commission already adopted a one-per-qualifying consumer rule in the *2011 Duplicative Program Payments Order*. *See, e.g.*, AT&T Public Notice Comments at 1-2; CTIA Public Notice Reply Comments at 3-4. To the contrary, in that order, the Commission explicitly prohibited a qualified low-income individual from receiving more than one Lifeline-supported service at the same time; it did not hold that each such person was entitled to Lifeline benefits. *2011 Duplicative Program Payments Order*, 26 FCC Rcd. 9022 at 9026-28, paras. 8-14.

<sup>215</sup> *See, e.g.*, SBI Comments at 9-10 (recommending that the Commission provide one Lifeline discount per eligible adult to eligible residents of Tribal lands whose annual household income is at or below the federal poverty level, which SBI estimates would cost approximately \$25 million with a 32 percent program take rate); Letter from John T. Nakahata, Counsel, GCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2-3 (filed Dec. 6, 2011) (stating that Lifeline-supported wireless services should be available to each eligible adult on Tribal lands and estimating that this would expand service to an additional 22,000 adults in Alaska) (GCI Dec. 6 *ex parte* Letter); Letter from Steven M. Chernoff, Counsel, PR Wireless d/b/a Open Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 5 (filed Jan. 25, 2012) (stating that if a one-per-qualifying-adult rule is adopted for Tribal lands, it would be essential to extend such a rule to Puerto Rico, which has economic and infrastructure conditions similar to many Tribal areas) (PR Wireless Jan. 25 *ex parte* Letter). *But see* Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Dec. 22, 2011) (stating that there is no reason to base a rule of general applicability on unique circumstances that may be faced in specific areas) (NTCA Dec. 22 *ex parte* Letter).

<sup>216</sup> *See, e.g.*, NHMC Reply Comments at 1, 3; Sprint Reply Comments at 8; GCI Comments at 39-40; COMPTTEL Comments at 15; Budget/GreatCall/PR Comments at 9-10.

<sup>217</sup> Commenters point out that multiple members of a family, for example, or adult roommates may each sign up for a separate plan from different companies so that each person has his or her own subscription. Additionally, low-income consumers, such as residents of nursing homes or shelters, may share a residence with other similarly situated consumers, each of whom may wish to obtain a Lifeline service.

<sup>218</sup> SBI Comments at 10-12; GCI Reply Comments at 10; Consumer Groups Comments at 19-20; State of Alaska Reply Comments at 2.

or residential address.<sup>219</sup>

82. Although we acknowledge these concerns and issues, the program's ability to subsidize service for each eligible low-income individual is tempered by the need to minimize the contribution burden the program places on all consumers. A one-per-person rule could potentially increase the size of the low-income program by a significant percentage above the projected Fund size with the one-per-economic unit rule we adopt in this Order. By codifying a one-per-economic unit rule rather than a one-per-person rule, the Commission can strike an appropriate balance between ensuring that support is available for eligible low-income families and that universal service funds are spent in a fiscally prudent way.<sup>220</sup> Moreover, the expected savings from strict enforcement of a one-per-economic unit rule may be utilized to implement other measures to modernize the Lifeline program, such as the broadband pilot program we adopt below,<sup>221</sup> that will assist in meeting the challenges of broadband adoption for low-income consumers.

83. Contrary to assertions in the record that a one-per-household rule overlooks the importance of mobility for low-income consumers, the rule we adopt today will allow eligible low-income households to select the Lifeline service, whether landline or mobile, that best meets their needs.<sup>222</sup> We recognize the public safety concerns raised by some commenters with respect to a one-per-household rule. However, as noted above, the potential benefits of a one-per-person rule must be balanced against the corresponding increase in the burden on the consumers and businesses that contribute to USF.<sup>223</sup> The Lifeline program can play an important safety role for low-income consumers, particularly those in isolated rural areas; however, in some limited instances consumers may need to seek out other alternatives to ensure phone coverage in emergency situations (*e.g.*, non-Lifeline prepaid wireless services or postpaid wireline services). Additionally, as we clarify below, eligible consumers may choose to apply their Lifeline discount to the purchase of family shared calling plans, which may mitigate commenters' public safety concerns by making voice service available to more than one person in a household at any given time.<sup>224</sup>

84. We acknowledge those comments that urge the Commission to use caution to ensure that the rules we adopt do not impose additional or excessive administrative costs on ETCs, including small carriers.<sup>225</sup> The rules we adopt here will not unreasonably burden ETCs, including those with a small number of Lifeline subscribers, as the rules will require ETCs to obtain information from only a limited

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<sup>219</sup> Commenters state, for example, that one member of a household could take a mobile phone with them outside of their residence, leaving the rest of the household members without a phone. Letter from David A. LaFuria, Counsel, SBI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Nov. 25, 2011) (SBI Nov. 25 *ex parte* Letter); GCI PN Comments at 13; Letter from John T. Nakahata, Counsel, GCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 3 (filed Dec. 6, 2011) (GCI Dec. 6 *ex parte* Letter); Letter from Tom W. Davidson, Counsel, GRTI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Jan. 24, 2012) (GRTI Jan. 24 *ex parte* Letter).

<sup>220</sup> *See, e.g.*, Cricket PN Comments at 2-3; Consumer Groups Comments at 17-18; CA PUC Reply Comments at 3, 5; Cricket Reply Comments at 10. *See also supra* Section III.C (Performance Goals & Measures).

<sup>221</sup> *See infra* section IX.B (Broadband Pilot).

<sup>222</sup> *See, e.g.*, Amvensys Comments at 7; GCI Reply Comments at 6; PR Wireless Jan. 25 *ex parte* Letter at 1-2; NHMC Reply Comments at 3.

<sup>223</sup> *See supra* section III.C (Performance Goals & Measures).

<sup>224</sup> *See infra* section IX.A (Bundled Services).

<sup>225</sup> *See, e.g.*, NTCA Comments at 3-4; MITS Reply Comments at 7-8.

number of consumers about their household arrangements, specifically those who are residing in group living facilities or at addresses shared by multiple households.<sup>226</sup> This information is necessary to assist qualifying consumers in such living situations to obtain Lifeline service and to document their compliance with the one-per-household rule. As noted above, USAC will develop materials print and web materials that ETCs can use to educate consumers about the one-per-household rule. We stress that we are requiring consumers to furnish only as much information as is needed for the ETC to verify the consumer's compliance with the one-per-household rule, which allows more than one Lifeline-supported service at a given address in specific circumstances.<sup>227</sup> We are not expecting a consumer, for example, to list the names of other residents of their household or explain personal or familial relationships on the Lifeline application form. Rather, as stated above, it would be sufficient for a consumer to state that he or she shares an address with other adults who do not contribute income to their household or share in the household expenses. We are not imposing an obligation on ETCs to investigate or inquire further about the specifics of those household arrangements.

85. *Lifeline Address Requirement.* We adopt a requirement that, prior to providing service to a consumer, ETCs must obtain that consumer's residential address, which the consumer must indicate is his or her permanent address, and a billing address for the service (if the consumer's billing address differs from his or her residential address).<sup>228</sup> We also adopt a requirement that Lifeline participants provide their new address to the ETC within 30 days of moving. As described in the Database section below, ETCs will be required to enter this address in the duplicates database within 10 business days of receipt to determine if a subscriber is receiving Lifeline support from another ETC.<sup>229</sup> It is important that ETCs obtain accurate address information for all subscribers so that such information can be used to detect potential cases of duplicative support, and for eligible consumers to promptly notify the ETC of any changes in their address.

86. In the record of the *NPRM*, we observed that some ETCs have not permitted consumers to obtain Lifeline support when using a P.O. Box as their mailing address.<sup>230</sup> Instead, ETCs have required applicants seeking Lifeline support to provide a residential address on their application to ensure that the subscriber is eligible for supported service and is not receiving more than one subsidized service.<sup>231</sup> We sought comment on whether to codify a rule requiring ETCs to collect the residential addresses of their Lifeline applicants before they provide discounted service, meaning that if a consumer receives mail at a P.O. Box, the consumer would have to provide a residential address to which his or her service would be

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<sup>226</sup> A few commenters contend that the Commission should not require ETCs to collect potentially sensitive information about low-income consumers' household living arrangements. *See, e.g.*, AT&T Comments at 18; CTIA Reply Comments at 11; COMPTTEL PN Comments at 6-7.

<sup>227</sup> We acknowledge the challenges associated with the lack of addresses on Tribal lands and discuss this issue further below. *See infra* para. 166. The record indicates that residential addresses are frequently non-existent on Tribal lands and, where present, often differ significantly from residential addresses off Tribal lands. *See, e.g.*, SBI Comments at 14-16.

<sup>228</sup> *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2807-08, para. 115 and Appendix A, 47 C.F.R. § 54.408(a)(2) (proposed rule). The rule is supported by CenturyLink and the Missouri Public Service Commission. *See* CenturyLink Comments at 8; MO PSC Comments at 11-12.

<sup>229</sup> *See infra* section VII.A (National Lifeline Accountability Database).

<sup>230</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2792, para. 63. *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.

<sup>231</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2792, para. 63.



tied.<sup>232</sup>

87. Lifeline applicants will not be permitted to use a P.O. Box address as their Lifeline address. We are concerned that some subscribers could list a P.O. Box as their address in an effort to avoid complying with our one-per-household requirement. Moreover, requiring a residential address to serve as the Lifeline address will facilitate the discovery of duplicative support for a particular household or subscriber.<sup>233</sup> Thus, requiring a residential address is an important tool in reducing the potential for waste, fraud, and abuse in the program. We recognize that there are also circumstances where an applicant may not have a permanent residential address due to a temporary living situation or because the address is not recognized by the post office.<sup>234</sup> In the case of temporary living situations, the applicant must provide a temporary residential address or other qualifying address, such as the address of a temporary shelter, or a friend or family member, which could be used to perform a check for duplicative support and trigger the requirement that the consumer complete the one-per-household document referenced above.<sup>235</sup> In the case of addresses not recognized by the post office, including residences on Tribal lands, the applicant must provide a descriptive address which could be used to perform a check for duplicative support and trigger the requirement to complete the one-per-household document. For the consumer's billing address, an ETC may accept a P.O. Box or General Delivery address in lieu of a residential address.<sup>236</sup>

88. *Persons with temporary addresses.* As stated above, the one-per-household rule will be applicable to individuals residing in group living facilities, including, but not limited to, nursing homes, shelters, halfway houses, boarding houses, and apartment buildings without individual unit numbers. This rule and its associated procedures will provide an administratively feasible means for ETCs to provide Lifeline-supported service to residents of these facilities, while also reducing the risk of waste, fraud, and abuse. Some group living facilities, however, may serve consumers who lack a permanent address. In the *2010 Joint Board Recommended Decision*, the Joint Board recommended that the Commission consider how to best serve such populations while also maintaining a commitment to preventing waste, fraud, and abuse in the program.<sup>237</sup>

89. We agree with those commenters who state that consumers without permanent addresses should not be precluded from participation in Lifeline. However, we also share the Joint Board's concern

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<sup>232</sup> *Id.*

<sup>233</sup> See, e.g., MO PSC Comments at 5; IN URC Comments at 4. As discussed above, while our rules will allow ETCs to provide service to multiple households at an address, this will require the consumer to take affirmative steps to confirm that his or her housing arrangement involves multiple households at the same address and to certify that no more than one Lifeline subsidy is received by his or her household.

<sup>234</sup> See, e.g., GCI Jan. 13 *ex parte* Letter; Letter from David A. LaFuria, Counsel, SBI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Dec. 6, 2011) (SBI Dec. 6 *ex parte* Letter); Letter from Erica M. Olsen, MSW, Technology Safety Specialist, National Network to End Domestic Violence (NNEDV), WC Dkt. No. 11-42 *et al.* (filed July 27, 2011) (NNEDV July 27 *ex parte* Letter).

<sup>235</sup> See *supra* paras. 77-79. See, e.g., Family Services Manual, Oregon Department of Human Services, Supplemental Nutrition Assistance Program (SNAP), Section D (Non-Financial Eligibility), Residency, <http://apps.state.or.us/cf1/EligManual/EMnlFrame.htm?Page+ID=06-toc> (noting that persons without fixed residential addresses can provide the address of a shelter or the address of a friend to receive SNAP benefits) (last visited Feb. 2, 2012).

<sup>236</sup> See USPS.com, Research Delivery Options, General Delivery, <https://www.usps.com/manage/research-delivery-options.htm>.

<sup>237</sup> See *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15602-03, paras. 12-14.

with respect to the “inherent difficulties of serving and verifying such highly mobile populations.”<sup>238</sup> Accordingly, we adopt additional protections to be implemented by those ETCs that serve consumers without a permanent address, in order to assist ETCs in more easily confirming such consumers’ continued eligibility for the program. Specifically, we adopt a rule requiring ETCs to inquire on their Lifeline application forms whether the applicant’s address is a temporary one. If it is, the ETC must verify with the subscriber every 90 days that he/she continues to rely on that address.<sup>239</sup> As noted above, if the subscriber has moved, the ETC must update the database with the information within 10 business days of receipt of that information.<sup>240</sup> Similar to the non-usage requirement for prepaid Lifeline service, if the subscriber fails to respond within 30 days of the ETC’s attempts to verify the temporary address, the subscriber must be de-enrolled from Lifeline pursuant to the program’s de-enrollment rules. This requirement will enable consumers with temporary addresses to reap the benefit of the Lifeline program, but will also alleviate the concerns about waste, fraud, and abuse raised by the Joint Board in the *2010 Joint Board Recommended Decision*.<sup>241</sup>

90. *Application of the One-Per-Household Rule to Commercially Zoned Buildings.* As noted in the NPRM, there are instances where otherwise eligible applicants have been denied Lifeline service because they live in facilities that are zoned for commercial, rather than residential use.<sup>242</sup> Such commercial residences typically tend to be group living facilities, such as single-room occupancy buildings, lodging houses, rooming houses, and shelters, rather than individual residences.<sup>243</sup> Several commenters responding to the NPRM state that otherwise eligible consumers should not be denied Lifeline service due to their residence in these commercially zoned facilities.<sup>244</sup> We agree. Accordingly, we clarify that if the consumer is otherwise eligible for Lifeline and the consumer certifies at enrollment that the address of record provided by the consumer is his or her residential address, the consumer should not be denied Lifeline because of residence in an area that is commercially zoned.

### C. Certification of Consumer Eligibility for Lifeline

91. In this section, we adopt uniform and consistent measures to check low-income consumers’ initial and ongoing eligibility for Lifeline. The measures we adopt today will increase consistency in certification practices and reduce the number of ineligible consumers in the Lifeline program.<sup>245</sup> First, we take several steps in this Order to move expeditiously toward the goal of having an

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<sup>238</sup> *Id.* at 15603, para. 14.

<sup>239</sup> We do not impose a requirement as to what method ETCs must use to verify the address of such subscribers. For example, a free-of-charge text message confirming the subscriber’s address or a confirmation from a group living facility that the subscriber resides there could be sufficient to satisfy this requirement.

<sup>240</sup> *See supra* para. 85.

<sup>241</sup> *See 2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15602-03, paras. 12-14. We do not expect this requirement to impose unreasonable burdens on ETCs. As stated above, we do not prescribe the method that ETCs must use to verify the address of those subscribers utilizing temporary addresses. *See supra* n.240. Moreover, in most cases this rule is likely to be applicable to only a small portion of an ETC’s Lifeline subscriber base. Thus, the rule we adopt today properly balances our obligation to provide access to telecommunications services for eligible low-income consumers with our responsibility to ensure that funds are spent in a fiscally responsible way.

<sup>242</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2808, para. 117.

<sup>243</sup> *Id.* at 2808, paras. 117-18.

<sup>244</sup> *See, e.g.*, CenturyLink Comments at 13; FL PSC Comments at 17; MA DTC Comments at 5; Media Action Grassroots Network Comments at 19; MI PSC Comments at 6; MFY Legal Reply Comments at 2.

<sup>245</sup> To date, “certification” has referred to the initial determination of eligibility for enrollment in the program, and “verification” has referred to the subsequent determinations of ongoing eligibility after a subscriber has already been (continued...)

automated means to determine Lifeline eligibility for all consumers. Second, we amend section 54.410 of the Commission's rules to require that ETCs (or the state Lifeline program administrator, where applicable) check the eligibility of low-income consumers seeking to enroll in Lifeline either by accessing electronic eligibility databases, where available, or by reviewing documentation from the consumer demonstrating his/her eligibility for Lifeline service.<sup>246</sup> Third, we amend section 54.410 of the Commission's rules to require Lifeline subscribers to make initial and annual certifications under penalty of perjury concerning their eligibility for Lifeline. Fourth, we amend sections 54.410 and 54.407 of the Commission's rules to require that all Lifeline subscribers certify upon enrollment in Lifeline and annually thereafter that the subscriber's household is receiving no more than one Lifeline-supported service. Fifth, we amend section 54.416 of the Commission's rules to require ETCs to certify to their compliance with our rules on an annual Lifeline eligible telecommunications carrier certification form and when submitting FCC Forms 497 to USAC for reimbursement.

92. We also take several actions to improve the current methodology employed by ETCs to verify ongoing consumer eligibility for Lifeline. First, we amend section 54.410 of the Commission's rules to replace the existing verification procedures and methodology with a uniform annual re-certification requirement to be performed through the end of 2012 by ETCs in all states (or the state Lifeline program administrator, where applicable), while also allowing ETCs to leverage existing databases to more easily confirm the continued eligibility of their subscribers. Second, we establish a process to transition, beginning in 2013, the responsibility for annual subscriber re-certification to USAC, at the ETC's election. Third, we amend section 54.405 of the Commission's rules to adopt a procedure for de-enrolling those subscribers who do not respond to an ETC's or state's annual re-certification efforts, which will encourage consumer accountability and ensure that universal service support is not directed toward consumers who may not be eligible for Lifeline. Fourth, to provide the Commission and the states with a more complete set of consumer eligibility data, we codify a rule requiring ETCs in all states to share their annual re-certification results with USAC, the Commission, and their respective state commissions, where the carrier is subject to state jurisdiction.

### 1. Background

93. The Commission's current rules regarding the certification and verification of consumer eligibility for Lifeline differ based on whether a state maintains its own universal service low-income program. States with their own low-income programs may establish rules to govern the initial certification and ongoing verification of consumers' eligibility for Lifeline support.<sup>247</sup> Such states are referred to as "non-federal default states." In states without their own low-income programs, referred to as "federal default states," ETCs must follow the federal certification and verification requirements set forth in sections 54.409, 54.410, and 54.416 of the Commission's rules.<sup>248</sup> Thus, ETCs providing Lifeline service in multiple states may be required to comply with various state and/or federal certification and

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enrolled in and is receiving support from the program. *See, e.g., 2010 Joint Board Recommended Decision, 25 FCC Rcd at 15606-15611, paras. 23-34.* As detailed below, we replace this approach today with a process requiring ETCs to make and obtain certain initial and annual attestations relating to consumer eligibility for Lifeline. Accordingly, in the Discussion section below we use the term "certification" to collectively refer to the procedures that ETCs (or states, where applicable) must employ to check both the initial and ongoing eligibility of their Lifeline subscribers.

<sup>246</sup> Throughout this section, we use the term "state Lifeline program administrator", "states" and "state agencies" interchangeably to include any governmental agency within a state, or its agents, that may perform functions relating to consumer eligibility.

<sup>247</sup> *See* 47 C.F.R. §§ 54.410(a)(1), (c)(1).

<sup>248</sup> *See* 47 C.F.R. §§ 54.409(d); 54.410(a)(2), (c)(2); 54.416.

verification procedures. Moreover, certification and verification requirements may even vary from ETC to ETC within a given state because some states do not assert jurisdiction over certain carriers within the state (e.g., wireless ETCs).<sup>249</sup> In such circumstances, the federally-designated ETCs may be subject to different standards from the state-designated ETCs in the same state.

94. *Initial Certification of Consumer Eligibility.* Certification is the process by which eligible consumers establish their qualification for Lifeline. Certification occurs at the time a consumer is applying to enroll in Lifeline.<sup>250</sup> To qualify for universal service low-income support, a consumer must first demonstrate that he or she meets the eligibility criteria set forth in federal or state rules, as applicable. Sections 54.409 and 54.410 of the Commission's rules provide two options for consumers in federal default states to choose between to establish eligibility for Lifeline: (1) consumers may self-certify that they are eligible for Lifeline support based on participation in certain federal programs;<sup>251</sup> or (2) consumers may provide documentation showing that they meet the income threshold requirements set forth in the Commission's rules.<sup>252</sup> Non-federal default states, however, exhibit variation in permitted certification practices, particularly with respect to the proof required by low-income consumers seeking to enroll in Lifeline based on participation in a qualifying state or federal program.<sup>253</sup> According to the 2010 GAO study of the Lifeline program, 25 states currently require consumers to provide documentation of enrollment in a qualifying program.<sup>254</sup>

95. *Annual Verification of Continued Eligibility.* Currently, section 54.410 of the Commission's rules sets out a bifurcated structure for ETCs to follow when verifying consumers' ongoing eligibility for Lifeline. Pursuant to section 54.410(c)(1) of the Commission's rules, ETCs in non-federal-default states must comply with the verification procedures established by the states, each of which may adopt its own method for verifying continued consumer eligibility.<sup>255</sup> GAO's 2010 report noted wide variation in methods employed by non-federal-default states to verify consumers' ongoing eligibility for Lifeline.<sup>256</sup> Section 54.410(c)(2) of the Commission's rules requires ETCs in federal default states to annually verify the continued eligibility of a statistically valid random sample of their consumers.<sup>257</sup> The size of annual samples are based on a number of factors, including the number of

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<sup>249</sup> Under the current rules, when a state commission mandates Lifeline support but does not impose certification and verification requirements on certain carriers or customers within the state, the affected carriers must follow federal default criteria for certification and verification purposes. *See Lifeline and Link Up*, WC Dkt. No. 03-109, Order and Declaratory Ruling, 25 FCC Rcd 1641, 1641-42, 1645, paras. 1, 9 (2010) (*Lifeline Declaratory Ruling*).

<sup>250</sup> *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd at 8317, para. 23.

<sup>251</sup> 47 C.F.R. § 54.409(b), (c), (d)(1).

<sup>252</sup> 47 C.F.R. §§ 54.409(b), (d)(2), 54.410(a)(2). Currently, consumers in federal default states who wish to qualify for Link Up support based on income levels must present documentation showing they meet the income threshold requirements in the Commission's rules. 47 C.F.R. § 54.416.

<sup>253</sup> 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. 2010 GAO REPORT at 51.

<sup>254</sup> *Id.*

<sup>255</sup> 47 C.F.R. § 54.410(c)(1).

<sup>256</sup> *See* 2010 GAO REPORT at 51. 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. *Id.*

<sup>257</sup> 47 C.F.R. § 54.410(c)(2); *see also Lifeline and Link Up NPRM*, 26 FCC Rcd at 2879-81, Appendix B (overview of the current sampling methodology used by ETCs in federal default states). Subscribers who are sampled in (continued...)

Lifeline subscribers served by the ETC and the previously estimated proportion of Lifeline subscribers served that are “inappropriately taking” Lifeline service.<sup>258</sup> However, the current methodology assumes that no more than six percent of consumers would be found ineligible in any given year.<sup>259</sup>

96. In the *Lifeline and Link Up NPRM*, the Commission suggested several changes to the Lifeline certification and verification rules aimed at improving the integrity of the program by strengthening federal requirements and introducing greater consistency nationwide.<sup>260</sup> The Commission developed such proposals drawing, in large part, on recommendations of the Joint Board and the findings of the GAO in its 2010 review of the low-income program.<sup>261</sup> GAO, for example, found that the Lifeline program lacks an adequate front-end mechanism to prevent ineligible consumers from receiving program support, and that there are risks associated with self-certification of subscriber eligibility.<sup>262</sup> Additionally, the Joint Board recommended that, to promote nationwide uniformity in the verification of consumer eligibility for Lifeline, the Commission adopt uniform, minimum verification procedures and sampling criteria that would apply to ETCs in all states.<sup>263</sup> The changes we adopt today directly address the GAO’s critiques and the Joint Board’s recommendations.

## 2. Discussion

### a. Initial and Annual Certification Requirements

97. *Eligibility Databases.* We find that establishing a fully automated means for verifying consumers’ initial and ongoing Lifeline eligibility from governmental data sources would both improve the accuracy of eligibility determinations, ensuring that only eligible consumers receive Lifeline benefits, and reduce burdens on consumers as well as ETCs. We therefore direct the Bureau and USAC to take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common programs through

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federal default states and who qualify for Lifeline under program-based eligibility criteria must present proof of their continued eligibility and self-certify under penalty of perjury that they continue to participate in a qualifying public assistance program. See 47 C.F.R. § 54.410(c)(2). Subscribers who are sampled in federal default states and who qualify for Lifeline based on income must present current documentation of income and self-certify under penalty of perjury as to the number of individuals in the subscriber’s household and that the documentation presented accurately represents their household income. *Id.* ETCs are required to retain copies of the self-certifications but not the underlying documentation of income. See 47 C.F.R. § 54.417.

<sup>258</sup> See *Lifeline and Link Up NPRM*, at 26 FCC Rcd at 2879-81, Appendix B (Sample Size Table); see also *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd at 8365, Appendix J-1.

<sup>259</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2879-81, Appendix B (“In all instances, the estimated proportion P should never be less than .01 or more than .06.”).

<sup>260</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2824-31, paras. 167-98.

<sup>261</sup> See generally *2010 Joint Board Recommended Decision*; 2010 GAO REPORT.

<sup>262</sup> See 2010 GAO REPORT at 37.

<sup>263</sup> *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15607, para. 26. However, the Joint Board recommended that states be permitted to utilize different and/or additional verification procedures, as long as those procedures are at least as effective in detecting waste, fraud, and abuse as the minimum federal procedures. *Id.* at 15608, para. 28. For additional discussion of the Joint Board’s recommendations with respect to verification, see *infra* discussion at section VI.C.2.b (Annual Re-Certification of Consumer Eligibility).

which consumers qualify for Lifeline.<sup>264</sup> Several states have already developed qualifying databases through which a Lifeline subscriber's initial and continued eligibility can be verified, and in some cases eligibility determinations are performed by a third-party administrator rather than ETCs. In other states, ETCs can directly access an eligibility database.<sup>265</sup> We take several steps in this Order to move expeditiously toward the goal of having an automated means to determine Lifeline eligibility for all consumers. First, we direct the Wireline Competition Bureau to reach out to the other federal government agencies responsible for the qualifying programs to help facilitate access to the data necessary to determine subscriber eligibility. Second, we direct the Bureau to host a series of workshops including non-governmental entities such as ETCs, technical experts, and database vendors to identify pragmatic solutions to issues regarding the establishment of one or more databases. Finally, we seek additional targeted comment on implementation issues in the attached further notice.<sup>266</sup>

98. *Determination of Initial Program Eligibility.* We first amend section 54.410 of the Commission's rules to require all ETCs, prior to enrolling a new subscriber in Lifeline, to access state or federal social services eligibility databases, where available, to determine a consumer's program-based eligibility.<sup>267</sup> By accessing state or federal social service eligibility data, ETCs will more efficiently and accurately determine whether a consumer is eligible for low-income support.<sup>268</sup> As discussed below, we conclude that a rule requiring ETCs to access databases where available at enrollment to confirm program-based eligibility is necessary in light of evidence demonstrating that consumer self-certification of program-based eligibility does not effectively prevent ineligible consumers from enrolling in Lifeline.<sup>269</sup> Where ETCs access state or federal databases to make determinations about consumer

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<sup>264</sup> Based on the information in the record, most consumers qualify for Lifeline through Medicaid, SNAP, and SSI. See *infra* paras. 104 and n.1063. We recognize that meeting this goal will require coordinated action among numerous parties outside of the Commission.

<sup>265</sup> As the record indicates, there are at least nine states with an automated means for ETCs or state administrators to determine consumer participation in at least some programs which qualify consumers for Lifeline support. See Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 5 (filed Jan. 24, 2012) (noting that TracFone has access to eligibility information in Florida, Wisconsin, Maryland, Texas and Washington state) (TracFone Jan. 24 *ex parte* Letter); Letter from Shana Knutson, Staff Attorney, Nebraska Public Service Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. Nos. 11-42 *et al.*, at 2 (filed Aug. 8, 2011) (NE PSC Aug. 8 *ex parte* Letter); Letter from Jon Cray, Residential Service Protection Fund Program Manager, Public Utilities Commission of Oregon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. 11-42 *et al.*, at 2 (filed Aug. 24, 2011) (OR PUC Aug. 24 *ex parte* Presentation); NY PSC Comments at 10; Letter from Robert W. Wilhelm, Jr., Regulatory Pricing Manager, Cincinnati Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Aug. 30, 2011) (discussing data access to Ohio energy assistance program) (Cincinnati Bell Aug. 30 *ex parte* Letter).

<sup>266</sup> See *infra* FNPRM, section XIII.A (Establishing an Eligibility Database).

<sup>267</sup> This discussion focuses on certification requirements for consumers seeking Lifeline support. ETCs must also follow the certification procedures set forth in section 54.410, as modified, to determine an eligible resident of Tribal lands' initial eligibility for Link Up.

<sup>268</sup> See, e.g., Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Nov. 22, 2011) (TracFone Nov. 22 *ex parte* Letter); Letter from Danielle Frappier, Counsel, Nexus Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Nov. 18, 2011) (proposing that ETCs participating in the Lifeline program engage in a cooperative effort to establish a database to screen for duplicative Lifeline subscriptions and confirm consumer eligibility) (Nexus Nov. 18 *ex parte* Letter).

<sup>269</sup> See *infra* paras. 102-05.

eligibility for Lifeline, we do not require ETCs to obtain from a new subscriber documentation of his or her participation in a qualifying federal program. The ETC or its representative must note in its records what specific data was relied upon to confirm the consumer's initial eligibility for Lifeline (*e.g.*, name of a state database.) This rule will reduce administrative burdens on ETCs by allowing them to leverage existing systems and processes. In states where the ETC is not responsible for the initial determination of consumer eligibility, a state agency or third-party administrator, as applicable, may query the database in lieu of the ETC doing so.

99. We recognize that some ETCs will not have access to centralized consumer eligibility data in the near-term, or may only have access to eligibility data for a subset of the social services programs in a given state. In states where ETCs are responsible for establishing eligibility (*i.e.*, there is no state administrator, and the state commission or other state agency is not making eligibility determinations) and there is no automated means for ETCs to check electronic databases for eligibility, an ETC must review documentation to determine eligibility for new subscribers until such time as a qualifying eligibility database is available.<sup>270</sup> In states where the ETC is not responsible for the initial determination of consumer eligibility, a state agency or third-party administrator, as applicable, may obtain consumer documentation in lieu of the ETC doing so.<sup>271</sup>

100. No later than June 1, 2012, ETCs in states where carriers are responsible for checking consumer eligibility must implement certification procedures to document the eligibility of those consumers seeking to qualify for Lifeline under program-based criteria.<sup>272</sup> Consistent with our current Lifeline rules, ETCs in states where carriers are responsible for checking consumer eligibility must have already implemented procedures to document the eligibility of consumers seeking to qualify for Lifeline under income-based criteria.<sup>273</sup> ETCs will be required to comply with these documentation requirements unless access to an electronic eligibility or income database is available.

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<sup>270</sup> For comments in support of a rule requiring consumers to provide documentation of program-based eligibility, *see, e.g.*, Letter from Sen. Claire McCaskill, United States Senate, to Hon. Julius Genachowski, Chairman, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Dec. 9, 2011) (*Sen. McCaskill Letter*); CenturyLink Comments at 16-17; NY PSC Comments at 7; MI PSC Comments at 8; OH PUC Comments at 18; Cricket Reply Comments at 13; DC PSC Comments at 5; MO PSC Comments at 13; NE PSC Comments at 12; Letter from Commissioner Anne Boyle, Nebraska Public Service Commission, to Hon. Julius Genachowski, Chairman, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed July 21, 2011) (stating that self-certification exacerbates the potential for waste, fraud, and abuse in the Lifeline program) (*Comm'r Boyle Letter*); Letter from Norina T. Moy, Director, Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Jan. 18, 2012) (Sprint Jan. 18 *ex parte* Letter).

<sup>271</sup> We note that while we require upfront documentation of program eligibility where a carrier cannot access state or federal eligibility data evidencing the consumer's participation in a qualifying federal program, the amended re-certification process we adopt today reduces burdens on consumers and carriers by eliminating the requirement that Lifeline subscribers in federal default states provide annual documentation of their continued eligibility. *See infra* section VI.C.2.b.

<sup>272</sup> We recognize that ETCs may choose to enroll consumers online or by phone. We do not discourage ETCs from employing these types of enrollment methods, but stress that ETCs choosing to utilize them must have a means for verifying eligibility pursuant to the rules set forth in this order.

<sup>273</sup> The rule we adopt today does not modify the current rule requiring consumers qualifying for Lifeline under income-based criterion to present documentation of household income to the ETC prior to enrolling in the program. *See* 47 C.F.R. § 54.410(a). Where ETCs access state or federal databases to make determinations about consumer income-based eligibility for Lifeline, we do not require ETCs to obtain from a new subscriber documentation of his or her household income. The ETC or its representative must note in its records what specific data was relied upon to confirm the consumer's initial eligibility for Lifeline (*e.g.*, name of a state income database).

101. Acceptable documentation of program eligibility would include: (1) the current or prior year's statement of benefits from a qualifying state, federal or Tribal program; (2) a notice letter of participation in a qualifying state, federal or Tribal program; (3) program participation documents (*e.g.*, the consumer's Supplemental Nutrition Assistance Program (SNAP) electronic benefit transfer card or Medicaid participation card (or copy thereof); or (4) another official document evidencing the consumer's participation in a qualifying state, federal or Tribal program. Acceptable documentation of income eligibility includes the prior year's state, federal, or Tribal 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/Workmen's Compensation statement of benefits, federal or Tribal notice letter of participation in General Assistance, or a divorce decree, child support award, or other official document containing income information.<sup>274</sup> While ETCs will be required to examine such documentation as appropriate to verify a consumer's program or income-based eligibility for initiating Lifeline service, ETCs are not required to and should not retain copies of the documentation.<sup>275</sup> Rather, pursuant to section 54.417 of our rules, the ETC or its representative should establish policies and procedures to review such documentation and must keep accurate records detailing how the consumer demonstrated his or her eligibility. Within 45 days of the effective date of this Order, USAC should develop training materials to educate ETCs on the types of documentation, consistent with the list of documentation described above, that may be presented by low-income consumers to demonstrate program and income-based eligibility for Lifeline.<sup>276</sup>

102. We view the documentation requirement as necessary to protect the integrity of the program. Recent verification data provides troubling evidence that suggests additional measures are needed to prevent ineligible consumers from signing up for Lifeline. Up to an estimated 15 percent of existing Lifeline subscribers could be ineligible for Lifeline benefits, potentially representing hundreds of millions of dollars in support that could have been used to serve eligible subscribers.<sup>277</sup> As an example, Appendix D, Tables 1 and 2 summarize the percentage of subscribers deemed ineligible for Lifeline based on the results of verification surveys conducted by ETCs in 2011 and 2007.<sup>278</sup> The verification survey data for 2011 and 2007 separately reports ineligibility and non-response rates. Based on USAC's preliminary results for 2011, 9 percent of subscribers surveyed responded that they were no longer

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<sup>274</sup> We clarify that the consumer must provide either documentation of income that covers a full year (*e.g.*, pay stubs) or three consecutive months' worth of the same types of document within the previous twelve months. As noted by GCI, the current language of 47 C.F.R. § 54.410 could be construed to preclude some consumers from obtaining Lifeline support within the first three months of the calendar year, because three months' worth of documentation is unavailable. *See* Letter from John T. Nakahata, Counsel, General Communications Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Dec. 19, 2011) (GCI Dec. 19 *ex parte* Letter).

<sup>275</sup> *See also, e.g.*, YourTel Comments at 12-13 (stating that carriers should not be required to retain documents containing potentially sensitive information).

<sup>276</sup> These materials should be developed in conjunction with the print and web materials that USAC creates to assist ETCs in educating consumers about the one-per-household rule. *See supra* para. 79.

<sup>277</sup> Staff conservatively assumes that ineligible subscribers could constitute up to 15 percent of the total Lifeline subscribers in 2011 – 2014.

<sup>278</sup> *See* Appendix D, Tables 1 and 2; *see also* Letter from Karen Majcher, Vice President High Cost and Low Income Division, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Dkt. Nos. 11-42, 03-109, CC Dkt. No. 96-45 (Jan. 10, 2012) (*USAC Certification & Verification Letter and Data*); Letter from Karen Majcher, Vice President High Cost and Low Income Division, Universal Service Administrative Company, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Dkt. Nos. 11-42, 03-109, CC Dkt. No. 96-45 (Jan. 24, 2012) (*USAC 2011 Verification Results Letter*).



eligible for Lifeline, in comparison to the 27 percent of subscribers who failed to respond to the carriers' verification surveys.<sup>279</sup> Similarly, in 2007, 12 percent of subscribers surveyed responded that they were no longer eligible for Lifeline, in comparison to the 10 percent of consumers who failed to respond to the carriers' verification surveys.<sup>280</sup> Moreover, in some cases, a substantial percentage of subscribers surveyed were found to be ineligible for the program.<sup>281</sup> This data suggests that existing certification practices may be insufficient to prevent ineligible consumers from enrolling in Lifeline.<sup>282</sup>

103. Lifeline subscribership data also reflects troubling evidence suggesting that ineligible consumers may be enrolling in the program at a particularly rapid rate in states that do not require documentation of program-based eligibility at sign-up. For example, subscribership data demonstrates that the number of Lifeline subscribers in Louisiana, which does not require documentation of program participation at enrollment, increased by 1,565 percent from 2008 to 2011.<sup>283</sup> In comparison, the number of Lifeline subscribers in Kansas, which requires program participants to provide documentation of

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<sup>279</sup> Appendix D, Table 1; *USAC 2011 Verification Results Letter* at 1, 3. In the 2011 verification survey results compiled by USAC, 4,694 subscribers were found to be ineligible for Lifeline, out of a total of 52,865 subscribers surveyed by ETCs (or the state Lifeline administrator, where applicable). In addition, 14,219 or 27 percent of subscribers surveyed could be deemed ineligible for Lifeline due to failure to respond to the carrier or state administrator's verification efforts. That is, at least 9 percent of subscribers surveyed in 2011 were found to be ineligible for Lifeline. In the 2007 Lifeline verification survey, 23,360 subscribers were found to be ineligible for Lifeline, out of a total of 203,057 subscribers surveyed.

<sup>280</sup> See Appendix D, Table 2; see also *USAC Certification & Verification Letter and Data* at 2-3. In the 2007 Lifeline verification survey, 23,360 subscribers were found to be ineligible for Lifeline, out of a total of 203,057 subscribers surveyed. Therefore, at least 12 percent of subscribers surveyed in 2007 were found to be ineligible. In addition, 19,572 subscribers, *i.e.*, 10 percent of the sample, could be deemed to be ineligible for Lifeline due to failure to respond to the carrier or state administrator's verification efforts. One commenter asserts that the results of its verification surveys do not reflect a significantly higher percentage of ineligible consumers in those states that currently require documentation of program eligibility as compared to states that do not. Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Aug. 3, 2011) (TracFone Aug. 3 *ex parte* Letter) (noting that 34.9 percent of Safelink consumers in Louisiana could not verify continued eligibility for Lifeline, as opposed to 30.5 percent of Safelink consumers in Missouri). See also Nexus Reply Comments at 11-13; *cf.* AARP Comments at 9 (stating that there is no basis to believe that large numbers of consumers will fraudulently assert eligibility for Lifeline, particularly if verification surveys are conducted on a yearly basis).

<sup>281</sup> See Appendix D, Table 1 (in Alabama, for example, which permits consumers to self-certify their participation in a qualifying federal or state program, see, *e.g.*, TracFone Jan. 24 *ex parte* Letter, nearly twenty percent of subscribers surveyed in 2011 were found to be ineligible for Lifeline).

<sup>282</sup> We do recognize that it is not unusual for consumers to fail to respond to surveys. At the time same, a subscriber's failure to confirm his or her continuing eligibility for Lifeline is potentially suggestive that the consumer may not be eligible for the program. See *Comm'r Boyle Letter* at 2 (noting that if an application to participate in Nebraska's Lifeline program is not supported by documentation, the state returns it and asks the consumer to provide documentation to demonstrate program eligibility; however, a significant number of persons do not respond when asked to produce such documentation, despite verbally asserting that they are eligible to participate in the program).

<sup>283</sup> The number of Lifeline subscribers in Louisiana grew from approximately 38,000 in 2008 to 626,000 in 2011 (annualized based on 11 months subscriber data), which is an increase of 1565 percent. See Letter from Karen Majcher, Vice President High Cost and Low Income Division, Universal Service Administrative Company, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Jan. 23, 2012) (*USAC Low Income Support and Subscriber Claims Letter*).

participation in a qualifying federal program, increased by 105 percent from 2008 to 2011.<sup>284</sup> Lifeline participation rates in other states reflect a similar trend. It is critical that the Commission put in place measures immediately to address this situation.

104. Requiring consumers to present documentation demonstrating their participation in a qualifying program prior to enrollment in Lifeline will go a long way towards ensuring that only qualified consumers benefit from the program, thereby reducing waste, and possibly fraud and abuse in the program.<sup>285</sup> As we noted in the NPRM, self-certification does little to guard against those persons who wish to intentionally defraud the Lifeline program by enrolling in the program despite their ineligibility.<sup>286</sup> Similarly, self-certification does not exclude consumers who are ineligible to participate in the program but mistakenly enroll due to misunderstanding the eligibility requirements. Recent data from two of the ETCs with the largest number of Lifeline subscribers indicates that an overwhelming majority of consumers today sign up for Lifeline on the basis of program eligibility.<sup>287</sup> Additionally, state data indicates that most low-income consumers qualify for Lifeline based on participation in Medicaid, SSI, and SNAP.<sup>288</sup> Requiring that consumers present documentation of eligibility before receiving subsidized phone service will help to reinforce that they are signing up for a federal benefit.

105. A new rule requiring consumers to provide documentation of program-based eligibility as part of the initial enrollment process is consistent with the existing rule applicable in federal default states requiring documentation for income-based eligibility. It is also consistent with enrollment requirements

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<sup>284</sup> The number of Lifeline subscribers in Kansas grew from 26,737 in 2008 to 54,680 in 2011 (annualized based on 11 months subscriber data), which is an increase of 105 percent. It should be noted that the difference in poverty rates between Kansas and Louisiana remained same in 2008 and 2010 and is expected to remain same in 2011. See U.S. Department of Agriculture, Economic Research Service, 2010 County-Level Poverty Rates, <http://www.ers.usda.gov/data/povertyrates/> (last visited Jan. 30, 2012); United States Census Bureau, State Rankings, Statistical Abstract of the United States, Persons Below Poverty Level, 2008, <http://www.census.gov/compendia/statab/2011/ranks/rank34.html> (last visited Jan. 30, 2012). Thus, it does not appear that the disparity in poverty rates contributed to the higher growth in Lifeline subscribership in Louisiana. See *USAC Low Income Support and Subscriber Claims Letter* at 2. This growth rate could be explained by new entrants providing low-income consumers telephone service, including mobile service, for the first time.

<sup>285</sup> See, e.g., *Sen. McCaskill Letter*; *Comm'r Boyle Letter*; Cricket Reply Comments at 13; NE PSC Comments at 12.

<sup>286</sup> One commenter states that a requirement that consumers provide documentation of both program- and income-based eligibility will not prevent outright fraud, as consumers may fabricate eligibility documentation in order to obtain benefits. See Letter from Joan M. Griffin, Counsel, Emerios, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 5 (filed Nov. 3, 2011) (Emerios Nov. 3 *ex parte* Letter). To protect against such scenarios, we expect that ETCs will enact appropriate safeguards to prevent fraudulent enrollments. Further, as detailed below, any individual who willfully and knowingly violates any rule or regulation of the Commission may be subject to penalties and permanent program de-enrollment. See *infra* para. 115.

<sup>287</sup> See, e.g., TracFone Aug. 3 *ex parte* Letter (stating that, since 2008, TracFone has enrolled nearly 5 million households in its Lifeline program, of which 99 percent qualified based on program-based criteria); Letter from Jamie M. Tan, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Aug. 15, 2011) (noting that, in AT&T's experience, the vast majority of Lifeline customers qualify via participation in public assistance programs, rather than on the basis of documenting household income); see also Solix Aug. 31 *ex parte* (stating that in Texas and California, approximately 70 percent of consumers qualify for Lifeline based on program eligibility, while 30 percent qualify based on income level) (AT&T Aug. 15 *ex parte* Letter); see also CA PUC June 28 *ex parte* Presentation, Attachment B, at 18.

<sup>288</sup> See, e.g., WASHINGTON STATE DEPARTMENT OF HEALTH & SOCIAL SERVICES, REPORT TO THE LEGISLATURE, WASHINGTON TELEPHONE ASSISTANCE PROGRAM, YEAR 21 OF PROGRAM OPERATION: JULY 1, 2007 THROUGH JUNE 30, 200811 (2008), available at <http://www.dshs.wa.gov/pdf/main/legrep/Leg1208/WTAP2008LegReport.pdf>; CA PUC June 28 *ex parte* Presentation, Attachment B, at 18.

in nearly all federal benefits programs. Several of the federal benefits programs that constitute qualifying programs for Lifeline, including SNAP, Supplemental Security Income (SSI), the Federal Housing Assistance Program, and the Low-Income Home Energy Assistance Program (LIHEAP), require consumers to present several forms of documentation to enroll in the benefit program.<sup>289</sup> Moreover, as noted above, GAO found that a number of states already require that consumers initiating Lifeline service provide documentation of enrollment in a qualifying program.<sup>290</sup> For example, Missouri, Texas, and Nebraska currently require proof of participation in a qualifying program to establish program-based eligibility for Lifeline.<sup>291</sup> Thus, given that many consumers are already subject to such requirements, it is not unreasonable to extend the applicability of those requirements to cover ETCs in all states.

106. Some commenters expressed concern that a rule requiring consumers to show documentation of eligibility upon enrollment will discourage program enrollment because not all consumers have documentation to prove eligibility, and many low-income consumers lack access to technology (such as fax machines, copiers, and scanners) that would assist them in submitting documentation to ETCs.<sup>292</sup> For example, one commenter asserts that Nebraska, which requires consumers to provide documentation of participation in a qualifying federal program to establish eligibility for Lifeline, has a program enrollment rate below the national average.<sup>293</sup> We are not

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<sup>289</sup> See 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(f)(1)(i), (4), (5) (verification of eligibility for SNAP); Social Security Online, Nutrition Assistance Programs, <http://www.ssa.gov/pubs/10100.html#apply> (last visited Feb. 2, 2012); Social Security Online, Supplemental Security Income, <http://www.ssa.gov/pubs/11000.html#part4> (last visited Feb. 2, 2012); HUD's Public Housing Program, [http://portal.hud.gov/hudportal/HUD?src=/topics/rental\\_assistance/phprog](http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog) (last visited Feb. 2, 2012); U.S. Department of Health & Human Services, Office of Community Services, Low-Income Home Energy Assistance Program (LIHEAP), <http://www.acf.hhs.gov/programs/ocs/liheap/brochure/brochure.html> (last visited Feb. 2, 2012); Letter from Cheryl A. Leanza, Policy Advisor, United Church of Christ, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (stating that most anti-poverty programs that are qualifying programs for Lifeline require consumers to provide documentation of income, either a pay stub or by getting their employer to complete a verification form) (LCCHR Nov. 21 *ex parte* Letter); see also USDA, Food & Nutrition Service, WIC Prescreening Tool, <https://stars.fns.usda.gov/wps/pages/start.jsf> (last visited Feb. 2, 2012).

<sup>290</sup> See *supra* para 94.

<sup>291</sup> See, e.g., MO PSC Comments at 3-4; Solix Comments at 3; NE PSC Comments at 12-13. Other examples of states that require documentation of enrollment in a qualifying program include Pennsylvania and South Carolina. See South Carolina Lifeline and Link-Up Telephone Assistance Application, available at <http://www.regulatorystaff.sc.gov/images/Upload/LifelineApplication.pdf>; Letter from Joseph K. Witmer, Esq., Assistant Counsel, Pennsylvania PUC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, (filed July 7, 2011) (Pennsylvania PUC July 7 *ex parte* Letter).

<sup>292</sup> See, e.g., COMPTTEL Comments at 19-20; Consumer Groups Comments at 24-25; GCI Comments at 48; Keep USF Fair Comments at 2; MAG-Net Comments at 20; NASUCA Reply Comments at 13-14; Nexus Reply Comments at 11; USTelecom Comments at 6; Rainbow PUSH Comments at 1; OpenAccess Comments at 4; TracFone Comments at 28-29; YourTel Comments at 12-13; State of Alaska Reply Comments at 3; see also Letter from Commissioner Deborah Taylor-Tate, Federal Communications Commission, to Julius Genachowski, Chairman, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Aug. 1, 2011) (Comm'r Tate Aug. 1 *ex parte* Letter); Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (July 28, 2011) (TracFone July 28 *ex parte* Letter); TracFone Aug. 3 *ex parte* Letter; Emerios Nov. 3 *ex parte* Letter at 4; Letter from George Korn, Advisor to Rev. Jesse L. Jackson, Sr., Rainbow PUSH, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Dec. 9, 2011) (Rainbow PUSH Dec. 9 *ex parte* Letter).

<sup>293</sup> TracFone July 28 *ex parte* Letter at 2; see also Emerios Nov. 3 *ex parte* Letter at 4 (stating that consumers who are required to provide documentation of program-based eligibility may opt not to complete the Lifeline sign-up process).

persuaded that requiring documentation of program eligibility will unduly reduce enrollment in Lifeline or otherwise significantly hinder low-income consumers from obtaining needed telephone services. Generally, consumers who qualify for Lifeline under program-based criteria receive documentation evidencing their participation in a qualifying program.<sup>294</sup> Further, as Chart 2, below, demonstrates, Lifeline subscriber data also demonstrates that program enrollment continues to increase significantly in states that currently require consumers to provide documentation of program-based eligibility, such as Kansas.<sup>295</sup> Nonetheless, to the extent that the balance we strike here is more burdensome for consumers in those states that currently allow self-certification, we anticipate that the documentation requirement will be temporary until eligibility can be better addressed through a database solution.

Chart 2

Comparison of Lifeline Growth Rate in States Requiring Documentation of Program Eligibility Versus States Permitting Self-Certification of Program Eligibility<sup>296</sup>

State	Requirement	Compound Annual Growth Rate (2008 - 2011)	Eligible HH (in thousands) (2010)	Take Rate* (2011)
KS	Documentation	28%	229	25%
OR	Database	4%	278	19%
MD	Self-certification	250%	325	75%
LA	Self-certification	155%	518	121%

<sup>294</sup> For example, program participants may receive an identification card or number (Medicaid, SNAP), an electronic benefit transfer card (SNAP), a voucher (Federal Public Housing Assistance (Section 8)), a notice of eligibility or other written decision letter (SSI, LIHEAP, Federal National School Lunch, TANF, Food Distribution Program on Indian Reservations, BIA General Assistance). *See, e.g.*, 24 C.F.R. § 982.302(a) (Section 8 Issuance of Voucher); 7 C.F.R. § 245.6(C)(6) (National School Lunch Program Notice of Approval); 47 C.F.R. §§ 274.1, 274.2 (setting out how state agencies may issue SNAP benefits to households using an Electronic Benefit Transfer system); LCCHR Nov. 21 *ex parte* Letter (stating that “most federal benefits programs provide an award letter or notice of eligibility when an individual or household is deemed eligible and also a card to help maneuver in the system”); USDA, Supplemental Nutrition Assistance, Electronic Benefit Transfer, <http://www.fns.usda.gov/snap/ebt/> (last visited Feb. 2, 2012); Social Security Online, Glossary, Appeal (Appeal Rights), <http://www.ssa.gov/glossary.htm> (last visited Feb. 2, 2012); USDA, FNS HANDBOOK 501 FOR FDPIR 5-3, <http://www.fns.usda.gov/fdd/hdbks-instruct/FNS501/Chap05-Certification.pdf#xml=http://65.216.150.153/tehis/search/pdfhi.txt?query=handbook+501&pr=FNS&prox=page&roder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&cq=&id=4ea87d7c39>; U.S. Department of the Interior, Bureau of Indian Affairs, Application for Financial Assistance and Social Services Instructions, at 17, <http://www.bia.gov/idc/groups/mywcsp/documents/collection/idc014233.pdf>.

<sup>295</sup> For instance, the number of Lifeline subscribers in Kansas grew from approximately 26,737 in 2008 to 54,680 (annualized based on 11 months subscribers data) in 2011. That is, the number of Lifeline subscribers in Kansas increased at a 28 percent Compound Annual Growth Rate (CAGR) between 2008 and 2011. *See USAC Low Income Support and Subscriber Claims Letter* at 2.

<sup>296</sup> *See USAC Low Income Support and Subscriber Claims Letter* at 2.

107. As the record demonstrates, state agencies and non-profit organizations often play an important role in facilitating access to benefits for low-income individuals.<sup>297</sup> State agencies and non-profit organizations may be able to assist low-income consumers if low-income consumers do not have the ability to transmit documentation to their chosen ETC. Additionally, some ETCs enroll consumers using a variety of methods, including at retail stores (*i.e.*, in person). We encourage ETCs to provide consumers with multiple options for presenting documentation of eligibility, including in-person and by mail.

108. Some commenters responding to the *Lifeline and Link Up NPRM* voice concerns about the costs ETCs will incur in implementing a system to collect and verify consumer documentation of program-based eligibility.<sup>298</sup> We acknowledge that compliance with the rule we adopt here will involve some administrative costs for ETCs; however, we conclude that those costs are outweighed by the significant benefits gained by protecting the Fund from waste, fraud, and abuse.<sup>299</sup> As noted above, we estimate that up to 15 percent of current Lifeline subscribers may be ineligible for the program, potentially representing as much as 360 million dollars of support per year.<sup>300</sup> We expect that a rule requiring ETCs to obtain documentation of program participation from new Lifeline applicants, in conjunction with our efforts to implement a Lifeline database,<sup>301</sup> will enable the Commission to recapture those funds and prevent unbridled future growth in the Fund. The resulting cost savings will in turn benefit those consumers who contribute to the Universal Service Fund, new qualifying low-income consumers, and our goal to modernize the program for a broadband future. Further, while we will require consumers to provide documentation of program- and income-eligibility to ETCs at enrollment, consumers will no longer be required to provide such documentation as part of the annual verification process in federal default states.<sup>302</sup> Moreover, consumers will not need to demonstrate eligibility at enrollment (or annually) once that function is addressed through a database. We expect that these changes will reduce the burdens on both consumers and ETCs.

109. Other commenters state that a rule requiring ETCs to verify documentation of consumers' program eligibility would raise privacy concerns.<sup>303</sup> As noted above, without accessing a state or federal eligibility database or collecting documentation of consumer eligibility for Lifeline, ETCs cannot reliably confirm that a consumer is eligible for Lifeline. We believe that the privacy concerns raised in the record

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<sup>297</sup> See, e.g., MFY Legal Services Reply Comments at 1; Open Access Comments at 2, 7-8; Consumer Groups Comments at 2-5; Letter from Martha Deaver, Executive Director, Arkansas Advocates for Nursing Home Residents, to Julius Genachowski, Chairman, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Apr. 13, 2011).

<sup>298</sup> See, e.g., AT&T Reply Comments at 15-16; USTelecom Comments at 6; MITS Reply Comments at 7; Sprint Reply Comments at 11; Consumer Cellular Comments at 20; Cox Comments at 4; Emerios Nov. 3 *ex parte* Letter at 4-5.

<sup>299</sup> Immediate adoption of a rule requiring documentation of program-based eligibility will enable the Commission to realize cost savings in the near term, which can in turn be used to, among other things, fund efforts to modernize the Lifeline program. See *infra* section IX.B (Support for Broadband).

<sup>300</sup> See *supra* para. 102. Assuming that the Low-Income program provides an estimated \$2.4 billion in support in 2012, see *infra* section X (Managing the Size of the Low-Income Fund), 360 million represents fifteen percent of that amount.

<sup>301</sup> See *infra* Sections VII.A (National Lifeline Accountability Database) and XIII.A (Establishing an Eligibility Database).

<sup>302</sup> See *infra* section VI.C.2.b (Annual Re-certification of Consumer Eligibility).

<sup>303</sup> See, e.g., AT&T Reply Comments at 15-16; Rainbow PUSH Comments at 1; CTIA Comments at 21-22; USTelecom Comments at 6.

are minimal in light of the fact that ETCs in several states currently collect documentation of program-based eligibility and the Commission is unaware of abuses resulting from that system. Thus, when balancing the benefits with the potential burdens of such a rule, we conclude such concerns do not outweigh the significant benefits of adopting such a rule.

110. One commenter recommends that the Commission require carriers themselves, rather than their agents or representatives, to review all documentation of eligibility.<sup>304</sup> The commenter notes that, for example, the Indiana Utility Regulatory Commission has procedures in place requiring carriers to deal directly with consumers to reduce incentives for illicit third party behavior.<sup>305</sup> We do not find it necessary to adopt such a rule at this time. The Commission has consistently found that “[l]icensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,” and has held the regulated party responsible for violations of the Commission’s rules committed by agents.<sup>306</sup> Thus, ETCs may permit agents or representatives to review documentation of consumer program eligibility for Lifeline. However, the ETC remains liable for ensuring the agent or representative’s compliance with the Lifeline program rules.

111. *Content of Consumer Eligibility Certifications.* We next amend the Commission’s rules to require consumers to make certifications concerning their eligibility for Lifeline when initially enrolling in the Lifeline program. All ETCs must also obtain a signed certification from the consumer that complies with section 54.410 of our rules.<sup>307</sup> No later than June 1, 2012, ETCs in all states (or the state Lifeline program administrator, where applicable) must update their Lifeline certification processes to enable consumers to comply with the requirements listed below.<sup>308</sup> ETCs will also be required to verify each subscriber’s compliance with the Lifeline eligibility rules annually by requiring each subscriber to submit an annual re-certification complying with the requirements described below.<sup>309</sup> As discussed below, we will permit interactive voice response systems to be used for both enrollment and

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<sup>304</sup> Letter from Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 3 (filed Dec. 16, 2011) (T-Mobile Dec. 16 *ex parte* Letter).

<sup>305</sup> *Id.*; see *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*; Compliance Plan, CC Dkt. No. 96-45, at 15 (filed Oct. 11, 2005) (agreeing that TracFone will have direct contact with all Lifeline applicants, including processing of the applicants’ applications); *Federal-State Joint Board on Universal Service; 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 et. al.*, Compliance Plan, CC Dkt. No. 96-45, at 7-8 (same) (filed Apr. 3, 2009).

<sup>306</sup> See, e.g., *Bethune-Cookman College, Inc.*, File Number EB-08-TP-0406, Forfeiture Order, 24 FCC Rcd. 4513, 4515, para. 8 (Enf. Bur. 2009) (citing *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863,-64, para. 7 (2002)); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991) (holding that a company’s reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee’s failure to conduct weekly EAS tests and to maintain the “issues/programs” list).

<sup>307</sup> In states that determine subscriber’s eligibility for Lifeline services, the state administrator should provide prospective subscribers with the certification forms, collect completed forms from subscribers, and provide them to ETCs. ETCs should update their annual certification forms to conform to the list of requirements provided in Appendix B.

<sup>308</sup> ETCs may choose to use a single document for their Lifeline program application and certification form.

<sup>309</sup> See discussion *infra* section VI.C.2.b (Annual Re-Certification of Consumer Eligibility).

annual recertifications, as well as text messages for annual recertifications.<sup>310</sup>

112. We do not anticipate that these requirements will impose unreasonable burdens on low-income consumers, many of whom already provide certifications as part of the Lifeline enrollment process.<sup>311</sup> Further, the requirements we adopt today will help to educate low-income consumers about the Lifeline program rules and remind them of the actions that are necessary to ensure their compliance. In this way, we will prevent consumers from being de-enrolled from Lifeline due to lack of awareness of program rules.

113. First, where a subscriber's eligibility cannot be determined through a database, consistent with the rule we adopt above requiring documentation of program-based eligibility for Lifeline, we amend section 54.410 of the Commission's rules to require ETCs (or states, where applicable) to obtain each consumer's signature on a document<sup>312</sup> certifying under penalty of perjury that the consumer's household receives benefits from a qualifying state or federal assistance program, specifying the program in which the consumer's household is enrolled, or has income at or below 135 percent of the FPG, and that the consumer, if required to do so, presented documentation that accurately represents the consumer's household income or participation in such program. Consumers must provide this certification to the ETC (or state agency or third-party administrator, where applicable) upon enrolling in Lifeline and annually thereafter.

114. Second, consistent with the proposal in the *Lifeline and Link Up NPRM*, we amend section 54.410 of our rules to require that a consumer notify its ETC within 30 days if he or she no longer qualifies for Lifeline service. Specifically, a consumer must notify its telephone service provider within 30 days if (1) the consumer ceases to participate in a federal or state qualifying program or programs or the consumer's annual household income exceeds 135 percent of the FPG (if that is the criterion by which that consumer qualified for Lifeline); (2) the consumer is receiving more than one Lifeline-supported service; or (3) the consumer, for any other reason, no longer satisfies the criteria for receiving Lifeline support.<sup>313</sup> ETCs (or states where, applicable) must set forth the notification requirement on their program certification form. The notification requirement must be explained in clear, easily understandable language. Additionally, prior to enrolling in Lifeline, consumers must attest under penalty of perjury that they understand the notification requirement, and that they may be subject to penalties if they fail to follow this requirement. Any consumer found to be ineligible for Lifeline support will be de-enrolled from the program pursuant to the procedures set forth in section 54.405(e) of the Commission's rules.<sup>314</sup> Currently, consumers who are no longer eligible for Lifeline support may lack the incentive to

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<sup>310</sup> See *infra* VI.E (Electronic Signature).

<sup>311</sup> See, e.g., *Telecommunications Carriers Eligible for Universal Service Support; NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b); Cricket Communications, Inc. Petition for Forbearance*, WC Dkt. No. 09-197, Order, 26 FCC Rcd 13723, 13730, para. 15 (2011) (*Cricket / NTCH Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; PlatinumTel, LLC Petition for Forbearance; CAL Communications, Inc. Petition for Forbearance; ReCellular, Inc. (MSA Wireless) Petition for Forbearance*, WC Dkt. No. 09-197, Order, 26 FCC Rcd 13788, 13795, para. 17 (2011) (*PlatinumTel Forbearance Order*). See also 47 C.F.R. §§ 54.409(c)-(d); 54.410(b)(2).

<sup>312</sup> See *infra* VI.E (Electronic Signature).

<sup>313</sup> For commenters supporting this rule, see DC PSC Comments at 8; OH PUC Comments at 19-20; MO PSC Comments at 15.

<sup>314</sup> Some commenters express concern about the Commission's ability to enforce such a rule. See DC PSC Comments at 8; OH PUC Comments at 19-20; CenturyLink Comments at 18. We emphasize that the Commission does not seek to penalize consumers who inadvertently sign up for Lifeline due to misunderstandings about their eligibility under program rules. However, to the extent that persons intentionally defraud the Lifeline program by knowingly participating in the program despite their ineligibility, such behavior will not be tolerated. We note that, (continued....)

notify their telephone service provider of their changed eligibility status, or they may not recognize the importance of doing so. The rule we adopt here will make clear that subscribers must contact their telephone service provider once they are no longer eligible for Lifeline support.

115. Third, we amend section 54.410 of our rules to require all ETCs (or states, where applicable) to obtain each consumer's initials or signature on a document, under penalty of perjury, when the consumer enrolls in Lifeline and annually thereafter, attesting that the information contained in the consumer's application remains true and correct to the best of his or her knowledge and acknowledging that providing false or fraudulent information to receive Lifeline benefits is punishable by law.<sup>315</sup> We also require ETCs to explain that Lifeline is a government benefit program and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program.<sup>316</sup> We expect that by requiring ETCs and/or states to inform consumers that Lifeline is a government benefit and about the penalties for noncompliance with program requirements, we will more effectively reduce both inadvertent and purposeful instances of waste, fraud, and abuse.

116. Fourth, we amend section 54.410 of the Commission's rules to require that ETCs (or states, where applicable) inform consumers about the annual re-certification requirement, described in more detail below, on the certification form that is completed upon program enrollment and annually thereafter. Specifically, ETCs or states should obtain the consumer's initials or signature acknowledging that the consumer may be required to re-certify his or her continued eligibility for Lifeline at any time, and that failure to do so will result in the termination of the consumer's Lifeline benefits.<sup>317</sup> We expect that such a reminder would lessen non-response rates for ETCs' annual re-certification surveys by increasing consumer awareness of the annual re-certification requirement and of consumers' obligation to respond to ETCs' and/or states' re-certification efforts.

117. Fifth, as noted in the one-per-household section, above, we adopt a requirement that Lifeline participants provide their new address to their ETC within 30 days of moving.<sup>318</sup> As described in the Database section below, ETCs will be required to enter this address in the duplicates database within 10 business days of receipt to determine if a subscriber is receiving Lifeline support from another ETC.<sup>319</sup> ETCs (or states, where applicable) should notify their Lifeline subscribers of this requirement on their initial and annual certification forms using clear, easily understandable language.

118. Sixth, as explained below, to eliminate incidences of duplicative support, we require ETCs to collect subscribers' date of birth and last four digits of the Social Security number (or an official Tribal government identification card number (for eligible consumers living on Tribal lands who lack a

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pursuant to section 503 of the Act, any person who "willfully or repeatedly" and knowingly violates "any rule, or regulation, or order issued by of the Commission" may be subject to penalties. 47 U.S.C. § 503(b)(1)(B).

<sup>315</sup> See *Federal-State Joint Board on Universal Service et al.*, CC Dkt. No. 96-45 *et al.*, i-Wireless, LLC's Revised Compliance Plan, at 8 (filed Sept. 9, 2011); TracFone Safelink Application Forms, available at <https://www.safelinkwireless.com/Safelink/blank-application/>.

<sup>316</sup> See 47 C.F.R. § 54.8 (permitting the Commission to suspend and debar individuals from activities associated with or related to the low-income program).

<sup>317</sup> See, e.g., *Telecommunications Carriers Eligible for Universal Service Support; Cricket Communications, Inc. Petition for Forbearance*; Cricket Communications, Inc. Compliance Plan, WC Dkt. No. 09-197, at 5 (filed Sept. 23, 2011).

<sup>318</sup> See *infra* para. 85.

<sup>319</sup> See *infra* para. 197



social security number) to verify the subscriber's ID through the National Accountability Database.<sup>320</sup> ETCs must collect this information on their initial and annual certification forms and the Lifeline subscriber must attest that the information is correct.

119. Seventh, as discussed below, we amend our rules to clarify that Lifeline service is a non-transferable benefit.<sup>321</sup> Prepaid ETCs (*i.e.*, ETCs that do not assess or collect a monthly fee from their Lifeline subscribers) or the state Lifeline program administrator, where applicable, must inform consumers about this rule in clear, easily understandable language on their initial and annual certification form. The certification form should inform consumers that a Lifeline subscriber may not transfer his or her service to any other individual, including another eligible low-income consumer.

120. *Initial and Annual One-per-Household Certification.* As discussed in more detail above, we adopt a "one-per-household" rule for Lifeline.<sup>322</sup> We therefore adopt initial and annual certification rules tied to that requirement. Specifically, we amend section 54.410 of the Commission's rules to require that all ETCs (or state Lifeline program administrators, where applicable) obtain a certification from each subscriber, under penalty of perjury, that the subscriber's household is receiving no more than one Lifeline-supported service. Each eligible Lifeline consumer served by an ETC must attest at the time of enrollment and annually thereafter that he or she receives Lifeline-supported service only from that ETC and, to the best of his or her knowledge, no one in the subscriber's household is receiving a Lifeline-supported service. By June 1, 2012, ETCs in all states (or the state program administrator, where applicable) must update their Lifeline certification form to enable consumers to comply with the one-per-household certification requirement.

121. As the Commission noted in the *Lifeline and Link Up NPRM*, requiring such certifications at sign-up and on an ongoing basis thereafter will inform the consumer of program requirements and periodically remind him or her that support is available for only one Lifeline-supported service per household.<sup>323</sup> Each ETC's or state's certification form must also explain in plain, easily comprehensible language that: (1) Lifeline is a federal benefit; (2) Lifeline service is available for only one line per household; (3) a household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses; and (4) a household is not permitted to receive Lifeline benefits from multiple providers.<sup>324</sup> The certification form must also contain language stating that violation of the one-per-household requirement constitutes a violation of the Commission's rules and will result in the consumer's de-enrollment from the program, and could result in criminal prosecution by the United States government.<sup>325</sup>

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<sup>320</sup> See *infra* para. 184.

<sup>321</sup> See *infra* para. 257.

<sup>322</sup> See *supra* section VI.B (One-Per-Household).

<sup>323</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2824, para. 167. We proposed in the NPRM to adopt a rule requiring ETCs to obtain an initial certification and annual re-certifications documenting their subscribers' compliance with the proposed one-per-residential-address rule. *Id.* at paras. 167-69. However, because we choose to adopt a one-per-household rule today in lieu of the NPRM's one-per-address-proposal, it is appropriate to modify the certification required by Lifeline subscribers to ensure compliance with the one-per-household rule.

<sup>324</sup> Enrolling a consumer in Lifeline without first explaining the one-per-household rule and asking the consumer whether another member of his or her household is already receiving Lifeline-supported service is a violation of our rules.

<sup>325</sup> See also OH PUC Comments at 17 (noting that ETCs should include on their certification forms a warning that a violation of the one per household requirement may result in immediate removal from the program). In its comments, NASUCA states that "a form signed by a customer might eliminate some duplicative support but it will not eliminate outright fraud." NASUCA Comments at 23. We acknowledge that there may be situations where (continued....)

122. Additionally, ETCs (or states, where applicable) will be required to verify each subscriber's compliance with the one-per-household rule annually by requiring each subscriber to submit an annual re-certification complying with the requirements described above.<sup>326</sup> Any subscriber who indicates that he or she is receiving more than one Lifeline-supported service per household, or neglects to make the required one-per-household certification on his or her certification form, must be de-enrolled from Lifeline pursuant to the process for resolving duplicative Lifeline subscriptions described in section 54.405(e)(2) of our rules.<sup>327</sup> Any non-responders will be de-enrolled, after notification and an appropriate waiting period, pursuant to the process set forth in section 54.405(e)(4) of our rules.

123. We do not expect that these certification requirements will impose unreasonable burdens on low-income consumers. As described above, the initial and annual certification form must explain the one-per-household requirement to the consumer in plain and simple language, so the consumer understands what he or she is signing and what the consumer must do to comply with the one-per-household requirement. In addition, to help consumers understand the certifications and program rules, we expect ETCs to verbally explain the certifications to consumers when they are enrolling in person or over the phone. With respect to those enrolling via the Internet, we expect ETCs to highlight the certifications that are required. They may do so, for example, by requiring consumers to acknowledge each certification before moving on to the next field. ETCs should not bury these certifications in their contracts. If included in a contract, these certifications should be at the beginning of the contract and stand out to the consumer. At this time, we do not require consumers to provide documentation (e.g., tax forms) to ETCs in order to establish their compliance with the one-per-household rule.<sup>328</sup> Rather, we will permit consumers to self-certify that they comply with this requirement upon enrollment and annually thereafter, which will simplify the certification process for low-income consumers and provide a minimally invasive means for the Commission to enforce low-income consumers' compliance with the one-per-household rule.

124. This requirement also will not impose unreasonable burdens on ETCs, including ETCs considered to be small businesses. We note that some ETCs already request similar certifications from their subscribers, and we see no reason why requiring all ETCs to do so in the future would be

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consumers provide false certifications of their eligibility for Lifeline, despite the provided warnings. We expect that such consumers will be discovered through the process set forth above for detecting duplicative Lifeline subscriptions and will be de-enrolled pursuant to our rules. Additionally, such consumers, if discovered to have provided a false certification, may be subject to harsher penalties, including possible prosecution.

<sup>326</sup> See *infra* section VI.B (One-per-Household).

<sup>327</sup> As above, this requirement will not impose unreasonable burdens on ETCs, including small ETCs. ETCs may obtain the one-per-household certification as part of their existing verification processes, and the costs of doing so should be minimal. Similarly, ETCs already have de-enrollment processes in place to de-enroll those consumers who are found to be ineligible for Lifeline. See 47 C.F.R. § 54.405(c)-(d). It will not impose unreasonable costs or administrative burdens to require ETCs to extend those processes to include any subscribers who fail to comply with the one-per-household certification requirement we adopt today.

<sup>328</sup> See *supra* paras. 77-79. Unlike the process of establishing program-based eligibility for Lifeline, it is not clear what, if any, documentation a consumer could submit to an ETC to make such a showing. See, e.g., AT&T PN Comments at 4-6; GCI PN Comments at 20-21. It is appropriate to require consumers to present some evidence of their eligibility for government benefits (i.e., documentation of participation in a qualifying state or federal program); however, we recognize the need to balance the potential burdens to consumers with the adoption of rules to guard against waste, fraud, and abuse. As such, we conclude that the self-certification requirement listed above will be the least burdensome alternative to accomplish our goal of ensuring consumers' compliance with the one-per-household rule and thereby preventing waste, fraud, and abuse in the Lifeline program.

unreasonably burdensome.<sup>329</sup> Moreover, we anticipate that any burden to ETCs or consumers would be outweighed by the potential cost savings associated with the prevention of waste, fraud, and abuse in the program. By taking steps to eliminate support for ineligible consumers and prevent duplicative Lifeline claims, the one-per-household certification requirement we adopt today is consistent with our program goal of ensuring that support for low-income voice and broadband service minimizes the contribution burden on consumers and businesses.<sup>330</sup>

125. *Eligible Telecommunications Carrier Certifications.* We also amend section 54.410 of the Commission's rules to require ETCs to make certain certifications when the ETC conducts its annual re-certification of its consumers' ongoing eligibility for Lifeline, as described below. We also amend section 54.407 of the Commission's rules to require ETCs to make certain certifications when submitting an FCC Form 497 to USAC for reimbursement. As with respect to the consumer certifications set forth above, we expect the administrative burdens for ETCs to comply with these rules to be minimal.<sup>331</sup>

126. First, we amend section 54.416 of the Commission's rules to require that an officer of the eligible telecommunications carrier certify that the carrier has procedures in place to review consumers' documentation of income- and program-based eligibility. Eligible telecommunications carriers must make this certification annually to the Administrator as part of the carrier's submission of re-certification data pursuant to section 54.416. In instances where an eligible telecommunications carrier confirms consumer eligibility by relying on official program eligibility data, such as a state or federal database, an officer of the carrier must attest to what data the ETC uses to confirm consumer eligibility in each state.<sup>332</sup> By requiring ETCs to provide these certifications annually, we will help ensure ETCs' compliance with the rules we adopt above relating to the documentation of program-based eligibility for Lifeline.<sup>333</sup>

127. Second, we adopt a rule requiring that an officer of each ETC must attest that the carrier is in compliance with all federal Lifeline certification procedures. This rule will help to protect the Fund from waste, fraud, and abuse by ensuring that ETCs are accountable for their compliance with program rules. Eligible telecommunications carriers must make this certification annually to the Administrator as part of the carrier's submission of re-certification data pursuant to section 54.416.<sup>334</sup>

128. Third, we adopt a rule in section 54.407 requiring that each ETC certify when it seeks reimbursement that the carrier has obtained a valid certification form for each consumer for whom the

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<sup>329</sup> See *Cricket / NTCH Forbearance Order*, 26 FCC Rcd at 13730, para. 15; *PlatinumTel Forbearance Order*, 26 FCC Rcd at 13795, para. 17; *i-Wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3387, para. 12; *TracFone Forbearance Order*, 20 FCC Rcd at 15103, para. 18. See also Letter from John J. Heitmann & Josh Guyan, Counsel for Link Up for America Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 6 (filed Oct. 3, 2011) (stating that their members have agreed to 1) explain in clear and plain language to new customers that they may not receive more than one Lifeline supported service; 2) require all Lifeline applicants to confirm on the application form that he or she is not receiving Lifeline supported service from any other Lifeline provider; and 3) require all Lifeline applicants to self-certify that they receive Lifeline services only from the ETC) (Link Up for America Coalition Oct. 3 *ex parte* Letter).

<sup>330</sup> See *supra* section III.C (Performance Goals & Measures).

<sup>331</sup> The Commission currently directs ETCs to make certain certifications relating to the Lifeline program. See 47 C.F.R. § 54.410(b). In this section, we do not substantially change those requirements; rather, we simply add additional certifications that the ETC must make annually and when seeking reimbursement from the Fund.

<sup>332</sup> See discussion *supra* section VI.C. (Certification of Consumer Eligibility for Lifeline).

<sup>333</sup> See *id.*

<sup>334</sup> See *infra* section VI.C.2.b (Annual Re-Certification of Consumer Eligibility for Lifeline).

ETC seeks Lifeline reimbursement. This rule will protect low-income consumers by preventing an ETC from enrolling a consumer in their Lifeline program without his or her consent and seeking reimbursement for that consumer.<sup>335</sup> This rule will also protect against waste, fraud, and abuse by ensuring that ETCs claim support for only those subscribers that are eligible for the program and who have agreed to comply with the Lifeline program requirements.

**b. Annual Re-Certification of Consumer Eligibility**

129. Consistent with the recommendations of the Joint Board, we amend section 54.410 of the Commission's rules to adopt a set of uniform re-certification procedures that all ETCs should perform annually to verify the ongoing eligibility of their Lifeline subscriber base. These standards will serve as a minimum threshold for re-certification procedures to be performed by all ETCs, but will allow ETCs in specific circumstances to leverage existing state verification processes to more easily verify the ongoing eligibility of their subscriber base each year.<sup>336</sup>

130. Pursuant to the new rule we adopt today, all ETCs must re-certify the eligibility of their Lifeline subscriber base as of June 1, 2012 by the end of 2012 and report the results to USAC by January 31, 2013.<sup>337</sup> This re-certification may be done on a rolling basis throughout the year, at the ETC's election.<sup>338</sup> Where ongoing eligibility cannot be determined through access to a qualifying database either by the ETC or the state, and there is no state administrator verifying the continued eligibility of Lifeline subscribers, by the end of 2012, an ETC must re-certify the continued eligibility of all of its subscribers by contacting them—which can be done in any of a number of ways, including in person, in writing, by phone, by text message, by email, or otherwise through the Internet—to confirm their continued eligibility pursuant to the rules established in this Order.<sup>339</sup> Specifically, all such ETCs must obtain from each Lifeline subscriber by the end of 2012 a re-certification form that contains each of the required certifications described above.<sup>340</sup>

131. In states where a state agency or a third party has implemented a database that carriers may query to re-certify the consumer's continued eligibility, the carrier (or state agency or third-party, where applicable) must instead query the database by the end of 2012 and maintain a record of what

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<sup>335</sup> See *infra* section VI.F (Automatic and Coordinated Enrollment).

<sup>336</sup> Adoption of a set of uniform, minimum verification procedures is supported by CenturyLink, Cincinnati Bell, Consumer Groups, Cricket, TracFone, US Telecom, YourTel, and the NY PSC. CenturyLink Comments at 18-19; Cincinnati Bell Comments at 9; Consumer Groups PN Comments at 14; Cricket Reply Comments at 12-13; TracFone Reply Comments at 4-6; US Telecom Comments at 5; YourTel Comments at 12; NY PSC Comments at 9-10.

<sup>337</sup> Consistent with the the Wireline Competition Bureau's practice with respect to the issuing reminders via Public Notice to the federal default states, the Bureau will publish a Public Notice after June 1, 2012 to remind ETCs that they must re-certify all of their subscribers of record as of June 1, 2012 by December 31, 2012 and to report their results to USAC by January 31, 2013.

<sup>338</sup> We delegate to the Wireline Competition Bureau the authority to establish, in coordination with USAC, a process for facilitating the collection of consumer re-certifications on a rolling basis. See, e.g., Letter from Matthew A. Brill, Counsel, Cricket Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Jan. 24, 2012) (Cricket Jan. 24 *ex parte* Letter) (recommending that annual re-certifications be permitted on a rolling basis).

<sup>339</sup> See *infra* para. 132.

<sup>340</sup> See *supra* paras. 111-24; see also, e.g., TracFone Reply Comments at 5-6; Letter from Norina Moy, Director, Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Nov. 14, 2011) (Sprint Nov. 14 *ex parte* Letter).

specific data was used to re-certify eligibility and the date of re-certification.<sup>341</sup> If a subscriber's address cannot be verified through the state data, ETCs who do not bill their subscribers must contact the subscriber every year to obtain a valid address which may be accomplished during the annual certification process.

132. In contrast to the current verification rules, which require all sampled subscribers (but no other subscribers) to provide documentation of their continued eligibility for Lifeline, the rule we adopt today will apply to all Lifeline subscribers enrolled in the program as of June 1, 2012, while allowing those consumers to provide self-certifications without associated documentation. Such certifications may be obtained through a written format, an Interactive Voice Response system, or a text message.<sup>342</sup> Regardless of the format used to re-certify the subscriber's continued eligibility for Lifeline, ETCs (or the state Lifeline administrator or other state agency, where applicable) must convey all of the required information set forth in the amended section 54.410 and obtain from the subscriber an individual certification for each requirement set forth in the rule.<sup>343</sup> Any text messages must be sent to the phone number associated with the supported service, and text responses must be sent from that phone number. Carriers (or the state Lifeline program administrator, where applicable) must report the results of this annual re-certification process, as described below, to USAC by January 31, 2013.<sup>344</sup> Carriers must also file an annual Lifeline eligible telecommunications carrier certification form with USAC, beginning on January 31, 2013, that complies with the certification requirements discussed above.<sup>345</sup>

133. Ongoing eligibility of Lifeline subscribers must continue to be verified annually after 2012; however, we expect that ETCs will increasingly gain access to automated means of verifying subscriber eligibility. In those instances where ongoing eligibility cannot be determined through access to a qualifying database either by the ETC or the state, and there is no state administrator verifying continued eligibility, ETCs retain the responsibility for annual subscriber re-certification. However, after 2012, ETCs may elect to have USAC administer the self-certification process on their behalf. We direct USAC to work with the ETCs and the Bureau to develop a plan for USAC to conduct annual re-certifications in lieu of ETCs, with such annual certifications starting in 2013. If an ETC chooses to perform the annual self-certifications itself, it must re-certify the continued eligibility of all of its subscribers by contacting them—which can be done in any of a number of ways, including in person, in writing, by phone, by text message, by email, or otherwise through the Internet—to confirm their

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<sup>341</sup> In states where a state agency or third-party is responsible for performing annual recertification functions, the state or its agent should provide the ETC with a copy of each Lifeline subscriber's re-certification form.

<sup>342</sup> See *infra* section VI.E (Electronic Signature).

<sup>343</sup> Section 54.410 requires that the subscriber be provided with program information, including that Lifeline is a federal benefit available to only one line per household. In addition, the subscriber must certify that he or she continues to be eligible for the program and will notify the carrier within 30 days if he or she no longer satisfies the criteria for receiving Lifeline support. A message that merely asks "Are you still eligible for Lifeline?" would not convey the necessary information that must be provided to the subscriber, nor would a message that directs the consumer to a url where the full certification information is listed. In order to convey to and obtain all of the required information from the subscriber via text messages, we expect that the ETC (or state administrator or agency) will need to send and receive multiple messages to the subscriber. Similarly, when re-certifying the subscriber by phone or IVR, the subscriber must be prompted to certify the individual requirements set forth in section 54.410.

<sup>344</sup> See *infra* paras. 147-48 (collection and submission of re-certification data). *But see* Cricket Jan. 24 *ex parte* Letter at 2 (recommending that the Commission retain the existing August 31 filing deadline for re-certifications or a similar mid-year deadline and require re-certification to be performed on a rolling basis).

<sup>345</sup> See *supra* paras. 125-28 (ETC certifications).

continued eligibility pursuant to the rules established in this Order.<sup>346</sup> Additionally, all carriers must continue to file an annual Lifeline ETC certification form with USAC that complies with the certification requirements discussed above.<sup>347</sup>

134. This amendment to our rules will work in lock step with other measures we implement today. Because consumers in states without eligibility databases will be required to provide documentation at enrollment to establish program eligibility, we find a requirement that ETCs or program administrators, where applicable, verify all Lifeline subscribers' documentation on an annual basis to be unnecessary.<sup>348</sup> The upfront documentation requirement will serve as a sufficient initial check of consumer eligibility and alleviate the need for ETCs or third-party administrators to obtain documentation from subscribers on a recurring basis as part of the back-end re-certification process. Additionally, some commenters note that by eliminating the requirement that consumers provide annual documentation of continued eligibility to their ETC, we could reduce the burden of annual verifications on both consumers and ETCs.<sup>349</sup> The collection of annual self-certifications from all consumers as part of the re-certification process will also assist in obtaining updated address information from their subscribers, which can ultimately be used to populate the duplicates database that we adopt today.<sup>350</sup>

135. Further, by requiring ETCs, or program administrators, where applicable, to annually re-certify the eligibility of their entire subscriber base, we will remedy the problems associated with sampling noted by the Commission in the NPRM. In contrast to the current sampling methodology, all of an ETC's Lifeline subscribers will be subject to annual re-certification requirements. The current sampling methodology, while statistically significant and sufficient for some data analysis purposes, fails to assess the actual eligibility of a large number of subscribers nationwide and, more importantly, leaves enrolled in the program subscribers that are not eligible. In contrast, the approach we adopt today will assess the eligibility of all current subscribers to the program. Moreover, any subscribers that fail to respond to the ETC's or administrator's re-certification attempts must be de-enrolled from Lifeline pursuant to the de-enrollment procedures set out in our rules, as described in more detail below.<sup>351</sup> These protections will assist the Commission to more effectively protect the Fund from waste, fraud, and abuse.<sup>352</sup>

136. After consideration of the record, we decline to adopt the verification methodologies proposed in the NPRM for several reasons. We decline to rely solely on statistical sampling because we

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<sup>346</sup> See *supra* paras. 111-24 (Consumer certifications). This re-certification may be done on a rolling basis throughout the year. We delegate to the Wireline Competition Bureau the authority to establish, in coordination with USAC, a process for facilitating the collection of consumer re-certifications on a rolling basis.

<sup>347</sup> See *supra* paras. 125-28 (ETC certifications).

<sup>348</sup> See *supra* paras. 98-110 (Determination of Initial Program Eligibility).

<sup>349</sup> See, e.g., Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 3, 10 (filed Oct. 17, 2011) (estimating that by requiring all ETCs to obtain a signed certification from each consumer that the consumer is eligible to receive Lifeline and does not receive Lifeline service from any other carrier could save the fund approximately \$270 million per year) (TracFone Oct. 17 Ex Parte Presentation); Sprint Nov. 14 *ex parte* Letter at 1-2 (estimating that if all Lifeline subscribers are required to annually re-certify their continued Lifeline eligibility, the fund could save approximately \$150 million per year).

<sup>350</sup> See *infra* section VII.A (National Lifeline Accountability Database).

<sup>351</sup> See *infra* paras. 141-46.

<sup>352</sup> See, e.g., GRTI Comments at 16-17; MO PSC Comments at 16; Alaska Commission Reply Comments at 9-10.

remain concerned that it will not be sufficient to detect and remedy instances of subscriber ineligibility.<sup>353</sup> As the Commission noted in the NPRM, the current methodology fails to identify the ineligible subscribers that are not part of the sample.<sup>354</sup> The rule we adopt today remedies that problem by ensuring that the eligibility of all Lifeline subscribers will be re-certified on an annual basis and is consistent with our obligation to protect the Fund from waste, fraud, and abuse.<sup>355</sup>

137. With respect to sample-and-census, the Commission received feedback from commenters – ETCs in particular – expressing concern that the census component would be overly burdensome.<sup>356</sup> These commenters state that if a full census were triggered it would be excessively costly and burdensome for ETCs, particularly ETCs with a small number of Lifeline subscribers, to collect and verify the eligibility documentation of their entire subscriber base.<sup>357</sup> We adopt what is expected to be a less burdensome method of checking the eligibility of an entire subscriber’s base as it does not require the consumer to produce documentation of continued eligibility.

138. We also considered alternatives that would require ETCs to verify only a portion of their Lifeline subscriber base, including allowing small ETCs within a state to perform sampling in the aggregate rather than on an individual basis, requiring ETCs with a minimal number of Lifeline subscribers to sample fewer subscribers than larger ETCs, and allowing all ETCs to sample a lesser percentage of their Lifeline subscriber base. The approach we adopt today strikes an appropriate balance between these interests by helping to identify and de-enroll ineligible subscribers, while imposing fewer burdens on consumers and ETCs than a full census survey (*i.e.*, requiring consumers to annually produce documentation to verify continued eligibility).<sup>358</sup> Some commenters note that the costs for an ETC to seek out and obtain annual self-certifications from subscribers could be significantly lower than the costs of performing a full verification with examination of the underlying documentation.<sup>359</sup>

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<sup>353</sup> See, e.g., DC PSC Comments at 5-6; TracFone Reply Comments at 5.

<sup>354</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2826-27, para. 181.

<sup>355</sup> In the NPRM, the Commission noted that it has the means to identify ineligible subscribers that are not part of an ETC’s statistical survey, including but not limited to the use of audits. *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2821, para. 181 n.316.

<sup>356</sup> See, e.g., MITS Reply Comments at 5; GCI Comments at 4; CTIA Comments at 20.

<sup>357</sup> See, e.g., NTCA Comments at 5-7; MITS Reply Comments at 5; TCA Comments at 3-4; TSTCI Reply Comments at 1-2.

<sup>358</sup> *But see* GCI Nov. 23 *ex parte* Letter at 3-4 (stating that an annual recertification requirement would be burdensome and would be disruptive to consumers, who may lose service if they do not respond to the ETC’s recertification requests); *see also* Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Jan. 17, 2012) (Verizon Jan. 17 *ex parte* Letter).

<sup>359</sup> See, e.g., Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Aug. 24, 2011) (stating that in 2010, TracFone spent \$4.75 per verified subscriber to ascertain that each subscriber remained head of household and received Lifeline service only from TracFone; however, to verify the continued eligibility of their Lifeline subscribers by contacting a statistically valid sample of its subscriber base, TracFone’s cost per verified subscriber was \$66.69) (TracFone Aug. 24 *ex parte* Letter); Letter from Norina Moy, Director, Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (Sprint Aug. 12 *ex parte* Letter). *But see* Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, Attach. At 3 (AT&T Jan. 24 *ex parte* Letter).

139. We also do not believe that the re-certification process we adopt today will be overly burdensome to consumers.<sup>360</sup> As noted above, the amendments to section 54.410 will permit consumers to annually re-certify to their continued eligibility for Lifeline without requiring associated documentation as is currently mandated by our program rules for consumers in federal default states.<sup>361</sup> While all consumers will be required to provide an annual self-certification of continued eligibility, we expect that elimination of the requirement that consumers annually provide supporting eligibility documentation will enable consumers to more easily respond to verification surveys, thereby reducing the number of Lifeline subscribers de-enrolled for failure to respond to carrier verification efforts. Additionally, as discussed below, we direct the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau to coordinate with USAC, states, consumer groups, and ETCs to facilitate a consumer outreach campaign to educate consumers about the Lifeline program rules.<sup>362</sup> By educating consumers about the annual self-certification requirement adopted in the Order, we expect that we will reduce the number of subscribers that fail to respond to an ETC's or administrator's re-certification attempts. Further, by ensuring that all Lifeline subscribers annually verify their continued eligibility for the program, we expect to regain cost savings that will benefit those consumers and companies who contribute to the Universal Service Fund.<sup>363</sup>

140. In the NPRM, the Commission sought comment on the Joint Board's recommendation 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."<sup>364</sup> Pursuant to the rule we adopt today, as a condition of receiving federal Lifeline support, ETCs in all states, or the state Lifeline program administrator, where applicable, must perform the re-certification processes adopted in this Order.<sup>365</sup> We recognize that states may wish to impose additional requirements where they have their own Lifeline programs and specific concerns that may not be applicable to ETCs in all states.<sup>366</sup> States may supplement the federal re-certification methodology with their own procedures specifically tailored to state-specific program requirements.<sup>367</sup> Those supplemental procedures, however, must may be performed in addition to, and but not in lieu of, the uniform, minimum

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<sup>360</sup> See, e.g., GCI Nov. 23 *ex parte* Letter at 3-4; Verizon Jan. 17 *ex parte* Letter at 2.

<sup>361</sup> See 47 C.F.R. § 54.410(c)(2).

<sup>362</sup> See *infra* paras. 281-82.

<sup>363</sup> See *supra* section III.C (Performance Goals and Measures).

<sup>364</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2825, para. 176 (citing *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15608, para. 28).

<sup>365</sup> Some states, such as Arkansas, North Carolina, and New York, have adopted verification methodologies akin to the Commission's current sampling formula. As discussed above, the Commission's current sampling methodology is flawed due to its inability to detect potentially large numbers of ineligible Lifeline subscribers and we replace it today with a uniform re-certification requirement. See *supra* para. 136. To ensure the benefits of this rule change accrue nationwide, it is necessary to mandate that ETCs in all states, at minimum, annually re-certify the continued eligibility of their Lifeline subscriber base. In those states where verification functions are performed by the state and not ETCs, all states are expected to implement procedures to comply with the verification processes adopted here.

<sup>366</sup> See OR PUC Comments at 3, Alaska Commission Reply Comments 2 at 14-15, CenturyLink Comments at 19, MA DTC Comments at 9, DC PSC Comments at 5-6.

<sup>367</sup> For example, some states have verification procedures in place where the subscriber must provide proof of continued eligibility. See, e.g., CA PUC PN Comments at 9-10.



standards we adopt today for those ETCs who receive support from the federal Universal Service Fund.<sup>368</sup>

141. *Procedures to be followed after annual re-certification.* In the *Lifeline and Link Up NPRM*, the Commission proposed to amend section 54.405 of the Commission's rules to adopt a procedure for de-enrolling those subscribers who do not respond to an ETC's verification surveys.<sup>369</sup> Specifically, the Commission proposed a rule requiring ETCs to provide a written notice of impending service termination to the subscriber, separate from the subscriber's bill, and then give the subscriber 30 days after the date of the letter to demonstrate that his or her Lifeline service should not be terminated.<sup>370</sup> In order to protect the program against waste, fraud, and abuse, we amend our rules to codify the proposed de-enrollment procedure.<sup>371</sup>

142. We amend section 54.405 of the Commission's rules to require ETCs to de-enroll within 30 days Lifeline subscribers who do not respond to the carrier's or state's attempts to re-certify the subscriber within a 30-day period. When contacting their Lifeline subscribers to perform the annual re-certification process, ETCs (or the state Lifeline program administrator, where applicable) must notify their subscribers in writing that failure to respond to the re-certification request could result in de-enrollment from that carrier's Lifeline program. By codifying a specific requirement that all ETCs de-enroll subscribers for non-responsiveness, we will ensure that support is not distributed where subscribers fail to evidence their ongoing eligibility for Lifeline.

143. We similarly amend section 54.405 of our rules to provide that, where the carrier has a reasonable basis to believe that the subscriber no longer meets the Lifeline-qualifying criteria (including instances where a subscriber informs the ETC or the state that he or she is ineligible for Lifeline), the ETC must send notification of impending termination in writing separate from the subscriber's monthly bill. Carriers must allow subscribers 30 days following the date of the impending termination letter in which to demonstrate continued eligibility.<sup>372</sup>

144. We do not anticipate that the de-enrollment processes we adopt today will unreasonably burden low-income consumers. As stated above, ETCs in federal default states currently de-enroll Lifeline subscribers for failure to respond to an ETC's verification survey. However, no standardized de-enrollment process is presently in place to provide subscribers with notice of impending de-enrollment and an opportunity to demonstrate their continued eligibility for Lifeline. The processes we adopt here will ensure that Lifeline subscribers are notified of their impending de-enrollment and are given an additional period of time during which they may re-certify to their continued eligibility.

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<sup>368</sup> The state of California, for example, requires all Lifeline subscribers to annually provide a re-certification (verification) form to Solix, the third-party administrator of California's Lifeline program. CA PUC PN Comments at 9; Solix Comments at 6. Solix also verifies the eligibility of 3 percent of the existing Lifeline subscribers in California by requesting documentation to confirm the subscribers' ongoing eligibility. CA PUC PN Comments at 9-10; Solix Comments at 6. The re-certification procedure we adopt today would not preclude California from implementing procedures to examine the eligibility documentation of a random sample of Lifeline subscribers.

<sup>369</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2829-30, para. 192.

<sup>370</sup> *Id.* at 2872, Appendix A, 47 C.F.R. § 54.405(e) (proposed rule).

<sup>371</sup> For commenters supporting adoption of a de-enrollment requirement for non-responders, see DC PSC Comments at 6; TracFone Comments at 32; MI PSC Comments at 8.

<sup>372</sup> *See id.* In such cases, section 54.405(d) of the Commission's rules currently requires ETCs to allow subscribers 60 days following the date of impending termination to demonstrate continued program eligibility. *See* 47 C.F.R. § 54.405(d). We amend section 54.405 of the Commission's rules to reduce that period of time to 30 days, in order to more effectively reduce instances of waste, fraud, and abuse in the program.

145. Moreover, we adopt a requirement above that ETCs must inform consumers about the annual re-certification requirement on the certification form that is completed upon initial program enrollment and annually thereafter.<sup>373</sup> On their annual re-certification materials, ETCs or the program administrator, as applicable, must clearly and succinctly inform subscribers that they are being contacted to re-certify their continuing eligibility for Lifeline. The subscribers must be informed that if they fail to respond, they will be considered ineligible for Lifeline and de-enrolled from the program.<sup>374</sup> ETCs and states may also choose to notify subscribers about the re-certification requirements in their Lifeline outreach materials.<sup>375</sup> By taking these actions, ETCs and states will ensure that consumers are aware of the importance of responding to re-certification efforts, and that they are not inadvertently disconnected due to a lack of understanding of program rules.<sup>376</sup>

146. We also do not expect that these rules will impose significant burdens on ETCs (including small ETCs), many of whom already have similar de-enrollment processes in place.<sup>377</sup> These processes are also consistent with our current rules, which already 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 satisfies the qualifying criteria.<sup>378</sup>

147. *Collection and submission of re-certification data.* Currently, the Commission has access to verification results only from ETCs in federal default states and in a handful of non-federal-default states that require ETCs to submit verification results annually to USAC.<sup>379</sup> As the Commission noted in the NPRM, USAC presently receives verification results for a total of 17 states and territories.<sup>380</sup> In the *2010 Recommended Decision*, the Joint Board recommended that all ETCs in all states should be required to submit the data results of their verification sampling to USAC, the Commission, and their respective states, in order to obtain a more complete set of verification data.<sup>381</sup> The Joint Board also recommended that ETCs' verification results be made publicly available.<sup>382</sup> The Commission sought comment on the

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<sup>373</sup> See *supra* para. 116.

<sup>374</sup> See also MI PSC Comments at 8.

<sup>375</sup> See MI PSC Comments at 8; Consumer Groups Comments at 25-26.

<sup>376</sup> See Consumer Groups Comments at 25-26 (stating that the Commission should be cautious in requiring ETC's to de-enroll consumers who decline to respond to ETC's verification attempts and recommends a phase-in of the rule, if adopted, to allow outreach).

<sup>377</sup> Between 2008 and 2011, under the Commission's verification methodology for federal default states, no distinction was made between subscribers who are ineligible for Lifeline and those who do not respond to an ETC's verification survey. See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2879-81, Appendix B; see also *Deadline for Annual Lifeline Verification Surveys and Certifications*, WC Dkt. No. 03-109, Public Notice, 25 FCC Rcd 7272, 7277, para. 8 (Wireline Comp. Bur. 2010) (*Verification Public Notice*). Thus, subscribers are routinely de-enrolled by ETCs in federal default states. Moreover, other ETCs may already de-enroll subscribers who fail to respond to their verification surveys. See, e.g., TracFone Comments at 32.

<sup>378</sup> 47 C.F.R. § 54.405(c),(d).

<sup>379</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2830, para. 193.

<sup>380</sup> 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.

<sup>381</sup> *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15607-08, paras. 26-27.

<sup>382</sup> *Id.*

Joint Board's recommendations in the *Lifeline and Link Up NPRM*.<sup>383</sup>

148. We codify a rule requiring all ETCs in all states (or the state administrator, where applicable) to submit their aggregated re-certification data to USAC and the Commission by January 31, 2013.<sup>384</sup> We delegate to the Wireline Competition Bureau the authority to coordinate with USAC to determine an appropriate format for the submission of such data.<sup>385</sup> All eligible telecommunications carriers must also provide this re-certification data to the relevant state commission, where the carrier is subject to state jurisdiction, and to the relevant Tribal government, for subscribers residing on reservations or Tribal lands. If an ETC opts to continue performing the annual re-certification process after 2012, the ETC must provide the results of its attempts to obtain signed certifications from all consumers attesting to their continued eligibility for Lifeline to USAC, the Commission, and the relevant state commission, where the carrier is subject to state jurisdiction, by January 31 of each year, beginning on January 31, 2014. All ETCs performing annual re-certifications after 2012 must also provide, by January 31 of each year, their annual recertification results for subscribers residing on reservations or Tribal lands to the relevant Tribal government.

#### **D. Tribal Lifeline Eligibility**

149. In this Order, we take steps to advance the availability of Lifeline support for low-income consumers living on or near Tribal lands. First, we amend section 54.409 of the Commission's rules to clarify that low-income residents of Tribal lands may be eligible for program support based on either income or participation in certain federal or Tribal assistance programs. Second, we amend section 54.409 of the Commission's rules to expand program-based eligibility to participants 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. Third, we establish a process for Tribal governments to seek designation of off-reservation lands as Tribal lands for the purpose of receiving enhanced Lifeline support and remove the term and definition of "near reservation" from section 54.400(e) of our rules. Fourth, we clarify that, pursuant to section 54.410 of the Commission's rules, low-income residents of Tribal lands may self-certify as to their residency on Tribal lands.

##### **1. Background**

150. In its *2000 Tribal Lifeline Order*, the Commission adopted measures to significantly enhance Lifeline and Link Up support for low-income residents living on Tribal lands.<sup>386</sup> The

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<sup>383</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2830, paras. 193-94.

<sup>384</sup> As stated above, the annual re-certification procedures we adopt today will serve as a uniform, minimum set of processes to be followed by all ETCs in all states. By adopting a uniform set of re-certification standards, we will remedy the problems that result from having a patchwork of procedures that vary on a state-by-state basis. For example, a uniform re-certification methodology will reduce compliance costs and administrative burdens on ETCs. See CTIA Comments at 20; Cincinnati Bell Comments at 9; Cricket Comments at 11-12; TracFone Comments at 31-32; YourTel Comments at 12. Moreover, a uniform rule will ensure that adequate checks for ineligible consumers are being performed by ETCs in all states, thereby reducing potential waste, fraud, and abuse in the program.

<sup>385</sup> This format should be such that data can be easily submitted to USAC by ETCs, states, and third-parties, as applicable, and to minimize the administrative burdens for compliance with the rules we adopt today.

<sup>386</sup> *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12231-32, paras. 20-85. An eligible resident of Tribal lands is defined as a qualifying low-income consumer living on or near a reservation, with a reservation being 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." 47 C.F.R. § 54.400(e); see also *2000 Tribal Lifeline Order*, 15 FCC Rcd 12217-19, paras. 16-19. See *infra* paras. 156-63 for a discussion of "near reservation" lands.

Commission defined an eligible resident of Tribal lands as a low-income consumer living on a reservation, with a reservation 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.”<sup>387</sup> The changes were a direct response to the disproportionately low subscribership to telecommunications services among Tribal communities at the time. For example, in 2000, only an estimated 47 percent of Tribal households had phone service compared to 94 percent of all American households and 76.7 percent of rural households earning less than \$5,000 per year.<sup>388</sup> The rules adopted in 2000 were designed to address this urgent challenge.

151. Relying on both section 254 and the unique trust relationship between the federal government and American Indian Tribes and Alaska Native Villages,<sup>389</sup> the Commission created a fourth tier of Lifeline support, providing up to an additional \$25 (for a maximum of \$35) per month in Lifeline support to qualifying low-income consumers living on Tribal lands.<sup>390</sup> The Commission also expanded Link Up to allow qualifying residents of Tribal lands to receive up to an additional \$70 (for a maximum of \$100) off of the cost of commencing telephone service.<sup>391</sup> Moreover, the Commission broadened the program-based eligibility criteria for Lifeline to include the Bureau of Indian Affairs (BIA) general assistance program, Tribally-administered Temporary Assistance for Needy Families, Head Start, and the National School Lunch Program’s free lunch program.<sup>392</sup>

152. In the *Lifeline and Link Up NPRM*, the Commission proposed further changes to the rules to expand opportunities for eligible households on Tribal lands to receive Lifeline support and to permit Tribal governments to designate additional areas as Tribal lands eligible for support.<sup>393</sup>

## 2. Discussion

153. *Income-based eligibility.* We first revise sections 54.409(a) and 54.409(c) of our rules to more clearly reflect that residents of Tribal lands are eligible for Lifeline support based on income.<sup>394</sup>

<sup>387</sup> 47 C.F.R. § 54.400(e); see also *2000 Tribal Lifeline Order*, 15 FCC Rcd 12217-12219, paras. 16-19.

<sup>388</sup> *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12211, 12212, para. 2.

<sup>389</sup> *Id.* at 12221-22, para. 22.

<sup>390</sup> *Id.* at 12230-31, para. 42. Such support is commonly referred to as Tier 4, or enhanced, Lifeline support.

<sup>391</sup> *Id.* at 12238-39, para. 59. Such support is commonly referred to as enhanced Link Up support.

<sup>392</sup> *Id.* at 12245, para. 68.

<sup>393</sup> *Id.* at 2810-17, paras. 126-41.

<sup>394</sup> In the *Lifeline and Link Up NPRM*, the Commission observed that significant confusion exists among ETCs, USAC and Tribal governments about whether residents of Tribal lands can qualify for enhanced support based on income. *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2811, para. 127. The Commission noted that interpretations of section 54.409 of the Commission’s rules appear to differ despite consistent language in the *2000 Tribal Lifeline Order* and the *2003 Tribal Lifeline Order*. Both of those orders stated that the new rules enhancing support represented an expansion of the low-income program; therefore, income-based eligibility for Tribal Lifeline, which existed prior to the amendments, remained intact. See, e.g., *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12245, para. 68 (“Specifically, we *expand* the federal default qualification criteria for eligibility for Lifeline and Link Up assistance . . .” (emphasis added)); *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 Dkt. No. 96-45, 18 FCC Rcd 10958, 10970, para. 23 (2003) (*2003 Tribal Lifeline Order*) (“[T]he Commission *broadened* the federal default qualification criteria to enable low-income individuals living on tribal lands to qualify for this enhanced support . . . . We make this clarification to ensure that those otherwise eligible to participate in the enhanced programs will have the full opportunity to do so.” (emphasis added)).

Consumers living on Tribal lands may qualify for Tribal lands support if the consumer's household income is at or below 135 percent of the federal poverty guidelines; consumers may also qualify through participation in any Tribal-specific federal income assistance program identified in our rules or participation in any other qualifying income assistance program identified in subsection 54.409(b) of our rules. The record suggests, and we agree, that this revision will eliminate any perceived confusion about the availability of income-based eligibility to residents of Tribal lands<sup>395</sup> and reduce the uncertainty that qualifying consumers on Tribal lands have faced in securing Lifeline support.<sup>396</sup>

154. *Program-based eligibility.* We also amend section 54.409 of our rules to expand the number of assistance programs that will qualify eligible residents of Tribal lands for program support. We add the Food Distribution Program on Indian Reservations, a food assistance program for Tribal communities, to the list of programs through which participating consumers living on Tribal lands may qualify for program support. In the *Lifeline and Link Up NPRM*, the Commission noted that, while residents of Tribal lands may qualify for Lifeline support based on participation in the SNAP, they may not qualify based on participation in FDPIR.<sup>397</sup> The Commission observed that because both programs have income-based eligibility criteria, but households may not participate in both programs, some residents of Tribal lands do not qualify for Lifeline support simply because they choose to participate in FDPIR rather than SNAP.<sup>398</sup> Indeed, the Commission observed that members of more than 200 Tribes currently receive benefits under FDPIR, and that elderly Tribal residents often opt for FDPIR benefits.<sup>399</sup> The Commission proposed amending section 54.409 of our rules to add FDPIR to the list of qualifying programs through which participating consumers living on Tribal lands may qualify for Lifeline support.<sup>400</sup>

155. Permitting SNAP beneficiaries to qualify for low-income support but not FDPIR beneficiaries is inconsistent with our program goals when the SNAP and FDPIR programs utilize such similar eligibility criteria.<sup>401</sup> Moreover, the record reflects that our current approach excludes from the

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<sup>395</sup> As stated in the *NPRM*, "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." See *Lifeline and Link Up NPRM* 26 FCC Rcd at 2811, para. 127.

<sup>396</sup> Commenters who addressed this issue expressed support for amending the rule to make clear that residents of Tribal lands qualify for Lifeline based on income. CenturyLink Comments at ii-iii, 14; GRTI Comments at 11; YourTel Comments at 10. But see Alaska Commission Reply Comments at 4-5 (urging the Commission to proceed with care in implementing changes to the eligibility criteria to ensure that consumers currently eligible for Tier 4 support in Alaska are not inadvertently excluded from the program).

<sup>397</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2812, para. 129.

<sup>398</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2812, para. 130. For a summary of the eligibility criteria for SNAP, see United States Department of Agriculture, Supplemental Nutrition Assistance Program (SNAP), Eligibility Criteria, [http://www.fns.usda.gov/snap/applicant\\_recipients/eligibility.htm](http://www.fns.usda.gov/snap/applicant_recipients/eligibility.htm) (last visited Jan. 30, 2012). For a summary of the eligibility criteria for FDPIR, see United States Department of Agriculture, FD Programs, About FDPIR, [http://www.fns.usda.gov/fdd/programs/fdpir/about\\_fdpir.htm](http://www.fns.usda.gov/fdd/programs/fdpir/about_fdpir.htm) (last visited Jan. 30, 2012); see also Food Distribution Fact Sheet, October 2010, available at <http://www.fns.usda.gov/fdd/programs/fdpir/pfs-fdpir.pdf>.

<sup>399</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2812, para. 130.

<sup>400</sup> *Id.* at para. 131; see also *id.* at Appendix A, 47 C.F.R. § 54.409(b) (proposed rule).

<sup>401</sup> See Letter from Duke Storen, Director, Office of Strategic Initiatives, Partnerships, and Outreach, United States Department of Agriculture, Food and Nutrition Service, to Marlene Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 (filed Sept. 2, 2011) (*USDA FDPIR Letter*).

low-income program the very population that the Commission has attempted to support through its Tribal lands Lifeline program – low-income consumers living on Tribal lands.<sup>402</sup> We therefore agree with commenters that including FDPIR as a qualifying program will allow more low-income residents on Tribal lands to receive Lifeline support, which will further the Commission’s goal of increasing access to telecommunications services by low-income residents of Tribal lands.

156. *Designation of Off-Reservation Areas for Tribal Support.* We next adopt the proposal in the *Lifeline and Link Up NPRM* to establish a process for Tribal governments to seek designation of off-reservation areas as Tribal lands for purposes of determining eligibility for Tribal lands Lifeline support. This process will apply to Tribal governments seeking qualification for enhanced Lifeline support for Tribal communities whose land does not meet the definition of “reservation” contained in section 54.400(e) of our rules.

157. In the *2000 Tribal Lifeline Order*, the Commission limited the availability of enhanced low-income program support to qualified low-income consumers living on Tribal lands, which it defined to include both reservations and near reservation areas. The Commission defined near reservation as “those areas or communities adjacent or contiguous to reservations,” and noted that other federal programs supporting Tribes have generally considered such areas to be Tribal lands.<sup>403</sup> Shortly after the adoption of the *2000 Tribal Lifeline Order*, however, the Commission became aware that its definition of near reservation potentially encompassed wide areas in which communities do not face the economic and geographic barriers faced by communities on reservations.<sup>404</sup> Thus, in the *Near Reservation Stay Order*, the Commission stayed the implementation of the enhanced support rules set forth in the *2000 Tribal Lifeline Order* as applied to “qualifying low-income consumers living near reservations,” and sought comment on alternative methods of reaching low-income Tribal consumers living off-reservation.<sup>405</sup>

158. We are concerned that the current definition of Tribal lands and the associated stay have precluded many potentially eligible low-income consumers from receiving Tribal lands Lifeline support as intended by the *2000 Tribal Lifeline Order*. Although they reside in off-reservation areas, such consumers may face the same levels of poverty, geographic isolation, and lack of access to telecommunications services faced by communities on reservations.<sup>406</sup> We also recognize the Commission’s concerns, as discussed in the *Near Reservation Stay Order*, about the potential over-inclusiveness of the current definition of Tribal lands. Accordingly, we adopt a process today that will enable us to more effectively target Lifeline support to qualified residents of Tribal lands.

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<sup>402</sup> Commenters generally supported the addition of FDPIR as a qualifying program for residents of Tribal lands. See, e.g., GRTI Comments at 11-12 (noting that consumers who could otherwise participate in SNAP but choose to participate in FDPIR may be unnecessarily excluded from Lifeline eligibility, and that cultural and language barriers faced by Tribal members when attempting to qualify for federal aid programs exacerbate the problem of inadvertent disqualification); YourTel Comments at 9-10 (noting that one state, Oklahoma, already includes FDPIR in its list of qualifying programs, and that it supported making the same change on the federal level); see also *USDA FDPIR Letter*, at 1; CenturyLink Comments at 14.

<sup>403</sup> *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12218, para. 17.

<sup>404</sup> For example, well-served population centers such as Phoenix, Arizona and Sacramento, California were considered near reservation areas. *2003 Tribal Lifeline Order*, 18 FCC Rcd at 10965, para. 13.

<sup>405</sup> *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Order and Further Notice of Proposed Rulemaking, CC Dkt. No. 96-45, 15 FCC Rcd 17112, 17113-15, paras. 2-6 (2000) (*Near Reservation Stay Order*).

<sup>406</sup> See, e.g., LCCHR Comments at 9-10 (noting the low penetration rates for American Indians for basic telephone service and asserting that the Commission should direct support toward Tribal lands and Tribal members with low subscriberhip rates).

159. Under the rule we adopt today, a Tribal government may seek designation of off-reservation lands as Tribal lands by filing a petition for designation with the Commission's Wireline Competition Bureau and Office of Native Affairs and Policy, to whom we jointly delegate the authority to resolve such petitions. The Office of Native Affairs and Policy will also be responsible for initiating consultation with each Tribal government submitting a designation petition. In establishing this process allowing Tribal governments to designate off-reservation areas as Tribal lands, we rely on the precedent articulated by the Commission in establishing a similar process for radio stations seeking to serve Tribal lands.<sup>407</sup> By making individualized designations of off-reservation Tribal lands, the Commission will more effectively reach those Tribal consumers and communities that are most in need while at the same time reducing over-inclusiveness that could expand eligibility beyond what is appropriate to serve our goal of increasing access to telecommunications services on Tribal lands.

160. A petition for designation of off-reservation lands as Tribal lands for purposes of qualifying for Tribal lands Lifeline support must be formally made by a duly authorized official of a federally recognized Tribe and must establish good cause for such designation. The requirement that designation be formally requested by a duly authorized official of a federally recognized Tribe is consistent with our requirement that only residents of Tribal lands may qualify for enhanced low-income support, based on the government-to-government relationship between Tribal governments and the federal government.<sup>408</sup> A request for designation must provide sufficient evidence of: (1) a nexus between the area or community and the Tribe; and (2) a description of how Tribal lands Lifeline support to the designated area would aid the Tribe in serving the needs and interests of its citizens and further the Commission's goal of increasing telecommunications access on Tribal lands.

161. To satisfy the first requirement, a Tribal government seeking designation for off-reservation Tribal lands must submit evidence probative of a connection between a defined community or area and the Tribe itself. A designation petition should explain that the communities or areas associated with the Tribe do not fit the definition of Tribal lands contained in section 54.400(e) of the Commission's rules. Geographically identifiable factors, such as evidence that the area is one to which the Tribe delivers services to its citizens or to which the federal government delivers services specifically intended for Tribal members, would be probative.<sup>409</sup> Evidence that a Tribe has a defined seat, such as a headquarters or office, in combination with evidence that Tribal citizens live and/or are served by the Tribal government in the immediate environs of such a government seat, would also be probative of a nexus between that community and the Tribe. A Tribal government might also provide a showing under the standard enunciated in section 83.7(b)(2)(i) of Part 25 of the Code of Federal Regulations,<sup>410</sup> that more than 50 percent of Tribal members live in a geographical area exclusively or almost exclusively

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<sup>407</sup> See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Dkt. No. 09-52, RM-11528, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd 2556, 2561-63, paras. 8-11 (2011) (*Rural Radio Second Report and Order*).

<sup>408</sup> See generally *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078 (2000) (*Tribal Policy Statement*). See also *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12213-14, para. 5.

<sup>409</sup> For example, areas to which the federal government provides services to Tribal members could include federal service areas used by the Indian Health Service, Department of Energy, or Environmental Protection Agency. Probative evidence might also include evidence of Census Bureau-defined Tribal service areas used by agencies such as the Department of Housing and Urban Development. See *Rural Radio Second Report and Order*, 26 FCC Rcd at 2561, para. 7.

<sup>410</sup> 25 C.F.R. § 83.7(b)(2)(i). Title 25 encompasses the responsibilities of the Bureau of Indian Affairs, and Part 83 is entitled "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe."

composed of members of the Tribe.<sup>411</sup> Additionally, Tribal governments might provide other indicia of community, such as Tribal institutions (e.g., hospitals or clinics, museums, businesses) or activities (e.g., conferences, festivals, fairs).<sup>412</sup> The designation petition should also detail, pursuant to the second requirement adopted in section 54.412 of our rules, how the provision of Tribal lands Lifeline support to the community or area would aid the Tribe in serving the needs of its community and thus would further the goals of the enhanced Lifeline program.

162. The Tribal government must also clearly describe a defined area for the off-reservation lands for which it seeks designation as Tribal lands.<sup>413</sup> This requirement is consistent with the purposes of enabling Tribes to serve their citizens, to perpetuate Tribal culture, and to promote self-government.<sup>414</sup> In addition, the showing must demonstrate the Tribal character of the area or community for which Tribal lands designation is sought. The need for such a demonstration is in line with the purposes underlying Tribal lands enhanced low-income support, namely to promote telecommunications deployment and subscribership on Tribal lands, consistent with our obligations under the historic federal trust relationship between the federal government and federally recognized Indian Tribes to encourage Tribal sovereignty and self-governance.<sup>415</sup> We note that it is the express intent of the Commission that any such designation shall be used solely for the Lifeline program and shall not be used for other purposes – such as eligibility for the Tribal Mobility Fund established in the *USF/ICC Transformation Order and FNPRM*.

163. In conjunction with this action, we also adopt the proposal in the *Lifeline and Link Up NPRM* to remove the term and definition of “near reservation” from section 54.400(e) of our rules. We acknowledge that leaving the language in the rules after staying its implementation may have caused confusion. We also acknowledge that the term “near reservation” was overly broad, designating large areas that do not possess characteristics warranting Tribal lands low-income support. We expect that the designation process we adopt today will eliminate any lingering confusion associated with this term and, consistent with the *2000 Tribal Lifeline Order*, will enable the Commission to target Tribal lands Lifeline support to underserved consumers living off of reservations. We do not anticipate the removal of the near reservation language from our rules to have any adverse impact on consumer eligibility for Tribal lands support. Moreover, the record supports the adoption of a process for designating off-reservation areas as Tribal lands in lieu of maintaining or modifying the term “near reservation,”<sup>416</sup> and we therefore make that change today.

164. *Self-certification of Tribal land residence.* We also adopt the proposal in the *Lifeline and Link Up NPRM* to clarify that, pursuant to section 54.410 of the Commission’s amended rules, consumer self-certification is sufficient to meet the Tribal lands residency requirement for enhanced Lifeline support. In 2008, Qwest Communications (Qwest) (now known as CenturyLink) sought review of a USAC decision which found that Qwest provided enhanced Lifeline support to subscribers who did not

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<sup>411</sup> See *Rural Radio Second Report and Order*, 26 FCC Rcd at 2562, para. 9.

<sup>412</sup> *Id.*

<sup>413</sup> See *Rural Radio Second Report and Order*, 26 FCC Rcd at 2586, para. 58 (noting that Tribal lands may be very small or irregularly shaped).

<sup>414</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2814, para. 136.

<sup>415</sup> See *Tribal Policy Statement*, 16 FCC Rcd at 4080-81; *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12213-14, para. 5.

<sup>416</sup> Commenters generally found this proposal to be non-controversial. Specifically, CenturyLink expressed its support for the implementation of a new designation process for off-reservation Tribal lands, adding that once the process is in place, the Commission should maintain a list of Tribal lands designated under the process. CenturyLink Comments at 14.



reside on eligible Tribal lands and failed to provide enhanced Lifeline support to subscribers who were eligible residents of Tribal lands.<sup>417</sup> Qwest argued that it had secured signed documents from consumers self-certifying their participation in a qualifying program and residence on a reservation, and had thus fulfilled its obligation to demonstrate the consumers' residence on Tribal lands as required by Commission rules.<sup>418</sup> The Commission sought comment on the Qwest Petition in 2008,<sup>419</sup> and commenters generally urged the Commission to continue allowing low-income consumers to self-certify to their residency on Tribal lands.<sup>420</sup>

165. In the *Lifeline and Link Up NPRM*, the Commission proposed to eliminate the option for consumers to self-certify to their program-based eligibility for Lifeline support, but to maintain a rule allowing consumers to self-certify to their residence on Tribal lands.<sup>421</sup> The Commission noted that there is consensus among ETCs and Tribes that Tribal addresses are often difficult, if not impossible, to determine, and that requiring ETCs to document Tribal residency would significantly undermine the goal of increasing access to telecommunications services on Tribal lands by discouraging carriers from serving Tribal communities.<sup>422</sup>

166. As proposed in the NPRM, we clarify that, pursuant to section 54.410 of the Commission's amended rules, consumer self-certification is sufficient to meet the residency requirement of Tribal lands Lifeline support.<sup>423</sup> Thus, a low-income consumer applying for Tribal lands low-income support must certify upon program enrollment that he or she is an "eligible resident of Tribal lands," as defined in section 54.400(e) of our rules. The record indicates that residential addresses are frequently non-existent on Tribal lands and, where present, often differ significantly from residential addresses off Tribal lands.<sup>424</sup> Further, the record strongly suggests that imposing an address verification requirement for Tribal land residence would be unduly cumbersome and counterproductive to our goal of increasing access to telecommunications services on Tribal lands.<sup>425</sup> We therefore agree with commenters, who urge

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<sup>417</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2815, para. 138; *see also Request for Review by Qwest Communications International, Inc. of the Decision of the Universal Service Administrator*, WC Dkt. No. 03-109 (filed Apr. 25, 2008) (*Qwest Petition*).

<sup>418</sup> *Qwest Petition* at 6-9.

<sup>419</sup> *Comment Sought on Qwest Request for Review of a Decision of the Universal Service Administrative Company*, WC Dkt. No. 03-109, Public Notice, 23 FCC Rcd 7845 (Wireline Comp. Bur. 2008).

<sup>420</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2816, para. 139 (citing AT&T Qwest Petition Comments, WC Dkt. No. 03-109 (filed Jun. 16, 2008); USTelecom Association Qwest Petition Comments, WC Dkt. No. 03-109 (filed Jun. 16, 2008); Alltel Communications, LLC Qwest Petition Reply Comments, WC Dkt. No. 03-109 (filed Jul. 1, 2008); Rural Cellular Corporation Qwest Reply Comments, WC Dkt. No. 03-109 (filed Jul. 1, 2008); SBI Qwest Petition Reply Comments, WC Dkt. No. 03-109 (filed Jul. 1, 2008)).

<sup>421</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2816-17, para. 141.

<sup>422</sup> *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2816, para. 139.

<sup>423</sup> We also grant Qwest's April 2008 request for review of the USAC audit finding. We find that Qwest was compliant with the Commission's Lifeline rules that existed at the time, as clarified herein.

<sup>424</sup> *See, e.g.*, SBI Comments at 14-16. SBI cited a letter to the Commission from the Navajo Nation describing the absence of addressing systems on Tribal lands and the significant challenges that the absence has posed to the provision of basic services like mail and emergency medical dispatch. *See* SBI Comments at 14-15. SBI noted that when a consumer provides an address commonly seen in Tribal communities such as "5 MI NE OF ROCKWELL STORE," reliable verification of the address is all but impossible. SBI Comments at 15. *See also* NNTRC Jan. 20 *ex parte* Letter at 5.

<sup>425</sup> *See, e.g.*, CenturyLink Comments at 15; SBI Comments at 14-16; USTelecom Comments at 6-7. Because we have already addressed the proposal on self-certification as to income and program participation above, we limit our (continued....)

us to keep the rule as is.

### **E. Electronic Signature and Interactive Voice Response Systems**

167. *Background.* The Commission's Lifeline and Link Up rules require subscribers or potential subscribers to the program to sign documents certifying to program eligibility in order to obtain the service. Sections 54.409(c) and (d) of our rules, for example, require ETCs to "obtain [a] consumer's signature on a document certifying under penalty of perjury" that the consumer meets certain Lifeline eligibility requirements.<sup>426</sup> Similarly, section 54.410 requires ETCs to verify their subscribers' continued eligibility by having subscribers self-certify under penalty of perjury to certain requirements relevant to continued eligibility.<sup>427</sup> In the *NPRM*, the Commission proposed to allow consumers to electronically sign the "penalty of perjury" requirements of sections 54.409(c), 54.409(d), and 54.410 of the Commission's rules and sought comment on the rules defining and guidelines for accepting electronic signatures for Lifeline enrollment, certification, and verification.<sup>428</sup> The Commission also sought comment on whether interactive voice response (IVR) systems, which record and save an applicant's certification of eligibility over the telephone, is an acceptable method to verify a consumer's signature under sections 54.409(c), 54.409(d), and 54.410 of the Commission's rules.<sup>429</sup>

168. *Discussion.* We clarify that ETCs may obtain electronic signatures from potential or current subscribers certifying eligibility to receive support under "penalty of perjury" pursuant to section 54.410 of the Commission's rules. The Electronic Signatures in Global and National Commerce Act (E-Sign Act)<sup>430</sup> and Government Paperwork Elimination Act<sup>431</sup> establish that an electronic signature, defined by the E-Sign Act as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.<sup>432</sup> The E-Sign Act grants federal agencies, including the Commission, the authority to issue rules and guidance in accordance with section 101 of the E-Sign Act, which states that "a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form," before specifying further requirements regarding verifiability, accuracy, and consumer consent.<sup>433</sup> Because our Lifeline rules make no distinction between electronic and written signatures, the operative effect of the E-Sign Act is to permit the use of electronic signatures for the purposes of certifying eligibility to receive support under penalty of perjury.<sup>434</sup> The record supports the use of electronic signatures by consumers as a way to

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discussion in this section to the proposal on self-certification as to residence on Tribal lands. *See supra* section VI.C (Certification of Consumer Eligibility).

<sup>426</sup> *See* 47 C.F.R. § 54.409(c), (d).

<sup>427</sup> *See* 47 C.F.R. § 54.510.

<sup>428</sup> *See NPRM*, 26 FCC Rcd at 2839, para. 224.

<sup>429</sup> *See id.* at 2839, para. 225. In addition, one ETC has filed a request with the Commission seeking permission to enroll Lifeline consumers online and by telephone using an IVR. *See* Letter from Peter Lurie, Virgin Mobile USA, L.P., to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Dkt. No. 09-197 (filed March 4, 2010).

<sup>430</sup> *See* 15 U.S.C. §§ 7001-7004 (2006).

<sup>431</sup> *See* 44 U.S.C. §§ 3501-20 (2006).

<sup>432</sup> *See* 15 U.S.C. §§ 7001-7004 (2006); 44 U.S.C. §§ 3501-20 (2006).

<sup>433</sup> *See* 15 U.S.C. §§ 7001-7004 (2006).

<sup>434</sup> One commenter agrees with our analysis: Comptel states that electronic signatures are already allowed under the E-Sign Act, which includes IVRs. COMPTTEL Comments at 22. Furthermore, we interpret "document" in 47 C.F.R. (continued....)

simplify the enrollment process.<sup>435</sup> As such, we find that it is in the public interest to clarify that electronic signatures may be relied upon for purposes of the Lifeline program rules, including the certification requirements adopted herein. We also determine for purposes of annual certifications, ETCs may rely upon text messages from Lifeline consumers when such communications is received in response to the annual certification request from the consumer's Lifeline-supported phone number.

169. Though ETCs may now rely on electronic signatures, including IVR recordings, we note that our recordkeeping requirements remain unchanged.<sup>436</sup> Indeed, our requirements, as written, are not affected by the inclusion of electronic records; ETCs are still required to maintain records to document compliance with all Commission and state requirements governing the Lifeline program, including copies of text messages for annual certifications.<sup>437</sup> Nevertheless, we adopt a rule to clarify that an electronic signature is an acceptable method to verify a consumer's signature under section 54.410 of the Commission's rules. While we make clear that ETCs may rely on electronic signatures to obtain a consumer's signature on a document certifying under penalty of perjury, ETCs must keep accurate and verifiable records and must comply with the certification requirements set forth in section VI.C, above.

#### F. Automatic and Coordinated Enrollment

170. *Background.* In this section, we limit automatic enrollment in the program by state agencies and, at the same time, encourage the use of coordinated enrollment. Coordinated enrollment is a mechanism that permits but does not compel consumers to enroll in Lifeline and Link Up at the same time they enroll in a qualifying public assistance program.<sup>438</sup> Coordinated enrollment is distinguishable from "automatic" or "automated" enrollment, which entails a state or authorized agent automatically enrolling an eligible consumer in Lifeline without the consumer submitting a Lifeline application or expressly authorizing the enrollment.<sup>439</sup> In automatic enrollment programs, an eligible consumer is automatically enrolled in a Lifeline program without their affirmative consent.<sup>440</sup> The Texas PUC matches ETCs' current subscribers' names to eligibility data from state social services databases.<sup>441</sup> Eligible subscribers are automatically enrolled in the Lifeline program of their carrier (if that carrier is an ETC). The Lifeline discount is then provided to the subscriber unless they opt out after having received notification of their enrollment. Other states have similar processes.<sup>442</sup>

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§ 54.409(c) and (d) to constitute a record that may be saved pursuant to the record keeping requirements set forth in 47 C.F.R. § 54.410.

<sup>435</sup> See, e.g., Amvensys Comments at 9; CenturyLink Comments at 21-22; COMPTTEL Comments at 22; Emerios Comments at 17; GCI Comments at 52; NALA/PCA Comments at 6; Solix Comments at 3; YourTel Comments at 14.

<sup>436</sup> See 47 C.F.R. § 54.417.

<sup>437</sup> See *id.*

<sup>438</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2831, para 199. The Commission and its staff have long encouraged coordinated enrollment as a way to improve the efficiency of the low-income program. In 2004, for example, the Commission encouraged states to implement coordinated enrollment. See *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd at 8318, para. 25.

<sup>439</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2831-32, para 200 ("Unlike automatic or automated enrollment, coordinated enrollment requires eligible consumers to affirmatively choose to enroll in the Lifeline program.").

<sup>440</sup> See *id.*

<sup>441</sup> See Solix Comments at 3-4.

<sup>442</sup> See, e.g., NY PSC Comments.

171. In 2010, the National Broadband Plan recommended that the Commission encourage state agencies responsible for Lifeline and Link Up to streamline benefit enrollment and suggested the use of unified online applications for social services.<sup>443</sup> In the *2010 Recommended Decision*, the Joint Board recommended that coordinated and automatic enrollment should be encouraged as a best practice,<sup>444</sup> but also recommended that the Commission not mandate coordinated enrollment before seeking comment on the various administrative, technological and funding issues of such a requirement.<sup>445</sup> Thus, in the *Lifeline and Link Up NPRM*, the Commission suggested that coordinated enrollment be encouraged as a best practice by the states and sought comment on the steps that the Commission could take to further facilitate coordinated enrollment.<sup>446</sup> The Commission sought comment on the overall costs and benefits of coordinated enrollment as the Joint Board recommended.<sup>447</sup>

172. *Discussion.* We limit the ability of states and their agents to automatically enroll a consumer in Lifeline without the consumer's express authorization in order to protect the Fund against duplicative Lifeline support, increase adherence to consumer certification rules, and ensure that all ETCs have an opportunity to compete for subscribers. At the same time, we agree with the Joint Board that coordinated enrollment has substantial benefits and should be facilitated.

173. While automatic enrollment programs increase consumer enrollment in Lifeline, some features of these programs may have the unintended consequences of excessively burdening the Fund, may undermine Commission objectives to reduce waste and prevent duplicative support, and limit ETCs' opportunities to compete for consumers.<sup>448</sup> For example, in one state, Verizon must apply the Lifeline discount to any existing Verizon wireline consumer identified as receiving benefits from the that state's Office of Temporary Disability Assistance.<sup>449</sup> The consumer subsequently receives a letter from the state explaining that they have been enrolled in Verizon's Lifeline program and must opt-out if they do not want the discount. A substantial number of consumers will likely not exercise that option and stay with the default selection regardless of their actual preference or whether they are receiving Lifeline from another provider.<sup>450</sup> Not only can competition among ETCs for low-income consumers be frustrated by automatic enrollment processes that favor a single provider, but this process may lead to duplicative claims. For example, a Verizon wireline subscriber that is automatically enrolled in Verizon's Lifeline program and given the Lifeline discount may already be receiving Lifeline support from a wireless

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<sup>443</sup> NATIONAL BROADBAND PLAN at 173.

<sup>444</sup> In its recommended decision, the Joint Board used the term "automatic" or "automated" enrollment to mean both automatic enrollment and coordinated enrollment as defined in this order. See *2010 Joint Board Recommended Decision* at n.26 (citing LIFELINE ACROSS AMERICA WORKING GROUP, REPORT OF THE FCC/NARUC/NASUCA WORKING GROUP ON LIFELINE AND LINK-UP: "LIFELINE ACROSS AMERICA" 6-9 (2007), available at <http://www.lifeline.gov/LLLUREport.pdf> (WORKING GROUP REPORT)).

<sup>445</sup> See *2010 Joint Board Recommended Decision* at paras 18-22.

<sup>446</sup> See *Lifeline and Link Up NPRM*, FCC Rcd at 2832-33, paras. 201-04.

<sup>447</sup> See *id.* at 2833, para 204.

<sup>448</sup> See 47 U.S.C. § 254(d) ("A State may adopt regulations to provide for additional definitions and standards to advance universal service within that State only to the extent that such regulations...do not rely on or burden Federal universal support mechanisms.").

<sup>449</sup> See NY PSC Comments at 10.

<sup>450</sup> See *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Dkt. No. 04-36 *et al.*, para 44 (2007) (noting that customers may inadvertently provide consent to share private information if consent is provided unless the consumer affirmatively opts out).

Lifeline provider.<sup>451</sup> Automatic enrollment may also prevent ETCs from complying with certification and other requirements we adopt in this Order meant to reduce waste in the Fund. In states with automatic enrollment, automatically enrolled consumers are unable to attest, under penalty of perjury, that they are the only person in their household receiving Lifeline prior to enrollment.<sup>452</sup> In light of the rule changes we adopt today, states with automatic enrollment programs must modify those programs, as necessary, to comply with our rules, so that consumers are not automatically enrolled without consumers' express consent.

174. While we place limitations on how states' automatic enrollment processes can be utilized, we encourage coordinated enrollment and recognize coordinated enrollment as a best practice in light of the overwhelming support in the record and the benefits of coordinated enrollment. We also note that coordinated enrollment processes can increase the effectiveness of state eligibility databases which are currently in use and any national eligibility database which the Commission may adopt in the future.<sup>453</sup>

175. A number of states currently engage in or are implementing coordinated enrollment.<sup>454</sup> For example, in 2007, Florida's Department of Children and Families (DCF) and the Florida Public Service Commission (FL PSC) established a coordinated enrollment system in which applicants to three Lifeline eligible programs (Food Stamps, Medicaid, and Temporary Assistance to Needy Families) can also apply for Lifeline benefits at the same time.<sup>455</sup> When a consumer receiving benefits from DCF enrolls in one of these three DCF programs online, the consumer is also presented with the option to enroll in Lifeline.<sup>456</sup> If the consumer affirmatively enrolls in Lifeline, the consumer selects an ETC from a list.<sup>457</sup> The list of consumers and their ETC selections are sent to the FL PSC. The FL PSC then sends each ETC the list of consumers who selected that ETC as their Lifeline provider.<sup>458</sup> Nebraska has a similar coordinated enrollment process in which at least some consumers apply for Lifeline at the

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<sup>451</sup> For example, both TracFone and Virgin Mobile provide Lifeline service in New York. *See* Assurance Wireless, How To Qualify for Assurance Wireless, *available at* <http://www.assurancewireless.com/Public/HowToQualify.aspx> (last visited at Jan. 18, 2012); Safelink Wireless; New York Questions, *available at* [https://www.safelinkwireless.com/Safelink/program\\_info/faq/newyork](https://www.safelinkwireless.com/Safelink/program_info/faq/newyork); *see also* USAC Low-Income Disbursement Tool, <http://usac.org/li/tools/disbursements/default.aspx> (reflecting Lifeline disbursements to Safelink and TracFone in New York) (last visited Feb. 5, 2012).

<sup>452</sup> *Supra* n.52, *supra* para. 120.

<sup>453</sup> As AT&T argues, an eligibility database would enable coordinated enrollment on a wider scale. *See* AT&T Reply Comments at 2 ("We support the Commission requiring states to implement coordinated enrollment, a process that we see as logically linked to a national Lifeline consumer database.").

<sup>454</sup> *See, e.g.*, DC PSC Comments at 6-7 ("The DC PSC notes that, in the District of Columbia, there have been discussions to consolidate the utility discount program certification activities with the public assistance certification activities performed by the Income Maintenance Administration ('IMA'), which handles public assistance applications in the District of Columbia....The DC PSC intends to continue its efforts to promote Lifeline adoption through coordinated or automatic enrollment."); FL PSC Comments at 23.

<sup>455</sup> *See* FL PSC Comments at 20, 23. Lifeline consumers in Florida whose eligibility is based on a program that DCF does not administer (Supplemental Security Income, Section 8 Federal Public Housing, Low-Income Home Energy Assistance, National School Free Lunch, or Bureau of Indian Affairs Programs) might be required to provide additional documentation proving participation in these programs. *Id.* at 20.

<sup>456</sup> *See id.* at 23.

<sup>457</sup> *See id.*

<sup>458</sup> *See id.*

Nebraska social services office where those consumers apply for and receive other qualifying benefits.<sup>459</sup>

176. In response to the *Lifeline and Link Up NPRM*, many commenters argue that the Commission should maintain the current policy of encouraging coordinated enrollment as a best practice.<sup>460</sup> Commenters report that coordinated enrollment is an efficient and effective means of increasing participation in the Lifeline and Link Up programs while protecting against waste in the Fund. Commenters argue that coordinated enrollment helps ensure that only eligible consumers are enrolled,<sup>461</sup> increases awareness in the program,<sup>462</sup> makes enrollment more convenient for eligible subscribers,<sup>463</sup> and by doing so, expands program participation.<sup>464</sup> Others suggest that the Commission should make monies available from the Fund for states to use toward implementation of coordinated enrollment.<sup>465</sup> While some commenters support mandatory coordinated enrollment,<sup>466</sup> the majority oppose such a mandate as administratively and technologically infeasible and financially burdensome.<sup>467</sup> We decline at this time to impose coordinated enrollment obligations on states but instead, given the substantial benefits offered by coordinated enrollment, continue to encourage state social service agencies to coordinate enrollment in Lifeline with other qualifying benefit programs.

177. We also note that coordinated enrollment is, in many cases, facilitated through access to state social services databases which allow for real-time verification of eligibility.<sup>468</sup> Verifying eligibility at the beginning of the application process, either through coordinated enrollment at a state social services agency and/or by accessing an eligibility database at the time of application increases efficiency and effectively manages consumer expectations by ensuring that consumers know early in the process whether they are eligible for a supported service.<sup>469</sup>

178. Some states and ETCs query eligibility databases after the consumer has submitted their application but before the ETC initiates service.<sup>470</sup> While these processes are not, by definition,

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<sup>459</sup> See NE PSC Aug. 8 *ex parte* Letter at 1 (noting that some consumers receive lifeline applications from the NDHHS).

<sup>460</sup> See NASUCA Comments at 24; *see also* Alaska Commission Reply Comments at 14.

<sup>461</sup> See AT&T Reply Comments at 2; *see also* NJ DRC Comments at 21.

<sup>462</sup> See, e.g., CenturyLink Comments at 20; DC PSC Comments at 6; NJ DRC Reply Comments at 24.

<sup>463</sup> See CenturyLink Comments at 20.

<sup>464</sup> See NJ DRC Reply Comments at iii. FL PSC Comments at 23; Benton/PK/UCC Comments at 5; MAG-Net Comments at 14.

<sup>465</sup> See, e.g., Consumer Groups Reply Comments at 8 (arguing that “without financial incentives to address the cost of developing and implementing these systems, coordinated enrollment will languish as little more than a best practice”).

<sup>466</sup> See, e.g., AT&T Reply Comments at 2; LCCHR Comments at 8-9; Benton/PK/UCC Comments at 5.

<sup>467</sup> See, e.g., Alaska Commission Reply Comments at 13; FL PSC Comments at 23; MO PSC Comments at 17; NY PSC Comments at 10; NASUCA Comments at 24 (stating that the Commission lacks the authority to impose such a mandate); IN FSSA Comments at 1; MITS Reply Comments at 3.

<sup>468</sup> See *supra* para. 165.

<sup>469</sup> See TracFone Aug 3 *ex parte* Letter at 3. (“ETCs are able to access those data bases and determine whether applicants for the Lifeline programs are enrolled in qualifying programs, without imposing a documentation burden on those applicants.”).

<sup>470</sup> NE PSC Aug. 8 *ex parte* Letter (“Once a subscriber obtains the application from the NPSC, NDHHS, or from the carrier, and submits it to the NPSC, the NPSC staff reviews the application for completeness. If the subscriber’s eligibility is based on Medicaid, Food Stamps or Kids Connection, then the NPSC staff accesses NDHHS (continued....)”).

coordinated enrollment, they assist in improving administration of the Fund. By enabling the carrier or state to check eligibility prior to service activation, eligibility databases will likely eliminate a substantial amount of waste in the Fund. In the *FNPRM*, we seek further comment on the feasibility of establishing and/or mandating the use of databases capable of providing real-time eligibility verification.<sup>471</sup>

## VII. REFORMS TO ELIMINATE WASTE, FRAUD & ABUSE

### A. National Lifeline Accountability Database

179. In this Order, we establish a National Accountability Database (“database”) to detect and prevent duplicative support in the Lifeline/Link Up program. We direct USAC to establish a database to both eliminate existing duplicative support and prevent duplicative support in the future. To accomplish these purposes the database must have a number of core functions, including the ability to receive and process subscriber information provided by ETCs to identify whether a subscriber is receiving a Lifeline benefit from another ETC. The database will utilize subscriber data provided by ETCs to identify and reduce current instances of duplicative support. The database must also be capable of accepting queries from an ETC to enable them to determine if a prospective subscriber is already receiving Lifeline support from another ETC. The record indicates that the cost to the Fund of establishing the database with these functions will be substantially outweighed by the amount of duplicative support which will be eliminated through operation of the database.

#### 1. Background

180. As explained below, our ongoing oversight has revealed that a substantial number of subscribers are receiving duplicative Lifeline support, which includes individuals receiving two or more Lifeline benefits from ETCs as well as two or more individuals in a household receiving benefits from multiple ETCs. We conclude that without implementing additional measures to prevent duplicative Lifeline support, such waste will continue to increase, especially as additional ETCs begin offering Lifeline service. There is currently no mechanism for an ETC to verify, on its own, whether a prospective subscriber is receiving Lifeline benefits from another ETC because ETCs cannot view each other’s subscriber lists.<sup>472</sup> As a result, some subscribers receive Lifeline benefits from multiple carriers.

181. The Commission has taken steps to address waste and duplicative payments. The National Broadband Plan recommended that the Commission should “consider whether a centralized database for online certification and verification is a cost-effective way to minimize waste, fraud, and

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information via a secured file and NPSC staff verifies that the subscriber is on the said program.”); OR PUC Aug. 24 *Ex Parte* Presentation at 2 (“When an applicant contacts the Oregon Commission or submits an Oregon-specific Lifeline application via mail, fax or online, the Oregon Commission’s staff searches the Oregon Commission database using the applicant’s complete Social Security number followed by the phone number and the first few letters of their first and last name...”); Letter from Sally Brown, Senior Assistant Attorney General, Washington, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 at 3 (filed Aug. 30, 2011) (describing three-way call between the consumer, ETC and social services agency at time of customer enrollment in Lifeline in order to verify Lifeline eligibility).

<sup>471</sup> See *infra* section XIII(A).

<sup>472</sup> See Sprint Reply Comments at 10 (“Lifeline service providers currently have no means to prevent duplicate discounts...and have experienced significant de-enrollment of otherwise eligible Lifeline customers because those customers fail to provide proof of their on-going eligibility during the verification process. A national database would effectively address both of these situations.”); Verizon and Verizon Wireless Comments at 10. We note that ETCs participating through the duplicates resolution process have been informed by USAC which of their customers in certain states are receiving duplicative support. However, this process is temporary and does not allow the ETC to determine whether a prospective customer is already receiving support from another ETC.

abuse.”<sup>473</sup> In the *2010 Joint Board Referral Order*, the Commission asked the Joint Board to examine ways to eliminate waste, including how a database might streamline certification and verification and check for duplicative support “based on numerous such proposals in the record.”<sup>474</sup> In the *2010 Joint Board Recommended Decision*, the Joint Board observed that many stakeholders recognize that a database could eliminate duplicative claims and “provide accurate and up-to-date information on customers’ eligibility,”<sup>475</sup> but it concluded that it did not have “the level of operational details or associated tangible cost estimates necessary to implement a national database” at that time.<sup>476</sup> The Joint Board recommended that the Commission seek further comment on whether to adopt a database and how it would be administered and implemented.<sup>477</sup> In the *Lifeline and Link Up NPRM*, the Commission proposed several measures to modernize the Lifeline and Link Up programs and sought comment on both immediate and permanent measures to prevent waste in the Lifeline program, including the creation of a database to check for eligibility and duplicative support.<sup>478</sup> The vast majority of parties filing comments support a database and provide recommendations regarding its design and implementation.<sup>479</sup> In the *2011 Duplicative Program Payments Order*, the Commission established an interim process to eliminate duplicative support.<sup>480</sup> This process has been successful in eliminating substantial amounts of duplicative support. Indeed, according to data provided by USAC, it is estimated that over \$35 million will be saved per year from the elimination of duplicative support in twelve states,<sup>481</sup> and we anticipate there will be additional savings as USAC expands its examination to additional states.

## 2. Discussion

182. To prevent waste in the Universal Service Fund, we now create and mandate the use by ETCs of a National Lifeline Accountability Database with specified features and functionalities, described more fully below, to ensure that multiple ETCs do not seek and receive reimbursement for the same Lifeline/Link Up subscriber.<sup>482</sup> This action represents an important step in addressing potential waste, fraud, and abuse in the program; addressing the concerns the Commission has identified in the last eighteen months; and responding to recommendations made by the Government Accountability Office in

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<sup>473</sup> NATIONAL BROADBAND PLAN at 173.

<sup>474</sup> See *2010 Joint Board Referral Order*, 25 FCC Rcd at 5079 n.88 (noting that commenters believed a national database could prevent “double dippers who seek to obtain Lifeline-supported service from two different providers.”) (internal quotations omitted).

<sup>475</sup> *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15612, para. 38.

<sup>476</sup> *Id.* at 15611, para. 37.

<sup>477</sup> *Id.* at 15610, para. 36.

<sup>478</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2788-93, paras. 52-64.

<sup>479</sup> See, e.g., Solix Comments; Solix Reply Comments; Letter from Mitchell F. Brecher, Counsel for TracFone and West to Marlene Dortch, Secretary, Federal Communications Commission, *ex parte* Presentation, WC Dkt. No. 11-42 *et al.* (filed May 19, 2011) (West May 19 Presentation); Emerios Comments; Emerios Reply Comments; AT&T Comments at 11-15.

<sup>480</sup> *2011 Duplicative Program Payments Order* 26 FCC Rcd at 9030-9032, paras. 15-18.

<sup>481</sup> See Letter from Karen Majcher, Vice President, USAC, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Jan. 10, 2012) (*USAC 2011 IDV Process Letter*).

<sup>482</sup> To the extent a state agency or administrator enrolls consumers in the Lifeline program, the agency or administrator should perform the functions described below, in lieu of ETCs. In this section, obligations are placed on ETCs only to the extent there is no state agency or third party administrator that can perform this function.



its 2010 report.<sup>483</sup>

183. The database will have certain basic functions to prevent, detect, and eliminate duplicative Lifeline and Link Up support. This includes the ability to receive and process subscriber information provided by ETCs to identify whether a subscriber is receiving a Lifeline benefit from another ETC, and the ability to allow authorized users, including ETCs and states, to query the database to determine if a prospective consumer already is receiving Lifeline service.<sup>484</sup>

184. The database cannot serve its intended purpose unless ETCs (or states, where enrollment is performed by a state agency or third party) populate the database with the information necessary to detect duplicative support. We therefore adopt a rule requiring each ETC to submit the name, address, and phone number of each of its Lifeline subscribers,<sup>485</sup> the subscribers' service initiation and de-enrollment dates (when de-enrollment occurs), the means through which the subscriber qualified for support (e.g., Medicaid or income), the last four digits of the Social Security number<sup>486</sup> and date of birth of the subscriber, the amount of Lifeline support received by the subscriber each month (e.g., flat rate or Tribal Land support) as well as whether the subscriber has also received Link Up support, and if so, the address, and date of service initiation to which Tribal Link Up support applied. The database and related processes must be able to accommodate non-traditional addresses, such as addresses on Tribal lands not recognized by the U.S. Postal Service.<sup>487</sup> This data will be utilized by USAC and ETCs to eliminate duplicative claims, will assist USAC in its auditing processes and may also facilitate the "auto-generation" of Form 497s in the future. ETCs must provide this information for existing subscribers to the database within 60 days of the Bureau providing notice that the database is ready to accept ETC information for new subscribers upon initiation of service thereafter.<sup>488</sup>

185. We set a target date to have the database operational as soon as possible and no later than a year from release of the Order. Once the database is operational and has been populated with the initial subscriber information necessary to check for duplicative support (i.e., ETCs' existing subscriber data provided within 60 days of Bureau notice), we direct USAC to identify those subscribers currently receiving duplicative support and resolve those claims for duplicative support pursuant to the "scrubbing" process explained below.<sup>489</sup> We direct USAC to assist subscribers and ETCs in resolving disputes over

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<sup>483</sup> 2010 GAO REPORT at 35 (noting that the Commission must adequately address the risk of duplicative claims).

<sup>484</sup> By "authorized users" we mean entities which are permitted to query the database to detect duplicative support. As we explain below, we establish a process for USAC to authorize database access for those parties who will require or would benefit from database access, such as ETCs, state administrators, state social services agencies, and third-party administrators (e.g., Solix in California).

<sup>485</sup> Throughout this Order, the phrase "to the database" means to USAC, the third party administering the database and/or the database itself.

<sup>486</sup> For those consumers living on Tribal lands who lack a Social Security number, an official Tribal identification card number may be provided in lieu of the last four digits of a Social Security number. This is the case everywhere noted in the Order where a consumer is required to provide the last four digits of a Social Security number.

<sup>487</sup> See *supra* paras. 165-66, in which we note record support for the fact that residential addresses are frequently non-existent on Tribal lands and, where present, often differ significantly from residential addresses off Tribal lands (citing SBI Comments at 14-16).

<sup>488</sup> As noted below, ETCs operating in states that check for duplicative Lifeline and Link Up support are not obligated to provide such data to the national database.

<sup>489</sup> We anticipate that this process will be similar to the process described in the June 21, 2011 Guidance Letter. See generally *June Guidance Letter*. That process involved collecting subscriber lists from ETCs, determining those consumers who have duplicative service, facilitating the selection of a default ETC, and allowing the consumer to override the default ETC selection. See *id.*, at 3-5.

duplicative support as necessary and establish processes to manage the “exceptions” to the definition of “duplicate” adopted elsewhere in this Order.<sup>490</sup> Once the database is capable of being queried by authorized entities to detect duplicative support on an ongoing basis, we direct USAC to provide notice to the Commission, and the Bureau shall release a public notice that the database is fully operational. ETCs’ obligation to query the database to detect duplicative support, as explained below, will be effective 30 days following release of the Bureau notice.

186. We direct USAC, in coordination with the Bureau and the Office of the Managing Director (OMD), to take all necessary steps to develop and implement, as quickly as possible, a database and associated processes capable of performing the functions outlined in this section of the Order consistent with our rules. We direct USAC to submit an implementation plan covering all of its responsibilities as it relates to the operation of the database and its related duties discussed below in this section to OMD and the Bureau for review and approval no later than 10 days after the effective date of this Order.

187. Finally, as we discuss in more detail below, we also direct the Bureau and USAC to take all necessary steps so that as soon as possible, and no later than the end of 2013, there will be an automated means to verify eligibility for a significant majority of Lifeline subscribers. In the near term, we expect that our documentation and certification requirements will substantially reduce the number of ineligible consumers while the Commission seeks targeted comment on the issues involved in creating an eligibility database.<sup>491</sup> We reiterate that to the extent that states have developed a database or other electronic means to check subscriber eligibility, ETCs must use those databases.<sup>492</sup>

**a. Functionality of Database and Obligations of ETCs**

188. The database must have certain capabilities to detect and eliminate duplicative support. These include, among other things, the capability to: (1) receive and process subscriber information provided by ETCs sufficient to identify whether a subscriber is receiving a Lifeline benefit from another ETC; (2) allow ETCs and other authorized entities to query the database to determine if a prospective subscriber seeking Lifeline service is already receiving a Lifeline benefit; and (3) maintain the proprietary nature of the data housed in the database by protecting it from theft, loss or disclosure to unauthorized persons.

189. We also require ETCs to, among other things, provide to the database subscriber name, address, phone number, the last four digits of Social Security number, date of birth, Lifeline service initiation and de-enrollment date(when applicable), and amount of federal Lifeline support being sought for that subscriber.<sup>493</sup> To the extent that a state agency or other authorized third party has not already done so with respect to a new subscriber, ETCs must also query the database prior to enrolling a new subscriber to determine whether a prospective subscriber is already receiving Lifeline from another ETC. ETCs are prohibited from receiving support for any prospective subscriber already receiving Lifeline benefits from another ETC.

190. *ETC Duty To Provide Particular Data To the Database.* The database must be designed both to identify subscribers currently receiving duplicative support and to avoid future instances of

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<sup>490</sup> See, e.g., *supra* para. 81 (discussing the fact that some consumers may not have postal addresses).

<sup>491</sup> See sections VI (Certification of Consumer Eligibility); XIII.A (Eligibility Database).

<sup>492</sup> See *supra* para. 91.

<sup>493</sup> We include phone numbers because, among other things, they will assist with USAC auditing procedures and will assist in the transfer of benefits between consumers.

duplicative support by providing a means for ETCs and other authorized users to query the database to determine if prospective subscribers are already receiving Lifeline service from another ETC. To perform these functions, the database must be able to match subscriber records from different ETCs. ETCs must provide the subscriber information described below for existing subscribers to the database within 60 days of the Bureau providing notice that the database is capable of accepting subscriber information for new subscribers thereafter.<sup>494</sup>

191. Based on a review of the record and our experience with the process established in the *2011 Duplicative Program Payments Order*, we require ETCs (or other authorized users) to provide to the database the name, address, and phone number of each of its Lifeline and Link Up subscribers. We also require ETCs, to the extent that they do not already do so, to request that their subscribers provide the last four digits of their Social Security number to the ETC and their date of birth, and, once received, for the ETC to provide that information to the database. We find that both date of birth and the last four digits of the Social Security number are necessary to perform the identification verification check described below.<sup>495</sup>

192. We are mindful that many ETCs do not currently collect subscribers' dates of birth and the last four digits of subscribers' Social Security number and may not have retained information regarding the means through which the subscriber qualified for Lifeline. However, we expect that the burden of collecting such information from both new and existing subscribers would be small because all ETCs must annually re-certify all of their subscribers and this information could be collected along with other information necessary for re-certification at that time. New subscribers can provide their date of birth and last four digits of their subscribers' Social Security number at the time of their application for Lifeline.<sup>496</sup> As discussed in the *FNPRM* attached to this Order, we remain interested in expanding the use and functionality of the database to improve checks for initial and continuing eligibility.<sup>497</sup>

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<sup>494</sup> As noted below, ETCs operating in states that check for duplicative Lifeline and Link Up support are not obligated to provide such data to the national database.

<sup>495</sup> See, e.g., Letter from Mitchell F. Brecher, Counsel, TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 at 2 (filed Dec. 5, 2011) (noting that by collecting the last four digits of customers' Social Security numbers and date of birth, TracFone has been able to "confirm that customers are who they say that they are who they claim to be."); Letter from Joan M. Griffin, Counsel, Emerios, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 11-42 *et al.*, Attach A. FCC National Database Industry and Collaboration Proposal at 5 (filed Aug. 3, 2011) (Emerios Database Proposal) (arguing that the name, address, date of birth and last four digits of Social Security number are necessary to verify the identity of an applicant); Nexus Nov. 18 *ex parte* Letter (arguing that a privately organized database to check for duplicate support "could also incorporate additional safeguard measures, such as 'third party ID Verification' which consists of ETCs collecting information such as the subscriber's date of birth and the last four digits of his or her Social Security number.").

<sup>496</sup> As explained *supra* section VI, ETCs must also determine customers' eligibility as well and therefore can provide the means of qualification to the database.

<sup>497</sup> Several commenters support AT&T's proposal that subscribers should be identified with a unique identifier or Personal Information Number (PIN). AT&T Comments at 11-15. However, we do not adopt AT&T's proposal. To the extent that AT&T's PIN proposal could eliminate duplicative support, we conclude that the burden and uncertainty of implementing AT&T's system for that purpose would outweigh the benefits of such a proposal. AT&T's proposal assumes that a third party at the state level (e.g., state PUC) would issue and manage PIN numbers (see AT&T Comments at 11) and there is no guarantee that states would be willing or economically able to take-on such an administrative function in the absence of explicit federal support. We note that we are seeking comment on the extent to which the Commission should provide support to states to implement eligibility databases in the attached *FNPRM*.

193. USAC has had substantial experience with standardizing (*i.e.*, placing in a proper format) and verifying addresses (determining whether the address is valid and deliverable) as part of the duplicates resolution process, and commenters and USAC have found that the standardization and verification of addresses and names makes the identification of duplicative benefits faster and more reliable.<sup>498</sup> However, as USAC has explained, substantial time and effort was expended to correct information provided by ETCs. Moreover, the ETCs have the direct relationship with the subscriber with whom the ETC may have to interact with to obtain the necessary information to correct the subscriber's address, we direct ETCs to standardize and verify addresses in their records prior to submission of the address data to the database.<sup>499</sup> We expect that having ETCs verify and standardize the address data on the front-end will substantially reduce the total time needed to load the database with the necessary subscriber information and will therefore speed up the process of identifying and eliminating duplicative support. At least three months prior to the ETCs providing subscriber information to the database pursuant to the scrubbing process below, USAC shall provide, subject to Bureau review and approval, detailed information to the ETCs regarding address standardization and address verification requirements and the proper format to use in submitting such information. We direct USAC to work with the ETCs to develop a process to ensure that all Lifeline subscribers' addresses can be loaded into the database, including the minority of cases where a subscriber's valid address cannot be verified. That is, the database must be able to accommodate those situations, such as on Tribal lands, where a U.S. postal address is not available or recognized.<sup>500</sup> This process is subject to Bureau review and approval. We also require the database to include the functionality to standardize and verify addresses to speed the process of loading customer information into the database.

194. We also mandate that ETCs provide the dates of service initiation and termination (when it occurs) of each subscriber and the amount of support being sought for the subscriber (e.g., flat rate or Tribal Land support) to the database. This information, along with name, address, and phone number will help facilitate the preparation of Form 497s and USAC's auditing efforts. Indeed, commenters have argued that the forgoing information can be used to provide a basis for carrier reimbursement and "autogenerate" Form 497s.<sup>501</sup> While we do not adopt such an approach in this Order given limited comment on implementing such a process, we expect that automating the reimbursement process through the autogeneration of Form 497s would both reduce fraud and ETCs' compliance burden. Information

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<sup>498</sup> See MS PSC Comments at 7-8 (noting that one of the requirements for a database to function properly would be to devise input requirements that would allow defined parameters with the same fields an input parameters and the database must be designed such that all data is submitted in a consistent manner); DC PSC Comments at 3 (arguing that subscriber information should be provided "in compatible formats, to reduce the administrative burden of comparing lists in different formats.").

<sup>499</sup> See *USAC 2011 IDV Process Letter* at 2 (describing the data steps necessary to correct ETC address data). Several ETCs have indicated that their consumer data is currently not in a standardized format. Cincinnati Bell Comments at 6; see also TSTCI Reply Comments at 2. However, we find that some carriers have already implemented similar standardization processes without an explicit requirement, indicating that the burden of doing so is limited. See TracFone June 1 *ex parte* Letter at 1. As explained, some consumers rely on non-standardized addresses (*e.g.*, Tribal lands, rural route numbers). See *supra* para. 81; *infra* paras. 165-66. In those cases, we direct USAC to work with ETCs through the exception management process described below so that such customers can receive Lifeline service and ETCs can receive reimbursement from the fund where appropriate.

<sup>500</sup> See Emerios Reply Comments at 9 (noting that there was widespread support for using a consistent format for address data and in those cases where a USPS address does not adequately characterize a location, rules can be defined in the database to take care of most of these situations).

<sup>501</sup> See, *e.g.*, Emerios Comments at ii (arguing that requiring ETCs to use to the duplicates database to obtain reimbursement would eliminate the need for ETCs to file Form 497 in its current form and create incentives for ETCs to use the platform).

regarding support levels will also provide USAC with an additional auditing tool through which USAC can compare an ETC's subscriber records with the records provided to the database.

195. We also direct ETCs (or other authorized users) to provide the means of qualification for Lifeline (*e.g.*, Medicaid, SNAP, TANF) to the database.<sup>502</sup> We find that the inclusion of such information in the database would assist in the transition to any eligibility database adopted pursuant to the attached *FNPRM*. Moreover, Commission analysis of such data on an aggregated basis would provide valuable insight regarding the operation of the Lifeline program.<sup>503</sup> The database must retain all data related to consumers who receive Lifeline and Link Up for ten years after the consumer receives Link-Up or de-enrolls from Lifeline. As explained in more detail below, we also direct ETCs seeking Link Up support to provide each subscriber's name, residential address, and date of Link Up service to the database to assist in USAC's auditing efforts, and the database must retain the record of Link Up assistance for ten years in order to facilitate USAC's oversight over the Fund. The Commission may revisit these obligations in the future so that the processes outlined in this Report and Order adequately address potential vulnerabilities to the Fund that may arise.

196. *Timely Transmission of Data.* Many commenters argue that for the database to effectively provide a means for ETCs to determine if prospective subscribers are already receiving Lifeline support, subscriber data must be provided as rapidly as possible from the ETC to the database at the time the consumer signs up for service.<sup>504</sup> Without real-time or near real-time updates to the database, there is an increased risk that some subscribers will receive duplicative benefits for at least some period of time, causing unnecessary confusion.<sup>505</sup> At the same time, many ETCs argue that it may be burdensome, particularly for smaller ETCs with limited resources and larger ETCs with less flexible back-office systems, to provide subscriber information to a database in real-time.<sup>506</sup>

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<sup>502</sup> We recognize that ETCs may not have retained this information during subscriber sign-up. Therefore, ETCs are required to collect such information for existing customers either before or during the first annual recertification process established in this order. We find that this approach will minimize the burden on ETCs.

<sup>503</sup> For example, California currently collects such information, indicating that the majority of customers qualify for Lifeline in that state through SNAP, Medicaid and SSI. See CA PUC June 28 *ex parte* Presentation, Attach. (Request for Proposal) at 18.

<sup>504</sup> See, *e.g.*, Emerios Comments at i-ii, 2; Verizon Reply Comments at 2; CenturyLink Comments at 21; Sprint Comments at 4; Consumer Groups Comments at 23-24.

<sup>505</sup> For example, if the database were only updated once a week, a consumer could sign up for Lifeline service from ETC A, and then, later that day, sign up for Lifeline service from ETC B. While the consumer might only receive duplicative benefits from both ETCs for a short time, one of the ETCs and USAC would likely incur costs to de-enroll the consumer from duplicate support and consumer's expectations would be upset. See Emerios Reply Comments at 8 (arguing for real-time database updates and asserting that daily or periodic updates would create administrative problems and would result in duplicate claims); *id.* (noting that without real-time updates, a Lifeline consumer might go without 911 or other phone services if that consumer moved into a house where another consumer had already been receiving Lifeline support because the database might indicate that two consumers were seeking support at a single address); Cincinnati Bell Comments at 11 ("If the database is out of date, a person could appear to have duplicate benefits when in fact the person simply switched service providers at the same address and the old provider had not yet updated the database.").

<sup>506</sup> See Cincinnati Bell Comments at 11 ("However, realtime updates also create significant expenses and administrative burdens that must be balanced against the potential benefits."); Letter from Matthew A. Brill, Counsel, Cricket, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed June 15, 2011) (Cricket June 15 *ex parte* Letter) ("In addition, the Commission should not require ETCs to upload subscriber information to any Lifeline database in real time. Any such mandate would impose substantial development costs on ETCs. In particular, Cricket does not have any means of electronically bonding with the databases maintained by third-party administrators in real time (such as Solix, in California), and (continued....)

197. Although real-time or near real-time updates would likely reduce waste in the Fund and reduce the likelihood of duplicative claims, we do not mandate real-time updates at this time, but rather adopt the following rule applicable to new subscribers to promote real-time updates. Except with respect to the scrubbing process described below, in those cases where two or more ETCs provide information to the database for the same subscriber, the ETC whose information was received by the database first will be entitled to reimbursement from the Fund for that subscriber, regardless of which ETC the consumer signed up with first.<sup>507</sup> We acknowledge that this approach may place those ETCs that are unable or unwilling to update the database in near real-time at a disadvantage. However, we find that this approach will reduce the amount of duplicative support and encourage the prompt transmission of data without imposing the burdens that a blanket requirement to provide data in near- or real-time would impose. With respect to subscribers already in the database, ETCs must (subject to the exception for subscriber de-enrollments described below) update the database within 10 business days after receiving notice of a change in subscriber data that is also housed in the database (*e.g.*, subscriber's address changes, or changes in a subscriber's means of qualification for Lifeline).

198. *Receipt of Information by the Database.* We next address the ability of the database to receive, process, and utilize the information we require ETCs to provide. In order to identify subscribers currently receiving duplicative support and provide a means for ETCs to determine if prospective subscribers are already receiving Lifeline service from another ETC, the database must be capable of receiving and processing subscriber data sent by ETCs. Indeed, commenters recognize that this capability is crucial to any database designed to identify and eliminate duplicative support.<sup>508</sup> We therefore require that the database must be capable of receiving and processing data provided by ETCs both in real-time and via periodic batches.<sup>509</sup> We direct USAC to provide ETCs with guidance, subject to Bureau review and approval, regarding how carriers must submit data to the database subject to both real-time and batch processes.

199. *Database Access and Output.* Once the database receives the necessary information from ETCs, it is equally important that ETCs and other authorized parties be able to query the database to determine if prospective subscribers are already receiving support from another ETC. The process established in the *2011 Duplicative Program Payments Order* has been effective in detecting and resolving duplicative support among certain ETCs in select states.<sup>510</sup> However, that process, by design, only identifies duplicates that already exist; it does not prevent consumers from signing up for duplicative support from more than one ETC at the time of service initiation.<sup>511</sup> There is widespread agreement that a

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developing such capabilities—particularly for multiple databases/administrators—would entail considerable investment in new IT systems.”).

<sup>507</sup> We clarify that this rule only applies to new subscribers who sign up for Lifeline following the initial loading of the database by ETCs. Existing subscribers receiving duplicative support identified once the initial loading of the database occurs will be de-enrolled according to the “scrubbing” process described below.

<sup>508</sup> *See, e.g.*, Emerios Comments at 10 (“The [database] should include the following processing steps, at a minimum, to initially populate the database and determine existing duplicates: Transfer of data on program beneficiaries from ... ETCs to the administrator; data processing to identify dual-benefit households and individuals ...”).

<sup>509</sup> *See* Emerios Database Proposal at 4 (arguing that the database must have “sufficient capacity, response speed, and recognition accuracy, and be flexible enough to incorporate batch processes or be fully automated. This will allow ETCs to readily integrate database activities with their existing workflows, giving them the flexibility and speed to continue enrollments without new burdens.”).

<sup>510</sup> *See generally* USAC 2011 IDV Process Letter.

<sup>511</sup> *See* TracFone Comments at 16.

permanent solution to duplicative claims requires that ETCs are able to determine if a prospective subscriber is already receiving a Lifeline benefit at the time the prospective subscriber requests service or seeks a Lifeline benefit from that ETC.<sup>512</sup> Therefore, the database must be capable of providing verification upon query from an eligible querying party whether a prospective subscriber is currently receiving Lifeline support.<sup>513</sup> The database must also provide information necessary (*e.g.*, error codes) to the querying party to understand the result of a database response that the prospective subscriber is either already receiving duplicative support, or if the database was unable, with the information provided, to make such a determination.<sup>514</sup> The database must permit ETCs to compare the subscriber information attributable to that ETC (and only that ETC) housed in the database to the ETC's own subscriber list and establish a process for doing so.<sup>515</sup> This feature will provide an additional check on the accuracy of the database while protecting consumers.

200. Several parties have argued that the database must be capable of verifying the identity of a subscriber through a third party identity verification service, prior to an ETC submitting for support for that subscriber. TracFone estimates that such a “front-end” identity verification check, if done by all ETCs, could save the Fund \$192 million annually.<sup>516</sup> An identification verification process would utilize a subscriber's name, address, date of birth and the last four digits of the social security number, and compare that information to publicly available databases, to determine if all of the information provided by the subscriber is valid (*e.g.*, Joe Smith really lives at 123 Main St., is 29 years old and the last four numbers of his social security number are 4444). This check would reduce the possibility that applicants and/or ETCs submit incorrect information either purposefully, in order to evade the one per household rule or to seek reimbursement for non-existent subscribers, or inadvertently. Moreover, by validating a subscriber's date of birth, minors will be prevented from signing up for service. We expect that this

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<sup>512</sup> See GCI Comments at 27-28 (“ETCs must be able to access the database (on a ‘read only’ basis) for at least two reasons. First, to prevent duplicate subscriptions, they must be able to access the database to ascertain whether any particular applicant for Lifeline service already receives Lifeline service from another ETC (although the identity of the other ETC should be masked). Second, they must be able to review their own Lifeline subscriber lists as reflected in the database in order to assess whether it accurately reflects their own records listing Lifeline subscribers. This would enable ETCs to inform USAC of variances between the lists and resolve discrepancies”); AT&T Comments at 11-12; CGM Comments at 3 (“critical stakeholders including USAC, State regulators and ETCs will all maintain access to the data for particular and managed purposes . . . this can be set up [with] security so that privacy is safeguarded”).

<sup>513</sup> GCI Comments at 3 (arguing that a database “would enable ETCs to ascertain whether an applicant for Low-income Program service already subscribes with an ETC (which no ETC would currently know).”); *id.* at 27 (“[T]o prevent duplicate subscriptions, [ETCs] must be able to access the database to ascertain whether any particular applicant for Lifeline service already receives Lifeline service from another ETC (although the identity of the other ETC should be masked) . . .”); CGM Comments at 4 (“ETCs will want to access this database in real time to authenticate new users . . .”).

<sup>514</sup> See Emerios Database Proposal at 7 (arguing that the database should “provide error codes and descriptions in real-time...”).

<sup>515</sup> See Cincinnati Bell Comments at 11; GCI Comments at 28 (“First to prevent duplicate Lifeline subscriptions, [ETCs] must be able to access the database to ascertain whether any particular applicant for Lifeline service already receives Lifeline service from another ETC (although the identity of the ETC should be masked). Second, they must be able to review their own Lifeline subscriber lists as reflected in the database in order to assess whether it accurately reflects their own records listing Lifeline subscribers.”).

<sup>516</sup> See TracFone Nov. 10 *ex parte* Letter, Attach. at 6.

functionality can be added to the database at minimal cost.<sup>517</sup> We also note that several ETCs have already been performing routine identification checks using subscribers' date of birth and social security number even though they are not explicitly required to do so by our rules, indicating that the burden of performing such verifications is low.<sup>518</sup>

201. Because of the benefits and limited costs of identification verification, we conclude that the database must have the capability of performing an identification verification check when an ETC or other party submits a query to the database about a potential consumer. In response to the query, the database must indicate whether the subscriber's identity can be verified, and if not, provide error codes to indicate why the identity could not be verified. To ensure that subscribers are not mistakenly denied benefits, USAC must establish a process, as part of the resolution process described below, so that those consumers who failed the identification verification are able to either provide additional information to verify their identity, or correct errors in the information utilized to validate the subscriber's identification.<sup>519</sup> As noted above, the database and identification verification process must be able to accommodate consumer addresses that are not recognized by the U.S. Postal Service (e.g., residences on Tribal lands). We direct USAC to facilitate this process by publishing its processes and rules used to verify subscriber identification. We anticipate that these processes will involve both automated processes and well as manual fall-out processes in those small number of cases where an automated process cannot verify a subscriber's identification. ETCs may not receive reimbursement for those subscribers whose identities could not be verified through the identification verification process.

202. Some State PUCs and state and local social service agencies are also involved in the process of enrolling consumers in Lifeline and must have the ability to query the database to check for duplicative support. ETCs, state, local and Tribal governmental agencies (including state regulatory commissions and social service agencies which may assist low-income consumers with signing up for Lifeline service) and their authorized agents, must be able to query the database with a prospective subscriber's identifying information to determine if he or she is already receiving Lifeline support from another ETC.<sup>520</sup> We also direct USAC to establish a process to qualify and provide individualized access

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<sup>517</sup> See, e.g., Experian, Experian GSA Catalog, available at <http://www.experian.com/assets/government/brochures/gsa-catalog.pdf> (noting that the cost of its Precise ID product costs approximately 25 cents per query per the GSA schedule, depending upon volume).

<sup>518</sup> See, e.g., TracFone Nov. 10 *ex parte* Letter, Attach. at 6; Letter from Mathew S. O'Brien, Century Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Jan. 23, 2012) (explaining that a number of carriers are using Century Corporation's products to standardize and implement the capture of DOB and the last four digits of subscriber's Social Security numbers and that Century Corporation is "[e]ngaging the services of LexisNexis to validate the identity of program enrollees in real-time").

<sup>519</sup> Low-income consumers and ETCs seeking Lifeline benefits must comply with all statutory, regulatory and procedural requirements in order to obtain the discount. Denial of this support does not violate an ETC's or a consumer's due process rights and does not deprive the ETCs or consumer of a protected property interest absent a legitimate claim of entitlement to the Lifeline benefit. See *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005); see also *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) ("To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.").

<sup>520</sup> See *supra* para. 178. It may be more efficient, and provide consumers with a faster response, if states are able to query the duplicates database prior to sending the application to the ETC in these situations. We direct USAC to establish a process to qualify state and local government agencies and their authorized agents to query the database. State and local government agencies may only query the database for the purpose of implementing and managing the program in their states.



to authorized users.<sup>521</sup> USAC must submit that process for review and approval by the Bureau.

203. *ETC Duty To Query the Database.* ETCs must ensure that they do not provide a Lifeline benefit to a consumer that is already receiving a Lifeline benefit from another ETC. We therefore require that 30 days following Bureau notice that the database is capable of accepting queries, all ETCs query the database to check to see if a prospective subscriber is already receiving service from another ETC at a residential address prior to seeking reimbursement from the Fund.<sup>522</sup> If the ETC queries the database, and discovers that the prospective consumer is already receiving a Lifeline benefit from another ETC at that address, the querying ETC may not seek a Lifeline benefit for that consumer unless and until the consumer de-enrolls from the ETC from whom they are receiving service. As explained above, if, based on the query, the ETC determines that an individual at the prospective consumer's residential address other than the prospective consumer is currently receiving a Lifeline-supported service at that address, the ETC must take an additional steps to ensure that the prospective and current subscriber are part of different households.<sup>523</sup> Only if the ETC takes these steps and determines that the prospective and current subscriber at the same address are in different households can the ETC receive reimbursement for the prospective subscriber.

204. If a carrier does not query the database prior to signing up a consumer or has not received notice from a state Lifeline administrator or its agent that it has performed a query on behalf of the ETC, the ETC may not receive Lifeline benefits for that consumer, regardless of whether the ETC has already provided a Lifeline discount to the consumer.<sup>524</sup> To assist with compliance with this rule, the database must have the capability of logging the time a query was made, the party who made the query, and the information (e.g., name, address) that was submitted in the query.

205. *Transfer of Benefits and Consumer De-enrollment.* With increased competitive choices for consumers seeking Lifeline supported services, we seek to simplify the process for subscribers to transfer their Lifeline supported service from one ETC to another. In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether subscribers should be able to take their Lifeline benefits with them when they change ETCs.<sup>525</sup> In at least some cases, the transfer of benefits could also be accompanied by the porting of a number. Commenters agree that the database should facilitate, as necessary, benefit transfers from one provider to another.<sup>526</sup> Without the ability to handle benefit

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<sup>521</sup> AT&T Comments at 11-12; CGM Comments at 3 (“[C]ritical stakeholders including USAC, State regulators and ETCs will all maintain access to the data for particular and managed purposes . . . this can be set up [with] security so that privacy is safeguarded”).

<sup>522</sup> This rule does not apply to ETCs in those instances where it receives notice from a state Lifeline administrator or its agent that the administrator or its agent has queried the Database about a prospective subscriber.

<sup>523</sup> See *supra* para. 78.

<sup>524</sup> As explained above, only the ETC which first populates the database with a new customer's information will be eligible to receive support from the fund for that consumer. See *supra* para. 197.

<sup>525</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2837, para. 217.

<sup>526</sup> See Consumer Groups Reply Comments at 6 (“The Commission must provide a clear and consumer-friendly process to switch carriers. . . Carriers should also be obliged to promptly coordinate ‘switch’ requests with the database administrator so that the duplicates database does not act to prevent customers from shopping for better Lifeline service.”); National Consumer Law Center Comments at 24; Rate Counsel Reply Comments at 8; Consumer Groups Reply Comments at 6-7; AT&T Comments at 6 (AT&T notes that in its proposal, benefits would be “fully portable to the service provider of a consumer’s choice.”); Letter from Jennifer Brandon, Executive Director, Community Voice Mail, to Marlene Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Jun. 23, 2011) (Community Voice Mail June 23 *ex parte* Letter) (“Numerous policy issues need to be clarified as part of the design process including . . . portability of Lifeline status. . .”).

transfers, there is a risk that subscribers will lose their Lifeline benefit when they change ETCs.<sup>527</sup> For these reasons, the database must include features which facilitate the process of transferring Lifeline benefits from one ETC to another in as expeditious and transparent a manner as possible.<sup>528</sup> We direct USAC to submit for Bureau review and approval a process for facilitating the transfer of benefits.<sup>529</sup>

206. We also adopt a rule that ETCs must update the database with any subscriber de-enrollments within one business day of de-enrollment. De-enrollment may occur due to, for example, subscriber inactivity, subscriber initiated deactivation or the porting of a number to another carrier.<sup>530</sup> This rule will not only assist the process of transferring benefits from one ETC to another, but will provide an added check against the possibility that ETCs would receive subsidies for subscribers who are no longer enrolled with that ETC.

207. *Security.* In its *Lifeline and Link Up NPRM*, the Commission acknowledged that the data housed in the database may include sensitive personal information subject to protection under state and federal privacy laws.<sup>531</sup> Indeed, as many of the commenters note, some of the data fields that we now require ETCs to transmit to the database constitute particularly sensitive information.<sup>532</sup> There is widespread consensus that the information in the database must be subject to the highest protections.<sup>533</sup> Moreover, the mere fact that a consumer receives Lifeline benefits (and therefore receives other government social services benefits or has a particular income level) is also sensitive personal information.<sup>534</sup> For these reasons, the database must have sufficient safeguards to maintain the proprietary or personal nature of the information in the database by protecting it from theft or loss.

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<sup>527</sup> For example, if a consumer switches from ETC A (through which it was receiving Lifeline support) to ETC B and the database does not contain a benefit porting function, when ETC B queries the database to determine if the consumer already has Lifeline support, the database may indicate that the consumer is already receiving a Lifeline benefit from ETC A.

<sup>528</sup> It is important to note that the rules which we adopt here are independent of and do not affect the carrier change and slamming rules.

<sup>529</sup> We recognize that this process may overlap with the dispute resolution and exception management processes outlined below.

<sup>530</sup> We note that ETCs' failure to do so would be subject to enforcement action.

<sup>531</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2838, paras. 220-221.

<sup>532</sup> FL PSC Comments at 24 ("Section 364.107, Florida Statutes, requires that personal identifying information of a participant in a telecommunications carrier's Lifeline Assistance Plan be confidential.").

<sup>533</sup> See, e.g., FL PSC Comments at 24 ("Whether USAC or a third party administrator is used, any national database of Lifeline subscribers/applicants would have to be maintained by an independent administrator under strict confidentiality provisions to protect the Lifeline subscriber's/applicant's personal identifying information."); Solix Comments at 8 ("Additionally data security must be designed into all system components and interfaces. In support of satisfying relevant data security and privacy laws, secure transfer methods such as Secure Socket Layer (SSL) encryption or SFTP should be required."); NASUCA Comments at 25 ("It goes without saying that NASUCA would emphasize the need to maintain consumer privacy as a high priority in the establishment of a national database."); CA PUC Reply Comments at 10 ("We share the Missouri PSC's concerns regarding a national database. Any such system must be established and maintained with federal dollars, and it must ensure privacy protection and online security of customer information.").

<sup>534</sup> This information also may be protected as CPNI. See 47 U.S.C. § 222(h)(1)(A) (requiring telecommunications carriers to protect "customer proprietary network information." The statute defines CPNI as "information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship...").

208. *Link Up Support on Tribal Lands.* Elsewhere in this Order, we eliminate Link Up support for ETCs serving non-Tribal subscribers and for Lifeline-only ETCs serving Tribal lands. We also require ETCs to provide information related to Link Up support provided to subscribers so that USAC is able to determine whether an ETC is improperly seeking reimbursements for the same consumer at the same principal place of residence. Subscribers may not receive Link Up support more than once at their residential address.<sup>535</sup> Sixty days following Bureau notice that the database is capable of receiving subscriber information, we require ETCs offering Link Up support to provide the subscriber's name, residential address, and date of Link Up service to the database so that USAC is able to efficiently track Link Up support.<sup>536</sup> ETCs seeking to provide Link Up support to residents on Tribal lands must query the database prior to requesting Link Up support to determine if the consumer has already received Link Up support at that location.<sup>537</sup> If the ETC determines from the query that the consumer has already received Link Up support at that residential address, the ETC may not receive reimbursement for that consumer. The database must retain submitted Link Up records for ten years.

209. *National Database.* We conclude that the database should be national in scope. In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether to establish state or regional databases or a national database.<sup>538</sup> The record persuades us that the Commission should adopt a national database to prevent duplicative support and should not establish multiple state or regional databases.<sup>539</sup> For example, Emerios argues that the cost of establishing and implementing a nationwide system would be “dramatically lower, as the incremental cost of a larger, single, pre-qualification system would be much less than the cost of multiple smaller state systems.”<sup>540</sup> Emerios also estimates that creation of a national database would cost only 30 percent more than the creation of a system for a single state with a large number of Lifeline/Link Up benefit recipients.<sup>541</sup> Furthermore, a single nationwide database would provide significant efficiencies because ETCs need only train staff to use a single system.<sup>542</sup> A single nationwide database could be deployed more rapidly than multiple state systems because national or regional ETCs would only need to interface with one system, and the physical infrastructure, connections, and all related components would be located in a single location (or several locations to establish sufficient redundancy).<sup>543</sup> The security risks associated with a single nationwide system would likely be

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<sup>535</sup> 47 C.F.R. § 54.411(a)(1), (c).

<sup>536</sup> This duty does not apply to ETCs operating in states whose opt-out certification has been approved by the Bureau.

<sup>537</sup> This duty does not apply to ETCs in those instances where it receives notice from a state Lifeline administrator or its agent that the administrator or its agent has queried the Database about a prospective subscriber.

<sup>538</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2838, para 222.

<sup>539</sup> See Emerios Comments at 7-8 (arguing for a national database instead of separate state databases because 1) a national database would be more cost-effective, 2) a national database could be deployed more rapidly, and 3) a national database would pose fewer security risks); Nebraska PSC Comments at 6 (arguing that having one entity in charge of a single database would reduce the number of errors and streamline the process of duplicate resolution); AT&T Comments at 5 (stating that, “auditing a provider’s compliance with the Commission’s Lifeline rules will also be simpler and more effective ... because the requirement to interface with the national database provides a consistent control point that is more conducive to standard auditing methods.”); *but see* OR PUC Comments at 3 (noting that states are better handle verification of eligibility); CGM Comments at 2 (same).

<sup>540</sup> Emerios Comments at 8.

<sup>541</sup> See *id.*

<sup>542</sup> See *id.*

<sup>543</sup> See Emerios Comments at 8; Letter from Thomas Cohen, Counsel, Emerios, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* at 2 (filed June 22, 2011) (Emerios June 22 *ex* (continued....))

less than the risks associated with multiple state systems.<sup>544</sup> AT&T argues that it would be easier to audit a single nationwide database provider.<sup>545</sup> In light of these advantages, we conclude that the database should be national in scope.<sup>546</sup>

**b. USAC's Additional Duties To Eliminate Duplicative Claims**

210. A database with the functions described above is a key building block of any permanent solution to reduce duplicative Lifeline claims. However, a database by itself is only one of the components of such a solution. As several commenters note, human intervention and non-electronic means may be necessary in some cases to identify and eliminate duplicative support.<sup>547</sup> We therefore direct USAC to implement processes to complement the implementation and functionality of the database described above. As discussed in more detail below, we direct USAC to implement a process to mitigate the risk that consumers are improperly denied access to Lifeline benefits, to implement a “scrubbing process” to substantially reduce if not eliminate current duplicative support, and to establish a dispute resolution process for managing duplicative claims.

211. *Continuation of IDVs.* As noted above, the IDV process undertaken by USAC in 12 states has resulted in significant savings to the Fund.<sup>548</sup> Until the duplicates database is operational, we direct USAC, consistent with the *2011 Duplicative Program Payments Order* to continue with in-depth data validations targeted at uncovering duplicative Lifeline support. We direct the Bureau to select the states and ETCs that should be subject to the IDVs, and require USAC to follow the consumer outreach requirements set forth in the *2011 Duplicative Program Payments Order*.<sup>549</sup> In the course of identifying duplicative subscribers, USAC shall also identify those subscribers receiving multiple Lifeline service offerings at the same address and notify such subscribers about the one-per-household requirement established in this Order. USAC shall provide notice to these subscribers that they must select a single Lifeline provider within their economic unit and provide them with a copy of the one-per-household worksheet. We direct the Bureau and USAC to work with ETCs to facilitate outreach to these subscribers and to develop a process for resolving the duplicative support within a household. We direct USAC to continue with the IDVs at the Bureau's direction until ETCs (or state agencies, where applicable) can determine if someone is receiving Lifeline benefits from another provider via the National Lifeline Accountability Database.

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*parte* Letter) (“In addition, at a minimum, the system should have a redundant location ideally with a hot/hot configuration to ensure the highest level of uptime.”).

<sup>544</sup> *See id.*

<sup>545</sup> *See* AT&T Comments at 5 (“[A]uditing a provider’s compliance with the Commission’s Lifeline rules will also be simpler and more effective ... because the requirement to interface with the national database provides a consistent control point that is more conducive to standard auditing methods.”).

<sup>546</sup> We note that the selection of a single, national database to assist in the elimination of duplicate support does not prejudice the geographic parameters of any database which may be adopted at a later date to verify eligibility.

<sup>547</sup> *See, e.g.,* Letter from Eric Seguin, Solix, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, Attach. at 4 (filed June 15, 2010) (discussing exception management process); Emerios Database Proposal at 6-7, 10 (discussing need for a “Customer Preference Resolution Process” and the need for a call center to answer customer questions during the scrubbing process).

<sup>548</sup> *See USAC 2011 IDV Process Letter.*

<sup>549</sup> *2011 Duplicative Payments Order*, 26 FCC Rcd at 9029, 9030-31, paras. 13, 16.

212. *Exception Management.* Any duplicates elimination process must balance the need to reduce waste in the Fund against mistakenly denying consumers Lifeline benefits. In the *Lifeline and Link Up NPRM*, the Commission recognized that it might be appropriate to establish “exceptions” to the rules restricting the availability of Lifeline so that consumers are not improperly denied access to Lifeline benefits. There was widespread support for the Commission to adopt a process to permit consumers falling within these exceptions to remain eligible to receive benefits.<sup>550</sup> For example, as explained, some residences on Tribal lands lack U.S. Postal Service addresses.<sup>551</sup> Without an exception process, consumers with addresses not recognized by the U.S. Postal Service may be inappropriately denied support.<sup>552</sup>

213. We direct USAC to implement a process to manage these exceptions so that consumers are not improperly denied access to Lifeline benefits. To the extent possible, the database should be designed to recognize and manage exceptions without human intervention to limit ongoing costs. However, as several commenters argue, it may not be feasible or desirable to eliminate all human intervention.<sup>553</sup> USAC, for example, may have to consider utilizing call center representatives to manage exceptions.<sup>554</sup> To provide sufficient flexibility to address exception management, we direct USAC to implement a process that will provide sufficient flexibility to address current and future exceptions, consistent with our rules.<sup>555</sup> We further direct USAC to propose such a process to the Bureau for approval within six months after the effective date of this Order. USAC may only implement such a process once approval is given by the Bureau. USAC’s proposal shall include estimates on how much their proposal will cost.

214. *Duplicates Scrubbing Process.* In June 2011, the Commission directed USAC to establish processes to notify subscribers that they are receiving duplicative support, explain that they can select the provider from which to receive a Lifeline benefit, and facilitate the selection of a single provider for receipt of Lifeline support.<sup>556</sup> This process has been successfully implemented in a number of states to take interim steps to eliminate duplicative support while ensuring that subscribers continue to receive Lifeline benefits.<sup>557</sup> Pursuant to the Commission’s instructions, USAC matched subscribers of a number of ETCs in a handful of states.<sup>558</sup> In its *Lifeline and Link Up NPRM*, the Commission anticipated that a similar “scrubbing” process would need to be undertaken to eliminate duplicative support once

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<sup>550</sup> See, e.g., Cricket Comments at 8-9; Verizon Reply Comments at 5; Smith Bagley Comments at 10-12; Benton/PK/UCC Comments at 4; NASUCA Comments at 18; NY PCS Comments at 8; TracFone Comments at 13.

<sup>551</sup> See *supra* para. 193.

<sup>552</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2807, para. 113.

<sup>553</sup> See Emerios June 22 *ex parte* Letter at 3 (“The cost of exception staff is significant and will rise as the Commission increases the need for exception handling. A well designed system that encourages automation will reduce this cost and improve the customer experience.”).

<sup>554</sup> See Emerios Database Proposal at 12 (discussing scenarios where live intervention may be necessary to manage exceptions).

<sup>555</sup> We note that under its Memorandum of Understanding with the FCC, USAC must “procure all goods and services in an open, neutral, lawful, and *cost effective manner*.” See USAC/FCC Memorandum of Understanding at 4, available at <http://transition.fcc.gov/omd/usac-mou.pdf>. (emphasis added).

<sup>556</sup> See generally *June Guidance Letter*.

<sup>557</sup> See generally *USAC 2011 IDV Process Letter*.

<sup>558</sup> See *June Guidance Letter* (“This letter provides guidance to USAC on the process it should follow in identifying and resolving duplicative Lifeline claims found through IDVs conducted in specific states ...”).

ETCs populate the database with the required subscriber information.<sup>559</sup> Many commenters agree and provide detailed proposals for implementation.<sup>560</sup> For example, West argues that, like the Duplicates Resolution Process, a scrubbing process must involve, at a minimum, identification of duplicative benefits, the selection of a default provider, notification of subscribers of their default selection, and a means for subscribers to select the Lifeline provider of their choice.<sup>561</sup>

215. Given the success of the Duplicate Resolution Process to date and support in the record for the creation of a similar industry-wide process, we direct USAC to develop and implement, subject to Bureau approval a scrubbing process modeled on the duplicates resolution process. We direct USAC to provide a plan to the Bureau within two months after the effective date of this order on how the scrubbing process would be implemented. This scrubbing process should begin once the Bureau approves USAC's plan, and ETCs have provided their existing subscriber lists and accompanying data to either USAC or the database, as directed by the Bureau, and USAC has developed an exception management process. The database must be sufficiently capable of handling whatever functions, if any, are necessary to implement the scrubbing process.

216. As part of the scrubbing process, USAC should identify those subscribers receiving duplicative support, establish a process to select a default Lifeline provider for each subscriber, provide notice to the subscriber that they will be de-enrolled from all Lifeline support except for support from their default provider unless they override the default selection, and provide subscribers a means to do so. Consistent with the Duplicates Resolution Process, USAC must provide subscribers information and perform outreach regarding how subscribers with more than one Lifeline subscription can continue receiving service under the Lifeline program from the ETC of their choosing.<sup>562</sup> We direct the Wireline Competition Bureau to work with USAC as necessary so that these outreach efforts are implemented smoothly.

217. *Dispute Resolution Process.* As the database and duplicates scrubbing process is implemented, ETCs will de-enroll existing subscribers receiving duplicative support. Going forward, ETCs will query the database to determine which prospective subscribers are already receiving support from another ETC. Despite best efforts, in any such situation, it is possible that some subscribers and prospective subscribers may be improperly identified as receiving or applying for duplicative support. For example, we expect that this process will ensure that consumers will not be denied support in those cases where the database is not updated with de-enrollment information quickly enough. To protect these current and prospective subscribers, several commenters suggest that the Commission put in place a process so that those persons denied access to Lifeline benefits based on a finding of duplicative support are able to dispute that finding and have a means of correcting inaccurate information in the database.<sup>563</sup> We direct USAC to establish processes to manage and resolve disputes over duplicative support

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<sup>559</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2791, paras. 59-60 (discussing population of database).

<sup>560</sup> See Presentation of West Corporation, WC Dkt. No. 11-42 *et al.*, at 5 (filed June 13, 2012) (West June 13 *ex parte* Presentation) (describing “scrubbing” process); Letter from James Bradford Ramsey, NARUC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed June 17, 2011) (NARUC June 17 *ex parte* Letter) (“The FCC needs to detail a process for selecting the default lifeline provider in cases where a customer with more than one lifeline service provider either refuses or fails to make a timely selection after being notified that only one carrier can get the support and a choice must be made.”).

<sup>561</sup> See West June 13 *ex parte* Presentation at 5.

<sup>562</sup> See generally *June Guidance Letter*.

<sup>563</sup> See Community Voice Mail June 23 *ex parte* Letter at 1 (“Numerous policy issues need to be clarified as part of the design process including ... a dispute resolution process...”).

consistent with our rules.<sup>564</sup> We further direct USAC to provide such a process to the Bureau for approval within six months after the effective date of this Order. USAC may only implement such a process once approval is given by the Bureau.

**c. Other Issues**

218. *Compliance with Laws and Regulations Regarding Privacy.* In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether the transmission of information to or storage of information by a database would violate any laws and regulations regarding privacy.<sup>565</sup> Some commenters raise concerns regarding privacy and urge the Commission to examine the matter closely before implementing the database.<sup>566</sup> As explained above, ETCs must provide the consumer's name, address, telephone number, the amount of support provided, date of initiation and termination of Lifeline service, the last four digits of social security number, date of birth, the means through which the consumer qualified (*e.g.*, Medicare or income), whether the consumer has received Link Up support, the address where the support was provided, and the date of initiation of Link Up service.<sup>567</sup>

219. We do not believe that federal privacy laws are implicated by the transmission or use of this information for the purposes outlined in this Order.<sup>568</sup> This includes the Electronic Communications Privacy Act (ECPA), which includes provisions limiting the ability of a provider of "electronic communication service," such as an ETC, to "divulge a record or other information pertaining to a subscriber to or customer of such service" to the extent such divulgence is made to a governmental entity.<sup>569</sup> ECPA permits a divulgence that is "necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service."<sup>570</sup> In light of the findings we make in

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<sup>564</sup> See 47 C.F.R. § 54.719 *et seq.*

<sup>565</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2838, paras. 220-21.

<sup>566</sup> See Cincinnati Bell Comments at 4 (arguing that a national duplicates database "may raise insurmountable hurdles relative to the protection of customer proprietary network information").

<sup>567</sup> See *supra* at paras. 188-192.

<sup>568</sup> As the Commission explained in the *2011 Duplicative Program Payments Order*, the transmission of customer data to a third party in order to eliminate duplicative support does not violate section 222 of the Act or the Commission's CPNI rules. See *2011 Duplicative Program Payments Order*, 26 FCC Rcd at 9029, n.48. Similarly, to the extent that the information transmitted by ETCs to the database or the information provided to authorized parties querying the database is CPNI, these disclosures are permitted by the exceptions in section 222(d). See 47 U.S.C. § 222(h); 47 U.S.C. § 222(d)(1)-(2) (permitting disclosure "to initiate, render, bill, and collect for telecommunications services" and "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").

<sup>569</sup> See 18 U.S.C. § 2702(c) (restricting disclosure of "a record or other information pertaining to a subscriber to or customer of" an electronic communication service), (c)(6) (allowing divulgence "to any person other than a governmental entity"); *id.* § 2703(c)(1) (providing that "[a] governmental entity may require a provider of electronic communication service to disclose a record or other information pertaining to a subscriber to or customer of such service" only under certain circumstances). We also observe that it is not at all clear whether transmitting information to this database constitutes divulgence to "a governmental entity" within the meaning of ECPA. See *id.* §§ 2702(c)(6), 2703(c)(3); *id.* § 2711(4) (defining "governmental entity" for this purpose as "a department or agency of the United States or any State or political subdivision thereof"). The information will be transmitted to a database that will be developed by USAC, in coordination with the Bureau and Office of Managing Director, and will not be operated by this Commission. See *supra* para. 186. Although the Commission generally has access to all information in USAC's possession, see 47 C.F.R. § 54.702(j), the Commission does not intend routinely to access the specific "information pertaining to a subscriber" that is protected by ECPA.

<sup>570</sup> 18 U.S.C. § 2702(c)(3).

this Order about the need to develop a database to detect and prevent duplicative support, we conclude that divulging information about Lifeline and Link Up subscribers as required by this Order is “necessarily incident to the rendition of the service.” The Lifeline program must be run efficiently and in compliance with the principles in section 254, including the public interest, convenience, and necessity.<sup>571</sup> As this Order explains, we must take steps now to reduce the amount of waste, fraud, and abuse in these programs, and that necessarily includes the creation of a database to identify and eliminate duplicate subscriptions. This would not be possible without the cooperation of participating ETCs. In any event, we also conclude that we have sufficient authority under the Communications Act of 1934, as amended, to require ETCs to provide the required subscriber information notwithstanding ECPA. Sections 215, 218, and 220<sup>572</sup> clearly demonstrate Congress’s intent that the Commission must have access to relevant information in the possession of carriers in order to conduct necessary oversight. In particular, section 220(c) provides that “[a]ny provision of law prohibiting the disclosure of the contents of messages or communications shall not be deemed to prohibit the disclosure of any matter in accordance with the provisions of this section.” Although we do not require access to the *contents* of any communications for present purposes, this provision demonstrates Congress’s intent that other provisions of law should not be held to override our specific authority to access information needed to perform oversight, including non-content information, which generally is less sensitive than the contents of communications.<sup>573</sup> Thus, even to the extent that ECPA might otherwise restrict the transmission of subscriber information to the database, we interpret sections 215, 218, and 220 to give the Commission authority to direct ETCs to provide this information to USAC notwithstanding ECPA.<sup>574</sup>

220. Many parties argue that the Commission should establish safeguards so that the data in the database is only used to check for duplicative support and related functions and for no other purpose.<sup>575</sup> For example, some commenters raise concerns that ETCs might “troll” the database to determine which prospective subscribers are or are not currently receiving Lifeline service and tailor marketing to those prospective subscribers accordingly.<sup>576</sup> We conclude that the database must have

<sup>571</sup> See 47 U.S.C. § 254(b), (c), (e)(2).

<sup>572</sup> 47 U.S.C. §§ 215, 218 (“The Commission may obtain from such carriers and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.”); 47 U.S.C. § 220(c) (“The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers . . .”).

<sup>573</sup> When these provisions of the Communications Act were enacted, there was no specific statutory provision prohibiting the disclosure of non-content information, so Congress would have had no need to refer to such prohibitions in section 220(c). See generally House Comm. on the Judiciary, *Electronic Communications Privacy Act of 1986*, H.R. Rep. No. 647, 99<sup>th</sup> Cong., 2d Sess. 25-26.

<sup>574</sup> Cf. *Qwest Communications International Inc. v. FCC*, 229 F.3d 1172, 1176-80 (D.C. Cir. 2000) (deferring to the Commission’s reasonable interpretation of section 220 in reading it together with the Trade Secrets Act).

<sup>575</sup> See, e.g., Letter from Mary L. Henze, Assistant Vice President, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Jun. 16, 2011) (“A Lifeline database should not be designed for, and in fact should not be allowed to be used for, any marketing or promotional activities by carriers.”) (AT&T June 16 *ex parte* Letter).

<sup>576</sup> See Cincinnati Bell Comments at 10 (“[P]rocedures must ensure that providers cannot collect information from the database for marketing purposes...”); Emerios Database Proposal at 11 (“The FCC should clearly limit data queries by ETCs to that data for which the ETC has a valid use, such as an actual enrollment request, change of address request, or de-enrollment request by the consumer. The FCC should prohibit any party from submitting data queries to determine whether an address is available for any other purpose, including marketing, unless such requirement conflicts with state rules.”).



sufficient protections so that all the data housed in the database may only be used to perform the functions and processes described in this Order and may not be used for any other purpose, including marketing or subscriber retention. This includes a function that logs, by time, every query and datafield upload or datafield change by an ETC. The database must have a feature such that each time the database is accessed, the accessing party must sign (electronically or otherwise) an acknowledgement that the database and the information in the database may only be used to perform the functions and processes described in this Order, and for no other purpose. Moreover, ETCs may only query the database to check to see if a prospective subscriber already has support from another ETC and to audit the ETC's own data in the database and for no other purpose.<sup>577</sup> ETCs violating this rule will be subject to the Commission's full enforcement authority.<sup>578</sup> Furthermore, prior to providing subscriber information to the database, the ETC must obtain consent from the subscriber. In doing so, the ETC must describe to the subscriber in writing using clear and easily understandable language the specific information being provided, that the information is being provided to the Administrator to ensure the proper administration of the low-income program, and that failure to provide consent will deny the consumer the Lifeline or Link Up benefit.

221. *State Opt-Out.* A number of states have or are about to move forward with their own systems to check for duplicative Lifeline support.<sup>579</sup> States have expressed concern that any national duplicates database not inhibit the operation of these state efforts.<sup>580</sup> We applaud the actions of these states to move proactively against waste and do not intend to inhibit their progress. At the same time, states that do not implement their own processes for checking for duplicative support must be covered by the national solution we implement in this Report and Order.<sup>581</sup> We allow states to opt-out of the duplicates database requirements outlined in this Order if they certify one time to the Commission that they have a comprehensive system in place to check for duplicative federal Lifeline support that is as at least as robust as the processes adopted by the Commission and that covers all ETCs operating in the state and their subscribers. Such certification must itemize with particularity each functionality of the state system that corresponds to the federal rule we adopt today and must be approved by the Bureau.<sup>582</sup> States wishing to take advantage of this process must submit their one time certification within six months of the effective date of this Order. If the Bureau does not act to deny the certification within 90 days of being filed, it will be granted automatically. We do not require ETCs operating in the states which have exercised their opt-out rights and whose certification has been approved by the Bureau to comply with the

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<sup>577</sup> A consumer is considered a prospective subscriber if the customer initiates the process of enrolling in the Lifeline program.

<sup>578</sup> See, e.g., 47 U.S.C. § 503. Moreover, to the extent that information housed or disclosed by querying the database is CPNI, ETCs may also be subject to forfeitures for the unlawful disclosure or use of such information. See 47 U.S.C. § 222(c).

<sup>579</sup> See, e.g., NARUC June 17 *ex parte* Letter at 2 (noting that states, including Texas, Oregon, and California have existing programs that target duplicative lifeline support); Letter from Liz Kayser, Public Utility Commission of Texas to Marlene Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Aug. 15, 2011) (discussing Texas' duplicates resolution process).

<sup>580</sup> See NARUC June 17 *ex parte* Letter at 2 ("Several [state PUCs urged] that all States with complementary and independent lifeline programs be allowed to opt out of any federal database if appropriate and/or be given real-time password access to the federal database.").

<sup>581</sup> See *id.* at 3 (noting that some states support rapid implementation of a federal database to eliminate duplicate support.").

<sup>582</sup> We direct the Bureau to release a public notice providing additional guidance to the states regarding the opt-out process.

obligations placed on ETCs herein with respect to the duplicates database.<sup>583</sup>

222. *Duplicates Database and Related Processes Must Be Sufficiently Flexible.* Our administration of the Lifeline program will continue to evolve over time, particularly as the Commission addresses additional issues raised in the *Lifeline and Link Up NPRM*. As several commenters note, the database should be designed to be sufficiently flexible to adapt to reasonably foreseeable changes in the Lifeline rules so that additional functionality can be added at minimal cost.<sup>584</sup> For example, we continue to consider whether we will provide ongoing Lifeline support for broadband services and adopt a Lifeline broadband pilot program in this Order.<sup>585</sup> As a result, any database should be flexible so that additional functionalities may be added in the future. For example, it should be capable of accepting and processing the data necessary to check for duplicative broadband support.

223. *Eligibility Database.* In the *Lifeline and Link Up NPRM*, we sought comment on the potential functions of a database designed to eliminate duplicative claims as well as a database to facilitate initial and ongoing certification of consumer eligibility.<sup>586</sup> As explained above, we adopt a number of requirements for ETCs, state agencies and USAC regarding the initial and ongoing certification of Lifeline subscribers in order to ensure that only subscribers receive a Lifeline benefit. To reduce burdens on consumers and ETCs going forward, we direct the Bureau and USAC to take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline. Many parties support the adoption of a permanent eligibility verification solution,<sup>587</sup> and find that such a solution may have significant benefits for consumers, state agencies that today enroll consumers in the Lifeline program, and ETCs. However, we find that we must gather additional information, including how to facilitate the access of eligibility data from state social service agencies and existing federal databases and how to manage consumer privacy risks.<sup>588</sup> We therefore seek comment in the attached Further Notice regarding discrete issues related to such a process.<sup>589</sup>

224. Because access to program and income information from federal or state agencies may require coordination among government agencies, following the release of this *FNPRM*, we direct the Wireline Competition Bureau to reach out to other government agencies to explore cooperation regarding the exchange of eligibility data, and to the extent necessary and feasible, coordinate the establishment of an interagency working group to include members of the Department of Agriculture, HHS, other appropriate federal agencies, and state PUCs.<sup>590</sup> We expect that shortly after release of the Order, the

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<sup>583</sup> See Appendix A.

<sup>584</sup> See, e.g., Emerios Comments at 2 (discussing need to capture both telephone and broadband information).

<sup>585</sup> See section IX.B (Support for Broadband).

<sup>586</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2835-36, paras. 211-213.

<sup>587</sup> See, e.g., AT&T Comments at 3; CenturyLink Comments at iii; CTIA Comments at 5; MMTTC Comments at 6; Sprint Comments at 1; Verizon Reply Comments at 1.

<sup>588</sup> See, e.g., Cincinnati Bell Comments at 9-10; MO PSC Comments at 18.

<sup>589</sup> Based on the information in the record, most consumers qualify for Lifeline through Medicaid, Food Stamps and SSI. See *supra* n. 288. We recognize that meeting this goal will require coordinated action among numerous parties outside of the Commission.

<sup>590</sup> Any such working group would be established consistent with the requirements of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. § 1501 *et seq.*) (UMRA), which creates an exception to the Federal Advisory Committee Act (see 5 U.S.C. Appendix 2), to allow intergovernmental meetings solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs (continued....)

Bureau will host a series of workshops with non-governmental entities, including ETCs, technical experts and database vendors, to accelerate the establishment of a wide-spread, automated means for initial and ongoing verification of subscriber eligibility. There are a number of benefits to proceeding in stages. As explained below, setting up the infrastructure for a permanent duplicates process may reduce the cost of subsequently implementing database solutions to address eligibility.<sup>591</sup> Moreover, the Commission's and USAC's experience with the process adopted in the *2011 Duplicative Program Payments Order* and the implementation of the duplicates database may assist in the design and creation of an automated process for confirming eligibility from governmental agencies.

**d. Cost**

225. The ultimate objective of the database is to reduce waste in the Fund. Therefore, it is important that the initial and ongoing costs of the database are outweighed by the waste that will be eliminated by operation of the database. Based on the evidence in the record, even the highest estimates of the cost of development and ongoing administration of a database appear to bear a much smaller cost than the substantial ongoing annual savings to the Fund that will result from limiting duplicate benefit payments.<sup>592</sup> For example, Emerios estimates the cost of development of a duplicates database and related functions at \$7.5-10 million.<sup>593</sup> While other available cost estimates vary depending on the vendor and specific functionality of each proposal,<sup>594</sup> estimates for a duplicates database do not appear to vary by orders of magnitude and all appear to be substantially less than the amount of money wasted through duplicative payments each year. Indeed, based on results from the first 12 states in which we implemented the duplicate resolution process, we have identified \$2.9 million in duplicative payments per month which represents \$35 million in annualized payments for those states alone.<sup>595</sup> There is little doubt

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established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

<sup>591</sup> See Emerios Database Proposal at 2 (“Phase II [the eligibility database] would be built on the structure and systems in Phase I [the duplicates database], thus dramatically reducing the cost and effort required to expand functionality of the [eligibility database].”).

<sup>592</sup> See CenturyLink Comments at 21 (“Ultimately, a database likely would prove cost effective by generating savings for the low-income program fund greater than the cost of developing and maintaining the database.”).

<sup>593</sup> See Emerios Comments at 15-16 (“Emerios estimates the market budget and planning costs for Phase I [*i.e.*, a duplicates database] at approximately \$7.5-10 million. This estimate excludes the costs to communicate with program beneficiaries and any ongoing fee to administer the database.”). West breaks down the estimated cost of a database into various components, including the “initial infrastructure configuration,” the initial database scrub, and the cost of ongoing “dips” to the database by participating ETCs. See West May 19 Presentation at 19-23. West estimates that if the initial infrastructure is a “shared platform,” the cost will be approximately \$25,000, but if it is a “dedicated platform,” it will cost approximately \$300,000. See *id.* The initial scrub would cost approximately \$532,500 plus the costs of “one-time letter creation” and “letter mailing,” which West lists as currently unknown costs. See *id.* Finally, West estimates that each database “dip” will cost \$0.19 for the first 500,000 dips; \$0.15 for dips 500,001-750,000; \$0.11 for dips 750,001-1,000,000; \$0.09 for dips 1,000,001-2,000,000; and \$0.08 for dips 2,000,001 and beyond. See *id.*

<sup>594</sup> See Solix Comments at 7 (noting that based on its experience in centralized Lifeline certification and verification, the cost of database administration will be determined by many factors, including the specific design requirements; degree of automation; interface standards between the administrator, state agencies and participating service providers, consumer application options and processes, eligibility review procedures and the level of communication and correspondence between applicants); West May 19 Presentation at 19-23; Emerios June 23 *ex parte* Letter (describing variables which may effect the cost of a database to check for duplicates or eligibility).

<sup>595</sup> See USAC 2011 IDV Process Letter.

that on a national scale, a database could potentially identify millions more in wasted support. A duplicates database may also produce other operational efficiencies that would improve administration of the program and may reduce costs for both ETCs as well as USAC, thereby reducing the burden on all contributors to the Fund. For instance, the consumer data in the duplicates database could potentially be utilized to save carriers the trouble of assembling and filing FCC Form 497s, reduce the need for USAC to perform audits so that ETCs are only being reimbursed for Lifeline consumers that they are actually serving, and make the audits that are undertaken more efficient and less costly.<sup>596</sup> Moreover, implementing a duplicates database now may reduce the future cost of development and/or administration of an eligibility database and associated processes.<sup>597</sup> While we recognize that carriers will incur some costs in interacting with the database (*e.g.*, submitting queries, uploading data), the database is designed to minimize these costs.<sup>598</sup> For example, we recognize that carriers will incur some costs from interacting with the database, because we do not mandate that carriers must update the database in real-time, we believe that the compliance costs will be minimal. Moreover, ETCs will not be charged for “dipping” the database and the costs of development and ongoing maintenance of the database will be supported by the Fund.<sup>599</sup> For all of these reasons, we conclude that it would be cost effective to implement a database to check for and eliminate duplicative support.

## **B. Toll Limitation Service Support**

226. *Background.* Toll limitation service (TLS) historically has included both toll blocking, which prevents the placement of all long distance and international 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.<sup>600</sup> In the *Universal Service First Report and Order*, the Commission required ETCs to offer TLS at no charge to low-income subscribers.<sup>601</sup> At the time, only incumbent local exchange carriers were receiving support for serving low-income consumers.<sup>602</sup> Consumers typically purchased long distance service separately from local service, and rates for long distance were considerably higher than they are today.<sup>603</sup> The Commission required ETCs to offer TLS based on studies

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<sup>596</sup> See Cox Comments at 5 (“Matching carrier records to the database will be much more straightforward than the current process, and may involve nothing more than validating the carrier’s procedure for using the database... While audits are necessary in the current program to control waste, fraud and abuse, the manual comparisons of records to filed claims can be quite labor-intensive and intrusive.”); Sprint Reply Comments at 10, n. 16 (“Today, carriers to [sic] file Form 497 lifeline count reports, which are processed and audited by USAC. A Lifeline customer database would obviate the need for these reports and thus should generate some administrative cost savings for USAC.”). While we do not in this order begin a transition from the filing of Form 497s to an “autofilling” process by the database, we believe that the construction of a duplicates database will make such a transition easier and less costly.

<sup>597</sup> See Emerios Reply Comments at 15-16.

<sup>598</sup> Moreover, no party has fully quantified these costs in the record.

<sup>599</sup> By contrast, a significant portion of the process established pursuant to the Duplicates Order was paid for by the ETCs participating.

<sup>600</sup> See 47 C.F.R. § 54.400(d); see also *Universal Service First Report and Order*, 12 FCC Rcd at 8980, para. 383.

<sup>601</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8980, para. 385.

<sup>602</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8969-8970, para. 365.

<sup>603</sup> 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, FEDERAL COMMUNICATIONS COMMISSION, WIRELINE COMPETITION BUREAU, INDUSTRY (continued....)

demonstrating that the primary reason for service termination for low-income subscribers was failure to pay long distance bills.<sup>604</sup>

227. Commission rules provide additional support to ETCs to be compensated for the “incremental” costs of providing toll limitation service to eligible low-income consumers.<sup>605</sup> The Commission’s TLS rule has not been comprehensively reexamined since it was established in 1997.

228. In the *NPRM*, the Commission proposed amending its rules to eliminate Lifeline support for the costs of providing TLS to Lifeline subscribers.<sup>606</sup> The Commission explained that the TLS rule, which was adopted more than a decade ago, may have outlived its usefulness given reductions in long-distance calling rates.<sup>607</sup>

229. *Discussion.* We conclude that the original policy rationale for requiring all ETCs to offer toll limitation service to low-income consumers no longer remains valid in light of significant changes in the communications marketplace over more than a decade. Many carriers no longer distinguish between toll and non-toll calls in how they price voice telephony. The notion of higher priced long distance or “toll” calling is increasingly irrelevant in today’s marketplace. Low-income consumers often have options for service that provide the ability to make calls for a flat price, regardless of the location of the called party. With such service plans, the need to block or limit toll calls to protect against unexpected, higher charges is necessarily moot.<sup>608</sup> Indeed, we note that today, only 5 percent of Lifeline subscribers also subscribe to TLS.<sup>609</sup>

230. We acknowledge the concern that eligible telecommunications carriers should be required to provide low-income consumers the ability to manage the cost of their monthly service plans, and to avoid higher expenditures that could prove to be devastating to a household of limited means.<sup>610</sup> Such concerns are less prevalent, however, for consumers who subscribe to service plans that offer a set amount of domestic minutes (local or toll calls) each month, which by definition provide a mechanism for the low-income household to manage monthly expenditures. We therefore clarify that we do not consider a subscriber who has a Lifeline calling plan that includes a set number of calling minutes available for either local or domestic long distance calls to have voluntarily elected to receive TLS. Therefore TLS support will not be provided to ETCs providing such plans effective with April 2012 disbursements. We maintain the requirement to offer TLS at no charge to the low-income consumer only for service plans for which the ETC charges a fee for toll calls, either domestic or international, that is in addition to the per

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ANALYSIS AND TECHNOLOGY DIVISION at 9-3 (Sept. 2010). 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.

<sup>604</sup> *See Universal Service First Report and Order*, 12 FCC Rcd at 8980, 8982-83, paras. 385, 389.

<sup>605</sup> 47 C.F.R. § 54.403(c).

<sup>606</sup> *See NPRM*, 26 FCC Rcd at 2794, para. 70.

<sup>607</sup> *See id.*

<sup>608</sup> By definition, in the absence of toll calls, there is no need to limit toll calling.

<sup>609</sup> Of the current 13 million Lifeline subscribers, ETCs seek reimbursement for TLS for only 500,000 subscribers, almost all of whom are wireline subscribers.

<sup>610</sup> Some commenters argue that TLS is of great value to Lifeline subscribers. *See COMPTEL Reply Comments* at 2, n. 1 (summarizing commenters that support a continued need for TLS for subscribers).

month or per billing cycle price of the consumer's Lifeline service.<sup>611</sup> A plan that does not provide the ability to make international calls, however, would not be considered a toll limitation service.

231. Moreover, given the low subscription rate to TLS, we no longer believe that providing additional support for the provision of TLS remains necessary to protect low-income consumers from potential service disconnection for non-payment of toll charges. The funds currently provided for the incremental costs of TLS could be used in other ways to more effectively meet our universal service goals. Program participants have increasingly moved to wireless services, which do not claim TLS support.<sup>612</sup>

232. We observe that there is great variance in TLS costs claimed by ETCs seeking reimbursement, ranging from \$0 to \$36 per Lifeline subscriber per month.<sup>613</sup> Such variance strongly suggests that ETCs are taking different interpretations of our current requirement for reimbursement for "incremental costs." Moreover, we note that a number of ETCs do not seek any reimbursement for TLS costs, despite providing TLS to their subscribers,<sup>614</sup> which calls into question whether there is any significant incremental cost to providing the service.

233. In 2010, USAC disbursed \$22.5 million in TLS support – an increase from \$8.9 million in 2009.<sup>615</sup> USAC reported \$7.8 million in TLS disbursements in 2011.<sup>616</sup> Given the growth and variance in TLS support, we are concerned that there may be significant waste or abuse in claims for TLS support.

234. We conclude that we should eliminate support for TLS as an amount separate from Lifeline support, but will do so over a period of time to mitigate the potential impact of doing so. We will phase out TLS support over a period of time by capping the maximum amount of TLS support that may be claimed by an ETC, subject to our existing requirement that claimed TLS costs "shall equal the eligible telecommunications carrier's incremental cost of providing either toll blocking or toll control, whichever is selected by the particular consumer."<sup>617</sup> We establish a limit on TLS support of \$3.00 per month per

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<sup>611</sup> Providing the consumer with the ability to purchase additional minutes when a set amount of minutes are exhausted does not constitute toll limitation service. In the event a Lifeline-only ETC provides to subscribers a set amount of "all distance" minutes whereby the subscriber can make local or toll calls without incurring additional charges, that Lifeline-only ETC does not meet the "facilities" requirement of section 214(e)(1)(a) if its only facilities are call management functionalities that track the consumer's usage and that limit the ability to make additional calls when the minutes associated with the Lifeline offering are exhausted. If the ETC transfers a subscriber to a call center to purchase additional minutes when the set amount of all distance minutes are exhausted, that is not toll limitation service. Likewise, if the subscriber must purchase additional minutes to make international calls, any facilities used by the ETC to permit the subscriber to purchase additional international minutes cannot be relied upon to meet the facilities requirement of section 214.

<sup>612</sup> See generally *USAC 2011 Support Amounts Letter*. USAC's filing indicates that only two competitive ETCs claiming TLS are wireless providers, and they each have only two subscribers. See *id.*

<sup>613</sup> See *id.*

<sup>614</sup> 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 Dkt. No. 96-45 (filed Feb. 25, 2011).

<sup>615</sup> 2011 MONITORING REPORT at Table 2-4.

<sup>616</sup> Because a number of TLS recipients have not yet submitted claims for 4<sup>th</sup> quarter 2011 support, TLS claims for 2011 are likely to be higher. See Letter from Karen Majcher, Vice President, Universal Service Administrative Company, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Dkt. No. 11-42 (filed Jan. 30, 2012) (*USAC Jan. 30 Support Letter*). USAC notes that carriers have up to January 31, 2012 to submit claims for fourth quarter 2011 support.

<sup>617</sup> 47 C.F.R. § 54.403(c).

TLS subscriber that will be implemented April 1, 2012 through the remainder of 2012. TLS support will be reduced to \$2.00 in 2013, and will be eliminated and unavailable at the beginning of 2014.

235. The initial limit of \$3.00 per month per TLS subscriber is based on the current disbursement distribution of TLS support for the relatively few ETCs that claim such support. According to USAC data, competitive ETCs, which serve roughly two-thirds of TLS subscribers, do so at an average cost to the Fund of \$3.67 per subscriber per month.<sup>618</sup> In contrast, incumbent LECs provide TLS at a much lower cost, at an average cost to the Fund of \$0.51 per subscriber per month.<sup>619</sup> We implement this rule to address our immediate concerns with the unprecedented growth in TLS support claims at a time when technological innovation and industry practices suggest there is less need for this service. This decision is also consistent with the Commission's focus on improving fiscal responsibility and reducing waste, fraud, and abuse.

236. We considered an immediate elimination of separate support for TLS provisioning, but take a more gradual approach to avoid a flash cut that could potentially have a negative impact on low-income consumers. Some commenters, including state regulators, support the elimination of reimbursement for TLS.<sup>620</sup> Other commenters, however, recommend that the Commission cap TLS support instead of eliminating it altogether.<sup>621</sup> One commenter argued for a limit of \$1 per month per subscriber.<sup>622</sup> Given that we still require provision of TLS by ETCs offering Lifeline services that would result in higher charges for consumers who elect to make a toll call, immediate imposition of a \$1 cap or immediate elimination of TLS support could have an impact on certain ETCs in the near term.<sup>623</sup> Incumbent LECs' wholesale cost of TLS varies – Verizon reports that its TLS costs range from \$0.58 to \$3.50 per month,<sup>624</sup> while AT&T reports that its TLS costs range from \$0 to \$5.38 per month.<sup>625</sup> Wireline competitive ETCs purchase resold TLS with periodic agreements sometimes purchased months in advance. An immediate elimination of TLS support could leave some wireline competitive ETCs with little time to readjust their business arrangements to be able to provide TLS at a lower cost.<sup>626</sup> Therefore, we conclude that this glide path is necessary to provide sufficient opportunity to ETCs and other interested parties to modify their practices in anticipation of the elimination of support for TLS.

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<sup>618</sup> See *USAC 2011 Support Amounts Letter*.

<sup>619</sup> See *id.*

<sup>620</sup> See, e.g., MI PSC Comments at 4; MO Commission Comments at 6.

<sup>621</sup> See, e.g., Amvensys Comments at 6; AT&T Comments at 31; COMPTTEL Reply Comments at 3; Image Access Reply Comments at 1-2; NALA/PCA Reply Comments at 5; NJ DRC Comments at 14.

<sup>622</sup> See AT&T Comments at 31.

<sup>623</sup> See NALA/PCA Reply Comments at 2; see also Reunion Reply Comments at 11.

<sup>624</sup> See Letter from Alan Buzacott, Executive Director, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, (filed Nov. 21, 2011) (Verizon Nov. 21 *ex parte* Letter).

<sup>625</sup> See, e.g., AT&T Jan. 24 *ex parte* Letter; Letter from John J. Heitmann, Counsel, Reunion, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. 11-42 *et al.*, (filed Jan. 20, 2012) (Reunion Jan. 20 *ex parte* Letter).

<sup>626</sup> In an *ex parte* filing, Reunion asserted that ILECs fees are up to \$8.52 in non-recurring charges and \$5.12 in monthly-recurring charges. Letter from John J. Heitman, Counsel, Reunion, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. 11-42 *et al.*, at 2 (filed April 8, 2011) (Reunion April 8 *ex parte* Letter). AT&T's average TLS rate is \$3.50. See Reunion Jan. 20 *ex parte* Letter as amended by AT&T Jan. 24 *ex parte* Letter. AT&T's average TLS rate was calculated by averaging the wholesale residential TLS rates of AT&T across all states except Wisconsin, for which wholesale TLS rates were unavailable.

237. We are also not persuaded by commenters who suggest a significantly higher cap for TLS. Reunion suggests a non-recurring charge of \$5.50 followed by \$3.50 in monthly-recurring charges per subscriber.<sup>627</sup> Two parties filed comments in support of Reunion's proposal.<sup>628</sup> The actual support claimed by the vast majority of ETCs for providing TLS, however, is significantly lower than Reunion's proposed caps. According to what ETCs submitted this year in TLS support claims, the average incremental cost per month per subscriber is \$2.65.<sup>629</sup> Because ETCs have not been required to substantiate their TLS costs, however, we have no way to determine what the actual costs may be, and the wide variance in submitted costs suggests that these figures may be higher than actual average costs.

238. Finally, we find that phasing out TLS support does not create an unfunded mandate for ETCs to supply TLS without reimbursement, despite what two commenters argued.<sup>630</sup> In this Order, we relieve ETCs of the obligation to offer TLS in the first instance if their Lifeline offering does not distinguish in the pricing of toll and non-toll calls, which may relieve many ETCs of the obligation to offer TLS.<sup>631</sup> For those ETCs that will still be required to offer TLS, we reject arguments that it is inappropriate or unlawful to require the offering of TLS but to deny separate reimbursement.<sup>632</sup> Commenters seem to suggest that they are entitled to continued separate support for TLS as a matter of right. Precedent makes clear, however, that carriers have no vested property interest in specific levels of support for the provision of supported services. To recognize a property interest, carriers must "have a legitimate claim of entitlement to" USF support.<sup>633</sup> Such entitlement would not be established by the Constitution, but by independent sources of law.<sup>634</sup> Section 254 does not expressly or implicitly provide that particular companies are entitled to a specified level of ongoing USF support, but rather that support mechanisms be specific and predictable.<sup>635</sup> The glide path established by this Order clearly satisfies those statutory requirements. Indeed, there is no statutory provision or Commission rule that provides companies with a vested right to continued receipt of support at current levels, and we are not aware of any other, independent source of law that gives particular companies an entitlement to ongoing USF support. Carriers, therefore, have no property interest in or right to continued USF support to cover the incremental costs of providing TLS.<sup>636</sup>

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<sup>627</sup> See Reunion April 8 *ex parte* Letter.

<sup>628</sup> See Letter of Jim Dry *et al.*, Image Access *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (filed May 10, 2011) (Image Access May 10 *ex parte* Letter); NALA/PCA Reply Comments at 5.

<sup>629</sup> See USAC 2011 Support Amounts Letter.

<sup>630</sup> See Amvensys Comments at 5-6; *see also* AT&T Comments at 31.

<sup>631</sup> As noted above, in today's marketplace many ETCs offer calling plans that do not distinguish between toll and non-toll calls.

<sup>632</sup> See, e.g., AT&T Reply Comments at 28; USTelecom Comments at v, 16.

<sup>633</sup> *Board of Regents*, 408 U.S. at 577.

<sup>634</sup> See *id.*; *see also* *Members of the Peanut Quota Holders Assoc. v. U.S.*, 421 F.3d 1323, 1334 (Fed. Cir. 2005), *cert. denied*, 548 U.S. 904 (2006) (finding that congressional action amending peanut quota program to exclude prior beneficiaries from that program did not effect a taking because "the property interest represented by the peanut quota is entirely the product of a government program unilaterally extending benefits to the quota holders, and nothing in the terms of the statute indicated that the benefits could not be altered or extinguished at the government's election").

<sup>635</sup> See 47 U.S.C. § 254(b)(5).

<sup>636</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 293. Moreover, we note that, even if we were to recognize a property interest in USF support, our action today would not result in a taking in circumstances (continued....)



239. Our rule balances the needs of the relatively few subscribers who subscribe to TLS with our goal of minimizing the USF contribution burden and providing support that is sufficient but not excessive. Our rule is specifically tailored to reduce burdens on the Fund; spur innovation in the TLS provisioning market; and minimize, through the gradual reduction in TLS support, the potential impact on ETCs caused by the elimination of TLS support. Further, we give ample transition for affected ETCs of the phase-out of TLS support so as to ease the burden of incorporating the costs of providing TLS with the costs of other aspects of Lifeline service.

## C. Link Up

### 1. Background

240. Link Up was originally adopted to provide up to \$30 to offset half of the customary charges assessed by incumbent local exchange carriers for commencing telephone service.<sup>637</sup> When the Commission adopted its current Link Up rules in 1997, Link Up support was provided to ETCs, and passed through to low-income subscribers, to reduce a single service connection charge at a consumer's principal place of residence.<sup>638</sup>

241. In 2000, in an effort to create incentives for ETCs to construct telecommunications facilities on Tribal lands, the Commission amended its Link Up rules to provide up to \$70 in additional support for ETCs serving residents of Tribal lands.<sup>639</sup> The Commission stated that enhanced Link Up was to be used to cover part of the costs of extending telecommunications infrastructure to eligible low-

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such as these, where the “interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.” *Penn Central*, 438 U.S. at 124; *see also Connolly*, 475 U.S. at 225. The “purpose of universal service is to benefit the customer, not the carrier.” *Rural Cellular Association v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009) (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000)). The Commission has discretion to balance competing section 254(b) principles. *Qwest Communications Intern., Inc. v. FCC*, 298 F.3d 1222, 1234 (10<sup>th</sup> Cir. 2005) (“The FCC may exercise its discretion to balance the principles against one another when they conflict, but may not depart from them altogether to achieve some other goal.”). Thus, the Commission may balance the principles posited in section 254(b)(3) (“Access to advanced telecommunications and information services should be provided in all regions of the Nation”) and (b)(4) (“Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services” at rates that are reasonably comparable to urban rates) with the principle in section 254(b)(5) (“There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service”). Nothing in the Takings Clause or section 254 precludes the Commission from such reasoned decision making, even if it means reducing support of some current support recipients. The requirement that support should be “specific, predictable and sufficient” does not mean that support levels may never change, nor does it mean that required service offerings may not be combined.

<sup>637</sup> *See Universal Service First Report and Order*, 12 FCC Rcd at 8977, para. 380 (adopting Joint Board recommendation to permit carriers to offset half of customary charges, up to \$30); *see MTS and WATS Market Structure Recommended Decision and Order*, 2 FCC Rcd at 2332, para. 68 (the Joint Board noted that “we believe that more can be done to directly address the problem of high non-recurring charges for low income households that are not presently on the network, thereby not only preserving, but also increasing, universal telephone service. Toward this end...we are recommending an additional lifeline assistance program to offset the charges assessed for commencing telephone service.”).

<sup>638</sup> *See Universal Service First Report and Order*, at 8977, para. 380 (determining “support shall only be available for the primary residential connection”); *see also* 47 C.F.R. § 54.411 (a) (defining Link Up).

<sup>639</sup> *See 2000 Tribal Lifeline Order*, 15 FCC Rcd 12208 at 12239-40, para. 60.

income consumers on Tribal lands.<sup>640</sup> In 2003, the Commission clarified that wireless carriers are eligible for Link Up support for their customary charges for commencing telecommunications service, but that Link Up does not support any costs of a wireless handset.<sup>641</sup>

242. The Commission's rules currently specify that such support reimburses ETCs for the revenue they forgo in reducing their customary charge for commencing telecommunications service and for providing a deferred schedule for interest-free payment of charges assessed for commencing service.<sup>642</sup> Link Up provides qualifying consumers with discounts of up to \$30 off the initial costs of installing a single telecommunications connection and up to \$100 for qualifying residents of Tribal lands.<sup>643</sup> Commission rules for Tribal Link Up specify that the charges that the carrier customarily assesses to connect subscribers to the network include facilities-based charges associated with the extension of lines or construction of facilities needed to initiate service.<sup>644</sup>

243. Link Up support has increased over 230 percent in the last three years.<sup>645</sup> USAC projects that it will disburse more than \$180 million in Link Up support to ETCs in 2012, compared to \$122.9 million in 2011, and up from \$37.2 million disbursed in 2008.<sup>646</sup> The increase in support is largely the result of certain Lifeline-only wireless ETCs entering the market in recent years and seeking reimbursement for Link Up, including enhanced Link Up on Tribal lands.<sup>647</sup> In September 2011, incumbent LECs accounted for 27 percent of Link Up claims, while competitive ETCs accounted for 73 percent.<sup>648</sup>

244. In the *Lifeline and Link Up NPRM*, the Commission proposed amendments to the Link

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<sup>640</sup> *2000 Tribal Lifeline Order*, 15 FCC Rcd at 122240-41, paras. 61-62 (discussing line extension charges). At the time, the Commission stated: "we do not anticipate that expanded Link Up support will encourage inefficient investment in telecommunications infrastructure because (1) support for line extension or other construction costs is capped at \$100 per qualifying low-income individual on Tribal lands; and (2) the line extension or other construction costs in many tribal areas will exceed the maximum amount covered under the expanded Link Up support; and (3) carriers therefore may have to absorb certain costs in excess of the maximum expanded Link Up support amount in order to induce low-income individuals to initiate service." *Id.* at 122241, para. 62.

<sup>641</sup> *2003 Tribal Lifeline Order*, 18 FCC Rcd at 10967-68, para. 18.

<sup>642</sup> 47 C.F.R. §§ 54.411, 54.413.

<sup>643</sup> 47 C.F.R. § 54.411.

<sup>644</sup> 47 C.F.R. § 54.411(a)(3).

<sup>645</sup> See 2011 MONITORING REPORT at Table 2.2 (providing actual Link Up disbursements from 2007 to end of 2010); see also *USAC 2011 Support Amounts Letter* at 3; *USAC Jan. 30 Support Letter*.

<sup>646</sup> See USAC Federal Universal Service Support Mechanisms Fund Size Projects for First Quarter 2012, dated Nov. 2, 2011, at 19, available at <http://www.usac.org/about/governance/fcc-filings/2012/Q1/IQ2012%20Quarterly%20Demand%20Filing.pdf> (detailing how USAC projects total annual 2012 Link Up support to be approximately \$183.48 million); see also *USAC 2011 Support Amounts Letter*; 2011 MONITORING REPORT at Table 2.2.

<sup>647</sup> ETCs typically are designated and eligible to receive both high-cost and low-income universal service support. Lifeline-only ETCs, however, are carriers authorized to receive support only for the provision of the Lifeline supported services to eligible low-income consumers. These carriers are not eligible to receive high-cost universal service support.

<sup>648</sup> See *USAC 2011 Support Amounts Letter* at 3 (listing support amounts for incumbent LECs and competitive ETCs from January 2011 through September 2011).

Up rules to eliminate waste, fraud, and abuse.<sup>649</sup> In response to a subsequent proposal to eliminate Link Up support,<sup>650</sup> the August Public Notice sought further comment on whether such support should be eliminated or limited to reimbursement for service initiations that involve physical installation of facilities by the provider at the consumer's residence.<sup>651</sup>

## 2. Discussion

245. We amend our rules to eliminate Link Up support on non-Tribal lands for all ETCs.<sup>652</sup> Marketplace trends indicate that Lifeline consumers increasingly have service options from ETCs that neither draw on Link Up support nor charge the consumer a service initiation fee,<sup>653</sup> raising concerns that Link Up support is not the most efficient means to reach our programmatic goals. As part of our responsibility to balance a number of universal service goals with finite resources, we conclude that dollars currently spent for Link Up in its current form can be more effectively spent to improve and modernize the Lifeline program.<sup>654</sup> Given the significant telecommunications deployment and access challenges on Tribal lands, however, at the present time we will maintain enhanced Link Up support for those ETCs that also receive high-cost support on Tribal lands.<sup>655</sup>

246. *Link Up on Non-Tribal Lands.* Today, unlike in 1997, many low-income consumers have competitive choices among carriers that do not charge an activation fee and do not draw on Link Up support.<sup>656</sup> At a time when we seek to modernize the program and constrain the growth of the Fund and

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<sup>649</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2795-96, paras. 72-76; *see also* TracFone Wireless, Inc. Petition for Declaratory Ruling, WC Dkt. No. 96-45 *et al.*, filed December 1, 2010 (TracFone Petition) (proposing reforms to Link Up to eliminate waste and abuse based on business practices of some Lifeline-only ETCs).

<sup>650</sup> *See* Sprint Comments at 9-10.

<sup>651</sup> *Lifeline and Link Up Public Notice*, 26 FCC Rcd at 11103-04, para. 3.b.

<sup>652</sup> March is the last month for which ETCs serving customers on non-Tribal lands can claim Link Up support on their FCC Form 497. For example, if an ETC serving non-Tribal lands currently receives Link Up support and enrolls a new subscriber on March 15, 2012, that ETC may claim Link Up support for that subscriber. If, however, that ETC enrolls a new subscriber on April 1, 2012, that ETC may not claim Link Up support for that subscriber.

<sup>653</sup> *See* Letter from Mitchell F. Brecher, Counsel, TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-3 (filed Nov. 21, 2011) (TracFone Nov. 21 *ex parte* Letter) (explaining that both TracFone and Virgin Mobile do not impose activation charges on Lifeline subscribers and operate in the same markets as other ETCs that obtain Link Up support); *see also* USAC Low Income disbursement tool, <http://www.usac.org/li/tools/disbursements/default.aspx> (showing the increase in subscribership of i-wireless, an ETC that does not receive Link Up support) (support amounts can be determined by typing "i-wireless" in "Study Area Name" option) (last visited Feb. 5, 2012).

<sup>654</sup> *See, e.g.*, Cricket PN Comments at 4 (arguing that Link Up support is not necessary to enable consumers to access the public switched telephone network); AT&T PN Comments at 8-10 (supports elimination of Link Up for all ETCs and explains problems of limiting Link Up to physical installations); T-Mobile Dec. 16 *ex parte* Letter, at 6 (urging the Commission to eliminate Link Up support, which would free up approximately \$136 million per year in funding that could be allocated toward other uses); Sprint PN Comments at 1 (supporting elimination of Link Up support and re-purposing of funds to support the broadband pilot).

<sup>655</sup> *See USF/ICC Transformation Order*, FCC 11-161 at para. 482 (recognizing that Tribal lands have significant telecommunications deployment and access challenges). When the Commission first established the expanded Link Up program for Tribal lands, it observed that doing so would create incentives for carriers to construct facilities where none existed. *See 2000 Tribal Lifeline Order*, 15 FCC Rcd at 12239-40, para. 60.

<sup>656</sup> The two largest wireless Lifeline providers, TracFone and Virgin Mobile (Sprint), along with Cricket and i-wireless, enroll millions of low-income consumers in Lifeline without reliance on Link Up support. *See* Letter from (continued....)

there are many competing demands for program support, we question whether it makes sense to provide Link Up support to ETCs with high activation fees for voice service when low-income consumers can get Lifeline service from another provider without paying an activation fee.<sup>657</sup> Declining costs and competitive pressures have led many ETCs to stop assessing connection charges on low-income consumers.<sup>658</sup> The Lifeline-only ETCs that do not assess a connection fee or collect Link Up support are operating in the same geographic markets as ETCs obtaining Link Up support.<sup>659</sup> In a competitive environment, carriers will only assess a fee that the market will bear. Indeed, the lack of activation fees assessed by many competitive ETCs raises the question of whether the existence of rules allowing ETCs to collect Link Up support creates an incentive for some ETCs to charge such fees, when they otherwise would not.<sup>660</sup>

247. We also have concerns that Link Up, in its current form, is vulnerable to waste and abuse.<sup>661</sup> Providing support for half of a “customary” charge up to a flat \$30 amount creates incentives for carriers to set their customary charge at \$60 in order to maximize their draw from the program, with incentives to focus on obtaining new subscribers, thus triggering application of the activation fee, rather than focus on maintaining existing subscribers.<sup>662</sup> Indeed, a number of Lifeline-only ETCs collecting Link Up support have \$60 activation fees for which they take \$30 from the Fund and waive the remaining

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Mitchell Brecher, Counsel, TracFone, to Marlene H. Dortch, Secretary of the Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 4 (filed Oct. 13, 2011), (TracFone Oct. 13 *ex parte* Letter) (providing examples of competitive choices of ETCs that do not receive Link Up support). The Link Up Coalition has also acknowledged that members of the coalition serve the same geographic areas. *See* Letter from John Heitmann, Counsel, Link Up Coalition, to Marlene Dortch, Secretary, Federal Communications Commission, at 2 (filed Dec. 7, 2011) (Link Up Coalition Dec. 7 *ex parte* Letter).

<sup>657</sup> *See supra* n.653 (providing examples of ETCs that do not charge activation fees and do not receive Link Up support).

<sup>658</sup> *See* Cricket PN Comments at 4 (noting that over the years many carriers have reduced and then eliminated their activation fees); *see also* Sprint Comments at 9-10 (stating that “the ever increasing level of automation has reduced the cost of initiating service”).

<sup>659</sup> *See* TracFone Nov. 21 *ex parte* Letter at 1-4 (explaining that both TracFone and Sprint do not impose activation charges on Lifeline customers and operate in the same markets as other wireless ETCs that obtain Link Up support). Indeed, some facilities-based wireless ETCs that provide Lifeline service using their own network argue that technological advances and business efficiencies have rendered activation fees unnecessary for wireless providers. *See* Sprint Comments at 9-10; *see also* Cricket PN Comments at 4 (recognizing changes in marketplace such that Link Up is unnecessary).

<sup>660</sup> *See* TracFone Nov. 21 *ex parte* Letter at 3-4 (noting that many Lifeline-only ETCs receiving Link Up support charge the maximum amount allowable under current Link Up rules).

<sup>661</sup> *See* AT&T PN Comments at 8-10 (providing examples of how Link Up support can create wasteful spending); *see also* Sprint Comments at 9-10 (arguing that elimination of Link Up, which it claims is a service of questionable utility, will promote the public interest by helping to keep the Fund at a manageable and sustainable size, and will discourage ETCs from manipulating program rules to get unneeded subsidies).

<sup>662</sup> *See* Letter from John J. Heitmann, Counsel, Link Up Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42, Redacted – Public Version, at 2-5 (filed Nov. 14, 2011) (Link Up Coalition Nov. 14 *ex parte* Letter) (arguing that activation fees are general industry practice and that several of its members charge \$60 due to their costs of operation, which gives them the maximum amount of allowable funds under Link Up rules); *but see* TracFone Nov. 21 *ex parte* Letter at 3-4 (rebutting Link Up Coalition Nov. 14 *ex parte* Letter by noting that the examples provided by the Link Up Coalition are of facilities-based wireless carriers with activation fees almost half the amount that the Link Up Coalition imposes).

balance.<sup>663</sup> In such circumstances, the ETC has no incentive to lower its activation fee.

248. There is significant disagreement in the record as to the purpose of Link Up and what costs are properly reimbursable through Link Up. The record indicates that Link Up support is being used to offset an array of costs, including customer billing, basic labor, equipment and facilities, outreach and marketing, as well as compliance with Lifeline rules, all of which are costs that every carrier assumes in doing business in today's market.<sup>664</sup> In fact, it appears that a number of Link Up recipients rely upon Link Up so that they can charge lower monthly charges to low-income consumers.<sup>665</sup>

249. As noted above, Link Up was adopted as a discount off "customary" connection charges, at a time when such connection charges were rate-regulated by state public utility commissions.<sup>666</sup> Now, the majority of Link Up is going to pre-paid wireless resellers who are not rate-regulated.<sup>667</sup> If we specified that only certain costs are properly recoverable through Link Up, compliance with such a rule would be difficult for USAC and this Commission to monitor, audit, and enforce for companies whose rates are not regulated today under cost of service principles.<sup>668</sup> Record evidence indicates that most wireless resellers are not charged a separate connection fee by their underlying wholesale providers.<sup>669</sup> Because their rates are not regulated, however, wireless carriers can set their "activation" fees at any level

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<sup>663</sup> See 47 C.F.R. § 54.413(b); see also Link Up Coalition Nov. 14 *ex parte* Letter at 2-5 (acknowledging they charge the maximum amount allowable in activation fees when receiving Link Up support); see TracFone Petition at 3-9 (explaining how at least one Lifeline-only ETC either waives the remaining balance of an activation not covered by Link Up or "defers" payment over a period of 12 months giving the customer the option of reducing any activation fee by purchasing more airtime minutes).

<sup>664</sup> See, e.g., COMPTTEL PN Comments at 9-11 (providing examples of the broad array of costs associated with connection charges); CenturyLink PN Comments at 3-4 (noting that Link Up support covers the cost of making the access line available to the customer, provisioning services, and processing the customer's service order and opening the account); GRTI PN Comments at 15 (noting that it charges its customers a one-time fee of \$75 in order to recoup its basic labor, equipment and facilities costs); Nexus PN Comments at 7-8 (providing examples of how the ETC uses Link Up to cover the costs of community outreach and marketing).

<sup>665</sup> The Link Up Coalition, comprised of at least six wireless competitive ETCs, acknowledges that its members rely on Link Up subsidies to provide low cost (and most often free) wireless service and "free" phones to Lifeline consumers. See Link Up Coalition PN Comments at 2.

<sup>666</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8969-70, paras. 365, 380 (originally intended for incumbent LECs' cost of connecting service in the residence).

<sup>667</sup> See 47 U.S.C. § 332(c)(3)(a) (preventing states from regulating commercial mobile radio service providers' rates).

<sup>668</sup> Dollars are fungible, and there is no administratively practical way to determine whether \$30 is recovering the costs of "acceptable" activities but not being used for other things, including defraying the costs of handsets. See Link Up Coalition PN Comments at 21 (stating that if Link Up was eliminated Coalition members would have to evaluate whether they could continue to provide "no-charge handsets;"); see also *supra* para. 241 (explaining how the Commission has previously held that Link Up does not support costs of wireless handsets).

<sup>669</sup> See TracFone Nov. 21 *ex parte* Letter at 3 (noting that TracFone's underlying carriers include three of the four largest CMRS network operators in the nation -- AT&T Mobility, Verizon Wireless and T-Mobile -- none of which impose activation fees on TracFone as the wholesale customers). We note that the incremental cost to connect a new subscriber to the network may be built into the wholesale rate structure. The Link Up Coalition claims that several of its members are subject to network activation charges from the underlying provider, but nothing in the record indicates that such charges are based on individual customer activations as opposed to a general charge built into the wholesale rates. See Link Up Coalition Reply Comments at 4.

the marketplace will bear.<sup>670</sup> The Link Up subsidy, coupled with the ability to waive the fee borne by the consumer, insulates those charges from the effects of competition when serving Link Up subscribers.<sup>671</sup> Indeed, as noted above, we are concerned that Link Up support may act as an incentive for ETCs that focus primarily or exclusively on the low-income market to charge higher activation fees to Lifeline consumers than typically are charged by other ETCs to non-Lifeline customers.<sup>672</sup>

250. We acknowledge that some incumbent LECs continue to assess a customary charge on their subscribers to commence service. The record indicates that such charges vary significantly among the incumbent carriers, ranging from \$13.50 to \$66.00.<sup>673</sup> Given the many competing demands for program support and our desire to maintain a technology-neutral approach, we decline to adopt a policy that would provide Link Up support only to wireline carriers.<sup>674</sup> We are not convinced from the record before us that elimination of Link Up support for incumbent LECs will discourage or prevent consumers from subscribing to telephone service.<sup>675</sup> Indeed, some incumbent LECs support eliminating Link Up

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<sup>670</sup> There is information in the record that the average activation charge for facilities-based wireless carriers is \$35, whereas some wireless ETCs do not charge any fees on Lifeline customers and others impose as much as \$72 for activation, but waive such fees for Lifeline customers. *See* Nexus Nov. 15 *ex parte* Letter, at 4, Attach. (providing examples of activation fees from competitors); *see also* Link Up Coalition Nov. 14 *ex parte* Letter at 2-4 (providing examples of activation fees in industry which are approximately \$35). In contrast, all or most of the members of the Link Up Coalition charge an activation fee of \$60, the level that maximizes draw from the Fund. *See id.*; *see also supra* n.662 (providing examples of how most Lifeline-only ETCs that are recipients of Link Up charge at least the maximum amount permitted under current regulations).

<sup>671</sup> *See* TracFone Petition at 3-9 (providing example of how at least one ETC either waives the remaining balance of an activation not covered by Link Up or “defers” payment over a period of 12 months giving the customer the option of reducing any activation fee by purchasing more airtime minutes).

<sup>672</sup> Many facilities-based wireless carriers charge fees at or about \$35-\$36, which is almost half the amount charged by Lifeline-only ETCs receiving Link Up. *See* Nexus Nov. 15 *Ex Parte* (noting that Verizon, AT&T and T-Mobile charge activation fees in the range of \$35-\$36); *see also* Letter from Matthew A. Brill, Counsel, Cricket, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Nov. 22, 2011) (Cricket Nov. 22 *Ex Parte*) (claiming that Link Up provides little benefit due to competitive pressures and invites waste and abuse in the program).

<sup>673</sup> Most incumbent LEC connection fees are based on the terms contained in state tariffs. *See* Letter from Jamie M. Tan, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Nov. 22, 2011) (listing line connection charges in its 22-state region) (AT&T Nov. 22 *ex parte* Letter); *see also* Verizon Nov. 21 *ex parte* Letter (listing activation charges for the 12-state region).

<sup>674</sup> Cox suggests that the Commission should consider eliminating Link Up support altogether unless it is available on a competitively neutral basis. *See* Letter from Charles Keller, Counsel, Cox, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (filed Oct. 24, 2011) (Cox Oct. 24 *ex parte* Letter). CenturyLink argues that Link Up support should be limited to wireline ETCs as opposed to wireless ETCs. *See* CenturyLink PN Reply Comments at 4.

<sup>675</sup> A number of commenters point out that for low-income consumers that face the challenges of securing employment, mobile service is preferred over landline service. *See, e.g.*, Letter from Mitchell Brecher, Counsel, TracFone, to Marlene H. Dortch, WC Dkt. No. 11-42, Attach., “Subsidized Cell Phones Provide Significant Economic Gains for Poor and Near-Poor Americans” (filed Dec. 5, 2011). USAC data indicate that while incumbent LECs are receiving less Link Up support each month, likely due to subscribers choosing competitive alternatives, Lifeline disbursements for Virgin Mobile, TracFone, i-wireless and Cricket, as non-recipients of Link Up, are steadily increasing. *See* USAC Low Income disbursement tool, <http://www.usac.org/li/tools/disbursements/default.aspx> (last visited Feb. 5, 2012). Disbursements for particular companies can be accessed on the USAC tool by typing company name in “Study Area Name” option.

support.<sup>676</sup> Others argue that Link Up should be limited to physical installation of facilities.<sup>677</sup> If the Commission limited support to physical installation of facilities, it is unlikely that many providers would be eligible for Link Up, as initiation of phone service in today's marketplace typically is an automated process.<sup>678</sup> With declining costs of initiating service and competitive pressures, we are not convinced that we should maintain Link Up for only wireline providers, even if we were to limit it only to the physical installation of facilities. Based on the record before us, we decline to maintain Link Up support for wireline ETCs only.<sup>679</sup>

251. We acknowledge that certain Link Up recipients contend that Link Up enables them to market Lifeline service in innovative ways to underserved markets that do not presently have phone service.<sup>680</sup> The record merely suggests, however, that community sign-up campaigns can be effective at signing up consumers, not that Link Up in its current form is the only way to ensure that such consumers subscribe to phone service.<sup>681</sup> We also note that ultimately the program is funded by other consumers and allowing the use of these funds for corporate marketing has moved the uses of the funds far from the original purpose of the Lifeline program. We note that through USAC's in-depth data validation process targeted at uncovering duplicative claims for Lifeline support, USAC has identified thousands of consumers subscribing to Lifeline service from both an ETC receiving Link Up and an ETC that does not receive Link Up.<sup>682</sup> For example, in the state of Maryland, there were 10,201 subscribers – accounting for

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<sup>676</sup> AT&T PN Comments at 8-10; Verizon Nov. 21 *ex parte* Letter.

<sup>677</sup> IN UR Comments at 4-5 (contending that ETCs must not be allowed to collect Link Up funds except when they are installing physical equipment on the subscriber's premises).

<sup>678</sup> See Centurylink PN Comments at 3 (noting that for most customers, initiating service does not require installation at the residence); Nexus PN Comments at 4 (acknowledging that physical installations are rare for both wireline and wireless providers in today's market); *supra* n. 658 (providing examples of how the ever increasing level of automation has reduced the cost of initiating service).

<sup>679</sup> Several LECs support elimination of Link Up support and believe that the funds could be redirected to more tangible benefits to consumers. See AT&T PN Comments at 8-10 (supporting elimination of Link Up support); Verizon Nov. 21 *ex parte* Letter (noting that it is not opposed to elimination of Link Up support to all ETCs provided carriers obligation to provide discounts are eliminated); Cox *ex parte* Oct. 24 Letter (advocating for Link Up support to be reallocated to more productive uses).

<sup>680</sup> See Link Up Coalition PN Comments at 14, Figs. 1, 2 (contending that community outreach efforts should be reimbursed by Link Up because, without the subsidy, certain low-income consumers would not otherwise be served); Letter from Christopher Savage, Counsel, Nexus, to Marlene H. Dortch, WC Dkt. No. 11-42, Attach. at 11, (filed Jan. 20, 2012) (Nexus Jan. 12 *ex parte* Letter) (stating that 62 percent of Nexus subscribers have no phone service at time of enrollment); Nexus' claim that 62 percent of their subscribers have no phone service at time of enrollment appears high given that approximately 91.5 percent of low-income households subscribe to telephone service. See 2011 MONITORING REPORT at Table 3.2. Nexus provides no back up support for its data. Indeed, one explanation for why its statistic could be so high is because a low-income consumer may disconnect service for periods of time and resume service with the same or competing carrier during the course of the year. There is no indication in Nexus' Jan. 12 *ex parte* Letter of whether the service provider properly verified whether the 62 percent of subscribers had previously had phone service in the last few months or benefited from Link Up support in the past by dropping service and reconnecting multiple times. The Commission's rules, however, make clear that a consumer can only receive the benefit from the Link Up support once unless the individual moves from their principal place of residence. See 47 C.F.R. § 54.411(c) (limiting a consumer to receive benefit of Link Up support only once unless the individual changes principal place of residence).

<sup>681</sup> See USAC 2011 IDV Process Letter at 5-6, 9, nn. 19, 21, 30 (providing details on duplicates with Link Up).

<sup>682</sup> See *id.* (providing details on duplicates from customers in Maryland, Michigan and Louisiana in which subscribers were found to subscribe to ETCs receiving Link Up and ETCs that did not receive Link Up support).

51 percent of total duplicates found in the state – who were found to be receiving Lifeline service from both an ETC that receives Link Up and an ETC that does not receive Link Up support.<sup>683</sup> This example suggests that at least for some low-income consumers, Link Up is not increasing phone subscribership. We seek further comment in the attached *FNPRM* whether there should be support for one-time service charges as opposed to monthly charges in a modernized Lifeline program.

252. Certain carriers suggest that a decrease in support to \$20-24 would be an appropriate amount of Link Up support.<sup>684</sup> We decline to adopt this proposal for the same reasons we are eliminating the \$30 amount allowable under our rules for receiving Link Up support. Many low-income consumers have competitive choices from ETCs that do not charge an activation fee and do not receive Link Up support. In balancing a number of universal service goals with finite resources, and given the circumstances described above, we decline to adopt this proposal. Because we find that the Link Up program is potentially susceptible to abuse,<sup>685</sup> is creating unhelpful incentives, and is providing little public-interest benefit, we conclude that it should be eliminated as soon as possible. We are unpersuaded by the factual arguments that some supporters of Link Up have made<sup>686</sup> and conclude there is no persuasive evidence in the record of any public-interest benefit to continuing to provide this support on non-Tribal lands<sup>687</sup> for any amount of time.

253. We therefore revise our rules, on a technologically-neutral basis, to eliminate Link Up support for all ETCs on non-Tribal lands. We also conclude there is no federal obligation for ETCs to offset or discount their activation fees for qualifying low-income consumers. While we considered various proposals to define more narrowly appropriate and inappropriate uses of Link Up, on balance, we conclude that the dollars spent on Link Up in its current form can be better spent on other uses, such as modernizing the program and constraining the overall size of the fund.<sup>688</sup> In eliminating Link Up today, we do not prejudice whether it would be appropriate in the future to adopt a new rule to provide subsidies for non-recurring charges imposed at service initiation.

254. *Link Up on Tribal Lands.* At present, we maintain the enhanced Link Up program on Tribal lands, but limit its availability to those ETCs receiving high-cost support.<sup>689</sup> Consistent with the

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<sup>683</sup> See *id.* at 5-6, n. 19. Similarly, in the state of Michigan, there were 25,055 subscribers who were found to be receiving Lifeline service from both an ETC who receives Link Up and an ETC that does not receive Link Up support, which accounted for 47 percent of total duplicates found in the state. *Id.* at 6, n. 21.

<sup>684</sup> See Nexus Jan. 20 *Ex Parte* at 3-4 (suggesting a decrease in Link Up per customer based on changes in market).

<sup>685</sup> See *supra* para. 247.

<sup>686</sup> See *supra* para. 251.

<sup>687</sup> Despite this finding, we will continue to provide Link Up support on Tribal lands for ETCs receiving high-cost support because those ETCs are building telecommunications infrastructure on Tribal lands, which have significant telecommunications deployment and connectivity challenges.

<sup>688</sup> See Sprint PN Comments at 1 (“Sprint supports elimination of Link Up support for the Lifeline voice telephony program and the redeployment of those funds to support the broadband pilot.”); Cox Oct. 24 *ex parte* Letter (advocating for Link Up support to be reallocated to more productive uses).

<sup>689</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 479-482 (recognizing the unique challenges in bringing communications services to Tribal Lands). Today, several Lifeline-only ETCs are receiving a large amount of enhanced Link Up support on Tribal Lands. See, e.g., USAC Low Income disbursement tool, <http://www.usac.org/li/tools/disbursements/default.aspx> (providing an example of how at least one Lifeline-only ETC has received approximately a million in Link Up support for two months in 2011 on Tribal lands in OK without building infrastructure) (support amounts can be determined for a company such as True Wireless by typing the company name in “Study Area Name” option) (last visited Feb. 5, 2012).



intent of the enhanced Link Up program, those ETCs are building telecommunications infrastructure on Tribal lands, which have significant telecommunications deployment and connectivity challenges.<sup>690</sup> This rule change will be effective beginning with April 2012 support claims.<sup>691</sup> Given changes in how high-cost support will be directed to Tribal lands as a result of the *USF/ICC Transformation Order and FNPRM*, however, we seek further comment in the attached *FNPRM* on whether the Commission should maintain the enhanced Link Up program for Tribal lands in the future, or whether such funding should be re-purposed for other uses, such as efforts to modernize Lifeline on Tribal lands.<sup>692</sup>

#### **D. Subscriber Usage of Lifeline-Supported Service**

##### **1. Background**

255. ETCs receive a specific amount of Lifeline support per month for each qualifying low-income consumer they serve. Some ETCs reduce the subscriber's monthly bill by the support amount and require the subscriber to pay the balance. Other ETCs, however, particularly those offering pre-paid services, do not charge for service on a monthly basis and do not have a regular billing relationship with the subscriber, or other similar relationship to track activity by the subscriber. Our current rules do not require ETCs to ensure the qualifying low-income consumer is actually using the Lifeline-supported service. As a result, some ETCs may seek and receive Lifeline support for a consumer who has abandoned the service, transferred the service to someone else, or failed to use the service at all.<sup>693</sup> This wastes Lifeline support, because the program is not actually benefiting the consumer for which it is intended. To address this situation, the Commission and some states have imposed "non-usage" procedures on some pre-paid wireless ETCs in order to eliminate payments from the Fund for enrolled Lifeline subscribers who are no longer using the service.<sup>694</sup>

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<sup>690</sup> See *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12239, para. 60 (concluding that expanded Link Up should apply to costs associated with the construction of facilities needed to initiate service to qualifying individuals on Tribal lands).

<sup>691</sup> March 2012 is the last month that Lifeline-only ETCs operating on Tribal lands (*i.e.*, those ETCs who do not receive high-cost support) may seek reimbursement for enhanced Link Up support on Tribal lands.

<sup>692</sup> See section XIII.E (Tribal Lands Lifeline and Link Up Support).

<sup>693</sup> There are many reasons why a consumer may not use his or her Lifeline-supported service. For example, some subscribers may have lost or abandoned their wireless devices, may lack a readily accessible source of electricity to charge the device, or may lack consistent access to a signal. In other cases, the consumer may have given or sold the phone to another person, in violation of the ETC's terms of service.

<sup>694</sup> See, *e.g.*, *PlatinumTel Forbearance Order*, 26 FCC Rcd at 13788; *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, available at [http://psc.wi.gov/apps35/erf\\_view/viewdoc.aspx?docid=118017](http://psc.wi.gov/apps35/erf_view/viewdoc.aspx?docid=118017) (*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* (Dkt. No. 19664), available at <ftp://www.psc.state.ga.us/dockets/18664/121955.PDF>; *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* (Dkt. No. 26282), available at <http://www.psc.state.ga.us/factsv2/Docket.aspx?docketNumber=26282>; Georgia Public Service Commission Order Amending ETC Designations, October 20, 2010, available at <ftp://www.psc.state.ga.us/dockets/26282/131742.pdf> (*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*, Dkt. No. 09-TFWZ-945-ETC, available at <http://estar.kcc.ks.gov/estar/portal/kcc/page/docket-docs/PSC/DocketDetails.aspx?DocketId=d40c343e-be19-4913-88ec-c567d1215bb3>; Kansas State Corporation Commission Order Granting in Part and Denying in Part Amended Application of TracFone for Designation as ETC (continued....)

256. In the *NPRM*, the Commission proposed to prohibit ETCs from seeking reimbursement from the Fund for any Lifeline subscriber who has failed to use his or her service for 60 consecutive days. The *NPRM* sought comment on whether a subscriber's failure to use the service for a specific period of time may reasonably demonstrate, or serve as a proxy for, intended service discontinuation. The Commission also sought comment on whether a 60-day period of inactivity, or something shorter or longer, would be reasonable and whether a usage requirement should be limited to particular types of service or should apply to all types of service.<sup>695</sup>

## 2. Discussion

257. We find that imposing a reasonable consumer usage requirement is appropriate in certain circumstances in order to ensure that Lifeline support benefits only eligible low-income subscribers actually using the supported service.<sup>696</sup> We also amend our rules to clarify that Lifeline service is a non-transferable benefit; an eligible Lifeline subscriber may not transfer his or her phone service to anyone, not even someone who is also eligible. We further amend our rules to prevent ETCs who do not assess and collect from end users a monthly charge (pre-paid ETCs) from obtaining Lifeline support for an inactive subscriber who has failed to use his or her service in the first instance.<sup>697</sup> If a pre-paid wireless service is not initiated, the consumer will not be considered enrolled, and the pre-paid wireless ETC will not be eligible for Lifeline support until a new subscriber personally activates the service. Furthermore, prepaid ETCs will not receive Lifeline support for inactive subscribers who have not used the service for a consecutive 60-day period. These new requirements for qualifying for Lifeline support respond directly to recommendations made by the GAO in 2010, and represent an important step in addressing potential waste, fraud, and abuse in the program.<sup>698</sup> Moreover, in order to make sure consumers are fully informed about the consequences of non-usage, we require pre-paid ETCs to notify their subscribers at service initiation about the non-transferability of the phone service, its usage requirements, and the de-enrollment and deactivation that will result following non-usage in any 60-day period of time.<sup>699</sup> We also require pre-paid ETCs to update the database within one business day of de-enrolling a consumer for non-use. Furthermore, we require pre-paid ETCs to annually report USAC the number of subscribers de-enrolled for non-usage. The de-enrollment reports must be submitted with the ETC's annual recertification results, and must report the number of de-enrolled subscribers on a month-by-month basis.

258. Adopting usage requirements should reduce waste and inefficiencies in the Lifeline program by eliminating support for subscribers who are not using the service and reducing any incentives ETCs may have to continue to report line counts for subscribers that have discontinued their service. The vast majority of commenters support a 60-day subscriber usage requirement for pre-paid ETCs.<sup>700</sup> One

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(Continued from previous page)

for Limited Purpose of Offering Lifeline Service to Qualified Households, December 14, 2010, available at <http://estar.kcc.ks.gov/estar/portal/kcc/page/docket-docs/PSC/DocketDetails.aspx?DocketId=d40c343e-be19-4913-88ec-c567d1215bb3> (*Kansas Non-Usage Order*).

<sup>695</sup> See *NPRM*, 26 FCC Rcd at 2798, para. 82.

<sup>696</sup> See *Wisconsin Non-Usage Order* at 8; see also *Georgia Non-Usage Order* at 2; *Kansas Non-Usage Order* at 6.

<sup>697</sup> These restrictions do not apply to prepaid providers that do not collect some monthly amount from the customer.

<sup>698</sup> GAO recognized this general approach as one step toward improving the integrity of the Lifeline program. See 2010 GAO REPORT at 36.

<sup>699</sup> See *id.*; see also *NASUCA Reply Comments* at 8 (supporting sufficient notice of termination for non-usage).

<sup>700</sup> See, e.g., *Cricket Comments* at 5; *FL PSC Comments* at 12-13; *COMPTEL Comments* at 13-14; *MI PSC Comments* at 5; *MO PSC Comments* at 7-8; *NASUCA Reply Comments* at 8; *NY PSC Comments* at 8-9; *TracFone Reply Comments* at 2-3; *USTelecom Comments* at v, 17-18; *IN URC Comments* at 5; *Sprint Reply Comments* at 7.

commenter argues for a significantly longer non-usage interval of 120 days to account for seasonal migrations in rural and Tribal areas and job opportunities that may require that Lifeline service be interrupted for months at a time.<sup>701</sup> While we understand that there may be unique circumstances that may disrupt some subscribers' connectivity for periods of time, the 60-day period we adopt is fiscally responsible and balances the interests of subscribers with the risks associated with potential waste in the program.<sup>702</sup> As noted above, we expect ETCs to educate their subscribers about usage requirements and the de-enrollment that will result from non-usage.

259. Existing consumer usage policies have already resulted in substantial savings for the program. TracFone, Virgin Mobile, and others have already implemented a 60-day "non-usage" policy in a number of states.<sup>703</sup> TracFone, for example, has de-enrolled 700,000 subscribers for non-usage in the last two years alone.<sup>704</sup> The Florida PSC has also instituted a 60-day non-usage requirement that has resulted in \$8.5 million in savings over six months from a single provider.<sup>705</sup> Some ETCs encourage the Commission to follow this policy and assert that by doing so savings to the program would approach \$230 million annually.<sup>706</sup> We are building on the proven success of practices developed and implemented at the state level, including in Florida, and believe that adopting a rule that will apply uniformly across the country should result in additional savings to the Fund.

260. An ETC offering pre-paid service may not seek or receive universal service support for a qualifying low-income consumer until that individual subscriber uses the supported service to either activate the service or complete an outgoing call.<sup>707</sup> We amend section 54.407 of our rules to make clear that all new Lifeline subscribers of pre-paid wireless service must personally activate the service prior to the ETC seeking reimbursement from the Fund. After service has been initiated in this manner (by initiation and/or actual use of the service by a subscriber), pre-paid ETCs will continue to receive universal service support reimbursement for each qualifying low-income subscriber who continues to use the supported service, as described below.

261. To provide clear guidance to ETCs on what is necessary to comply with this new rule, we specify the activities that establish continued usage by a consumer. An account will be considered active if during any 60-day period the authorized subscriber does at least one of the following: makes a monthly payment; purchases minutes from the ETC to add to an existing pre-paid Lifeline account; completes an outbound call; answers an incoming call from anyone other than the ETC, its representative, or agent; or affirmatively responds to a direct contact from the ETC confirming that he or she wants to continue

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<sup>701</sup> See GCI Comments at 32-33.

<sup>702</sup> See GAO Report at 35.

<sup>703</sup> See TracFone Aug. 24 *ex parte* Letter (noting that TracFone posts its non-usage policy on its Lifeline website [www.safelink.com](http://www.safelink.com), which states: "Regardless of the Service End Date displayed on your handset, if you exceed 2 months without any Usage, you will be de-enrolled from the SAFELINK Program").

<sup>704</sup> See Nexus Comments at 27; *see also* TracFone Comments at 17-18.

<sup>705</sup> See FL PSC Comments at 12-13. Other state commissions concur. *See* IRUC Comments at 5; *see also* MI PSC Comments at 5; MO PSC Comments at 7-8; OH PUC Comments at 9.

<sup>706</sup> See TracFone Oct. 17 *ex parte* Letter at page; *see also* Letter from Danielle Frappier, Counsel, Nexus Communications, Inc., WC Dkt. No. 11-42 *et al.*, at 1 (filed Oct. 25, 2011) (citing TracFone Oct. 17 *ex parte* Letter) (Nexus Oct. 25 *ex parte* Letter).

<sup>707</sup> The subscriber must activate the service, or the service must be activated in the presence of the subscriber. A third party, such as an ETC, cannot activate the service for the subscriber unless expressly authorized to do so by the subscriber. Unless and until the subscriber personally activates the Lifeline service, the pre-paid ETC may not seek or receive reimbursement from the Fund.

receiving the Lifeline supported service.<sup>708</sup> We find these actions impose an appropriately small burden on the subscriber to maintain use of the supported service and clearly establish for the ETCs the few actions they must monitor.<sup>709</sup> We decline to specify any other qualifying actions to establish usage at this time, and will evaluate whether any future modifications are necessary based on experience with the new rule.

262. We further clarify that ETCs must continue to comply with existing public safety obligations, and nothing in this Order modifies those obligations. For example, 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).<sup>710</sup> We do not modify this rule, and we make clear that our 60-day usage rule applicable to pre-paid ETCs does not modify in any way the requirement that ETCs transmit a Lifeline subscriber's wireless 911 calls, regardless of subscriber inactivity. Hence, an ETC must transmit 911 calls even if the ETC is no longer providing Lifeline service to that consumer.<sup>711</sup>

263. We extend the consumer usage condition only to pre-paid services, which are those services for which subscribers do not receive monthly bills and do not have any regular billing relationship with the ETC, and decline at this time to impose this condition on other types of Lifeline supported services. A number of commenters raised concern with a usage rule being applied to post-paid ETCs,<sup>712</sup> with several pointing out that post-paid service does not present the same risk of phantom accounts that can be detected only by inactivity.<sup>713</sup> Similarly, others argue that even a minimum payment on post-paid accounts is a clear indication of the subscriber's intent to maintain the Lifeline service.<sup>714</sup> Another commenter points out that a paying subscriber who is away from their phone does not signal that the consumer does not want the service.<sup>715</sup> We conclude that subscribers of post-paid ETCs do not present the same risk of inactivity as subscribers of pre-paid services. The possibility that a wireless phone has been lost, is no longer working, or the subscriber has abandoned or improperly transferred the account is much greater for pre-paid services.<sup>716</sup> We are sensitive to the administrative burden that a 60-day usage requirement may have on post-paid services, and at this time do not extend the usage requirements to post-paid services, whether wireline or wireless.<sup>717</sup> For pre-paid service with no monthly charge, by contrast, there may be no other means beside usage patterns to track whether a consumer is

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<sup>708</sup> See Sprint Comments at 10-11; see also NASUCA Reply Comments at 8 (concurring with Sprint's list of activities for determination of active use).

<sup>709</sup> We also decline to adopt CompTel's suggestion to include sending or receiving a text message in the enumerated list as text messaging is not a supported service. See COMPTTEL Comments at 13-14; see also 47 C.F.R. § 54.101(a)(1)-(9).

<sup>710</sup> See 47 C.F.R. § 20.18(b).

<sup>711</sup> See *id.*; see also *NPRM*, 26 FCC Rcd at 2798, para 83.

<sup>712</sup> See Alaska PUC Reply Comments at 2, 9-10; see also AT&T Reply Comments at 21-22; GCI Comments at 30; NASUCA Comments at 15; NASUCA Reply Comments at 8; NY PSC Comments at 8-9; TracFone Reply Comments at 2-3; Verizon Reply Comments at 8; YourTel Reply Comments at 2.

<sup>713</sup> See AT&T Reply Comments at 21; see also GCI Comments at 30; NASUCA Comments at 15; NASUCA Reply Comments at 8.

<sup>714</sup> See CenturyLink Comments at 9; see also GCI Comments at 3.

<sup>715</sup> See Verizon Reply Comments at 8.

<sup>716</sup> See Consumer Cellular Comments at 12 (explaining that subscribers may not be aware of the social cost of abandoning service).

<sup>717</sup> See AT&T Reply Comments at 21-22; see also GCI Comments at 30-31; NASUCA Comments at 15.

still receiving the benefit of the supported service.<sup>718</sup> Thus, the 60-day usage requirement we adopt is applicable only to subscribers of pre-paid ETCs who, because of the pre-paid contract arrangement, do not have regular contact with the ETC that would provide a reasonable opportunity to ascertain a continued desire to continue to receive Lifeline benefits.

## **E. Minimum Consumer Charges**

### **1. Background**

264. In the *2010 Recommended Decision*, the Joint Board expressed concern about Lifeline service offerings provided at no cost to the subscriber.<sup>719</sup> In particular, the Joint Board raised concerns about the connection between prepaid wireless ETCs, which do not provide a monthly bill and, in some cases, provide handsets and service at no charge to consumers, and the significant growth in the Fund.<sup>720</sup> The Joint Board recommended that the Commission consider whether all Lifeline subscribers should pay a minimum monthly rate, including eligible subscribers on Tribal lands.<sup>721</sup>

265. In the *NPRM*, the Commission sought comment on how best to prevent waste of universal service funds without creating unnecessary obstacles for low-income households to obtaining vital communications services.<sup>722</sup> The Commission noted alternatives, including a rule requiring all ETCs in all states to collect some minimum monthly amount from participating households, and sought comment on the administrative burdens for ETCs of a requirement to collect a minimum amount, such as \$1 per month, from participating consumers,<sup>723</sup> acknowledging that it may not be cost-effective to send a bill to collect such a small amount.<sup>724</sup>

### **2. Discussion**

266. At this time, we decline to adopt a rule requiring ETCs to impose a minimum consumer charge on subscribers for Lifeline services. We are concerned that requiring a minimum consumer charge could be burdensome for those low-income consumers who lack the ability to make such payments electronically or in person,<sup>725</sup> potentially undermining the program's goal of serving low-income consumers in need. We conclude that imposing a minimum charge could impose a significant burden on some classes of Lifeline consumers.<sup>726</sup> For example, making regular payments to an ETC, even when those payments are minimal, may be difficult for low-income consumers who do not have bank accounts

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<sup>718</sup> See GCI Comments at 30 (noting that for free pre-paid Lifeline wireless services in which there is no activation fee, no monthly fee, no surcharges or taxes, there is no objective means of ascertaining whether the subscriber should still be viewed as active apart from their usage patterns).

<sup>719</sup> See *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15626-27, para. 79.

<sup>720</sup> See *id.*; see also *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2782, para. 27. See, e.g., Assurance Wireless Lifeline Program, Program Description, <http://www.assurancewireless.com/Public/MorePrograms.aspx> (last visited Feb. 5, 2012); SafeLink Wireless, Lifeline/SafeLink Fact Sheet, [https://www.safelinkwireless.com/Safelink/program\\_info/benefits](https://www.safelinkwireless.com/Safelink/program_info/benefits) (last visited Feb. 5, 2012).

<sup>721</sup> See *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15626-27, para. 79.

<sup>722</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2799, para. 86.

<sup>723</sup> See *id.*

<sup>724</sup> See *id.* at para. 89.

<sup>725</sup> See Keep USF Fair Reply Comments 2 at 1; see also NAACP Reno Sparks Branch Comments at 1; TracFone Reply Comments at 6.

<sup>726</sup> See Amvensys Comments at 4; see also APRIL Comments at 1; Las Vegas Urban League Comments at 1.

and might fail credit checks.<sup>727</sup> TracFone reports that 60 percent of its Lifeline subscribers do not have checking accounts, credit cards, or debit cards, and would have no alternative other than to use money transfer services or purchase money orders to make minimum payments.<sup>728</sup> Further, the cost of a money transfer is likely to exceed the nominal \$1-\$5 monthly fee that some parties advocate, significantly raising the effective cost of Lifeline services for low-income consumers.<sup>729</sup> For example, one commenter notes that a Western Union money transfer for \$1 would cost consumers \$12.99 in fees.<sup>730</sup> We have serious concerns about the unintended costs of imposing a minimum charge.<sup>731</sup>

267. We also find that a minimum charge could potentially discourage consumers from enrolling in the program and could result in current Lifeline subscribers leaving the program.<sup>732</sup> Commenters argue that a minimum charge will drive down participation, and cite to a TracFone survey in which almost 65 percent of its responding consumers stated that they would de-enroll from the Lifeline program instead of paying a mandatory charge.<sup>733</sup> While we recognize that requiring low-income consumers to pay some minimum monthly charge would help ensure that the subscriber places some value on the service,<sup>734</sup> the possibility that the subscriber will not or cannot pay that minimal charge does not necessarily mean that the low-income consumer does not value Lifeline service.<sup>735</sup> The Lifeline program is serving the truly neediest of the population in the most dire economic circumstances and for whom even a routine charge is an excessive financial burden.<sup>736</sup>

268. While some state commissions and providers advocate for a minimum charge,<sup>737</sup> and argue that such a charge will protect against abuse because the nominal charge ensures that subscribers place some value on the service,<sup>738</sup> there is insufficient data to establish that such a federal requirement would effectively protect the program from waste, fraud, and abuse without thwarting our goal of making vital communications services available to low-income consumers. It also is unnecessary to impose a federal minimum charge requirement in light of the other significant steps we take here to reform the

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<sup>727</sup> See Letter from Cheryl Leanza, Policy Advisor, United Church of Christ, OC Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed May 18, 2011) (LCCHR May 18, *ex parte* Letter).

<sup>728</sup> See TracFone Comments at 23-24; *see also* TracFone Reply Comments at 7, n.7.

<sup>729</sup> See Open Access Connections Comments at 5; *see also* TracFone Reply Comments at 7.

<sup>730</sup> See Open Access Connections Comments at 5.

<sup>731</sup> See USTelecom Comments at 18 (discussing the cost of billing a minimum consumer charge).

<sup>732</sup> See Keep USF Fair Reply Comments 2 at 1; *see also* NAACP Reno Sparks Branch at 1; TracFone Reply Comments at 6.

<sup>733</sup> See AT&T Reply Comments at 24; *see also* TracFone Comments at 21.

<sup>734</sup> See State of Alaska Reply Comments at 9.

<sup>735</sup> See NASUCA Reply Comments at 9; *see also* NJ DRC Reply Comments at 17.

<sup>736</sup> See AT&T Reply Comments at 24; *see also* TracFone Comments at 23; TracFone Aug. 10 *ex parte* Letter at Attach. (“When you’re on a limited income you’ve gotta watch your money. . . . If I didn’t have [SafeLink] I would be more of a recluse than anything else. I just thank God and SafeLink for the freedom I have”).

<sup>737</sup> For instance, the California PUC requires a minimum monthly payment and believes it serves as a deterrent for consumers to receive more than one Lifeline benefit. *See* CA PUC Reply Comments at 4; *see also* Cricket Comments at 4-5; Cricket Reply Comments at 7; INURC Comments at 6; NE PSC at 8-9.

<sup>738</sup> For instance, GCI argues that a minimum charge establishes a billing relationship between the ETC and the subscriber and thus ensures that the ETC knows there is an actual *bona fide* customer behind an account. *See* GCI Comments at 15.

Lifeline program. We therefore choose not to implement such a requirement at this time.<sup>739</sup> A minimal charge, such as \$1 per month, might be insufficient to serve as a deterrent to those seeking to exploit the program, while a greater amount, such as \$5 per month, would potentially pose a significant barrier to participation for those in severe economic need.<sup>740</sup> While a minimum charge might reduce the number of duplicate claims,<sup>741</sup> duplicative claims can better be reduced by additional certification requirements, improved consumer education about Lifeline program rules, and the implementation of a duplicates database, in conjunction with the measures the Commission has already taken to reduce duplicative claims.<sup>742</sup> Finally, we are not persuaded at this time that charging low-income consumers a one-time fee upon service activation, rather than a minimal monthly amount, would be an appropriate measure to address waste, fraud, and abuse.<sup>743</sup> A number of commenters oppose a one-time fee as creating an unreasonable hurdle for low-income consumers for the same reasons applicable to a monthly fee.<sup>744</sup> Even a minimal one-time fee could be a significant barrier for many of the intended recipients of the program. As noted above, the concerns about waste, fraud, and abuse are sufficiently addressed by other rules adopted in this Order.<sup>745</sup> For example, identification verification and enrollment requirements, along with the subscriber usage policy adopted in this Order will help ensure that there will be a valid and qualifying subscriber behind each account and that the ETC is accountable for that subscriber's continued use of the supported service.<sup>746</sup>

269. *Application of Minimum Charge to Tribal Consumers.* The Commission's rules currently 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.<sup>747</sup> We understand, however, that some carriers do not collect the \$1 from their Tribal subscribers.<sup>748</sup> While the Commission's current rules specify the minimum rate, they do not require the ETC to bill or collect such amounts.<sup>749</sup> As a result, we sought comment in the *NPRM* on whether to amend section 54.403(a)(4)(i) of the Commission's rules to require a \$1 monthly payment from each participating subscriber on Tribal Lands to their ETC, and whether this proposal would adequately balance our objective of ensuring affordable service for eligible Tribal consumers while also guarding against waste, fraud, and abuse in the Lifeline program.<sup>750</sup>

270. At this time, we decline to impose a payment requirement on Tribal Lifeline recipients, but we will monitor Lifeline subscribership on Tribal lands and revisit this issue in the future if necessary.

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<sup>739</sup> Notwithstanding the foregoing, nothing in this Order precludes states from requiring state-designated ETCs to assess and collect a minimum charge from Lifeline subscribers.

<sup>740</sup> *See, e.g.*, CA PUC Reply Comments at 4; GCI Comments at 15.

<sup>741</sup> *See* Cincinnati Bell Comments at 5.

<sup>742</sup> *See supra* section VII.A. (National Lifeline Accountability Database)

<sup>743</sup> For instance, the Michigan PSC suggests that a one-time \$10 charge for Lifeline consumers who receive service without a monthly fee would help deter situations in which a Lifeline-supported service has been activated on a phone that is unused or improperly transferred to third parties. *See* MI PSC Comments at 5.

<sup>744</sup> *See* Consumer Groups Comments at 12-13; *see also* TracFone Reply Comments at 6.

<sup>745</sup> *See supra* section VII (Reforms to eliminate waste, fraud & abuse.)

<sup>746</sup> *See* section VII.D (Subscriber Usage of Lifeline-Supported Service).

<sup>747</sup> *See* 47 C.F.R. § 54.403(a)(4)(i).

<sup>748</sup> *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2800, para. 990.

<sup>749</sup> *See* 47 C.F.R. § 54.403(a)(4).

<sup>750</sup> *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2799-80, paras. 90-92.

In an effort to eliminate any confusion as to what our rules require ETCs to collect from Lifeline subscribers on Tribal lands, we eliminate section 54.403(a)(4)(i) of the Commission's rules. We note that the additional federal Lifeline support of up to \$25 per month Tribal support will be available to an ETC providing service to an eligible resident of Tribal lands regardless of whether that amount brings the rate for service below \$1 per month per qualifying low-income subscriber. However, we maintain the current requirements of section 54.403(a)(4)(ii) to require an ETC to certify to the Administrator that it will pass through the full Tribal support amount to qualifying residents of Tribal lands.<sup>751</sup> We also clarify that, under no circumstances can an ETC collect from the Fund more than the rate charged to Tribal subscribers, up to a maximum of \$34.25 for monthly Lifeline support.

## **F. Marketing & Outreach**

### **1. Background**

271. 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."<sup>752</sup> Over the years, the Commission has highlighted the importance of outreach to low-income consumers,<sup>753</sup> and in 2004 adopted outreach guidelines for ETCs and states to ensure that those in need of Lifeline service would be made aware of the program.<sup>754</sup> While we continue to believe in the benefits of outreach, which entails increasing public awareness of the program, we are also concerned about messages ETCs use when marketing Lifeline supported services that may mislead consumers and increase waste, fraud, and abuse. We therefore take significant steps to ensure that potential consumers receive accurate and quality information from ETCs.

272. 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.<sup>755</sup> In support, the Joint Board cited USAC data showing that, in 2009, only 36 percent of eligible consumers participated in Lifeline.<sup>756</sup> Based on this statistic, the Joint Board expressed concern that current outreach is ineffective or that some ETCs are neglecting low-income outreach altogether.<sup>757</sup> The Joint Board also recommended that the Commission review carrier best practices on community-based outreach,<sup>758</sup> clarify the role of the states in performing low-income outreach,<sup>759</sup> including working with ETCs to formulate methods to reach households that do not currently have telephone and/or broadband service,<sup>760</sup> and monitor ETCs' outreach efforts.<sup>761</sup> With

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<sup>751</sup> 47 C.F.R. § 54.403(a)(4)(ii).

<sup>752</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>753</sup> *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12250, para 78.

<sup>754</sup> 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 sizable non-English speaking populations within a carrier's service area; and (3) states and carriers should coordinate their outreach efforts with governmental agencies/Tribal governments that administer any of the relevant government assistance programs. *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd. at 8326-28, paras. 45-48.

<sup>755</sup> *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15619, para. 60.

<sup>756</sup> *See id.* at 15618-19, para. 59 n.152.

<sup>757</sup> *See id.* at 15618-19, paras. 59-60.

<sup>758</sup> *See id.* at 15621, para. 64.

<sup>759</sup> *See id.* at 15622, para. 67.

<sup>760</sup> *See id.* at 15622, para. 68.



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.<sup>762</sup> In accordance with the Joint Board's recommendation, the Commission sought comment on effective outreach methods to low-income subscribers and inquired whether additional outreach requirements were necessary.<sup>763</sup> The Commission also sought comment on whether to impose marketing guidelines on ETCs to ensure that consumers fully understand the benefit being offered.<sup>764</sup>

273. Some ETCs market their Lifeline-supported service offerings under trade names. For example, TracFone offers Lifeline-supported service under the name SafeLink Wireless, while Virgin Mobile's competing offering is called Assurance Wireless. A number of ETCs also spend significant amounts of money marketing their Lifeline-supported services to low-income consumers. For example, TracFone states it spent \$41 million in advertising during 2010 to promote SafeLink Wireless.<sup>765</sup> Virgin Mobile, now owned by Sprint, notes that it has spent tens of millions of dollars promoting its Assurance Wireless prepaid Lifeline offering through television, radio, and newspaper advertising; direct mail campaigns; and partnerships with organizations and agencies that serve Lifeline-eligible consumers.<sup>766</sup> The Commission sought comment in the *NPRM* on whether to require all ETCs to include standard language in their marketing materials.<sup>767</sup>

## 2. Discussion

274. While we continue to support increased public awareness of the program, we are concerned about the messages ETCs use when marketing Lifeline-supported services to potential subscribers. Consumers may not understand that these products are Lifeline-supported offerings entailing a government benefit, that they must be eligible in order to receive the benefit, or that they may receive no more than one benefit at a time from the program.<sup>768</sup> We therefore take significant steps to increase the quality of information ETCs must provide to potential consumers.

275. *Marketing and Uniform Language To Describe Lifeline.* To increase accountability within the program and to target support where it is needed most, we require that ETCs providing Lifeline-supported services make specific disclosures in all marketing materials related to the supported service. We adopt rules requiring ETCs to explain in clear, easily understood language in all such marketing materials that the offering is a Lifeline-supported service; that only eligible consumers may enroll in the program; what documentation is necessary for enrollment; and that the program is limited to one benefit per household, consisting of either wireline or wireless service. We also require ETCs to explain that Lifeline is a government benefit program, and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from

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<sup>761</sup> See *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15623, para. 70.

<sup>762</sup> See *id.* at 15620-21, paras. 62-63.

<sup>763</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2841, para. 230.

<sup>764</sup> *Id.*

<sup>765</sup> See TracFone Comments at 41.

<sup>766</sup> See Sprint Comments at 16.

<sup>767</sup> See *NPRM*, 26 FCC Rcd at 2842-43, para. 237.

<sup>768</sup> See *2011 Duplicative Program Payments Order*.

the program.<sup>769</sup> For purposes of this rule, the term “marketing materials” includes materials in all media, including but not limited to print, audio, video, Internet (including email, web, and social networking media), and outdoor signage, that describe the Lifeline-supported service offering, including application and certification forms. These disclosures will help ensure that only eligible consumers enroll in the program and that those consumers are fully informed of the limitations of the program, so as to prevent duplicative or otherwise ineligible service as well as other forms of waste, fraud, and abuse.<sup>770</sup> Additionally, we require every ETC to disclose the company name under which it does business and the details of its Lifeline service offerings in any Lifeline-related marketing and advertising.<sup>771</sup>

276. Some ETCs have already revised their marketing materials to make some of these disclosures and others have committed to doing so.<sup>772</sup> We require all ETCs to implement these disclosures six months from the effective date of this Order. We direct USAC to undertake ongoing reviews of ETCs’ marketing materials sufficient to ensure compliance with program rules. We leave the scope and frequency of those reviews to USAC’s discretion, but direct the Wireline Competition Bureau to oversee USAC’s efforts to review the ETCs’ materials.

277. ETCs should have the flexibility to market their Lifeline-supported services in creative and innovative ways. Therefore, we do not mandate a uniform Lifeline application or provide model language for ETCs to include in marketing materials.<sup>773</sup> The rules summarized above provide sufficient information that ETCs must convey to potential subscribers about the Lifeline service. Additionally, we do not believe it is necessary to adopt a rule, as some suggest, that prepaid wireless providers explain how their Lifeline service differs from other forms of Lifeline service. There is no benefit to imposing this burden on only one segment of the Lifeline service provider community particularly considering the disclosures we require above.<sup>774</sup>

278. *Outreach Guidelines.* Since 2004, the Commission has urged states and carriers to coordinate their outreach efforts with governmental agencies that administer the relevant government assistance programs.<sup>775</sup> 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.<sup>776</sup> Although the Joint Board recommended that the Commission adopt mandatory outreach requirements for all ETCs that receive low-income support from the Fund,<sup>777</sup> the current outreach guidelines, as established in the *2004 Lifeline and Link Up Order*, provide a broadly applicable set of goals without prescribing any specific outreach methods.<sup>778</sup> Many states already perform a variety of outreach activities designed to inform consumers about the Lifeline program, consistent with our broad guidelines. For example, the

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<sup>769</sup> See 47 C.F.R. § 54.8, permitting the Commission to suspend and debar individuals from activities associated with or related to the low-income program.

<sup>770</sup> See, e.g., CenturyLink Comments at iv, 23; CinciBell Comments at 4; Consumer Group Comments at 41; MI PSC Comments at 10; Missouri Commission Comments at 19; OH PUC Comments at 21; OR PUC Comments at 2; Sprint Comments at 14-15; YourTel Reply Comments at 2.

<sup>771</sup> Consumer Groups Reply Comments 2 at 9; MO PSC Comments at 19; YourTel Reply Comments at 2.

<sup>772</sup> See, e.g., *i-Wireless Forbearance Order*, 26 FCC Rcd 14508 at 14510.

<sup>773</sup> See CenturyLink Comments at 23.

<sup>774</sup> See OH PUC Comments at 21.

<sup>775</sup> See *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd. at 8328, para 48.

<sup>776</sup> See *id.* at 8326-8327, para. 45-46.

<sup>777</sup> *2010 Joint Board Recommended Decision* at 15619, para. 60.

<sup>778</sup> *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd. at 8326-28, paras. 45-48.

Regulatory Commission of Alaska and the Massachusetts Department of Telecommunications and Cable provide information on Lifeline availability to other state agencies involved with assistance to low-income consumers.<sup>779</sup>

279. We encourage states to provide comparative information to low-income consumers requiring Lifeline service plans available in their states, such as the rates charged, number of minutes included in the Lifeline plan, and what additional charges, if any, are assessed for toll calls or additional minutes of use.

280. Given the wide variety of outreach engaged in by ETCs and states, we do not, at this time, amend our outreach guidelines. However, the Commission received many insightful comments regarding how to improve outreach.<sup>780</sup> Two commenters suggested the development of best practices for the purposes of outreach, including increased public-private partnerships.<sup>781</sup> Another commenter recommended methods for state public service commissions to work with other state agencies for purposes of coordinated enrollment; this commenter also suggested a variety of possible outreach requirements of state public service commissions and ETCs.<sup>782</sup> Many of these recommendations dovetail

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<sup>779</sup> See Alaska Commission Reply Comments at 15; MA DTC Comments at 10.

<sup>780</sup> See, e.g., AARP Comments at 8-10; Consumer Groups Comments at 36, 39-41; DC PSC Comments at 7; FL PSC Comments at 27-28; MA DTC Comments at 10.

<sup>781</sup> See Consumer Groups Comments at 35; FL PSC Comments at 26. Consumer Groups also provided a series of specific outreach recommendations, including: include a reference about discounted telephone programs on the home page of the website of each ETC (or state agency), with comprehensive information about the program only one click away either on the carrier's website or a third party website; provide state-specific and program-specific material about Lifeline, translated into languages other than English and in formats accessible to those with disabilities; inform new customers about the discounted telephone program either verbally or through a separate mailing at the time they sign up for telephone service, or at the latest within 14 days from the customer's service initiation; provide additional annual notice to all subscribers of the availability of the program, its basic eligibility requirements, and a reference to the website or to a phone number to call for more information; and provide additional notice to customers who are at risk of service termination due to non-payment. See Consumer Groups Comments at 36. FL PSC recommended the Commission expand its Lifeline Across America Working Group to include wireline and wireless representatives to determine which methods of outreach work best with each of the underserved populations making up the body of Lifeline subscribers. See FL PSC Comments at 26-28. FL PSC also recommended public-private partnerships, one-on-one outreach, train-the-trainer programs, and interagency cooperation at the state level as useful at expanding outreach. See *id.*

<sup>782</sup> See AARP Comments 8-10. AARP recommended the Commission require state public service commissions to conduct statewide outreach and education programs designed to raise awareness about the Lifeline and Link Up program, with a goal of 100 percent enrollment of eligible subscribers. AARP further recommended that any statewide education program should be developed and implemented with the advice and assistance of local community-based organizations with firsthand experience with the means to effectively communicate with their respective members and communities. Additionally, AARP recommended that:

Outreach efforts should be undertaken by or on behalf of an ETC or a consortium of ETCs. Accordingly, any such ETC, or ETC-sponsored program, should be subject to the approval of the state commission and should be coordinated with the statewide education and outreach program. At a minimum as part of an ETC's outreach efforts, the ETC should be required to solicit eligibility for Lifeline and Link Up from each residential customer at the time that the customer requests installation of service, at a contact with the customer prior to a pending termination of service for nonpayment, and at a contact with a customer who seeks to negotiate a deferred payment plan. In addition, the ETC should be required to notify all residential customers about the Lifeline and Link Up program and how to participate in the program at least once per year. The incremental costs of the statewide consumer education and outreach program should be eligible for recovery in rates in the same manner as state-funded Lifeline and Link Up benefits.

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with outreach guidelines suggested in 2006 by the Lifeline Across America Working Group (LAAWG).<sup>783</sup> Given that the LAAWG has already provided a compendium of outreach guidelines that remain as relevant today as when they were published five years ago, we do not find further Commission action with regards to outreach to be necessary at this time, except as noted below with respect to consumer education.

281. *Consumer Education.* After the Commission adopted the *2011 Duplicative Program Payments Order*, the Commission's Bureau and Consumer and Governmental Affairs Bureau (Consumer Bureau), in concert with USAC, ETCs, states, and consumer groups, engaged in an outreach campaign designed to educate consumers about the changes to the Lifeline program rules. USAC sent a letter to subscribers explaining that they are not permitted to receive more than one Lifeline subsidy and had to select a single provider, which was followed by a postcard and telephone call to those subscribers who did not respond. The Commission also coordinated with consumer groups and states to run Public Service Announcements (PSAs) in states participating in the duplicate resolution process, to create posters for distribution to social service offices in such states, and to create consumer tip sheets to be circulated by the Commission, states, and consumer service groups. USAC received a high response rate from low-income consumers who were contacted as part of this outreach process.

282. In light of the success of these recent outreach efforts, we direct the Commission's Wireline Competition Bureau and Consumer and Governmental Affairs Bureau to conduct an outreach campaign to educate low-income consumers about the Lifeline program rules adopted in this Order.<sup>784</sup> The Bureaus shall coordinate, as appropriate, with USAC, consumer groups, and states to ensure that consumers are sufficiently apprised of the new Lifeline program rules and any actions they may be required to take in the future to obtain Lifeline service.

## **G. Audits and Enforcement**

### **1. Background**

283. The Commission is committed to ensuring that there is a focused and effective system for identifying and deterring program abuse. Our existing rules authorize USAC to conduct audits of Lifeline recipients.<sup>785</sup> As directed by the Commission's Office of Managing Director,<sup>786</sup> USAC currently has two

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AARP Comments at 10.

<sup>783</sup> See WORKING GROUP REPORT; Consumer Groups Comments at 35; FL PSC Comments at 26-28.

<sup>784</sup> See NCLC Jan. 24 *ex parte* Letter, at Attach.

<sup>785</sup> See 47 C.F.R. § 54.707. The 2008 FCC-USAC Memorandum of Understanding requires USAC to conduct audits, including audits of Fund beneficiaries, in accordance with generally accepted government auditing standards (GAGAS), as required by section 54.702(n) of our rules. 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, October 13, 2010, available at <http://www.fcc.gov/omd/usac-letters/2010/101310CPA-USAC.pdf>; 47 C.F.R. § 54.702(n).

<sup>786</sup> See Letter from Steven Van Roekel, Managing Director, Federal Communications Commission to Scott Barash, Acting CEO, Universal Service Administrative Company, February 12, 2010, available at <http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf>. (FCC IPIA Letter); see also OMB Circular A-123, available at [http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a123/a123\\_rev.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a123/a123_rev.pdf). In 2010, the Commission provided additional direction to USAC regarding independent CPA firms and follow-up on audit findings. See Letter from Steven Van Roekel, Managing Director, Federal Communications Commission to Scott Barash, Acting CEO, Universal Service Administrative Company, January 25, 2011, available at (continued....)

programs in place to safeguard the Universal Service Fund – the Beneficiary/Contributor Compliance Audit Program (BCAP)<sup>787</sup> and the Payment Quality Assurance (PQA) program.<sup>788</sup> USAC has completed its first round of PQA assessments and initiated a number of Lifeline and Link Up BCAP compliance audits in 2011.

284. In the *NPRM*, the Commission sought comment on ways to improve the current low-income audit program in light of growing concerns with waste, fraud, and abuse in the program, including duplicative claims and ineligible consumers.<sup>789</sup> The Commission proposed that all new ETCs be audited after the first year of providing Lifeline-supported service.<sup>790</sup> The Commission also proposed that negative audit findings above a specified dollar threshold, or affecting at least a specific percentage of an ETC's Lifeline consumers, 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.<sup>791</sup> The *NPRM* also sought comment on appropriate Commission responses to multiple audit findings of non-compliance, such as precluding an ETC with significant non-compliance from receiving some or all Lifeline support.<sup>792</sup> Lastly, the Commission sought comment on whether to require some or all ETCs in the program to engage an independent third-party firm to assess the ETCs' compliance with some or all Commission

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[http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0210/DA-11-128A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0210/DA-11-128A1.pdf); *see also* Letter from Steven Van Roekel, Managing Director, Federal Communications Commission to Scott Barash, Acting CEO, Universal Service Administrative Company (filed Oct. 13, 2010), *available at* <http://www.fcc.gov/omd/usac-letters/2010/101310CPA-USAC.pdf>.

<sup>787</sup> The Compliance Audit program, BCAP, 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. To assist program participants, USAC has information about BCAP available on its website. *See* USAC, Understanding Audits, <http://www.usac.org/li/about/understanding-audits.aspx> (last visited Feb. 5, 2012).

<sup>788</sup> The Improper Payments Information Act (IPIA) assessment program (PQA) 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. Unlike BCAP, the PQA program does not involve audits. *See* USAC, Payment Quality Assurance (PQA) Program FAQs, *available at* <http://www.usac.org/fund-administration/about/program-integrity/pqa-faqs.aspx>. Rather, it provides for reviews specifically designed to assess estimated rates of improper payments, thereby supporting IPIA requirements. The PQA reviews measure the accuracy of USAC payments to applicants, evaluate the eligibility of program applicants, and involve high level testing of information obtained from program participants. USAC tailors the scope of procedures to ensure reasonable costs while still meeting IPIA requirements. To assist program participants, USAC has information about the PQA program available on its website. *See* USAC, Payment Quality Assurance (PQA) Program, <http://www.usac.org/fund-administration/about/program-integrity/pqa-program.aspx> (last visited Feb. 5, 2012).

<sup>789</sup> The 2010 GAO REPORT also expressed concern about the increased risk of waste, fraud, and abuse due to consumers simultaneously receiving Lifeline discounts for both a wireline and wireless phone. *See* 2010 GAO REPORT at 35.

<sup>790</sup> *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2802, para. 98.

<sup>791</sup> *See id.* at 2802, para. 99.

<sup>792</sup> *See id.* at 2082, paras. 100-01.

low-income requirements.<sup>793</sup>

## 2. Discussion

285. The Commission will continue to use the audit process to ensure there is a focused and effective system for identifying and deterring program abuse.<sup>794</sup> The development of a uniform audit program, USAC audits of ETCs in their first year of providing Lifeline service, the requirement for biennial independent audits for larger ETCs, and stepped-up enforcement will strengthen our existing low-income oversight process to reduce improper payments and mitigate the potential for program violations.

286. *Uniform Audit Program.* USAC must assess compliance with the program's requirements, including the new requirements established in this Order for recipients of low-income support. We therefore direct USAC to review and revise the BCAP and PQA programs to take into account the changes adopted in this Order. We further direct USAC to submit a report to the Wireline Competition Bureau (Bureau) and Office of Managing Director (OMD) within 60 days of the effective date of this Order proposing changes to the BCAP and PQA programs consistent with this Order. Program audits should be conducted against a uniform set of auditing guidelines. The Bureau and OMD will work with USAC as necessary to ensure that there is consistency in these compliance standards.<sup>795</sup>

287. USAC's oversight program to assess compliance should be designed to test the effectiveness of Lifeline ETCs' internal controls and ensure that management is reporting accurately to USAC, the Commission, and state regulators, as appropriate. The oversight program should also be designed to test some of the underlying data that forms the basis for management's certification of compliance with various requirements including, but not limited to, verifying eligibility at enrollment and thereafter, verifying that only one discount per household is provided, verifying that subscribers are not receiving duplicate discounts, and verifying that subscribers are de-enrolled for non-use of the service. This list is not intended to be exhaustive, but rather illustrative of the requirements that USAC must take into account in determining what modifications to make to its existing oversight activities. We also direct USAC to test the accuracy of carrier certifications made pursuant to our new reporting requirements, the accuracy of the data included in the carriers' Form 497, and the data input into the database by carriers.

288. *First Year Audit Requirement.* We conclude there is a need for heightened oversight of newly designated ETCs that have not previously provided Lifeline services anywhere in the country to

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<sup>793</sup> See *id.* at 2803, para. 102.

<sup>794</sup> USAC's audit program historically has consisted of audits by USAC's internal audit division staff as well as audits by independent auditors under contract with USAC. In addition, in the past, the Commission's OIG has conducted audits of USF program beneficiaries. See FEDERAL COMMUNICATIONS COMMISSION OFFICE OF INSPECTOR GENERAL, SEMI-ANNUAL REPORT TO CONGRESS, OCTOBER 1, 2009 THROUGH MARCH 31, 2010 AT 17-20, available at [http://transition.fcc.gov/oig/SAR\\_March\\_2010\\_050710.pdf](http://transition.fcc.gov/oig/SAR_March_2010_050710.pdf). 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. See 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. See Letter from Steven Van Roekel, Managing Director, Federal Communications Commission to Scott Barash, Acting CEO, Universal Service Administrative Company (filed Feb. 12, 2010), available at <http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf>.

<sup>795</sup> Several commenters noted that the current audit process could be improved by increased clarity of the standards against which the auditors are auditing carrier behavior and increased consistency of these compliance standards. See Conexions Comments at 7-8; see also YourTel Comments at 8.

ensure they establish effective internal controls regarding compliance with Commission requirements.<sup>796</sup> DC PSC notes that this is especially important in situations where the state commission may not have oversight authority over the ETC.<sup>797</sup> An initial audit will aid efficient administration of the program by confirming early on that new ETCs are providing Lifeline service in accord with program requirements.<sup>798</sup> ETCs will be made aware of any violations of the low-income requirements and prevent them from occurring on an ongoing basis.<sup>799</sup>

289. We direct USAC to audit new carriers (those carriers activating a new Study Area Code to provide Lifeline service for the first time) within the first year they begin receiving federal low-income USF support. This audit requirement shall include ETCs that received their first Study Area Code for the designated service from USAC in 2011.<sup>800</sup> The audit should occur in the first study area in which the ETC is designated, after it completes its first annual re-certification of its subscriber base. In instances where an ETC is designated in multiple study areas, USAC may, at its discretion, choose which study area in which to perform the audit. This audit will be conducted on an ETC within its first year of seeking Lifeline support within any single state.<sup>801</sup>

290. We are not persuaded by the argument that a first-year audit requirement will unreasonably divert resources at companies that have demonstrated a good compliance pattern in their first year.<sup>802</sup> One commenter proposed that a threshold dollar amount of annual benefits in any state trigger audits rather than an audit subsequent to a carrier's first year of receiving benefits.<sup>803</sup> USAC has the discretion, however, to conduct a desk audit, rather than a full-blown audit, of newly established ETCs, including those whose revenues are minimal. Exercising this discretion will minimize potential disruption for smaller ETCs.

291. *Independent Audit Requirements.* We also adopt a requirement that every ETC providing Lifeline services and drawing \$5 million or more in the aggregate on an annual basis, as determined on a holding company basis taking into account all operating companies and affiliates, from the low-income program hire an independent audit firm to assess the ETC's overall compliance with the program's requirements.<sup>804</sup> Such audits will be performed once every two years unless otherwise directed by the

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<sup>796</sup> A number of commenters support such a requirement. See CenturyLink Comments at 12; see also DC PSC Comments at 3-4; FL PSC Comments at 14-15; MI PSC Comments at 5; MO PSC Comments at 9-10; YourTel Comments at 8. We note that USAC retains the right to conduct targeted audits of any ETC in response to suspicious data, whistleblower activity, inquiries from state commissions, and for other reasons as permitted by law.

<sup>797</sup> See DC PSC Comments at 3-4.

<sup>798</sup> See CenturyLink Comments at 12; see also NASUCA Reply Comments at 11.

<sup>799</sup> See FL PSC Comments at 14.

<sup>800</sup> If an ETC was providing wireline Lifeline service prior to 2011 but received its first study area code for wireless service in 2011, it is subject to this requirement.

<sup>801</sup> Annually, ETCs providing low-income service must submit the FCC Form 497 and Eligibility Verification Survey. See USAC, Step 6: Submit Lifeline and Link Up Worksheet (Form 497), <http://www.usac.org/li/telecom/step06/form497.aspx> (last visited Feb. 2, 2012); USAC, Step 8: Annual Verification of Consumer Eligibility, <http://www.usac.org/li/telecom/step08/verification-of-eligibility.aspx> (last visited Feb. 2, 2012).

<sup>802</sup> See Consumer Cellular Comments at 16; see also NALA/PCA Comments at 5.

<sup>803</sup> See Consumer Cellular Comments at 16.

<sup>804</sup> Under our risk-based approach, we selected \$5 million as our threshold so as to subject those carriers that collectively draw the vast majority (over 90 percent) of Lifeline funding to the new requirement, while not imposing (continued....)

Commission, as discussed below.<sup>805</sup> The independent audit firms conducting the audits must be licensed certified public accounting firms. These audits shall be conducted consistent with the GAGAS standards and follow the audit guidelines described below.<sup>806</sup>

292. The Commission directs USAC to prepare proposed audit guidelines outlining the scope of the engagement and the extent of compliance testing to be performed in the independent audits and submit them to the Bureau and OMD within 60 days of the release of this Order. The Bureau, in conjunction with OMD, will review the proposal and finalize a uniform and standard audit plan and publish it in a Public Notice, which also will establish a deadline for completing the first biennial audit. Rather than performing an audit at the individual study area level, we expect these audits to focus on the company's overall compliance program and internal controls regarding Commission requirements as implemented on a nationwide basis. For instance, when an ETC has an automated system to verify initial and ongoing eligibility, the biennial independent audit should focus on whether the methods and procedures of such automated systems are appropriately structured to ensure compliance with program rules. Independent audits shall be an agreed upon procedures attestation.

293. We expect that the uniform audit plan established by the Bureau and OMD, working in conjunction with USAC, will provide clarity for both auditors and the companies subject to this requirement. As discussed above, the Bureau and OMD will work with USAC to identify the key risk areas and specific audit program requirements that independent auditors must audit for compliance. In other words, independent audit firms will not need to guess at the areas of greatest concern to the Commission, but rather will be given structured aspects of ETC program compliance to verify. The Bureau and OMD will set out standards for ETCs that are engaging auditors to perform an agreed upon procedures attestations. If an auditor subsequently identifies an area of ambiguity regarding Commission requirements, one that will likely affect multiple ETCs, the issue should be reported to USAC, and the audit firm shall submit to the Commission any requests for rule interpretations necessary to complete the audit. For areas where it appears Commission requirements may be unclear, USAC will notify all outside auditors so that it will not be held as a negative finding until guidance has been provided by the OMD or the Bureau.

294. Within 60 days after completion of the audit work, but prior to finalization of the report, the third party auditor shall submit a draft of the audit report to the Commission and USAC. In order to maximize the administrative efficiency and benefit of these audits, we mandate that covered ETCs provide audit reports to the Commission, USAC, and relevant state and Tribal governments within 30 days of issuance of the final report, and that the Commission and USAC be deemed authorized users of such reports, as proposed in the *NPRM*.<sup>807</sup> These audit reports will not be considered confidential and requests to render them so will be denied.

295. We determine that due to the significant growth of the program; the known instances of waste, fraud, and abuse; and the critical importance of ensuring this program effectively serves those most

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additional compliance costs on carriers who collectively draw less than 10 percent of annual funding, many of whom are smaller providers.

<sup>805</sup> An affiliate shall be determined in accordance with section 3(2) of the Communications Act, as amended.

<sup>806</sup> See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GOVERNMENT AUDITING STANDARDS (Aug. 2011), available at <http://www.gao.gov/govaud/iv2011gagas.pdf>. In particular, these audit program standards shall reflect the GAGAS standards for auditor independence, auditor professional judgment, auditor competence, auditor quality control and assurance, standards for attestation engagements, reporting audit field work standards, and reporting standards.

<sup>807</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2803, para. 102.



in need, these remedial steps are warranted and necessary at this time.<sup>808</sup> We do not agree with commenters that contend an annual audit requirement is unnecessary absent evidence of abuse.<sup>809</sup> The Commission has long recognized that regular audits of a company's compliance when the company receives federal funds or is a federally regulated entity are part of the cost of doing business.<sup>810</sup> We conclude it is appropriate to focus the mandatory audit requirement on the largest recipients, who pose the biggest risk to the program if they lack effective internal controls to ensure compliance with Commission requirements.<sup>811</sup> These larger ETCs have greater resources to devote to compliance-related activities and should be prepared to devote such resources as part of the necessary cost of obtaining significant federal benefits. Performing a baseline audit of the carriers drawing \$5 million from the fund annually, which collectively draw more than 90 percent of Lifeline support, is warranted to develop an understanding of the areas of biggest risk once the new rules have been implemented. If there are no material findings in a carrier's first independent audit report, the Wireline Competition Bureau may, in its discretion, relieve the carrier of its obligation to perform an independent audit in the next biennial audit cycle. Nor do we agree with commenters who contend that any new audit requirement should replace existing USAC oversight activities.<sup>812</sup> The new biennial audit requirement that we adopt today is focused on the corporate-wide compliance program, rather than carrier activity in a particular study area.

296. In order to implement this new biennial audit rule, we will need to determine at the holding company level which carriers meet the \$5 million threshold. We therefore adopt a rule requiring all Lifeline ETCs to report annually the names of the company's holding company, operating companies and affiliates, and any branding (a "dba," or "doing-business-as company" or brand designation).<sup>813</sup> Additionally, filers will be required to report relevant universal service identifiers for each such entity by Study Area Code. This reporting will help the Commission increase accountability in our universal service programs by simplifying the process of determining the total amount of public support received by each recipient, regardless of corporate structure. Overall, we conclude that this annual reporting requirement should not impose an undue burden on ETCs, and the benefits of USAC and the Commission

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<sup>808</sup> *Id.* at 2900, Separate Statement of Chairman Genachowski.

<sup>809</sup> See NTCA Comments at 5; see also TSTCI Reply Comments at 4.

<sup>810</sup> See, e.g., *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities; Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and their Affiliates*, CC Dkt. No. 86-111, Report and Order, 2 FCC Rcd 1298, 1329-31, paras. 243-59 (1987) (*Joint Cost Order*), petition for review denied, *Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990); *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14190-92, paras. 336-38, 341 (2000) (*Bell Atlantic/GTE Merger Order*), vacated in part sub nom., *Ass'n of Communications Entrs. v. FCC*, 235 F.3d 662 (D.C. Cir. 2001); *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14190, para. 336.

<sup>811</sup> Commenters raised various concerns about a mandatory audit requirement, such as the potential cost to companies, and the potential for burden on small businesses. See, e.g., CenturyLink Comments at 12; Consumer Cellular Comments at 16; MITS Reply Comments at 5; MI PSC Comments at 5; NTCA Comments at 5; TSTCI Reply Comments at 4. MITS and NTCA note, for instance, that requiring ETCs to engage independent firms for routine compliance audits would have the effect of imposing greater economic and fiscal impacts on small companies than on larger providers with increased numbers of staff and greater resources.

<sup>812</sup> See AT&T Jan. 24 *ex parte* Letter Attach., at 4.

<sup>813</sup> Section 153 of the Act defines "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." 47 U.S.C. § 153(2); see also 47 C.F.R. § 76.1200.

being able to determine who is subject to this new audit requirement outweigh any burdens. Such information is necessary in order for the Commission to ensure compliance with the requirements adopted today that take into account holding company structure. We delegate authority to the Wireline Competition Bureau to announce the initial deadline for this annual reporting requirement after Federal Register publication of OMB approval under the Paperwork Reduction Act. The Bureau also will issue a Public Notice identifying the carriers that meet the \$5 million threshold.

297. We acknowledge that compliance with the rules we adopt here will involve some administrative costs for ETCs; however, we conclude that those costs are outweighed by the significant benefits gained by protecting the Fund from waste, fraud, and abuse.<sup>814</sup> We estimate that up to 15 percent of current Lifeline subscribers may be ineligible for the program, potentially representing hundreds of millions of dollars in wasted support per year. We expect that a rule requiring regular and mandatory audits of ETCs will ensure that the companies have put in place adequate procedures to prevent such waste and prevent unbridled future growth in the Fund.<sup>815</sup> The resulting cost savings will in turn benefit through cost savings those consumers and companies who contribute to the Universal Service Fund.

298. *Consequences of Non-Compliance.* 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, or support amounts... upon reasonable request, or if directed by the Commission to do so."<sup>816</sup> We now address the specific procedural steps that will be taken when USAC determines an ETC has failed to comply with our low income rules. Going forward, when USAC finds that an ETC has failed to provide adequate documentation or has otherwise been operating in violation of the Commission's low income rules and requirements, it shall notify the ETC of that failure and give the ETC 30 days to provide the necessary documentation and come into compliance. The ETC must provide USAC with proof of that compliance as well as a description of the specific measures the ETC will take to avoid repetition of the violation. USAC has the discretion to suspend further payments to the carrier pending USAC's receipt and evaluation of the carrier's response to this notification. USAC, however, shall suspend only payments related to the Study Area Codes where the ETC is operating in violation of the Commission's low income rules and requirements.

299. Carrier compliance with the Commission's low-income USF rules and requirements is critical to maintaining the integrity of the fund. Protecting the fund against waste, fraud and abuse helps further Congress's objectives in section 254(b) of the Act, including providing low income consumers with access to affordable telecommunications and information services.<sup>817</sup> We intend to pursue recapture of any funds that ETCs obtain in violation of our rules pursuant to applicable statutes and regulations including, but not limited to, the Improper Payments Elimination and Recovery Act (IPERA) and related Office of Management and Budget implementation guidelines.<sup>818</sup> A carrier that violates the

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<sup>814</sup> Immediate adoption of a rule requiring documentation of program-based eligibility will enable the Commission to realize cost savings in the near term, which can in turn be used to, among other things, fund efforts to modernize the Lifeline program.

<sup>815</sup> See *supra* para. 102 (noting that up to an estimated 15 percent of Lifeline subscribers could be ineligible).

<sup>816</sup> 47 C.F.R. § 54.707.

<sup>817</sup> See 47 U.S.C. § 254(b); see also *FCC Enforcement Advisory: Eligible Telecommunications Carriers Offering Lifeline Service Are Reminded of Their Obligation to Confirm Consumers' Eligibility and to Avoid Providing Duplicative Service*, Enforcement Advisory, DA 11-1971 (Enforc. Bur. Dec. 5, 2011) (*Lifeline Enforcement Advisory*).

<sup>818</sup> See Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111-204, 124 Stat. 2224; see also Memorandum For the Heads of Executive Departments and Agencies (March 22, 2010), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/a123/a123\\_appx-c.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a123/a123_appx-c.pdf); Memorandum For the Heads of (continued...)

Commission's low-income rules also faces stiff penalties, including monetary forfeitures of up to \$150,000 for each violation or each day of a continuing violation, up to a maximum of \$1,500,000 per continuing violation.<sup>819</sup> In particularly egregious cases, a carrier also could face revocation of its section 214 authorization to operate as a carrier.<sup>820</sup> Finally, ETCs are subject to revocation of their ETC designation, by either the relevant state commission or this Commission, for failure to comply with program requirements.

### VIII. PAYMENT OF LOW-INCOME SUPPORT

300. The Commission's Office of the Managing Director directed USAC on May 13, 2011 to propose an administrative process for disbursing low-income support to eligible telecommunications carriers based on actual claims, as opposed to projected claims.<sup>821</sup> On August 9, 2011, USAC submitted its plan to transition universal service low-income support from payments based on projections of subscriber counts to payments based on actual subscriber counts.<sup>822</sup> The Bureau sought comment on USAC's plan, including the filing deadline for carriers to submit their FCC Form 497, whether carriers should be allowed to continue to file the FCC Form 497 on a quarterly basis, the deadline for revisions on the FCC Form 497, and on various questions related to the transition to the new disbursement process.<sup>823</sup>

301. USAC's plan proposes to establish a monthly due date by which an ETC must submit its FCC Form 497 in order to receive a payment at the end of the following month.<sup>824</sup> In order to transition to paying on actual support claims, USAC proposes to true-up the amount of support already paid to each ETC based on projected support against the ETC's support claim for a specific month when the transition takes place.<sup>825</sup> In the case of a carrier that would owe money back to the Fund as a result of the true-up process that takes place during the transition month, USAC suggests subtracting the overpayment from

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Executive Departments and Agencies (April 14, 2011), available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-16.pdf>.

<sup>819</sup> 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2). We note that these penalties are periodically adjusted for inflation.

<sup>820</sup> See 47 U.S.C. § 214; 47 C.F.R. § 63.01(a) (granting domestic section 214 authority generally); *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, Report and Order, 14 FCC Rcd 11364, 11373-74, paras. 15-16 (1999) (stating that a carrier's blanket section 214 authority can be revoked "when warranted in the relatively rare instances in which carriers may abuse their market power or their common carrier obligations").

<sup>821</sup> See Letter to Scott Barash, Acting Chief Executive Officer, Universal Service Administrative Company, from Dana Shaffer, Deputy Managing Director, Federal Communications Commission (dated May 13, 2011), 26 FCC Rcd 6810 (*FCC May 2011 Letter*).

<sup>822</sup> The Bureau sought comment in a Public Notice on USAC's plan to replace the current process of USAC projecting low-income support with a process whereby ETCs are reimbursed based on actual claims. See *Lifeline Disbursement Public Notice*.

<sup>823</sup> See *id.* at 13132-33.

<sup>824</sup> See *id.* at 13132. USAC's plan proposes that carriers that do not file an FCC Form 497 by the monthly deadline would not receive a payment in the following month, but would receive a disbursement based on that support claim in the subsequent month. See *id.* at 13132.

<sup>825</sup> See *id.* at 13139, Appendix A. The effect of this process would be that carriers currently paid based on projections would likely receive little or no support for one month as a result of the true-up. USAC's plan allows an alternative for carriers to begin the transition to payment on actual claims earlier than the transition month by notifying USAC to begin transitioning specific study area codes sooner so that the carrier mitigates the risk of experiencing a month with little or no payment. See *id.* at 13141, Appendix A

the carrier's next low-income disbursement, and in the event the negative amount exceeds the carrier's next monthly payment, USAC plans to invoice the carrier for the full amount of the negative balance beginning the second month after the transition month.<sup>826</sup> USAC further proposes to adopt a rolling six-month window, calculated from the current disbursement month, during which ETCs can file an original or a revised FCC Form 497.<sup>827</sup> Carriers would have until the yearly December filing deadline to file original or upward revisions for the preceding June, but downward revisions would be accepted at any time.<sup>828</sup> USAC's plan for transition to payment on actual support claimed would still allow carriers to file on a monthly or quarterly basis, but carriers filing quarterly would receive a three-month lump payment, not a monthly payment. The majority of commenters support USAC's plan to transition payment to actual support, noting the plan would curb waste, fraud and abuse in the low-income program.<sup>829</sup>

302. *Discussion.* With a few modifications noted below, we adopt USAC's plan to shift the low-income disbursement process from payments based on projected subscriber counts to payments based on actual subscriber counts. We direct USAC to implement the transition beginning on July 1, 2012 with completion by October 2012. We also implement administrative measures to accelerate the reporting and disbursement process and establish a new disbursement system to promote efficiency in the methods and timeliness of low-income support payments and decrease the burden on carriers who are transitioning from projected payments to actual payments.<sup>830</sup>

303. We first adopt USAC's proposal to establish a monthly deadline for carriers to file the FCC Form 497.<sup>831</sup> Beginning July 1, 2012, ETCs seeking support for low-income service provided in the preceding month shall submit to USAC no later than the eighth day of each month an electronic FCC Form 497 reporting their support claims, as well as certifications of accurate reporting, in order to receive a low-income disbursement at the end of that same month.<sup>832</sup> ETCs that do not file their FCC Form 497 electronically by the eighth day of the month may still file the FCC Form 497, electronically or manually, within the time period we establish below, however those carriers may not receive their low-income support disbursement at the end of the same month.<sup>833</sup> ETCs are currently required to file an FCC Form

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<sup>826</sup> See *Lifeline Disbursement Public Notice 26* FCC Rcd at 13140, Appendix A.

<sup>827</sup> See *id.* at 13141, Appendix A.

<sup>828</sup> See *id.*

<sup>829</sup> CenturyLink Disbursement Comments at 1; COMPTTEL Disbursement Comments at 1-2; MI PSC Disbursement Comments at 3; PR Wireless Disbursement Comments at 2; Smith Bagley Disbursement Comments at 2; South Carolina Office of Regulatory Staff Disbursement Comments at 3; USTelecom Disbursement Comments at 2; Verizon and Verizon Wireless Disbursement Reply Comments at 2; MA DTC Disbursement Reply Comments.

<sup>830</sup> See, e.g., COMPTTEL Disbursement Comments at 2; MI PSC Disbursement Comments at 3; South Carolina Office of Regulatory Staff Disbursement Comments at 2; USTelecom Disbursement Comments at 1; MA DTC Disbursement Reply Comments at 3.

<sup>831</sup> Most commenters support USAC's proposal to establish a filing deadline for the FCC Form 497, and state that a filing deadline should enable USAC to make disbursements in a timely and predictable manner. See, e.g., CenturyLink Disbursement Comments at 1; Verizon and Verizon Wireless Disbursement Comments at 2; Smith Bagley Disbursement Comments at 6; PR Wireless Disbursement Comments at 6; COMPTTEL Disbursement Comments at 3-4; USTelecom Disbursement Comments at 3; NTTA Disbursement Comments at 2.

<sup>832</sup> In months on which the 8<sup>th</sup> falls on a weekend or holiday, carriers must submit the FCC Form 497 by the next business day after the 8<sup>th</sup> day.

<sup>833</sup> For example, an ETC that files its September support claims in an FCC Form 497 manually on October 8<sup>th</sup> may not receive its low-income support disbursement until November 30<sup>th</sup>, whereas an ETC that files its September support claims in an electronically filed FCC Form 497 on October 8<sup>th</sup> would receive its low-income support disbursement on October 31<sup>st</sup>. An ETC that files an electronic FCC Form 497 for September support claims on (continued...)

497 by the fifteenth day of each month reporting low-income service provided in the preceding month. We find that requiring ETCs to electronically file an FCC Form 497 within eight days of the end of the preceding month, rather than fifteen days, is a necessary modification to the current administration of this program given one of our goals to expedite support payments to ETCs.<sup>834</sup>

304. Beginning October 2012, we direct USAC to process each electronically filed FCC Form 497 and disburse support to ETCs that file electronically by the last business day of the same month in which the FCC Form 497 is due, provided it is timely filed. As we require ETCs to submit FCC Forms 497 earlier in the month, we also decrease substantially the amount of time between the filing of an FCC Form 497 and USAC's disbursement so that carriers will receive actual support within one month of providing service to eligible low-income consumers so long as they timely file an electronic FCC Form 497.<sup>835</sup> This new timetable will provide USAC sufficient time to process the claims. Finally, some ETCs submit claims for reimbursement on a quarterly, rather than a monthly basis. We find no reason to disallow carriers from filing their FCC Form 497 on a quarterly basis; however carriers choosing to file quarterly will no longer receive monthly support payments, but rather will receive one quarterly payment for all three months.<sup>836</sup>

305. We next modify the amount of time ETCs have to file FCC Forms 497 and any revisions thereto. Currently, USAC maintains an administrative window of fifteen months for filing original or revised support claims.<sup>837</sup> After the end of each calendar year, carriers have fifteen months to file original claims or to revise support claims for any request due during the closed calendar year.<sup>838</sup> After the fifteen month window, ETCs may not file revised or original support claims for any portion of the closed calendar year.<sup>839</sup> USAC proposes that new support claims and upward revisions would only be permitted to be filed within six months of the current disbursement month, while downward revisions may be filed at any time.<sup>840</sup> We adopt USAC's proposal of a rolling window, but decline to adopt the six-month window proposed by USAC because it does not allow sufficient time for carriers to process revisions and may promote inaccuracies in payments. We find instead that a rolling one-year deadline is sufficient time for ETCs to reconcile their records and submit original or revised FCC Form 497s to USAC.<sup>841</sup> ETCs

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October 10<sup>th</sup> may not receive its low-income support disbursement until November 30<sup>th</sup>, whereas an ETC that electronically files its September support claims in an FCC Form 497 on October 8<sup>th</sup> would receive its low-income support disbursement on October 31<sup>st</sup>.

<sup>834</sup> Commenters expressed concern at the amount of time it takes for USAC to disburse low-income funds. *See, e.g.*, COMPTTEL Disbursement Comments at 2-7; Smith Bagley Disbursement Comments at 5-6; PR Wireless Disbursement Comments at 5-6; Nexus Disbursement Reply Comments at 2. This modification will substantially reduce the time it takes for USAC to disburse low-income funds to the ETCs that file electronically.

<sup>835</sup> Carriers that do not file their FCC Form 497 electronically may experience a delay in payment and receive their disbursement by the end of the following month.

<sup>836</sup> *See Lifeline Disbursement Public Notice*, 26 FCC Rcd at 13132-33.

<sup>837</sup> *See id.* at 13133.

<sup>838</sup> *See id.*

<sup>839</sup> *See id.*

<sup>840</sup> *See id.*

<sup>841</sup> Many commenters oppose USAC's proposal to have an asymmetrical revision window, and suggest that a six month window for upward revisions is too short a period for carriers to reconcile their records and submit revisions. *See, e.g.*, Alexicon Disbursement Comments at 5; CenturyLink Disbursement Comments at 1-2; COMPTTEL (continued....)

therefore must file within one year from the due date of the relevant FCC Form 497 an original FCC Form 497 or any revisions to the FCC Form 497 due on that date. ETCs that file an FCC Form 497 after the relevant due date, but within the one-year rolling deadline, shall receive reimbursement in the following month. USAC, however, shall not accept any requests for reimbursement submitted more than one year from the due date of the relevant FCC Form 497. This twelve-month period to file an original FCC Form 497 or any revision should be sufficient time for carriers to ensure their request for support contains accurate and complete subscriber data and all other information supporting their claim.<sup>842</sup>

306. Finally, USAC's plan for the transition to actual claims would reduce an ETC's actual support claim during the transition month by the already paid projected amount from prior months. USAC also proposes not to pay a new projected amount during this transition month.<sup>843</sup> In many cases, this method would provide ETCs with little or no support for the transition month. We acknowledge that this transition could inflict a financial hardship on many carriers for the transition month.<sup>844</sup> USAC's plan for the transition allows carriers to notify USAC to begin transitioning specific study area codes before the transition month so that the carriers may reduce the potential financial hardship of having all study area codes transition in one month.<sup>845</sup> We therefore adopt a modified version of USAC's alternative approach whereby the transition to payments based on actual claims for ETCs receiving support based on projections as of the date of this Order will take place over a three-month period.<sup>846</sup> During this transition period, carriers may notify USAC which study area codes to transition from projected to actual claims during each month. This method allows carriers to offset the financial impact of the transition by permitting the carrier to designate the study area codes USAC will transition in a given month. For example, a carrier with twenty study area codes may choose to transition five study area codes in the first month, while receiving support consistent with the current system based on projections for the remaining fifteen study area codes in that same month. In subsequent months, the carrier could choose to transition other study area codes and would receive disbursement based on actual claims for those study area codes, while receiving payment on projections for the remaining undesignated study area codes. Carriers could continue to designate the study area codes to transition until the third month when USAC would complete the transition and disburse payment for all study area codes based on actual claims.

307. The approach we adopt not only reduces the financial impact on the carriers by extending the transition period to three months, but it also minimizes the likelihood of the carrier owing money to the Fund at the end of the transition by completing the transition in the same month as USAC begins its accelerated payment. Because we set the new FCC Form 497 due date to the eighth day of the month and direct USAC to pay disbursements based on the actual claims in the electronically filed FCC Form 497 by

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Disbursement Comments at 8; PR Wireless Disbursement Comments at 6-8; Smith Bagley Disbursement Comments at 6-8; USTelecom Disbursement Comments at 2-3; NTTA Disbursement Comments at 3-4; Nexus Disbursement Reply Comments at 4.

<sup>842</sup> We decline to establish a different limitation period for downward adjustments, but note that the Commission or USAC may conduct an audit of a carriers' subscriber data and recoup any excess funds disbursed to the carrier at any time.

<sup>843</sup> See *Lifeline Disbursement Public Notice*, 26 FCC Rcd at 13139, Appendix A.

<sup>844</sup> See, e.g., Alexicon Disbursement Comments at 3-4; COMPTTEL Disbursement Comments at 2; Smith Bagley Disbursement Comments at 2-6; PR Wireless Disbursement Comments at 2-6; Sprint Disbursement Comments at 1-2; NTTA Disbursement Comments at 2-3; PR Wireless Disbursement Comments at 2-6.

<sup>845</sup> See *Lifeline Disbursement Public Notice*, 26 FCC Rcd at 13141, Appendix A.

<sup>846</sup> See NTTA Disbursement Comments at 3 (explaining that a transition to actual costs over multiple months would ease the transition for USAC as well as for ETCs).

the last business day of the same month the FCC Form 497 is due, a carrier will receive payments based on actual claims submitted in the same month that the FCC Form 497 is due. Therefore, in the first month of the accelerated payment schedule, which is also the last month in which we complete the transition to payment on actual claims, a carrier that has filed an FCC Form 497 by the last business day of the previous month, as well as an electronic FCC Form 497 by the eighth day of the current month, would receive a low-income disbursement for the previous month's FCC Form 497 as well as the current month's electronic FCC Form 497 at the end of the current month, thus receiving payment for two months' of support at the end of that month. For example, if a carrier files an FCC Form 497 in September, under the current system it would be paid in October. When the transition month occurs in October, the carrier would file its electronic FCC Form 497 on the eighth day of October, and receive its September disbursement as well as its October disbursement on the last business day of October. Any true-up of disbursements would take place in this "double payment" month and will minimize carriers experiencing a negative disbursement as a result of this transition period.

308. Carriers may choose to begin their transition to payment on actual claims at any time after the effective date of these rules. Carriers must notify USAC, however, of which study area codes to transition during each month no later than June 1, 2012, and the transition to payments based on actual claims must be completed by October 2012. In the event a carrier fails to notify USAC of which study area codes to transition each month, we direct USAC to select which study area codes to transition for such carrier.<sup>847</sup> USAC will use its best efforts to choose study area codes proportionately to that carrier's monthly disbursements so that the risk of the carrier experiencing the entire transition for all its study area codes in a one-month period is minimized. Carriers that service only one study area code will have until October 2012 to plan and prepare for their transition to actual claims. This transition method should minimize the burden on carriers and avoid the hardship of carriers missing a month of payments under the USAC proposal. Any study area codes that are submitted to USAC for low-income support for the first time on or after the date of this Order will be paid based on actual claims.<sup>848</sup>

309. In the event a carrier owes money to the Fund as a result of the transition process, USAC proposes to offset any negative balance in the next month and, if the carrier continues to owe the Fund money in subsequent months, to invoice the carrier for any remaining balance thereafter.<sup>849</sup> We adopt USAC's plan to net any negative balance a carrier may incur as a result of this process against the carrier's next monthly payment and invoice the carrier for the remaining balance thereafter. While many carriers suggest that USAC net any remaining balance against future monthly payments until the negative balance is paid off, we find that the transition method we adopt today allowing carriers to stagger the transition by study area code will minimize the financial burden on the carrier and reduce the likelihood of any carrier having substantial negative balance.

## **IX. MODERNIZING THE PROGRAM**

### **A. Bundled Services**

310. *Background.* Today, consumers are increasingly purchasing services in bundles that include both voice and broadband services.<sup>850</sup> Bundled plans allow consumers to customize packages of

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<sup>847</sup> Carriers that fail to notify USAC of which study area codes to transition each month by June 1, 2012 may experience a delay in payment for the first transition month.

<sup>848</sup> Any ETCs that USAC currently pays based on actual claims must continue to be paid based on actual claims.

<sup>849</sup> *Lifeline Disbursement Public Notice*, 26 FCC Rcd at 13133.

<sup>850</sup> See, e.g., NATIONAL BROADBAND PLAN at 38, n.20 (noting that "no definitive data source tracks whether consumers purchase broadband as a standalone product or as a bundle, but estimates of the share of subscribers with some type of bundle range from 65 percent . . . to 90 percent"); OECD, *Broadband Bundling: Trends and Policy* (continued....)

services to meet their communications needs,<sup>851</sup> and also offer potential cost-savings as compared to standalone products.<sup>852</sup> Eligible low-income consumers also can benefit from the opportunity to obtain packages that contain both mobile voice and broadband services at a reduced cost.

311. The Commission's rules currently provide for Lifeline discounts on basic voice service, but do not address whether such discounts may be applied to bundled offerings that include both basic voice service and other services, such as broadband. Specifically, section 54.401 of the Commission's rules provide that Lifeline supported services consist of a "retail local service offering" with specified functionalities.<sup>853</sup> The rule is silent, however, on 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.

312. Section 54.403(b) of the Commission's current rules sets out how Lifeline support must be passed through to the consumer.<sup>854</sup> As noted above,<sup>855</sup> pursuant to that rule, ETCs that charge federal subscriber line charges or equivalent federal charges to the subscriber apply Tier 1 federal Lifeline support to waive the federal SLC for Lifeline subscribers.<sup>856</sup> Any additional support received (*i.e.*, from Tiers 2 through 4) is then applied to reduce the consumer's intrastate rate.<sup>857</sup> 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.<sup>858</sup> 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.

313. Some states have enacted their own policies regarding use of Lifeline support to reduce the cost of expanded voice offerings that include optional features or bundled combinations of other services.<sup>859</sup> Among these states, however, there is no uniform approach.<sup>860</sup> In an October 2010 report, the

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Implications, OECD Digital Economy Papers No. 175, at 3, [http://www.oecd-ilibrary.org/science-and-technology/broadband-bundling\\_5kghtc8znnbx-en](http://www.oecd-ilibrary.org/science-and-technology/broadband-bundling_5kghtc8znnbx-en) (stating that its "data collection of over 2,000 offers of stand-alone and bundled services from 90 firms across 30 OECD countries reveals that broadband services in the OECD are overwhelmingly sold as mixed bundles, allowing users to choose among stand-alone offers or bundled services") (*OECD Bundling Study*).

<sup>851</sup> See *OECD Bundling Study* at 5 ("Typical bundles offer fixed-voice, data, and video services and are commonly referred to as 'multiple-play' or 'triple-play' packages. A number of operators are expanding their bundles to include mobile voice as a fourth component of 'quadruple-play' offers.").

<sup>852</sup> As the Commission noted in the *NPRM*, as compared to carriers' basic plans, bundled packages of services may offer better value for Lifeline consumers. See *Broadband Adoption and Use in America* (finding 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), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296442A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf); see also *OECD Bundling Study* at 3 (noting that the average bundled discount compared with buying the services separately is \$15 per month or a 26 percent discount).

<sup>853</sup> 47 C.F.R. § 54.401(a).

<sup>854</sup> See 47 C.F.R. § 54.403(b).

<sup>855</sup> See *supra* section V (Support Amounts for Voice Service).

<sup>856</sup> 47 C.F.R. § 54.403(b).

<sup>857</sup> *Id.*

<sup>858</sup> *Id.*

<sup>859</sup> See, e.g., Letter from James Bradford Ramsay, General Counsel, National Association of Regulatory Utility Commissioners, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. Nos. 11-42 *et al.*, (continued...)



GAO found that 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.<sup>861</sup> The National Broadband Plan recommended that the Commission and states permit Lifeline consumers to apply their Lifeline discounts on all calling plans with a local voice component, including bundled service packages, as it would help make bundled offerings, including those that include broadband, more affordable for low-income households.<sup>862</sup>

314. In the *Lifeline and Link Up NPRM*, the Commission first sought comment on amending the Commission's rules to adopt a uniform federal requirement that Lifeline discounts may be used on any Lifeline calling plan offered by an ETC with a voice component, including bundled service packaging combining voice and broadband, or packages containing optional calling features.<sup>863</sup> Pursuant to this proposed rule, states would not be permitted to adopt rules prohibiting ETCs from offering bundled service packages or packages with optional calling features to Lifeline consumers.<sup>864</sup> Second, the Commission also sought comment on whether to adopt a national rule that would require all ETCs to offer Lifeline discounts on all of their service plans with a voice component.<sup>865</sup> Third, the Commission sought comment on whether to cap the Lifeline discount for each eligible subscriber receiving a bundled service package or package with optional calling features at the amount the subscriber would have received if he or she had selected a basic voice plan.<sup>866</sup>

315. *Discussion.* We amend sections 54.401 and 54.403 of the Commission's rules to adopt a rule permitting ETCs in all states to allow qualifying low-income consumers to apply Lifeline discounts to all residential service plans that provide voice telephony service, including bundled service packages combining voice and broadband, or packages containing optional calling features.<sup>867</sup> We adopt a flexible federal policy that allows all ETCs (whether designated by a state or this Commission) to choose to make bundled service packages or packages containing optional calling features available to Lifeline

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(filed Aug. 17, 2011) (noting that 24 states permit ETCs to offer bundled service packages or voice plans with additional services to Lifeline consumers, 5 require that ETCs offer bundled service packages or voice plans with additional services to Lifeline consumers, and one state is currently looking into the issue) (NARUC Aug. 17 *ex parte* Letter).

<sup>860</sup> *See id.*

<sup>861</sup> 2010 GAO REPORT at 13; *see also* NATIONAL REGULATORY RESEARCH INSTITUTE (NRRI), STATE UNIVERSAL SERVICE FUNDING MECHANISMS: RESULTS OF NRRI'S 2005-2006 SURVEY 49, Table 30 (2006) (listing the services supported by various state universal service low-income programs), *available at* <http://nrri.org/pubs/telecommunications/06-09.pdf>.

<sup>862</sup> *See* NATIONAL BROADBAND PLAN at 172 (Recommendation 9.1).

<sup>863</sup> *See Lifeline and Link Up NPRM*, 26 FCC Rcd at 2850, para. 258.

<sup>864</sup> *Id.* (citing 47 U.S.C. § 254(f) (barring states from adopting regulations that are inconsistent with the rules established by the Commission to preserve and advance universal service)).

<sup>865</sup> *Id.* at 2850, para. 259.

<sup>866</sup> *Id.*

<sup>867</sup> Several commenters support this proposal. *See, e.g.,* AT&T Comments at 7; AT&T PN Reply Comments at 12; Box Top Comments at 3; CT DPUC Comments at 4; GCI Comments at 52; LCCHR Reply Comments at 3; MA DTC Comments at 11; MI PSC Comments at 11; NASUCA Comments at 29-30; NCTA Comments at 4; NJ DRC Comments at 24; New America Foundation Comments at 5-6; NAF PN Reply Comments at 4-5; NJ DRC Comments at 24; NY PSC Comments at 6; TCA Comments at 4.

consumers.<sup>868</sup> We clarify that, pursuant to the rule we adopt today, ETCs may permit consumers to apply their Lifeline discount to family shared calling plans. The plan must be in the name of an eligible low-income consumer, and a household may receive only one Lifeline-supported service. Moreover, pursuant to this rule, each subscriber's Lifeline discount can be no larger than if he or she chose a basic voice plan.<sup>869</sup> Finally, as described below, we adopt an additional rule to protect the interests of Lifeline subscribers who purchase bundled service packages.

316. We also eliminate language in section 54.401 of our rules that currently describes Lifeline as a retail service offering "that is available only to low-income consumers."<sup>870</sup> We eliminate such language to clarify that ETCs are free to apply the Lifeline discount to any retail service offering, not just to an offering specifically offered to low-income consumers.

317. Adoption of these requirements is consistent with the statutory principle that consumers have access to quality services at "just, reasonable, and affordable rates."<sup>871</sup> As the Commission noted in the *Lifeline and Link Up NPRM*, many carriers limit Lifeline offerings to basic voice service, even in 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 voice services.<sup>872</sup> A nationwide rule giving ETCs the flexibility to offer expanded service packages to Lifeline consumers will enhance consumer choice by making broadband and mobile voice services more accessible and affordable for all eligible low-income consumers.<sup>873</sup> Indeed, competition in the Lifeline services market may provide additional incentives for ETCs to offer an expanded range of service plans with additional calling features to eligible low-income consumers, including bundled service packages.

318. Our findings today are compatible with the determinations made by the Commission in the April 2004 *Lifeline and Link Up Order and Further Notice of Proposed Rulemaking*, which expressly declined to adopt a rule prohibiting Lifeline consumers from purchasing optional calling features, such as caller ID or call waiting.<sup>874</sup> In that case, the Commission stated that such a restriction might discourage qualified low-income consumers from enrolling in the Lifeline programs.<sup>875</sup> Such a rationale is analogous

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<sup>868</sup> Thus, if an ETC chooses to make expanded calling plans available to Lifeline consumers, states may not adopt policies that prohibit consumers from applying their Lifeline discounts to the voice calling plan of their choice. See 47 U.S.C. § 254(f). We clarify that, pursuant to the rule we adopt today, ETCs may permit consumers to apply their Lifeline discount to family shared calling plans. The plan must be in the name of an eligible low-income consumer and a household may receive only one Lifeline-supported service. See Appendix A, 47 C.F.R. §§ 54.408, 54.409 (adopted rules). Consumers who are eligible to receive Tribal Link Up support, see *supra* section VI.D (Tribal Lifeline Eligibility), may also apply those discounts to the cost of bundled service packages or packages containing optional calling features.

<sup>869</sup> For example, if a Lifeline subscriber would have received \$9.25 per month in support to purchase a voice-only service, he or she would continue to receive no more than \$9.25 per month, or \$111 per year, in Lifeline support to apply toward the purchase of a bundled service package or a voice package containing optional calling features.

<sup>870</sup> 47 C.F.R. § 54.401(a); see also *supra* section IV (Voice Services Eligible for Discounts).

<sup>871</sup> 47 U.S.C. § 254(b)(1).

<sup>872</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2850, para. 259; see USAC, Low Income, Telephone Assistance Program for Low Income Households, LifelineSupport.org, [www.lifelinesupport.org](http://www.lifelinesupport.org) (last visited Jan. 30, 2012) (searchable database listing Lifeline services available by each ETC in a state).

<sup>873</sup> See, e.g., AT&T Reply Comments 2 at 12 n.43; MA DTC Comments at 11; New America Foundation Reply Comments 2 at 3-5; NY PSC Comments at 6; Regulatory Commission of Alaska Reply Comments at 10; NATOA Comments at 2-3.

<sup>874</sup> 2004 *Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd. at 8330, para. 53.

<sup>875</sup> *Id.*

here, and we encourage ETCs to make expanded service packages available to eligible low-income consumers.

319. We do not have sufficient information in the record before us to evaluate the impact of a rule mandating that ETCs allow Lifeline discounts to be applied to any package containing a voice component, and we seek further comment in the attached *FNPRM* on requiring ETCs to allow consumers to apply their discount to any service offering.

320. Finally, we adopt an additional rule to better protect the interests of Lifeline subscribers who choose to purchase bundled service packages or packages containing optional calling features. Specifically, we agree with commenters that ETCs should explicitly notify Lifeline subscribers that partial payments will first be applied to pay down the allocated price of the Lifeline voice services, and require ETCs to provide clear language to this effect on the bills of those Lifeline subscribers who are receiving bundled service packages from the ETC.<sup>876</sup> We adopt this rule to protect against Lifeline subscribers losing access to voice service if they can no longer afford to pay for the non-Lifeline components of a bundled package, thereby also reducing potential burdens that ETCs may face if they have to re-enroll disconnected subscribers.

## **B. Support for Broadband**

### **1. Background**

321. The National Broadband Plan recognized that although increasing numbers of Americans have broadband at home, some segments of the population – particularly low-income households, racial and ethnic minorities, seniors, rural residents, residents of Tribal lands and people with disabilities – disproportionately do not.<sup>877</sup> The National Broadband Plan recommended using Lifeline to help close the broadband adoption gap and specifically recommended that the Commission implement a low-income pilot program to produce actionable information about how best to design efficient and effective long-term broadband support mechanisms for low-income consumers.<sup>878</sup> The *Lifeline and Link Up NPRM* likewise recognized the importance to low-income consumers and society as a whole of reducing the gap in broadband adoption, and that the program may be able to play an important role in helping to close the

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<sup>876</sup> See Consumer Groups Comments at 44. This rule will ensure that Lifeline subscribers do not lose access to voice service if they can no longer afford to pay for the non-Lifeline components of a bundled package. Otherwise applicable disconnection rules (state and/or federal) will apply. The rule we adopt today will not unreasonably burden ETCs, including small carriers, some of whom may already have processes in place to apply partial payments to maintain the voice portion of a Lifeline calling plan. Moreover, this rule will help to prevent Lifeline subscribers from being disconnected from voice service for non-payment, thereby reducing potential burdens that may result to ETCs from having to re-enroll disconnected subscribers.

<sup>877</sup> NATIONAL BROADBAND PLAN at 167 (providing data about how some communities are significantly less likely to have broadband at home); see also *id.* at 152, Box 8-4 (noting that available data suggests that less than 10 percent of residents on Tribal lands have broadband available).

<sup>878</sup> *Id.* at 172-173. In 2010, the Commission hosted a roundtable discussion to solicit input on how to design a pilot program to test the effectiveness of supporting broadband services directed to low-income households. See *Wireline Competition Bureau Announces June 23, 2010 Roundtable Discussion to Explore Broadband Pilot Programs for Low-Income Consumers*, WC Dkt. No. 03-109, Public Notice, 25 FCC Rcd 7272 (2010) (*2010 Roundtable Public Notice*). Webcast of the event is available at <http://www.fcc.gov/events/roundtable-discussion-explore-broadband-pilot-programs>. At the roundtable discussion participants explored goals for supporting broadband through the low-income program; barriers to adoption, including the cost of service; the availability of data and information on broadband service and adoption by low-income individuals; and pilot program mechanics and operation. *Id.* Webcast of the event is available at <http://www.fcc.gov/events/roundtable-discussion-explore-broadband-pilot-programs>.

broadband adoption gap.<sup>879</sup> The Commission sought comment on whether to amend the definition of Lifeline to cover broadband services, and proposed to set aside a discrete amount of funds reclaimed from eliminating inefficiencies in the program to create a low-income broadband pilot program to gather data about how Lifeline can be used to support broadband adoption.<sup>880</sup>

322. Based on the record, we are taking the first step in working towards achieving one of the three express goals of the program --- recognizing the importance of the availability of broadband services for low-income Americans by creating a low-income broadband pilot program.<sup>881</sup> Recognizing the complexities of modernizing the low-income support mechanisms for broadband, and the need to ensure that universal service funds are used efficiently, we are launching a pilot program to test the design of any future universal service programs involving support for broadband adoption.

## 2. Creation of a Pilot Program

323. There is broad agreement that a pilot program could allow the Commission to gather data on whether and how the Lifeline program can be structured to promote the adoption and retention of broadband services by low-income households.<sup>882</sup> We therefore adopt a Low-Income Broadband Pilot Program (Pilot Program) that will focus on testing the necessary amount of subsidies for broadband and the length of support. Given our implementation of the Pilot Program, we decline to amend the definition of Lifeline at this time to include broadband for the existing low-income program. Rather, we conclude it is preferable to develop data that will allow the Commission and participating ETCs to evaluate how best to structure the program in the future, with the added benefit of helping to close the adoption gap for consumers that participate in the pilot.<sup>883</sup> We direct the Bureau to initiate the Pilot Program by the release of a Public Notice specifying the Pilot Program application procedures, including dates, deadlines, and other details of the application process, no later than 15 days after receiving approval under the Paperwork Reduction Act.

324. As discussed more fully above, the Fund has realized substantial savings from the June 2011 *Duplicative Program Payments Order*,<sup>884</sup> and we anticipate that the other efforts to reduce waste in the low-income program will lead to additional significant savings. Consistent with our overarching objective of fiscal responsibility in using universal service funds, we are able to start a pilot program using low-income program funds without increasing the current size of the low-income program. We delegate authority to the Bureau to implement the Pilot Program consistent with the framework established in this Order, and direct USAC to disburse no more than \$25 million to fund the Pilot

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<sup>879</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2852-53, para 267. Many commenters echoed the Commission's concern about the gap in broadband adoption. *See, e.g.*, The City of New York Comments at 1; AT&T Comments at 19-20; Gila River Telecommunications, Inc. PN Comments at 1-9.

<sup>880</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2855-56, paras. 275-276 and 26 FCC Rcd at 2856-62, paras. 279-302.

<sup>881</sup> *See supra* section III.B (setting forth goals of Lifeline program, which includes availability of broadband service to low-income consumers).

<sup>882</sup> We note that some commenters urged us to expand the Lifeline program immediately to cover broadband services. *See, e.g.*, Consumer Groups PN Comments at 6; NASUCA PN Comments at 3-4; MAG-Net Comments at 21-22. Further, the record indicates that the Commission would be better served by gathering data on how best to modify the Lifeline program to support broadband. *See* Joint Center for Political And Economic Studies *Ex Parte* (Nov. 18, 2011) (providing recommendations of how best to structure a pilot program).

<sup>883</sup> *See infra* para. 334 (explaining why funding is limited to ETCs pursuant to section 254(e)).

<sup>884</sup> *See generally* 2011 *Duplicative Program Payments Order*; *see also* USAC 2011 IDV Process Letter at 1 (noting that USAC has discovered approximately 269,000 duplicates in 12 states).

Program, as directed by the Bureau.<sup>885</sup>

325. As discussed in more detail below, we direct the Bureau to solicit applications from ETCs to participate in the Pilot Program and to select a relatively small number of projects to test the impact on broadband adoption with variations in the monthly discount for broadband services, including variations on the discount amount, the duration of the discount (phased down over time or constant) over a 12-month period.<sup>886</sup> As discussed more fully below, we will implement an 18-month Pilot Program, which includes 3 months for ETCs to implement necessary back-office functions, up to 12 months of subsidized broadband service either through bundles of voice and broadband or standalone broadband, and 3 months to finalize data collection and analysis.

326. The Bureau shall select a diversity of projects, with different amounts and duration of subsidies, different types of geographic areas (*e.g.*, rural, urban) and different types of broadband networks (*e.g.*, fixed and mobile) and technologies.<sup>887</sup> To the extent possible, the pilot program will seek to collect data on a number of variables, such as the impact of income, age, ethnicity, gender, and family size and make up on adoption rates. The Bureau will give preference in choosing projects that offer speeds at least at 4 Mbps for downloads and 1 Mbps for uploads. The Bureau will also give preference to ETCs that partner with third parties (*e.g.*, grantees of other programs such as the Broadband Technology Opportunities Program (BTOP), the Broadband Initiatives Program (BIP), existing library programs) that have already developed holistic approaches to overcoming broadband adoption barriers, including digital literacy, equipment costs, and relevance. The Bureau will consider whether the projects proposed will promote entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, consistent with section 257 of the Communications Act, including those that may be socially and economically disadvantaged businesses. We recognize, however, that it is difficult to partner with third party entities in more rural areas, and will not exclude from consideration applications that include remote online training.<sup>888</sup> We also encourage ETCs to utilize control groups when developing proposals in order to better assess the impact on adoption of the project. Project funding, which will be disbursed directly to ETCs participating in the program, will be passed on to subscribers in the form of subsidies to defray the cost of service. ETCs selected to participate in the Pilot Program will be required to participate in the collection, analysis, and sharing of anonymized quantitative and qualitative data with standardized data elements, formatting, and submission requirements. At the end of the Pilot Program, the Commission will publicly recognize the ETCs and their partners that best succeeded in meeting the Pilot Program goals.

327. The Commission will draw on the experiences of other broadband adoption programs such as BTOP/BIP and “Connect to Compete” without duplicating their efforts and results, and plans to implement best practices (*e.g.*, type of data collected and tools used, evaluation metrics/criteria, use of

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<sup>885</sup> The \$25 million for the pilot is exclusive of administrative expenses.

<sup>886</sup> We find that the Pilot Program, and the data collection involved, is exempt from the requirements to create an Institutional Review Board (IRB). *See* 45 C.F.R. 46.101(b); *see also* Letter from Sarah Morris, New America Foundation, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, (filed Jan. 23, 2012) (*citing* 45 C.F.R. § 46) (raising the question of whether the data collection component within the Pilot Program would require creation of an IRB).

<sup>887</sup> *See, e.g.*, AT&T PN Comments at 15 (recommending that the pilot test a variety of variety of approaches to determine which approach most efficiently increases broadband adoption by low-income consumers).

<sup>888</sup> *See* Letter from Jennie B. Chandra, Senior Counsel, Windstream, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. *et al.* at 9-10 (filed Dec. 21, 2011) (Windstream Dec. 21 *ex parte* Letter) (urging the Commission to take into account the particular challenges presented by rural areas including the difficulty of partnering with third party entities with existing adoption programs).

control groups) that were learned through implementation of such programs.<sup>889</sup> While the Commission plans to take best practices learned through other broadband adoption programs to help in creating metrics/criteria for selecting and evaluating pilots and data collection, the Pilot Program is unique in that it is a subsidy-focused program intended to study the length and amount of subsidy that is necessary for low-income consumers to adopt broadband.<sup>890</sup> Additionally, as discussed in more detail below, the Pilot Program is unique in that it will require participation by broadband providers that are also ETCs, which means low-income consumers that qualify for Lifeline will also qualify for the subsidized broadband service through this Pilot.<sup>891</sup>

### 3. Legal Authority

328. In the *USF/ICC Transformation Order and FNPRM*, the Commission concluded that we have authority under section 254 and section 706 of the Act to provide support for modern networks capable of providing both voice and broadband and to condition receipt of support for the provision of voice telephony on the offering of broadband services over those networks.<sup>892</sup> Consistent with that decision, we conclude that sections 254 and 706 authorize us to fund bundled voice and broadband services as well as standalone broadband services as part of a discrete, time-limited Pilot Program structured to determine how best to bring advanced services to low-income consumers. These conclusions are consistent with the overwhelming bulk of the comments we received on this issue.<sup>893</sup>

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<sup>889</sup> Letter from Sarah Morris, New America Foundation, to Marlene Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Dec. 12, 2011) (New America Foundation Dec. 12 *ex parte* Letter) (providing examples of data tools that BTOP grantees developed that could be implemented for the purposes of the Pilot Program study such as the definition of what is meant by adoption). Based on their work on BTOP evaluations, the New America Foundation recommends that the Commission use evaluation tools and metrics that measure broadband adoption in broad terms, including customers' access to community resources. *See id.* Commenters have also recommended that the Commission utilize existing data from other adoption programs to help in selecting pilot communities, program evaluation and control groups. *See id.* (recommending that the Commission utilize data from other adoption programs); *see also* Letter from Nicol Turner-Lee, The Joint Center for Political And Economic Studies to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 at 1-3 (filed Nov. 18, 2011).

<sup>890</sup> New America Foundation Dec. 12 *ex parte* Letter (recognizing how the Pilot Program differs from BTOP/BIP, but Commission can implement practices learned through other grant programs).

<sup>891</sup> Other broadband adoption programs are distinguishable from the Pilot Program. For example, the BTOP program focuses on digital literacy training centers with some grantees entering partnerships with broadband providers to offer discounted broadband service after completing digital literacy training programs. *See* Broadband Technology Opportunities Program (BTOP) Quarterly Program Status Report Submitted to the Committee on Appropriations United States Senate and House of Representatives, the Committee on Commerce, Science and Transportation United States Senate and the Committee on Energy and Commerce United States House of Representatives, December 2011, *available at* <http://www.ntia.doc.gov/files/ntia/publications/btop-quarterly-congressional-report-dec-2011.pdf>. In the "Connect to Compete" initiative, cable broadband providers will provide discounted broadband service at minimum speed tier of 1 Mbps to eligible families when at least one student is enrolled in the Free School Lunch Program, the family has not subscribed to broadband service for the past 90 days and does not have an overdue bill or unreturned equipment owed to the participating cable company. *See* FCC & "Connect to Compete" Tackle Barriers to Broadband Adoption, *available at* <http://www.fcc.gov/document/fcc-and-connect-compete-broadband-fact-sheet> (providing details of the discounted broadband service and which consumers are eligible).

<sup>892</sup> *See USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 60-73.

<sup>893</sup> *See, e.g.*, MMTC PN Comments at 1-2 (recognizing Commission authority to create broadband pilot project); GRTI PN Comments at 4-5 (citing sections 254(b)(2) and (b)(3) of the Communications Act and sections 151 and (continued...))

329. In enacting section 254, as part of the Telecommunications Act of 1996, Congress expressly recognized the importance of ensuring that low-income consumers “have access to telecommunications and information services, including . . . advanced telecommunications and information services.” Section 254 sets forth additional principles upon which we must “base policies for the preservation and advancement of universal service.”<sup>894</sup> Among these principles are that “[q]uality services should be available at just, reasonable, and affordable rates,” and that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.” Recently, in the *USF/ICC Transformation Order and FNPRM*, consistent with the recommendations of the Joint Board, we adopted an additional principle that “[u]niversal service support shall be directed where possible to networks that provide advanced services as well as voice services.”<sup>895</sup>

330. As we explained in the *USF/ICC Transformation Order and FNPRM*, section 254 provides express statutory authority to support telecommunications services that we have designated as eligible for universal service support.<sup>896</sup> To the extent carriers offer traditional voice telephony services over traditional circuit-switched networks, our authority to provide support for such services is well-established. Section 254 also allows us to impose conditions on the support provided to entities designated as ETCs. Indeed, we have a “mandatory duty” to adopt universal service policies that advance the principles outlined in section 254(b), and we have the authority to “create some inducement” to ensure that those principles are achieved.<sup>897</sup> Congress made clear in section 254 that the deployment of, and access to, information services – including “advanced” information services – are important components of a robust and successful federal universal service program.<sup>898</sup> Also, the statute is clear that universal service support should include addressing low-income needs.<sup>899</sup> Using a discrete, time-limited broadband pilot program to determine whether the low-income program can successfully be used to increase broadband adoption among low-income consumers is therefore consistent with the purposes of section 254. Accordingly, we find authority under section 254, as supported by section 4(i),<sup>900</sup> to provide limited USF support through a Low-Income Broadband Pilot Program and to require ETCs receiving support through the Pilot Program to offer either a bundle of voice and broadband services or standalone broadband service.

331. We also have authority under section 706 of the 1996 Act to provide USF support to ETCs through a low-income broadband Pilot Program to subsidize low-income consumers’ purchase of broadband services. In section 706, Congress recognized the importance of ubiquitous broadband deployment to Americans’ civic, cultural, and economic lives and, thus, established a federal policy of “encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications

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154(i) as legal authority for the Commission to fund broadband pilot program); Cox PN Comments at 5-6 (arguing that the Commission has broad legal authority to fund broadband pilot program under sections 254(c) and 706).

<sup>894</sup> 47 U.S.C. § 254(b).

<sup>895</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 65.

<sup>896</sup> 47 U.S.C. § 254(c); See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 62.

<sup>897</sup> *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200, 1204 (10th Cir. 2001).

<sup>898</sup> 47 U.S.C. § 254(b)(2), (b)(3).

<sup>899</sup> See 47 U.S.C. §§ 254(b)(1), (b)(3) (implementing Congress’s universal service directives in sections 254(b)(1) and 254(b)(3) that quality services should be available at affordable rates and to consumers throughout the nation).

<sup>900</sup> 47 U.S.C. § 4(i) (providing Commission authority to “perform any and all acts . . . as not inconsistent with [the Communications Act] as may be necessary in the execution of its functions”).

capability to all Americans.”<sup>901</sup> Of particular importance, Congress adopted a definition of “advanced telecommunications capability” that is not confined to a particular technology or regulatory classification. Rather, “‘advanced telecommunications capability’ is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.”<sup>902</sup> Section 706(a) directs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”<sup>903</sup> Section 706(b) requires the Commission to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion” and, if the Commission concludes that it is not, to “take *immediate action* to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”<sup>904</sup> The Commission has found that broadband deployment to all Americans has not been reasonable and timely<sup>905</sup> and observed in its most recent broadband progress report that “too many Americans remain unable to fully participate in our economy and society because they lack broadband.”<sup>906</sup> This finding triggers our duty under section 706(b) to “remov[e] barriers to infrastructure investment” and “promot[e] competition in the telecommunications market” in order to accelerate broadband deployment throughout the Nation.

332. Providing support to carriers to subsidize low-income consumers’ purchase of broadband services helps achieve section 706’s objectives. The Commission has recognized that a key barrier to infrastructure investment is “lack of affordability of broadband Internet access services.”<sup>907</sup> Providing federal support for low-income consumers’ purchase of broadband services will expand the base of consumers able to purchase broadband services. The additional revenue generated by these new consumers in areas where broadband is already available will provide additional resources for deployment projects where broadband networks are not yet available. Effective support for broadband services to low-income consumers thus “removes barriers to infrastructure investment” as section 706(b) directs us to

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<sup>901</sup> 47 U.S.C. § 1302(a); Section 706(a) is more than just a statement of policy, as Commissioner McDowell contends. It directs the Commission to “utiliz[e], in a manner consistent with the public interest, convenience, and necessity, ... regulating methods that remove barriers to infrastructure investment.” *Id.* As discussed in para. 332, *infra*, providing federal support for low-income consumers’ purchase of broadband services does remove barriers to infrastructure investment.

<sup>902</sup> 47 U.S.C. § 1302(d)(1); *see also National Broadband Plan for our Future*, GN Dkt. 09-51, Notice of Inquiry, 24 FCC Rcd 4342, 4309, App., para. 13 (2009) (“advanced telecommunications capability” includes broadband Internet access); *Inquiry Concerning the Deployment of Advanced Telecomms. Capability to All Americans in a Reasonable and Timely Fashion*, CC Dkt. No. 98-146, Report, 14 FCC Rcd 2398, 2400, para. 1 (section 706 addresses “the deployment of broadband capability”), 2406, para. 20 (same). The Commission has observed that the phrase “advanced telecommunications capability” in section 706 is similar to the term “advanced telecommunications and information services” in section 254. *See Rural Health Care Support Mechanism*, WC Dkt. No. 02-60, Order, 21 FCC Rcd 11111, 11113, n.9 (2006).

<sup>903</sup> 47 U.S.C. § 1302(a).

<sup>904</sup> 47 U.S.C. § 1302(b) (emphasis added).

<sup>905</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Dkt. No. 09-147 *et al.*, Report, 25 FCC Rcd 9556, 9558, paras. 2-3 (2010) (*Sixth Broadband Progress Report*); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Seventh Broadband Progress Report and Order on Reconsideration, GN Dkt. 10-59, 26 FCC Rcd 8008, 8009, para. 1 (2011) (*Seventh Broadband Progress Report*)

<sup>906</sup> *Seventh Broadband Progress Report*, 26 FCC Rcd at 8011, para. 4.

<sup>907</sup> *Id.*, at 8040, para. 65.



do, and the pilot program we establish here is an important first step to designing such support.<sup>908</sup>

#### 4. Structure of the Pilot Program

333. The Pilot Program is to be a joint effort of the Commission, ETCs, broadband providers, and other interested parties, including non-profit institutions, independent researchers with experience in program design and evaluation, consumer device manufacturers, and state, local and Tribal government agencies. Over the last several years, there has been a groundswell of initiatives focused on broadband adoption.<sup>909</sup> Our aim is not to retread the ground already covered by public and private broadband adoption projects but to benefit from the work already done on broadband adoption in order to determine how we can best use Lifeline funds to increase broadband adoption and retention by low-income consumers. Consistent with this aim and our legal authority, we direct the Bureau to incorporate the following general guidelines in implementing the Pilot Program.

##### a. Service Provider Qualifications

334. In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether funding for the Pilot Program should be limited to ETCs, or whether non-ETCs could be eligible for funding.<sup>910</sup> Section 254(e) of the Communications Act provides that only ETCs designated pursuant to section 214(e) are eligible for universal service support.<sup>911</sup> Given that the Fund will be used for the Pilot Program, only ETCs will be eligible to receive Pilot Program funds. Carriers that seek to participate in the Pilot Program must be ETCs in the areas for which they propose to offer service at the time they submit their proposed projects to the Commission for review. If a carrier is contemplating becoming an ETC to participate in the Lifeline program, including participation in the Pilot Program, it should act promptly to

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<sup>908</sup> 47 U.S.C. § 1302(b).

<sup>909</sup> Federal, state, and local entities, along with their non-governmental partners, have provided significant funding to support hundreds of innovative broadband adoption programs. Most recently, we have announced several broadband adoption initiatives. For example, *Connect to Compete* is aimed at boosting basic computer skills and promoting the adoption of high-speed Internet. See <http://connect2compete.org> (last visited Feb. 5, 2012); see also Press Release, Federal Communications Commission, FCC “Connect to Compete” Tackle Barriers to Broadband Adoption (Nov. 9, 2011), available at <http://www.fcc.gov/document/fcc-and-connect-compete-broadband-fact-sheet> (detailing private/non-profit partnership providing qualifying families with \$9.95 monthly broadband service and reduced price equipment). The Connect to Compete program is intended to complement the Broadband Telecommunications Opportunities Program (BTOP) and the Broadband Initiatives Program (BIP) which together have committed more than \$7 billion to fund numerous exciting broadband initiatives, many of which have already increased adoption in the communities in which they are working and provided other tangible results for the program participants. Also recently, Comcast and CenturyLink have announced low-cost broadband adoption programs. The Comcast Internet Essentials program is aimed at families that have one or more children who qualify for free school lunches, and is advertised as providing \$9.95/month broadband services, at speeds of up to 1.5 Mbps down and 384 Kbps up, and the opportunity to purchase a \$150 netbook computer. The CenturyLink program is aimed at consumers who would qualify for Lifeline service, and is advertised as providing \$9.95/month broadband services for the first 12 months at speeds of up to 1.5Mbps down and the opportunity to purchase a \$150 netbook computer.

<sup>910</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd. 2860, para. 293.

<sup>911</sup> 47 U.S.C. § 254(e). Some commenters argued that only ETCs can and should receive USF funds. See, e.g. GCI PN Comments at 2; Staff of the Public Utilities Commission of Ohio Comments at 30-31 (citing 214(e)(1)(A) as limiting funding to ETCs); Sprint PN Comments at 5 (supporting participation only to designated ETCs to ensure adequate oversight and eliminate issues associated with inexperience in serving Lifeline subscribers). Other commenters felt that the Commission should not limit funding for the Pilot Program to ETCs. See, e.g., Box Top Comments at 4; EDNet Reply Comments at 2; LCCHR Comments at 4; NCTA Comments at 4-5; USTelecom Comments at 23; MSB Reply Comments at 5; AT&T Comments at 8-9 (claiming Commission has authority to distribute funds to non-ETCs under 254(j)).

begin the process. The Commission will make every effort to process such ETC applications in a timely fashion, and we urge the states to do likewise. We anticipate the Bureau will give ETCs at least 45 days after release of the Public Notice to submit applications for the Pilot Project.

335. To afford Tribes an increased opportunity to participate in the Pilot Program, in recognition of their interest in self-government and self-provisioning on their own lands, we will permit a Tribally-owned or controlled entity to submit a Pilot Program proposal for the geographic area defined by the boundaries of the Tribal land associated with the Tribe that owns or controls the entity as long as the Tribally-owned or controlled entity has an application for ETC designation pending at the time it submits its proposal.<sup>912</sup> We note that allowing such entities to submit applications for the Pilot Program in no way prejudices the ultimate decision on a Tribally-owned or controlled entity's ETC designation or whether it will be chosen as a project for the Pilot Program. Support would be disbursed only after the carrier receives its ETC designation.<sup>913</sup>

#### **b. Data Gathering and Sharing**

336. Numerous commenters noted the importance of using the Pilot Program to collect and share robust data.<sup>914</sup> Therefore, to be eligible for funding, ETCs seeking to participate in pilot projects must commit to robust data gathering as well as analysis and sharing of the data. Applicants will be expected to explain what types of data they intend to gather and how they intend to gather that data. There will be standardized data elements, formatting and submission requirements for all of the participating ETCs outlined in the Public Notice that will detail the application procedures. Service providers need not commit to conducting all data gathering and analysis functions "in house," however. As discussed in section IX.B.3.f below, we authorize administrative expenses from the Fund to perform data gathering and analysis functions. Funded projects must seek participating subscribers' consent to share information about their experiences with the Commission, public utility commissions in states that host pilot projects, Tribal governments hosting pilot projects and other stakeholders, and must provide such subscriber information in anonymized form. The Commission plans to make this data public for the benefit of all interested parties, including third parties that may use such information for their own studies and observations.

#### **c. Duration of Pilot Program**

337. In order to garner useful data without delay, we direct the Bureau to fund the pilot projects for up to 18 months from the time the Bureau announces the selection of the pilot projects, and expect the projects to be substantially completed at the end of that time, with interim reporting as discussed in IX.B.3.b.<sup>915</sup> We expect each project to offer 12 months of reduced-price voice and broadband services or standalone broadband to the consumers served in the pilot, unless the pilot is specifically designed to test a shorter duration, and that design element is clear in the proposal made to

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<sup>912</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 491 (affording Tribes a similar opportunity in the Mobility Fund auction).

<sup>913</sup> A Tribally-owned or controlled entity that does not obtain and provide the required ETC designation will not be entitled to any support payments and may ultimately be in default in accordance with the rules. See 47 C.F.R. § 54.1005(b)(3)(v); 47 C.F.R. § 1.21004.

<sup>914</sup> See, e.g., EDNet Comments at 10-12 (emphasizing importance of requiring carriers to collect data); Benton/NAF PN Comments at 9-11 (proposing an open process that ultimately makes available anonymized raw data).

<sup>915</sup> Although the Pilot Program will officially end after 18 months, we encourage ETCs to set up their projects so that they can follow the low-income subscribers beyond the end of the funding for the project, and we direct the Wireline Competition Bureau when deciding which projects to fund to give preference to well designed projects that commit to collecting and sharing longer term data about the subscribers that participated in the projects.

the Commission. We recognize, however, that some projects may require additional time to implement, as well as several months to finalize the collection and analysis of the data the projects generate. We therefore authorize the Bureau to grant up to six additional months for projects to startup and wind down provided that no project may offer more than 12 months of reduced-price services.

338. 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 benefits of broadband.<sup>916</sup> Proposals to provide reduced voice and broadband services for less than 12 months should include a commitment to track and report data on adoption and retention for a minimum of 12 months so that the Commission can evaluate whether consumers drop service when the subsidy is eliminated or reduced.

#### d. Services to Be Supported

339. In order to encourage consumer participation in this Pilot Project, all projects must support services meeting the criteria set forth in this section.

340. *Bundled and Standalone Services.* As discussed in section IX.B.3, we conclude that sections 254 and 706 authorize us to fund bundled voice and broadband services as well as standalone broadband services as part of a discrete, time-limited Pilot Program structured to determine how best to bring the low-income program into the digital age.<sup>917</sup> We therefore direct the Bureau to select Pilot Program applicants that agree to offer voice services bundled with broadband or standalone broadband service. We expect that pilot participants will seek a monthly Lifeline subsidy equal to whatever subsidy the ETC would be entitled to for a voice-only subscriber, plus whatever additional amount that the ETC proposes to offer consumers as part of the pilot program. In its application, the ETC will propose how much support it should receive for each broadband service subscriber.

341. *Broadband Speed.* Consumers should have access to broadband that is capable of enabling the kinds of key applications that drive our efforts to achieve universal broadband, including education (e.g., distance/online learning),<sup>918</sup> healthcare (e.g., remote health monitoring),<sup>919</sup> and person-to-person communications (e.g., VoIP or online video chat with loved ones serving overseas).<sup>920</sup> In the *USF/ICC Transformation Order and FNRPM*, we established 4 Mbps downstream and 1 Mbps upstream as a broadband speed benchmark at fixed locations for CAF recipients.<sup>921</sup> We further established speeds for recipients of Mobility Fund Phase I support deploying current generation, also known as third generation or 3G, or next generation, also known as fourth generation or 4G, mobile networks.<sup>922</sup> In

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<sup>916</sup> See June 2010 Roundtable Public Notice.

<sup>917</sup> See, e.g., Consumer Groups PN Comments at 5; Budget/Great Call/UCC PN comments at 1-2; CA PUC PN Comments at 6-7; Cox PN Comments at 8-12; GCI PN Comments at 2; MMTC PN Comments at 3; NASUCA/NJ PN Comments at 6; SBI PN Comments at 10.

<sup>918</sup> See NATIONAL BROADBAND PLAN at 223-44.

<sup>919</sup> See, e.g., Omnibus Broadband Initiative, *Health Care Broadband in America, Early Analysis and a Path Forward*, at 5 (Aug. 2010); Center for Technology and Aging, *Technologies for Remote Patient Monitoring for Older Adults*, Position Paper, at 13 (Apr. 2010), available at <http://www.techandaging.org/RPMPositionPaper.pdf> (discussing data transmission methods used for various continuous cardiac remote patient monitoring technologies).

<sup>920</sup> See NATIONAL BROADBAND PLAN at 223-244.

<sup>921</sup> See *USF/ICC Transformation Order and FNRPM*, FCC 11-161 at paras. 92-5; see NATIONAL BROADBAND PLAN at 135-36 (recommending the Commission to establish minimum broadband speed goal of 4 Mbps for downloads and 1 Mbps for uploads).

<sup>922</sup> See *USF/ICC Transformation Order and FNRPM*, FCC 11-161 at paras. 359-364.

particular, the minimum standard for 3G networks requires supported mobile service providers to offer mobile transmissions to and from the network meeting or exceeding the following minimum standards: outdoor minimum of 200 kbps downstream and 50 kbps upstream to handheld mobile devices. For 4G networks, we required the following minimum standards: outdoor minimum of 768 kbps downstream and 200 kbps upstream to handheld mobile devices. These minimum data rates should be achievable in both fixed and mobile conditions, at vehicle speeds consistent with typical speeds on the roads covered and must be achieved throughout the cell area, including at the cell edge. We adopt these benchmarks for purposes of the Pilot Program as well, meeting the CAF benchmarks for fixed service, 3G benchmarks on 3G networks, and 4G benchmarks on 4G networks.<sup>923</sup> However, we recognize there are many areas of the country where low-income consumers do not yet have access to networks that can provide such speeds, either for fixed or mobile services.<sup>924</sup> We also recognize that there is typically a trade-off between the performance of broadband service and its cost to consumers, and note that some commenters support enabling low-income consumers to use a Lifeline subsidy for slower broadband speeds.<sup>925</sup> An offering that includes a broadband service below the speed benchmarks to the extent that it is less expensive, potentially could draw more Lifeline-eligible consumers.<sup>926</sup> In light of the challenges of offering higher speeds in some areas and on some networks, and the benefits of more fully understanding consumer choices in the Pilot Program, we provide the Bureau discretion to select some projects that offer broadband at speeds below the benchmark, but only upon careful consideration of the justification for providing lower speeds. Such a justification should at a minimum show that the project would contribute data that would be comparably useful in our efforts to understand how Lifeline can best help overcome barriers to broadband adoption.

342. *Latency and Capacity.* The *USF/ICC Transformation Order and FNPRM* required ETCs to offer sufficiently low latency to enable use of real-time applications, such as VoIP, and concluded that any usage limitations imposed by an ETC on its USF-supported broadband offerings must be reasonably comparable to usage limits for comparable broadband offerings in urban areas.<sup>927</sup> We expect Pilot Project participants to offer services with similar characteristics to low-income consumers. In particular, we require participants to offer usage limits that are reasonably comparable to usage limits for comparable broadband offerings in urban areas. We direct the Bureau to require applicants that propose to limit data usage on their offerings to specify the size of usage limits, and explain how subscribers will be notified when they reach their limits and the consequences to a subscriber of exceeding such usage limits.

#### e. Consumer Qualifications

343. *Consumer Eligibility To Participate in Pilot Projects.* The *Lifeline and Link Up NPRM* and *Public Notice* both sought comments on whether to allow broadband pilot projects to deviate from the federal default rules with regard to consumer eligibility for the Lifeline/Link Up programs.<sup>928</sup> We

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<sup>923</sup> As noted in the *USF/ICC Transformation Order and FNPRM*, examples of 3G networks are EV-DO, EV-DO Rev A, UMTS/HSPA, while examples of 4G networks are HSPA+ or LTE. *Id.* at para. 334.

<sup>924</sup> See *id.* at paras. 93-95; *Sixth Broadband Progress Report*, 25 FCC Rcd 8011-12, para. 5; *Seventh Broadband Progress Report*, 26 FCC Rcd 8008, 8019, para. 15; see also Budget PN Comments at 2-3 (explaining that speeds of 4 Mbps/1Mbps are unrealistic in some Tribal lands, areas of mountainous terrain, and Puerto Rico); GCI PN Comments at 4-5 (noting that 4 Mbps/1Mbps speeds are not affordable in many areas, including Alaska).

<sup>925</sup> See, e.g., GCI PN Comments at 5.

<sup>926</sup> Participants in “Connect to Compete” will offer consumers a minimum of download speeds up to 1 Mbps, while some may receive faster speeds.

<sup>927</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 96-100 (fixed); 363-64 (mobile).

<sup>928</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2832-33, para. 202; *Lifeline and Link Up Public Notice*, 26 FCC Rcd 11099-11100, para. 1. A significant number of commenters urged the Commission to set the income-eligibility (continued....)

recognize that the need to increase broadband adoption does not start and stop with consumers who are eligible for the Lifeline program. However, by definition, Lifeline must focus its resources on qualifying low-income consumers. Moreover, consistent and uniform eligibility rules applicable to both the Pilot Program and the program will control administrative costs associated with the pilots and help the Commission to more easily compare results from different pilot projects.<sup>929</sup> Therefore, we require that all pilot projects use the federal criteria for low-income consumer eligibility as modified in this Order.

344. *New Adopters.* One important variable to test during the Pilot Program is the extent to which discounts on the cost of broadband services may induce broadband adoption among those who do not currently subscribe to broadband. For that reason, we direct the Bureau to ensure that all of the projects selected provide services that focus on qualifying households that do not currently subscribe to broadband services.<sup>930</sup> We do this to focus on the goal of increasing broadband adoption by low-income consumers. We conclude that using the Pilot Program to subsidize broadband services purchased by consumers who have already adopted such services will not provide us with sufficient and useful data about whether such subsidies increase adoption.

#### f. Use of Pilot Program Funds

345. Consistent with the Lifeline program, we expect that the primary use of Pilot Project funds will be to provide discounts to qualifying consumers for recurring and non-recurring fees. Additionally, we authorize a portion of funds to be used to execute necessary program administrative functions.

346. *Recurring/Nonrecurring Fees for Broadband.* To test various subsidy levels, we will not require that ETCs impose minimum or maximum monthly fees for each project. However, to ensure there is a commitment by consumers to utilize the service, we direct the Bureau to give preference to those projects that impose at least a minimal charge, either one-time or on an ongoing basis, for the low-income consumer to participate in the project.<sup>931</sup> We acknowledge that many ETCs charge a non-recurring activation fee for broadband services and will consider proposals that include reimbursement for such fees.<sup>932</sup> As with the current program, the full amount of the subsidies must be passed on to the participating subscribers.

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threshold for consumers participating in the Pilot Program at 150 percent of FPG. *See, e.g.,* Benton/PK/UCC Comments at 10; Consumer Groups PN Comments at 4, 6; CA PUC PN Comments at 4; GRTI PN Comments at 9-10; MMTCC PN Comments at 2; NASUCA/NJ PN Comments at 5-6; SBI PN Comments at 10; Joint Center, PN Reply Comments at 4. Still other commenters argued that the Commission should apply the existing voice eligibility criteria of 135 percent of FPG to broadband. *See, e.g.,* Cox PN Comments at 9.

<sup>929</sup> Letter from Steven F. Morris, National Cable & Telecommunications Association, GN Dkt. No. 09-51 *et al.*, (filed Dec. 4, 2009).

<sup>930</sup> We recognize that some participants might currently subscribe to a 3G wireless service but do not subscribe to fixed residential broadband, which would not preclude them from participating in the Pilot Program; *see supra* section VI.B (codifying a one-per-household requirement).

<sup>931</sup> The subsidy amount within each project will apply to the lowest publicly available promotional rate that the ETC offers for broadband, with the same speeds, to consumers in the same geographic market at the time the ETCs submit their applications for the Pilot Project.

<sup>932</sup> *See, e.g.,* Windstream Internet service, available at <http://www.windstream.com/Free> (last visited on Jan. 3, 2011); Centurylink Internet service, available at <http://embarq.centurylink.com/embarq/assets/disclaimers/resDisclaimers.html> (last visited on Jan. 3, 2011). Any reimbursements for non-recurring fees in the Pilot Program are separate and apart from the Link Up program that the Commission is eliminating as described in section VII.C.

347. *Administrative Costs.* To allow for uniform collection of data from consumer and carrier surveys and other related program administrative costs, the Fund may be used to administer such functions as are necessary, including costs associated with conducting surveys of pilot participants and analyzing data.

348. *Equipment.* As the Commission recognized in the *Lifeline and Link Up NPRM*, the expense of consumer equipment necessary to access the Internet (including computers or other devices) has been shown to be a major barrier to broadband adoption, particularly for low-income households.<sup>933</sup> At the same time, as the Commission acknowledged in the *Lifeline and Link Up NPRM*, historically the Fund has been used for services not equipment.<sup>934</sup> The Commission therefore sought comment on how the Pilot Program could test the impact of a variety of equipment discount programs in encouraging broadband adoption.<sup>935</sup>

349. There is evidence in the record that lack of access to affordable equipment, including computers, smart phones, air cards, and modems is a significant barrier to broadband adoption among low-income consumers,<sup>936</sup> and we therefore conclude that projects should incorporate this consideration into their plans. We encourage Pilot Program applicants – directly or in partnership with other entities – to provide no-cost or low-cost devices to participants in their pilot project, and direct the Bureau to consider the extent to which pilot projects provide access to equipment when deciding which projects to fund.<sup>937</sup> However, in keeping with the Commission’s historic approach to using the Fund, we will not subsidize equipment purchases as part of the pilot program.<sup>938</sup>

#### **g. Other Factors To Be Considered**

350. *Diversity of Data.* The *Lifeline and Link Up NPRM* sought comment on how best to design the Pilot Program in order to gather as much useful data as possible.<sup>939</sup> We recognize that there is a tension between the need to limit the number of variables examined in order to ensure that the data gathered is comparable and useful and the desire to examine as many facets of the issue as possible. Given the potential variety of proposed projects and the goal of finding the best way to use program funds to encourage low-income consumers to adopt and use broadband services, we direct the Bureau to select projects that will maximize the useful information available regarding the impact of variations in the

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<sup>933</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd. at 2853, para. 268.

<sup>934</sup> *Id.* at 2857, para. 282.

<sup>935</sup> *Id.* at 2857-58, paras. 282-283.

<sup>936</sup> Commenters agreed that lack of access to affordable equipment is a major barrier to broadband adoption among low-income consumers, and offered data supporting that proposition. *See, e.g.*, Cox Comments at 4 (providing data demonstrating that one of the most significant barriers to broadband adoption is the lack of necessary equipment). Cox’s internal research shows that approximately 70 percent of the low-income consumers in Cox’s market do not have computers. *See id.*

<sup>937</sup> The Public Notice asked about whether we should seek to test the impact of consumers using leased versus purchased equipment. *Lifeline and Link Up Public Notice*, 26 FCC Rcd at 11099-11100, at para. 1.c. A number of consumer groups expressed concerns the Commission would encourage consumers to lease computers. *See* Consumer Groups PN Comments at 7-8. The groups pointed out that computer leasing has often proved to be financially detrimental to consumers and could lead to abusive equipment lending schemes. *Id.*

<sup>938</sup> *Compare* GRTI PN Reply Comments at 2 (arguing that sections 254(b)(2) and (b)(3) of the Communications Act give the Commission authority to take necessary action to increase “access to services” and subsidizing equipment costs will increase access to broadband services); *with* Cox PN Comments at 6-7 (urging the Commission to use its ancillary authority to support computer equipment and training).

<sup>939</sup> *Lifeline and Link Up NPRM*, at 2856-65, paras. 279-312.

subsidy level, the amount of time the subsidy is made available, and whether different approaches are warranted based on consumer demographics or geography.<sup>940</sup> Proposals are not, however, limited to examining these factors, and may seek funding for one or more models of providing broadband service to low-income consumers, including variations on technology used and program design (e.g., utilizing different techniques to combine discounts on service with efforts to address other barriers to broadband adoption such as digital literacy).<sup>941</sup> In addition, in light of the extremely low broadband penetration rate on Tribal lands, we direct the Bureau, in coordination with the Office of Native Affairs and Policy, to select at least one pilot project directed at providing support on Tribal lands.<sup>942</sup> If the Bureau determines that a single or small number of proposals provide the best opportunity to gather data consistent with the guidelines set forth in this Order, the Bureau should select only that set of proposals for funding.

351. *Digital Literacy.* The National Broadband Plan and subsequent research have identified the lack of digital literacy among low-income Americans as a major barrier to broadband adoption.<sup>943</sup> 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. Therefore the *Lifeline and Link Up NPRM* proposed that pilot projects be prepared to experiment with different approaches to overcoming digital literacy barriers to broadband adoption.<sup>944</sup> In the *FNPRM* accompanying this Order, we propose to provide support for digital literacy training and seek comment on dedicating a certain amount of annual funding for training at libraries and schools that do not currently offer this service in order to help these institutions develop ways to reduce the digital literacy skills gap and to assist Americans who have not yet adopted broadband technology gain the necessary digital skills.<sup>945</sup>

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<sup>940</sup> One Economy recommended three possible pilot designs: one involving a 4G public-private partnership focused on a selected metropolitan area; one involving a reverse auction pilot; and one providing shared wireless service in multi-dwelling units identified by HUD as being affordable housing. See One Economy Comments at 22-25. We welcome projects aimed at studying adoption among varied groups of low-income consumers.

<sup>941</sup> One commenter suggested that Pilot Program funds be directed at low-income consumers in Puerto Rico. See Letter of Colleen Newman, Strategic Policy Advisor, Puerto Rico Federal Affairs Administration, to Marlene H. Dortch, Secretary, Federal Communications Commission, (filed Nov. 17, 2011). Still another commenter suggested that Pilot Program funds be directed at low-income consumers who are blind or visually impaired. See Cintex PN Reply Comments at 1-2. There was general agreement that any broadband pilot program should be geographically diverse, and technology-neutral, and should be flexible enough to allow different pilots to test different elements of a pilot program. See Benton Comments at 6; see also AT&T Comments at 22-23. As one commenter noted, “[p]ilot programs, by definition, are expected to be experimental and exploratory. As the Commission seeks to determine what the best path forward is, it must assess the widest range of models, strategies, and networks, and other components.” NAF Comments at 9.

<sup>942</sup> Some commenters suggested that some Pilot Program funds be directed at low-income consumers residing on Tribal lands. See, e.g., SBI Comments at 6-7; GRTI PN Comments at 7; Standing Rock PN Comments at 10-11.

<sup>943</sup> See EXPLORING THE DIGITAL NATION (noting that level of education is a strong predictor of broadband use among adults); SOCIAL SCIENCE RESEARCH COUNCIL, BROADBAND ADOPTION IN LOW-INCOME COMMUNITIES, available at [http://webarchive.ssrc.org/pdfs/Broadband\\_Adoption\\_v1.1.pdf](http://webarchive.ssrc.org/pdfs/Broadband_Adoption_v1.1.pdf) (Mar. 2010).

<sup>944</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2858, para. 284.

<sup>945</sup> See *infra* section XIII.B (Advancing Broadband Availability for Low-Income Americans through Digital Literacy Training).

352. *Partnerships.* The Commission sought comment on whether to require funded ETCs to partner with entities approved by the NTIA's State Broadband Data & Development (SBDD) Program.<sup>946</sup> We direct the Bureau to give preference in the selection process to ETCs that partner with non-ETCs in designing and implementing proposals that include components involving digital literacy and equipment.<sup>947</sup> In particular, we believe ETCs should consider partnering with successful BTOP/BIP grantees, those involved in "Connect to Compete," existing library programs or other entities currently providing broadband adoption and education services to low-income consumers in order to develop pilot projects that integrate federal universal service support into existing or planned adoption efforts.<sup>948</sup>

353. We recognize the importance of digital literacy in encouraging broadband adoption and in providing the tools consumers need to fully explore and exploit the benefit of having broadband services.<sup>949</sup> Indeed, as discussed above, the "Connect to Compete" program recently announced includes a substantial digital literacy component.<sup>950</sup> Therefore, we strongly encourage applicants for Pilot Program funding to explore cost-effective ways to incorporate existing digital literacy programs into their pilot programs and to include in their proposals a plan for overcoming digital literacy barriers.<sup>951</sup>

## 2. Pilot Project Data Gathering and Evaluation

354. During the Pilot Program and at its conclusion, the Bureau will hold workshops discussing the interim and final results of the various projects as well as the Pilot Program as a whole, and provide an opportunity for participants to share information with the Commission, other policy makers, and stakeholders about how best to use limited universal service funds to increase low-income consumers' adoption of broadband services. Funded projects must commit to participate in those

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<sup>946</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2860-61, para 284. 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. 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. 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. *See id.* at para. 295.

<sup>947</sup> We received a wealth of comments discussing the importance of partnerships-- public-private partnerships, private-non-profit partnerships; and federal-state partnerships -- in finding ways to speed broadband adoption among low-income consumers and we received comments from entities, including state and local governments, nonprofit groups, academics, and others, that are not ETCs describing their own work or work of third parties that could add substantial value to ETC-led pilot projects. *See, e.g.*, Benton/NAF PN Comments at 5-6; Cox PN Comments at 9-10; Connected Living PN Comments at 1-2; LISTA PN Comments at 1-2.

<sup>948</sup> The Commission will plan to publicly recognize those multi-stakeholder partnerships, and their members, that successfully integrate federal universal service support with digital literacy programs to increase broadband adoption.

<sup>949</sup> A number of commenters also stressed that digital literacy is a significant barrier to broadband adoption and stressed the need to include digital literacy in pilot projects. *See, e.g.* Connected Living PN Comments at 2; Cox PN Comments at 6-7; Joint Center PN Reply Comments at 7; USTelecom Comments at 25. There was disagreement among the commenters, however, about whether the Commission can and should use USF funds to pay for digital literacy training. *See* GRTI PN Comments at 4-5; *see also* Cox PN Comments at 4-7.

<sup>950</sup> *See generally* <http://connect2compete.org/>; *see also* FCC & "Connect to Compete" Tackle Broadband Adoption Challenge Through Expanded Digital Literacy Training, Fact Sheet (Oct. 12, 2011) (Connect to Compete Digital Literacy Fact Sheet), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db1012/DOC-310346A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1012/DOC-310346A1.pdf).

<sup>951</sup> *See, e.g.*, One Economy Comments at 9 (recognizing the benefits of partnerships between private and nonprofit sectors); *see* Connected Living PN Comments (providing examples of how digital literacy programs increase adoption for seniors); MMTIC PN Comments at 4 (recognizing digital literacy as barrier to broadband adoption).



workshops and to respond to informal inquiries from the Bureau about the data gathered and the information generated by the Pilot Program.

## X. MANAGING THE SIZE OF THE LOW-INCOME FUND

355. Today's Order takes a number of substantial and unprecedented steps to eliminate waste, fraud, and abuse from Lifeline, including establishing a database to eliminate duplicative support, requiring electronic or documentary evidence of program-based eligibility, and eliminating support for services such as toll limitation and Link Up that are no longer the best uses of funds given current product offerings available in the marketplace. These reforms build on significant action the Commission has already taken to curb waste in the program. In June, the Commission directed USAC to undertake a series of in-depth data validations to identify duplicative support. Through the IDV process, now completed in 12 states, USAC examined 3.6 million customer records and directed ETCs to de-enroll over 292,000 customers receiving duplicative support, saving the Fund approximately \$35 million annually.<sup>952</sup> As explained above, the IDV process will continue and expand to additional states until the duplicates database is online, resulting in additional savings.<sup>953</sup> In addition, the Commission is actively investigating allegations that some providers have signed up subscribers who may not be eligible for Lifeline.<sup>954</sup>

356. The Joint Board recommended that the Commission develop a full record on the recent growth in low-income program support.<sup>955</sup> In the *NPRM*, the Commission sought comment generally on how to balance the principles of deterring waste, fraud, and abuse with the need to enable households in economic distress to access essential communications services.<sup>956</sup> Specifically, the Commission sought comment on whether and how it should constrain the growth of the Fund.<sup>957</sup>

357. As the reforms adopted in this Order take effect, they will substantially constrain program growth. Program disbursements have reached a \$2.1 billion annual rate.<sup>958</sup> We project that, absent the reforms adopted in this Order, the program would disburse \$3.3 billion in 2014, a 57 percent increase over three years.<sup>959</sup> With today's reforms, we project program growth will start declining in 2012 and

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<sup>952</sup> See *USAC 2011 IDV Process Letter*.

<sup>953</sup> See *supra* para. 211.

<sup>954</sup> See *Lifeline Enforcement Advisory*, DA 11-1971.

<sup>955</sup> See *2010 Joint Board Recommended Decision*, 25 FCC Rcd 15598, at 15630, para. 91.

<sup>956</sup> 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 (10<sup>th</sup> Cir. 2005).

<sup>957</sup> *NPRM* at 2817-18, paras. 143-45.

<sup>958</sup> \$2.1 billion is equal to approximately four times the average quarterly run rate of disbursements for the fourth quarter of calendar year 2011 as calculated by USAC (\$502 million) and staff’s projections for disbursements for the first quarter of calendar year 2012 (\$547 million). See *USAC Jan. 30 Support Letter*; n. 959.

<sup>959</sup> This estimate is arrived at by starting with a baseline estimate of program disbursements for 2012 in the absence of this Order’s reforms. Based on growth trends in disbursements in 2011, during which the quarter over quarter growth in disbursements declined from 13 percent (Q1-Q2) to 11 percent (Q2-Q3) to 9 percent (Q3-Q4). Staff conservatively assumed that disbursements would grow nine percent from the fourth quarter of 2011 to the first quarter of 2012, and seven percent quarterly for the rest of 2012. See *USAC Q1 2012 Filing*, Appendices at LI04 (continued....)

turn negative in 2013, reducing Lifeline disbursements so that by 2014 the program will be at or below its current size of approximately \$2.1 billion annually.<sup>960</sup> The reforms we adopt in this Order will save up to

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(Continued from previous page)

(Quarterly Low-Income Disbursement Amounts by Company (3Q 2011), *available at*

[http://www.usac.org/about/governance/fcc-filings/2012/Q1/LI04-](http://www.usac.org/about/governance/fcc-filings/2012/Q1/LI04-Quarterly%20Low%20Income%20Support%20Disbursement%20Amounts%20by%20Company-%203Q2011.xlsx)

[Quarterly%20Low%20Income%20Support%20Disbursement%20Amounts%20by%20Company-%203Q2011.xlsx](http://www.usac.org/about/governance/fcc-filings/2012/Q1/LI04-Quarterly%20Low%20Income%20Support%20Disbursement%20Amounts%20by%20Company-%203Q2011.xlsx);

USAC Q4 2011 Filing, Appendices at LI04 (Quarterly Low-Income Disbursement Amounts by Company (2Q 2011)

*available at* [http://www.usac.org/about/governance/fcc-filings/2011/Q4/LI04%20-](http://www.usac.org/about/governance/fcc-filings/2011/Q4/LI04%20-%20Quarterly%20Low%20Income%20Support%20Disbursement%20Amounts%20by%20Company%20-%202Q2011.xlsx)

[%20Quarterly%20Low%20Income%20Support%20Disbursement%20Amounts%20by%20Company%20-%202Q2011.xlsx](http://www.usac.org/about/governance/fcc-filings/2011/Q4/LI04%20-%20Quarterly%20Low%20Income%20Support%20Disbursement%20Amounts%20by%20Company%20-%202Q2011.xlsx);

*USAC Jan. 30 Support Letter* (providing actual 2011 Q4 disbursements). Based on these

assumptions, staff estimated disbursements would reach \$547 million in Q1 2012 (a nine percent increase from the

\$502 million in actual support disbursed in Q4 2011) and \$2.4 billion by the end of 2012. \$2.4 billion represents

approximately 18.5 million subscriptions, of which approximately 5.3 million would represent either duplicate

subscriptions or ineligible subscribers. *See supra* para 102 and accompanying footnotes (explaining calculation of

ineligible consumers); *Jan. 10 IDV Letter* (describing the extent to which individuals and households are receiving

duplicative support). Based on the Current Population Survey) for the number of consumers receiving one of the

benefits that qualify consumers for Lifeline, staff estimated that there are approximately 32.6 million eligible

subscribers, suggesting that, not counting ineligible and duplicates, approximately 13.2 million subscriptions in

2012 would constitute a take rate for Lifeline of approximately 41 percent. *See UNITED STATES CENSUS BUREAU,*

*CURRENT POPULATION SURVEY, CPS March Supplement, available at*

[http://www.bls.census.gov/cps\\_ftp.html#cpsmarch](http://www.bls.census.gov/cps_ftp.html#cpsmarch).

For 2013 and 2014, staff used additional data to project from the 2012 baseline an estimated fund size in the absence of reform of approximately \$2.8 billion in 2013, and \$3.3 billion in 2014. To derive these estimates, staff assumed that competition, marketing, and expansion of operators offering prepaid wireless Lifeline service would cause the subscriber take rate (not counting duplicates and ineligible) to increase from 41 percent in 2012 to 46 percent and 51 percent in 2013 and 2014, respectively. In addition, staff made the conservative assumption that from 2013-2014, absent reforms, the share of ineligible subscribers would remain at 15 percent (as was the case in 2012) and the duplicate rate would increase to 19 percent in 2013 and 22 percent in 2014, due to several factors, including the continued use of self-certification for program-based eligibility and the lack of a database for preventing duplicates. Furthermore, staff estimated that the eligible population for Lifeline would stay roughly constant at 32.6 million from 2012 to 2014, reflecting the combined effect of an improving economy and a growing U.S. population. Staff's estimates of the eligible population are based on (1) the Congressional Budget Office's projection that the unemployment rate will decline from 9.1 percent in 2011 to 8.3 percent in 2014, from which staff estimated that the poverty rate would decline 3 percent from 2011 to 2014; and (2) Census estimates of past household growth nationwide from which staff projected continued household growth of 1.1 percent annually. *See CBO, THE BUDGET AND ECONOMIC OUTLOOK, AN UPDATE at 73 (Aug. 2011), available at* <http://www.cbo.gov/ftpdocs/123xx/doc12316/08-24-BudgetEconUpdate.pdf>); CENSUS, CURRENT POPULATION REPORTS, PROJECTIONS OF THE NUMBER OF HOUSEHOLDS AND FAMILIES IN THE UNITED STATES: FROM 1995 TO 2010 at 7 (1996) *available at* <http://www.census.gov/prod/1/pop/p25-1129.pdf>

<sup>960</sup> Staff estimated the impact of the reforms as follows: (1) in 2012, reforms are projected to eliminate 10 percent of total duplicate and ineligible consumers, and by the end of 2013, nearly all duplicate and ineligible consumers will be removed (we expect that the savings will accelerate as the reforms are implemented over the next three years); (2) the combined effect of requiring electronic or documentary evidence of initial eligibility along with annual recertification for all subscribers is expected to result in the subscriber take rate (not counting duplicates or ineligible) increasing from 41 percent in 2012 to 43 percent in 2013 and 45 percent in 2014; (3) Link Up support is eliminated for all subscribers except Tier-4 subscribers initiating service with an ETC that also receives high-cost funding; and (4) \$25 million is budgeted for the broadband pilot program from Q1 2012 to Q3 2013. Combining the impacts of all these reforms, staff estimated the size of the Lifeline fund as approximately \$2.1 billion in 2014.

an estimated \$2 billion over the next three years.<sup>961</sup>

358. As part of today's comprehensive reform to eliminate waste, fraud, and abuse, we adopt a savings target of \$200 million for 2012—that is, we expect to realize \$200 million in savings in 2012 versus the program's status quo path in the absence of reform. We direct the Bureau to closely monitor the impact of the reforms adopted today in meeting that savings target, and to provide each Commissioner a report no later than the first anniversary of the adoption of this Order evaluating the impact of today's reforms; determining whether the reforms have succeeded in meeting the savings target; and, if they have not, analyzing the causes, providing options for realizing those savings, and making specific recommendations for corrective action to realize those savings. Such recommendations may include accelerating the development of the database capabilities for duplicates and eligibility, as well as a possible reduction of the monthly support amount ETCs receive. The Bureau shall also provide to each Commissioner an interim report no later than six months from the adoption of this Order analyzing the reforms' progress in meeting the savings target. Both reports shall be made available for public input on the Commission's website.

359. In addition to the fundamental overhaul of the program we begin today, the Commission is addressing in the *FNPRM* the key question of the appropriate monthly support amount for the program, among other issues. We find that at this time, it is appropriate for us to review how the reforms impact the size of the Fund and whether our assumptions and projections are accurate, whether growth of the Fund is impacted by changes in macroeconomic conditions and the number of consumers who seek to initiate Lifeline service, and the impact of competitive Lifeline offerings on the program. With the information we will gather in the next year as a result of the reforms and in response to the Further Notice, and from the Bureau's reports described in the previous paragraph, we fully expect to have the information needed to determine an appropriate budget for the program and its appropriate duration. We will be in a position to take into account the program's goals—ensuring availability of communications service to low-income Americans, and minimizing the contribution burden on consumers and businesses—and the Commission's review of the effects of the reforms adopted in this Order; the effects of any further reforms and modernization of the program, including adoption of proposals in the *FNPRM*; and changes in the economy. In doing so, the Commission may consider linking the size of the monthly support amount to a communications price index as one way to constrain the size of Lifeline, as discussed in the *FNRPM*.

360. During this interim period between the adoption of today's Order and the Commission's decision regarding an appropriate budget, we strongly discourage ETCs from enrolling ineligible subscribers or taking other actions (or failing to take actions) that enable or exacerbate waste, fraud, and abuse in the program. We note that today's Order largely eliminates Link Up based in part on our conclusion that Link Up has become too susceptible to abuse and provides perverse incentives to ETCs. We will be particularly vigilant over the coming year to ensure such problems do not persist or arise elsewhere in the program.

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<sup>961</sup> Considering the impacts of the reforms (including the one-time shift in 2012 to reimbursements based on actual subscriber counts), staff estimated the size of the Lifeline fund as \$2.2 billion, \$2.2 billion, and \$2.0 billion in 2012, 2013, and 2014, respectively. Thus, because of the reforms in the program, up to \$2 billion less will be spent on the Lifeline program by 2014 than would have been the case in the absence of reforms. *See also*, Tracfone Nov. 10 *ex parte* Letter, Attach. at 3 (arguing that verification of ID, the minimization of Link Up, annual 100 percent verification and non-usage requirements would result in an annual savings of \$760 million); Nexus Oct. 25 *ex parte* letter at 2 (supporting Tracfone's savings estimates).

## XI. ELIGIBLE TELECOMMUNICATIONS CARRIER REQUIREMENTS

### A. Facilities-Based Requirements for Lifeline-Only ETCs

#### 1. Background.

361. To be eligible for federal universal service support, the Act provides that an ETC must offer the services supported by federal universal service support mechanisms throughout a service area “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”<sup>962</sup> In the *Universal Service First Report and Order*, the Commission interpreted this to mean that a carrier “must use its own facilities to provide at least one of the supported services,” but did not specify or define the amount of its own facilities a carrier must use.<sup>963</sup> The Commission clarified, however, that “a carrier that serves customers by reselling wholesale service may not receive universal service support for those customers that it serves through resale alone.”<sup>964</sup> It interpreted the term “facilities” to mean “any physical component of the telecommunications network that are used in the transmission or routing of the services that are designated for support.”<sup>965</sup> As such, pursuant to the Act as interpreted by the Commission, a carrier’s facilities that are not being used to route or transmit USF supported services do not qualify as “facilities” to meet the ETC requirements in section 214(e)(1)(A).<sup>966</sup>

362. In 2005, the Commission agreed to conditionally forbear from the own-facilities requirement for the limited purpose of allowing TracFone to participate in the federal Lifeline program and receive Lifeline-only support.<sup>967</sup> By receiving forbearance, TracFone was able to apply for and become an ETC for Lifeline-only support. The Commission subsequently granted conditional forbearance from the facilities requirement for Lifeline support to several other carriers, but refused to extend this forbearance for Link-Up support, finding that such carriers had not demonstrated that doing so was in the public interest.<sup>968</sup> In the most recent forbearance orders, the Commission conditioned forbearance on carriers meeting several 911 and E911 obligations as a precaution to ensure that a lack of facilities would not impair emergency services.<sup>969</sup> Other conditions have focused on preventing waste, fraud, and abuse of universal service funding.<sup>970</sup>

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<sup>962</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>963</sup> See *USF First Report and Order* at 8871, para. 169.

<sup>964</sup> *USF First Report and Order* at 8873, para. 174.

<sup>965</sup> 47 C.F.R. § 54.201(e).

<sup>966</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>967</sup> See *TracFone Forbearance Order*.

<sup>968</sup> See *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*, WC Dkt. No. 09-197, CC Dkt. No. 96-45, Order, 25 FCC Rcd 10510 (2010) (“*Global Forbearance Order*”); *Conexions ETC Order*; *PlatinumTel Forbearance Order*. The Commission has pending before it several petitions seeking forbearance from the facilities requirement. See, e.g., American Broadband and Telecommunications Petition for Forbearance, WC Dkt. No. 09-197 (filed Feb. 25, 2011); Petition for Forbearance of Millennium 2000, Inc., WC Dkt. No. 09-197 (filed Apr. 12, 2011); Petition for Forbearance of North American Local, LLC, WC Dkt. No. 09-197 (filed Apr. 27, 2011); Total Call Mobile, Inc. Petition for Forbearance, WC Dkt. No. 09-197 (filed May 25, 2011); Petition of Airvoice Wireless, LLC, WC Dkt. No. 09-197 (filed Sept. 13, 2011).

<sup>969</sup> See *TracFone Forbearance Order*, 20 FCC Rcd at 15101–02, paras. 15–16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390–91, paras. 21–23; *PlatinumTel Forbearance Order*, 26 FCC Rcd at 13793–94, paras. 12–14.

<sup>970</sup> See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15102–03, paras. 17–18; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3393, para. 29; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *PlatinumTel Forbearance Order*, 26 FCC Rcd at 13794–96, paras. 17–18. In granting forbearance from the facilities requirement (continued....)

363. In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether it should forbear from applying the Act's facilities-based requirement to all carriers that seek limited ETC designation to participate in the Lifeline program.<sup>971</sup> In determining whether to grant a blanket forbearance, the Commission also asked whether it should adopt rules codifying any conditions it would impose on grant of forbearance, rather than imposing them on a case-by-case basis.<sup>972</sup> Section 10 of the Act requires that the Commission forbear from applying any regulation of any provision of the Act to telecommunications services or telecommunications carriers, or classes thereof, in any or some of its or their geographic markets, if the Commission determines that the three conditions set forth in section 10(a) are satisfied.<sup>973</sup>

364. In avoiding the forbearance process, some carriers seeking designation as ETCs by state commissions for the limited purpose of participating in the federal low-income program have relied on their provision of operator services and/or directory assistance to meet the ETC "facilities" requirement.<sup>974</sup> These carriers have received ETC status as facilities-based carriers because they are using their own "facilities" to provide at least one of the supported services.<sup>975</sup>

365. As noted above, in the *USF/ICC Transformation Order FNPRM*, the Commission eliminated its former list of nine supported services and amended section 54.101 of the Commission's rules to specify that "voice telephony service" is supported by federal universal service support mechanisms.<sup>976</sup> In amending section 54.101, the Commission eliminated the following functionalities as supported services: dual tone multi-frequency signaling or its functional equivalent; single-party service

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for Lifeline-only ETCs, the Commission has not approved Link Up support for any ETC. *TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*; *Conexions Forbearance Order*; *PlatinumTel et. al. Forbearance Order*.

<sup>971</sup> *Lifeline and Link Up NPRM*, at 2863, para. 306.

<sup>972</sup> *Id.*

<sup>973</sup> Specifically section 10(a) provides that the Commission shall forbear from applying such provision or regulation if the Commission determines that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers;
- (3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a).

<sup>974</sup> See, e.g., Comments of Ohio Public Utilities Commission Staff, WC Dkt. No. 09-197, WC Dkt. No. 03-109, at 9-10 (explaining how entrance of wireless carriers into the Lifeline market raises questions as to what constitutes "wireless facilities" in the ETC designation process); Reply Comments of Michigan Public Service Commission, CC Dkt. 96-45, WC Dkt. No. 09-197 at 2-3 (raising concerns on whether American Broadband and Telecommunications Company claims that it is a facilities-based ETC meets the requirements under the Act); Comments of South Carolina Office of Regulatory Staff, WC Dkt. No. 09-197, at 2-4 (arguing that Budget PrePay, Inc. should be denied Link Up support because it is not providing facilities-based wireless service).

<sup>975</sup> See *id.*; see also Letter of Kerri J. DeYoung, Counsel, MA DTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Dkt. No. 11-42 *et al.*, (filed Nov. 10, 2011) (MA DTC Nov. 10 *ex parte* Letter (reporting that in MA and elsewhere, many wireless carriers are filing ETC petitions claiming satisfaction of the facilities requirement solely by facilities used for operator services and directory assistance).

<sup>976</sup> *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 3, 78; see also revised section 54.101(a).

or its functional equivalent; access to operator services; access to interexchange service; and access to directory assistance.<sup>977</sup>

366. On December 23, 2011, the Commission affirmed that only carriers that provide voice telephony as defined under section 54.101(a) as amended using their own facilities will be deemed to meet the requirements of section 214(e)(1).<sup>978</sup> Thus, a Lifeline-only ETC does not meet the “own-facilities” requirement of section 214(e)(1) if its only facilities are those used to provide functions that are no longer supported “voice telephony service” under amended rule 54.101, such as access to operator service or directory assistance. The Commission stated that to be in compliance with the rules, Lifeline-only carriers that seek ETC designation after the December 29, 2011 effective date of the *USF/ICC Transformation Order and FNPRM*, as well as such carriers that had previously obtained ETC designation prior to December 29, 2011 on the basis of facilities associated solely with, for example, access to operator service or directory assistance, must either use their own facilities, in whole or in part, to provide the supported “voice telephony service,” or obtain forbearance from the “own-facilities” requirement from the Commission.<sup>979</sup> To avoid disruption to consumers of previously designated ETCs, however, the Commission set July 1, 2012 as the effective date of amended rule 54.101 for Lifeline-only ETCs in the service areas for which they were designated prior to December 29, 2011, to provide sufficient time to take further action related to the “own-facilities” requirement for Lifeline providers in this proceeding.<sup>980</sup>

367. Moreover, in light of the modifications to TLS adopted in this Order, TLS is no longer required to be provided except in certain specified circumstances, and no longer will be deemed a supported service. We provide support for TLS only on a transitional basis for those carriers that are required to offer TLS – namely, ETCs that charge a fee for toll calls, whether domestic or international, that is in addition to the per month or per billing cycle price of the consumer’s Lifeline service. Furthermore, we clarify that call management functionality that tracks usage for a Lifeline offering that provides a specified number of minutes for a set price does not constitute TLS. As a consequence of such actions, a carrier that formerly relied on toll-limitation facilities as its “own” facilities can no longer rely on those facilities to satisfy the facilities-based requirement in section 214, and such carriers must also obtain forbearance from this Commission.<sup>981</sup>

## 2. Discussion.

368. We forbear, on our own motion, from applying the Act’s facilities requirement of section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions noted below.<sup>982</sup> For the reasons explained below, we find

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<sup>977</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 3, 78, nn.114-115 (noting that the Commission no longer mandates that ETCs provide those services that were eliminated from the definition of USF-supported services under section 54.101, but encourages carriers to continue to offer them to customers).

<sup>978</sup> See *id.* at para. 4.

<sup>979</sup> See *id.*

<sup>980</sup> See *id.*

<sup>981</sup> See *supra* section VII.B, para. 230 (explaining how facilities that enable a subscriber to access a call center to purchase additional minutes or to pay for an international call do not constitute toll limitation facilities).

<sup>982</sup> See Section 214(e)(1)(A); see also Letter from John J. Heitmann, Link Up for America Coalition, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (filed Dec. 15, 2011) (Link Up Coalition Dec. 15, 2011 *ex parte* Letter) (describing customer impact to existing Lifeline-only ETCs if Commission does not issue blanket forbearance). Upon the effective date of this Order, we grant forbearance from the facilities requirement of section 214(e)(1)(A) of the Act and section 54.201(d)(1), (i) of the Commission’s rules, subject to (continued....)

that all three prongs of section (10)(a) are satisfied and that, as a result, the Commission will forbear from the “own-facilities” requirement contained in section 214(e)(1)(A) for carriers that are, or seek to become, Lifeline-only ETCs, subject to the following conditions: (1) the carrier must comply with certain 911 requirements, as explained below; and (2) the carrier must file, and the Bureau must approve, a compliance plan providing specific information regarding the carrier’s service offerings and outlining the measures the carrier will take to implement the obligations contained in this Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary.<sup>983</sup> The review and approval of all compliance plans is a critical element of our action today. These conditions will give the states and the Commission the ability to evaluate the Lifeline providers’ offerings to low-income consumers and adherence with program rules before such companies may receive any Lifeline funds. At the same time, this grant of forbearance will re-allocate administrative resources that would otherwise be devoted to evaluating forbearance petitions subject to a statutory timeframe, resources that can otherwise be utilized to improve and oversee the Lifeline program.

369. Since 2005, the Commission has granted forbearance eleven times to carriers seeking to participate in the Lifeline program without using their own facilities to provide service.<sup>984</sup> In each case, 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 as long as such carriers meet certain conditions, approved by the Bureau in each carrier’s compliance plan.<sup>985</sup>

370. *Just and Reasonable.* Under section 10(a)(1) of the Act, we must consider whether enforcement of the facilities requirement of section 214(e) for carriers that are, or seek to become, Lifeline-only ETCs is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory.<sup>986</sup>

371. We conclude that the section 214(e) facilities requirement is not necessary to ensure that Lifeline-only ETCs have charges, practices, classifications, and regulations for Lifeline service that are just and reasonable and not unjustly or unreasonably discriminatory. Resellers necessarily will face existing competition in the marketplace from the Lifeline offerings of the incumbent wireline carriers in the same designated areas, as well as other carriers, such as facilities-based wireless providers. Competition should help to keep their rates and other terms and conditions of service just and reasonable

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the conditions contained in this Order, to carriers with petitions for forbearance from the facilities requirement of the Act pending with the Commission, including American Broadband & Telecommunications, Millennium 2000, Inc., North American Local, LLC, Total Call Mobile, Inc., and Airvoice Wireless, LLC. See Petition for Forbearance of American Broadband & Telecommunications, WC Dkt. No. 09-197 (filed Feb. 25, 2012); Petition for Forbearance by Millennium 2000, Inc., CC Dkt. No. 96-45, WC Dkt. 09-197 (filed Apr. 12, 2011); Petition for Forbearance by North American Local, LLC., WC Dkt. 09-197 (filed Apr. 28, 2011); Petition for Forbearance by Total Call Mobile, Inc., WC Dkt. 09-197 (filed May 25, 2011); and Petition for Forbearance of Airvoice Wireless, LLC, WC Dkt. 09-197 (filed Sep. 13, 2011); 47 U.S.C. § 214(e)(1)(A); 47 C.F.R § 54.201(d)(1), (i).

<sup>983</sup> All ETCs availing themselves of forbearance from the facilities requirement as granted in this Order, including carriers with forbearance petitions and compliance plans pending with the Commission must comply with this requirement. Carriers with compliance plans currently pending Commission approval must revise, and if necessary amend, its compliance plan to include a detailed description of its compliance with this Order.

<sup>984</sup> See, e.g., *TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*; *Conexions Petition for Forbearance*, *PlatinumTel Forbearance Order*.

<sup>985</sup> See, e.g., *Conexions Forbearance Order*, 25 FCC Rcd at 13868, paras. 8-20.

<sup>986</sup> 47 U.S.C. §160(a)(1); 47 U.S.C. §214(e).

and not unjustly or unreasonably discriminatory.<sup>987</sup> The additional competition that they provide would do more to ensure just and reasonable rates and terms than a requirement to use their own facilities. For these reasons, we find that the first prong of section 10(a) is met.

372. *Consumer Protection.* Section 10(a)(2) requires the Commission to consider whether enforcement of the "own-facilities" requirement of section 214(e) for the Lifeline-only ETCs is necessary for protection of consumers. We find that imposing the "own-facilities" requirement on Lifeline-only ETCs is not necessary for the protection of consumers so long as the carriers comply with the obligations described below.

373. We reaffirm the Commission's previous finding that ensuring consumers' access to 911 and E911 services is an essential element of consumer protection.<sup>988</sup> Given the importance of public safety, we condition this grant of forbearance on each carrier's compliance with certain obligations as an ETC. Specifically, our forbearance from the facilities requirement of section 214(e) is conditioned on each carrier: (a) providing its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes; (b) providing its Lifeline subscribers with E911-compliant handsets and replacing, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services; and (c) complying with conditions (a) and (b) starting on the effective date of this Order.<sup>989</sup>

374. The Commission has an obligation to promote "safety of life and property" and to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure" for public safety.<sup>990</sup> The provision of 911 and E911 services is critical to our nation's ability to respond to a host of crises, and the Commission has a longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline consumers.<sup>991</sup> We find that these conditions are necessary to ensure that Lifeline subscribers of these Lifeline-only ETCs will continue to have meaningful access to emergency services.<sup>992</sup>

375. Based on the record and the fact that wireless resellers are obligated to comply with section 20.18(m) of the Commission's rules, we are not requiring that each Lifeline-only ETC obtain a

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<sup>987</sup> See TracFone Oct. 13 *ex parte* Letter at 4 (noting that both TracFone and Sprint, as ETCs, operate in the same markets as other wireless ETCs).

<sup>988</sup> See, e.g., *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390-91, paras. 22-23; *TracFone Forbearance Order*, 20 FCC Rcd at 15102-03, paras. 16-17.

<sup>989</sup> Under section 20.18(m) of our rules, wireless resellers have an independent obligation, beginning December 31, 2006, to provide access to basic and E911 service, to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver E911 information to the appropriate Public Safety Answering Point (PSAP). See 47 C.F.R. § 20.18(m). Section 20.18(m) further provides that resellers have an independent obligation to ensure that all handsets or other devices offered to their customers for voice communications are location-capable. *Id.* Under our rules, this obligation applies only to new handsets sold after December 31, 2006. *Id.*

<sup>990</sup> *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorization*, WT Dkt. No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14020, para. 144 (2005).

<sup>991</sup> *Id.*

<sup>992</sup> See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15101-02, paras. 15-16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390-91, para. 21-23; *i-wireless Forbearance Order*, 25 FCC Rcd at 8788, para. 12; *Global Forbearance Order*, 25 FCC Rcd at 10515, para. 12.



certification from each PSAP where it currently provides Lifeline service.<sup>993</sup> States, however, have a right to impose a state-specific obligation on each existing Lifeline-only ETC to obtain either a certification from each PSAP where the company plans to offer service, or a self-certification, confirming that the carrier provides its subscribers with 911 and E911 access.<sup>994</sup>

376. We find that, subject to the conditions contained herein, the facilities requirement is not necessary for consumer protection with respect to Lifeline-only ETCs. We therefore conclude that the second prong of section 10(a) is satisfied.

377. *Public Interest.* Section 10(a)(3) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for Lifeline-only ETCs is in the public interest. Requiring Lifeline-only ETCs to use their own facilities to offer Lifeline service does not further the statutory goal of the low-income program.<sup>995</sup>

378. Our public-interest inquiry must include consideration of whether forbearance would promote competitive market conditions, including the extent to which such forbearance would enhance competition among providers of telecommunications services.<sup>996</sup> We conclude that forbearance from the facilities requirement will enhance competition among retail providers that service low-income subscribers. Lifeline-only ETCs offer eligible consumers an additional choice of providers for telecommunications services. The prepaid feature that many Lifeline-only ETCs offer is an attractive alternative for subscribers who need the mobility, security, and convenience of a wireless phone, but who are concerned about usage charges or long-term contracts.<sup>997</sup>

379. The Commission has made clear its ongoing commitment to fight waste, fraud and abuse in the Lifeline program. The Commission has historically conditioned forbearance from the facilities requirement on the filing and approval by the Bureau of a compliance plan describing the ETC's adherence to certain protections designed to protect consumers and the Fund, and we see no reason to disrupt that precedent.<sup>998</sup> Accordingly, in addition to the requirements currently imposed on all ETCs that participate in the Lifeline program, including those we adopt in this Order, we condition this grant of forbearance from the "own-facilities" requirement by requiring each carrier to submit to the Bureau for approval a compliance plan that (a) outlines the measures the carrier will take to implement the obligations contained in this Order, including but not limited to the procedures the ETC follows in enrolling a subscriber in Lifeline and submitting for reimbursement for that subscriber from the Fund, materials related to initial and ongoing certifications and sample marketing materials, as well as further

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<sup>993</sup> See 47 C.F.R. § 20.18(m); see also Letter from Jonathan Lee, Consumer Cellular, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, Attach. (filed, Dec. 21, 2011) (explaining how the underlying facilities-based provider has complete control over deployment of 911/E911 and how AT&T, its underlying network provider, provides Consumer Cellular with a certification stating that AT&T routes all 911 calls on its network to PSAPs in accordance with applicable FCC rules).

<sup>994</sup> Section 214(e)(2) of the Act authorizes state commissions to designate ETCs for federal universal service purposes. 47 U.S.C. § 214(e)(2).

<sup>995</sup> See, e.g., *i-wireless Forbearance Order*, 25 FCC Rcd at 8789, para. 15. We also note that the Commission's traditional concern with a carrier doubling its recovery by reselling facilities that are already supported by the high-cost fund does not apply in the low-income context. *Id.*

<sup>996</sup> See 47 U.S.C. § 160(b) (requiring the Commission to consider whether forbearance will promote competitive market conditions).

<sup>997</sup> See Link Up Coalition Dec. 15 *ex parte* Letter at 5.

<sup>998</sup> See, e.g., *TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*; *Conexions Petition for Forbearance*, *PlatinumTel Forbearance Order*.

safeguards against waste, fraud and abuse the Bureau may deem necessary; and (b) provides a detailed description of how the carrier offers service, the geographic areas in which it offers service, and a description of the carrier's various Lifeline service plan offerings, including subscriber rates, number of minutes included and types of plans available.

380. We note that after each carrier submits its compliance plan, the Bureau will review it for conformance with this Order. To avoid disruption to the millions of low-income subscribers served by existing Lifeline-only ETCs that met the facilities requirement based solely on operator services/directory assistance facilities and were designated prior to December 29, 2011,<sup>999</sup> those ETCs may continue to receive reimbursement pending approval of their compliance plans in the states in which they currently serve Lifeline subscribers, provided they submit their compliance plans to the Bureau by July 1, 2012.<sup>1000</sup> Such existing Lifeline-only ETCs may not receive reimbursement, however, for additional states where they have not yet been designated as of December 29, 2011, until their compliance plans are approved. No designations shall be granted for any pending or new Lifeline-only ETC applications filed with the states or the Commission after December 29, 2011, and carriers shall not receive reimbursement from the program, until the Bureau approves their compliance plans. We find that these requirements are necessary to ensure ongoing compliance with our rules.

381. With the reforms adopted today, along with the conditions outlined herein to address potential waste, fraud and abuse, including the Bureau's review and approval of all compliance plans, we find that the public interest is served by forbearing from the facilities requirement in section 214(e) for all carriers that are, or seek to become, Lifeline-only ETCs, and that the third prong of section 10(a) is therefore satisfied.

#### **B. Impact of New Rules on Prior Forbearance Conditions**

382. The Commission has exercised its statutory authority to forbear from enforcing the facilities requirement of the Act on several non-facilities based wireless resellers so that those wireless resellers may be eligible to be designated as an ETC for participation in the Lifeline program.<sup>1001</sup> In each forbearance order, the Commission provisioned forbearance on several key conditions aimed at consumer safety protection and at protecting the Lifeline fund from waste, fraud and abuse.<sup>1002</sup> Each of the orders

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<sup>999</sup> See Link Up Coalition Dec. 15 *ex parte* Letter (claiming that the rule change would threaten service disruption for an estimated 2 million-plus Lifeline service customers served by members of the Link Up Coalition).

<sup>1000</sup> If an existing Lifeline-only ETC fails to submit its compliance plan by July 1, 2012, however, that ETC will not be able to continue to receive Lifeline support after July 1, 2012. If the Bureau finds that an existing Lifeline-only ETC's compliance plan does not conform to the requirements of the Order, it shall provide that ETC with notice that it must file a revised compliance plan within 45 days that conforms to the requirements of the Order. If the ETC fails to file a revised compliance plan pursuant to the Bureau's direction, the Bureau may direct USAC to suspend Lifeline disbursements to that ETC until such time as its compliance plan is revised to the satisfaction of the Bureau. In the event there is a change in ownership control of an existing Lifeline-only ETC that received forbearance of the facilities-based requirement, designated prior to December 29, 2011, and that Lifeline-only ETC is acquired by a telecommunications carrier that does not meet the definition of a facilities-based carrier under section 214(e)(1)(A), the controlling carrier may not rely on the existing Lifeline-only ETC's compliance plan and must submit a compliance plan for Bureau approval as detailed in paragraph 379 before receiving reimbursement from the program.

<sup>1001</sup> See *TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*; *Conexions Forbearance Order*; *PlatinumTel Forbearance Order*. No wireless reseller has received forbearance for the purpose of receiving Link Up support.

<sup>1002</sup> See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15101-03, paras. 15-18; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390-93, paras. 21-29; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *Global* (continued....)

also requires that the carrier subject to forbearance submit a compliance plan describing how that carrier would comply with the conditions of forbearance.<sup>1003</sup>

383. In this Order, the Commission adopts several new rules, many of which relate to the requirements set forth in prior forbearance orders and compliance plans.<sup>1004</sup> To the extent that any of the conditions in the carrier-specific forbearance orders and compliance plans are inconsistent with the rules adopted herein, the newly adopted rules established in this proceeding shall prevail. However, the conditions and rules adopted in this Order set forth the minimum obligations with which a carrier must comply for forbearance from the facilities requirement, and any carrier whose grant of forbearance was conditioned on more stringent compliance plans must comply with those additional obligations as well as the conditions adopted herein. In addition, any ETC that has received forbearance from the facilities requirement prior to this Order must continue to comply with the 911/E911 public safety obligations, as set forth in the preceding paragraphs 373-375.<sup>1005</sup>

### C. Additional Rule Amendments

384. In the *Lifeline & Link Up NPRM*, we sought comment on whether the current process for designating eligible telecommunications carriers should be revised for Lifeline providers and, if so, how.<sup>1006</sup> In this Order, we have made a number of important changes to our rules in order to eliminate waste and inefficiency, and to increase accountability in the program. Here, we make some conforming changes to our rules and several other changes that reflect the growing role of Lifeline-only ETCs in today's marketplace. We seek further comment in the attached *FNPRM* on additional proposal to streamline the process of becoming a Lifeline-only service provider.

385. First, we modify the definition of "eligible telecommunications carrier" in section 54.5 of our rules to include not just ETCs designated by the states pursuant to section 54.201, but to include all ETCs designated pursuant to our rules. This modification is necessary because section 214 of the Act, and our rules provide for designation of ETCs by the states and by the Commission.<sup>1007</sup> Furthermore this

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*Forbearance Order*, 25 FCC Rcd 10517-18, paras. 16-18; *Conexions Forbearance Order*, 25 FCC Rcd at 13871, paras. 17-18; *PlatinumTel et. al Forbearance Order*, 26 FCC Rcd 13795-96, paras. 17-18.

<sup>1003</sup> See *TracFone Forbearance Order*, 20 FCC Rcd at 15105, para. 25; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3397, para. 44; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 17; *Global Forbearance Order*, 25 FCC Rcd 10517, paras. 16; *Conexions Forbearance Order*, 25 FCC Rcd at 13871, para. 17; *PlatinumTel et. al Forbearance Order*, 26 FCC Rcd 13796, para. 17.

<sup>1004</sup> See, e.g. *supra* para. 74 (adopting a one-per-household requirement similar to the head of household certification condition in the *TracFone Forbearance Order* and the *PlatinumTel. Forbearance Order*); *TracFone Forbearance Order*, 20 FCC Rcd at 15098, para. 6; *PlatinumTel. Forbearance Order*, 26 FCC Rcd 13795, para. 17.

<sup>1005</sup> Given that section 20.18(m) already requires wireless resellers to provide access to basic and enhanced 911 service to the extent that the underlying licensee of the facilities the reseller uses to provide access to the public switched network complies with 20.18(d)-(g), we are no longer requiring that Lifeline-only ETCs subject to existing forbearance orders to obtain a certification from each PSAP where it currently provides Lifeline service. See 47 C.F.R. § 20.18(m). As noted in paragraph 375 above, states, however, have a right to impose a state-specific obligation on these existing Lifeline-only ETCs. See *supra* para. 375.

<sup>1006</sup> *NPRM* at 2865. para. 312.

<sup>1007</sup> See 47 U.S.C. 214(e)(2), (3) and (6); and 47 C.F.R. §§ 54.201-203. In 1997, Congress amended section 214 of the Act to give the Commission specific authority to designate ETCs, and the Commission issued a public notice setting forth the procedures it would use to designate ETCs, but did not amend its rules at that time. See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947 (1997).

modification conforms the rule to the Commission's consistent use of the term since it was given specific authority to designate ETCs by Congress in 1997.<sup>1008</sup> We therefore find good cause to amend this rule without notice and comment.<sup>1009</sup>

386. Second, we amend section 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC. In the *USF/ICC Transformation Order and FNPRM*, the Commission included a new requirement in section 54.202, requiring a common carrier seeking to be designated as an eligible telecommunications carrier by the Commission to submit a five-year plan describing proposed network improvements and upgrades. Given that Lifeline-only ETCs are not receiving funds to improve or extend their networks, we see little purpose in requiring such plans as part of the ETC designation process.

387. Third, we amend sections 54.201 and 54.202 of our rules, which govern ETC designations by states and this Commission, respectively, to require a carrier seeking designation as a Lifeline-only ETC to demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules.<sup>1010</sup> In 2005, the Commission declined to adopt such an explicit requirement for federally-designated ETCs, concluding that the Commission's existing rules, including the showings a common carrier had to make to be designated as an ETC pursuant to section 54.202, would provide sufficient assurance of the carrier's financial and technical ability to provide the supported service.<sup>1011</sup>

388. Given recent growth in the number of companies obtaining ETC designation,<sup>1012</sup> we now conclude that it is appropriate to update our rules for federally-designated ETCs and extend the requirement to all ETCs to ensure that Lifeline-only ETCs have the financial and technical ability to offer Lifeline-supported services. Therefore, in order to ensure Lifeline-only ETCs, whether designated by the Commission or the states, are financially and technically capable of providing Lifeline services, we now include an explicit requirement in both 54.202 and 54.203 that a common carrier seeking to be designated as a Lifeline-only ETC demonstrate its technical and financial capacity to provide the supported

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<sup>1008</sup> See, e.g., *ETC Designation Order*, 20 FCC Rcd, at 6378-79, para. 17 ("State commissions and the Commission are charged with reviewing ETC designation applications for compliance with section 214(e)(1) of the Act"); *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3383-84, para. 5 (discussing the authority of the state commissions and the Commission to designate ETCs); *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 390 ("By statute the states, along with the Commission, are empowered to designate common carriers as ETCs.").

<sup>1009</sup> See 5 U.S.C. § 553(b)(3)(B).

<sup>1010</sup> See Indiana Commission Comments at 15 ("[C]ompanies that have made a business case to serve a certain market in a state prior to receiving Lifeline subsidies may be less inclined to risk being cited for non-compliance with the program.").

<sup>1011</sup> See *ETC Designation Order*, 20 FCC Rcd at 6387-88, paras. 37-39.

<sup>1012</sup> USAC assigns a study area code (SAC) for each state in which a company receives designation as an ETC, and USAC reported disbursement information for 135 more SACs in the fourth quarter of 2011 than it did in the fourth quarter of 2010. See Universal Service Administrative Company, 2Q 2011 Filing, Appendices at LI04 <http://usac.org/about/governance/fcc-filings/2011/quarter-2.aspx> (reporting fourth quarter 2010 disbursements for 2085 SACs); Universal Service Administrative Company, 2Q 2012 Filing, Appendices at LI04 ([usac.org/about/governance/fcc-filings/2012/quarter-2.aspx](http://usac.org/about/governance/fcc-filings/2012/quarter-2.aspx) (reporting 4th quarter 2011 disbursements for 2220 SACs)).

service.<sup>1013</sup> Among the relevant considerations for such a showing would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.

389. Fourth, we delete section 54.209 of our rules regarding certification and reporting obligations for federally-designated ETCs, while moving those reporting requirements relevant to ETCs providing Lifeline services to subpart E, which governs universal service support provided to low-income consumers.<sup>1014</sup> In the *USF/ICC Transformation Order and FNPRM*, the Commission indicated that recipients of high-cost support would henceforth report pursuant to new section 54.313, and section 54.209 would continue to apply only to Lifeline-only ETCs.<sup>1015</sup> In order to centralize and streamline certification and reporting requirements pertaining to federally-designated Lifeline-only ETCs in subpart E of the rules, we move the relevant portions of 54.209, as they related to ETCs offering Lifeline services to new section 54.422. In particular, in order to receive support under subpart E, an ETC must provide the following information, previously required by section 54.209: information regarding service outages, the number of complaints received per 1,000 connections, certification of compliance with applicable service quality standards and consumer protection rules, and certification that the carrier is able to function in emergency situations. In doing so, we streamline annual reporting by eliminating reporting requirements that no longer make sense in today's marketplace for federally-designated Lifeline providers.

390. We also establish targeted reporting requirements in this new rule section that will apply to all ETCs receiving Lifeline. First, as discussed above,<sup>1016</sup> an ETC receiving low-income support must annually report the names and identifiers used by the ETC, its holding company, operating companies and affiliates, which will assist us in the Lifeline audit program. Second, we require every ETC receiving low-income support to provide to the Commission and USAC general information regarding the terms and conditions of the Lifeline plans for voice telephony service offered specifically for low income consumers through the program they offered during the previous year, including the number of minutes provided, and whether there are additional charges to the consumer for service, including minutes of use and/or toll calls, which will enable us to monitor service levels provided to low-income consumers.<sup>1017</sup>

391. Because section 54.209 is now obsolete in light of the rule changes adopted in this Order and in the *USF/ICC Transformation Order and FNPRM*, we find good cause to delete it without notice and comment.<sup>1018</sup>

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<sup>1013</sup> See Letter from Luisa Lancetti, T-Mobile, to Marlene H. Dortch, WC Dkt. No. 11-42 *et al.*, Attach. at 10 (filed Jan. 24) (arguing that the Commission should require ETCs to demonstrate that they are technically and financially capable).

<sup>1014</sup> See USTelecom Comments at 23 (participation in Lifeline should not be tied to high-cost requirements).

<sup>1015</sup> *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at 580, n.955.

<sup>1016</sup> See *supra* para. 296.

<sup>1017</sup> In the event ETCs choose to offer, as an additional option to low income consumers, the Lifeline discount to other retail service offerings, including bundles, that are available to the general public as described in section IX.A above, ETCs are not required to submit the terms and conditions of such retail service offerings to the Commission or USAC.

<sup>1018</sup> See 5 U.S.C. § 553(b)(3)(B).

## XII. APCC PETITION FOR RULEMAKING AND INTERIM RELIEF

392. *Background.* On December 6, 2010, the American Public Communications Council (APCC) petitioned the Commission (Petition) to initiate a rulemaking to make payphone service eligible for Lifeline support at \$10 per month per line for all publicly available phones.<sup>1019</sup> APCC also petitioned for interim relief (Petition for Interim Relief), seeking to allow ETCs to receive Lifeline support for service provided over payphone lines.<sup>1020</sup> APCC asserts that Lifeline funds for payphone service will prevent the disappearance of payphones.<sup>1021</sup> It urges the Commission to “act on an interim basis to provide immediate relief before the decline in payphones becomes irreversible as payphone deployment ceases to be a viable business.”<sup>1022</sup> The Wireline Competition Bureau sought comment on the petitions.<sup>1023</sup>

393. According to APCC, in 1998, there were over 2 million payphones in service, but there are now fewer than 475,000 payphones, a collapse APCC attributes to the growth in wireless telephone service as well as in Lifeline-supported wireless service.<sup>1024</sup> APCC seeks universal service support for the 475,000 payphones in service.<sup>1025</sup>

394. APCC argues that the Commission should amend its rules to give Lifeline support to payphone service providers. APCC argues that section 276 of the Act was established to promote widespread deployment of payphone services to the benefit of the general public, and the Act requires the Commission to determine whether “public interest payphones” located “where there would otherwise not be a payphone, should be maintained, and if so, to ensure that such public interest payphones are supported fairly and equitably.”<sup>1026</sup> APCC asserts that such support would cost the Fund roughly \$57 million annually.<sup>1027</sup>

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<sup>1019</sup> *Petition for Rulemaking to Provide Lifeline Support to Payphone Line Service*, WC Dkt No. 03-109 *et al.* (filed Dec. 6, 2010) (*Petition*). APCC is a national trade association that represents independent payphone providers.

<sup>1020</sup> *Emergency Petition for Interim Relief to Prevent the Disappearance of Payphones*, CC Dkt. No. 96-45; WC Dkt. No. 03-109 (filed December 6, 2010) (*Petition for Interim Relief*).

<sup>1021</sup> *Petition* at 32; *Petition for Interim Relief* at 9.

<sup>1022</sup> *Petition for Interim Relief* at 1.

<sup>1023</sup> *Wireline Competition Bureau Seeks Comment on American Public Communications Council Petitions Regarding Universal Service and Payphone Issues*, Public Notice, WC Dkt. No. 03-109 *et al.*, 25 FCC Rcd 17345 (2010). Five commenters, Rosebud Telephone, the Florida Public Telecommunications Association, Minority Media & Telecom Council, and, in a joint submission, Consumer Action and the National Consumers League support APCC’s petitions. Verizon and Verizon Wireless, Sprint Nextel Corporation, TracFone, United States Telecom Association, and NASUCA oppose the petitions.

<sup>1024</sup> *Petition* at 3.

<sup>1025</sup> *Id.* at 19-20.

<sup>1026</sup> *Id.* at 17; 47 U.S.C. § 276(b)(1), (2). We note that APCC requests support for *all* publicly available payphones, rather than petitioning for support only for public interest payphones. Congress stated clearly in its Conference Report accompanying the Act that “public interest payphones” refers to “payphones at locations where payphone service would not otherwise be available as a result of the operation of the market. Thus, the term does *not* apply to a payphone located near other payphones, or to a payphone that, even though unprofitable by itself, is provided for a location provider with whom the payphone provider has a contract.” *S. Rept. 104-230*, 104<sup>th</sup> Cong., 2d Sess. at 157 (1996).

<sup>1027</sup> *Petition for Interim Relief* at 5.

395. *Discussion.* After consideration of the petitions and filed comments, we deny both the Petition for Rulemaking and the Petition for Interim Relief. We question whether the requested relief is consistent with section 254, and we are not persuaded that the agency should devote resources to commence a proceeding to explore these issues at a time when our focus is on reforming the program to protect it against waste, fraud and abuse and modernizing it to include broadband.

396. As the Commission has long made clear, Lifeline is intended to benefit eligible low-income consumers, not service providers.<sup>1028</sup> There is no indication in the Petitions that Lifeline support would be passed through to consumers. Indeed, APCC seeks to redefine “qualifying low-income consumers” to include payphone service providers, without a commitment to pass through the Lifeline discount to the consumers that would use those payphones.<sup>1029</sup> As proposed, this would merely provide a windfall to payphone service providers. On its face, APCC’s request is inconsistent with our longstanding commitment to ensure that low-income consumers have access to phone service in their homes. Moreover, we are not persuaded by APCC that section 276 somehow compels us to use contributions collected pursuant to section 254 to advance the goals of section 276.

397. Pursuant to section 254 of the Act, the Commission must define services eligible for universal service based in part on a determination that the services “have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers . . . .”<sup>1030</sup> As APCC readily admits, payphone service cannot, by definition, meet this criteria.<sup>1031</sup> Indeed, in 2002, the Joint Board considered and rejected the idea of providing universal service support to payphone service providers in part for the same reason.<sup>1032</sup> In 2003, the Commission agreed with the Joint Board and explicitly excluded payphone service from universal service support.<sup>1033</sup> The Commission reasoned that “payphone lines are not subscribed to by a substantial majority of residential consumers.”<sup>1034</sup> We decline, at this time, choose to overturn this previous Commission determination.

398. For the reasons set forth above, we deny APCC’s petitions for interim relief and for a rulemaking to make payphone service providers eligible for Lifeline support.

### XIII. FURTHER NOTICE OF PROPOSED RULEMAKING

#### A. Establishing an Eligibility Database

399. *Background.* In the *Lifeline and Link Up NPRM*, we sought comment on the administrative, practical, and legal issues involved in establishing a database to check consumer eligibility

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<sup>1028</sup> See *Universal Service First Report and Order* 12 FCC Rcd at 8952, para. 326. “First, we adopt the Joint Board’s recommendation that Lifeline service should be made available to low-income consumers nationwide, even in states that currently do not participate in Lifeline. To that end, we adopt the Joint Board’s recommendations that Lifeline service should be provided to low-income consumers in every state, irrespective of whether the state provides matching funds, and that all eligible telecommunications carriers should be required to provide Lifeline service.” See also Sprint APCC Comments at 2-3.

<sup>1029</sup> *Petition* at Attach. § 54.400(a)

<sup>1030</sup> 47 U.S.C. § 254(c)(1)(B).

<sup>1031</sup> *Petition* at 5.

<sup>1032</sup> *Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45, Recommended Decision, 17 FCC Rcd 14095 at 14114 (2002).

<sup>1033</sup> 2003 *Tribal Lifeline Order*, 18 FCC Rcd at 15090.

<sup>1034</sup> *Id.*

for Lifeline.<sup>1035</sup> We asked a number of questions regarding whether it would be beneficial and administratively feasible to establish a database at the national level or facilitate the creation of databases at the state level to allow ETCs and other interested parties to check whether a consumer is eligible for Lifeline. There was widespread agreement that such databases would help ensure that only those customers who qualify for Lifeline benefits would receive such benefits, while also reducing carriers' costs.<sup>1036</sup>

400. The record shows that some states have already implemented automated processes and systems to ensure Lifeline eligibility.<sup>1037</sup> Some states utilize eligibility databases as part of the coordinated enrollment process to further increase participation in the program.<sup>1038</sup> Some states also utilize databases to verify ongoing eligibility.<sup>1039</sup> States also vary in how available automated processes are to different types of ETCs. In Washington state, for instance, the extent to which a carrier is required and authorized to access eligibility databases depends upon whether that ETC is wireline, pre-paid wireless, or post-paid wireless.<sup>1040</sup> In Maryland, the PSC makes a list of consumers who are receiving benefits under certain state social service programs that qualify consumers for Lifeline available to any ETC signing a confidentiality agreement.<sup>1041</sup>

401. The record indicates that eligibility data is typically housed at state social service agencies and separately administered from the Lifeline program, posing an obstacle to broader implementation of electronic eligibility checks.<sup>1042</sup> The Commission, ETCs, and in some cases even state commissions are unable to easily access such eligibility data and determine quickly whether a potential Lifeline subscriber is eligible for the program.<sup>1043</sup> Some states do not have an easily accessible centralized electronic depository for even the individual programs which qualify consumers for Lifeline, let alone a coordinated system across all such programs, and even those that have established such systems may face limitations, due to cost or privacy concerns, in providing ETCs or their own state PUC access.<sup>1044</sup> As a result, only a handful of states have implemented eligibility databases, and fewer still have implemented databases that account for all programs for which consumers can qualify for Lifeline.

402. There is currently no robust federally administered national database that can be utilized to check for Lifeline eligibility because nearly all of the program data is maintained exclusively at the state level. However, efforts are currently underway within and across federal agencies to facilitate eligibility determinations and eliminate waste in various government programs, some of which qualify

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<sup>1035</sup> See *Lifeline and Link Up NPRM* at 2834, para 207.

<sup>1036</sup> See, e.g., Nexus Nov. 18 *ex parte* Letter.

<sup>1037</sup> See, e.g., Tracfone Nov. 11 *ex parte* Letter, Attach. at 8 (noting that it can access eligibility data in Washington state and Wisconsin to determine eligibility).

<sup>1038</sup> See *supra* para. 177.

<sup>1039</sup> See, e.g., OR PUC Comments at 6.

<sup>1040</sup> See Washington State Aug. 30 *ex parte* Letter at 8.

<sup>1041</sup> See filing from Ralph Markus, Maryland, WC Dkt. No. 11-42 (filed June 30, 2011) (describing data lists)

<sup>1042</sup> See, e.g., Solix Comments at 2.

<sup>1043</sup> See, e.g., Michigan PSC Comments at 9 (“In Michigan, it is unlikely that the social service agencies will allow the ETCs or the MPSC to have direct access to the confidential information in their databases.”).

<sup>1044</sup> See Cincinnati Bell Comments at 9-10; see also Missouri PSC Comments at 4 (“The Missouri Department of Social Services is only able to verify eligibility in the following four programs: Missouri Healthnet, food stamps, LIHEAP, and Temporary Assistance for Needy Families.”).



consumers for Lifeline. For example, a June 2010 Presidential memorandum created a “do not pay” system through which federal benefits payments could be cross-checked by agencies to prevent ineligible recipients from receiving payments.<sup>1045</sup> The Office of Management and Budget (OMB), through its Partnership Fund for Program Integrity Innovation, has provided grants for states for pilot programs to computerize and share benefits data for social services programs across states.<sup>1046</sup> For example, a group of southeastern states received a grant to aggregate their Medicaid (a program that qualifies consumers for Lifeline) eligibility information into a single database.<sup>1047</sup> Another pilot provides funding for an interstate food stamps database, which may be expanded to include TANF and Medicaid information.<sup>1048</sup> In addition, other federal agencies and third parties have worked cooperatively to solve this problem in other federal programs or initiatives. An intergovernmental board administers the Public Assistance Reporting Information System (PARIS) database, an intergovernmental database which permits states to check for duplicative claims for several government programs across states (including Medicaid) through a social security number match.<sup>1049</sup> One Economy has explored with HUD whether it is feasible to make available the database containing information for Section 8 housing assistance recipients, another program that qualifies consumers for Lifeline.<sup>1050</sup>

403. *Discussion.* As explained above, we conclude that establishing a fully automated means for verifying consumers’ initial and ongoing Lifeline eligibility from governmental data sources would both improve the accuracy of eligibility determinations and ensure that only eligible consumers receive Lifeline benefits, and reduce burdens on consumers as well as ETCs. We conclude that it is important to accelerate the adoption of a widespread, automated means of verifying program eligibility. We therefore direct the Bureau and USAC to take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline.<sup>1051</sup> To ensure that the

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<sup>1045</sup> Whitehouse.gov, President’s Memorandum on Enhancing Payment Accuracy through a “Do Not Pay List,” 75 Fed. Reg. 35,953 (June 18, 2010), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/financial\\_improper/06232010\\_donotpaylist.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/financial_improper/06232010_donotpaylist.pdf).

<sup>1046</sup> Office of Management and Budget (OMB), Partnership Fund for Program Integrity Innovation, About the Partnership Fund, available at <http://partner4solutions.gov/about> (last visited Jan. 18, 2012).

<sup>1047</sup> OMB, Partnership Fund for Program Integrity Innovation, Centers for Medicare and Medicaid Services Partnership Fund Pilot Award Summary, available at [http://partner4solutions.gov/sites/www.partner4solutions.gov/files/CMS\\_Pilot\\_Award\\_Summary.pdf](http://partner4solutions.gov/sites/www.partner4solutions.gov/files/CMS_Pilot_Award_Summary.pdf) (last visited Jan. 18, 2012) (“The pilot will test how open source technology reduces fraud and administrative costs to States and the Federal government by enabling multiple states to check Medicaid provider eligibility.”).

<sup>1048</sup> OMB, Partnership Fund for Program Integrity Innovation, USDA Partnership Fund Pilot Award Summary, [http://partner4solutions.gov/sites/www.partner4solutions.gov/files/USDA\\_Pilot\\_Award\\_Summary.pdf](http://partner4solutions.gov/sites/www.partner4solutions.gov/files/USDA_Pilot_Award_Summary.pdf). (last visited Jan. 18, 2012).

<sup>1049</sup> Admin. for Children and Families, U.S. Dep’t of Health and Human Servs., Public Assistance Reporting Information System (PARIS), About PARIS, <http://www.acf.hhs.gov/programs/paris/about/index.html> (last visited Jan. 18, 2012).

<sup>1050</sup> One Economy Comments at 4 (noting that One Economy, as leader of the Digital Adoption Coalition applied for a BTOP grant in which Federal Public Housing assistance program beneficiaries would receive broadband, “only because senior officials at HUD thought our program was so necessary for their residents that they agreed to modernize their database structure and allow ‘blind’ access to the Digital Adoption Coalition to provide these services. As we did not receive this grant, this vital modernization and access provision at HUD never occurred”).

<sup>1051</sup> Based on the information in the record, most consumers qualify for Lifeline through Medicaid, Food Stamps and SSI. See *supra* para. 104. We recognize that meeting this goal will require coordinated action among numerous parties outside of the Commission.

Commission has sufficient information to implement such a solution, we seek focused comment on the issues below.

404. Because much of the relevant federal eligibility data is housed at the state level, we seek comment on how the Commission can encourage the accelerated deployment of widespread state databases that can be used or accessed to streamline Lifeline eligibility determinations. These databases could be queried directly by ETCs to determine customer eligibility, and potentially used to provide information to a national eligibility database. We also seek comment on whether federal benefit databases under development across states and at the national level can be leveraged to assist in checking for Lifeline eligibility. We seek comment on whether a state-specific or national eligibility database approach is more reliable, efficient, or imposes greater costs on the states and ETCs.

405. We seek to further develop the record on ways to mitigate the potential cost on states if the Commission were to mandate the creation of Lifeline eligibility databases at the state level or the transmission of state eligibility data to a national database. Several states argue, for example, that they are unable to implement a Lifeline eligibility database because they lack sufficient funding and expertise.<sup>1052</sup> Should the Fund be used to assist states in implementing their own eligibility databases and/or facilitate the transfer of state eligibility data to a federal database? Does the Commission have the legal authority to provide Fund support to states for this purpose? How much funding would be necessary to materially assist states in implementing a database? To assist in our determination of the size of such funding, we seek comment on the implementation and ongoing costs of those Lifeline databases that are currently in operation at the state level.

406. We seek comment on whether we should condition receipt of federal Lifeline funds on state implementation of an eligibility database. Some commenters argue that the Commission does not have the authority to impose requirements on states to implement state eligibility databases for Lifeline.<sup>1053</sup> However, we note that states must, as a condition of receiving federal funds for certain other federal programs, such as Medicaid, participate in national eligibility databases by transmitting beneficiary data to a national database.<sup>1054</sup> Should the Commission condition federal Lifeline support to a state's consumers on the state's ability to facilitate access to eligibility data? Are there other measures we could adopt to encourage states and other participating entities to implement a database or provide the necessary information to support a federal database? What would the impact on Lifeline consumers be if the state, for whatever reason, were unable to implement such a database?

407. We seek focused comment on the federal or state privacy requirements implicated in the establishment of a national or state eligibility database. Some states appear to assert that federal and state privacy rules preclude the transmission of eligibility information or other personal data from state social

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<sup>1052</sup> See, e.g., Alabama PSC Comments at 2 (“The APSC currently has at its disposal the data necessary for populating a fully functional Lifeline eligibility database, but lacks the funding required to achieve that goal. Therefore, the APSC seeks the financial assistance needed to fully develop, test, implement, and maintain the software required for management of that database.”).

<sup>1053</sup> See, e.g., Missouri PSC Comments at 2.

<sup>1054</sup> State Health Access Data Assistance Ctr., *New Opportunities for Medicaid data-matching using PARIS database*, available at <http://www.shadac.org/blog/new-opportunities-medicaid-data-matching-using-paris-database> (Jul. 20, 2010) (“Participation in the Public Assistance Reporting Information System (PARIS) is required by states to receive Medicaid funding for automated data systems (including the Medicaid Management Information System). The requirement to participate, effective October 1, 2009 as part of the Qualifying Individual (QI) Program Supplemental Funding Act of 2008, allows the sharing of enrollee and applicant information for state public assistance agencies (SPAAs) and federal agencies.”).

services agencies to third parties.<sup>1055</sup> However, other states do not appear to have similar state laws, or they interpret federal laws to allow the transmission of such information.<sup>1056</sup> We ask commenters to specify the federal and state privacy laws that they believe may preclude the transmission of eligibility information to a state or national eligibility database. Would affirmative customer consent at the time of application allow for the transmission of information notwithstanding such laws? If so, can and should we mandate that ETCs seek to obtain such consent at the time the consumer applies for Lifeline?

408. An alternative approach would be for the Commission to establish a national eligibility database instead of or in addition to state databases. If the Commission establishes a national database, should it be populated by individual customer eligibility data stored in state eligibility databases? Should state or federal entities pay for the electronic interface between the state and federal databases? If the national database did not house eligibility data, should it only have the capability of querying the individual state databases to determine consumer eligibility?

409. We seek comment on whether there are reasons to mandate a national eligibility database if that database relies on data provided by states. One commenter argues that it would be costly and administratively difficult to implement a national eligibility database and that nothing would be gained over state database access because the data is housed at the state level.<sup>1057</sup> If a national database merely served as a conduit or gateway through which ETCs could query state databases, what are the advantages of such a national database over and above separate state databases? Do these advantages outweigh the costs of additional sources of error that may be introduced when a state database interacts with a national database?

410. We also seek comment on whether, as a practical matter, a national Lifeline eligibility database could be established without the need to access or obtain eligibility data housed at the state level. As explained above, there are several national databases at various stages of development which contain beneficiary information for certain federal programs and enable authorized parties to check federal program eligibility. Some of these databases are for programs that qualify consumers for Lifeline.<sup>1058</sup> We seek comment on how these national databases for other programs can be leveraged to assist in the creation of a national Lifeline database. How could the Commission best partner with other relevant agencies to share information housed in other agencies' databases? Can third parties, such as ETCs, query other existing national benefit databases, or can only another federal or state agency do so? We also seek comment on how issues relating to the accuracy of information in federal government databases already in service are handled and corrected.<sup>1059</sup> Moreover, we seek comment on whether national

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<sup>1055</sup> See, e.g., Cincinatti Bell Aug. 30, 2011 *ex parte* Letter at 2.

<sup>1056</sup> Compare *id.* (discussing how privacy concerns precluded the transmission of eligibility data to the Ohio PUC) with Washington State Aug. 31 *ex parte* Letter at 4 (“DSHS is providing prepaid wireless ETCs with access to their online Beneficiary Verification System (BVS). The BVS is an interactive online interface. When an authorized user keys in a Lifeline applicant's 9-digit DSHS client ID or the combination of the applicant's full name and Social Security number, the website will confirm if the customer is receiving one of the nine qualifying public assistance programs administered by the DSHS.”).

<sup>1057</sup> See CGM Comments at 2 (“It is much more difficult and time consuming to require states to provide timely state centric eligibility data to a centralized national repository than it is to gain access to this data at the state level. The vast majority of eligibility is determined at the state level. The eligibility criteria are not generally called into question, only timely access to that data. Nationalizing this data and access to it doesn't do anything to make the task easier or make its accuracy any better. It makes on-going maintenance more difficult and prone to error. Transferring eligibility data from state care to a national database will also expose privacy and security issues.”).

<sup>1058</sup> See *supra* section VI.F (Automatic and Coordinated Enrollment).

<sup>1059</sup> Letter from Cheryl Leanza, Leadership Conference on Civil Rights, to Marlene H. Dortch, FCC, WC Dkt. No. (continued....)

databases are sufficiently robust to be utilized to check for eligibility in the Lifeline program. For example, is the PARIS database updated frequently enough to be utilized to check for Lifeline eligibility?

411. To the extent that the program data available at the federal level is utilized to establish a Lifeline database, we propose that the Commission should first focus on the three programs which, based on the record, qualify the most consumers for Lifeline (*i.e.*, Medicaid, food stamps, SSI).<sup>1060</sup> We expect that such a focus will impact the largest number of Lifeline beneficiaries, and may also be able to leverage the work already done by HHS in its PARIS program and recent OMB grants for Medicaid administration.

412. In the Order, we adopt a national database to check for duplicative support. We seek comment on the synergies that could result from combining the duplicates database and a national eligibility database. Should a national eligibility database be built “on top of” the duplicates database, and, if so, what is the most efficient way of doing so? What are the cost savings and other benefits that would result from the integration of both duplicate and eligibility databases and what, if any, are the drawbacks of such an approach?

413. In the Order, we require ETCs to transmit the name, address, telephone number, date of birth, last four digits of the social security number and the means through which the consumer qualified for Lifeline to the duplicates database. We find that such data will allow the database to check for duplicative support. However, it may be necessary for ETCs to collect and transmit additional information (*e.g.*, the full SSN) to a national eligibility database to determine eligibility. For example, some state Lifeline databases require that any valid query to determine eligibility include the transmission of a beneficiary’s full social security number and/or date of birth.<sup>1061</sup> At the same time, several parties have raised concerns regarding ETCs’ collection of the full social security number.<sup>1062</sup> We seek comment to refresh the record about the privacy issues surrounding the creation of any eligibility database and the transmission of the full social security number. Do state or federal laws *require* the submission of particular information (*e.g.*, the full SSN) in order for a third party such as an ETC to be able to determine if a consumer is receiving a federal or state benefit which qualifies a consumer for Lifeline? Does the answer depend upon the program? Can the Commission decline to provide benefits to a consumer based on the consumer’s refusal to provide a full social security number?<sup>1063</sup>

414. Some commenters argue that the Commission should pursue other, non-electronic methods to check for eligibility in lieu of or in the interim while an electronic means of verifying eligibility is created. For example, both Verizon and AT&T suggest that a national third-party administrator, not the ETCs, should examine income and program documentation submitted by end-users

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11-42 at 5 (filed Nov. 21, 2011) (discussing how errors in the social security database are corrected).

<sup>1060</sup> See *supra* para. 104; see also Holt *et al.*, *Making Telephone Service Affordable for Low Income Households* at 40 (Jan. 28, 2007) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=959692](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=959692) (noting that, in Florida, programs that increased the number of households the most . . . were Medicaid, Food Stamps and SSI).

<sup>1061</sup> See Washington State Aug. 31 *ex parte* Letter at 4.

<sup>1062</sup> See GCI Ex Parte Presentation, WC Dkt. Nos. 11-42 *et al.*, Attach. 1 at 2 (filed June 13, 2011) (“The Commission cannot use the whole Social Security number without express statutory authorization”).

<sup>1063</sup> See Privacy Act § 7(a)(1), 5 U.S.C. § 552A (“It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his Social Security account number.”); *Ingerman v. Delaware River Port Authority*, 630 F. Supp. 2d 426, 442 (D. N.J. 2009) (invalidating requirement of Social Security number for an EZ Pass seniors discount, which was collected in part to prevent fraud).

and make a determination of eligibility.<sup>1064</sup> We recognize that establishing a centralized third-party review of documentation may involve a delay in time between the application and proof of verification being submitted by the consumer and being approved. At the same time, however, it would relieve carriers from the burden of having to make initial determinations of eligibility as required by our rules and would result in increased standardization of eligibility determinations.<sup>1065</sup> We seek comment on the costs and benefits of mandating a non-electronic means of checking program eligibility by a third-party administrator, including the cost of implementing such a solution on a nationwide basis, and whether such a non-mechanized approach can be integrated with the duplicates database at a later date.<sup>1066</sup> What would be the benefits and costs if USAC were to assume this function given its role to implement the National Lifeline Accountability Database to eliminate duplicative support?

415. Finally, we seek comment on additional features and functions which can and should be added to the National Accountability database. We seek comment on whether the current features and functions of the database can be refined, including the manner in which ETCs interact with the database.

### **B. Advancing Broadband Availability for Low-Income Americans through Digital Literacy Training**

416. In the attached Order, the Commission established a goal of ensuring the availability of broadband service for low-income Americans and adopted broadband penetration rates among low-income Americans as an outcome measure for this goal. The most recently available statistics suggest that approximately 32 percent of the American population has not adopted high-speed Internet at home,<sup>1067</sup> and the percentage of non-adopters among low-income Americans may be as much as double the national rate.<sup>1068</sup> As discussed in today's Order, for broadband to be "available" to a consumer, a broadband network must be deployed to the consumer, the service must be of sufficient robustness to meet the needs of consumers, and the broadband service offered over the network must be affordable.<sup>1069</sup>

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<sup>1064</sup> See Verizon Reply Comments at 4-5; Letter of Mary L Henze, AT&T, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 at 2 (filed Jan. 24, 2012) (arguing that ETCs should not be involved in making eligibility determinations). California engages a third party contractor to examine the program documentation of those Lifeline customers who are audited during the renewal process. See California Comments, WC Dkt. No. 03-109 *et al.*, at 11 (filed Jul. 13, 2010) ("[T]he CPUC's Certifying Agent vendor annually reviews a sample of customers who are verifying their status for renewal of Lifeline eligibility. If a customer is randomly selected for this 'audit' during the renewal process, the customer must provide documentation of participation in one of the above programs, and the web-based system cannot be used.").

<sup>1065</sup> As we explain above, we direct USAC to establish a process so that, after 2012, ETCs may elect to have USAC administer the re-certification process on their behalf. We seek additional comment here on whether a third party administrator, such as USAC or another party, should perform initial certifications of Lifeline eligibility.

<sup>1066</sup> Letter of Alan Buzzacott, Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 11-24 at 2 (filed Nov. 7, 2011) ("Even if the database administrator does not initially have direct, real-time access to state systems that contain eligibility information, the database administrator's responsibilities should not be limited solely to checking for duplicates. At a minimum, the administrator should assume responsibility for the annual verification process. The California Lifeline program is an example of how a centralized administrator can assume responsibility for annual verifications even without access to state systems that contain eligibility information.").

<sup>1067</sup> See NTIA, U.S. DEP'T OF COMMERCE, DIGITAL NATION: EXPANDING INTERNET USAGE, NTIA RESEARCH PREVIEW at 2 (Feb. 2011), available at [http://www.ntia.doc.gov/files/ntia/publications/ntia\\_internet\\_use\\_report\\_february\\_2011.pdf](http://www.ntia.doc.gov/files/ntia/publications/ntia_internet_use_report_february_2011.pdf).

<sup>1068</sup> AARON SMITH, PEW INTERNET & AMERICAN LIFE PROJECT, HOME BROADBAND 2010, at 8 (Aug. 11, 2010), available at <http://pewinternet.org/~media/Files/Reports/2010/Home%20broadband%202010.pdf> (2010 *Broadband Adoption Report*).

<sup>1069</sup> See *supra* para. 34.

The *USF/ICC Transformation Order and FNPRM* recently adopted by the Commission reformed and modernized USF's high-cost program to address the first two of these barriers, while the attached Order adopts a Broadband Pilot Program to assess how best to modernize the Lifeline program to address affordability of broadband service.<sup>1070</sup> However, barriers to broadband adoption also include lack of digital literacy, and a perception that the Internet is not relevant or useful.<sup>1071</sup> The Commission has taken a number of steps to help tackle the digital literacy challenge, including through the recent "Apps for Communities" contest, which focused on increasing the relevance of Internet access.<sup>1072</sup> In this section, we seek comment on the use of universal service funding to address the barrier that lack of digital literacy creates to increased broadband adoption among low-income Americans.

## 1. Background

417. The National Broadband Plan (NBP) defined digital literacy as the skills needed to "us[e] [information and communications technology] to find, evaluate, create and communicate information," while recognizing that digital literacy is an evolving concept.<sup>1073</sup> Digital literacy is increasingly essential to obtaining an education, searching for a job, learning job-related skills, accessing government information, participating in civic processes, and managing household and financial responsibilities.<sup>1074</sup> Additionally, increasing digital literacy and use of the Internet can help bridge the skills gap, reduce job search discouragement,<sup>1075</sup> and aid the country's economic recovery.<sup>1076</sup>

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<sup>1070</sup> See generally, *USF/ICC Transformation Order and FNPRM*.

<sup>1071</sup> *2010 Broadband Adoption Report* at 2-3, 11.

<sup>1072</sup> See *Apps for Communities*, available at <http://appsforcommunities.challenge.gov> (last visited Jan. 19, 2012). Winning entries included tools to help people find jobs and connect the homeless with services.

<sup>1073</sup> See, e.g., NATIONAL BROADBAND PLAN at 174-77.

<sup>1074</sup> See Remarks on Broadband Adoption, Federal Communications Commission, Chairman Julius Genachowski, Washington, D.C. at 3 (Oct. 12, 2011) (Chairman Broadband Remarks), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db1012/DOC-310350A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1012/DOC-310350A1.pdf) (Chairman's Broadband Remarks); American Library Association, *Public Library Funding & Technology Access Study 2010-2011: Public Library Technology Study*, at 24, [http://www.ala.org/ala/research/initiatives/plftas/2010\\_2011/plftas11-techlandscape.pdf](http://www.ala.org/ala/research/initiatives/plftas/2010_2011/plftas11-techlandscape.pdf) (Library Tech Study); Carlos A. Manjarrez & Kyle Schoombs, *Who's In the Queue? A Demographic Analysis of Public Access Computer Users and Uses in U.S. Public Libraries*, Institute of Museum and Library Services, at 5 (June 2011), [http://www.ims.gov/assets/1/AssetManager/Brief2011\\_04.pdf](http://www.ims.gov/assets/1/AssetManager/Brief2011_04.pdf) (IMLS Research Brief); George S. Ford, PhD, *Phoenix Center Perspectives 11-04: Internet Use and Labor Market Participation: Additional Insights from New and Old Data*, Phoenix Center for Advanced Legal & Economic Public Policy Studies, at 7 (Aug. 18, 2011), available at <http://www.phoenix-center.org/perspectives/Perspective11-04Final.pdf> (Phoenix Center Perspective 11-04); Digital Literacy and Citizenship in the 21<sup>st</sup> Century, White Paper, Common Sense Media, at 2 (Mar. 2011), available at <http://www.common Sense Media.org/sites/default/files/DigitalLiteracyandCitizenshipWhitePaper-Mar2011.pdf> (Common Sense 2011 White Paper) (discussing the definition of digital literacy and digital citizenship).

<sup>1075</sup> See, e.g., *Phoenix Center Perspective 11-04* at 3; George S. Ford, PhD, *Phoenix Center Perspective 10-01s: Internet Use and Job Search: More Evidence*, Phoenix Center for Advanced Legal & Economic Public Policy Studies (Jan. 26, 2011), <http://www.phoenix-center.org/perspectives/Perspective10-01Final.pdf> (Phoenix Center Perspective 10-01); T. Randolph Beard, et al., *Phoenix Center Policy Paper Number 39: Internet Use and Job Search*, Phoenix Center for Advanced Legal & Economic Public Policy Studies, at 21 (Jan. 2010), <http://www.phoenix-center.org/pcpp/PCPP39Final.pdf> (Phoenix Policy Paper No. 39).

<sup>1076</sup> See, e.g., *U.S. Commerce Secretary Gary Locke Announces Digital Literacy Initiative*, Press Release, NTIA (May 13, 2011), available at <http://www.ntia.doc.gov/print/press-release/2011/us-commerce-secretary-gary-locke-announces-digital-literacy-initiative>; *Fact Sheet: Digital Literacy*, U.S. Department of Commerce, <http://www.commerce.gov/news/fact-sheets/2011/05/13/fact-sheet-digital-literacy> (May 13, 2011); Robert D. (continued...)

418. Americans who lack the skills to use the Internet fall behind in a number of important areas. Consumers who do not know how to participate in e-commerce lose the financial benefit of online sales and discounts,<sup>1077</sup> lose out on the cost savings and benefits of e-banking,<sup>1078</sup> and lose access to government services – also imposing additional costs on the government to maintain duplicative service-delivery models.<sup>1079</sup> Broadband Internet is also a tremendous resource for health care information, including specific information about treatment options, safety and drug recall information, doctors and other health professionals, and health insurance.<sup>1080</sup> Americans who lack the skills to use broadband simply do not have the same access to services and information as other consumers.

419. The NBP recommended a number of steps to help all Americans obtain access to broadband and acquire the skills to use it, including launching a National Digital Literacy Corps to train young people and adults to teach digital literacy skills to non-adopters of computer and Internet technology.<sup>1081</sup> The NBP also recommended private and public sector programs with similar digital literacy goals, and suggested an online digital literacy website.<sup>1082</sup> In recent months, several private sector organizations have announced significant commitments to tackle barriers to digital literacy.<sup>1083</sup> For example, the “Connect to Compete” initiative seeks to address barriers to broadband adoption, including a focus on digital literacy and the employment skills gap.<sup>1084</sup> Additionally, the National Telecommunications and Information Administration (NTIA), part of the U.S. Department of Commerce,

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Atkinson, *et al.*, *The Internet Economy 25 Years After .com*, Information Technology and Innovation Foundation at 42 (Mar. 15, 2010), available at <http://www.itif.org/files/2010-25-years.pdf>; Hamilton Consultants, Inc., *Economic Value of the Advertising-Supported Internet Ecosystem*, Hamilton Consultants, at 12 (June 2009), available at <http://www.iab.net/media/file/Economic-Value-Report.pdf>; Phoenix Center Perspective 11-04, at 6; ECDL Foundation highlights role of digital literacy in economic recovery, awards top programs at Global Forum, Press Release, AMEinfo.com (Dec. 13, 2009), available at <http://www.ameinfo.com/218610.html>; Digital Inclusion Report New Report Shows the Economic Benefit of Getting Everyone Online, PR Newswire, <http://www.prnewswire.co.uk/cgi/news/release?id=268499> (Oct. 13, 2009) (stating that digital literacy could potentially provide billions of dollars to the economy).

<sup>1077</sup> *Id.* (stating that lack of Internet access can greatly impact personal finances and the national economy).

<sup>1078</sup> Pew Research Center, Pew Internet & American Life Project (2006), available at [http://www.pewinternet.org/~media/Files/Reports/2006/PIP\\_Online\\_Banking\\_2006.pdf.pdf](http://www.pewinternet.org/~media/Files/Reports/2006/PIP_Online_Banking_2006.pdf.pdf), at 1-3.

<sup>1079</sup> See PRNewswire Report (suggesting UK government could save hundreds of millions of pounds per year in efficiencies if better use was made of online government services).

<sup>1080</sup> See, e.g., Susannah Fox, *The Social Life of Health Information, 2011*, Pew Internet and American Life Project, at 3 (May 12, 2011), available at [http://pewinternet.org/~media/Files/Reports/2011/PIP\\_Social\\_Life\\_of\\_Health\\_Info.pdf](http://pewinternet.org/~media/Files/Reports/2011/PIP_Social_Life_of_Health_Info.pdf).

<sup>1081</sup> See NATIONAL BROADBAND PLAN at 174-78.

<sup>1082</sup> See *id.* The website was developed by NTIA and is available at [www.digitalliteracy.gov](http://www.digitalliteracy.gov).

<sup>1083</sup> See Chairman Julius Genachowski, FCC, Remarks at Comcast Internet Essentials Event, Washington, D.C. (Sept. 20, 2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-309693A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-309693A1.pdf) (recognizing Comcast’s Internet Essentials program that seeks to provide low-cost high-speed Internet combined with digital literacy training).

<sup>1084</sup> See Chairman’s Broadband Remarks at 4-6; see also FCC & “Connect to Compete” Tackle Broadband Adoption Challenge Through Expanded Digital Literacy Training, Fact Sheet (Oct. 12, 2011) (*Connect to Compete Digital Literacy Fact Sheet*), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db1012/DOC-310346A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1012/DOC-310346A1.pdf); Supporting Statements From Connect to Compete Partners, (Oct. 12, 2011) (*Connect to Compete Supporting Statements*), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db1012/DOC-310348A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1012/DOC-310348A1.pdf).

has been providing funding to develop digital literacy programs through its Broadband Technology Opportunities Program grants.<sup>1085</sup> BTOP grant funds are currently being used in libraries across the country.<sup>1086</sup> BTOP funds are also being used by various community programs and technology corporations to improve digital literacy and citizenship.<sup>1087</sup>

420. Although these initiatives are making significant progress in boosting the digital literacy skills of Americans where such programs are available, much more needs to be done to make digital literacy ubiquitous, particularly among low-income populations. BTOP's Sustainable Broadband Adoption and Public Computing Center programs are providing needed funding, but its projects are available only in certain communities and during certain times. Additionally, BTOP funding will end by 2013.<sup>1088</sup> The number of public libraries offering formal digital literacy programs is still relatively low, with only 38 percent of public libraries offering formal digital literacy courses, and only 25 percent of those in rural America offering courses.<sup>1089</sup> More than 60 percent of public libraries still do not provide any formal digital literacy services to their patrons, and due to budgetary restrictions, some libraries have reported eliminating digital literacy skills training programs.<sup>1090</sup>

## 2. Discussion

421. We seek comment on using universal service support for targeted, time-limited funding to ensure that low-income Americans who have not adopted broadband have the digital literacy skills they need to access and use broadband. In particular, we seek comment on the details of providing digital literacy funding, including whether such funding should be used for digital literacy training programs, what types of entities should receive such funding, how much funding to provide and for how long, and how funding should be administered.

422. *Legal Authority.* As an initial matter, we seek comment on our statutory authority to use universal service funds to support digital literacy. As we recently noted in the *USF/ICC Transformation Order and FNPRM*, the principle that all Americans should have access to communications services has been at the core of the Commission's mandate since its creation. Congress created the Commission in 1934 for the purpose of making "available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . ." <sup>1091</sup> In the Telecommunications

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<sup>1085</sup> See NTIA, BroadbandUSA, Grants Awarded: Sustainable Broadband Adoption, <http://www2.ntia.doc.gov/sustainableadoption> (last visited Jan. 19, 2012). See also DIGITALLITERACY.GOV, In the Community Stories, <http://www.digitalliteracy.gov/communities> (last visited Jan. 19, 2012).

<sup>1086</sup> See, e.g., Enhancing Computer Centers in Montana Public Libraries, <http://msl.mt.gov/btop/>; New Jersey State Library, available at <http://njworks.org/>; State Library of Louisiana, <http://www.state.lib.la.us/>; Technology Expertise, Access and Learning for all Texans, <https://www.tsl.state.tx.us/teal/>; DC Public Library, Public Computing Centers, <http://dclibrary.org/broadbandusa/public-computing-centers>.

<sup>1087</sup> See, e.g., CFY, <http://cfy.org/> (last visited Jan. 19, 2012) (providing services in NYC, Philadelphia, Atlanta, LA, and San Francisco Bay Area); ONECOMMUNITY, <http://www.onecommunity.org/> (last visited Jan. 19, 2012); Common Sense Media, *Digital Literacy and Citizenship Curriculum for Grades 6-8*, COMMON SENSE MEDIA, <http://www.common sense media.org/educators/curriculum/6-8> (last visited Jan. 19, 2012).

<sup>1088</sup> BTOP Quarterly Status Report, NTIA, Department of Commerce, at 9 (Dec. 2011), available at <http://www.ntia.doc.gov/files/ntia/publications/btop-quarterly-congressional-report-dec-2011.pdf>.

<sup>1089</sup> See *Library Tech Study* at 32-33. Formal training generally refers to group/classroom type training. Informal training generally refers to anything outside of formal classes, including one-on-one training, downloadable references and guides and ad hoc point-of-use library staff assistance. See *id.*

<sup>1090</sup> *Id.* at 35.

<sup>1091</sup> 47 U.S.C. § 151.



Act of 1996, Congress built upon that longstanding principle by enacting section 254, which sets forth six principles upon which we must “base policies for the preservation and advancement of universal service . . . .”<sup>1092</sup> Among these principles are that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation,” and that “[c]onsumers in all regions of the nation, including low-income consumers . . . should have access to telecommunications and information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>1093</sup> Congress also directed the Commission to take the steps necessary to ensure the delivery of affordable telecommunications service to all Americans, including eligible schools and libraries.<sup>1094</sup> Section 254(h)(2) directs the Commission “to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services” for libraries and school classrooms.<sup>1095</sup> Furthermore, the Commission has the authority under section 254(c)(3) to designate “additional” services eligible for universal service support under the schools and libraries program.<sup>1096</sup> Under this authority, the Commission may provide support to non-telecommunications carriers providing non-telecommunications services, such as Internet access and internal connections.<sup>1097</sup> Historically, the Commission has supported transmission used to access advanced information services. Training on how to use information services also enhances access to those services in classrooms and libraries and furthers the purposes of section 254(h).<sup>1098</sup>

423. Against this statutory backdrop, we seek comment on our legal authority to use universal service funds to support digital literacy in general and digital literacy training in particular. Should the directive to provide “access” be understood to include the ability for consumers to use the services once they have access to them? Just as the Commission has long relied upon sections 254(c)(3) and 254(h)(2) to provide support for internal connections to enable access to the Internet in classrooms, could we also authorize funding for training to enable library patrons to effectively utilize the Internet access provided at libraries, or to enable parents and other members of the community to learn the skills to use E-rate funded connections at School Spots<sup>1099</sup> across the country?

424. We seek comment on whether promoting digital literacy would serve the objective of providing support that is sufficient but not excessive, so as to not impose an excessive burden on consumers and businesses who ultimately pay to support USF. By providing more consumers with the

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<sup>1092</sup> 47 U.S.C. § 254(b).

<sup>1093</sup> 47 U.S.C. § 254(b) (1) – (3).

<sup>1094</sup> 47 U.S.C. § 254 (a)– (c). *See Universal Service First Report and Order*, 12 FCC Rcd at 8780, para. 1.

<sup>1095</sup> 47 U.S.C. § 254(h)(2).

<sup>1096</sup> 47 U.S.C. § 254(c)(3).

<sup>1097</sup> *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 440-45 (5th Cir. 1999).

<sup>1098</sup> *See, e.g.*, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 132 (1996) (“The provisions of subsection (h) will help open new worlds of knowledge, learning and education to all Americans . . . . They are intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of an illness, to Americans everywhere via schools and libraries.”); *but see, e.g., Schools and Libraries Universal Service Support Mechanism et al.*, CC Dkt. No. 02-6 *et al.*, Sixth Report and Order, 25 FCC Rcd 18762, 18841 (2010) (*2010 E-Rate Sixth Report and Order*) (listing such training as “Ineligible for E-rate Funding as Internet Access Services”).

<sup>1099</sup> *See 2010 E-Rate Sixth Report and Order*, 25 FCC Rcd at 18901 (Statement of Chairman Julius Genachowski); *Schools and Libraries Universal Service Support Mechanism*, CC Dkt. No. 02-6, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 1740, para. 13 (2010) (*E-rate Community Use Order and NPRM*).

requisite skills to use broadband, we could expect to see more demand for broadband, which would improve the business case for broadband providers to deploy and expand networks and offer services to all consumers. Increased broadband penetration rates could reduce the need for Connect America Fund subsidies to enable broadband networks in high cost areas to provide service at reasonably comparable rates. As the Commission explained in its most recent Broadband Progress Report, obstacles to broadband adoption, such as poor digital literacy, are barriers to infrastructure investment because they reduce the revenue available to providers who invest in broadband.<sup>1100</sup> The Commission recognized that one of the most significant barriers to investment in broadband infrastructure is the lack of a “business case for operating a broadband network” in high-cost areas “[i]n the absence of programs that provide additional support.”<sup>1101</sup> In addition, to the extent digital literacy contributes to consumers’ ability to search for, secure, and keep jobs, targeted investment in digital literacy could, over time, help reduce demand on Lifeline by reducing unemployment. Consistent with court holdings that the “purpose of universal service is to benefit the customer, not the carrier,”<sup>1102</sup> would providing digital literacy training be a way to lessen demand for both low-income and high-cost funding, and thereby reduce contribution obligations on consumers and businesses?

425. In the wake of the 1996 Act, the Commission implemented the directives in section 254 by adopting rules to administer universal service through four functionally separate programs – high cost, low-income, E-rate, and rural health care. Our current rules direct USAC, the USF program administrator, to project program demand separately for those four programs, and to keep separate accounts for the amounts of money collected and disbursed for each program.<sup>1103</sup> Nothing in the statutory framework, however, dictates that the Commission must keep these four programs functionally separate from one another, or precludes the Commission from creating a new program that is administered separately from existing programs, so long as that program is consistent with our statutory authority. We therefore seek comment on whether a digital literacy program should be administered through the existing E-rate program, the low-income program, or as a separate program outside of the current structure of any of the existing programs. What are the practical and administrative implications of each of these alternatives?

426. *Digital Literacy Training.* We seek comment on whether universal service funding for digital literacy should be focused on training programs. By reducing the digital literacy skills gap, training programs could help consumers, and particularly low-income Americans, who have not yet adopted broadband to gain the digital skills necessary to adopt broadband. Connect Ohio, a BTOP grantee that offers digital literacy training classes in libraries and community centers across Ohio, found that approximately 87 percent of consumers who took formal digital literacy classes said they intended to subscribe to broadband at home within a year as a result of the training, demonstrating the effectiveness of digital literacy training as a tool for increasing broadband adoption.<sup>1104</sup> We seek comment and data on the effectiveness of formal digital literacy training classes, and the benefits such training provides as compared to informal digital literacy guidance that may be provided by librarians and others to consumers who have not adopted broadband.

427. Although some digital literacy training programs are already being offered, many

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<sup>1100</sup> *Seventh Broadband Progress Report*, 26 FCC Rcd at 8040, paras. 64-65.

<sup>1101</sup> *Id.* at 8040-41, para. 66.

<sup>1102</sup> *Rural Cellular Association* 588 F.3d at 1103 (quoting *Alenco Communications, Inc.* 201 F.3d at 621).

<sup>1103</sup> See 47 C.F.R. § 54.702(h).

<sup>1104</sup> Amanda Murphy, *2011 Review: ECO Progress, Last Mile Successes, New Initiatives & Partnerships*, Connect Ohio, (Dec. 28, 2011), available at <http://connectohio.org/blog/post/2011-review-eco-progress-last-mile-successes-new-initiatives-partnerships>.

Americans who haven't adopted broadband still may not have access to digital literacy training, because it may not be offered where they live or because the service may be offered through a program or institution that is only available to certain populations. For example, a local area senior center may provide computer or Internet classes, but the mission of these institutions and the people they serve is limited to the elderly. Of the approximately 16,800 public libraries in the United States,<sup>1105</sup> only about 38 percent currently provide formal digital literacy training.<sup>1106</sup> Providing additional funding for digital literacy training that is free and open to all consumers, for example through programs offered at libraries and schools, could help close that gap by ensuring that all Americans, particularly low-income Americans, can access the benefits of digital literacy training. Furthermore, funding digital literacy training programs could provide not only an immediate infusion of resources, but also produce a more sustainable impact by fostering the development of curricula and training skills that would serve as building blocks for future digital literacy training programs run without USF support. Accordingly, we seek comment on whether funding digital literacy training is an effective way to help close the digital literacy gap and thereby increase demand for and the availability of broadband to low-income consumers and others. We also seek comment on how to ensure that the non-adopters we are targeting are aware of and can access the digital literacy training programs that are established as a result of our providing funding. Are there ways to utilize the expertise of other government agencies, groups or organizations to assist us in better targeting digital literacy training?<sup>1107</sup>

428. *Funded Entities.* We seek comment on what types of entities should be eligible to receive digital literacy training funds, consistent with our statutory authority, efficient program design, and the targeting of the funding towards low-income consumers. Many have advocated that libraries are effective institutions for digital literacy training,<sup>1108</sup> while schools, particularly those offering School Spots pursuant to the *E-rate Community Use Order and NPRM*, could be effective as well. Does our authority allow funding received from savings in the Lifeline program to be directed to libraries and schools through our current E-rate program? Could this minimize administrative overhead and provide a ready means to prioritize or limit receipt of funds to libraries and schools in low-income areas?<sup>1109</sup> Alternatively, as part of the low-income program, could USF funding be provided to ETCs that apply for additional support for the purpose of providing digital literacy training in locations like libraries that are targeted to low-income communities?<sup>1110</sup> We also seek comment on whether to provide funding to ETCs

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<sup>1105</sup> See Funding & Technology Access Study, Public Libraries and Access, Information Policy & Access Center at 1 (2010-2011 data presented) (*iPAC Information*), available at [www.ala.org/plinternetfunding](http://www.ala.org/plinternetfunding). See also How Libraries Stack Up: 2010, OCLC at 1 (2010) (*OCLC Research*), available at [www.oclc.org/reports/stackup](http://www.oclc.org/reports/stackup)

<sup>1106</sup> See Library Tech Report at 33, Figure C-17.

<sup>1107</sup> See, e.g., Letter from Marijke Visser, American Library Association, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Jan. 24, 2012) (American Library Association Jan 24 *ex parte* Letter).

<sup>1108</sup> *Informing Communities Sustaining Democracy in the Digital Age*, The Aspen Institute and The Knight Foundation at 47 (2009), available at [http://www.knightfoundation.org/media/uploads/publication\\_pdfs/Knight\\_Commission\\_Report\\_-\\_Informing\\_Communities.pdf](http://www.knightfoundation.org/media/uploads/publication_pdfs/Knight_Commission_Report_-_Informing_Communities.pdf); INFORMATION NEEDS OF COMMUNITIES REPORT: PART 3 - RECOMMENDATIONS, Federal Communications Commission, Office of Strategic Planning and Policy Analysis at 358 (July 2011), available at <http://transition.fcc.gov/osp/inc-report/INoC-35-Recommendations.pdf>.

<sup>1109</sup> See 47 C.F.R. § 54.505(c) (*E-rate Discount Matrix*). An E-rate applicant filing for discounts on eligible services must calculate the percentage discount that it is eligible to receive measured by the percentage of students eligible for the National School Lunch Program and dependant upon whether it is located in an urban or rural location.FCC Form 471 Instructions at 8-19 (identifying how an E-rate applicant should calculate its discount).

<sup>1110</sup> See, e.g., *Communications Workers of America Comments*, WC Dkt No. 10-90 *et al.*, at 16-17 (filed Apr. 18 2011).

that participate in the high-cost program, conditioned on their offering digital literacy training to consumers in their service territory.<sup>1111</sup> For example, such training could be provided by ETC employees in public locations such as libraries or schools. Are there anchor institutions better suited to serve low-income non-adopters than schools and libraries, or perhaps in addition to schools and libraries? If so, what are they, and how could we target them? For example, would Tribal government administrative buildings or other community centers be more accessible and better suited to serve low-income non-adopters on Tribal lands?

429. Libraries are open to the general public during operating hours, while digital literacy training offered by schools to non-students would presumably be offered only outside of school hours. In addition, libraries may be open during the evenings and on weekends, which could increase the opportunities for digital literacy classes to be held at times when people could attend them. Furthermore, for millions of Americans, libraries have become established institutions where people feel comfortable accessing the Internet,<sup>1112</sup> and libraries are a known place in the community where people may already go to seek help in becoming digitally literate.<sup>1113</sup> For example, data shows that approximately 32 percent of the American public 14 years or older have accessed the Internet using a library computer or wireless network at least once in the last 12 months.<sup>1114</sup> Additionally, this access is highest among low-income and working poor, people of mixed race, 14-18 year olds, men, and non-English speakers.<sup>1115</sup> Schools can also provide meaningful opportunities for digital literacy courses and potentially reach non-adopters, although they may be more limited in their reach and purpose – focusing primarily on students and their immediate families and on digital citizenship, a concept that teaches how to appropriately and safely use technology and the Internet in a technology-rich society.<sup>1116</sup>

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<sup>1111</sup> In the *USF/ICC Transformation Order and FNPRM* proceeding, several rural telecommunications companies commented that they maintain relatively low broadband adoption rates. Some advocated for greater availability of information to increase adoption. See, e.g., Hargray Telephone Company Reply Comments at ii, 2; Hawaiian Telecom 9-10; IT&E Reply Comments at 3-5; San Juan Cable at 3, 6; ALA at 4; California Emerging Technology Fund at 1; CA PUC at 11, 14-15; Connected Nation at 17; DC PSC at 3; Free Press at 6; Global Crossing at 18; Information Technology Industry Council at 5; Internet2 at 3; Kansas Corporation Commission at 20-21; Maine Public Advocate Office at 5; National Assoc of State Utility Advocates at 48, 51; NY PSC at 4-5; Schools, Health and Libraries Broadband Coalition at 4; State of Hawaii at Reply Comments at 3-4.

<sup>1112</sup> See NATIONAL BROADBAND PLAN at 176-77; *OCLC Research* at 1; *iPAC Information*; *IMLS Research Brief*; Library Tech Study at 30, 32-39; The U.S. IMPACT Study, Opportunity for All: How Library Policies and Practices Impact Public Internet Access, Institute of Museum and Library Studies (June 2011) (*IMPACT Study*), available at <http://tascha.washington.edu/usimpact>; Phoenix Center Perspective 11-04 at 3 (showing the impact that libraries have made in reducing the probability of labor market discouragement).

<sup>1113</sup> See *IMPACT Study*; *OCLC Research*; *IMLS Research Brief* at 2-4; *iPAC Information* at 3.

<sup>1114</sup> See *Opportunity for All: How the American Public Benefits from Internet Access at U.S. Libraries*, The U.S. IMPACT Study, IMLS at 32 (Mar. 2010) (*2010 IMLS Study*), available at <http://www.gatesfoundation.org/learning/Documents/OpportunityForAll.pdf>; Library Tech Study at 34.

<sup>1115</sup> *Id.*

<sup>1116</sup> See, e.g., Secretary Arne Duncan, *Common Sense 2011 White Paper; Using Technology to Transform Schools, Remarks to the 2010 Association of American Publishers Annual Meeting, Department of Education* (Mar. 3, 2010) (stating, “In the 21st century, students must be fully engaged. This requires the use of technology tools and resources, involvement with interesting and relevant projects, and learning environments—including online environments—that are supportive and safe”), available at <http://www2.ed.gov/news/speeches/2010/03/03032010.html>; New York City Department of Education Connected Learning, available at <http://schools.nyc.gov/community/innovation/ConnectedLearning/default.htm> (offering digital literacy training in New York City for disadvantaged middle school students and their families); Ten Elements of High Quality Digital Learning, Digital Learning Now! (Dec. 1, 2010), available at (continued....)

430. We propose to limit funds to entities that do *not* already offer formal digital literacy training services so that USF does not displace existing funding sources for such training, whether derived from public or private sector sources. Further, to encourage outreach to the community, we propose that any digital literacy training supported in schools be limited to those schools that offer community access after regular school hours.<sup>1117</sup> We propose to establish these eligibility criteria to encourage the development of new digital literacy training programs for the purpose of helping those people without digital literacy skills gain access to digital literacy training. We believe these criteria will further the goal of promoting universal service, instead of simply funding programs that already exist. We seek comment on these criteria, and whether they will promote the goal of expanding access to and demand for broadband among populations that disproportionately lack digital literacy skills, particularly low-income consumers. We also seek comment on whether we should limit funding only to “communities” that are not already served by digital literacy programs, such as BTOP-funded programs designed to teach digital literacy skills. For purposes of administering such a requirement, how should we define a “community” such that we could determine what community would not be eligible for digital literacy training funding? Should the Commission establish additional eligibility criteria, and, if so, what should those criteria include?

431. We also seek comment on the criteria for selection of recipients in the event that demand exceeds available funding. Research shows that certain demographic populations, such as the elderly, disabled, low-income, and non-English speaking populations, need more help with digital literacy.<sup>1118</sup> Accordingly, for example, funding could be prioritized to areas, such as census tracts, that have more low-income consumers. Should we direct funding to low-income areas? If so, at what level and based on what criteria? Should we direct funding to entities serving elderly, disabled, bilingual, Tribal or non-English speaking populations? How would we verify that these entities serve the targeted population? The census data show that rural areas generally have higher non-adoption rates than urban areas. Should we establish a rural priority for the funding if the demand exceeds the amount we ultimately adopt for this program?

432. On the other hand, if demand does not exceed available funding, should we consider funding existing programs or entities that have already received funding for digital literacy training? Should we consider funding programs focused on particular digital literacy skills, *e.g.*, job searching, e-government services, or financial services? We propose that the Wireline Competition Bureau provide USAC with detailed criteria and guidelines for determining which applicants receive funding if the demand exceeds the amount available. We seek comment on delegating this authority to the Bureau.

433. *Funding Levels and Duration.* We seek comment on how to fund digital literacy training without increasing the overall size of the Universal Service Fund. Could we use funding reclaimed through savings in one USF program to advance digital literacy, potentially administered through another program? Could, for instance, digital literacy training be administered in conjunction with the current E-

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<http://digitallearningnow.com/wp-content/uploads/2011/11/Digital-Learning-Now-Report-FINAL.pdf>. *But see* Mexican Institute For Greater Houston – Computer Literacy, *available at* <http://www.org/programs/computer-training> (Spanish-language program consists of 100 hours of classroom training taught in 2 weekly 2-3 hour sessions, which take place largely in K-12 public schools; curriculum consists of training on how to navigate the Internet; create E-mail accounts; and use Microsoft Word, PowerPoint, and Excel).

<sup>1117</sup> See *E-rate Community Use Order and NPRM*.

<sup>1118</sup> See Reply Comments of The United States Internet Industry Association and Netliteracy, GN Dkt. No. 09-51 at 8-11, Illustration #1 (June 8, 2009); *see also* John B. Horrigan, *Closing the Broadband Divide*, Pew Internet & American Life Project at 2-3 (Aug. 2007), *available at* <http://www.pewinternet.org/Reports/2007/Closing-the-Broadband-Divide.aspx>; 2010 *Broadband Adoption Report* at 7.

rate program, but be funded through savings realized by measures we adopt today to eliminate waste, fraud, and abuse in the Lifeline program, or by savings realized in high-cost support?<sup>1119</sup>

434. Would up to \$50 million in annual funding over a four year period appropriately balance the goal of advancing digital literacy for Americas that lack such skills, such as low-income consumers, with minimizing the USF contribution burden on consumers and businesses? Would this level and duration of funding appropriately balance advancing digital literacy for Americas that lack such skills, such as low-income consumers, with minimizing the USF contribution burden on consumers and businesses? To aid commenters in addressing the impact of this amount of funding, we offer an example of how a digital literacy training program could be structured if libraries and schools were the primary recipients of funding and the program were administered through E-rate; we also estimate the likely number of libraries and schools such a program could reach.

435. Through E-rate, eligible schools and libraries may receive discounts from for eligible services, including telecommunications services, Internet access, and internal connections.<sup>1120</sup> As noted above, section 254 gives the Commission authority to designate additional services eligible for support through E-rate.<sup>1121</sup> The Commission also has determined that it has the authority to designate services eligible for E-rate support as part of its authority to enhance access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms and libraries, to the extent technically feasible and economically reasonable.<sup>1122</sup> If we were to administer support for digital literacy training through E-rate, we seek comment on designating certain additional services as eligible for funding for entities that separately apply and are authorized to receive such funding. We also seek comment on whether we can designate these services as eligible under a different USF program.

436. A recent study of libraries shows that there are a number of challenges to establishing and maintaining a robust digital literacy program, including limited funds to hire staff, provide training, and acquire the tools and resources to provide digital literacy training to patrons.<sup>1123</sup> Accordingly, we seek comment as to whether any of the following specific services to advance digital literacy should be added to the Eligible Services List (ESL) as supported services eligible for E-rate program funding support if digital literacy support were administered through the E-rate program:

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<sup>1119</sup> *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 138, n.221 (noting that Connect America Fund support declined by carriers “could be held as part of accumulated reserve funds that would help minimize budget fluctuations in the event the Commission grants some petitions for waiver,” or, in addition or instead, “[t]o the extent that savings were available from CAF programs, the Commission could reallocate that funding for broadband adoption programs, consistent with our statutory authority, while still remaining within our budget target”).

<sup>1120</sup> 47 C.F.R. §§ 54.502, 54.503, 54.506, 54.517.

<sup>1121</sup> See 47 U.S.C. § 254(c)(1), (c)(3), (h)(2)(A). Congress charged the Commission with establishing competitively neutral rules to enhance access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms and libraries; and also provided the Commission with the authority to designate “special” or “additional” services eligible for universal service support for schools and libraries. 47 U.S.C. § 254 (c)(3), (h)(2).

<sup>1122</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9008-9015, paras. 436-449; see also 47 U.S.C. § 254(h)(2)(A). We note that in the *Universal Service First Report and Order*, the Commission concluded that training costs would not be deemed eligible for E-rate support for several reasons, including that the cost of supporting training would be prohibitive, the E-rate program should provide funds to as many applicants as possible, and participation in the program requires a showing that the applicant is ready and able to use the E-rate supported services. See *id.* at 9038, 9077, paras. 497, 572.

<sup>1123</sup> See *Library Tech Study* at 24-25, 32-39; see also *IMPACT Study*.

- Labor costs for trainers: dedicated personnel to provide digital literacy training for a minimum number of hours per week;
- Staff training for the trainers: providing effective in-person digital literacy training courses, including supporting costs for in-person training, conferences, and online training;
- Curriculum development: staff time developing curriculum, purchase of training content for in-person digital literacy classroom courses, one-on-one training, and online tutorials;
- Software and materials to facilitate in-person digital literacy training;
- Marketing: staff time spent on marketing the training classes, including time spent developing marketing materials as well as printing and advertising costs;
- Volunteer recruitment: staff time spent on recruiting and training volunteer digital literacy trainers; and
- Administrative costs: staff time spent administering the program, including scheduling the classes and reserving rooms.

In the alternative, if the digital literacy program were administered through the low-income or the high-cost program, would the costs of these specific services or activities be appropriate to support and how would the support be disbursed through those existing programs?

437. We seek comment on whether these are the digital literacy resources that USF funding should support. Are there other necessary resources that digital literacy training funding should support? If so, what are they and why are they vital to providing digital literacy training?

438. We also seek comment on whether and how funding should be allocated across libraries and schools. Is it reasonable to assume that libraries are better situated to provide digital literacy training to low-income consumers, and therefore that an allocation of digital literacy funding such as 80 percent to libraries and 20 percent to schools would be appropriate? Does this allocation between two groups of eligible entities allow for sufficient funding to encourage the development of sustainable digital literacy training programs? If not, what would be a better allocation?

439. We estimate that approximately \$15,000 a year would be sufficient to cover the cost of approximately eight to 10 hours of digital literacy training per week at one funded location (*e.g.*, one library or school).<sup>1124</sup> If we structured the support to provide up to \$10,500 per library or school per year, requiring that the participant matches this funding by providing an additional \$4,500 per year, each entity would have a total of \$15,000 per year to use for digital literacy training. A program structured in this way could provide funding to nearly 4,800 entities annually within a \$50 million annual budget.<sup>1125</sup> We note that providing funding for digital literacy training to 4,000 libraries could increase the percentage of public libraries that provide formal digital literacy training from 38 percent to about 60 percent.

440. We seek comment on this structure and its impact. Would a \$15,000 annual program budget per entity be sufficient to support a digital literacy training program? Would that level of support allow eligible entities to provide meaningful training programs in the community? How many low-income non-adopters could be reached with such a digital literacy training budget? Would ensuring digital literacy training is available in 60 percent of libraries as well as nearly a thousand schools be sufficient to ensure that all or nearly all low-income Americans who have not adopted broadband have access to a digital literacy training program? Should a priority be established for schools and libraries on Tribal lands, which historically have lagged behind in terms of both infrastructure deployment and

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<sup>1124</sup> This estimate is based on a review of the average hourly trainer salary, benefits and administrative costs of various ongoing digital literacy training programs administered by NTIA.

<sup>1125</sup> If the funding were allocated 80% to libraries and 20% to schools, this would provide funding to 3,809 libraries (\$40M/\$10,500) and 952 schools (\$10M/\$10,500) annually.

subscribership?<sup>1126</sup> Is the \$10,500 USF/\$4,500 entity contribution (*i.e.*, a 30 percent match, equivalent to the 70 percent discount rate in the E-rate program) a reasonable balance between USF funding and entity contribution, or would there be a greater impact if we required a smaller match and funded a smaller number of entities? Is a \$4,500 entity contribution an attainable amount for most libraries and schools? If not, what would be a reasonable amount? Should the contribution amount be different for libraries and schools? If so, on what basis and what should the amount be? Should we establish different discount rates or match requirements for libraries and schools? If so, on what basis and what should they be? We note that providing a set amount per entity, regardless of poverty level or urban versus rural location, is different from the way libraries currently receive USF funding.<sup>1127</sup> However, libraries have consistently maintained that the current structure is not ideal for the way libraries serve their communities.<sup>1128</sup> Given the objective of increasing the number of and access to digital literacy training programs, a funding framework different from the current USF funding structure could be beneficial. We seek comment on providing a set discount level for funding all eligible entities.

441. We seek comment on whether four years is an appropriate length of time to provide funding for digital literacy training. Should it be longer or shorter? Is four years sufficient time to improve significantly the digital literacy skills of low-income Americans and thereby increase broadband adoption? Would funding for a shorter period of time discourage recipients from hiring permanent staff, fully implementing a digital literacy curriculum, and providing training? Will there be a continued need for digital literacy funding in the future?

442. *Administrative Structure.* We propose that any digital literacy training funding that might be established be administered through USAC. We anticipate the number of entities applying for funding to offer digital literacy training could be high, and USAC has the experience and the resources to process applications and distribute funding. We seek comment on this proposal. Is an alternative approach to administration preferable, and, if so, why and what should that approach be?

443. We seek comment on whether there should be an annual application process, comparable to the E-rate process, or whether an eligible entity should be authorized to receive funding for the full four years upon initially satisfying any applicable requirements. Are there other methods of disbursing support that are more appropriate or more efficient considering the amount of support for each recipient and the number of anticipated recipients? Could we utilize another government agency or organization to review applications or distribute the funds to recipients?<sup>1129</sup>

444. If the funding were to be administered as part of E-rate, should we establish a separate filing window for digital literacy training applications? If a majority of funding is provided to libraries, would there be less need to tie the funding cycle to the calendar of a typical school year? Given the idea to provide a set amount of funding per applicant, linked to a specified number of hours of training per week, there may be less of a need for a competitive bidding process for eligible recipients to procure the necessary training resources and services. Does it generally make sense to apply the E-rate rules to this

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<sup>1126</sup> See *Native Nations NOI*, 26 FCC Rcd 2672, at 2673-74, para. 1 (estimating broadband deployment on Tribal lands at less than 10 percent). See also *id.* at 2674, para. 2 (“where Native Nations and their community members do have access to broadband, studies indicate that their rates of use are on par with, if not higher than, national averages”) (*citing* Traci L. Morris Ph.D, *Native Public Media and Sascha D. Meinrath*, New America Foundation, *NEW MEDIA, TECHNOLOGY AND INDIAN USE IN INDIAN COUNTRY* (Nov. 19, 2009).

<sup>1127</sup> See *E-rate Discount Matrix*.

<sup>1128</sup> See, e.g., ALA Comments, CC Dkt. No. 10-14 *et al.* (filed Jul. 9, 2010).

<sup>1129</sup> See, e.g., American Library Association Jan. 24 *ex parte* Letter at 1 (suggesting the FCC seek comment on the suitability of disbursing Lifeline reform savings to the Institute for Museum and Library Services (IMLS) so that IMLS “may award grants to promote digital literacy training through public, school and tribal libraries.”)



program? If not, why not? If so, are there existing E-rate program rules that should not apply?

445. If digital literacy funding were to be administered as part of another USF program, what modifications to existing rules for that program rules should be made? Are there other USF program rules or requirements we should consider waiving or should not apply?

446. We also seek comment on the content and the format of the application forms. Should we amend any of our current forms or create new forms only for the purpose of providing digital literacy training support? What data should be submitted along with the digital literacy funding application? How would applicants be required to demonstrate they are contributing the requisite amount of funding? We propose to delegate the development of any new forms to the Bureau, and we seek comment on this proposal.

447. What reporting requirements and certifications should be imposed on recipients of funding, and how would we ensure that the minimum number of hours of training per week are provided? Should we require recipients to report to the Commission and/or to the public the number of individuals that receive training, the number of individuals receiving training that go on to adopt broadband at home, and/or any other metrics? If so, how frequently should such data be reported? Is there other information that would enable us to monitor the impact of using universal service funds for this purpose? How often should funding be disbursed – annually, quarterly, monthly, or some other interval?

### **C. Limits on Resale of Lifeline-Supported Services**

#### **1. Background**

448. Some telecommunications carriers are offering Lifeline-supported services directly to consumers through resale arrangements with incumbent LECs.<sup>1130</sup> Pursuant to section 251(c)(4) of the Communications Act of 1934 (as amended), incumbent LECs have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.<sup>1131</sup> In 1996, the Commission concluded that all retail services are subject to this resale obligation.<sup>1132</sup> In 1997, in its initial implementation of section 254, the Commission rejected arguments that all carriers, not just ETCs, should be able to participate in Lifeline, noting that section 254 allows universal service support to be provided only to ETCs. It concluded, however, that a large class of companies that would not be eligible to receive universal service support directly would nonetheless be able to offer Lifeline-supported service because “resellers could obtain Lifeline service at wholesale rates that include the Lifeline discount and pass these discounts through to qualifying low-income consumers.”<sup>1133</sup> In its 2004 Lifeline Report and Order, the Commission required non-ETCs that provide Lifeline-supported service to eligible consumers through resale arrangements with the incumbent LECs to comply with all Lifeline/Link Up requirements, including certification and verification of subscribers.<sup>1134</sup>

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<sup>1130</sup> See 47 U.S.C. § 251(c)(4).

<sup>1131</sup> See *id.*

<sup>1132</sup> The Commission concluded there was no reason to limit the resale duty to basic telephone services, and that all retail services are subject to wholesale rate obligations under section 251(c)(4). See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Dkt. No. 96-98 *et al.*, 11 FCC Rcd 15499, 15934 (1996) (*Local Competition Order*).

<sup>1133</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8972, para. 370; see also *id.* at paras. 161, 178; *Tracfone Forbearance Order*, 20 FCC Rcd at 15100-01, para. 12.

<sup>1134</sup> See *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd 8302, 8325.

## 2. Discussion

449. In the Order adopted today, our goal is to make sure that all providers of Lifeline service operate under a common set of rules designed to protect consumers and the Fund. We are very concerned that in today's marketplace, the current resale arrangements pose risk to the Fund in two respects.<sup>1135</sup> First, in situations where both the wholesaler and the reseller are ETCs, there is a risk that both the wholesaler and the reseller could seek reimbursement from the Fund for the same subscriber.<sup>1136</sup> Because ETCs submit line counts to USAC for reimbursement without identifying customer information, there is no way for USAC to determine whether both the wholesale provider and the ETC-reseller are seeking reimbursement from the Fund for the same subscriber.

450. Second, in situations where only the wholesaler is an ETC, allowing non-ETC resellers to provide Lifeline-supported services to consumers poses a risk to the Fund because non-ETCs are subject to less oversight to ensure compliance with the Commission's Lifeline rules. While our rules require resellers to maintain records sufficient to demonstrate compliance with Commission rules,<sup>1137</sup> it is difficult, as a practical matter, to oversee compliance with our Lifeline rules in situations where the entity with the retail relationship with the consumer is not interfacing directly with either USAC or regulators (state or federal). Non-ETC resellers may lack incentives to comply with a number of the protective measures we adopt in this Order today, including the measures related to the institution of the duplicates database.<sup>1138</sup> In the most extreme case, carriers that have been denied designation as an ETC or otherwise "red-lighted" as ineligible to receive Fund support could effectively circumvent those decisions by entering into resale arrangements with the incumbent LECs under section 251 of the Act.<sup>1139</sup>

### a. Limiting Lifeline Support to the ETCs Directly Serving the Lifeline Customers

451. Consistent with our obligation to protect the program and reduce waste and abuse in the Fund, we therefore propose to allow ETCs to receive Lifeline support from the Fund only when they provide Lifeline service directly to subscribers. ETCs offering services at wholesale to resellers would no longer be eligible to receive reimbursement from the Fund for such services when they are resold as Lifeline services directly to end-users by resellers. This means that the incumbent LEC wholesale provider would not be eligible to seek reimbursement from the Fund for any low-income subscriber for whom it does not directly provide service. We seek comment on this proposal. How could such a requirement be implemented? For example, could the Commission adopt a new Lifeline rule specifying

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<sup>1135</sup> The discussion in this section is confined to section 251 resale arrangements with incumbent local exchange carriers for landline service; the questions posed here are confined to such arrangements and are not intended to seek comment on issues relating to wireless resellers who are ETCs seeking reimbursement directly from the Fund.

<sup>1136</sup> Pursuant to section 254(e) of the Act, only ETCs designated by a state commission or this Commission pursuant to section 214(e) can receive federal universal service support. *See* 47 U.S.C. § 254(e).

<sup>1137</sup> *See* 47 C.F.R. § 54.417.

<sup>1138</sup> For example, we impose a number of new obligations on ETCs including, among other requirements, the transmission of all subscribers' information into the National Lifeline Accountability Database and initial and annual certification requirements. *See supra* sections VII.A and VI.C.

<sup>1139</sup> The "Red Light Rule" is codified at 47 C.F.R. § 1.1910, and provides that anyone filing an application or seeking a benefit from the Commission or one of its components (including USAC and the Pooling Administrator) that is delinquent in debt owed to the Commission, will be barred from receiving a license or other benefit until the delinquency has been resolved. Any entity that files an application or seeks a benefit from the Commission or one of its components, and is delinquent in debt to the Commission, will be notified of the delinquency and given 30 days to resolve it. Failure to resolve it will result in dismissal of the application or other request for a benefit.

this requirement? Could we define the supported Lifeline service to be “voice telephony service provided directly to end users,” thus excluding wholesale services that are used to serve Lifeline customers? If we do not limit Lifeline support only to ETCs when they provide Lifeline service directly to eligible subscribers, what other measures could we take to address the potential risks to the Fund?

**b. Re-examining the Scope of the Incumbent LEC Resale Obligation**

452. Even if incumbent LECs no longer receive support from the Fund when providing a wholesale service used to serve Lifeline customers, we acknowledge that, as long as the incumbent LEC continues to offer Lifeline-supported voice telephony service to retail customers, the section 251(c)(4) resale obligation could be interpreted to require that incumbent LECs offer their Lifeline-discounted retail voice telephony services for resale “at wholesale rates.”<sup>1140</sup> This result could be avoided, however, if we interpret the statute not to require incumbent LECs to resell their voice telephony services at a wholesale discount based on their ordinary retail rate further discounted by the amount of the Lifeline subsidy when resold to carriers seeking to serve Lifeline customers. Although certain Commission precedent could be read to adopt a contrary interpretation,<sup>1141</sup> we believe that this interpretation of section 251(c)(4) is reasonable here, especially in light of intervening changes in the marketplace. In interpreting section 251(c)(4) in the *Local Competition Order*, the Commission found that “[t]he 1996 Act does not define ‘retail rate,’ nor is there any indication that Congress considered the issue” and “[i]n view of this ambiguity” and thus concluded “that ‘retail rate’ should be interpreted in light of the pro-competitive policies underlying the 1996 Act.”<sup>1142</sup> In resolving the ambiguity in “retail rates” in this context, we believe that section 251(c)(4) might also appropriately be interpreted in light of certain universal service policies. In particular, we believe that section 251(c)(4) could be interpreted in light of the goals of section 254, including avoiding waste, fraud, and abuse of universal service, and section 214(e), which anticipates that universal service support will be flowing to ETCs that meet certain criteria, including that they will not be providing service solely using resale.<sup>1143</sup> Balancing the pro-competitive goals of the Act with these universal service-specific considerations, we believe that we could conclude that the “retail rate” in this context is the rate for the incumbent LEC’s voice telephony service before applying the Lifeline discount. In the case of such resold services, only an ETC-reseller that has the direct relationship with the end-user could apply for and obtain subsidies from the Fund.<sup>1144</sup> Consequently, this approach would retain section 251(c)(4) resale as a competitive option in the case of ETCs serving Lifeline customers, which can get wholesale-priced service for resale plus direct Lifeline support from the Fund, while protecting against waste, fraud, and abuse under section 254 and remaining consistent with the framework of section 214(e). We seek comment on that interpretation of section 251(c)(4), as well as other approaches that would achieve the statutory and regulatory goals of universal service. For example, could the Commission achieve a similar result through the interpretation of the phrase “other costs that

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<sup>1140</sup> See 47 U.S.C. § 251(c)(4).

<sup>1141</sup> See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd at 8866, 8875, 8972, paras. 161, 178, 370 (discussing reliance on resale to provide Lifeline services); see also *Tracfone Forbearance Order*, 20 FCC Rcd at 15100-01, para. 12 (same); *Local Competition Order*, 11 FCC Rcd 15499, 15975, para. 962 (1996) (“We also conclude that section 251(c)(4)(B) allows states to make similar prohibitions on the resale of Lifeline or any other means-tested service offering to end users not eligible to subscribe to such service offerings.”).

<sup>1142</sup> *Local Competition Order*, 11 FCC Rcd 15499 at 15970, para. 949.

<sup>1143</sup> See generally 47 U.S.C. §§ 214(e), 254.

<sup>1144</sup> Non-ETC resellers are precluded from obtaining subsidies directly from the Fund for their provision of service to Lifeline eligible subscribers. See 47 U.S.C. § 214(e).

will be avoided by the [LEC]” in the resale pricing standard in section 252(d)(3)?<sup>1145</sup>

453. As an alternative to that statutory interpretation, we seek comment on whether we could relieve incumbent LECs of any section 251(c)(4) obligations they may have to resell Lifeline-discounted services by forbearing, on our own motion, from applying those obligations to the resale of Lifeline-discounted services.<sup>1146</sup> We seek comment on our analysis for each of the criteria for forbearance set forth in section 10(a). We also seek further comment on the competitive effect if the Commission were to forbear from the resale requirement of section 251(c)(4) as it applies to Lifeline-discounted services sold to non-ETC providers.

454. *Just and Reasonable.* Under section 10(a)(1) of the Act, we must consider whether enforcement of a section 251(c)(4) duty to offer Lifeline-discounted services at wholesale rates is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory.<sup>1147</sup> Requiring incumbent LECs to offer for resale Lifeline-discounted services at wholesale rates may not be necessary to ensure that the charges, practices, classifications, and regulations for Lifeline service are just and reasonable, because low-income consumers would still be able to receive Lifeline-supported services from other providers. Would eliminating this resale requirement be unjustly or unreasonably discriminatory against non-ETCs—which could not compete to offer Lifeline services because they would not be eligible to obtain such support directly from the Fund—given the intent in the Act that only ETCs be eligible to offer Lifeline-supported services?<sup>1148</sup>

455. *Consumer Protection.* Section 10(a)(2) requires the Commission to consider whether requiring incumbent LECs to offer Lifeline-supported services at wholesale under section 251(c)(4) is necessary to protect consumers. Imposing this aspect of a resale requirement may not be necessary for the protection of consumers as they will continue to have access to Lifeline-supported services from numerous providers, including competitive ETCs that resell voice telephony services and receive Lifeline support directly from the Fund.

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<sup>1145</sup> See 47 U.S.C. § 252(d)(3).

<sup>1146</sup> Section 10 of the Act requires the Commission to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that the telecommunications carrier’s charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. See 47 U.S.C. § 160. In making a forbearance determination regarding the public interest, the Commission must also consider “whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which forbearance will promote competition among providers of telecommunications services.” *Id.* We note that section 10(d) provides that the Commission may not forbear from applying the requirements of section 251(c) unless it determines that those requirements are “fully implemented.” See *id.* § 160(d). In the *Qwest Omaha Forbearance Order*, the Commission determined that, for purposes of section 10(d), the requirements of section 251(c) are fully implemented nationwide and may be forborne from. See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Dkt. No. 04-223, *Memorandum and Order*, 20 FCC Rcd 19415, 19439-42, paras. 51-56 (2005). The D.C. Circuit affirmed the Commission’s interpretation, see *Qwest Corp. v. FCC*, 482 F.3d 471, 477-79 (2007).

<sup>1147</sup> See 47 U.S.C. § 160(a)(1); 47 U.S.C. § 251(c)(4); see also *CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003) (finding reasonable the Commission’s view that the term “necessary” means that there is a strong connection between the requirement and its regulatory goal).

<sup>1148</sup> See 47 U.S.C. § 214(e)(1)(A). Although non-ETC resellers currently do not receive reimbursement directly from the Fund, they do receive a benefit from the Fund in the form of a discounted wholesale price that effectively passes the Lifeline subsidy through to the reseller.

456. *Public Interest.* Section 10(a)(3) requires that we consider whether enforcement of a section 251(c)(4) resale requirement for Lifeline-discounted services is in the public interest. The Commission has made clear its ongoing commitment to fight waste, fraud, and abuse in the Lifeline program. Restricting Lifeline support to resellers that also are ETCs, thereby limiting reimbursements to only those entities that have a direct reporting requirement to the Commission and USAC, should function to prevent waste, fraud, and abuse of the program, which is in the public interest. Section 10(b) requires that the analysis under section 10(a)(3) include consideration of whether forbearance would promote competitive market conditions. Although we do not believe that forbearance will necessarily increase competition in the market for Lifeline services, given the number of Lifeline providers currently in the market and ongoing efforts to market and make available Lifeline services, commenters should address whether the proposed forbearance will in any way harm the already-competitive Lifeline services market. We seek comment on this analysis.

457. We seek comment on whether there are any policy concerns with the Commission precluding the flow-through of Lifeline support to resellers, whether through statutory interpretation or limited forbearance, and instead providing such support only directly to the ETC serving the Lifeline customer. If so, what other ways exist to achieve the intended objective of preventing waste, fraud, and abuse of the Fund and ensuring Commission rules regarding the provision of Lifeline services are being followed by all Lifeline service providers? For example, if the Commission does not interpret the statute or forbear as described above, what, if any, additional recordkeeping, reporting, or other measures should be imposed to ensure that the Lifeline rules and requirements are being followed by the resellers?

**c. Implementation Issues**

458. We seek comment on how best to implement these changes if we were to adopt them. Would limiting Lifeline funding to ETCs directly serving the Lifeline customers, coupled with either of the alternatives to protecting against an unfunded incumbent LEC resale obligation, harm any existing Lifeline subscribers? We seek input on how we could ensure continuity of service to current subscribers of Lifeline resold service. Resellers are free to take steps, consistent with statutory requirements, to become ETCs and, therefore, continue to resell Lifeline services. Should we defer the implementation date of any rules for a limited time to provide sufficient time for existing non-ETC resellers to obtain ETC designation, and if so, what time period would be appropriate? If non-ETC resellers do not choose to apply for, or do not obtain, ETC designation, how should their subscribers be handled? Alternatively, should existing resold lines be grandfathered? If so, how can the Commission ensure that the non-ETC resellers offering such services to Lifeline subscribers are complying with the Commission's rules?

459. We also seek comment on the extent to which incumbent LEC Lifeline services today are tariffed offerings that include a discount for the Lifeline subsidy as part of the wholesale price in the tariff. Under the proposed alternatives, would incumbent LECs need to amend such tariffs to separate the amount of the Lifeline subsidy from the wholesale price of the underlying service that is being resold, and could they do so consistent with federal and state regulations? We also seek comment on how a rule that restricts reimbursement from the Fund to ETCs providing Lifeline directly to end-users would impact existing contractual arrangements, including interconnection agreements, that may exist between incumbent LECs and resellers. Should we provide some period of transition before such a rule would become effective to allow parties to renegotiate or terminate such agreements? Are there any other actions the Commission should take with respect to such agreements under either of the approaches discussed here?

460. We seek comment on procedures that could be implemented to provide assurance that ETCs are not seeking reimbursement for their wholesale service offerings. For instance, should wholesale carriers be required to certify that they are not seeking reimbursement for resold services when they submit line counts to USAC? Should incumbent LECs and other wholesalers be required to maintain records of their resold lines for purposes of annual self-certification to USAC and any audit

requirements?

461. The Order requires ETCs to populate a database with Lifeline subscriber information to ensure that duplicate services are not awarded to qualifying individuals.<sup>1149</sup> In the case of resold services, the carrier that is providing Lifeline service directly to the low-income consumer is in the best position to obtain the necessary information. We propose requiring that the Lifeline service provider with the direct relationship to the end-user be responsible for entering all pertinent information into the database as described in today's Order. In the alternative, we propose that the Lifeline resellers be required to provide the information, including subscribers' names and service addresses, to the Lifeline wholesaler, which then would be responsible for entering that information into the database. Regardless of which party is required to populate the database, we also seek comment on methods to ensure that resellers are adhering to the requirement to not enroll existing subscribers. We also seek comment on which entity, the incumbent LEC wholesaler or the ETC-reseller, will be responsible for obtaining annual subscriber certifications and who will de-enroll ineligible subscribers pursuant to the rules we adopt in this Order.

#### **D. Lifeline Support Amount for Voice Service**

462. In the Order, we adopted on an interim basis a uniform reimbursement amount of \$9.25 in monthly Lifeline support for voice service.<sup>1150</sup> In this *FNPRM*, we seek to further develop the record on what a modernized Lifeline support amount should be, including the appropriate structure of support (e.g., whether it should be uniform or vary in some way) and how the level or levels of support should be determined. We are seeking to determine the optimal level of Lifeline discount that will help us accomplish our goals.<sup>1151</sup>

463. First, we seek comment on whether to continue with a flat rate of reimbursement. We note that a uniform Lifeline support level is administratively simple and unlikely to significantly distort the aims of the Lifeline program in any specific cases. While prices do vary somewhat from place to place, reflecting market conditions such as underlying costs and the nature and extent of competition, we are aware that many regional and national carriers set relatively uniform prices across a wide geographic area.<sup>1152</sup> Are there other approaches, such as one based on the price of the lowest-priced available offering in a particular geographic area, that the Commission should consider instead of a flat rate of reimbursement? Should the Commission provide support for any non-recurring up-front charges associated with the provision of the service?

464. We also seek comment on how we should determine the size of the support amount for voice service. In the attached Order, we adopt a pilot program to test the impact of different support amounts on broadband penetration rates. In the voice context, however, we could potentially develop an estimate of the impact of different support amounts on voice service penetration based on data from the existing program.

465. For example, we could estimate low-income consumers' demand response to price, and hence estimate the subsidy levels that would achieve our goals. To do this we would need demand data – both price and quantity information – from the Lifeline program, including data from the enhanced Lifeline program on Tribal lands. Because Lifeline is a subsidy, “price” means both the actual price paid by consumers for Lifeline service and the effective price received by ETCs. These two prices differ by

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<sup>1149</sup> *Supra* Order at paras. 182-208.

<sup>1150</sup> *Id.* at para. 53.

<sup>1151</sup> *Id.* at paras. 24-43.

<sup>1152</sup> We note that one commenter suggests that a flat rate be based upon the “costs incurred by the least cost provider for a given area.” Ohio PUC Comments at 26.

the support amount, currently set at \$9.25, or up to \$34.25 on Tribal lands. In this case, “quantity” means the number of lines of a given quality obtained for a given price. Because the quality of service may differ from one observation to the next, information on service characteristics (i.e., wireline or wireless, number of minutes, value-added services, etc.) would also be needed. Ideally, this price and quantity information would be obtained at the level of the Lifeline household. The more specific information available to us, the better we could estimate demand for Lifeline-supported service, which would in turn help us determine the optimal amount for the Lifeline discount. While a cross-section of households (or study areas or states) may be sufficient for demand estimation, the more aggregated the data set is, the more statistical fluctuation may be introduced into the estimate. Ideally, we would test data over a period of time.

466. We seek comment on the best method to determine the optimal support amount. Should we require ETCs providing Lifeline service to submit the data described above to USAC as part of the reimbursement process? Should this data be submitted directly to the Commission? Or is there a less burdensome way to obtain the necessary information?

467. In the alternative, could we rely on commenters’ estimates of the impact – on both voice penetration and the Fund – of support amounts above or below the \$9.25 or up to \$34.25 on Tribal lands, adopted on an interim basis in the attached Order? For us to do so, commenters would need to provide specific credible evidence in support of their positions. If they believe that a lower rate would be sufficient to meet our program goals, they would need to provide estimates of the expected savings obtained from a lower rate, and also of the expected impact on penetration by low-income consumers, including low-income consumers on Tribal lands. Conversely, if commenters believe a higher rate would have a material impact on achievement of our goals for the program, they should describe with specificity how such a higher rate would affect penetration rates for the targeted low-income population as well as the associated costs it would impose on the Fund.

468. We seek comment on whether support amount for voice should be uniform across all providers or whether there should be different amounts for fixed v. mobile voice? Should the support amount take into account varying business models for delivering the supported voice telephony service, or the relative value that consumers may place on different types of service offerings? Should support be provided on a monthly basis to those ETCs that do not charge for service on a monthly basis?

469. We seek comment on whether the support levels could in the future be linked to a communications price index? If so, how often should it be updated?

470. Finally, we seek additional comment on issues related to the one-per-household rule adopted in the Order. We ask whether the flat rate discount amount should be provided in a way that would provide support for multiple services within a household. For example, should a household be able to split the Lifeline discount across two or more lines? Should a household be able to use the discount for both a wireless and a wireline service?

471. Some commenters propose that the Commission make additional support available within a household. For example, T-Mobile argues that the Commission should permit households receiving one Lifeline-supported service to obtain a second supported service at 50 percent of the Lifeline support level (e.g., 50 percent of \$9.25, or \$4.60).<sup>1153</sup> We seek comment on this proposal. First, how would such a rule be enforced? Would the extra support be available only to the ETC already serving the household, or

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<sup>1153</sup> See T-Mobile Dec. 16 *ex parte* Letter, at 4 (stating that a reduced Lifeline subsidy should be available for second (and subsequent, if applicable) household members, in recognition that wireless carriers generally offer family plans with lower rates for additional connections); SBI Jan. 23 *ex parte*, at 2 (stating that the Commission could provide an additional ten dollars of Lifeline support to enable households to afford wireless family plans which share minutes).

could the discount be split between two ETCs? How could such a rule be applied to the purchase of a wireline connection and a wireless phone for a household, as opposed to a wireless family shared calling plan? If such a rule were adopted, how should the Commission determine an appropriate per-household support amount, or should the total support amount be one and a half times the standard support amount as T-Mobile proposed?

472. In the *Lifeline and Link Up Public Notice*, we sought comment on the costs associated with providing one Lifeline-supported service per eligible resident of Tribal lands.<sup>1154</sup> We seek to refresh the record on this issue. Commenters are encouraged to provide written analysis to support their recommendations.

473. Should a household be able to allocate the set discount amount between both voice service and broadband service? Finally, should the support amount for voice service be reduced over time to the extent voice becomes an application that is available at no or minimal charge over a broadband connection?<sup>1155</sup> If so, how should the support amount be adjusted for areas in which broadband is not available?

#### **E. Tribal Lands Lifeline and Link Up Support**

474. *Tribal Lands Lifeline Support.* In the *2000 Tribal Lifeline Order*, the Commission adopted several measures to enhance Lifeline support for low-income residents living on Tribal lands.<sup>1156</sup> One such measure was the adoption of enhanced low-income support, now known as Tribal Lands support, for eligible residents of Tribal lands.<sup>1157</sup> Tribal Lands Lifeline support provides up to an additional \$25 per month in support to eligible low-income consumers living on Tribal lands.<sup>1158</sup> In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether the Tribal Lands support amount remains a reasonable additional reimbursement rate for consumers receiving enhanced Tribal support.<sup>1159</sup>

475. In the Order above, we codified a rule limiting Lifeline support to a single subscription per household.<sup>1160</sup> We concluded that a one-per-household rule is a reasonable way to ensure that voice and broadband service are available to low-income consumers, while minimizing the contribution burden on consumers and businesses.<sup>1161</sup> Thus, eligible residents of Tribal lands may currently receive one Tribal Lands-supported service per household. However, as noted in the Order, some commenters responding to the *Lifeline and Link Up NPRM* suggest that the Commission adopt a less restrictive “one-per-person

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<sup>1154</sup> See *Lifeline and Link Up Public Notice*, 26 FCC Rcd at 11103, para. 2(c).

<sup>1155</sup> *Supra* section III (Performance Goals and Measures).

<sup>1156</sup> See *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12231-32, paras. 20-85. See also *supra* discussion at section VI.D (Tribal Lifeline Eligibility).

<sup>1157</sup> *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12230-31, 12238-39, paras. 42, 59.

<sup>1158</sup> Tribal Lands Link Up support provides up to an additional \$70 in support to eligible low-income consumers living on Tribal lands.

<sup>1159</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2847, para. 250.

<sup>1160</sup> Order at para. 74. We further defined “household” in a manner consistent with the definition used in the Low-Income Home Energy Assistance Program, as “any individual or group of individuals who are living together at the same address as one economic unit.” *Id.* We also defined an “economic unit” for the purposes of this rule as “all adult individuals contributing to and/or sharing in the income and expenses of a household.” *Id.*

<sup>1161</sup> *Id.* at para. 82; see *supra* Order at section III.C.



rule” applicable only to eligible residents of Tribal lands.<sup>1162</sup>

476. We seek comment on whether to adopt a rule permitting eligible residents of Tribal lands to apply their allotted Tribal Lands discount amount to more than one supported service per household. Under such a rule, ETCs would have the flexibility to permit their consumers to apply their discount to multiple services, up to the maximum allowable discount amount. For example, should a household receiving a \$34 Lifeline discount per month be permitted to “split” the discount between a wireline and a mobile phone service (*e.g.*, the household could receive a \$17 discount off of the cost of each service) or between two mobile services? Should eligible households on Tribal lands also be permitted to apply Link Up to reduce the connection or activation costs for multiple services? Are there other areas of the country that are similarly situated to Tribal lands such that subscribers in those areas should be permitted to apply their allotted Lifeline discount amount to more than one supported service per household?<sup>1163</sup>

477. We also seek comment on how such a rule could be administered. Should eligible households on Tribal lands be permitted to obtain supported services from more than one ETC, or should low-income support be limited to one ETC per household? What changes, if any, would need to be made to sections 54.403 and 54.407 of the Lifeline rules, as amended today, if multiple ETCs are permitted to seek support for the same household on Tribal lands? What steps could the Commission take to prevent improper payments in that scenario? Additionally, how could the Commission and the Administrator ensure compliance with the Commission’s reimbursement rules?<sup>1164</sup>

478. In the Order above, we remove section 54.403(a)(4)(i) of the Commission’s current rules, which required that the basic local residential rate for Tribal Lands subscribers not fall below \$1 per month.<sup>1165</sup> Thus, Tribal lands Lifeline support will be available to an ETC providing service to an eligible household on Tribal lands regardless of whether that amount brings the rate for voice telephony service below \$1 per month per qualifying low-income household.<sup>1166</sup> We seek comment on what precautions we could implement to prevent waste, fraud, and abuse in this situation.

479. *Enhanced Link Up Support on Tribal Lands.* In the Order, we eliminate Link Up support, except for those ETCs receiving high-cost support on Tribal lands. In this *FNPRM*, we seek comment on whether the Link Up program for residents of Tribal lands as currently implemented is the most effective way to use these funds, or whether we should alter or eliminate Link Up support for Tribal lands.

480. As the Commission has previously observed, Tribal lands have significant communications deployment and access challenges.<sup>1167</sup> In the past, the Commission has targeted additional universal service support for residents of Tribal lands in a variety of ways, including by providing enhanced Lifeline and expanded Link Up support and by exempting competitive ETCs serving Tribal lands from the interim cap on competitive ETC support the Commission adopted in 2008. Under the exemption from the interim cap, high-cost support to competitive ETCs for Tribal lands more than doubled between 2008 and 2011, to an estimated \$150 million, while support for other parts of the nation was frozen. While significant strides have been made with this funding, including bringing new services to many Tribal lands, more remains to be done. The Commission remains committed to continuing to

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<sup>1162</sup> Order at para. 81 (citing SBI Comments at 9-10; SBI Nov. 23 *ex parte*; GCI Dec. 6 *ex parte*).

<sup>1163</sup> *See, e.g.*, PR Wireless Jan. 24 *ex parte* Letter at 5.

<sup>1164</sup> *See* Order at Appendix A, 47 C.F.R. §§ 54.407, 54.413 (adopted rules).

<sup>1165</sup> *See* Order at para. 270.

<sup>1166</sup> *See id.*

<sup>1167</sup> *See generally* *Native Nations NOI*, 26 FCC Rcd 2672; *see, e.g., USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 479-88 (discussing the Tribal Mobility Fund Phase I).

expand access to advanced telecommunications services on Tribal lands.

481. In the recent *USF/ICC Transformation Order and FNPRM*, the Commission adopted comprehensive reforms to the high-cost support program. Those reforms will make more efficient use of limited federal universal service resources and ensure that carriers accepting funding are accountable for meeting clearly defined universal service obligations, including buildout obligations. The Commission's reforms will expand access to both wireline and wireless services in high-cost, difficult-to-serve areas across the nation—both Tribal and non-Tribal. In addition, the Commission took several steps specifically targeted to facilitate deployment and improve access on Tribal lands. First, the Commission's Mobility Fund I, which allocates \$300 million in one-time support to fund deployment of 3G or better mobile services where no 3G service currently exists, provides for a 25 percent bidding credit for Tribally owned or controlled carriers that seek to provide service on their own Tribal lands.<sup>1168</sup> In addition, the Commission established the Tribal Mobility Fund I, which allocates \$50 million in one-time support for advanced mobile services on Tribal lands where no such services currently exist. The Commission also created Mobility Fund II, which will provide \$500 million in ongoing support for wireless service. While the details of that support mechanism are the subject of a further notice of proposed rulemaking, the Commission has stated that it anticipates that up to \$100 million annually will be reserved exclusively for Tribal lands. In addition, the Commission budgeted at least \$100 million per year for the new Remote Areas Fund to support affordable access to broadband and voice service, including through the use of alternative technologies, in areas in the nation that are most costly to serve.

482. These comprehensive reforms to the high-cost program will efficiently target support for voice and broadband service both in the nation generally and on Tribal lands specifically. In light of those reforms, and the reforms we make to the program in this Order, we seek comment on whether the Link Up program for Tribal lands should be modified or eliminated. In this context, we note that when the Commission first established the enhanced Link Up program for Tribal lands, it observed that doing so would create incentives for carriers to construct facilities where none existed.<sup>1169</sup> Today, enhanced Link Up could support multiple providers extending facilities in the same geographic area (to the extent that there is a business case for multiple providers to serve Tribal lands), which is inconsistent with our overall framework of not providing support to multiple providers. We seek comment on whether enhanced Link Up support for Tribal lands remains necessary given the recent reforms in high-cost support. We also seek comment on the benefits of enhanced Link Up support and the impact of elimination of that benefit for low-income consumers living on Tribal lands. We further seek comment on ways any savings might be used to more efficiently serve the purposes of the program, the specific needs of low-income consumers on Tribal lands, or both.

#### **F. Adding Women, Infants, and Children Program to the Eligibility Criteria**

483. Lifeline currently permits consumers to qualify for a Lifeline supported service if the consumer participates in one of several federal or Tribal assistance programs.<sup>1170</sup> Several commenters suggest that we add the Special Supplemental Nutrition Assistance Program for Women, Infants, and

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<sup>1168</sup> *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 490.

<sup>1169</sup> *2000 Tribal Lifeline Order*.

<sup>1170</sup> See 47 C.F.R. § 54.409. Currently, participation in any of several federal assistance programs qualifies participants for Lifeline. These programs are Medicaid; Supplemental Nutrition Assistance Program (Food Stamps); Supplemental Security Income; Federal Public Housing Assistance (Section 8); Low-Income Home Energy Assistance Program; National School Lunch Program's free lunch program; and Temporary Assistance for Needy Families (TANF). In addition to these programs, participation in Bureau of Indian Affairs General Assistance, Tribally administered TANF, or Head Start (only those meeting its income standard), qualifies participants living on Tribal lands for Lifeline.

Children (WIC) administered by the Department of Agriculture to the list of qualifying federal assistance programs for Lifeline.<sup>1171</sup> We seek comment on whether adding WIC to the eligibility criteria will advance our goal of ensuring universal availability of phone service to low-income consumers.<sup>1172</sup>

484. The WIC program was “established to counteract the negative effects of poverty on prenatal and pediatric health and provides a combination of direct nutritional supplementation, nutrition education and counseling, and increased access to health care and social service providers for pregnant, breastfeeding, and postpartum women; infants; and children up to the age of five years.”<sup>1173</sup> As such, it functions as a complement to the National School Lunch Program’s Free Lunch Program, a qualifying program for Lifeline that provides nutritional assistance to low-income, at-risk, children enrolled in school.<sup>1174</sup> To qualify for WIC, applicants must meet four requirements:<sup>1175</sup> categorical,<sup>1176</sup> residential,<sup>1177</sup> income,<sup>1178</sup> and nutrition risk.<sup>1179</sup> WIC is offered in all states, and over 35 percent of WIC participants do not participate in another federal assistance program.<sup>1180</sup> One commenter estimates that more than two-thirds of WIC participants are at or below the federal poverty line, though we note that such WIC participants are already eligible for Lifeline through the income eligibility standard<sup>1181</sup>

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<sup>1171</sup> See Letter of Debra Whitford, Supplemental Food Programs Division, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 (filed Aug. 17, 2011) (Aug. 17 WIC *ex parte* Letter); YourTel Comments at 11; Media Action Grassroots Network and Consumers Union Reply Comments at 12; Letter from Geraldine Henchy, Director, Food and Research Action Center, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 (filed Sept. 2, 2011) (Food and Research Action Center Sept. 2 *ex parte* Letter); LCCHR Comments at 9.

<sup>1172</sup> One commenter states that WIC participants are “particularly likely to benefit from discounted telephone services...; families with young children require extensive connection to the community, whether it be pediatricians, child care providers or schools.” Media Action Grassroots Network and Consumers Union Reply Comments at 12.

<sup>1173</sup> See Aug. 17 WIC *ex parte* Letter, at Attach.

<sup>1174</sup> See 7 C.F.R. § 210.1; 7 C.F.R. § 245.3.

<sup>1175</sup> See Food and Nutrition Service, WIC Eligibility Requirements, *available at* <http://www.fns.usda.gov/wic/howtoapply/eligibilityrequirements.htm> (last visited Feb. 5, 2012).

<sup>1176</sup> To meet the categorical criterion for WIC, an individual must be: a woman who is pregnant (during pregnancy and up to 6 weeks after the birth of an infant or the end of the pregnancy), postpartum (up to six months after the birth of the infant or the end of the pregnancy), or breastfeeding (up to the infant’s first birthday); an infant; or a child (up until the child’s fifth birthday). *See id.*

<sup>1177</sup> Applicants must live in the state in which they apply for WIC benefits in order to meet the residential eligibility criterion. *See id.*

<sup>1178</sup> WIC applicants must also meet an income standard as established by the state agency administering WIC. This income standard must be between 100 percent of the Federal Poverty Guidelines and 185 percent of the Federal Poverty Guidelines and varies by state. Applicants automatically meet the income criterion through participation in certain programs, including SNAP, Medicaid, and Temporary Assistance for Needy Families. At the state agency’s option, applicants who are eligible to participate in certain other State-administered programs may be granted automatic income eligibility. *See id.*

<sup>1179</sup> To meet the nutritional risk criterion, applicants must be seen by a health professional such as a physician, nurse, or nutritionist who must determine whether the individual is at nutrition risk. “Nutrition risk” means that an individual has medical-based or dietary-based conditions. *See id.*

<sup>1180</sup> *See id.*; Media Action Grassroots Network and Consumers Union Reply Comments at 12; Aug. 17 WIC *ex parte* Letter.

<sup>1181</sup> Food and Research Action Center Sept. 2 *ex parte* letter.

485. We seek comment on whether adding WIC to the list of programs that automatically confers Lifeline eligibility would advance our universal service goals. Is expansion of program eligibility to households participating in WIC necessary given the multiple assistance programs and income-eligibility standard that already confer Lifeline eligibility? Would there be any administrative complexities given that WIC benefits are also available to infants and children? Would the Lifeline benefit, as with the National School Lunch Free Lunch Program eligibility criterion, attach to the household? How many households that are not eligible today would qualify if we were to allow participation based on WIC? Could WIC clinics potentially be a partner of ETCs in outreach to low-income consumers?<sup>1182</sup> Would WIC clinics be willing to do this? If so, how would such a partnership work? What would be the monetary impact of potential inclusion of WIC as an eligibility criterion? Finally, given the temporary nature of WIC participation, should there be additional verification requirements?<sup>1183</sup>

#### **G. Establishing Eligibility for Homeless Veterans**

486. The Department of Veterans Affairs (VA) has a number of programs designed to assist homeless veterans and veterans at risk of homelessness.<sup>1184</sup> The Veterans Benefits Administration-Veterans Health Administration Special Outreach and Benefits Assistance program consists of “outreach, benefits counseling, referral, and additional assistance to eligible veterans.”<sup>1185</sup> The program has homeless veterans coordinators spread out nationally who work with homeless veterans.<sup>1186</sup> The Healthcare for Homeless Veterans program identifies homeless veterans to the VA for eligibility determinations and then connects the veterans to assistance programs.<sup>1187</sup>

487. The Veterans Homeless Initiative Office, a division of VA, suggested that we include homeless veterans programs as qualifying eligibility criteria.<sup>1188</sup> Our rules for demonstrating income eligibility require the subscriber to provide documentation such as an income tax return or current income statement from an employer to establish income is at or below 135 percent of the Federal Poverty Guidelines. The rule does not address, however, situations in which the consumer has no income at all, and therefore lacks any such documentation. We seek comment on measures that would enable veterans who lack any income, but are not otherwise enrolled in a qualifying program, to demonstrate eligibility for Lifeline. For instance, should a low-income consumer that lacks any income be permitted to sign a certification under penalty of perjury that he or she has no income, with some form of additional certification from an authorized VA official, such as an outreach worker or program coordinator, that the person in question is a homeless veteran or at risk of becoming homeless? Given the unique difficulties in verifying transient and homeless Lifeline consumers' eligibility, are there any additional measures that should be implemented in situations where an eligible veteran has no documentation of income eligibility

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<sup>1182</sup> WIC requires participant interaction with caregivers on a regular basis. *See id.*

<sup>1183</sup> *See* 47 C.F.R. § 54.409(d)(3). Our rules already require Lifeline participants to notify their carrier if they cease to participate in the qualifying program conferring Lifeline eligibility.

<sup>1184</sup> Department of Veterans Affairs, Homeless Programs & Initiatives, *available at* <http://www.va.gov/homeless/programs.asp>.

<sup>1185</sup> *Id.*

<sup>1186</sup> *Id.*

<sup>1187</sup> Department of Veterans Affairs, HCHV Frequently Asked Questions, *available at* [http://www.va.gov/HOMELESS/HCHV\\_Frequently\\_Asked\\_Questions.asp](http://www.va.gov/HOMELESS/HCHV_Frequently_Asked_Questions.asp).

<sup>1188</sup> Letter from C.Q. Tillery, VA Homeless Veterans Initiative Office, to Marlene Dortch, WC Dkt. No. 11-42 (filed Jan. 30, 2012).

to minimize waste, fraud, and abuse while ensuring Lifeline access?

#### H. Mandatory Application of Lifeline Discount to Bundled Service Offerings

488. In the above Order, we amend sections 54.401 and 54.403 of the Commission's rules to adopt a federal policy providing all ETCs (whether designated by a state or this Commission) the flexibility to permit Lifeline subscribers to apply their Lifeline discount to bundled service packages or packages containing optional calling features available to Lifeline consumers.<sup>1189</sup> Giving ETCs the flexibility to offer expanded service packages to Lifeline consumers will enhance consumer choice by making broadband and mobile voice services more accessible and affordable for low-income consumers.<sup>1190</sup>

489. In the *Lifeline and Link Up NPRM*, the Commission also sought comment on amending the Commission's rules to adopt a uniform federal requirement that Lifeline discounts may be used on any Lifeline calling plan offered by an ETC with a voice component, including bundled service packaging combining voice and broadband, or packages containing optional calling features.<sup>1191</sup> Some argued that by requiring ETCs to permit eligible low-income consumers to apply their Lifeline discount to the purchase of expanded service offerings, particularly packages that include broadband, the Commission will help make broadband available to consumers who may otherwise be underserved.<sup>1192</sup> Others argued that the Commission should not interfere with the products offered by ETCs and should allow the market to resolve this issue.<sup>1193</sup> Certain ETCs argued that requiring such ETCs to offer these added features as part of their Lifeline service offerings could upset their respective business models.<sup>1194</sup>

490. Several states, including Oregon, Texas, and Kansas, have enacted rules *requiring* ETCs to offer Lifeline discounts on all voice service offerings, including expanded service plans.<sup>1195</sup> We now seek comment on whether to further revise our rules to require ETCs to permit subscribers to apply their

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<sup>1189</sup> Order at para. 316. Pursuant to this rule, each subscriber's Lifeline discount can be no larger than if he or she chose a basic voice plan. *Id.* at para. 315.

<sup>1190</sup> *Id.* at para. 317.

<sup>1191</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2850, para. 258.

<sup>1192</sup> *See, e.g.*, NATOA Comments at 2-3; NJ DRC Comments at 24; NASUCA Comments at 29-30. In the Order, we adopted a program performance goal of ensuring the availability of broadband service for low-income Americans. *See* Order at paras. 33-36. A uniform federal policy requiring that ETCs permit Lifeline consumers to apply their discount to the service plan of their choice could help us to more effectively achieve this goal.

<sup>1193</sup> *See, e.g.*, Letter from Mitchell F. Brecher, Counsel, TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (filed Nov. 14, 2011) (TracFone Nov. 14 *ex parte* Letter).

<sup>1194</sup> 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 Dkt. 06-GIMT-446-GIT, Violates Federal Law*, WC Dkt. No. 03-109 *et al.*, (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).

<sup>1195</sup> 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 Dkt. 06-GIMT-446-GIT, Violates Federal Law*, WC Dkt. No. 03-109 *et al.*, (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).

Lifeline discount on any bundle that includes a voice component.<sup>1196</sup> Would a uniform federal requirement mandating that ETCs permit Lifeline subscribers to apply their discount on any service offering that includes voice further the statutory principle that consumers have access to quality services at “just, reasonable, and affordable rates” because it would make bundled offerings more affordable to low-income consumers?<sup>1197</sup>

491. We seek further comment on and information about current ETC practices. In states that do not mandate use of a discount on any offering, to what extent do ETCs currently offer Lifeline discounts on plans that include bundles of services or optional calling features? If so, what services are Lifeline consumers permitted to purchase? We also seek comment on the extent to which specific states mandate that ETCs allow the application of Lifeline discounts to expanded service plans. Where available, commenters are encouraged to submit supporting documentation of ETC or state practices along with any written submissions.

492. We also seek comment on the potential benefits and costs of such a requirement. For example, would such a requirement stimulate broadband adoption by low-income individuals? Is there any evidence that voice telephone penetration rates have been positively impacted by state requirements mandating the extension of program discounts to the purchase of bundled packages and optional services? Would there be any growth in Lifeline subscription rates stemming from the extension of Lifeline support to expanded service packages?<sup>1198</sup> What are the potential administrative costs to carriers in complying with the proposed rule? Finally, are there any potential unidentified costs to consumers associated with the proposed rule?

493. We also ask whether there should be any limitations on this potential requirement, 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 that contain services other than voice and broadband (*e.g.*, packages that include video)? To what extent could Lifeline consumers risk the termination of their local voice service based on an inability to pay for the remaining portion of their chosen calling plan?<sup>1199</sup> In the states that currently mandate that discounts be used on all offerings, has this been an issue, and how have the states addressed this potential concern? Do Lifeline providers have the capability to block Lifeline consumers’ ability to purchase and be billed for additional service offerings, such as pay-per-view offerings in a bundled package that includes video, or to specify certain usage amounts that may be incurred per billing cycle? Do the carriers that operate in the states that mandate the use of discounts on any service package provide consumers with any way to limit their usage of premium features that would result in additional charges?

### **I. “Own Facilities” Requirements**

494. *Background.* To be eligible for universal service support, a common carrier must offer the services supported by federal universal service support mechanisms throughout a service area “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”<sup>1200</sup> The Commission has interpreted the term “facilities” to mean “any physical component of the

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<sup>1196</sup> ETCs would apply federal Lifeline support to reduce the cost of any voice calling plan or package selected by an eligible consumer. *See* Appendix A, 47 C.F.R. § 54.401(b) (adopted rule).

<sup>1197</sup> *See* 47 U.S.C. § 254(b)(1).

<sup>1198</sup> *See, e.g.*, Verizon Comments at 16 (“Assuming the extension of Lifeline support to bundled services will increase participation in the Lifeline program, this approach will further grow the fund and has the potential to effectively negate other efforts to constrain the size of the fund.”); Verizon Jan. 17 *ex parte* Letter at 2.

<sup>1199</sup> *See, e.g.*, NJ DRC PN Comments at 17.

<sup>1200</sup> 47 U.S.C. § 214(e)(1)(A).

telecommunications network that are used in the transmission or routing of the services that are designated for support.”<sup>1201</sup> As such, a carrier’s facilities that are not being used to route or transmit voice telephony services do not qualify as “facilities” to meet the ETC requirements in section 214(e)(1)(A). In the *USF First Report and Order*, the Commission held that a carrier “must use its own facilities to provide at least one of the supported services” but did not qualify the term “own facilities” with respect to the amount of facilities a carrier must use.<sup>1202</sup>

495. In the *USF/ICC Transformation Order and FNPRM*, the Commission eliminated its former list of nine supported services and amended section 54.101 of the Commission’s rules to specify that “voice telephony service” is supported by federal universal service support mechanisms.<sup>1203</sup> On December 23, 2011, the Commission affirmed that only carriers that provide voice telephony as defined under section 54.101(a), as amended, using their own facilities will be deemed to meet the requirements of section 214(e)(1).<sup>1204</sup> Thus, a Lifeline-only ETC does not meet the “own-facilities” requirement of section 214(e)(1) if its only facilities are those used to provide functions that are no longer supported “voice telephony service” under amended rule 54.101, such as access to operator service or directory assistance. The Commission stated that to be in compliance with the rules, Lifeline-only carriers must either use their own facilities, in whole or in part, to provide the supported “voice telephony service,” or obtain forbearance from the “own-facilities” requirement from the Commission.<sup>1205</sup>

496. In today’s Order, the Commission issued a blanket forbearance from the facilities-based requirement contained in section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions contained in sections XI.A & B of the Order.<sup>1206</sup> In light of these actions, we now seek further, focused comment on whether there remains a need for the Commission to resolve any further issues concerning the facilities requirement of section 214(e)(1)(A).<sup>1207</sup>

497. *Discussion.* In light of the reforms adopted in today’s Order to limit waste, fraud, and abuse and our continued requirement for non-facilities-based Lifeline-only ETCs to obtain approval of a compliance plan before receiving Lifeline reimbursements, is there a need to establish additional uniform

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<sup>1201</sup> 47 C.F.R. § 54.201(e).

<sup>1202</sup> See *USF First Report and Order*, 12 FCC Rcd at 8871, para. 169.

<sup>1203</sup> *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 3, 78; see also revised section 54.101(a).

<sup>1204</sup> See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 4.

<sup>1205</sup> See *id.*

<sup>1206</sup> Order section XI.A & B.

<sup>1207</sup> 47 U.S.C. § 214(e)(1)(A) (imposing a requirement that ETCs must “either us[e] its own facilities or a combination of its own facilities and resale of another carrier’s services”). Several state commissions as well as carriers seeking ETC designation have expressed concern regarding what may be considered “facilities” under section 214(e)(1)(A) for purposes of ETC designation. In addition, the Commission has pending before it a Petition for Declaratory Ruling filed by TracFone in which this question of the facilities requirement is at issue. See generally South Carolina PUC Comments (recommending denial of Budget Prepay, Inc.’s request for Link Up support in its Petition for limited designation as a facilities based ETC on the grounds it only provides ancillary services using its own facilities and resells all other supported services); see also MI PSC Comments at 2-3 (requesting that Commission provide guidance to states on “level of facilities an applicant must own” to be considered facilities-based). In addition, the Commission has pending before it a Petition for Declaratory ruling filed by TracFone in which this question of the facilities requirement is at issue. See *TracFone Petition*.

standards for the designation of Lifeline-only ETCs?<sup>1208</sup> In order to ensure compliance with the Lifeline rules and prevent waste and abuse in the program, should we consider any additional requirements if a carrier does not own network assets or meets the requirements of section 214(e)(1)(A)?

498. We seek comment on whether we should amend our rules to clarify the term “combination of its own facilities” with respect to the facilities a carrier must own and use to provide USF supported services.<sup>1209</sup> Historically, ETCs have had broad flexibility in how they combine the use of their own facilities with the resale of another carrier’s services so long as at least one supported service is offered using that carrier’s “own facilities.”<sup>1210</sup> Several ETCs, some of which call themselves “facilities-based resellers,” have previously maintained they are facilities-based based on facilities that provision operator and/or directory assistance services, which are provided in conjunction with their retail offering.<sup>1211</sup> Parties in the record have suggested that ETC applicants seeking Link Up support have an incentive to become facilities-based carriers to avoid the Commission’s forbearance process.<sup>1212</sup>

499. If a carrier does claim that it is a facilities-based provider and meets the requirements of section 214(e)(1)(A), should there be a minimum combination of facilities that the carrier should own and use in order to qualify as a facilities-based ETC under the rules? Is there a continuing financial incentive for carriers to be classified as a facilities-based ETC? Should the rules specify in more detail what facilities must be used to provide voice telephony service, in order for a carrier to be deemed facilities-based? Several parties filed comments on TracFone’s Petition for Declaratory Ruling on the issue of what constitutes facilities.<sup>1213</sup> We seek to refresh the record in light of the reforms set forth in the *Order*, so that we may appropriately consider whether there is a need to clarify any minimum requirements of what is classified as “facilities” under section 214(e)(1)(A).

500. We seek comment on whether the location and continued use of facilities is relevant to the ETC designation process for Lifeline-only ETCs under section 214(e)(1)(A). The Commission has previously provided guidance on the location of an ETC’s facilities for purposes of satisfying section 214(e)(1)(A).<sup>1214</sup> Our current rules provide that a common carrier’s facilities need not be located within

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<sup>1208</sup> The Commission recognizes that most of the existing Lifeline-only ETCs operating in today’s market do not own network facilities or could not meet the requirements of section 214(e)(1)(A) based on the Commission’s recent action to amend Section 54.101. See *USF/ICC Transformation Order and FNRPM*, FCC 11-161 at para. 4; Link Up Coalition Dec. 15 *ex parte* Letter at 2-3 (recognizing that its members would not meet the amended definition of 54.101 based on Commission staff interpretation); see TracFone Oct. 13 *ex parte* Letter (acknowledging that as one of the largest recipients in the Lifeline program, it is not a facilities-based wireless carrier). See also generally *TracFone Forbearance Order*.

<sup>1209</sup> See *Universal Service First Report and Order*, 12 FCC Rcd 8776, at 8861-62, para. 152 (1997).

<sup>1210</sup> See *id.* at 8871, para. 169.

<sup>1211</sup> See Letter from John Heitmann, *et al.*, Link Up For America Coalition, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, (filed Oct. 25, 2011) (calling themselves “facilities-based resellers”); *Ex Parte* Conexions LLC d/b/a Conexion Wireless, WC Dkt. No. 09-197 (Jan. 20, 2011) (explaining how company believes it is a facilities-based ETC).

<sup>1212</sup> See Ohio PUC Comments at 5 (explaining how some wireless companies are claiming to own “wireless facilities” in order to receive Link Up funding); see also Michigan PUC Comments at 2-4 (noting that American Broadband and Telecommunications Company claimed it was a facilities-based ETC in Michigan because it owned and used a switch in Ohio even though the company has previously held that it is not a facilities-based provider in Ohio through the American Broadband and Telecommunications Company Petition for Forbearance).

<sup>1213</sup> See AT&T Comments; Budget Pre-Pay and Great Call Comments; CETC Commenters Comments; NASUCA Comments; Nexus Comments; Nexus Reply Comments; Ohio PUC Comments; TracFone Reply Comments.

<sup>1214</sup> See 47 C.F.R. § 54.201(g).



the relevant service area as long as the carrier uses them within the designated service area.<sup>1215</sup> Our rules do not address, however, how the designated carrier must utilize those facilities. If a carrier relies on certain “facilities” to get designated as a Lifeline-only ETC by a state or the Commission, but subsequently discontinues use of those facilities, is the ETC designation invalid given that the facilities are no longer being used to transmit or route the services designated for support? In such cases, should the designation be re-opened to determine whether the ETC is using its own facilities to provide the service?

501. We also seek input on whether, in light of marketplace and other changes, we should revise or clarify our requirements regarding ownership of the facilities in question.<sup>1216</sup> In the *USF First Report and Order*, the Commission made clear that the facilities used must be the ETC’s “own,” meaning that the ETC must have the exclusive right to use the facilities to provide the supported services.<sup>1217</sup> The Commission concluded that if a carrier has obtained exclusive use of facilities, such as an unbundled loop, it would be treated as a carrier’s “own facilities.”<sup>1218</sup> The Commission has also held that if an ETC leases facilities from another carrier and uses such facilities to provision the USF supported services, the ETC has exclusive rights to those facilities and therefore “owns” the facilities as required under section 214(e)(1)(A).<sup>1219</sup> We seek comment on whether we should further clarify the meaning of how a carrier should “own” the facilities used to provision the supported services. If the ETC leases facilities jointly with one or more carriers that it uses to provision the supported services, does that ETC have exclusive right to use the facilities? To provide further guidance for the designation process, is it necessary for the Commission to clarify what is meant by requiring that a facilities-based ETC have exclusive right to use facilities in the provisioning of the supported services?

#### **J. Eligible Telecommunications Carrier Requirements**

502. In the recent *USF/ICC Transformation Order and FNPRM*, the Commission sought comment on various issues relating to ETCs’ existing service obligations to ensure that obligations and high-cost funding are appropriately matched, while avoiding consumer disruption in access to communications services. The Commission acknowledged that relinquishment of ETC status is governed by section 214(e)(4) of the Act, which directs states (or the Commission, for federally designated ETCs) to “permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier.”<sup>1220</sup> The Commission proposed that existing ETC relinquishment and service area redefinition procedures, backstopped by the availability of forbearance from federal requirements, would provide an appropriate case-by-case framework in which to address these issues in the near term.<sup>1221</sup> It also sought comment on how to ensure that low-income consumers across America continue to have access to Lifeline service, both in urbanized areas and in rural areas. In particular, it asked whether as a matter of federal policy, it would “thwart achievement of the objectives established by Congress to relieve an existing ETC of the obligation to provide Lifeline if

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<sup>1215</sup> See *id.*

<sup>1216</sup> See *Virgin Mobile Forbearance Order*, 25 FCC Rcd at 3388, paras. 15-16 (explaining that due to Sprint’s acquisition of Virgin Mobile, the company is “facilities-based” because it now enjoys “beneficial use of Sprint’s wireless facilities” without arm’s length transactions or purchase of service from Sprint).

<sup>1217</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8866, para. 160.

<sup>1218</sup> 47 C.F.R. § 54.201(f); *Universal Service First Report and Order*, 12 FCC Rcd at 8865, para. 158.

<sup>1219</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8865, para. 158, n. 407.

<sup>1220</sup> 47 U.S.C. § 214(e)(4).

<sup>1221</sup> *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 1097.

there was no other ETC in that particular area willing to offer Lifeline services.”<sup>1222</sup>

503. In this proceeding, AT&T suggests that the Commission should allow incumbent wireline Lifeline providers to choose whether to participate in the Lifeline program, arguing that wireline telephone companies are no longer the dominant provider of voice services.<sup>1223</sup> We seek further targeted comment on this suggestion in this docket, and how it might be implemented given the statutory framework for revocation of ETC designations set forth in section 214. How would this Commission, or the states, ensure that low-income consumers in all regions of the country have “access to telecommunications and information services”?<sup>1224</sup> How would one take into account that there may be portions of a given state where the incumbent Lifeline provider is the only provider of service? What factual determinations would need to be made regarding the presence of other eligible telecommunications carriers?

504. In the *Lifeline and Link Up NPRM*, the Commission also sought comment on AT&T’s proposal that all providers of voice and broadband services register to become Lifeline providers, outside of the current ETC designation process.<sup>1225</sup> In response, a number of parties supported the idea of simplifying the process for carriers to participate in the Lifeline program,<sup>1226</sup> while others opposed eliminating the ETC designation process.<sup>1227</sup> MetroPCS suggests that the Commission implement a voucher-based Lifeline program in which Lifeline discounts would be provided directly to eligible low-income consumers.<sup>1228</sup> Are there modifications to this proposal that would be necessary to comply with statutory requirements? We seek to further develop the record on these proposals and concrete steps that we could take to simplify carrier participation in the program, while protecting against waste, fraud and abuse.

#### **K. Record Retention Requirements**

505. Without proper documentation, it is difficult to conduct effective audits of Lifeline service providers. Our rules currently require ETCs to maintain records to document their compliance with state and federal low-income program rules for the three full preceding calendar years.<sup>1229</sup> ETCs must also maintain documentation of consumer eligibility for as long as the consumer receives Lifeline service from that ETC.<sup>1230</sup> In the *USF/ICC Transformation Order and FNPRM*, the Commission revised the record retention requirements for recipients of high-cost support to extend the retention period from five years to ten years. In so doing, the Commission determined that the high cost retention requirement of five years was inadequate for the purposes of litigation under the False Claims Act,<sup>1231</sup> which can

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<sup>1222</sup> *Id.* at para. 1102.

<sup>1223</sup> See AT&T Jan. 24 *ex parte* Letter at 1.

<sup>1224</sup> 47 U.S.C. § 254(b)(3).

<sup>1225</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2864-65, paras. 310-312.

<sup>1226</sup> See, e.g., Viasat Comments at 7-8; Consumer Cellular Comments at 23; Iridium Comments at 5.

<sup>1227</sup> See, e.g., DC PSC Comments at 8; NE PSC Comments at 14.

<sup>1228</sup> See Letter from Carl Northrop, Telecommunications Law Professionals, on behalf of MetroPCS, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, (filed Jan. 25, 2012).

<sup>1229</sup> 47 C.F.R. § 54.417(a).

<sup>1230</sup> *Id.*

<sup>1231</sup> 31 U.S.C. §§ 3729-33. Under the False Claims Act, carriers receiving funds under fraudulent pretenses may be held liable for a civil penalty of between \$5,000 and \$10,000, plus treble damages. 31 U.S.C. § 3729(a)(1).

involve conduct that relates back substantially more than five years.

506. We conclude that the same is true with respect to the record retention requirements for eligible telecommunications carriers receiving low-income universal service support. The current three-year record retention requirements, although adequate to facilitate audits of ETCs, are not adequate for purposes of litigation under the False Claims Act. Thus, we propose to amend section 54.417 of the Commission's rules to extend the retention period for Lifeline documentation, including subscriber-specific eligibility documentation, to at least ten years. ETCs will continue to maintain documentation of consumer eligibility for at least ten years and for as long as the consumer receives Lifeline service from that ETC, even if that period extends beyond ten years. We seek comment on this proposal.

#### **XIV. DELEGATION TO REVISE RULES**

507. Given the complexities associated with modifying existing rules as well as other reforms adopted in this Order, we delegate authority to the Wireline Competition Bureau to make any further rule revisions as necessary to ensure the reforms adopted in this Order are reflected in the rules. This includes correcting any conflicts between the new and or revised rules and existing rules as well as addressing any omissions or oversights. If any such rule changes are warranted, the Wireline Competition Bureau shall be responsible for such change. We note that any entity that disagrees with a rule change made on delegated authority will have the opportunity to file an Application for Review by the full Commission.<sup>1232</sup>

#### **XV. PROCEDURAL MATTERS**

##### **A. Filing Requirements**

508. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 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 the Commission's Electronic Comment Filing System (ECFS). *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/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy 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 12<sup>th</sup> 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 and boxes 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.

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<sup>1232</sup> See 47 U.S.C. § 155(c)(1).

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

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).

## **B. Paperwork Reduction Act Analysis**

509. This Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe the impacts that might affect small businesses, which include most businesses with fewer than 25 employees, in the FRFA in Appendix J, *infra*.

510. The *Further Notice of Proposed Rulemaking (FNPRM)* contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>1233</sup> we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”<sup>1234</sup>

## **C. Congressional Review Act**

511. The Commission will send a copy of this *Report and Order and Further Notice of Proposed Rulemaking* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

## **D. Final Regulatory Flexibility Analysis**

512. The Regulatory Flexibility Act (RFA)<sup>1235</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>1236</sup> Accordingly, we have prepared a Final Regulatory Flexibility Analysis concerning the possible impact of the rule changes contained in the *Report and Order* on small entities. The Final Regulatory Flexibility Analysis is set forth in Appendix J.

## **E. Initial Regulatory Flexibility Analysis**

513. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>1237</sup> the Commission has

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<sup>1233</sup> Pub. L. No. 107-198.

<sup>1234</sup> 44 U.S.C. § 3506(c)(4).

<sup>1235</sup> *See* 5 U.S.C. § 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>1236</sup> 5 U.S.C. § 605(b).

<sup>1237</sup> *See* 5 U.S.C. § 603.

prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in the *Further Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix K. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *FNPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.<sup>1238</sup>

## XVI. ORDERING CLAUSES

514. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1, 2, 4(i), 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and sections 1.1 and 1.427 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.427, this Report and Order is ADOPTED.

515. IT IS FURTHER ORDERED that. Part 54 of the Commission's rules, 47 C.F.R. Part 54, is AMENDED as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for those rules and requirements that involve Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval and of effective dates of such rules, and except for the amendments contained herein to 47 C.F.R. §§ 54.411, 54.412, 54.413 and 54.414 which shall become effective April 1, 2012; and 47 C.F.R. §§ 54.409 which shall become effective June 1, 2012.

516. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and sections 1.1 and 1.421 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.421, this Further Notice of Proposed Rulemaking is ADOPTED.

517. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the Further Notice of Proposed Rulemaking 30 days from publication in the Federal Register, and reply comments on or before 60 days from publication in the Federal Register.

518. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 214, 254, the petition for forbearance filed by AMERICAN BROADBAND & TELECOMMUNICATIONS is GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

519. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 214, 254, the petition for forbearance filed by MILLENNIUM 2000, INC. is GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

520. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160,

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<sup>1238</sup> See 5 U.S.C. § 603(a).

214, 254, the petition for forbearance filed by NORTH AMERICAN LOCAL, LLC is GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

521. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 214, 254, the petition for forbearance filed by TOTAL CALL MOBILE, INC. is GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

522. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 214, 254, the petition for forbearance filed by AIRVOICE WIRELESS, LLC IS GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

523. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 214, 254, we forbear from applying section 214(e)(1)(A) of the Communications Act, 47 U.S.C. § 214(e)(1)(A), and section 54.201(d)(1) and (i) of the Commission's rules, 47 C.F.R. § 54.201(d)(1), (i), to American Broadband & Telecommunications, Millennium 2000, Inc., North American Local, LLC, Total Call Mobile, Inc. and Airvoice Wireless, LLC to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

524. IT IS FURTHER ORDERED that the Petition of Qwest, Inc. regarding self-certification of subscribers on Tribal lands, filed April 5, 2008, is GRANTED.

525. IT IS FURTHER ORDERED that the Petition of AMERICAN PUBLIC COMMUNICATIONS COUNCIL seeking a rulemaking regarding payphone service eligibility for Lifeline support, filed December 6, 2010, is DENIED.

526. IT IS FURTHER ORDERED that the Petition of AMERICAN PUBLIC COMMUNICATIONS COUNCIL for interim relief seeking to allow ETCs to receive Lifeline support for services provided to payphones, filed December 6, 2010, is DENIED.

527. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

528. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Final Rules**

**For the reasons discussed in the preamble, the Federal Communications Commission amends 47**

**CFR part 54 as follows:**

**PART 54 – UNIVERSAL SERVICE**

1. The authority citation for part 54 continues to read as follows:

47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

**Subpart A – General Information**

2. Amend § 54.5 by revising the definition of “eligible telecommunications carrier” to read as follows:

**§ 54.5 Terms and definitions.**

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Eligible telecommunications carrier. “Eligible telecommunications carrier” means a carrier designated as such under subpart C of this part.

\*\*\*\*\*

**Subpart B – Services Designated for Support**

3. Amend § 54.101 by revising paragraph (a) to read as follows:

**§ 54.101 Supported services for rural, insular and high cost areas.**

(a) Services designated for support. Voice Telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

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**Subpart C – Carriers Eligible for Universal Service Support**

4. Amend § 54.201 by revising paragraphs (a)(1) and (h) to read as follows:

**§ 54.201 Definition of eligible telecommunications carriers generally.**

(a) \*\*\*

(1) Only eligible telecommunications carriers designated under this subpart shall receive universal service support distributed pursuant to part 36 of this chapter, and subparts D and E of this part.

\*\*\*\*\*

(h) A state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part.

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5. Revise § 54.202 to read as follows:

**§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.**

(a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

- (1) (i) Certify that it will comply with the service requirements applicable to the support that it receives.
- (ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements. Except, a common carrier seeking designation as an eligible telecommunications carrier in order to provide supported services only under subpart E of this part does not need to



submit such a five-year plan.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.

(5) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public website outlining the terms and conditions of such plans.

(b) Public Interest Standard. Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest.

(c) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of Tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal

Communications Commission. In addition, the Commission shall send any public notice seeking comment on any petition for designation as an eligible telecommunications carrier on Tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by the most expeditious means available.

**§ 54.209 [Removed]**

6. Section 54.209 is removed.

**Subpart E – Universal Service Support for Low-Income Consumers**

7. Revise § 54.400 to read as follows:

**54.400 Terms and definitions.**

As used in this subpart, the following terms shall be defined as follows:

- (a) Qualifying low-income consumer. A “qualifying low-income consumer” is a consumer who meets the qualifications for Lifeline, as specified in § 54.409.
- (b) Toll blocking service. “Toll blocking service” is a service provided by an eligible telecommunications carrier that lets subscribers elect not to allow the completion of outgoing toll calls from their telecommunications channel.
- (c) Toll control service. “Toll control service” is a service provided by an eligible telecommunications carrier that allows subscribers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.
- (d) Toll limitation service. “Toll limitation service” denotes either toll blocking service or toll control service for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, “toll limitation service” denotes both toll blocking service and toll control service.
- (e) 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 Tribal lands. For purposes of this subpart, “Tribal lands” include 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); Indian allotments; Hawaiian Home Lands – areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et. seq., as amended; and any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in § 54.412.

(f) Income. “Income” is all income actually received by all members of a household. This includes salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, lottery winnings, and the like. The only exceptions are student financial aid, military housing and cost-of-living allowances, irregular income from occasional small jobs such as baby-sitting or lawn mowing, and the like.

(g) Duplicative support. “Duplicative support” exists when a Lifeline subscriber is receiving two or more Lifeline services concurrently or two or more subscribers in a household are receiving Lifeline services or Tribal Link Up support concurrently.

(h) Household. A “household” is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An “economic unit” consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.

(i) National Lifeline Accountability Database or Database. The “National Lifeline Accountability Database” or “Database” is an electronic system, with associated functions, processes, policies and procedures, to facilitate the detection and elimination of duplicative support, as directed by the Commission.

(j) Qualifying assistance program. A “qualifying assistance program” means any of the federal, state, or Tribal assistance programs participation in which, pursuant to § 54.409(a) or (b), qualifies a consumer for

Lifeline service, including 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; Temporary Assistance for Needy Families; Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families (Tribal TANF); Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR), and with respect to the residents of any particular state, any other program so designated by that state pursuant to § 54.409(a).

8. Revise § 54.401 to read as follows:

**§ 54.401 Lifeline defined.**

(a) As used in this subpart, Lifeline means a non-transferable retail service offering:

(1) For which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in § 54.403; and

(2) That provides qualifying low-income consumers with voice telephony service as specified in § 54.101(a). Toll limitation service does not need to be offered for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of the service. If an eligible telecommunications carrier charges Lifeline subscribers a fee for toll calls that is in addition to the per month or per billing cycle price of the subscribers' Lifeline service, the carrier must offer toll limitation service at no charge to its subscribers as part of its Lifeline service offering.

(b) Eligible telecommunications carriers may allow qualifying low-income consumers to apply Lifeline discounts to any residential service plan that includes voice telephony service, including bundled packages of voice and data services; and plans that include optional calling features such as, but not limited to, caller identification, call waiting, voicemail, and three-way calling. Eligible telecommunications carriers may also permit qualifying low-income consumers to apply their Lifeline discount to family shared calling plans.

(c) Eligible telecommunications carriers may not collect a service deposit in order to initiate Lifeline service for plans that:

- (1) Do not charge subscribers additional fees for toll calls; or
  - (2) That charge additional fees for toll calls, but the subscriber voluntarily elects toll limitation service.
- (d) When an eligible telecommunications carrier is designated by a state commission, the state commission shall file or require the eligible telecommunications carrier to file information with the Administrator demonstrating that the carrier's Lifeline plan meets the criteria set forth in this subpart and describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public website outlining the terms and conditions of such plans. Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier's Lifeline plan satisfies the criteria set out in this subpart.
- (e) Consistent with § 52.33(a)(1)(i)(C), eligible telecommunications carriers may not charge Lifeline customers a monthly number-portability charge.

9. Amend § 54.403 to read as follows:

**§ 54.403 Lifeline support amount.**

- (a) The federal Lifeline support amount for all eligible telecommunications carriers shall equal:
- (1) Basic support amount. Federal Lifeline support in the amount of \$9.25 per month will be made available to an eligible telecommunications carrier providing Lifeline service to a qualifying low-income consumer, if that carrier certifies to the Administrator that it will pass through the full amount of support to the qualifying low-income consumer and that it has received any non-federal regulatory approvals necessary to implement the rate reduction.
  - (2) Tribal lands support amount. 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 (e), to the extent that the eligible

telecommunications carrier certifies to the Administrator that it will pass through the full Tribal lands support amount to the qualifying eligible resident of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(b) Application of Lifeline Discount Amount.

(1) Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges must apply federal Lifeline support to waive the federal End User Common Line charges for Lifeline subscribers. Such carriers must 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 must apply the federal Lifeline support amount, plus any additional support amount, to reduce the cost of any generally available residential service plan or package offered by such carriers that provides voice telephony service as described in § 54.101, and charge Lifeline subscribers the resulting amount.

(2) Where a subscriber makes only a partial payment to an eligible telecommunications carrier for a bundled service package, the eligible telecommunications carrier must apply the partial payment first to the allocated price of the voice telephony service component of the package and then to the cost of any additional services included in the bundled package.

(c) Toll limitation service. An eligible telecommunications carrier providing toll limitation service voluntarily elected by Lifeline subscribers whose Lifeline plans would otherwise include a fee for placing a toll call that would be in addition to the per month or per billing cycle price of the subscriber's Lifeline service, shall, for April 2012 Lifeline disbursements through December 2013 Lifeline disbursements, receive support in an amount equal to the lesser of:

- (1) The eligible telecommunications carrier's incremental cost of providing either toll blocking services or toll control services to each Lifeline subscriber who has selected such service; or
- (2) The following amounts for each Lifeline subscriber who has selected toll blocking services or toll control services:

- (i) \$3.00 per month per subscriber during 2012; and
- (ii) \$2.00 per month per subscriber during 2013.

10. Add § 54.404 to Subpart E to read as follows

**§ 54.404 The National Lifeline Accountability Database.**

(a) State certification. An eligible telecommunications carrier operating in a state that provides an approved valid certification to the Commission in accordance with this section is not required to comply with the requirements set forth in paragraphs (b) and (c) of this section with respect to the eligible telecommunications carriers' subscribers in that state. A valid certification must include a statement that the state has a comprehensive system in place to prevent duplicative federal Lifeline support that is at least as robust as the system adopted by the Commission and that incorporates information from all eligible telecommunications carriers receiving low-income support in the state and their subscribers. A valid certification must also describe in detail how the state system functions and for each requirement adopted by the Commission to prevent duplicative support, how the state system performs the equivalent functions. The certification must be submitted to the Commission no later than six months from the effective date of this section of the Commission's rules to be valid. Such certification will be considered approved unless the Wireline Competition Bureau rejects the certification within 90 days of filing.

(b) The National Lifeline Accountability Database. In order to receive Lifeline support, eligible telecommunications carriers operating in states that have not provided the Commission with approved valid certification pursuant to paragraph (a) of this section must comply with the following requirements:

- (1) All eligible telecommunications carriers must query the National Lifeline Accountability Database to determine whether a prospective subscriber who has executed a certification pursuant to § 54.410(d) is currently receiving a Lifeline service from another eligible telecommunications carrier; and whether anyone else living at the prospective subscriber's residential address is currently receiving a Lifeline service.

(2) If the Database indicates that a prospective subscriber, who is not seeking to port his or her telephone number, is currently receiving a Lifeline service, the eligible telecommunications carrier must not provide and shall not seek or receive Lifeline reimbursement for that subscriber.

(3) If the Database indicates that another individual at the prospective subscriber's residential address is currently receiving a Lifeline service, the eligible telecommunications carrier must not seek and will not receive Lifeline reimbursement for providing service to that prospective subscriber, unless the prospective subscriber has certified, pursuant to § 54.410(d) that to the best of his or her knowledge, no one in his or her household is already receiving a Lifeline service.

(4) An eligible telecommunications carrier is not required to comply with paragraphs (b)(1)-(3) of this section if it receives notice from a state Lifeline administrator or other state agency that the administrator or other agency has queried the Database about a prospective subscriber and that providing the prospective subscriber with a Lifeline benefit would not result in duplicative support.

(5) Eligible telecommunications carriers may query the Database only for the purposes provided in paragraphs (b)(1)-(b)(3) of this section, and to determine whether information with respect to its subscribers already in the Database is correct and complete.

(6) Eligible telecommunications carriers must transmit to the Database in a format prescribed by the Administrator each new and existing Lifeline subscriber's full name; full residential address; date of birth and the last four digits of the subscriber's social security number or Tribal Identification number, if the subscriber is a member of a Tribal nation and does not have a social security number; the telephone number associated with the Lifeline service; the date on which the Lifeline service was initiated; the date on which the Lifeline service



was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for Lifeline.

(7) In the event that two or more eligible telecommunications carriers transmit the information required by this paragraph to the Database for the same subscriber, only the eligible telecommunications carrier whose information was received and processed by the Database first, as determined by the Administrator, will be entitled to reimbursement from the Fund for that subscriber.

(8) All eligible telecommunications carriers must update an existing Lifeline subscriber's information in the Database within ten business days of receiving any change to that information, except as described in paragraph (b)(10) of this section.

(9) All eligible telecommunications carriers must obtain, from each new and existing subscriber, consent to transmit the subscriber's information. Prior to obtaining consent, the eligible telecommunications carrier must describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Lifeline program, and that failure to provide consent will result in subscriber being denied the Lifeline service.

(10) When an eligible telecommunications carrier de-enrolls a subscriber, it must transmit to the Database the date of Lifeline service de-enrollment within one business day of de-enrollment.

(c) Tribal Link Up and the National Lifeline Accountability Database. In order to receive universal service support reimbursement for Tribal Link Up, eligible telecommunications carriers operating in states that have not provided the Commission with a valid certification pursuant to paragraph (a) of this section, must comply with the following requirements:

- (1) Such eligible telecommunications carriers must query the Database to determine whether a prospective Link Up recipient who has executed a certification pursuant to § 54.410(d) has previously received a Link Up benefit at the residential address provided by the prospective subscriber.
- (2) If the Database indicates that a prospective subscriber has received a Link Up benefit at the residential address provided by the subscriber, the eligible telecommunications provider must not seek Link Up reimbursement for that subscriber.
- (3) An eligible telecommunications carrier is not required to comply with paragraphs (c)(1) through (c)(2) of this section, if it receives notice from a state Lifeline administrator or other state agency that the administrator or other agency has queried the Database about a prospective subscriber and that providing the prospective subscriber with a Link Up benefit would not result in duplicative support or support to a subscriber who had already received Link Up support at that residential address.
- (4) All eligible telecommunications carriers must transmit to the Database in a format prescribed by the Administrator each new and existing Link Up recipient's full name; residential address; date of birth; and the last four digits of the subscriber's social security number, or Tribal identification number if the subscriber is a member of a Tribal nation and does not have a social security number; the telephone number associated with the Link Up support; and the date of service activation. Where two or more eligible telecommunications carriers transmit the information required by this paragraph to the Database for the same subscriber, only the eligible telecommunications carrier whose information was received and processed by the Database first, as determined by the Administrator, will be entitled to reimbursement from the Fund for that subscriber.
- (5) All eligible telecommunications carriers must obtain, from each new and existing subscriber, consent to transmit the information required in paragraph (c) of this section. Prior to obtaining consent, the eligible telecommunications carrier must describe to the subscriber, using clear,

easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Link Up program, and that failure to provide consent will result in the subscriber being denied the Link Up benefit.

11. Revise § 54.405 to read as follows:

**§ 54.405 Carrier obligation to offer Lifeline.**

All eligible telecommunications carriers must:

- (a) Make available Lifeline service, as defined in § 54.401, to qualifying low-income consumers.
- (b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.
- (c) Indicate on all materials describing the service, using easily understood language, that it is a Lifeline service, that Lifeline is a government assistance program, the service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household. For the purposes of this section, the term “materials describing the service” includes all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms.
- (d) Disclose the name of the eligible telecommunications carrier on all materials describing the service.
- (e) De-enrollment.

(1) De-enrollment generally. If an eligible telecommunications carrier has a reasonable basis to believe that a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under § 54.409, the carrier must notify the subscriber of impending termination of his or her Lifeline service. Notification of impending termination must be sent in writing separate from the subscriber's monthly bill, if one is provided, and must be written in clear, easily understood language. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination, that requires, at a minimum, written notification of

impending termination, must comply with the applicable state requirements. The carrier must allow a subscriber 30 days following the date of the impending termination letter required to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the carrier consistent with applicable annual re-certification requirements, as described in § 54.410(f). An eligible telecommunications carrier must terminate any subscriber who fails to demonstrate continued eligibility within the 30-day time period. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination must comply with the applicable state requirements.

(2) De-enrollment for duplicative support. Notwithstanding paragraph (e)(1) of this section, upon notification by the Administrator to any eligible telecommunications carrier that a subscriber is receiving Lifeline service from another eligible telecommunications carrier or that more than one member of a subscriber's household is receiving Lifeline service and therefore that the subscriber should be de-enrolled from participation in that carrier's Lifeline program, the eligible telecommunications carrier must de-enroll the subscriber from participation in that carrier's Lifeline program within five business days. An eligible telecommunications carrier shall not be eligible for Lifeline reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

(3) De-enrollment for non-usage. Notwithstanding paragraph (e)(1) of this section, if a Lifeline subscriber fails to use, as "usage" is defined in § 54.407(c)(2), for 60 consecutive days a Lifeline service that does not require the eligible telecommunications carrier to assess or collect a monthly fee from its subscribers, an eligible telecommunications carrier must provide the subscriber 30 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 30-day notice period will result in service termination for non-usage under this paragraph. If the subscriber uses the Lifeline service within 30 days of the carrier providing such notice, the eligible telecommunications carrier shall not terminate the subscriber's Lifeline service. Eligible telecommunications carriers shall report to the Commission annually

the number of subscribers de-enrolled for non-usage under this paragraph. This de-enrollment information must be reported by month and must be submitted to the Commission at the time an eligible telecommunications carrier submits its annual certification report pursuant to § 54.416.

(4) De-enrollment for failure to re-certify. Notwithstanding paragraph (e)(1) of this section, an eligible telecommunications carrier must de-enroll a Lifeline subscriber who does not respond to the carrier's attempts to obtain re-certification of the subscriber's continued eligibility as required by § 54.410(f); who fails to provide the annual one-per-household re-certifications as required by § 54.410(f); or who relies on a temporary address and fails to respond to the carrier's address re-certification attempts pursuant to § 54.410(g). Prior to de-enrolling a subscriber under this paragraph, the eligible telecommunications carrier must notify the subscriber in writing separate from the subscriber's monthly bill, if one is provided using clear, easily understood language, that failure to respond to the re-certification request within 30 days of the date of the request will trigger de-enrollment. If a subscriber does not respond to the carrier's notice of impending de-enrollment, the carrier must de-enroll the subscriber from Lifeline within five business days after the expiration of the subscriber's time to respond to the re-certification efforts.

12. Revise § 54.407 to read as follows:

**§ 54.407 Reimbursement for offering Lifeline.**

(a) Universal service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier, based on the number of actual qualifying low-income consumers it serves.

(b) An eligible telecommunications carrier may receive universal service support reimbursement for each qualifying low-income consumer served. For each qualifying low-income consumer receiving Lifeline service, the reimbursement amount shall equal the federal support amount, including the support amounts described in § 54.403(a) and (c). The eligible telecommunications carrier's universal service support reimbursement shall not exceed the

carrier's rate for that offering, or similar offerings, subscribed to by consumers who do not qualify for Lifeline.

(c) An eligible telecommunications carrier offering a Lifeline service that does not require the eligible telecommunications carrier to assess or collect a monthly fee from its subscribers:

(1) Shall not receive universal service support for a subscriber to such Lifeline service until the subscriber activates the service by whatever means specified by the carrier, such as completing an outbound call; and

(2) After service activation, an eligible telecommunications carrier shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 60 days, or who have cured their non-usage as provided for in § 54.405(e)(3). Any of these activities, if undertaken by the subscriber will establish "usage" of the Lifeline service:

(i) Completion of an outbound call;

(ii) Purchase of minutes from the eligible telecommunications carrier to add to the subscriber's service plan;

(iii) Answering an incoming call from a party other than the eligible telecommunications carrier or the eligible telecommunications carrier's agent or representative; or

(iv) Responding to direct contact from the eligible communications carrier and confirming that he or she wants to continue receiving the Lifeline service.

(d) In order to receive universal service support reimbursement, an eligible telecommunications carrier must certify, as part of each request for reimbursement, that it is in compliance with all of the rules in this subpart, and, to the extent required under this subpart, has obtained valid certification and re-certification forms from each of the subscribers for whom it is seeking reimbursement.

(e) In order to receive universal service support reimbursement, an eligible telecommunications carrier must keep accurate records of the revenues it forgoes in providing Lifeline services. Such records shall

be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by the Administrator or as provided in this Subpart.

13. Revise § 54.409 to read as follows:

**§ 54.409 Consumer qualification for Lifeline.**

(a) To constitute a qualifying low-income consumer:

(1) A consumer's household income as defined in § 54.400(f) must be at or below 135% of the Federal Poverty Guidelines for a household of that size; or

(2) The consumer, one or more of the consumer's dependents, or the consumer's household must receive benefits from 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; or

(3) The consumer must meet eligibility criteria established by a state for its residents, provided that such state-specific criteria are based solely on income or factors directly related to income.

(b) A consumer who lives on Tribal lands is eligible for Lifeline service as a "qualifying low-income consumer" as defined by § 54.400(a) and as an "eligible resident of Tribal lands" as defined by § 54.400(e) if that consumer meets the qualifications for Lifeline specified in paragraph (a) of this section or if the consumer, one or more of the consumer's dependents, or the consumer's household participates in one of the following Tribal-specific federal assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations.

(c) In addition to meeting the qualifications provided in paragraph (a) or (b) of this section, in order to constitute a qualifying low-income consumer, a consumer must not already be receiving a Lifeline service, and there must not be anyone else in the subscriber's household subscribed to a Lifeline service.

14. Amend § 54.410 to read as follows:

**§ 54.410 Subscriber eligibility determination and certification.**

(a) All eligible telecommunications carriers must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services.

(b) Initial income-based eligibility determination.

(1) Except where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline or using the income-based eligibility criteria provided for in § 54.409(a)(1) or (a)(3) an eligible telecommunications carrier:

(i) Must not seek reimbursement for providing Lifeline to a subscriber, unless the carrier has received a certification of eligibility from the prospective subscriber that complies with the requirements set forth in paragraph (d) of this section and has confirmed the subscriber's income-based eligibility using the following procedures:

(A) If an eligible telecommunications carrier can determine a prospective subscriber's income-based eligibility by accessing one or more databases containing information regarding the subscriber's income ("income databases"), the eligible telecommunications carrier must access such income databases and determine whether the prospective subscriber qualifies for Lifeline.

(B) If an eligible telecommunications carrier cannot determine a prospective subscriber's income-based eligibility by accessing income databases, the eligible telecommunications carrier must review documentation that establishes that the prospective subscriber meets the income-eligibility criteria set forth in sections 54.409(a)(1) or (a)(3). Acceptable documentation of income eligibility includes the prior year's state, federal, or Tribal 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 benefit; federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information. If the prospective subscriber presents documentation of income that does not cover a full year, such as current pay stubs, the prospective subscriber must present the same type of documentation covering three consecutive months within the previous twelve months.

(ii) Must not retain copies of the documentation of a prospective subscriber's income-based eligibility for Lifeline.

(iii) Must, consistent with § 54.417, keep and maintain accurate records detailing the data source a carrier used to determine a subscriber's eligibility or the documentation a subscriber provided to demonstrate his or her eligibility for Lifeline.

(2) Where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, an eligible telecommunications carrier must not seek reimbursement for providing Lifeline service to a subscriber, based on that subscriber's income eligibility, unless the carrier has received from the state Lifeline administrator or other state agency:

(i) Notice that the prospective subscriber meets the income-eligibility criteria set forth in §§ 54.409(a)(1) or (a)(3); and

(ii) A copy of the subscriber's certification that complies with the requirements set forth in paragraph (d) of this section.

(c) Initial program-based eligibility determination.

(1) Except in states where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's program-based eligibility, when a prospective subscriber seeks to qualify for Lifeline service using the program-based criteria set forth in §§ 54.409 (a)(2), (a)(3) or (b), an eligible telecommunications carrier:

(i) Must not seek reimbursement for providing Lifeline to a subscriber unless the carrier

has received a certification of eligibility from the subscriber that complies with the requirements set forth in paragraph (d) of this section and has confirmed the subscriber's program-based eligibility using the following procedures:

(A) If the eligible telecommunications carrier can determine a prospective subscriber's program-based eligibility for Lifeline by accessing one or more databases containing information regarding enrollment in qualifying assistance programs ("eligibility databases"), the eligible telecommunications carrier must access such eligibility databases to determine whether the prospective subscriber qualifies for Lifeline based on participation in a qualifying assistance program; or

(B) If an eligible telecommunications carrier cannot determine a prospective subscriber's program-based eligibility for Lifeline by accessing eligibility databases, the eligible telecommunications carrier must review documentation demonstrating that a prospective subscriber qualifies for Lifeline under the program-based eligibility requirements. Acceptable documentation of program eligibility includes the current or prior year's statement of benefits from a qualifying assistance program, a notice or letter of participation in a qualifying assistance program, program participation documents, or another official document demonstrating that the prospective subscriber, one or more of the prospective subscriber's dependents or the prospective subscriber's household receives benefits from a qualifying assistance program.

(ii) Must not retain copies of the documentation of a subscriber's program-based eligibility for Lifeline services.

(iii) Must, consistent with § 54.517, keep and maintain accurate records detailing the data source a carrier used to determine a subscriber's program-based eligibility or the documentation a subscriber provided to demonstrate his or her eligibility for Lifeline.

(2) Where a state Lifeline administrator or other state agency is responsible for the initial

determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline service using the program-based eligibility criteria provided in § 54.409, an eligible telecommunications carrier must not seek reimbursement for providing Lifeline to a subscriber unless the carrier has received from the state Lifeline administrator or other state agency:

(i) Notice that the subscriber meets the program-based eligibility criteria set forth in §§ 54.409(a)(2), (a)(3) or (b); and

(ii) a copy of the subscriber's certification that complies with the requirements set forth in paragraph (d) of this section.

(d) Eligibility certifications. Eligible telecommunications carriers and state Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber's eligibility for Lifeline must provide prospective subscribers Lifeline certification forms that in clear, easily understood language:

(1) Provide the following information:

(i) Lifeline is a federal benefit and that willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment or being barred from the program;

(ii) Only one Lifeline service is available per household;

(iii) A household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses;

(iv) A household is not permitted to receive Lifeline benefits from multiple providers;

(v) Violation of the one-per-household limitation constitutes a violation of the Commission's rules and will result in the subscriber's de-enrollment from the program; and

(vi) Lifeline is a non-transferable benefit and the subscriber may not transfer his or her benefit to any other person.

- (2) Require each prospective subscriber to provide the following information:
- (i) The subscriber's full name;
  - (ii) The subscriber's full residential address;
  - (iii) Whether the subscriber's residential address is permanent or temporary;
  - (iv) The subscriber's billing address, if different from the subscriber's residential address;
  - (v) The subscriber's date of birth;
  - (vi) The last four digits of the subscriber's social security number, or the subscriber's Tribal identification number, if the subscriber is a member of a Tribal nation and does not have a social security number;
  - (vii) If the subscriber is seeking to qualify for Lifeline under the program-based criteria, as set forth in § 54.409, the name of the qualifying assistance program from which the subscriber, his or her dependents, or his or her household receives benefits; and
  - (viii) If the subscriber is seeking to qualify for Lifeline under the income-based criterion, as set forth in § 54.409, the number of individuals in his or her household.
- (3) Require each prospective subscriber to certify, under penalty of perjury, that:
- (i) The subscriber meets the income-based or program-based eligibility criteria for receiving Lifeline, provided in § 54.409;
  - (ii) The subscriber will notify the carrier within 30 days if for any reason he or she no longer satisfies the criteria for receiving Lifeline including, as relevant, if the subscriber no longer meets the income-based or program-based criteria for receiving Lifeline support, the subscriber is receiving more than one Lifeline benefit, or another member of the subscriber's household is receiving a Lifeline benefit.
  - (ii) If the subscriber is seeking to qualify for Lifeline as an eligible resident of Tribal lands, he or she lives on Tribal lands, as defined in 54.400(e);
  - (iii) If the subscriber moves to a new address, he or she will provide that new address to the eligible telecommunications carrier within 30 days;

- (iv) If the subscriber provided a temporary residential address to the eligible telecommunications carrier, he or she will be required to verify his or her temporary residential address every 90 days;
- (v) The subscriber's household will receive only one Lifeline service and, to the best of his or her knowledge, the subscriber's household is not already receiving a Lifeline service;
- (vi) The information contained in the subscriber's certification form is true and correct to the best of his or her knowledge,
- (vii) The subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law; and
- (viii) The subscriber acknowledges that the subscriber may be required to re-certify his or her continued eligibility for Lifeline at any time, and the subscriber's failure to re-certify as to his or her continued eligibility will result in de-enrollment and the termination of the subscriber's Lifeline benefits pursuant to § 54.405(e)(4).

(e) State Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber's eligibility for Lifeline must provide each eligible telecommunications carrier with a copy of each of the certification forms collected by the state Lifeline administrator or other state agency from that carrier's subscribers.

(f) Annual eligibility re-certification process.

- (1) All eligible telecommunications carriers must annually re-certify all subscribers except for subscribers in states where a state Lifeline administrator or other state agency is responsible for re-certification of subscribers' Lifeline eligibility.
- (2) In order to re-certify a subscriber's eligibility, an eligible telecommunications carrier must confirm a subscriber's current eligibility to receive Lifeline by:
  - (i) Querying the appropriate eligibility databases, confirming that the subscriber still meets the program-based eligibility requirements for Lifeline, and documenting the

results of that review; or

(ii) Querying the appropriate income databases, confirming that the subscriber continues to meet the income-based eligibility requirements for Lifeline, and documenting the results of that review; or

(iii) Obtaining a signed certification from the subscriber that meets the certification requirements in paragraph (d) of this section.

(3) Where a state Lifeline administrator or other state agency is responsible for re-certification of a subscriber's Lifeline eligibility, the state Lifeline administrator or other state agency must confirm a subscriber's current eligibility to receive a Lifeline service by:

(i) Querying the appropriate eligibility databases, confirming that the subscriber still meets the program-based eligibility requirements for Lifeline, and documenting the results of that review; or

(ii) Querying the appropriate income databases, confirming that the subscriber continues to meet the income-based eligibility requirements for Lifeline, and documenting the results of that review; or

(iii) Obtaining a signed certification from the subscriber that meets the certification requirements in paragraph (d) of this section.

(4) Where a state Lifeline administrator or other state agency is responsible for re-certification of subscribers' Lifeline eligibility, the state Lifeline administrator or other state agency must provide to each eligible telecommunications carrier the results of its annual re-certification efforts with respect to that eligible telecommunications carrier's subscribers.

(5) If an eligible telecommunications carrier is unable to re-certify a subscriber or has been notified of a state Lifeline administrator's or other state agency's inability to re-certify a subscriber, the eligible telecommunications carrier must comply with the de-enrollment requirements provided for in § 54.405(e)(4).

(g) Re-certification of temporary address. An eligible telecommunications carrier must re-certify, every

90 days, the residential address of each of its subscribers who have provided a temporary address as part of the subscriber's initial certification or re-certification of eligibility, pursuant to paragraphs (d), (e), or (f) of this section.

**§ 54.411 [Removed]**

15. Section 54.411 is removed.

16. Add § 54.412 to Subpart E to read as follows:

**§ 54.412 Off reservation Tribal lands designation process.**

(a) The Commission's Wireline Competition Bureau and the Office of Native Affairs and Policy may, upon receipt of a request made in accordance with the requirements of this section, designate as Tribal lands, for the purposes of the Lifeline and Tribal Link Up program, areas or communities that fall outside the boundaries of existing Tribal lands but which maintain the same characteristics as lands identified as Tribal lands defined as in § 54.400(c).

(b) A request for designation must be made to the Commission by a duly authorized official of a federally recognized American Indian Tribe or Alaska Native Village and must be filed pursuant to the Commission's rules.

(c) A request for designation must clearly describe a defined geographical area for which the requesting party seeks designation as Tribal lands.

(d) A request for designation must demonstrate the Tribal character of the area or community.

(e) A request for designation must provide sufficient evidence of a nexus between the area or community and the Tribe, and describe in detail how program support to the area or community would aid the Tribe in serving the needs and interests of its citizens and further the Commission's goal of increasing telecommunications access on Tribal lands.

(f) Upon designation by the Wireline Competition Bureau and the Office of Native Affairs and Policy, the area or community described in the designation shall be considered Tribal lands for the purposes of this subpart.

17. Revise § 54.413 to read as follows:

**§ 54.413 Link Up for Tribal lands.**

(a) Definition. For purposes of this subpart, the term “Tribal Link Up” means an assistance program for eligible residents of Tribal lands seeking telecommunications service from a telecommunications carrier that is receiving high-cost support on Tribal lands, pursuant to subpart D of this part, that provides:

(i) A 100 percent reduction, up to \$100, of the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber’s principal place of residence imposed by an eligible telecommunications carrier that is also receiving high-cost support on Tribal lands, pursuant to subpart D of this part. For purposes of this subpart, a “customary charge for commencing telecommunications service” is the ordinary charge an eligible telecommunications carrier imposes and collects from all subscribers to initiate service with that eligible telecommunications carrier. A charge imposed only on qualifying low-income consumers to initiate service is not a customary charge for commencing telecommunications service. Activation charges routinely waived, reduced, or eliminated with the purchase of additional products, services, or minutes are not customary charges eligible for universal service support; and

(ii) A deferred schedule of payments of the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber’s principal place of residence imposed by an eligible telecommunications carrier that is also receiving high-cost support on Tribal lands, pursuant to subpart D of this part, for which the eligible resident of Tribal lands does not pay interest. The interest charges not assessed to the eligible resident of tribal lands shall be for a customary charge for connecting telecommunications service of up to \$200 and such interest charges shall be deferred for a period not to exceed one year.

(b) An eligible resident of Tribal lands may receive the benefit of the Tribal Link Up program for a second or subsequent time only for otherwise qualifying commencement of telecommunications service at a principal place of residence with an address different from the address for which Tribal Link Up assistance was provided previously.

18. Add § 54.414 to Subpart E to read as follows:



**§ 54.414 Reimbursement for Tribal Link Up.**

(a) Eligible telecommunications carriers that are receiving high-cost support, pursuant to subpart D of this part, may receive universal service support reimbursement for the reduction in their customary charge for commencing telecommunications service and for providing a deferred schedule for payment of the customary charge for commencing telecommunications services for which the subscriber does not pay interest, in conformity with § 54.413.

(b) In order to receive universal support reimbursement for providing Tribal Link Up, eligible telecommunications carriers must follow the procedures set forth in § 54.410 to determine an eligible resident of Tribal lands' initial eligibility for Tribal Link Up. Eligible telecommunications carriers must obtain a certification form from each eligible resident of Tribal lands that complies with § 54.410 prior to enrolling him or her in Tribal Link Up.

(c) In order to receive universal service support reimbursement for providing Tribal Link Up, eligible telecommunications carriers must keep accurate records of the reductions in their customary charge for commencing telecommunications service and for providing a deferred schedule for payment of the charges assessed for commencing service for which the subscriber does not pay interest, in conformity with § 54.413. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by the Administrator or as provided in this subpart. The reductions in the customary charge for which the eligible telecommunications carrier may receive reimbursement shall include only the difference between the carrier's customary connection or interest charges and the charges actually assessed to the subscriber receiving Lifeline services.

**§ 54.415 [Removed]**

19. Section 54.415 is removed.

20. Revise § 54.416 to read as follows:

**§ 54.416 Annual certifications by eligible telecommunications carriers.**

(a) Eligible telecommunications carrier certifications. Eligible telecommunications carriers are required to make and submit to the Administrator the following annual certifications, under penalty of perjury,

relating to the Lifeline program:

(1) An officer of each eligible telecommunications carrier must certify that the carrier has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services. Each eligible telecommunications carrier must make this certification annually to the Administrator as part of the carrier's submission of annual re-certification data pursuant to this section. In instances where an eligible telecommunications carrier confirms consumer eligibility by relying on income or eligibility databases, as defined in §§ 54.410(b)(1)(A) or (c)(1)(A), the representative must attest annually as to what specific data sources the eligible telecommunications carrier used to confirm eligibility.

(2) An officer of the eligible telecommunications carrier must certify that the carrier is in compliance with all federal Lifeline certification procedures. Eligible telecommunications carriers must make this certification annually to the Administrator as part of the carrier's submission of re-certification data pursuant to this section.

(3) An officer of the eligible telecommunications carrier must certify annually that the carrier has obtained a valid certification form for each subscriber for whom the carrier seeks Lifeline reimbursement.

(b) All eligible telecommunications carriers must annually provide the results of their re-certification efforts, performed pursuant to § 54.410(f), to the Commission and the Administrator. Eligible telecommunications carriers designated as such by one or more states pursuant to § 54.201 must also provide, on an annual basis, the results of their re-certification efforts to state commissions for subscribers residing in those states where the state designated the eligible telecommunications carrier. Eligible telecommunications carriers must also provide their annual re-certification results for subscribers residing on Tribal lands to the relevant Tribal governments.

(c) States that mandate Lifeline support may impose additional standards on eligible telecommunications carriers operating in their states to ensure compliance with state Lifeline programs.

21. Revise § 54.417 to read as follows:

**§ 54.417 Recordkeeping requirements.**

- (a) Eligible telecommunications carriers must maintain records to document compliance with all Commission and state requirements governing the Lifeline and Tribal Link Up program for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. Notwithstanding the preceding sentence, eligible telecommunications carriers must maintain the documentation required in §§ 54.410(d) and 54.410(f) for as long as the subscriber receives Lifeline service from that eligible telecommunications carrier.
- (b) If an eligible telecommunications carrier provides Lifeline discounted wholesale services to a reseller, it must obtain a certification from that reseller that it is complying with all Commission requirements governing the Lifeline and Tribal Link Up program.
- (c) Non-eligible-telecommunications-carrier resellers that purchase Lifeline discounted wholesale services to offer discounted services to low-income consumers must maintain records to document compliance with all Commission requirements governing the Lifeline and Tribal Link Up program for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. To the extent such a reseller provides discounted services to low-income consumers, it must fulfill the obligations of an eligible telecommunications carrier in §§ 54.405(e), 54.405(f), and 54.410.

22. Add § 54.419 to Subpart E to read as follows:

**§ 54.419 Validity of electronic signatures.**

- (a) For the purposes of this subpart, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.
- (b) For the purposes of this subpart, an electronic record, defined by the Electronic Signatures in Global and National Commerce Act as a contract or other record created, generated, sent, communicated, received, or stored by electronic means, constitutes a record.

23. Add § 54.420 to Subpart E to read as follows:

**§ 54.420 Low income program audits.**

(a) Independent audit requirements for eligible telecommunications carriers. Companies that receive \$5 million or more annually in the aggregate, on a holding company basis, in Lifeline reimbursements must obtain a third party biennial audit of their compliance with the rules in this subpart. Such engagements shall be agreed upon performance attestations to assess the company's overall compliance with rules and the company's internal controls regarding these regulatory requirements.

(1) For purposes of the \$5 million threshold, a holding company consists of operating companies and affiliates, as that term is defined in section 3(2) of the Communications Act of 1934, as amended, that are eligible telecommunications carriers.

(2) The initial audit must be completed one year after the Commission issues a standardized audit plan outlining the scope of the engagement and the extent of compliance testing to be performed by third-party auditors and shall be conducted every two years thereafter, unless directed otherwise by the Commission. The following minimum requirements shall apply:

(i) The audit must be conducted by a licensed certified public accounting firm that is independent of the carrier.

(ii) The engagement shall be conducted consistent with government accounting standards (GAGAS).

(3) The certified public accounting firm shall submit to the Commission any rule interpretations necessary to complete the biennial audit, and the Administrator shall notify all firms subject to the biennial audit requirement of such requests. The audit issue will be noted, but not held as a negative finding, in future audit reports for all carriers subject to this requirement unless and until guidance has been provided by the Commission.

(4) Within 60 days after completion of the audit work, but prior to finalization of the report, the third party auditor shall submit a draft of the audit report to the Commission and the Administrator, who shall be deemed authorized users of such reports. Finalized audit reports

must be provided to the Commission, the Administrator, and relevant states and Tribal governments within 30 days of the issuance of the final audit report. The reports will not be considered or deemed confidential.

(5) Delegated authority. The Wireline Competition Bureau and the Office of Managing Director have delegated authority to perform the functions specified in §§ 54.22(a)(2) and (a)(3).

(b) Audit requirements for new eligible telecommunications carriers. After a company is designated for the first time in any state or territory the Administrator will audit that new eligible telecommunications carrier to assess its overall compliance with the rules in this subpart and the company's internal controls regarding these regulatory requirements. This audit should be conducted within the carrier's first twelve months of seeking federal low-income Universal Service Fund support.

24. Add § 54.422 to Subpart E to read as follows:

**§ 54.422 Annual reporting for eligible telecommunications carriers that receive low-income support.**

(a) In order to receive support under this subpart, an eligible telecommunications carrier must annually report the company name, names of the company's holding company, operating companies and affiliates, and any branding (a "dba," or "doing-business-as company" or brand designation) as well as relevant universal service identifiers for each such entity by Study Area Code. For purposes of this paragraph, "affiliates" has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended.

(b) In order to receive support under this subpart, a common carrier designated as an eligible telecommunications carriers under section 214(e)(6) of the Act must annually provide:

(1) Detailed information on any outage in the prior calendar year, as that term is defined in 47 CFR § 4.5, of at least 30 minutes in duration for each service area in which the eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

(i) At least ten percent of the end users served in a designated service area; or

(ii) A 911 special facility, as defined in 47 CFR § 4.5(e).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

- (A) The date and time of onset of the outage;
- (B) A brief description of the outage and its resolution;
- (C) The particular services affected;
- (D) The geographic areas affected by the outage;
- (E) Steps taken to prevent a similar situation in the future; and
- (F) The number of customers affected.

(2) The number of complaints per 1,000 connections (fixed or mobile) in the prior calendar year;

(3) Certification of compliance with applicable service quality standards and consumer protection rules;

(4) Certification that the carrier is able to function in emergency situations as set forth in § 54.202(a)(2);

(5) Information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public website outlining the terms and conditions of such plans.

(c) All reports required by this section must be filed with the Office of the Secretary of the Commission, and with the Administrator. Such reports must also be filed with the relevant state commissions and the relevant authority in a U.S. territory or Tribal governments, as appropriate.

**APPENDIX B**  
**Proposed Rules**

*Current rule language = italics*

New rule language = black standard text

Deletions from current rules = *italics, strikethrough text*

**§ 54.417 Recordkeeping Requirements**

~~(a) Eligible telecommunications carriers must maintain records to document compliance with all Commission and state requirements governing the Lifeline/Link Up programs for the ~~three~~ ten full preceding calendar years and provide that documentation to the Commission or Administrator upon request. Notwithstanding the preceding sentence, eligible telecommunications carriers must maintain the documentation required in §§ 54.409(d) and 54.410(b)(3) for as long as the consumer receives Lifeline service from that eligible telecommunications carrier. If an eligible telecommunications carrier provides Lifeline discounted wholesale services to a reseller, it must obtain a certification from that reseller that it is complying with all Commission requirements governing the Lifeline/Link Up programs.~~

~~(b) Non-eligible telecommunications carrier resellers that purchase Lifeline discounted wholesale services to offer discounted services to low income consumers must maintain records to document compliance with all Commission requirements governing the Lifeline/Link Up programs for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. To the extent such a reseller provides discounted services to low income consumers, it constitutes the eligible telecommunications carrier referenced in §§ 54.405(c), 54.405(d), 54.409(d), 54.410, and 54.416.~~

## APPENDIX C

### Certification Requirements for Lifeline Subscribers

Pursuant to the Universal Service Low-Income Order, all ETCs (or the state Lifeline program administrator, where applicable) must provide the following information in clear, easily understandable language on their initial and annual Lifeline certification forms:

#### Household Information for Initial and Annual Certification Forms

- **Contact Information:** All certification forms must ask for the Lifeline subscriber's name and address information.
  - *Residential Address:* Prior to providing service to a consumer, ETCs must collect a residential address from each subscriber, which the subscriber must indicate is his/her permanent address, and a billing address, if different than the subscriber's residential address. ETCs should inform subscribers that, if the subscriber moves, they must provide their new address to the ETC within 30 days of moving.
    - A consumer who lacks a permanent residential address (*e.g.*, address not recognized by the Post Office, temporary living situation) must provide a temporary residential service address or other address identifying information that could be used to perform a check for duplicative support.
  - *Consumers using Post Office Box Addresses:* Lifeline subscribers may not use a post office box as their residential address. An ETC may accept a P.O. Box or General Delivery address as a billing address, but not a residential address.
  - *Consumers with Temporary Addresses:* ETCs must collect permanent addresses from subscribers. If a subscriber does not have a permanent address, ETCs must:
    - Inform applicants that, if they use a temporary address, the ETC will attempt to verify every 90 days that the subscriber continues to rely on that address, and (as noted above) the subscriber must notify the ETC within 30 days of their new address after moving.
    - Inform the subscriber that if he or she does not respond to the ETC's address verification attempts within 30 days, the subscriber may be de-enrolled from the ETC's Lifeline service.
- *Multiple Households Sharing an Address:* Upon receiving an application for Lifeline support, all ETCs must check the duplicates database to determine whether an individual at the applicant's residential address is currently receiving Lifeline-supported service. The ETC must also search its own internal records to ensure that it does not already provide Lifeline-supported service to someone at that residential address.
  - If nobody at the residential address is currently receiving Lifeline-supported service, the ETC may initiate Lifeline service after determining that the household is otherwise eligible to receive Lifeline and obtaining all required certifications from the household.
  - If the ETC determines that an individual at the applicant's residential address is currently receiving Lifeline-supported service, the ETC must collect from the applicant upon initial enrollment and annually thereafter a worksheet that: (1) explains the Commission's one-per-household rule; (2) contains a check box that an applicant can mark to indicate that he or she lives at an address occupied by multiple households; (3) provides a space for the applicant to initial or certify that he or she shares an address with other adults who do not contribute income to the



applicant's household and/or share in the household's expenses; and (4) notifies applicants of the one-per-household certification requirement adopted below and the penalty for a consumer's failure to make the required one-per-household certification (*i.e.*, de-enrollment).

- One-per-Household Certification: All consumers must certify that they receive Lifeline support for a single subscription per household.
  - All ETCs (or state agencies or third-parties, where they are responsible for Lifeline enrollment in a state) must obtain a certification from the subscriber at sign up and annually thereafter attesting under penalty of perjury that the subscriber's household is receiving no more than one Lifeline-supported service. In addition, the certification form must include a place for the subscriber to separately acknowledge that, to the best of his or her knowledge, no one at the consumer's household is receiving a Lifeline-supported service from any other provider.
  - The certification form must explain in clear, easily understandable language that: (1) Lifeline is a federal benefit; (2) Lifeline service is available for only one line per household; (3) a household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses; and (4) households are not permitted to receive benefits from multiple providers.
  - The certification form must also contain clear, easily understandable language stating that violation of the one-per-household requirement would constitute a violation of the Commission's rules and would result in the consumer's de-enrollment from the program, and potentially, prosecution by the United States government.

#### Eligibility Information for Initial and Annual Certification Forms

- *Identity Information:* all certification forms must ask for the Lifeline subscriber's date of birth and the last 4 digits of the subscriber's social security number.
- *Establishing eligibility for Lifeline:*
  - The certification form should be written in clear, easily understandable language and should include a place for the customer to sign under penalty of perjury attesting to his/her eligibility for Lifeline. All ETCs (or the state Lifeline program administrator, where applicable) should obtain the consumer's signature certifying under penalty of perjury that:
    - The consumer either participates in a qualifying federal program or meets the income qualifications to establish eligibility for Lifeline;
    - The consumer has provided documentation of eligibility, if required to do so;
    - The consumer attests that the information contained in his or her application is true and correct to the best of his or her knowledge and acknowledging that providing false or fraudulent information to receive Lifeline benefits is punishable by law. The certification form should explain that Lifeline is a government benefit program and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program.
  - The certification form must include space for consumers qualifying for Lifeline under an income-based criterion to certify the number of individuals in their household.
  - ETCs (or the state administrator, where applicable) should also obtain the consumer's initials or signature on the certification form acknowledging that the consumer may be required to re-certify his or her continued eligibility for Lifeline at any time, and that failure to do so will result in the termination of the consumer's Lifeline benefits.

- *Consumer no longer eligible for Lifeline:* The certification form must notify the consumer using clear, easily understandable language that he or she must inform the ETC within 30 days if (1) the consumer ceases to participate in a federal qualifying program or programs or the consumer's annual household income exceeds 135% of the Federal Poverty Guidelines; (2) the consumer is receiving more than one Lifeline-supported service; or (3) the consumer, for any other reason, no longer satisfies the criteria for receiving Lifeline support. Additionally, prior to enrolling in Lifeline, consumers must certify attest under penalty of perjury that they understand the notification requirement, and that they may be subject to penalties if they fail to follow this requirement.
- *Tribal eligibility:* Consumers seeking Tribal lands Lifeline support must certify that they reside on Federally-recognized Tribal lands.
- *Non-transferability of Lifeline benefit:* The certification form should inform consumers that Lifeline service is a non-transferable benefit, and that a Lifeline subscriber may not transfer his or her service to any other individual, including another eligible low-income consumer.

#### Annual Re-certification of Consumer Eligibility for Lifeline

- By the end of 2012, each Lifeline subscriber enrolled in the program as of June 1, 2012 must provide a signed re-certification form to the ETC (or the state Lifeline administrator, where applicable) attesting to their continued eligibility for Lifeline. This signed certification should collect all of the subscriber information noted above, including an updated address. Consumers may provide the re-certification in writing, by phone, by text message, by email, or otherwise through the Internet.
- Alternatively, where a database containing consumer eligibility data is available, the carrier (or state Lifeline administrator, where applicable) must query the database by the end of 2012 and maintain a record of what specific data was used to re-certify the consumer's eligibility and the date that the consumer was re-certified.
- The ETC or the state administrator, where applicable, must report the results of their re-certification efforts to USAC, the Commission, and the relevant state commission (where the state has jurisdiction over the carrier) by January 31, 2013. ETCs or the state administrator, where applicable, should also provide their re-certification results to the relevant Tribal government, for subscribers residing on reservations or Tribal lands.
- ETCs must remind consumers about the annual re-certification requirement on the ETC's certification form that is completed upon program enrollment and annually thereafter.

#### Database

- *Consent to provide information to the database:* An ETC must obtain acknowledgement and consent from each of its subscribers that is written in clear, easily understandable language that the subscriber's name, telephone number, and address will be divulged to the Universal Service Administrative Company (USAC) (the administrator of the program) and/or its agents for the purpose of verifying that the subscriber does not receive more than one Lifeline benefit. In the event that USAC identifies a consumer as receiving more than one Lifeline subsidy per household, all carriers involved may be notified so that the consumer may select one service and be de-enrolled from the other.

## APPENDIX D

## Lifeline Verification Survey Results for 2011 and 2007

Table 1 – Lifeline Verification Results for 2011<sup>1</sup>

State / Territory	Subscribers Surveyed	Found ineligible	No response to survey	Percentage Deemed Ineligible	Percentage Non-Responders
<b>Federal Default States</b>					
American Samoa	62	0	16	0%	26%
Delaware	534	56	217	10%	41%
Hawaii	499	61	116	12%	23%
Indiana	2,066	340	647	16%	31%
Iowa	12,015	711	4,936	6%	41%
Louisiana	3,656	331	926	9%	25%
New Hampshire	629	115	156	18%	25%
North Dakota	2,240	419	706	19%	32%
Northern Mariana Islands	1,857	0	0	0%	0%
South Dakota	2,411	243	802	10%	33%
<b>Non-Federal-Default States Mandating that ETCs Follow Federal Verification Procedures</b>					
Arkansas	6,114	384	653	6%	11%
New York	6,276	401	1,755	6%	28%
North Carolina	4,288	171	689	4%	16%
<b>Non-Federal-Default States Requiring ETCs to submit verification results to USAC</b>					
Alabama	4,594	858	1,193	19%	26%
Arizona	1,982	180	674	9%	34%
Pennsylvania	2,519	226	395	9%	16%
West Virginia	1,123	198	338	18%	30%
Average	52,865	4,694	14,219	9%	27%

<sup>1</sup> Letter from Karen Majcher, Vice President High Cost and Low Income Division, Universal Service Administrative Company, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Dkt. Nos. 11-42, 03-109, CC Dkt. No. 96-45, at 3 (Jan. 24, 2012) (*USAC 2011 Verification Results Letter*). As USAC noted, In 2010, USAC could not confirm that Kentucky, Puerto Rico, and Tennessee required ETCs to submit verification results to USAC. *Id.* at 1 n.3. Therefore, USAC excluded those states from the list of non-federal default states that require ETCs to submit verification results to USAC for 2011. *Id.*

Table 2 – Lifeline Verification Results for 2007<sup>2</sup>

State / Territory	Subscribers Surveyed	Found ineligible	No response to survey	Percentage Deemed Ineligible	Percentage Non-Responders
<b>Federal Default States</b>					
American Samoa	154	3	0	2%	0%
Delaware	250	4	162	2%	65%
Hawaii	296	54	11	18%	4%
Iowa	9,492	1,646	1,219	17%	13%
Indiana	2,669	991	1,065	37%	40%
Louisiana	2,141	673	175	31%	8%
New Hampshire	483	108	212	22%	44%
North Dakota	2,795	342	574	12%	21%
Northern Mariana Islands	947	0	0	0%	0%
South Dakota	1,823	472	447	26%	25%
<b>Non-Federal-Default States Mandating that ETCs Follow Federal Verification Procedures</b>					
Arkansas	5,650	1,608	296	28%	5%
New York	4,208	624	585	15%	14%
North Carolina	10,534	940	600	9%	6%
<b>Non-Federal-Default States Requiring ETCs to submit verification results to USAC</b>					
Alabama	4,618	1,393	454	30%	10%
Arizona	1,313	619	525	47%	40%
Kentucky	11,482	1,253	1,788	11%	16%
Pennsylvania	138,453	10,956	9,866	8%	7%
Puerto Rico	4	3	0	75%	0%
Tennessee	4,907	1,562	891	32%	18%
West Virginia	838	109	702	13%	84%
Average	203,057	23,360	19,572	12%	10%

<sup>2</sup> Letter from Karen Majcher, Vice President High Cost and Low Income Division, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Dkt. Nos. 11-42, 03-109, CC Dkt. No. 96-45, at 3 (Jan. 10, 2012) (*USAC Certification & Verification Letter and Data*).

## APPENDIX E

## Initial Commenters

<u>Commenter</u>	<u>Abbreviation</u>
AARP	AARP
Advocates for Basic Legal Equality, Inc.	
Community Counseling Bristol County	
Community Voice Mail	
Crossroads Urban Center	
Disability Right Advocates	
Legal Services Advocacy Project	
Low Income Utility Advocacy Project	
National Center for Medical-Legal Partnership	
National Consumer Law Center, On Behalf of Our Low-Income Clients	
New Jersey Shares	
Ohio Poverty Law Center	
Open Access Connections	
Pennsylvania Utility Law Project	
Pro Seniors, Inc.	
Salt Lake Community Action Program	
Texas Legal Services Center	
Virginia Citizens Consumer Council	Consumer Groups
Alaska Telephone Association	ATA
American Library Association	ALA
American Public Communications Council, Inc.	APCC
Amvensys Telecom Holdings, LLC	Amvensys
Area Agency on Aging of West Central Arkansas	Area Agency on Aging WCA
Arkansas Advocates for Nursing Home Residents	AANHR
Association of Programs for Rural Independent Living	APRIL
AT&T	AT&T
Benton Foundation and Center for Rural Strategies	
Public Knowledge and United Church of Christ, OC Inc.	Benton/PK/UCC
Box Top Solutions, Inc.	Box Top
Budget Prepay, Inc.	
GreatCall, Inc.	
and PR Wireless Inc. d/b/a Open Mobile	Budget/GreatCall/PR
CenturyLink	CenturyLink
CGM, LLC	CGM
Cincinnati Bell Inc.	Cincinnati Bell
City Councilor Sean Paulhus (ME)	
City of New York	City of NY
City of North Las Vegas	North Las Vegas
Comcast Corporation	Comcast
Commissioner Brenda Howerton (NC)	
Commissioner Joe Bowser (NC)	

Commissioner Lawrence Weekly (NV)	
Commissioner Michael Page (NC)	
Ogden-Weber Community Action Partnership	OWCAP
COMPTEL	COMPTEL
Conexions LLC d/b/a Conexion Wireless	Conexions
Consumer Cellular, Inc.	CCI
Connecticut Department of Public Utility Control	CT DPUC
Councilman Christopher A. Hilbert (VA)	
Councilman Howard Clement (NC)	
Councilman Jamie Benoit (MD)	
Councilman Kelvin E. Washington, Sr. (SC)	
Councilman Ricki Y. Barlow (NV)	
Councilwoman Cora Cole-McFadden (NC)	
Cox Communication Inc.	Cox
CTIA–The Wireless Association	CTIA
Daniel Reyes, III	
Delegate Benjamin S. Barnes	
Delegate Eileen Filler-Corn	
Delegate Joe Morrissey (VA)	
Delegate Paula J. Miller (VA)	
Public Service Commission of the District of Columbia	DC PSC
Educational Services Network, Corp.	EDNet
Executive Councilor Daniel St. Hilaire (NH)	
Florida Public Service Commission	FL PSC
General Communication, Inc.	GCI
Gila River Telecommunications, Inc.	GRTI
House Democratic Caucus (GA)	
Indiana Family and Social Services Administration	Indiana FSSA
Indiana Utility Regulatory Commission	IN URC
Institute for Health, Law & Ethics	IHLE
Iridium Satellite LLC	Iridium
Keep USF Fair Coalition	Keep USF Fair
Kevan Lee Deckelmann	
Las Vegas Urban League	Las Vegas Urban League
The Leadership Conference on Civil and Human Rights	LCCHR
Leap Wireless International, Inc.	
and Cricket Communications, Inc.	Cricket
Massachusetts Department of Telecommunications and Cable	MA DTC
Mayor Jim Bouley (NH)	
Media Action Grassroots Network	MAG-Net
Michigan Public Service Commission	MI PSC
Minority Media and Telecommunications Council	MMTC
Mississippi Public Service Commission	MS PSC
Public Service Commission of the State of Missouri	MO PSC
National ALEC Association/Prepaid Communications Association	NALA/PCA
National Association for the Advancement of Colored People Reno / Sparks Branch #1112	NAACP Reno Sparks
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers	

and Advisors	NATOA
National Cable & Telecommunications Association	NCTA
National Consumer Law Center	NCLC
National Telecommunications Cooperative Association	NTCA
Nebraska Public Service Commission	NE PSC
New America Foundation	NAF
New Hampshire Coalition of Aging Services	NH Coalition of Aging
New Hampshire Coalition Against Domestic and Sexual Violence	NHCADSV
New Jersey Division of Rate Counsel	NJ DRC
New York State Public Service Commission	NY PSC
Nexus Communications, Inc.	Nexus
Ohio Association of Second Harvest Food Banks	OASHF
Open Access Connections (formerly Twin Cities Community Voice Mail)	
Energy Cents Coalition	
Main Street Project	
Minnesota Center for Neighborhood Organizaing Voices for Change	Open Access
One Economy Corp.	One Economy
Partnership for a Connected Illinois	PCI
Public Utilities Commission of Ohio	OH PUC
Public Utilities Commission of Oregon	OR PUC
Rainbow PUSH Coalition	Rainbow PUSH
Reunion Communications, Inc.	Reunion
San Juan Cable LLC d/b/a OneLink Communications	OneLink
Several Members of the Texas House Democratic Caucus	
Smith Bagley, Inc.	SBI
Solix, Inc.	Solix
Southern Nevada Children First	SNCF
Sprint Nextel Corp.	Sprint
State Representative Barbara B. Boyd, Ed. D. (OH)	
State Representative Bob Turner (WI)	
State Representative Christopher J. England (AL)	
State Representative Cory Mason (WI)	
State Representative Demetrius C. Newton (AL)	
State Representative Denise Driehaus (OH)	
State Representative Denise Harlow (ME)	
State Representative Diane Russell (ME)	
State Representative Dennis Murray (OH)	
State Representative J. M. Lozano (TX)	
State Representative John F. Knight (AL)	
State Representative John Robinson (AL)	
State Representative John W. Rogers (AL)	
State Representative Leslie Milam Post (AR)	
State Representative Mark Eves (ME)	
State Representative Peter Stuckey (ME)	
State Representative Ralph Howard (AL)	
State Representative Richard Laird (AL)	
State Representative Sheila Lampkin (AR)	

State Representative Stacy Adams (GA)  
State Representative Tony Payton (PA)  
State Senator Jason Wilson (OH)  
State Senator John C. Astle (MD)  
State Senator Thomas Mac Middleton (MD)  
Suzanne Burke  
TCA  
TracFone Wireless, Inc.  
United States Telecom Association  
Verizon and Verizon Wireless  
ViaSat, Inc.  
Virginia Interfaith Center for Public Policy  
YourTel America, Inc.

TCA  
TracFone  
USTelecom  
Verizon  
ViaSat  
Virginia Interfaith Center  
YourTel



## APPENDIX F

## Reply Commenters

<u>Commenter</u>	<u>Abbreviation</u>
Advocates for Basic Legal Equality, Inc.	
Community Voice Mail National	
Disability Rights Advocates	
Low Income Utility Advocacy Project	
The National Consumer Law Center, on Behalf of our Low-Income Clients	Consumer Groups
Ohio Poverty Law Center	APCC
Open Access Connections	Amvensys
Pennsylvania Utility Law Project	AT&T
Pro Seniors, Inc.	CA PUC
Texas Legal Services Center	COMPTEL
Virginia Citizens Consumer Council	CTIA
American Public Communications Council, Inc.	Emerios
Amvensys Telecom Holdings, LLC	Fletcher School
AT&T	GCI
California Public Utilities Commission	
COMPTEL	
CTIA–The Wireless Association	
Emerios	
Fletcher School (Tufts University)	
General Communication, Inc.	
Leap Wireless International, Inc. and Cricket Communications, Inc.	Cricket
Media Action Grassroots Network	MAG-Net
MFY Legal Services, Inc.	MFY Legal Services
Michigan Public Service Commission	MI PSC
Montana Independent Telecommunications Systems, LLC	MITS
National ALEC Association/Prepaid Communications Association	
National Association of State Utility Consumer Advocates	NALA/PCA
National Hispanic Media Coalition	NASUCA
New Jersey Division of Rate Counsel	NHMC
Nexus Communications, Inc.	NJ DRC
One Economy Corp.	Nexus
League of United Latin America Citizens	
Minority Media and Telecommunications Council	One Economy
Open Access Connections	Open Access Connections
PR Wireless, Inc. d/b/a Open Mobile	PR Wireless
Regulatory Commission of Alaska	Alaska Commission
Reunion Communications, Inc.	Reunion
Sprint Nextel Corporation	Sprint
State of Alaska	Alaska
Texas Statewide Telephone Cooperative, Inc.	TX Telephone Cooperative
TracFone Wireless, Inc.	TracFone

Verizon and Verizon Wireless  
YourTel America, Inc.

Verizon  
YourTel

## APPENDIX G

## Further Inquiry Public Notice (DA 11-1346) Commenters

<u>Commenter</u>	<u>Abbreviation</u>
Advocates for Basic Legal Equality, Inc.	
Center for Accessible Technology	
Community Voice Mail	
Crossroads Urban Center	
Legal Services Advocacy Project	
The Low Income Utility Advocacy Project	
National Consumer Law Center	
National Center for Medical-Legal Partnership	
Ohio Poverty Law Center	
Pennsylvania Utility Law Project	
Pro Seniors, Inc.	
Salt Lake Community Action Program	
Texas Legal Services Center	
Virginia Citizens Consumer Council	
Alabama Public Service Commission	APSC
American Public Communications Council	APCC
Atlantic Tele-Network, Inc.	ATNI
Allied Wireless Communications Corporation	Allied
Wireless Comnet of Nevada, LLC	Comnet
Choice Communications, LLC	Choice
AT&T	AT&T
Benton Foundation	
New America Foundation	
Public Knowledge	
United Church of Christ	
OC Inc.	
Center For Rural Strategies	
Access Humboldt and Deep Tech	Benton
Budget PrePay, Inc.	Budget PrePay
GreatCall, Inc.	GreatCall
PR Wireless Inc. d/b/a Open Mobile	PR Wireless
California Public Utilities Commission	CA PUC
CenturyLink	CenturyLink
COMPTEL	
Connected Living Inc.	Connected Living
Cox Communications, Inc.	Cox
Don S. Samuelson Associates	DSSA
Emerios	Emerios
Free State Foundation	
General Communication, Inc.	GCI
Gila River Telecommunications, Inc.	GRTI
Latinos in Information Sciences and Technology Association	LISTA

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Leap Wireless International, Inc.	
Cricket Communications, Inc.	Cricket
Link Up for America Coalition	LUAC
Michigan Public Service Commission	MPSC
Minority Media and Telecommunications Council	MMTC
Public Service Commission of the State of Missouri	MoPSC
National Association of State Utility Consumer Advocates	NASUCA
New Jersey Division of Rate Counsel	NJ DRC
National Consumer Law Center	NCLC
Nexus Communications, Inc.	Nexus
Smith Bagley, Inc.	SBI
Sprint Nextel Corporation	Sprint
Standing Rock Sioux Tribe	SRST
Standing Rock Telecommunications Inc.	SRTI
TracFone Wireless, Inc.	TracFone

## APPENDIX H

## Further Inquiry Public Notice Reply Commenters

<u>Commenter</u>	<u>Abbreviation</u>
AT&T Inc.	AT&T
Benton Foundation	Benton Foundation
CenturyLink	CenturyLink
Cincinnati Bell Inc.	Cincinnati Bell
Cintex Wireless, LLC	Cintex
COMPTEL	COMPTEL
CTIA–The Wireless Association	CTIA
General Communication, Inc.	GCI
Gila River Telecommunications, Inc.	GRTI
Joint Center for Political and Economic Studies	Joint Center
The Leadership Conference	
Leap Wireless International, Inc.	
Cricket Communications, Inc.	Cricket
Link Up for America Coalition	Coalition
Massachusetts Department of Telecommunications and Cable	
Media Action Grassroots Network	MDTC
National Association of State Utility Consumer Advocates	MAG-Net
New Jersey Division of Rate Counsel	NASUCA
National Telecommunications Cooperative Association	NJ DRC
Nexus Communications, Inc.	NTCA
Rainbow PUSH Coalition	Nexus
Smith Bagley, Inc.	Rainbow PUSH
Sprint Nextel Corporation	SBI
Third Party Verification, Inc.	Sprint
TracFone Wireless, Inc.	3PV
Verizon and Verizon Wireless	TracFone
	Verizon

## APPENDIX I

## USAC Disbursement Public Notice Commenters

**Commenter****Abbreviation**

Alexicon Telecommunications Consulting	Alexicon
CenturyLink	CenturyLink
COMPTEL	Comptel
Michigan Public Service Commission	MI PSC
PR Wireless, Inc. d/b/a Open Mobile	PR Wireless
Smith Bagley, Inc.	Smith Bagley
South Carolina Office of Regulatory Staff	South Carolina Office of Regulatory Staff
Sprint Nextel Corporation	Sprint
United States Telecom Association	USTelecom
Verizon and Verizon Wireless	Verizon and Verizon Wireless

**Reply Commenter**

Massachusetts Department of Telecommunications and Cable	MDTC
National Tribal Telecommunications Association	NTTA
Nexus Communications, Inc.	Nexus

## APPENDIX J

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Lifeline and Link Up Reform and Modernization Notice of Proposed Rulemaking (*Lifeline and Link Up NPRM*).<sup>2</sup> The Commission sought written public comments on the proposals in the *Lifeline and Link Up NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Order**

2. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254.<sup>4</sup> 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.<sup>5</sup> Among other programs, the Commission adopted a program to provide discounts that make basic, local telephone service affordable for low-income consumers.<sup>6</sup>

3. In this Order, we comprehensively reform and begin to modernize the Universal Service Fund's Lifeline program (Lifeline or the program). Building on recommendations from the Federal-State Joint Board on Universal Service ("Joint Board"), proposals in the National Broadband Plan, input from the Government Accountability Office (GAO), and comments received in response to the Commission's March Notice of Proposed Rulemaking<sup>7</sup> the reforms adopted in this Order substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund (USF or the Fund). We take these significant actions, while ensuring that eligible low-income consumers who do not have the means to pay for telephone service can maintain their current voice service through the Lifeline program and those who are not currently connected to the networks will have the opportunity to benefit from this program and the numerous opportunities and security that telephone service affords.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> *Lifeline and Link Up Reform and Modernization*, WC Dkt. No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking, 26 FCC Rcd 2770, FCC 11-32 (2011) (*Lifeline and Link Up NPRM*).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> 47 U.S.C. § 254.

<sup>5</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, paras. 326-328 (1997).

<sup>6</sup> See *id.*

<sup>7</sup> *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*); see FEDERAL COMMUNICATIONS COMMISSION, OMNIBUS BROADBAND INITIATIVE, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2010) (NATIONAL BROADBAND PLAN), available at <http://www.broadband.gov/plan>; 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); *Federal-State Joint Board on Universal Service, Lifeline and Link Up, WC Dkt. No. 11-42 et al.*, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011) (*NPRM or Lifeline and Link Up NPRM*). See also Appendices E & F listing comments and replies.

4. This Order is another step in the Commission's ongoing efforts to overhaul all Universal Service Fund programs to fulfill the goals Congress gave us to promote the availability of modern networks and the capability of all American consumers to access and use those networks. Consistent with previous efforts, we act here to eliminate waste and inefficiency, increase accountability, and transition the Fund from supporting standalone telephone service to broadband.<sup>8</sup> In June 2011, the Commission adopted the *Duplicative Program Payments Order*, which made clear that an eligible consumer may only receive one Lifeline-supported service, established procedures to detect and de-enroll subscribers receiving duplicative Lifeline-supported services, and directed USAC to implement a process to detect and eliminate duplicative Lifeline support—a process now completed in 12 states and expanding to other states in the near future.<sup>9</sup> Building on those efforts, we estimate that the unprecedented reforms adopted in today's Order could save the Fund up to an estimated \$2 billion over the next three years, keeping money in the pockets of American consumers that otherwise would have been wasted on duplicative benefits, subsidies for ineligible consumers, or fraudulent misuse of Lifeline funds.

5. These savings will reduce growth in the Fund but at the same time provide telephone service to consumers who remain disconnected from the voice networks of the Twentieth Century. Moreover, by using a fraction of the savings from eliminating waste and abuse in the program to create a broadband pilot program, we explore how Lifeline can best be used to help low-income consumers access the networks of the Twenty-First Century by closing the broadband adoption gap. This complements the recent *USF/ICC Transformation Order and FNPRM*, which reoriented intercarrier compensation and the high-cost fund toward increasing the availability of broadband networks, as well as the recently launched *Connect to Compete* private-sector initiative to increase access to affordable broadband service for low-income consumers.

6. To make the program more accountable, the Order establishes clear goals and measures and establishes national eligibility criteria to allow low-income consumers to qualify for Lifeline based on either income or participation in certain government benefit programs. The Order adopts rules for Lifeline enrollment, including enhanced initial and annual certification requirements, and confirms the program's one-per-household requirement. The Order simplifies Lifeline reimbursement and makes it more transparent. The Commission adopts a number of reforms to eliminate waste, fraud and abuse in the program, including creating a National Lifeline Accountability Database to prevent multiple carriers from

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<sup>8</sup> See *Joint Statement on Broadband*, GN Dkt. No. 10-66, Joint Statement on Broadband, 25 FCC Rcd 3420 (2010). The Commission has already made important strides in this area: We have modernized the E-rate program, by enabling schools and libraries to get faster Internet connections at lower cost. *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*). We have established a Connect America Fund (CAF) to spur the build out of broadband networks, both mobile and fixed, in areas of the country that are uneconomic to serve. See *Connecting America et al.*, WC Dkt. No. 01-92 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 16522 paras. 115-567 (2011) (*USF/ICC Transformation Order and FNPRM*). We have proposed changes to the 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. *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*).

<sup>9</sup> *Lifeline and Link Up Reform and Modernization et al.*, Report and Order, WC Dkt. No. 11-42 *et al.*, 26 FCC Rcd 9022 (2011) (*Duplicative Program Payments Order*); Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to D. Scott Barash, Acting Chief Executive Officer, Universal Service Administrative Company (USAC), WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, DA 11-1082 (Wireline Comp. Bur. Jun. 21, 2011) (*June Guidance Letter*); Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to D. Scott Barash, Acting Chief Executive Officer, Universal Service Administrative Company (USAC), WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, DA 11-1986, (Wireline Comp. Bur. Dec. 11, 2011) (*December Guidance Letter*).



receiving support for the same subscribers; phasing out toll limitation service support; eliminating Link Up support except for recipients on Tribal lands that are served by eligible telecommunications carriers (“ETCs”) that participate in both Lifeline and the high-cost program; reducing the number of ineligible subscribers in the program; and imposing independent audit requirements on carriers receiving more than \$5 million in annual support. These reforms are expected to save the Fund approximately \$2 billion over the next three years. Using savings from the reforms, the Order establishes a Broadband Adoption Pilot Program to test and determine how Lifeline can best be used to increase broadband adoption among Lifeline-eligible consumers. We also establish an interim base of uniform support amount of \$9.25 per month for non-Tribal subscribers to simplify program administration.

**B. Summary of Significant Issues raised by Public Comments in Response to the IRFA**

7. No comments were filed in response to the IRFA attached to the *Lifeline and Link Up NPRM*. Notwithstanding the foregoing, general comments discussing the impact of the proposed rules on small business were submitted in response to the *Lifeline and Link Up NPRM*. With respect to the proposal to provide household identifying information as a measure to prevent duplicate enrollment, one commenter expressed concern that the imposition of a data transmission requirement would result in new training, programming, and administrative expenses which would be burdensome on small entities.<sup>10</sup> One commenter opposed any limitations placed on Link Up support arguing that such limitations would inhibit small ETCs’ ability to participate in the low income program.<sup>11</sup> Commenters expressed concern that the newly proposed audit requirements would be expensive and difficult for small companies to comply with.<sup>12</sup> One commenter opposed the proposed verification proposals asserting that such new requirements would be unnecessarily expensive and disproportionately burden small businesses.<sup>13</sup> Commenters opposed the proposed sampling methodology to confirm eligibility as it would have the result of requiring small entities to sample most if not all of their Lifeline subscribers.<sup>14</sup> Commenters asserted that outreach efforts may be unreasonably burdensome for small ETCs.<sup>15</sup> In making the determinations reflected in the Order, we have considered the impact of our actions on small entities.

**C. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply:**

8. 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.<sup>16</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>17</sup> In addition, the term “small business” has the

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<sup>10</sup> See TSTCI Reply Comments at 2; see also, e.g., NTCA Comments at 3 (efforts to comply with the one-per-household limitation should not impose additional administrative costs on small companies).

<sup>11</sup> See Nexus Reply Comments at 5, 6.

<sup>12</sup> See NTCA Comments at 5-7; see also MITS Reply Comments at 5; TSTCI Reply Comments at 4.

<sup>13</sup> See NTCA Comments at 5, 7).

<sup>14</sup> See MITS Reply Comments at 5; see also NTCA Comments at 6.

<sup>15</sup> See LEAP Comments at 12-13; see also NJ FRC Corrected Reply Comments at 13 (citing Cricket Comments at 12).

<sup>16</sup> 5 U.S.C. § 603(b)(3).

<sup>17</sup> 5 U.S.C. § 601(6).

same meaning as the term “small business concern” under the Small Business Act.<sup>18</sup> 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).<sup>19</sup> Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>20</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>21</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>22</sup> 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.”<sup>23</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>24</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>25</sup> Thus, we estimate that most governmental jurisdictions are small.

### 1. Wireline Providers

9. *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.<sup>26</sup> 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.<sup>27</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>28</sup> 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

<sup>18</sup> 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).

<sup>19</sup> Small Business Act, 15 U.S.C. § 632.

<sup>20</sup> See Small Business Administration, Office of Advocacy, Frequently Asked Questions, <http://www.sba.gov/advocacy/7495> (last visited March 2, 2011).

<sup>21</sup> 5 U.S.C. § 601(4).

<sup>22</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>23</sup> 5 U.S.C. § 601(5).

<sup>24</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>25</sup> 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 data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

<sup>26</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>27</sup> 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*).

<sup>28</sup> See *id.*

providers.<sup>29</sup>

10. *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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.<sup>33</sup> 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.<sup>34</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>35</sup> Seventy of which have 1,500 or fewer employees and two have more than 1,500 employees.<sup>36</sup> 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.

11. *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.<sup>37</sup> 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,

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<sup>29</sup> 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).

<sup>30</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>31</sup> 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).

<sup>32</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>33</sup> See *id.*

<sup>34</sup> *Id.*

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> 13 C.F.R. § 121.201, NAICS code 517110.

the majority of these Interexchange carriers can be considered small entities.<sup>38</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>39</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>40</sup> 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.

12. *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.<sup>41</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>42</sup> 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.<sup>43</sup> Thus under this category and the associated small business size standard, the majority of these interexchange carriers can be considered small entities.<sup>44</sup> 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.<sup>45</sup> Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

13. *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.<sup>46</sup> 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.<sup>47</sup> Thus under this category and the associated small business size standard, the majority of these

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<sup>38</sup> 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).

<sup>39</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>40</sup> See *id.*

<sup>41</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>42</sup> *Id.*

<sup>43</sup> See *Wired Telecommunications Data*, *supra* note 33.

<sup>44</sup> 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).

<sup>45</sup> *Trends in Telephone Service* at Table 5.3.

<sup>46</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>47</sup> 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).

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.<sup>48</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>49</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

14. *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.<sup>50</sup> 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.<sup>51</sup> 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,<sup>52</sup> 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.

15. *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.<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup> Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.<sup>56</sup> 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.

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<sup>48</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>49</sup> *Id.*

<sup>50</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>51</sup> 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).

<sup>52</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>53</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>54</sup> 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).

<sup>55</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>56</sup> See *id.*

16. *800 and 800-Like Service Subscribers.*<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup> 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.<sup>60</sup> 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 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

17. 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.

18. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>61</sup> Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”<sup>62</sup> Under the present and prior categories, the SBA has deemed a wireless business

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<sup>57</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>58</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>59</sup> 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).

<sup>60</sup> *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

<sup>61</sup> 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).

<sup>62</sup> 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).

to be small if it has 1,500 or fewer employees.<sup>63</sup> 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.<sup>64</sup> 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 (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>65</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>66</sup> 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.

19. *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.<sup>67</sup> The SBA has approved these definitions.<sup>68</sup> 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.

20. *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.<sup>69</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>70</sup>

21. 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.”<sup>71</sup> Census Bureau data for 2007 show that 512 Satellite

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<sup>63</sup> 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).

<sup>64</sup> 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).

<sup>65</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>66</sup> See *id.*

<sup>67</sup> *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>68</sup> 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*).

<sup>69</sup> 13 C.F.R. § 121.201, NAICS code 517410.

<sup>70</sup> 13 C.F.R. § 121.201, NAICS code 517919.

<sup>71</sup> U.S. Census Bureau, 2007 NAICS Definitions, Satellite Telecommunications, <http://www.census.gov/naics/2007/def/ND517410.HTM> (last visited March 2, 2011).

Telecommunications firms that operated for that entire year.<sup>72</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.<sup>73</sup> Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

22. 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.”<sup>74</sup> For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.<sup>75</sup> Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49,999,999.<sup>76</sup> Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

23. *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.<sup>77</sup> 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.<sup>78</sup> The 2007 census also contains data for the specific category of “Paging” “that is classified under the seven-number North

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<sup>72</sup> 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).

<sup>73</sup> *Id.*

<sup>74</sup> U.S. Census Bureau, 2007 NAICS Definitions, All Other Telecommunications, <http://www.census.gov/naics/2007/def/ND517919.HTM> (last visited March 2, 2011).

<sup>75</sup> 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).

<sup>76</sup> *Id.*

<sup>77</sup> 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).

<sup>78</sup> 13 C.F.R. § 121.201, NAICS code 517210.



American Industry Classification System (NAICS) code 5172101.<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup> The SBA has approved these small business size standards.<sup>83</sup> An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.<sup>84</sup> Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

24. *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).<sup>85</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>86</sup> According to the *2008 Trends Report*, 434 carriers reported that they were engaged in wireless telephony.<sup>87</sup> Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.<sup>88</sup> We have estimated that 222 of these are small under the SBA small business size standard.

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<sup>79</sup> 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.

<sup>80</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>81</sup> 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) (220 MHz Third Report and Order).

<sup>82</sup> 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).

<sup>83</sup> *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 Rcd 10030, paras. 98-107 (1999).

<sup>84</sup> *Id.* at 10085, para. 98.

<sup>85</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>86</sup> *Id.*

<sup>87</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>88</sup> *Id.*

### 3. Internet Service Providers

25. 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,<sup>89</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>90</sup> The latter are within the category of All Other Telecommunications,<sup>91</sup> which has a size standard of annual receipts of \$25 million or less.<sup>92</sup> The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.<sup>93</sup> 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.<sup>94</sup> 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.<sup>95</sup> Consequently, we estimate that the majority of ISP firms are small entities.

26. The RFA requires an agency to describe any significant alternatives that it has considered in developing 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 such 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.”<sup>96</sup>

#### D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. *Support Amounts for Voice Service.* In the Order, we adopt an interim rate of reimbursement for Lifeline in lieu of the prior tiered system. The tiered system was tied to the subscriber line charge (SLC), which we find to be an imprecise basis for Lifeline support given the myriad changes in the telecommunications marketplace.<sup>97</sup> This interim monthly rate is set at \$9.25 per subscriber. This interim support amount was determined by calculating the average level of support from the most recent disbursement data available.<sup>98</sup> Because the interim support amount is an average, some ETCs will receive

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<sup>89</sup> U.S. Census Bureau, 2007 NAICS Definitions: Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM> (last visited March 2, 2011).

<sup>90</sup> 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

<sup>91</sup> U.S. Census Bureau, 2007 NAICS Definitions: All Other Telecommunications, <http://www.census.gov/naics/2007/def/ND517919.HTM> (last visited March 2, 2011).

<sup>92</sup> 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

<sup>93</sup> 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).

<sup>94</sup> 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).

<sup>95</sup> An additional 45 firms had receipts of \$25 million or more.

<sup>96</sup> 5 U.S.C. § 603(c)(1) – (c)(4).

<sup>97</sup> For further discussion on the elimination of the SLC and the adoption of an interim rate of reimbursement, see Section V.

<sup>98</sup> See Section V.

more monthly support while others receive less – regardless of size. While there may be a slightly negative economic impact on some small entities, such an impact will be felt by all entities currently receiving more than \$9.25 per month per subscriber in Lifeline support, not just small entities. However, as with our adoption of uniform consumer eligibility rules, this uniform interim support amount will simplify program administration by ETCs operating across different SLCs.

28. *Uniform Eligibility Criteria.* As part of the Commission’s effort to streamline the program, the Commission adopts a uniform set of consumer eligibility requirements throughout the nation. This rule alleviates some of the administrative burdens on ETCs operating in multiple states caused by varying consumer eligibility requirements. We anticipate that this new rule will significantly simplify program administration by ETCs, resulting in greater program efficiencies. Given that we permit states to adopt more permissive Lifeline eligibility criteria on top of the base of federal Lifeline eligibility criteria, no ETCs will face a smaller Lifeline subscriber base because of the change in eligibility criteria. We expect no economic impact on entities through the adoption of the federal eligibility criteria across all states.

29. *One-per-Household.* First, the Order adopts a one-per-household requirement. “Household” is defined consistent with the Low-Income Home Energy Assistance Program as “any individual or group of individuals who are living together at the same address as one economic unit,” with an “economic unit” defined as “all individuals contributing to and sharing in the income and expenses of a household” (which would include persons with no income who benefit from another person’s financial support). Second, the Order adopts procedures to enable Lifeline applicants to demonstrate when initially enrolling in the program that any other Lifeline recipients residing at their residential address are part of a separate household and directs USAC, within 30 days of the effective date of the Order, to develop a form that will allow low-income households sharing an address to indicate they are part of a separate household. Third, the Order also directs USAC, within 30 days of the effective date of the Order, to develop print and web materials to be posted on USAC’s website that both USAC and ETCs can use to educate consumers about the one-per-household rule (*i.e.*, how to determine what persons comprise a household). USAC will prepare materials that the ETCs can rely on to educate their subscribers about the one-per-household requirement.

30. We estimate that these rules will have a minimal economic impact. While the rules will require eligible telecommunications carriers to obtain information from a limited number of consumers about their household arrangements, it will only impact those low-income consumers who reside in group living facilities or at addresses shared by multiple households. This information will be collected using a worksheet to be designed and provided to the ETCs by USAC. This information is necessary to assist qualifying consumers relying on addresses shared by multiple households to obtain Lifeline service and to document their compliance with the one-per-household rule. Additionally, USAC will develop print and web materials that ETCs can use to educate consumers about the one-per-household rule. We do not expect these requirements to have a disproportionate impact on carriers, including those that are small entities.

31. *Certification of Consumer Eligibility.* First, the Order amends section 54.410 of the Commission’s rules to require all Lifeline subscribers to provide certain certifications pertaining to their eligibility for Lifeline upon initial program enrollment and annually thereafter. Depending on the state, certifications should be collected from consumers by carriers or the state Lifeline administrator or a state agency.

32. Carriers and states (where applicable) may need to update their existing certification forms to comply with the requirements of section 54.410, as amended. Carriers already collect several similar certifications from Lifeline subscribers at enrollment; thus, we expect that the costs of compliance with the amended rule will be marginally larger. Therefore, we anticipate that the effect of this rule will have minimal economic impact. Carriers and states (where applicable) may choose to use their existing

certification forms so long as those forms are updated to comply with the new certification rules. We also provide in the Order that the new certification rules will not go into effect until June 1, 2012, which will give carriers (both large and small) time to make any needed system updates. We also expect to recover cost savings to the program based on the reduction of ineligible consumers stemming from the updated certification requirements. We do not expect that this rule will disproportionately impact small entities.

33. Second, the Order requires ETCs (or the state administrator, where applicable) to check the eligibility of new Lifeline subscribers at enrollment by accessing available state or federal eligibility databases. Where underlying eligibility data cannot be accessed through a database, the Order requires new Lifeline subscribers to provide documentation of program-based eligibility or income-based eligibility, which the entity enrolling the subscriber should review (but not retain). We acknowledge that compliance with the rule we adopt here will involve some administrative costs for ETCs, for example, modifying their internal processes and systems to comply with the new documentation requirement. However, we do not expect these costs to have a significant economic impact especially since we limit this requirement to new customers rather than requiring ETCs to re-verify all of their subscribers by obtaining documentary proof of eligibility. We do not expect these costs to be disproportionately large for small carriers. We also conclude that those costs are outweighed by the significant benefits gained by protecting the Fund from waste, fraud, and abuse. We estimate in the Order that up to 15 percent of current Lifeline subscribers may be ineligible for the program, potentially representing as much as \$375 million of support per year. We expect that a rule requiring ETCs to obtain documentation of program participation from new Lifeline applicants, in conjunction with our efforts to implement a Lifeline database, will enable the Commission to recapture those funds and prevent unbridled future growth in the Fund. The resulting cost savings will in turn benefit those consumers who contribute to the Universal Service Fund, new qualifying low-income consumers, and our goal to modernize the program for a broadband future. Further, while we will require consumers to provide documentation of program- and income-eligibility to ETCs at enrollment, consumers will no longer be required to provide such documentation as part of the annual verification process in federal default states. Moreover, consumers will not need to demonstrate eligibility at enrollment (or annually) once that function is addressed through a database. Lastly, we give ETCs until June 1, 2012, to implement processes to document consumer eligibility for Lifeline. We expect that these changes will reduce the burdens on both consumers and ETCs.

34. Third, the Order requires ETCs to make certain certifications annually and when submitting for reimbursement from the program. The Commission currently directs ETCs to make certain certifications relating to the Lifeline program. Section 54.410 of the Commission's rules, as modified, does not substantially change those requirements; rather, the Commission adds additional certifications that the ETC must make annually and when seeking reimbursement from the Fund. USAC and the Commission have jointly developed the certification language and the forms. Thus, carriers need only make the necessary internal inquiries (*e.g.*, ensure that they have received a signed certification form from each Lifeline subscriber) and sign the forms as provided to them by USAC. We do not expect that this requirement will have an adverse financial impact on small entities.

35. Fourth, we replace the existing process used by ETCs and states to verify ongoing consumer eligibility for Lifeline with a uniform rule requiring all ETCs (or states, where applicable) to re-certify the eligibility of their complete Lifeline subscriber base as of June 1, 2012. By the end of 2012, all ETCs (or states, where applicable) must obtain from each Lifeline subscriber a re-certification form that contains each of the required certifications listed in section 54.410, as amended, and report those results to USAC, the Commission, states (where the state has jurisdiction over the carrier), and Tribal governments (where applicable). Alternatively, in states where a state agency or a third party has implemented a database that carriers may query to re-certify the consumer's continued eligibility, the carrier (or state agency or third-party, where applicable) must instead query the database by the end of 2012 and maintain a record of what specific data was used to re-certify eligibility and the date of re-

certification.

36. We have taken steps in implementing this rule to minimize the impact on carriers and states performing the re-certification function. This re-certification may be done on a rolling basis throughout the year, at the ETC's election. ETCs (or states, where applicable) may re-certify the continued eligibility of an ETC's Lifeline subscribers by contacting them—which can be done in any of a number of ways, including in person, in writing, by phone, by text message, by email, or otherwise through the Internet—to confirm their continued eligibility for Lifeline. As noted above, where available, ETCs and states will access electronic eligibility data rather than contact each subscriber to obtain an individual re-certification. Lastly, after 2012, ETCs may elect to have USAC administer the self-certification process on their behalf. We do not expect the costs of re-certification to disproportionately burden small entities, who will have a lesser number of subscribers to contact and may opt to use less costly means (such as text message or e-mail) to contact their subscribers for re-certification.

37. *Tribal Lifeline Eligibility.* First, the Order clarifies that residents of Tribal lands are eligible for Lifeline (and Link Up support if served by a high cost recipient) based on (1) income level; (2) participation in any Tribal-specific federal assistance program identified in the Commission's rules; or (3) participation in any other program identified in the Commission's rules. We do not expect that this clarification will have any financial impact, including on small businesses, as it does not change existing program rules, but rather removes any ambiguity in the interpretation of those rules by carriers and consumers.

38. Second, the Order adopts the NPRM proposal to add the Food Distribution Program on Indian Reservations (FDPIR) to the list of programs that confer eligibility. We expect this rule change to have only minimal financial impact. For example, carriers serving eligible residents of Tribal lands will need to update their certification/enrollment forms to add FDPIR to their list of qualifying programs. However, the benefit that will accrue to eligible residents of Tribal lands participating in FDPIR will outweigh the burdens to carriers. We do not expect this rule to have a disproportionate impact on small entities, for whom the cost of compliance would be the same as for other carriers.

39. Third, the Order establishes a waiver and designation process for those Tribal communities that are located outside of reservations, but can show ties to defined Tribal communities, and removes the term "near reservation" from the Commission's definition of Tribal lands. We do not expect this rule to have any financial impact, including on small entities, as carriers will not have any role in the designation process.

40. Fourth, the Order clarifies that we will continue to allow self-certification of residence on Tribal lands. We do not expect this rule to have any economic impact on any entities, as it clarifies, rather than changes, existing program rules.

41. *Electronic Signatures and Interactive Voice Response Systems.* In the Order, the Commission clarifies that ETCs may use electronic signatures and interactive voice response systems to obtain Lifeline subscriber certifications, provided the electronic signatures are obtained in accordance with the requirements of the E-SIGN Act. We expect no negative economic impact from this clarification because this clarification makes obtaining subscriber signatures easier for all ETCs.

42. *National Accountability Database.* The Order established a national accountability database to reduce the likelihood that a consumer or household will receive more than one subsidized service through the low-income program. The Order directs the Bureau to work with USAC and OMB to establish and implement the database and associated processes. The Order directs ETCs to (1) populate the database with the necessary subscriber information to implement these processes and (2) query the database for each new subscriber prior to receiving reimbursement from the fund for that subscriber. ETCs may have to collect customer information which is not currently in their possession to populate the database.

43. While the database imposes an economic impact on carriers to populate the database, and potentially interface with the database, the entire system will be designed to minimize burdens on small entities. There are a number of ways in which the database has been designed to limit the burden on small entities. First, the Commission does not impose any real-time obligations on ETCs to update the database. The ETCs must update the database prior to seeking reimbursement. Second, to the extent that ETCs have not collected the necessary data from existing customers to send to the duplicates database, ETCs will have a significant period of time before the database is operational to collect such information because the Commission projects that the database could take up to a year to build and ETCs are given an additional 60 days to populate the database. The Commission has directed USAC to provide support to ETCs regarding how they should populate the database, and this assistance should further reduce the burden on ETCs, particularly those smaller entities with fewer back-office resources and less sophisticated systems. For similar reasons, the burden on small entities will be limited because the database will be designed to accept the subscriber information in many different formats, not just via a machine to machine connection. The database will include an ID verification function, which had heretofore been undertaken by some ETCs at their own expense. The database includes an exception management and dispute resolution process so that the burden on ETCs to handle disputes if a subscriber is classified as a duplicate by the database will be limited.

44. *Toll Limitation Service Support.* In the Order, the Commission begins the process of eliminating toll limitation service (TLS) support and modifies its rules for which ETCs must offer TLS. The Commission finds that TLS is less relevant in a marketplace where many ETCs do not separately charge for “toll” or “long distance” calls. To the extent an ETC still distinguishes between local and long distance calling in its Lifeline service, it must provide at no additional cost to the consumer the ability to limit or block calls that would result in additional charge. Support for TLS will be eliminated over three years to mitigate the impact of this change. In the first year of limited TLS support, support will be capped at \$3 per month per consumer. In the second year, support will be limited to \$2 per month per consumer. In the third year, support will be eliminated. ETCs seeking TLS reimbursement will need to adjust their TLS provisioning methods as there will no longer be a separate TLS reimbursement outside of the standard Lifeline support amount. This rule will have an economic impact only on ETCs unable to provide TLS at an incremental cost above the limits set in the rule.

45. *Link Up.* The Order will eliminate Link Up support to all ETCs on non-Tribal lands and limit Link Up on Tribal lands to high cost recipients deploying infrastructure. Marketplace trends indicate that Lifeline consumers increasingly have service options from ETCs that neither draw on Link Up support nor charge the consumer a service initiation fee. In balancing a number of universal service goals with finite resources, we conclude that dollars currently spent for Link Up can be more effectively spent to improve and modernize the Lifeline program. Some ETCs who had previously been receiving support from the Fund will no longer receive such support, however, the rule will not disproportionately impact small entities because the support is being eliminated for all ETCs serving non-Tribal areas—not just small entities.

46. *Subscriber Usage of Customer Supported Service.* The Order establishes a rule that pre-paid ETCs who do not charge a fee for the service (pre-paid ETCs) may not seek Lifeline reimbursement until a subscriber initiates service. Moreover, the rules require pre-paid ETCs to de-enroll subscribers who fail to use the service within a consecutive 60-day period and correspondingly update the duplicates database within one business day of any such de-enrollment. These new rules require pre-paid ETCs to monitor usage prior to seeking reimbursement from the low-income fund. In an effort to make compliance easier, the rules identify what actions on the part of consumers constitute usage. Given that carriers already have systems in place whereby usage is monitored so as to prevent consumers from using more than their allocated minutes, the burden of de-enrolling those consumers who do not use the service within a 60-day period is likely minimal. Moreover, while there may be some administrative expense related to updating the database, we anticipate such expense to be nominal. The new rules also require

pre-paid ETCs to inform subscribers at service initiation of the usage and de-enrollment policies. This new requirement only applies to those ETCs choosing to provide Lifeline service at no charge to subscribers.

47. *Minimum Consumer Charge.* The Order does not adopt a minimum consumer charge for Lifeline services and eliminates the current rule imposing a minimum local charge on Tribal subscribers. The requirements do not impose any obligations on carriers, large or small, therefore there is no associated cost of compliance.

48. *Marketing & Outreach.* The Order requires ETCs to include plain, easy-to-understand language in all of their Lifeline marketing materials that the offering is a Lifeline-supported service; that Lifeline is a government assistance program; that only eligible consumers may enroll in the program; what documentation is necessary for enrollment; and that the program is limited to one benefit per household, consisting of either wireline or wireless service. Additionally, we require ETCs to disclose the company name under which it does business and the details of its Lifeline service offerings in its Lifeline-related marketing and advertising. We do not anticipate this rule to have a significant economic impact on any entities because the costs of including basic program information in all marketing materials should be minimal.

49. *Audits and Enforcement.* The Order adopts a new audit requirement whereby newly designated ETCs will be audited by USAC within the first 18 months of seeking Lifeline support in any single state. This requirement is the same regardless of the size of the ETC. Moreover, because all ETCs are required to maintain records for a period of three years, submit annual recertification documentation, and be subjected to discretionary USAC audits, this first year audit requirement does not pose any burden or hardship on new ETCs or a disproportionate burden on small ETCs. The Order also requires those ETCs drawing more than \$5 million in low-income support from the fund, at the holding company level, to perform a biennial independent audit. This requirement only pertains to large entities therefore there is no impact, let alone a disproportionate one, on small ETCs.

50. In the Order, the Commission requires the submission of certain ownership information to USAC in order to implement our new biennial audit rule. ETCs are required to report ownership information, including affiliates, holding companies, and any branding, to USAC, along with relevant universal service identifiers so that we may determine at the holding company level which ETCs meet the \$5 million threshold.<sup>99</sup> In addition, the Order requires newly designated ETCs to describe service offerings and type of service being provided. These reporting requirements apply to all ETCs equally and do not have a disproportionate impact on small providers. This reporting will help the Commission increase accountability in our universal service programs by simplifying the process of determining the total amount of public support received by each recipient, regardless of corporate structure. This new requirement will impose a burden on all ETCs, though not one that has a significant economic impact. While there will be some administrative costs associated with this requirement, the overall burden should be minimal and will be greater for large ETCs operating with complex corporate structures across multiple study areas.

51. *Payment of Low-Income Support.* The Order adopts a three month transition for low-income support to be disbursed based on actual support in place of the current administrative process of paying low-income support based on projected service. The Order accelerates USAC's payment of low-income support for carriers filing the FCC Form 497 electronically by a monthly deadline. The window by which carriers must file revisions or original FCC Form 497s is reduced from fifteen months from the

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<sup>99</sup> Section 153 of the Act defines "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." 47 U.S.C. § 153(2); *see also* 47 C.F.R. § 76.1200.

end of a calendar year, to a rolling twelve month window. In order to accomplish this transition, the Commission sets forth a procedure whereby entities determine which study area codes to transition in each of the transition months, thereby allowing carriers to proportionately distribute any potential financial burden resulting from the transition to payments based on actual support. The Commission sets the transition to payments based on actual support to begin in July 2012, giving small entities, and all ETCs alike, ample time to prepare for the transition to payments based on actual support. Any economic impact of this revision would be equal to all entities.

52. In addition, the Commission expedites payment of low-income funds for carriers that file the FCC Form 497 electronically by the monthly deadline, thereby allowing ETCs to receive payments in a timely manner for timely electronic filings, and helping small entities reduce the negative financial impact of delayed payment. The Commission narrowed the revision window for FCC Form 497s from fifteen months to a rolling twelve month window. While carriers, large or small, may experience a minor burden by narrowing this revision window, the burden is minimized by the transition to payments on actual support. Carriers should not require as much time to scrutinize payments received because the calculations of projections and true-ups is being eliminated, and payments will be based on actual support provided by the ETC. A twelve month rolling window should be sufficient time for carriers to reconcile their books and file any required revisions, without imposing an unfair burden.

53. *Bundled Services.* In the Order, we amend sections 54.401 and 54.403 of the Commission's rules to adopt a federal policy providing all ETCs (whether designated by a state or this Commission) the flexibility to permit Lifeline subscribers to apply their Lifeline discount to bundled service packages or packages containing optional calling features available to Lifeline consumers. We do not expect this rule change to have a substantial financial impact, as carriers can elect not to offer bundled service packages or packages containing optional calling features to Lifeline consumers. We are not mandating that they do so at this time and will continue to weigh the effects of the flexible policy adopted in the Order. We believe that the benefits to consumers that could result from this rule outweigh the potential costs of compliance for carriers who choose to make such plans available to Lifeline consumers.

54. *Support for Broadband: Pilot Program.* The Order will establish a broadband pilot program aimed at generating statistically significant data that will allow the Commission, ETCs, and the public to analyze the effectiveness of different approaches to using Lifeline funds to making broadband more affordable for low-income Americans while providing support that is sufficient but not excessive. The Commission directs the Bureau to solicit applications from ETCs to participate in the Pilot Program and to select a relatively small number of projects to test the impact on broadband adoption with variations in the monthly discount for broadband services, including variations on the discount amount, the duration of the discount (phased down over time or constant) over a 12-month period. The Bureau will also give preference to ETCs that partner with third parties that have already developed approaches to overcoming broadband adoption barriers, including digital literacy, equipment costs, and relevance.

55. We do not expect these requirements to have a significant economic impact on ETCs because entities have a choice of participating. We also do not expect small entities to be disproportionately impacted. The Bureau will consider whether the projects proposed will promote entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, consistent with section 257 of the Communications Act, including those that may be socially and economically disadvantaged businesses. All ETCs that choose to participate will be required to collect and submit data throughout the pilot to USAC. The collection of information is required to study the length and amount of subsidy that is necessary for low-income consumers to adopt broadband. The benefits of collecting information outweigh any costs.

56. *Facilities-Based Requirements.* In the Order, the Commission forbears from applying the Act's facilities requirement of section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions. Specifically, each



carrier must (i) comply with certain 911 requirements; and (ii) file, subject to Bureau approval, a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in this Order. To avoid disruption to subscribers served by existing Lifeline-only ETCs designated prior to December 29, 2011, those ETCs can continue to receive reimbursement pending approval of their compliance plan, provided they submit their plan to the Bureau by July 1, 2012. Carriers designated after December 29, 2011 will not receive reimbursement from the Fund until the Bureau approves their compliance plans.

57. We do not expect these changes to have a disproportionate impact on entities, including those that are small entities, because the Commission will no longer require carriers to seek forbearance from the facilities requirement of section 214(e)(1)(a). The Commission, however, will continue to require carriers seeking to forbear from the facilities requirement of section 214 to comply with certain 911 requirements and to file and obtain approval from the Bureau of a compliance plan describing the ETC's adherence to certain protections designed to protect consumers and the Fund. The Commission has historically imposed these requirements on carriers seeking to forbear from the facilities requirement so this will not unduly burden to all impacted entities.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

58. The RFA requires an agency to describe any significant alternatives that it has considered in developing 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 such 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.”<sup>100</sup>

59. *Support Amounts for Voice Service.* The Commission considered the establishment of a separate rate of reimbursement for different types of providers. The Commission determined that such a system of reimbursement would create administrative difficulties for USAC and for ETCs. A tiered system, be it the prior structure or the one contemplated for the benefit of small entities, does not treat all subscribers equally and makes comparison of Lifeline plans difficult for consumers. Therefore, we determined that the benefits of such a structure do not outweigh the costs.

60. *One Per Household.* We considered alternatives to a one-per-household rule, including a rule permitting one Lifeline-supported service per adult and one Lifeline-supported service per residential address. We did not, however, adopt these approaches – the former because it would increase the size of the universal service fund, inconsistent with our program goals, and the latter because it could potentially exclude eligible consumers from the Lifeline program. Thus, we found that the benefits of a one-per-household rule and the associated processes we adopt today outweigh the potential costs.

61. *Certification of Consumer Eligibility.* We considered alternatives that would require ETCs to verify only a portion of their Lifeline subscriber base, including allowing small ETCs within a state to perform sampling in the aggregate rather than on an individual basis, requiring ETCs with a minimal number of Lifeline subscribers to sample fewer subscribers than larger ETCs, and allowing all ETCs to sample a lesser percentage of their Lifeline subscriber base. The approach we adopt in the Order strikes an appropriate balance between these interests by helping to identify and de-enroll ineligible subscribers, while imposing fewer burdens on consumers and ETCs than a full census survey (*i.e.*, requiring consumers to annually produce documentation to verify continued eligibility).

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<sup>100</sup> 5 U.S.C. § 603(c)(1) – (c)(4).

62. *National Accountability Database.* The Commission considered whether ETCs would be obligated to update the database with customer information in real-time. The Commission found that it would be overly burdensome for ETCs, particularly ETCs which are also small entities, to implement real-time connections between the database and carriers given the limited benefits that real-time updates would provide. We therefore did not adopt a rule that the database would have to be updated in real-time. Furthermore, except for information regarding customer de-enrollment, ETCs would have ten business days to update the database once it has become aware that information regarding a subscriber has changed. The Commission adopted a rule that the first ETC to populate the database with a particular customer's information would be able to receive reimbursement for that customer. The Commission acknowledged that this rule would provide an advantage to those ETCs with real-time updating capability, but the Commission found that this approach would reduce the amount of duplicative support and encourage the prompt transmission of data without imposing burdens that a real-time updating requirement might impose on small entities.

63. *Toll Limitation Service Support.* The new TLS support rule, as discussed above, may have an economic impact on entities, including an impact on small entities because they are used to getting TLS support. This rule will have an economic impact only on ETCs unable to provide TLS at an incremental cost above limits set in the rule. In the Order, we note that ILECs typically seek TLS support at a much lower rate than competitive LECs. Small entities that purchase TLS will no longer be able to seek reimbursement for the incremental costs of doing so after 2013. Therefore, small competitive LECs may still be required to offer TLS to Lifeline subscribers but unable to receive sufficient support for the incremental costs of doing so. However, we adopt this TLS support rule to encourage efficiencies in the provisioning of TLS. In light of the concerns expressed by competitive LECs, we considered several other approaches to reforming TLS support, including a shorter timeframe for reduction of TLS support as well as an immediate elimination of support. We chose the approach adopted in the Order because it is the least burdensome method to reform TLS support.

64. *Link Up.* While we considered some carriers' proposal to decrease the Link Up support amount, and others to define more narrowly appropriate and inappropriate uses of Link Up, on balance, the Commission concluded that the dollars spent on Link Up in its current form can be better spent on other uses, such as modernizing the program and constraining the overall size of the fund. We acknowledge that some ETCs will receive less support as a result of the elimination of Link Up funds but the Commission has concluded that Link Up support has been abused by some carriers and that USF dollars are better spent supporting other aspects of the program.

65. *Subscriber Usage of Customer Supported Services.* We extend the consumer usage condition (whereby subscribers will be de-enrolled if they fail to use the service within a consecutive 60-day period) only to free pre-paid services, which are those services for which subscribers do not receive monthly bills and do not have any regular billing relationship with the ETC, and decline at this time to impose this condition on other types of Lifeline supported services. We are sensitive to the administrative burden that a 60-day usage requirement may have on post-paid services, and at this time do not extend the usage requirements to post-paid services, whether wireline or wireless.

66. *Audits and Enforcement.* We adopt a requirement that every ETC providing Lifeline service and drawing \$5 million or more in the aggregate on an annual basis from the low-income program hire an independent audit firm to assess the ETC's overall compliance with the program's requirements every two years. We considered imposing the biennial independent audit requirement on all ETCs but rejected that as too burdensome on small entities. We concluded it was appropriate to focus the mandatory independent audit requirement on the largest recipients who post the biggest risk to the program if they lack effective internal controls to ensure compliance with Commission requirements.

67. *Payment of Low-Income Support.* The Commission sought comment on a one month transition, as proposed by USAC, however the Commission found that the financial impact of the one

month proposed transition could have been overly burdensome on the financial well-being of small entities participating in the Lifeline program. The Commission considered a two month transition as suggested by commenters, and went one step further to extend the transition to three months, thus allowing all carriers, especially small entities, to minimize any potential negative financial impact by spreading the transition out over the three months.

68. *Bundled Services.* We considered adopting a rule mandating that all ETCs allow Lifeline discounts to be applied to any package containing a voice component; however, we determined that we did not have sufficient information in the record to evaluate the impact of a rule at this time. We also adopt a rule that ETCs must explicitly notify Lifeline subscribers purchasing bundled packages or packages containing optional calling features that partial payments will first be applied to pay down the allocated price of the Lifeline voice services, and require ETCs to provide clear language to this effect on the subscriber's bill. We do not expect that this rule will disproportionately impact small businesses, which, as above, may opt not to offer such plans to Lifeline subscribers. Additionally, we expect that some carriers may already have processes in place to apply partial payments to maintain the voice portion of a Lifeline calling plan. Moreover, this rule will help to prevent Lifeline subscribers from being disconnected from voice service for non-payment, thereby reducing potential burdens that may result to ETCs from having to re-enroll disconnected subscribers.

69. **Report to Congress:** The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>101</sup> In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SVA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>102</sup>

70. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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<sup>101</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>102</sup> See 5 U.S.C. § 604(b).

**APPENDIX K****Initial Regulatory Flexibility Analysis**

1. As Required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>103</sup>, the Commission has prepared this Initial Regulatory Flexibility analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (*FNPRM*). Written 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 *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>104</sup> In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>105</sup>

**A. Need for, and Objectives of, the Proposed Rulemaking:**

2. The *FNPRM* seeks comment on a variety of issues relating to the comprehensive reform and modernization of the Universal Service Fund's Lifeline program. As discussed in the Order accompanying the *FNPRM*, the Commission believes that such reform will strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; modernize the program for broadband; and constrain the growth of the program. In proposing these reforms, the Commission seeks comment on various reporting, recordkeeping, and other compliance requirements that may apply to all carriers, including small entities. We seek comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of those costs or burdens.

3. This *FNPRM* is one of a series of rulemaking proceedings designed to implement the National Broadband Plan's (NBP) vision of improving and modernizing the universal service programs.<sup>106</sup> In this *FNPRM*, we propose and seek comment on comprehensive reforms to the universal service low-income support mechanism.

4. Specifically, we propose and seek comment on the following eight reforms and modernizations that may be implemented in funding year 2012 (July 1, 2012 – June 30, 2013).

5. In the *FNPRM*, we recommend the creation of a centralized database for online certification and verification on Lifeline consumers' eligibility to participate in the low-income program. In the *FNPRM*, we seek comment on the methods of creating the database including whether, how, and with what information ETCs should populate the eligibility database.

6. Additionally, we seek comment on establishing a digital literacy training program, and specifically, we seek comment on what entities are best suited to provide such training (*i.e.*, schools and libraries), including ETCs.

7. As part of the effort to reduce waste, fraud, and abuse in the program, the Commission proposes to allow only ETCs with a direct relationship with the end-user Lifeline subscriber to seek

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<sup>103</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>104</sup> See 5 U.S.C. § 603(a).

<sup>105</sup> See *id.*

<sup>106</sup> Connecting America: The National Broadband Plan (rel. Mar. 16, 2010)(NBP), *available at* <http://www.broadband.gov/download-plan/> (last visited January 26, 2012).

reimbursement from the Fund. In addition we propose that the ETC with the direct relationship with the end-user be responsible for populating the duplicates database. How would this proposal affect entities economically? We seek comment on the matter. We seek comment on procedures that should be implemented to ensure that Lifeline wholesalers are not seeking Fund reimbursement for resold Lifeline offerings including self-certification, record keeping, and audit requirements. We also seek comment on which ETC, the wholesaler or the reseller, should be responsible for complying with the other certification and verification requirements in the Order. Compliance with the proposed rule would require current Lifeline resellers who are not designated ETCs to either (1) obtain ETC designation or (2) purchase Lifeline for resale at wholesale rates and be prevented from seeking Fund reimbursement. As an alternative, we seek comment on whether the Commission should forbear, on its own motion, on incumbent LECs' obligation to resell Lifeline services. In addition, we seek comment on how, if at all, incumbent LECs would be required to amend tariffs to separate the amount of the Lifeline subsidy from the wholesale price of the underlying Lifeline service being resold. We seek further comment on how the proposed rule would impact existing contractual relationships between incumbent LECs and Lifeline resellers.

8. In the Order, we establish an interim amount of \$9.25 per month for Lifeline reimbursement. In the *FNPRM*, we seek comment on whether the interim reimbursement amount of \$9.25 is appropriate and should be made permanent. We also seek comment on how to best determine a flat rate of reimbursement. In furtherance of that, we seek comment on the best method of obtaining the necessary information to perform a demand estimation study. Finally, we seek comment on whether the discount should be reduced over time as voice becomes a secondary application compared to broadband service.

9. In the *FNPRM*, we seek comment on whether to adopt a rule permitting eligible residents of Tribal lands to apply their allotted Tribal Lands discount amount to more than one supported service per household (*e.g.*, a household would be permitted to “split” their Lifeline discount between a wireline and a mobile phone service and receive a discount off of the cost of each service). The Commission seeks comment on how such a rule could be administered and how to prevent waste, fraud, and abuse if this rule is adopted.

10. The Commission seeks comment in the *FNPRM* on whether to include three additional programs in its eligibility criteria: the Supplemental Nutrition Assistance Program for Women, Infants and Children, administered by the Department of Agriculture; the Veterans Benefits Administration-Veterans Health Administration Special Outreach and Benefits Assistance program; and the Healthcare for Homeless Veterans program.

11. The Commission seeks comment regarding mandatory application of the Lifeline discount to bundled service offerings. Specifically, we seek comment on whether to require ETCs to permit subscribers to apply their Lifeline discount to any bundle that includes a voice component and whether there should be any limitations on this requirement. We ask whether there should be limitations on this potential requirement, should such a rule be adopted. Should ETCs be obligated to offer a Lifeline discount on all of their service plans, including premium plans and packages that contain services other than voice and broadband? We also seek comment on various implementation issues regarding any such rule (*i.e.*, would Lifeline subscribers face loss of voice service based on their inability to pay the entirety of a bundled service bill; can carriers limit Lifeline consumers' use of premium services).

12. Finally, we propose to update our rules to extend the retention period for Lifeline documentation, including subscriber-specific eligibility documentation, from three years to at least ten years, because the current requirements are inadequate for purposes of litigation under the False Claims Act.

**B. Legal Basis**

13. The Further 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, and 1302.<sup>107</sup>

**C. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply:**

14. 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.<sup>108</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>109</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>110</sup> 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).<sup>111</sup> Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>112</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>113</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>114</sup> 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.”<sup>115</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>116</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>117</sup> Thus, we estimate that most governmental jurisdictions are small.

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<sup>107</sup> 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 254, 257, 303(r), 503, 1302.

<sup>108</sup> 5 U.S.C. § 603(b)(3).

<sup>109</sup> 5 U.S.C. § 601(6).

<sup>110</sup> 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).

<sup>111</sup> Small Business Act, 15 U.S.C. § 632.

<sup>112</sup> See Small Business Administration, Office of Advocacy, Frequently Asked Questions, <http://www.sba.gov/advocacy/7495> (last visited March 2, 2011).

<sup>113</sup> 5 U.S.C. § 601(4).

<sup>114</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>115</sup> 5 U.S.C. § 601(5).

<sup>116</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>117</sup> 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 data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

## 1. Wireline Providers

15. *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.<sup>118</sup> 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.<sup>119</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>120</sup> 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.<sup>121</sup>

16. *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.<sup>122</sup> 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.<sup>123</sup> 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.<sup>124</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.<sup>125</sup> In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have

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<sup>118</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>119</sup> 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*).

<sup>120</sup> See *id.*

<sup>121</sup> 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).

<sup>122</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>123</sup> 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).

<sup>124</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>125</sup> See *id.*

1,500 or fewer employees.<sup>126</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>127</sup> Seventy of which have 1,500 or fewer employees and two have more than 1,500 employees.<sup>128</sup> 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.

17. *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.<sup>129</sup> 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.<sup>130</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>131</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>132</sup> 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.

18. *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.<sup>133</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>134</sup> 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.<sup>135</sup> Thus under this category and the associated small business size standard, the majority of these interexchange carriers can be considered small entities.<sup>136</sup> According to Commission data, 33 carriers

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<sup>126</sup> *Id.*

<sup>127</sup> *See id.*

<sup>128</sup> *See id.*

<sup>129</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>130</sup> 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).

<sup>131</sup> *See Trends in Telephone Service* at Table 5.3.

<sup>132</sup> *See id.*

<sup>133</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>134</sup> *Id.*

<sup>135</sup> *See Wired Telecommunications Data*, *supra* note 33.

<sup>136</sup> 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 (continued...))



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.<sup>137</sup> Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

19. *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.<sup>138</sup> 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.<sup>139</sup> 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.<sup>140</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>141</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

20. *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.<sup>142</sup> 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.<sup>143</sup> 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,<sup>144</sup> 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.

21. *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

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“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).

<sup>137</sup> *Trends in Telephone Service* at Table 5.3.

<sup>138</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>139</sup> 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).

<sup>140</sup> *See Trends in Telephone Service* at Table 5.3.

<sup>141</sup> *Id.*

<sup>142</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>143</sup> 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).

<sup>144</sup> *See Trends in Telephone Service* at Table 5.3.

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.<sup>145</sup> 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.<sup>146</sup> 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.<sup>147</sup> Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.<sup>148</sup> 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.

## 2. Wireless Carriers and Service Providers

22. 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.

23. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>149</sup> Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”<sup>150</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>151</sup> 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.<sup>152</sup> 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,

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<sup>145</sup> 13 C.F.R. § 121.201, NAICS code 517911.

<sup>146</sup> 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).

<sup>147</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>148</sup> See *id.*

<sup>149</sup> 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).

<sup>150</sup> 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).

<sup>151</sup> 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).

<sup>152</sup> 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).

including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>153</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>154</sup> 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.

24. *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.<sup>155</sup> The SBA has approved these definitions.<sup>156</sup> 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.

25. *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.<sup>157</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>158</sup>

26. 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.”<sup>159</sup> Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.<sup>160</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.<sup>161</sup> Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

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<sup>153</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>154</sup> See *id.*

<sup>155</sup> *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>156</sup> 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*).

<sup>157</sup> 13 C.F.R. § 121.201, NAICS code 517410.

<sup>158</sup> 13 C.F.R. § 121.201, NAICS code 517919.

<sup>159</sup> U.S. Census Bureau, 2007 NAICS Definitions, Satellite Telecommunications, <http://www.census.gov/naics/2007/def/ND517410.HTM> (last visited March 2, 2011).

<sup>160</sup> 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).

<sup>161</sup> *Id.*

27. 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.”<sup>162</sup> For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.<sup>163</sup> Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49, 999,999.<sup>164</sup> Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

28. *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.<sup>165</sup> 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.<sup>166</sup> 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.”<sup>167</sup> 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.<sup>168</sup> Consequently,

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<sup>162</sup> U.S. Census Bureau, 2007 NAICS Definitions, All Other Telecommunications, <http://www.census.gov/naics/2007/def/ND517919.HTM> (last visited February 2, 2012).

<sup>163</sup> 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).

<sup>164</sup> *Id.*

<sup>165</sup> 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).

<sup>166</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>167</sup> 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.

<sup>168</sup> See *Trends in Telephone Service* at Table 5.3.

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.<sup>169</sup> 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.<sup>170</sup> The SBA has approved these small business size standards.<sup>171</sup> An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.<sup>172</sup> Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

29. *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).<sup>173</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>174</sup> According to the *2008 Trends Report*, 434 carriers reported that they were engaged in wireless telephony.<sup>175</sup> Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.<sup>176</sup> We have estimated that 222 of these are small under the SBA small business size standard.

### 3. Internet Service Providers

30. 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,<sup>177</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>178</sup> The latter are within the category of All Other Telecommunications,<sup>179</sup> which has a size

<sup>169</sup> 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) (220 MHz Third Report and Order).

<sup>170</sup> 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).

<sup>171</sup> *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 Rcd 10030, paras. 98-107 (1999).

<sup>172</sup> *Id.* at 10085, para. 98.

<sup>173</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>174</sup> *Id.*

<sup>175</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>176</sup> *Id.*

<sup>177</sup> U.S. Census Bureau, 2007 NAICS Definitions: Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM> (last visited March 2, 2011).

<sup>178</sup> 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

<sup>179</sup> U.S. Census Bureau, 2007 NAICS Definitions: All Other Telecommunications, <http://www.census.gov/naics/2007/def/ND517919.HTM> (last visited March 2, 2011).

standard of annual receipts of \$25 million or less.<sup>180</sup> The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.<sup>181</sup> 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.<sup>182</sup> 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.<sup>183</sup> Consequently, we estimate that the majority of ISP firms are small entities.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

31. *Tribal Lands Lifeline Support.* If we permit eligible residents of Tribal lands to apply their allotted Tribal Lands discount amount to more than one supported service per household, postpaid carriers may need to update their billing systems to reflect that more than one supported service may be received per Tribal household. Additionally, several carriers currently allow consumers to apply their Lifeline discount to the purchase of family shared calling plans, and, if such a rule were adopted, a similar billing functionality could be used by postpaid carriers serving eligible residents of Tribal lands. The Commission is continuing to evaluate the potential costs and benefits of this proposal and will take the steps necessary to mitigate the costs to small businesses.

32. *Mandatory Application of Lifeline Discount to Bundled Service Offerings.* The *FNPRM* seeks comment on whether to require ETCs to permit subscribers to apply their Lifeline discount to any bundle that includes a voice component. The *FNPRM* also seeks comment on whether there should be any limitations on this requirement (*e.g.*, should ETCs be obligated to offer a Lifeline discount on all of their service plans, including premium plans and packages that contain services other than voice and broadband, such as video). While we do not anticipate that these proposals will have an impact on small businesses at this time, we recognize that small entities may incur costs due to a need to update their internal systems to comply with the rule.

33. *Record Retention Requirements.* The Commission proposes to amend section 54.417 of the Commission's rules to extend the retention period for Lifeline documentation, including subscriber-specific eligibility documentation, from three years to at least ten years. ETCs will continue to maintain documentation of consumer eligibility for at least ten years and for as long as the consumer receives Lifeline service from that ETC, even if that period extends beyond ten years. The amended recordkeeping requirement will continue to apply equally to all ETCs, all of whom are currently required to maintain Lifeline documentation, including subscriber-specific eligibility documentation, for at least three years.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

34. *Eligibility database.* For the period prior to the implementation of a national eligibility database, in the *FNPRM* we consider the alternative of having third-party administrators, as opposed to the ETCs, be responsible for verifying Lifeline consumers' eligibility in the program. Accordingly, we

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<sup>180</sup> 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

<sup>181</sup> 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).

<sup>182</sup> 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).

<sup>183</sup> An additional 45 firms had receipts of \$25 million or more.

seek comment on how to minimize or mitigate extra costs to the Fund caused by the selection of third-party administrators.

35. *Limitations on the Resale of Lifeline-Supported Services.* As part of the effort to reduce waste, fraud, and abuse in the program, the Commission proposes to allow only ETCs with a direct relationship with the end-user Lifeline subscriber to seek reimbursement from the Fund. To the extent that a reseller who is not an ETC is receiving support from the Fund, there could be an economic impact should this change be adopted, but the Commission believes that the need to protect the Fund from abuse outweighs any concerns with existing carriers raising concerns with the economic impact of the proposed rule. Furthermore, if there is an economic impact from this proposal, we seek comment on how to minimize the burdens of such a requirement on small entities. Accordingly, we seek comment on the potential economic impact of these requirements.

**F. Federal Rules that May Duplicate or Conflict with Proposed Rules**

36. None.

**STATEMENT OF  
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Lifeline and Link Up Reform and Modernization*, WC Dkt. No. 11-42; *Lifeline and Link Up*, WC Dkt. No. 03-109; *Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45; *Advancing Broadband Availability Through Digital Literacy Training*, WC Dkt. No. 12-23

For more than 25 years, the Lifeline program has played a vital role in ensuring that the neediest among us stay connected to our communications networks.

Today, the FCC reforms and modernizes the program for the 21st century, eliminating waste and misuse of public funds, imposing fiscal discipline and accountability, and ensuring that the program satisfies Congress's directive that – quote – “[c]onsumers in all regions, including low-income consumers ... should have access to telecommunications and information services.”

The reforms we're adopting today are major. This is a fundamental overhaul to make sure that an important program is efficiently and effectively meeting its mission. It says to anyone contemplating gaming the system: Don't bother, you'll be caught and punished.

Our steps today build on our earlier reforms – in particular our recent overhaul of the largest part of the Universal Service Fund, where together we transformed an inefficient, out-of-date program into the Connect America Fund – using market mechanisms to control costs and put the country on the path to universal broadband by the end of the decade.

Today, as part of our modernization of Lifeline, we execute on another key recommendation of the National Broadband Plan to begin transitioning Lifeline to support broadband. We do so with a seriousness of purpose – because broadband is rapidly becoming a necessity, not a luxury; and we do so with humility, because it is not easy to determine how Lifeline can best be transformed into a program that supports broadband.

When this Commission inherited Lifeline more than two years ago, the program faced real and serious challenges, including rules that failed to keep pace with the boom in mobile service; created perverse incentives for some carriers; and, as we came to see, invited fraud and abuse. Since then, we've rolled up our sleeves to put this program on a sound path and strong foundation.

The process of reforming Lifeline started with the release of the National Broadband Plan in early 2010. In the spring of 2010, I asked the Federal-State Joint Board on Universal Service to scrutinize the Lifeline program and offer recommendations for reform. Last year, the FCC proposed rules that built on the Joint Board's recommendations – and today's Order implements many of those ideas.

But we haven't waited to complete the rulemaking to take concrete steps to tackle fraud and abuse. Last June, the Commission adopted an order clarifying that an eligible consumer may only receive one Lifeline-supported service, creating procedures to detect and de-enroll subscribers with duplicate Lifeline-supported services. Working in close cooperation with CTIA and major Lifeline providers including AT&T, CenturyLink, Sprint, TracFone, and Verizon, we've established an unprecedented process to detect and eliminate duplicative Lifeline support—a process now underway in 12 states, that will expand to additional states in the months ahead.

I want to acknowledge the good faith and willingness to constructively engage that industry has demonstrated in helping address this problem. Thanks to this joint effort, we've already identified more than 200,000 duplicative Lifeline subscriptions for elimination – saving millions of dollars every month.



Today's Order builds on this progress.

Let me be clear: We will not tolerate waste or misuse of program funds. Today's reforms are strong and meaningful. In our Order, we set a savings target for 2012 of \$200 million, and a mechanism to ensure we realize those savings. Over the next three years, staff estimates that today's reforms will save up to \$2 billion compared to the status quo. That is a lot of money in the pockets of American consumers who otherwise would have been contributing to a program that was wasting funds on duplicative benefits, subsidies for ineligible consumers, or fraudulent misuse of Lifeline funds.

After evaluating the impact of today's fundamental overhaul of the program and addressing key issues teed up in the Further Notice of Proposed Rulemaking, including the appropriate monthly support amount, the Commission will be in a position to adopt a budget for the program in early 2013.

An important part of our reform is our establishment of databases, including a National Lifeline Accountability Database. This database approach will prevent multiple carriers from receiving support for the same subscriber and streamline the process of verifying consumers' initial and ongoing eligibility for the program, significantly reducing burdens on carriers and improving protections against waste and fraud. It will also reduce burdens on consumers participating in the program.

This is another example of the commission harnessing communications and information technology to do our work better, to help consumers, and to reduce burdens on both the companies that participate in these programs and the FCC itself.

We seek comment on ways to further streamline burdens on participating carriers, to improve program efficiency, and to encourage voluntary participation in Lifeline.

As Commissioner McDowell said earlier, we are moving forward today with fiscally responsible entitlement reform.

And we are doing it in a way that saves hundreds of millions of dollars and that will not cut off eligible, needy consumers from the vital lifeline to our basic communications grid.

Who are the people that benefit from Lifeline? They are people like a woman we heard about in South Pittsburg, Tennessee who was thrown from her car in a severe accident and used her phone to call 9-1-1 and receive immediate assistance. Or a veteran in Shady Springs, Florida who relies on his Lifeline phone to communicate with the V.A. hospital to obtain medications and organize hospital visits. And the man in Memphis who used a Lifeline phone to help with his job search, which ended with his now-current employer calling him – on his Lifeline phone -- to offer a job.

This Order is not only about increasing efficiency and eliminating waste. It's also about making sure the service is there for people who need it like the ones I mentioned. And it's about beginning to modernize Lifeline from telephone service to broadband.

Broadband, as Commissioner Clyburn has said, has gone from being a luxury to a necessity in the 21st century.

It's increasingly essential for finding a job, for example, as job postings have moved online, and for landing a job, as companies increasingly require basic digital skills.

As everyone who has followed our work knows, one-third of Americans haven't adopted broadband at home, and the majority of low-income Americans are non-adopters.

Recognizing that Lifeline was established to make sure low-income Americans have access to telecommunications and information services, and that voice will ultimately be just another application on our broadband networks, it makes sense to begin to transition Lifeline to support broadband.

Consistent with the language and purposes of the Communications Act, the Order starts by establishing as a core program goal ensuring universal availability of broadband for low-income Americans. To determine how best to achieve that goal, we're using a fraction of the savings we're realizing from today's reforms to launch a Broadband Adoption Pilot Program.

We're asking broadband providers to submit project proposals, and data from the projects we choose would be rigorously analyzed to ensure a full understanding of how best to transition Lifeline to support broadband.

In addition to our work, the work that we seek from entities like Connect to Compete and some of the BTOP programs will also be helpful in determining a smart course going forward.

In addition to cost, we know that a lack of digital literacy is a major barrier to broadband adoption. That's why we propose using savings from Universal Service Fund reforms to increase digital literacy training at libraries and schools. Digital literacy training not only promotes broadband adoption, but it could also arm more Americans with the skills they need to fully participate in our 21st century economy and society.

In my view, it would be irresponsible not to begin testing ideas to harness broadband to help connect low-income Americans, improving our economy and our kids' education. Other countries are moving ahead in this area, and it's essential to our global competitiveness that we use every tool at our disposal to win the broadband race.

In moving forward, as I mentioned, we will build on the excellent projects that have already been launched – ranging from BTOP programs focused on adoption, to the Connect to Compete initiative supported by the cable industry and other major companies and non-profit organizations.

I want to thank all those who contributed to this Order, including my fellow Commissioners, whose deep engagement with this item is reflected in many parts of the Order. I'm proud of the process we ran to produce this Order.

It presented many difficult issues, as you heard from our statements. Staff has worked on this very hard for quite some time, and the three of us reached agreement quickly on many issues. On other issues, we found ourselves in different places – three different places to be precise. But with a shared commitment to doing the right thing – to connecting needy Americans and to fiscal responsibility – we worked through some challenging issues together, as recently as yesterday. I'm grateful for each of my colleagues and our staffs for staying at the table and discussing the issues until we found a path through.

I want to thank the Joint Board and state commissions across the country, who again have demonstrated the tremendous value they provide by serving as laboratories for policy innovation and as partners in ensuring universal service.

Some of the best ideas we adopted today we learned about and felt comfortable adopting because they had been implemented in states across the country and we can see the data and measure the results.

Finally, thank you again to the outstanding staff who worked on this. For those of you who have been working on various Universal Service Fund matters over the past years, thank you very much, and to the new people who just joined the Lifeline effort and really focused on the unique issues that related to modernizing, reforming, and improving this program, you have the public's gratitude as well as all of ours.

In addition to the Wireline Competition Bureau, these items benefited from the Wireless Bureau, the General Counsel's Office, the Consumer and Governmental Affairs Bureau and other intra-agency cooperation.

It took a lot of months and a lot of hard work, and I hope you feel as proud as I do about the results we are accomplishing today, and that the agenda is going forward.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL  
APPROVING IN PART, CONCURRING IN PART, DISSENTING IN PART**

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Lifeline and Link Up*, WC Docket No. 03-109; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 12-23

Today the Federal Communications Commission is making the most fundamental, constructive and radical changes to the Lifeline program since its inception. We are infusing it with fiscal discipline for the first time. As a result, the program will be on track to become a more efficient tool to fulfill Congress's intended purpose: helping low-income Americans stay connected to society through telecommunications services.

In the Telecommunications Act of 1996, Congress explicitly mandated that we manage this program to help the disadvantaged. At the same time, Congress wants us to be fiscally prudent to maximize Lifeline's effectiveness for the truly eligible. With this legislative intent in mind, our action today will help eliminate waste, fraud and abuse to yield resources for those most in need while bending the unabated growth curve downward.

As I have said repeatedly since first joining the Commission, my primary goal for Universal Service reform is to instill fiscal discipline to the program. Today we largely achieve that goal for the Lifeline program in the near term. Although I would have preferred a longer-term fixed budget or cap, what we are rendering today is virtually unheard of in Washington: fiscally responsible entitlement reform.

On the bright side, some of the most appealing aspects of today's actions include the following:

- Establishing an aggressive savings target of \$200 million for this calendar year alone, with a projected \$600 million in savings in 2013;
- Largely eliminating the Link Up program to end perverse incentives for companies to enroll those who may not be eligible, while granting a limited exception to the unique circumstances facing Tribal and Alaska Native Lands;
- Limiting support to one recipient per household;
- Creating a database to weed out duplicate recipients;
- Accelerating the process of creating a database to verify eligibility;
- Requiring pre-paid ETC accounts that have been inactive for 60 days to be removed from the Lifeline program; and
- Commencing a process for a mechanism I have long advocated: basing subsidies on a "communications price index" that should reduce financial support per subscriber as communications networks become more efficient as technology advances.

Therefore, I am voting to approve these measures.

Today's Order is not perfect, however. Due to their inherent nature, many of the assumptions used to shape our decisions are not reliable for long-term planning, making a lasting solution improbable until we can gather more critical data over the next year. Nonetheless, Commission staff has worked diligently to find the best data and cost models available today to make essential economic and financial projections. Accordingly, I have concerns about relying on these assumptions and models to forecast costs and savings for longer than beyond the current year. Among the variables that make a longer-term solution less practical are the effectiveness of the database that is designed to eliminate duplicates, the design of the prospective database that will verify eligibility and a variety of economic factors. While we bend the growth curve this year, we will be able to make even more progress next year once we have built the systems needed to administer meaningful reform.

In light of these limitations, the Commission will hold itself accountable and render an assessment of the program within six months from today, followed by a more comprehensive and formal report due next year. Based on the information and analyses contained in those reports, next year the Commission will trim the sails of today's reform to maintain our course toward more fiscally prudent shores. In other words, our improvements to the Lifeline program will remain in "beta" mode while we continue to work to maximize its efficiencies.

Please keep in mind that although Congress's intent to maintain a communications lifeline for low-income Americans is clear, the Universal Service program is structured so that consumers who can afford phone service subsidize those who cannot. In short, some consumers pay artificially high rates so others may enjoy artificially low rates, or no rate at all. Accordingly, when we spend more on Universal Service to help the Fund's recipients, we are essentially "taxing" all other phone consumers whether they are rich or poor. This Universal Service contribution mechanism, or "tax," is highly regressive. I hope those who have advocated we adopt no spending restraints at all will understand that many Americans are just scraping by in this economy. Fiscal irresponsibility would hurt them the most. Recent estimates reveal that approximately 24 million Americans are underemployed, and many are paying their phone bills in full therefore subsidizing others. Our action today attempts to limit how much we rob Peter to subsidize Paul. The Order is imperfect in this regard, however, which underscores the urgency of tackling Universal Service contribution reform as soon as possible.

Although the Order optimistically claims that our action may save the program "up to \$2 billion," I am not confident in that assertion. As a result, I concur in part while being pleased that we will review the progress of these reforms before the end of the year.

Furthermore, it should come as no surprise that I cannot support my colleagues' continued interpretation of section 706 as granting us broad powers. It does not. Additionally, I don't believe it is fiscally prudent for us to launch pilot programs that are likely to increase the Lifeline program's costs. We certainly shouldn't be laying the foundation for inflating the program before shoring up its finances. Accordingly, I respectfully dissent from these portions of the Order.<sup>184</sup>

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<sup>184</sup> In addition to the significant budgetary effects of expanding Lifeline to broadband, I have concerns regarding the legal authority that the Commission relies upon to launch the broadband pilot. First, this Order relies on section 706 of the 1996 Act, in part, for its legal authority for establishing a broadband pilot. By referencing the findings of the previous two "706 reports," this Order notes that those reports triggered the Commission's duty under Section 706(b) to "remove[e] barriers to infrastructure investment" and "promot[e] competition in the telecommunications market." I dissented from both of those 706 reports, and have often noted that section 706 is narrow in scope and does not provide the Commission with specific or general authority to do much of anything.

As part of its analysis, this Order points to section 706(a), a provision which opens with a policy pronouncement that the Commission "shall encourage the deployment on a reasonable and timely basis of advanced (continued...)

In sum, I commend the Chairman for his leadership and diligence in pushing forward these unprecedented reform efforts. I also have appreciated working with Zac Katz who is always willing to listen to our perspectives and has tried to find creative solutions. Congrats on completing your last open meeting item before jumping into your new role as Chief of Staff. I have also enjoyed working with Commissioner Clyburn and look forward to collaborating with all of my colleagues on speeding up the process for the establishment of the eligibility database. Finally, my heartfelt thanks go to Sharon Gillett, Carol Matthey, Trent Harkrader, Kim Scardino and the legions of additional bureau staff who have worked countless hours on not only the development of this item but have also been instrumental in uncovering much of the waste, fraud and abuse in this program. We are making historic progress today, but we have even more work to do in the coming year.

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telecommunications capability to all Americans.” 47 U.S.C. 1302(a). However, as the the D.C. Circuit Court has previously noted, “under Supreme Court and D.C. Circuit case law statements of policy, by themselves, do not create ‘statutorily mandated responsibilities.’” *Comcast Corp. v. FCC*, 600 F.3d 642, 644 (D.C. Cir. 2010). Rather, “[p]olicy statements are just that – statements of policy. They are not delegations of regulatory authority.” *Id.* at 654. The same holds true for congressional statements of policy, such as the opening of Section 706, as it does for any agency’s policy pronouncements. Equally troubling is this Order’s reliance on section 706(b) which states that if the FCC determines that broadband is not being deployed to all Americans in a reasonable and timely fashion, the Commission shall “take immediate action to accelerate deployment of such capability by removing barriers to *infrastructure* investment and by promoting competition in the telecommunications market.” 47 U.S.C. § 1302(b) (emphasis added). Providing a subsidy to consumers for broadband access does not constitute infrastructure investment nor does it promote competition. I disagree with the Order’s line of reasoning that providing a government subsidy to individuals somehow translates into removing infrastructure barriers because it could free up revenue to be used for buildout.

This Order attempts to lay the groundwork for expansion of the broadband pilot in the future by establishing a performance goal to “ensure the availability of broadband service for low-income Americans.” This Order’s analysis is analogous to arguments set forth in last year’s 706 report which equated “availability” with “affordability” in the context of section 706. I have previously disagreed with such arguments. By way of background, last year’s 706 report made the leap that Congress did not mean “physical” deployment when referring to “deployment” and “availability.” It conceded that the Act does not define the terms “deployment” and “availability.” Instead of looking to the plain statutory language to determine Congress’ intent, however, the Commission relied on legislative report language to argue that even if broadband is physically deployed to a particular area but is not affordable, it is *not* considered available under section 706. But, the actual statutory language says otherwise, stating that as part of the inquiry, the Commission should look at demographic information for “geographical areas that are *not served* by any provider of advanced telecommunications capability.” 47 U.S.C. 1302(c) (emphasis added).

Thus, for the forgoing reasons, I respectfully dissent from any parts of this Order which rely on section 706. Also, specifically, I dissent from the adoption of the goal to ensure the availability of broadband service for low-income Americans (Order at paras. 25, 26, 33-36) and the establishment of the broadband pilot (Order at paras. 321-354.)

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

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Lifeline and Link Up*, WC Docket No. 03-109; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 12-23

Our Lifeline program is exactly that—a lifeline—for millions of low-income consumers who couldn't otherwise afford telephone service. Today's Order completely reforms and stabilizes this program and will ensure its survivability so that it can continue to serve our most vulnerable citizens.

Over the last few years, the FCC has spent an incredible amount of time, promoting and advancing what most would agree, is the greatest infrastructure challenge of the 21<sup>st</sup> Century—broadband. With its transformative and enabling powers, broadband is a means by which all Americans can enhance their extraordinary vision and actualize their greatest potential. Today, with respect to this Order, we are making yet another significant installment in our quest for universal broadband deployment and adoption, especially for our low-income citizens. I agree wholeheartedly that these consumers are significantly disadvantaged when broadband is not within their reach. But without telephone service, the disadvantage for them *is* most *severe*. Without the capability to call employers, schools, doctors, 911, and family and friends, those already vulnerable consumers are further isolated, and managing their day-to-day lives becomes extremely difficult.

We have hundreds of testimonials from economically challenged consumers about how their subsidized Lifeline phone service has benefitted them and what that connection means to them personally. Of course, when I read these stories, they touch my heart, but I also can't help but appreciate what those subsidized connections mean to all of us, as a society. Regardless of our means, we are able to communicate with one another, whether we are separated by a city block, or are miles apart, through the convenience of a simple device. The benefits that this capability has contributed to our nation are immeasurable, and the Lifeline program has been key in this achievement. Indeed, the telephone penetration rate for consumers with income less than \$10,000 has steadily increased in the last few years, and I think that's a very good demonstration that the Lifeline program is helping us realize the universal service goals Congress mandated in Section 254 of the Act, which is to ensure *affordable* phone service for *every* American.

We have seen more low-income consumers participate in the Lifeline program than ever before over the last few years, and I believe part of that is due to the economy. Over 46 million Americans are living in poverty. This is about 15 million more people than in 2000. Of those, we know that after paying for their basic necessities—not including phone service—I am talking food, shelter and health care—these citizens don't have any disposable income left. So you can see why more low-income consumers are turning to the Lifeline program for help. The other reason the number of Lifeline consumers has grown, is that new entrants, such as mobile phone providers, have started offering Lifeline products. These new options have allowed many low-income consumers to access mobile networks for the first time. And for those on a strict budget, that wireless option may be the most efficient means of staying in touch with family, employers and caregivers. So none of us should be surprised that low-income consumers want access to mobile networks.

Today we are taking steps to ensure that more eligible citizens are afforded the opportunity to benefit from this worthwhile program. No qualifying consumer will be cut off or unable to obtain the benefits of the Lifeline program as a result of our reforms today. There will be no minimum charge on consumers participating in this program. Far too many of them are unbanked, and the cost of sending

even a small payment to the carrier far outweighs the charge imposed and would just be another barrier to them participating in and receiving the benefits of the program. Moreover, we are taking steps to better serve the homeless population, including permitting those living in shelters to sign up, and we are seeking comment on how we can better coordinate with the Department of Veterans Affairs in serving our brave heroes who have sacrificed for us, yet do not have a permanent home.

We also are taking significant measures to ensure that all waste is expunged from the Lifeline program. We have evidence on our record that there are duplicates—that is, individuals who have obtained more than one benefit. This is primarily a result of more competition and the lack of a nationwide database to ensure that individual low-income consumers aren't signed up twice. In addition, there has been some confusion about the program's requirements, and not just among the consumers, but also with the service providers. Consumers haven't been properly educated about the program's rules, or even understood which services are Lifeline-subsidized, as evidenced by the consumer reaction during last year's duplicate resolution process, when many were surprised and dismayed by the letters they received from USAC. The bottom line is this: there are numerous reasons why the program has grown, and it's important that the steps we take today to reform the program are balanced with the purpose and goals of the program—to ensure that affordable phone service is available for low-income consumers.

Many have weighed in on whether it is appropriate for us to cap the program or set a budget at this time. However, I cannot support a cap of a program whose goal it is to ensure the affordability, and thus the availability of basic telephone service for our most vulnerable citizens. One national wireless carrier submitted its survey findings of the makeup of its Lifeline subscribers in our record and found that approximately 83 percent of its Lifeline subscribers make less than \$15,000 a year. Their average age is 51, and most of them are female. If we don't ensure their ability to access phone service, then we will be doing a great disservice to them and our nation, and we would not be meeting the requirements of Congress' mandate to provide universal service.

I want to thank the Chairman for working with me on the steps we should take today to manage the size of the Fund. I understand and embrace the need for fiscal responsibility, and the reforms we adopt today provide the best means to realize significant savings which will help us accomplish that goal. But at this juncture it is best for us to provide a baseline for how the reforms we adopt today unfold over the next year. I support the Chairman in setting a target for the savings we expect will be realized in 2012. The Bureau will be reporting to us in six months and then again in one year on whether the reforms met our savings target. I believe it is appropriate for us to first review how the reforms impact the size of the Fund, and whether our assumptions and projections are accurate, whether growth of the Fund is impacted by changes in the macroeconomic conditions and the number of consumers who initiate Lifeline service, and the impact of competitive Lifeline offerings in the program this year. This enhanced information will be important in any consideration for next steps. Only at that point, will we have the type of information needed to revisit the issue of a budget. As always, I will keep an open mind, but I cannot guarantee anyone that I will support any particular budget before we have seen this data. Nevertheless, I look forward to working with the Chairman, Commissioner McDowell, and hopefully two additional Commissioners next year on this issue, as well as the other matters raised in the Further Notice.

I, of course, support the Chairman's objective that the Lifeline program should include the goal of addressing broadband affordability for low-income consumers. I believe pilot projects are an appropriate first step to determine the best way to address the digital divide for low-income consumers in the Lifeline program. Although I wish we had adopted this pilot program soon after our workshop on this issue in 2010, I am grateful we are now charging ahead, and am hopeful that this program, along with other public and private sector efforts underway, will help us complete the modernization of this program that is contemplated in today's Order.



When everyone is connected to the networks, then the value of those networks increases. This is true for both voice and broadband services. Through the universal service fund and the private sector, our nation has invested hundreds of billions of dollars in our voice networks. Last October, we committed to spending \$4.5 billion a year to build broadband-capable networks. But when a segment of our fellow citizens cannot access those networks because they cannot afford to, we are all experiencing a loss. With respect to broadband, the statistics are startling. Less than a third of the poorest Americans in this country have adopted broadband. However, access to broadband service is not a luxury, it is a necessity. The importance of broadband to economic opportunity and quality of life in our nation is unquestionable. It is difficult to look and apply for a job, complete a school assignment, or access government services and resources—which consistently are moving online to save costs—without a broadband connection. Studies repeatedly show that cost is the greatest barrier to broadband adoption for low-income consumers. While we have seen some significant steps in the public and private sectors to bridge the affordability gap, it will take a considerable commitment of this nation and this agency to achieve a broadband penetration rate that mirrors our telephone penetration rate. I believe that the Lifeline program can do for broadband service affordability what the Lifeline program has done for telephone service affordability, but it will take a brave Commission to do what is necessary to make a financial commitment to ensure that result.

An underlying theme in our discussion about transforming our fund to support the availability of broadband, is that the concept of universal service evolves over time, based upon the technological changes and expectations of consumers that result from those changes. When the federal Lifeline program began, most consumers had only one personal phone—their home phone. Today, about 30% of consumers have chosen a mobile phone over a home phone, and tens of millions in our nation have access to both a home phone and a mobile phone. Our Order adopts a one phone service per household restriction for low-income families. For those families with two adults, I am concerned that a \$9.25 subsidy for service may not stretch far enough for them to each have access to a phone when they need it. I believe it's important that low-income consumers have choices, but given the recent societal expectation that consumers should be able to readily access a phone—whether at home or on the go, I believe asking low-income families with multiple adults to manage with just one phone is inconsistent with the new norm. I also worry what this means in their ability to manage their day-to-day lives and the public safety risks of those members of the family who may not have access to the phone service.

Of course, this Commission just recognized the importance of consumer access to both fixed and mobile networks, as evidenced by our recent commitment to fund both types of networks in our high-cost reform. I appreciate the Chairman's understanding about my concerns, and his willingness to tee up this issue directly in our Further Notice. As such, we are exploring recent proposals in the record about whether a modest increase in the subsidy for low-income families with multiple adults, will allow them to better access the networks. I think this is especially important for very remote areas, such as Tribal Lands and parts of Alaska, where access to a mobile phone may mean the difference between life and death. For this reason, I am concurring in our finding that the benefit of the Lifeline program, is one per household.

There is significant agreement in the record that by using modern database capabilities, we can best reform this program to make it more efficient and effective. My two colleagues and I couldn't agree more, and I want to thank them both for working with me on this issue. I am very pleased that we are setting the goal to address not just duplicates in the next two years, but also eligibility through such database capacity. By doing so, we can better ensure that only qualified consumers are signed up for the subsidy, and we can more effectively confirm eligibility periodically. As a result, two of the new requirements we establish in this Order—reviewing documentation for program eligibility and annual certification of 100 percent of subscribers—will be temporary measures carriers will perform until a database can be used for these functions.

In my initial review of the Order, I had real concerns about the burdens we were placing on both consumers and the carriers with respect to these two new requirements. I understood from the consumer perspective, that documenting their eligibility can be very difficult when they are not initiating their service in person with the carrier. Access to copy and fax machines for low-income consumers, and sometimes even the post office, can be significant barriers, especially because many post offices no longer have copy machines, not to mention the fact that the post office has been closing locations. From the carriers, I also appreciated that they don't want to make the judgment call on who is and isn't qualified for the program. In addition, I understood from both carriers and consumers, that an annual recertification process for 100 percent of Lifeline subscribers is likely to have the unintended effect of de-enrolling qualified consumers.

I can agree with the Chairman that this year, every current Lifeline participant should be checked for continued eligibility in the program through self-certification. Currently, about 65 percent of all Lifeline subscribers are being recertified annually, and checking the other 35 percent makes sense as an initial step in our reform of the program. By permitting consumers to re-certify via text and through individual voice response systems, I believe we have struck a balance for this temporary measure of 100 percent recertification. It is our intent that in 2013, carriers will be able to rely upon a database for recertification, and if the database isn't ready, we will permit carriers to rely upon USAC for recertifying consumers, should they choose to do so. I believe this option not only addresses some carriers' concerns that 100 percent re-certification *every year* is too burdensome, but it also will address the concerns about consumer response rates being too low.

The response rate to USAC last year during the duplicate process, exceeded our expectations, and I expect that consumers may be more likely to respond to an official notification from USAC, as compared to their phone company. Nonetheless, I could not agree more with many of the participants in this proceeding, that the sooner we can make the database capabilities function in this program for both duplicates and eligibility, the better off consumers, carriers, and the Fund will be.

It is critical that we begin the process of educating consumers concerning the changes to the Lifeline program. During the duplicates process last year, thanks to my partnership with Commissioner Copps, the Chairman's support, and the efforts of our Wireline and Consumer Bureaus—this Commission worked diligently with state agencies, the carriers, and consumer groups, to inform and educate the Lifeline subscribers about the duplicates process. We received very few complaints as a result. In fact, we have heard positive feedback from many. The information sent was easy to understand, and available in both English and Spanish. We are planning to replicate that campaign this year with respect to these reforms. I want to thank the Chairman and the staff for their willingness to work with me in getting the word out about the changes to the program, and I encourage all the state agencies, carriers, and consumer groups, to work with us again to ensure that no qualifying low-income consumer is cut off or unable to access the benefits of the program.

I want to take a moment and thank the Joint Board for its significant input into this item. Over the last year and a half, I have been working closely with my state colleagues and the Joint Board staff on this program. The Joint Board's Recommended Decision from November of 2010 was the cornerstone for all the work that has happened in this program in the last year. I believe there are many steps we take today that the states will support, and I look forward to further collaboration with the Joint Board as the reforms are implemented.

I also want to thank Sharon Gillett, and her capable staff, Carol Matthey, Trent Harkrader, Kim Scardino, Lisa Hone, Jonathan Lechter, Soumitra Das, Jamie Susskind, Garnet Hanly, Beau Finley, Rebecca Hirselj, Divya Shenoy, and Rebekah Bina. Their contributions to this Order and Further Notice were remarkable. There was a significant amount of work in the Lifeline program last year, in addition to

their work on the Order and Further Notice. Thank you for your dedication to the population served by this program and for your personal sacrifices to complete today's item. I know the implementation stage of the reforms will keep you busy, and I have every confidence that you will continue to serve our citizens in a diligent and thoughtful manner. I also want to thank my Wireline Legal Advisor, Angie Kronenberg, for her significant contributions during the last 18 months with respect to this program, leading up to today's actions, and her commitment to achieving the balanced reforms we adopt today. Mr. Chairman, I also thank you for your leadership in this proceeding.