Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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LIFELINE AND LINK UP REFORM AND MODERNIZATION	)	**WC Docket No. 11-42**
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TELECOMMUNICATIONS CARRIERS ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT	)	**WC Docket No. 09-197**
	)	
	)	
CONNECT AMERICA FUND	)	**WC Docket No. 10-90**
	)	
	)	

COMMENTS OF ITTA

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ITTA – The Voice of Mid-Size Communications Companies ("ITTA") hereby submits its comments in response to the issues raised in the June 22, 2015 *Second Further Notice of Proposed Rulemaking* ("*FNPRM*") issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceedings.[1]

INTRODUCTION AND SUMMARY

ITTA commends the Commission for continuing its efforts to comprehensively reform the federal Lifeline program and supports proposals in the *FNPRM* to further improve and modernize the program by strengthening protections against waste, fraud, and abuse, improve program accountability, and facilitate the ease and efficiency of the program's administration. Indeed, ITTA maintains that the Commission should take steps to address design flaws in the current Lifeline program and strengthen fiscal controls before exploring whether to expand the program to include support for broadband services.

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[1] *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71 (rel. June 22, 2015) ("*FNPRM*").

As a threshold matter, the Commission should conclude its long overdue contribution reform effort and expand the base of contributors to include broadband services before considering expansion of the Lifeline program to include support for broadband. It is both illogical and inequitable for the Commission to contemplate expanding the Lifeline program to support broadband when broadband services and service providers do not contribute to the federal universal service fund. In addition, the time is ripe for the Commission to move forward with the proposal first suggested in 2012 to set a budget for the program. Doing so would induce careful spending and further promote needed fiscal responsibility. Moreover, setting a budget for the Lifeline program would protect against Lifeline subsidies jeopardizing other important universal service policy goals relating to broadband deployment and adoption including, importantly, those provided for in the Connect America Fund ("CAF") program.

ITTA also believes the Commission should establish $9.25 as the permanent Lifeline support amount regardless of the type of service (including bundled service offerings) or service provider. It is fiscally reasonable and is easy for subscribers to understand and for providers to administer when marketing and billing for Lifeline services. Finally, the Commission should reject the proposal to provide a one-time reimbursement for broadband connection charges should it expand the program to include support for broadband services. Based on the lessons learned in the unsuccessful Link Up program for voice connection charges, it makes little sense to create a similar program for broadband that is likely to create the same unhelpful incentives and be just as susceptible to abuse.

ITTA enthusiastically supports the Commission's proposal to establish a national verifier to determine subscriber eligibility for Lifeline service. Having a national verifier would reduce waste, fraud, and abuse in the Lifeline program, create more efficiencies in overall program administration, and reduce administrative burdens for Lifeline providers. Indeed, establishing a

national verifier would be so effective that it would eliminate many of the other concerns raised in the *FNPRM* regarding the program's administration. For instance, it would diminish the significance of the ETC designation process as a means of guarding against program abuses by unscrupulous companies that exploit the program for their own benefit. It also would obviate the need for the Commission to adopt its proposed requirements relating to the certification process and employee training in connection with Lifeline providers' verification of consumer eligibility for the Lifeline program.

The national verifier should be required to review consumers' proof of eligibility and certification forms and be responsible for determining prospective subscribers' eligibility. In addition, the national verifier should be responsible for recertifying subscribers and should have primary responsibility for ensuring that neither individual consumers nor households receive duplicative Lifeline support. ITTA also strongly believes that consumers should be permitted to directly interface with the national verifier. This approach would allow consumers to submit all required Lifeline eligibility documentation and obtain approval for Lifeline service before contacting a service provider. ITTA also endorses the proposal to permit the national verifier to transfer Lifeline benefits directly to consumers via a portable benefit. This approach would be enormously beneficial to consumers by permitting them to use their Lifeline benefit with the provider of their choosing for whatever service best meets their needs.

Should the Commission not move forward with a national verifier, however, it should modernize the ETC designation process. Given the level of competition in today's marketplace, the Commission should allow service providers to opt out of providing Lifeline service. ILECs should be relieved of the obligation to provide Lifeline service if they so choose. Doing so would not in any way disserve the public interest since Lifeline consumers would continue to have access to numerous competitive alternatives. ITTA also agrees that the Commission should

de-link providers' Lifeline obligations from their ETC status and institute a separate process for establishing Lifeline provider eligibility.

The Commission should refrain from making the proposed changes to the Lifeline certification and recertification processes suggested in the *FNPRM*. Moving to a national verifier would obviate the need for such changes. However, to the extent the Commission fails to establish a national verifier, it should not adopt the proposed changes since it has provided no compelling reason why such intrusive, burdensome requirements are necessary.

The Commission also should refrain from establishing minimum service levels that Lifeline providers must offer to Lifeline subscribers. Imposing minimum service requirements would increase Lifeline providers' costs, thereby undermining participation in the Lifeline program. Establishing minimum service levels also would limit consumers' ability to determine for themselves which Lifeline provider and which service plan makes the most sense for their particular circumstances.

Finally, the Commission should not adopt the Lifeline de-enrollment procedures suggested in the *FNPRM*. There is no justification for requiring Lifeline service providers to maintain a 24-hour service line for de-enrollment requests. So long as subscribers can reach their service provider during regular business hours, there is sufficient assurance they can terminate Lifeline service in a timely manner. Also, the Commission does not need to limit the window in which Lifeline providers must implement a subscriber's decision to de-enroll to two business days. Requiring providers to de-enroll subscribers within five business days – in the same manner as de-enrollment for duplicative support and a subscriber's failure to recertify – should be sufficient to ensure that subscribers' wishes are timely honored and that funds are not wasted for services that either are not used or are no longer desired.

I. THE COMMISSION'S LIFELINE REFORMS SHOULD ENSURE THE PROGRAM IS MANAGED IN A FISCALLY RESPONSIBLE WAY

Modernizing the Lifeline program is a laudable goal. However, as explained below, the Commission must ensure the program evolves "in a way that ensures both the beneficiaries of the program, as well as those who pay into the universal service fund ("USF" or "Fund"), are receiving good value for the dollars invested."[2]

A. The Commission Should Not Expand the Lifeline Program Until It Adopts Additional Fiscal Controls

In 2012, the Commission adopted a number of reforms designed to combat waste, fraud, and abuse in the Lifeline program, including elimination of duplicative support and adoption of common sense changes that improved program administration.[3] These reforms have addressed some of the concerns regarding the integrity of the Lifeline program; however, additional reforms are needed to ensure the program is functioning as it should be.

While it makes sense for the Commission to explore modernizing the Lifeline program, including by expanding the program to include support for broadband services,[4] it should first take steps to address basic design flaws in the Lifeline program, restrain program expenditures, and ensure it is managing pubic resources in an effective and efficient manner that advances the public interest.

Before the Lifeline program is expanded to include broadband, the Commission should tackle long overdue reform of its universal service contribution methodology. Since 2008, the

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[2] *Id.* at ¶ 1.

[3] *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking (rel. Feb. 6, 2012) ("*Lifeline Reform Order*").

[4] *See FNPRM* at ¶¶ 61-62.

universal service contribution rate has jumped 83% – from 9.5% to 17.4 %.[5] And the changes the Commission proposes in the *FNPRM* to revamp the program to include broadband would put further pressure on the financial integrity of the Lifeline fund (as well as other federal universal service programs).

ITTA was hopeful that the Commission's referral of contribution reform to the Federal-State Board on Universal Service over a year ago signaled that the Commission was ready to tackle this issue.[6] Unfortunately, the Joint Board recommendation is more than five months overdue, and there is no indication that it will be issued any time in the near future.

The current contribution system has not kept pace with widespread and fundamental changes to the communications industry that have occurred over the past 15 years. As ITTA previously has noted, there has been a proliferation of new technologies, services, and service providers that were not anticipated when the current contribution methodology was adopted.[7] The lack of clear guidance under the current system as to when and upon whom the contribution obligation applies has incentivized certain providers to interpret the Commission's rules to minimize their contribution obligations. This has increased the contribution burden on traditional services and providers, putting them at a competitive disadvantage relative to other services and providers that have managed to avoid sharing in the contribution burden.

More importantly, it is both illogical and inequitable for the Commission to contemplate expanding the Lifeline program to support broadband services when broadband services and service providers do not contribute to the universal service fund. The Commission should first

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[5] Dissenting Statement of Commissioner Pai, p. 138.

[6] *In the Matter of Federal State Joint Board on Universal Service; Universal Service Contribution Methodology; A National Broadband Plan For Our Future*, WC Docket Nos. 06-122, 96-45, GN Docket No. 09-51, Order, FCC 14-116 (rel. August 7, 2014).

[7] *See* Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 06-122, GN Docket No. 09-51 (filed July 9, 2012).

conclude its long overdue contribution reform effort and expand the base of contributors to include broadband services before moving forward with efforts to provide universal service support for broadband services.

The Commission also should establish a budget for the Lifeline program.[8] The Commission first suggested adopting a budget for the program in 2012.[9] The time is ripe to move forward with this proposal in order to induce careful spending and further promote fiscal responsibility in the Lifeline program. The Commission should not ignore the pressure its decisions put on the universal service fund and the impact they have on consumers.

The Commission should not allow spending on Lifeline subsidies to jeopardize other important Commission policy goals relating to broadband deployment and adoption. While ensuring that low-income consumers have affordable access to communications services is a highly worthy goal, it should not come at the expense of other important initiatives, including those that provide more general support for broadband deployment, such as the Connect America Fund. The Commission must not lose sight of the fact that broadband must be "available" to low-income consumers for consumers to adopt it, and that in order for broadband to be available, broadband networks that provide service that is sufficiently robust and affordable to meet basic broadband needs must exist. That is exactly what the CAF program is designed to accomplish, i.e., to spur the deployment of broadband to unserved rural and other high-cost areas so that robust, affordable voice and broadband services are available to all Americans.[10]

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[8] *See FNPRM* at ¶¶ 55-58.

[9] *See Lifeline Reform Order* at ¶ 359.

[10] *See In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking,

Indeed, as Commissioner O'Reilly points out, setting the Lifeline budget at its current level of $1.6 billion seems more than reasonable when compared to other universal service programs.[11] As he observes, "[i]t would seem hard to justify spending as much on a consumer service *discount* as on funding *actual network infrastructure* by rate-of return carriers that serve the most rural areas of the country ($2 billion) or by price cap carriers that serve most of the high-cost consumers that still lack broadband service ($1.8 billion). After all, without infrastructure in place, there's no broadband service, much less the possibility of a discounted broadband service."[12]

In short, the Commission should institute financially sound policies in connection with comprehensive reform of the Lifeline program, including fixing the broken USF contribution mechanism and establishing a budget for the Lifeline program. Only then should it expand the program to include broadband service as proposed in the *FNPRM*.

B. The Commission Should Maintain the Current Support Amount, Even If It Expands the Lifeline Program to Include Broadband

In the *Lifeline Reform Order*, the Commission adopted an interim reimbursement amount of $9.25 in monthly Lifeline support for voice service.[13] The Commission proposes in the *FNPRM* to establish $9.25 as the permanent support amount.[14] It also seeks comment on whether bundles should affect the Lifeline support level, whether the support amount should vary depending on the type of service (e.g., fixed v. mobile voice service), and whether $9.25 would

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FCC 11-161, ¶ 1 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*") ("Today the Commission comprehensively reforms and modernizes the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service … are available to Americans throughout the nation.").

[11] Dissenting Statement of Commissioner O'Rielly, p. 141.

[12] *Id*., p. 141-42 (emphasis in original).

[13] *Lifeline Reform Order* at ¶ 58.

[14] *FNPRM* at ¶ 52.

be sufficient to cover broadband service should the Commission determine to expand the Lifeline program.[15]

ITTA supports retention of the $9.25 rate for Lifeline reimbursement. It is fiscally reasonable and is easy for customers to understand and for carriers to administer when marketing and billing for Lifeline services. Furthermore, Lifeline providers should be permitted to apply Lifeline discounts to any available bundled service offering that includes a voice component. Many carriers, including ITTA member companies, do this today. Moreover, as the Commission has previously acknowledged, some states require carriers to offer Lifeline discounts on all voice offerings, including expanded service plans, because of the flexibility it provides consumers.[16]

This approach would facilitate the Commission's broadband availability and adoption goals. As the Commission has observed, applying the discount to the purchase of expanded service offerings that include broadband would likely increase broadband take rates because it would make such service available to a consumer who may not otherwise be able to afford it.[17] This approach also would be consistent with the statutory principle that consumers have access to quality services at "just, reasonable, and affordable rates," because bundled service offerings would become more affordable for low-income consumers.[18]

In addition, ITTA believes the Lifeline reimbursement amount should be the same regardless of the type of service or service provider, i.e., all Lifeline services should be eligible for the same reimbursement amount. Thus, should the Commission expand the Lifeline program

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[15] *Id.* at ¶¶ 52-53.

[16] *Lifeline Reform Order* at ¶ 490.

[17] *See id.* at n. 1192 (noting that one of the performance objectives articulated in the *Order* was to "ensur[e] the availability of broadband service for low-income Americans" and that permitting Lifeline customers "to apply their discount to the service plan of their choice could help [the Commission] to more effectively achieve this goal").

[18] *See* 47 U.S.C. § 214(e)(1)(A).

to include broadband service, reimbursement should be at the $9.25 rate regardless whether the Lifeline subscriber chooses broadband or voice service.

There is no demonstrated basis for setting different reimbursement amounts for fixed and mobile voice services (or for fixed or mobile broadband services, to the extent applicable). Nor should the support amount take into account varying business models for the delivery of communications services or the value that consumers may place on different types of service offerings. A uniform rate for all services creates a simple and straightforward framework that is easy to administer for both Lifeline providers and federal and state regulators. If the program were to take into account other factors, such as consumer preferences or delivery platforms, it would only complicate the processes and undermine the Commission's objective to simplify program administration.[19]

The Commission should continue to monitor the impact of this rate on the fund, assess how consumers are using the Lifeline discount and for which services, and revisit whether it should modify the reimbursement rate at a later point if it would increase competition or affordability. Importantly, however, in no event should the Commission contemplate increasing the reimbursement rate until overdue USF contribution reform has been adopted and implemented.

C. Should the Commission Expand the Lifeline Program to Include Broadband Service, It Should Not Implement a One-Time Reimbursement for Broadband Connection Charges

To the extent the Commission expands the Lifeline Program to include broadband service, it should not provide a one-time reimbursement to Lifeline consumers to cover up-front

[19] Furthermore, it would not be an efficient use of the Commission's limited resources to devote time and attention to developing a new Lifeline reimbursement rate at this time in light of the fact that maintaining this reimbursement level may assist in constraining the growth of the universal service fund.

broadband connection charges.[20] Notwithstanding concerns by some that a broadband connection charge could serve as a barrier to adoption, "the Lifeline program isn't intended to cover every conceivable cost, and cannot do so within a reasonable budget."[21]

Providing a one-time reimbursement for broadband connection charges is akin to reconstituting the Link Up program for broadband service. Yet, the Commission discontinued the original Link Up program in 2012 because it was so vulnerable to waste, fraud, and abuse.[22] As the Commission found, providing support for half of a voice connection charge up to $30 created incentives for carriers to set their connection charge at $60 in order to maximize their draw from the program.[23] The Commission also observed that many low-income consumers had competitive choices among providers that did not charge activation fees, raising questions as to whether the program created incentives for those providers that drew on Link Up support to charge activation fees when they otherwise would not.[24] In addition, there was significant disagreement as to the purpose of Link Up and what costs were properly reimbursable through the program.[25] The record indicated that Link Up support was being used to offset an array of costs, including outreach and marketing, customer billing, and the costs of compliance with the Lifeline rules.[26] However, such expenditures are far removed from the original purpose of the Lifeline program and are expenses that all carriers assume in doing business in today's market.[27]

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[20] *See FNPRM* at ¶ 54.

[21] Dissenting Statement of Commissioner O'Rielly, p. 143.

[22] *Lifeline Reform Order* at ¶ 245.

[23] *Id*. at ¶ 247.

[24] *Id*.

[25] *Id*. at ¶ 248.

[26] *Id*.

[27] *Id*. at ¶¶ 248, 251.

Thus, the Commission wisely concluded that it should eliminate the Link Up program.[28] With finite resources and so many competing demands for program support, the Commission determined that it was better to devote those funds to more productive uses, such as constraining the growth of the fund.[29] Based on the experience of the Link Up program for voice connection charges, it makes little sense to create a similar program in the broadband context that is likely to create the same unhelpful incentives and be just as susceptible to abuse.

D. The Commission Should Not Calculate Support Based on NLAD Data At This Time

The Commission seeks comment in the *FNPRM* on implementing a process that would calculate providers' support based on Lifeline subscriber information in the NLAD.[30] Although adopting such an approach ultimately could aid in program administration and efficiency, the Commission should not use the NLAD to calculate Lifeline support at this time.

The NLAD is a young system and is not yet sufficiently reliable to be used for this purpose. As the Commission recognizes, relying on information in the NLAD to determine Lifeline support would "constitute a substantial change in the way Lifeline providers operate and USAC administers the program."[31] Furthermore, Lifeline providers and USAC would need to put in place the necessary systems and processes in order to be able to use the NLAD for this purpose.[32] Thus, it is premature to use NLAD to calculate providers' Lifeline support.

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[28] The Commission retained the program for ETCs that receive high-cost support on Tribal lands, given significant telecommunications deployment and connectivity challenges in such areas. *Id.* at ¶ 254.

[29] *Id.* at ¶ 253.

[30] *FNPRM* at ¶¶ 178-82.

[31] *Id.* at ¶ 182.

[32] *Id.*

However, the Commission should in the future examine whether it makes sense to use the NLAD for calculating support as the database matures.

II. THE COMMISSION'S LIFELINE REFORMS SHOULD MAXIMIZE EFFICIENCIES AND REDUCE ADMINISTRATIVE BURDENS ASSOCIATED WITH THE PROGRAM

One of the most significant changes the Commission should adopt as part of comprehensive reform of the Lifeline program is to establish a neutral third-party Lifeline verifier to determine consumer eligibility for Lifeline service.[33] ITTA fully supports the Commission's proposal to establish a national verifier and explains how the Commission should implement this change in more detail below.

Having a national verifier would reduce waste, fraud, and abuse in the Lifeline program, create more efficiencies in overall program administration, and reduce administrative burdens for Lifeline providers. Indeed, establishing a national verifier would be so effective that it would eliminate many of the other concerns raised in the *FNPRM* regarding the program's administration. For instance, it would diminish the significance of the ETC designation process as a means of guarding against program abuses by unscrupulous companies that exploit the program for their own benefit. It also would obviate the need for the Commission to adopt its proposed requirements relating to the certification process and employee training in connection with Lifeline providers' verification of consumer eligibility for the Lifeline program. Assuming, *arguendo*, the Commission does not move forward with establishing a national verifier, however, ITTA addresses questions posed in the *FNPRM* relating to changes in the ETC designation process, certification and decertification procedures and possible minimum service standards below.

[33] *See id.* at ¶ 64.

A. The Commission Should Establish a National Third-Party Lifeline Verifier

The Commission proposes in the *FNPRM* to remove the responsibility of determining consumer eligibility for Lifeline service from Lifeline providers and seeks comment on various ways to shift this responsibility to a trusted third party.[34] Among other things, the Commission asks whether it should establish a national Lifeline eligibility verifier[35] and whether it should permit consumers to directly interface with the national verifier.[36] The Commission also inquires whether it should provide consumers with a portable benefit, provided by the third party verifying eligibility, which they could use with any Lifeline provider.[37] ITTA believes the Commission should adopt each of these proposals.

ITTA fully supports the Commission's proposal to establish a national verifier to make eligibility determinations and perform other functions related to the Lifeline program.[38] The national verifier should be required to review consumers' proof of eligibility and certification forms, and be responsible for determining prospective subscribers' eligibility.[39] In addition, the national verifier should be responsible for recertifying subscribers.[40] As part of the recertification process, the national verifier should make clear that the subscriber must take action to continue to receive the Lifeline discount (e.g., that written correspondence must be

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[34] *Id.* at ¶¶ 63-110.

[35] *Id.* at ¶ 64.

[36] *Id.* at ¶ 66.

[37] *Id.* at ¶¶ 104-10.

[38] *Id.* at ¶ 64.

[39] *See id.* at ¶ 65. Obviously, when the Commission establishes a national verifier or otherwise removes the responsibility for determining eligibility from Lifeline providers, Lifeline providers' obligations to retain subscriber eligibility documentation would likewise cease. *See FNPRM* at ¶ 91.

[40] *See id.* at ¶ 86.

opened and filled out). One issue Lifeline providers have faced with third-party recertification (currently performed by USAC) is that consumers do not understand that they may be denied benefits if they do not complete the recertification process. Customers receive recertification documentation from USAC and may not realize that they have to open the envelope. Or, they may fail to accurately fill out the recertification form, which requires several steps. In either case, their benefits are denied and Lifeline providers are blamed. Customers also request credits when this situation occurs. Thus, the national verifier should make clear that any recertification correspondence or paperwork must be opened and filled out.[41]

The national verifier also should have primary responsibility for ensuring that neither individual consumers nor households receive duplicative Lifeline support.[42] In particular, it may make sense to merge the National Lifeline Accountability Database ("NLAD") into the national verifier database or, alternatively, for both databases to be operated by the same entity in order to maximize efficiencies in program administration.[43] At a minimum, the national verifier should be tasked with interacting with the NLAD to check for duplicates.[44]

ITTA also strongly believes that consumers should be permitted to directly interface with the national verifier.[45] This approach would allow consumers to compile and submit all required Lifeline eligibility documentation and obtain approval for Lifeline service prior to contacting a

[41] Additionally, if the customer is ultimately eligible for Lifeline, the national verifier should be responsible for awarding back credits when recertification fails through no fault of the subscriber. Eligible Lifeline customers should not be denied necessary benefits because the recertification forms are difficult to fill out or because consumers did not realize they needed to complete the forms.

[42] *See id.* at ¶ 87.

[43] *See id.*

[44] *See id.*

[45] *See id.* at ¶ 66.

provider for service. Removing Lifeline providers from the enrollment process in this manner would reduce administrative burdens on providers and maintain consumer privacy and dignity.

The Commission also should encourage states to rely on the national verifier to the maximum extent possible. As the Commission acknowledges, "the current tapestry of state eligibility systems is far from uniform and has some shortcomings."[46] For example, some state processes are limited in that they only verify eligibility against some, but not all, federal Lifeline qualifying programs.[47] In situations where a state has developed a process or database to examine subscribers' eligibility and wishes to perform the eligibility screening function for the federal Lifeline program, the Commission should adopt an approach similar to how it implemented the NLAD. Specifically, the Commission should allow a state to opt-out of utilizing the national verifier contingent on the state's having processes in place that are sufficient to fully determine federal eligibility.[48]

ITTA also endorses the Commission's proposal to permit the national verifier to transfer Lifeline benefits directly to consumers via a portable benefit.[49] This approach would be enormously beneficial for consumers by allowing them to use their Lifeline discount with the provider of their choosing for whatever service best meets their needs. A portable benefit also would make participation in the Lifeline program more attractive for service providers, thereby increasing consumer choice and stimulating competition in the Lifeline marketplace. Additionally, it would reduce administrative burdens for Lifeline providers by eliminating their role in transferring Lifeline benefits to consumers. Taking this responsibility out of the hands of Lifeline providers and placing it into the hands of consumers is consistent with the

[46] *Id.* at ¶ 81.

[47] *Id.* at ¶ 73.

[48] *See id.* at ¶ 75.

[49] *Id.* at ¶¶ 104-10.

Commission's goal in this proceeding of moving towards third-party consumer eligibility verification for Lifeline service.

ITTA does not believe that Lifeline providers should be required to reimburse the fund to cover the cost of operations of the national verifier.[50] Rather, the cost of administration should come out of the Lifeline budget, utilizing the cost savings generated by transitioning the enrollment and verification processes to the national verifier. This approach is similar to how the Commission funds the NLAD.[51] Should the Commission nonetheless require Lifeline providers to be responsible for reimbursing the fund for all or part of the operations of the national verifier, the Commission should allocate this obligation among providers on a *pro rata* basis.

B. To the Extent the Commission Refrains from Establishing a National Third Party Lifeline Verifier, It Must Modernize the ETC Designation Process

As indicated above, moving to a national verifier would address a number of challenges in the current administration of the Lifeline program, including by reducing program abuses associated with having ETCs verify consumer eligibility for Lifeline service. Thus, to the extent the Commission does not move forward with this proposal, it should modernize the ETC designation process.

The Commission seeks comment in the *FNPRM* on allowing Lifeline providers to opt-out of providing Lifeline service in certain circumstances.[52] Relatedly, the Commission requests comment on separating carriers' Lifeline obligations from their ETC status[53] and creating a whole new Lifeline approval process that is different from the ETC designation process in order

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[50] *See id.* at ¶ 88.

[51] Moreover, ITTA believes the costs associated with the NLAD, including the Third-Party Identification Verification check, should continue to be covered by the fund. *See id.* at ¶¶ 180, 183.

[52] *Id.* at ¶ 125.

[53] *Id.* at ¶ 125.

to establish provider eligibility for Lifeline support.[54] ITTA supports the Commission's adoption of these proposals.

ITTA agrees that the Commission should allow providers to opt out of providing Lifeline service, particularly given the level of competition in today's marketplace.[55] The Lifeline program has created an environment where potential Lifeline customers typically may choose from among several providers. As the Commission has acknowledged, not only are there a "number of Lifeline providers currently in the market," there also are "ongoing efforts to market and make available Lifeline services."[56] This increase in competition is largely the result of a proliferation of mobile wireless Lifeline providers. Such providers dominate the Lifeline marketplace today, as Lifeline-eligible consumers increasingly prefer wireless Lifeline service over service provided by wireline providers, including incumbent local exchange carriers ("ILECs"). Indeed, recent USAC data shows that Lifeline revenue has shifted from a mix of 7% wireless/93% wireline in 2007 to 80% wireless/20% wireline in 2013.[57]

In light of this environment, it makes sense for the Commission to relieve ILECs of the obligation to provide Lifeline service if they so choose.[58] Doing so would not in any way disserve the public interest because low-income consumers would have continued access to numerous competitive alternatives. Should the Commission decline to allow ILECs to opt-out of the Lifeline program generally, however, it should consider providing ILECs the ability to withdraw from the program in certain circumstances, such as where there is sufficient

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[54] *Id.*at ¶ 132.

[55] *Id.* at ¶ 125.

[56] CITE (*Lifeline Reform FNPRM* at ¶ 455).

[57] *See* Letter from Jon Banks, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Mar. 14, 2014), at 20.

[58] ILECs today are obligated to provide Lifeline service as a consequence of their status as ETCs.

competition among Lifeline providers or in those geographic areas where the ILEC does not receive high-cost USF support.

ITTA also agrees that the Commission should separate or "de-link" carriers' Lifeline obligations from their ETC status and institute a separate process for establishing Lifeline provider eligibility.[59] ETC status is unnecessary so long as other controls are in place to prevent waste, fraud, and abuse in the Lifeline program.

For instance, AT&T has proposed that the Commission permit an eligible consumer to obtain Lifeline-supported service from any provider that offers a voice service (either on a stand-alone basis or as part of a bundled package of services) that meets certain minimal criteria (such as access to emergency services via 911 dialing and access to Telecommunications Relay Service via 711 dialing).[60] To ensure provider accountability, providers would be required to register as a Lifeline provider and obtain a service provider identification number ("SPIN") from USAC so that USAC can provide reimbursement for providing Lifeline service, similar to the way in which providers obtain a SPIN to participate in the E-rate program today.[61] When a new Lifeline provider registers to obtain a SPIN, it also would be required to file a certification, signed by a senior executive with appropriate authority and made under penalty of perjury, that it will comply with all Lifeline program rules.[62] Providers that already have SPINs and are currently providing Lifeline service would simply be required to submit such a certification

[59] *FNPRM* at ¶¶ 125, 132.

[60] Comments of AT&T, WC Docket No. 11-42, 03-109, CC Docket No. 96-45 (filed April 21, 2011), at 7.

[61] *Id*. at 9.

[62] *Id*.

within a reasonable period of time following the effective date of the new Lifeline rules establishing these procedures.[63]

As AT&T points out, there is no statutory impediment to adopting this approach. Congress did not mandate that Lifeline service providers be ETCs.[64] Indeed, Congress expressly provided that nothing in Section 254 "shall affect" the Commission's preexisting Lifeline program.[65] In other words, the Lifeline program existed for more than a decade prior to enactment of the 1996 Act, and when Section 254 was adopted, Congress gave the Commission "*permission* to leave the Lifeline program in place, without modification, despite Lifeline's inconsistency with other portions of the 1996 Act."[66] Additionally, the Commission has concluded that it has "the authority under sections 1, 4(i), 201, 205, and 254 to extend Lifeline to include carriers other than eligible telecommunications carriers;" it simply has declined to do so to this point.[67] Because the Commission only linked Lifeline participation to the ETC designation process through its rules following enactment of the 1996 Act,[68] the Commission could just as easily delink them by amending its rules to separate carriers' Lifeline obligations from their ETC status and instituting a separate process for establishing Lifeline provider eligibility. ITTA encourages the Commission to do so.

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[63] *Id*. Entities that have SPINs but that are not ETCs would file this certification within a certain number of days (e.g., 10) of becoming a Lifeline provider. *Id*. at n. 14.

[64] *See, e.g.*, Comments of AT&T, WC Docket No. 11-42, 03-109, 12-23, CC Docket No. 96-45 (filed Apr. 2, 2012), at 19.

[65] 47 U.S.C. § 254(j) ("Nothing in the section shall affect the collection, distribution, or administration of the Lifeline Assistance Program…").

[66] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 332 (1997) (emphasis in original).

[67] *Id.* at ¶ 369.

[68] *See, e.g.*, 47 C.F.R. § 54.405 ("All eligible telecommunications carriers shall: (a) Make available one Lifeline service… per qualifying low-income consumer…").

C. To the Extent the Commission Refrains from Establishing a National Third Party Lifeline Verifier, It Must Avoid Making Unnecessary Changes to the Lifeline Certification Process

As indicated above, moving to a national verifier would obviate the need for the Commission to adopt requirements regarding Lifeline providers' verification of consumer eligibility for the Lifeline program, including changes to the Lifeline certification process. However, to the extent the Commission does not establish a national verifier, it should not adopt the proposed changes because it has provided no compelling justification for such intrusive and burdensome requirements.

In the *FNPRM*, the Commission proposes several changes to the Lifeline certification process. The Commission seeks comment on adopting forms that all consumers, ETCs, and/or states must use in order to certify consumers' initial and ongoing eligibility for Lifeline benefits.[69] The Commission also proposes that all written certifications require subscribers to initial their acknowledgement of each of the criteria in Section 54.410(d)(3) of the Commission's rules relating to their eligibility to receive Lifeline benefits.[70] The Commission also seeks comment on whether it should require an officer of an ETC to certify on each FCC Form 497 that all individuals taking part in that ETC's enrollment and recertification processes have received sufficient training on the Lifeline rules.[71] Finally, the Commission proposes to require Lifeline providers to record the subscriber execution date on certification and recertification forms to ease confusion regarding which rules should apply to a given subscriber's enrollment.[72]

As with the Commission's proposed subscriber de-enrollment procedures (addressed below), the suggested changes to the certification and recertification process are unnecessary and

[69] *FNPRM* at ¶ 203.

[70] *Id.* at ¶ 177.

[71] *Id.* at ¶ 210.

[72] *Id.* at ¶¶ 207-209.

overly intrusive. Rather, the Commission should continue to allow ETCs and/or states to create and use their own forms so long as those forms comply with the federal Lifeline rules.[73]

The Commission suggests that implementing universal initial certification, recertification, and "one-per-household" forms is warranted based on "anecdotal evidence" that the forms for these purposes are inconsistent, deficient, or are difficult for consumers to understand.[74] Rather than reducing burdens placed on ETCs, however,[75] creating official, standardized forms would make the certification process much more difficult. It is important that providers be allowed flexibility and that the forms accommodate different formats so they can properly interface with providers' internal systems. Mandating a "one-size-fits-all" approach would increase burdens on providers by requiring them to make changes to their internal systems and processes, which would likely involve a significant amount of time and expenditure of resources. At the same time, however, providing carriers with the option of using a standardized form could simplify processes for those carriers electing to pursue that route.

For the same reasons, the Commission should not dictate that subscribers provide an acknowledgement of each individual requirement regarding their Lifeline eligibility when certifying compliance with Section 54.410(d)(3) of the Commission's rules.[76] That rule requires subscribers to certify under penalty of perjury that they meet or agree to nine different criteria in order to establish their eligibility to receive Lifeline support.[77] As indicated above, providers should continue to have flexibility as to how they gather this information, so long as the documentation is compliant with this provision. Updating the subscriber certification form to

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[73] *Lifeline Reform Order* at ¶¶ 120-24.

[74] *FNPRM* at ¶ 205.

[75] *Id.* at ¶ 205.

[76] *Id.* at ¶ 177.

[77] 47 C.F.R. § 54.410(d)(3).

accommodate nine individual certifications when one would suffice would likely require providers to substantially change or modify their internal systems and processes, introducing unnecessary burdens to the Lifeline certification process.

The Commission also should refrain from adopting its proposal to require an officer of an ETC to certify that all individuals taking part in the ETC's enrollment and recertification processes have received sufficient training on the Lifeline rules.[78] Under this proposal, ETCs would be required to affirmatively certify on each FCC Form 497 that all individuals interfacing with consumers, including employees of the company and third-party agents, have received sufficient training on the Lifeline program rules.[79] Furthermore, the Commission proposes to require that ETCs obtain the signatures of all covered individuals certifying that those individuals have completed such training.[80] In addition, every covered individual would be required to receive such training before taking part in the enrollment process on behalf of the company and again every twelve months thereafter.[81]

As an initial matter, it is unclear how an ETC would show that covered individuals have received "sufficient training" regarding the Lifeline rules, as meeting this standard inherently involves a subjective determination.

Additionally, the Commission has offered no basis to justify micromanaging Lifeline providers, particularly established ETCs that provide Lifeline service, in this manner. Not only does the Commission contemplate requiring Lifeline providers to institute rigorous training for every employee and agent involved in the Lifeline enrollment process, it also proposes to dictate the schedule and frequency of such training and to require each and every person that may be

[78] *FNPRM* at ¶ 210.

[79] *Id.* at ¶ 213.

[80] *Id.* at ¶ 214.

[81] *Id*.

involved in subscriber enrollment, even in some tangential way, to certify that they have completed such training. Yet, the examples of alleged abuse the Commission cites as the justification for its proposal appear to involve fly-by-night Lifeline-only wireless ETCs that give away free cell phones from tents.[82]

Furthermore, in response to these allegations of abuse, the Commission issued an enforcement advisory reminding ETCs of their obligations to ensure compliance with the Lifeline rules and that they are responsible for the actions of their agents.[83] As the enforcement advisory makes clear, companies that violate the Lifeline rules could be subject to monetary forfeitures of up to $150,000 for each violation, or each day of continuing violation, up to a maximum of $1.5 million.[84] Moreover, in egregious cases, providers could lose their ETC status, and thus their eligibility to participate in the universal service program, or face revocation of their authorization to operate as carriers under Section 214.[85]

Thus, ETCs are on notice that that they must ensure compliance with consumer eligibility and documentation requirements and that they remain responsible for ensuring that their agents and independent contractors comply with the Lifeline rules. To the extent the Commission desires to impose training requirements such as those proposed in the *FNPRM*, such measures only would be appropriate in the enforcement context and/or with respect to implementation of a compliance plan involving a particular company that has been found to have violated the Lifeline rules. For instance, one of the safeguards the Commission adopted in the *Lifeline Reform Order* requires non-facilities-based wireless providers to file and receive approval of a compliance plan

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[82] *See id.* at ¶ 211.

[83] *See* FCC Enforcement Advisory, Lifeline Providers are Liable if Their Agents or Representatives Violate the FCC's Lifeline Program Rules, Public Notice, 28 FCC Rcd 9022 (rel. June 25, 2013).

[84] *Id*. at 2.

[85] *Id*.

prior to entering the market.[86] In such cases, the Commission's inserting itself in the day-to-day operations of the Lifeline provider likely is justified to punish fraud and abuse and/or prevent it from occurring in the future.

Finally, the Commission should consider an alternative approach with respect to its proposal to require Lifeline providers to record the subscriber execution date on certification and recertification forms.[87] The Commission maintains that an execution date would ensure that USAC, the Commission, and independent auditors can determine the relevant rules that apply to the enrollment or recertification of that subscriber.[88] The Commission also suggests that obtaining the execution date would allow USAC to recover funds for enrollment and recertification rule violations more accurately.[89]

Rather than determining which rules apply based on the date the form is executed, ITTA submits that it makes more sense to determine which rules apply based on the date the provider receives the certification form. A potential Lifeline subscriber could execute his/her certification form on a particular date, but delay sending the form to the provider for some period of time for a variety of reasons. A more logical approach would be to tie application of the rules to the date the provider receives the fully and properly executed form, as that is likely about the time when the subscriber would anticipate his/her Lifeline benefits to commence, and practically speaking, the subscriber would not be able to receive Lifeline benefits until it has actually communicated the required information to the provider.

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[86] *Lifeline Reform Order* at ¶ 379.

[87] *FNPRM* at ¶¶ 207-209.

[88] *Id.* at ¶ 208.

[89] *Id*.

D. The Commission's Proposal to Adopt Minimum Service Standards Raises a Number of Practical Concerns

The Commission proposes to establish minimum service levels that Lifeline providers must offer to low-income consumers in order to be eligible to receive reimbursement from the Lifeline program.[90] ITTA urges the Commission not to impose minimum service requirements on Lifeline providers given the practical concerns this proposal raises.

Imposing minimum service requirements would increase a provider's costs, thereby undermining participation in the Lifeline program. Generally speaking, minimum service standards would increase costs because they necessarily would entail obligations for providers to monitor and demonstrate compliance with the rules. The issue of increased costs is particularly problematic with respect to minimum standards for broadband service because service levels (i.e., broadband speeds) vary so greatly depending on a number of factors (geographic location, population density, network infrastructure, etc.).

ITTA does not believe the Commission intends to require broadband providers to deploy new services to comply with any minimum service levels it adopts, but the Commission's final rules should make clear that providers are not obligated to undertake new deployment to conform with any minimum service level requirements. Requiring providers to upgrade or deploy facilities in order meet minimum service requirements would result in significant unfunded costs for providers. Thus, to the extent the Commission moves forward with minimum service standards – which it should not – it should refrain from requiring providers to offer Lifeline service meeting such standards if they have not deployed facilities that are capable of such service.

[90] *Id.* at ¶¶ 34-47.

Establishing minimum service levels also would limit low-income consumers' ability to determine for themselves which Lifeline provider and which service plan makes the most sense for their particular circumstances. Again, this issue is particularly problematic when it comes to minimum standards for broadband service. Say, for example, the Commission established 10/1 Mbps as the minimum required speed for Lifeline-eligible broadband service. A consumer who desires to select a more affordable service option, such as 4/1 Mbps, would be precluded from receiving a Lifeline discount, even if 4/1 service adequately meets their particular needs. The consumer should have the freedom to select any plan that best fits his/her needs. Thus, to the extent the Commission moves forward with its proposal to establish minimum standards, it should allow consumers to utilize the Lifeline discount for a lesser standard of service to avoid discriminating against and increasing costs for consumers for whom a less robust or less expensive service would be acceptable.

The Commission indicates that establishing minimum service levels would, among other things, remove incentives for providers to offer minimal, un-innovative services.[91] However, promoting the availability of innovative, cutting edge services is not, and should not be, one of the objectives of the Lifeline program. Lifeline is an affordability program; therefore, the focus should be on services that are the most economically efficient for low-income consumers.

Moreover, the dearth of consumer complaints regarding the quality of their Lifeline services suggests that there is not sufficient record evidence to support implementation of minimum service levels. For instance, there is nothing to suggest that the standard Lifeline market offering for prepaid wireless service – 250 minutes at no cost to the recipient – does not

[91] *Id.* at ¶ 34.

comport with the underlying purpose of the program to ensure that quality services are available at just, reasonable, and affordable rates.[92]

Although data cited by the Commission suggests that the typical wireless user uses two-to-three times that amount,[93] nowhere does the statute direct the Commission to ensure that low income consumers get their entire voice plan or other communications service offering for free. According to the Commission, "[t]he purpose of the Lifeline program is to provide a hand up, not a hand out, to those low-income consumers who truly need assistance" accessing basic communications services.[94] Moreover, the program's real success, the Commission maintains, should be measured by the transition of Lifeline beneficiaries off of the program because they have used the discount as a "stepping stone" on their way to improved economic stability.[95] In fact, the Commission acknowledges that Lifeline is intended as a discount, not a windfall or free giveaway for consumers when it states in the *FNPRM* that any "service standards we… adopt may require consumers to contribute personal funds" toward their service.[96] Based on the various considerations described above, the Commission should not establish minimum service standards for Lifeline offerings at this time.

E. The Commission's Proposed De-Enrollment Procedures Are Unnecessary

The Commission proposes to adopt procedures to allow subscribers to terminate Lifeline service in a quick and efficient manner.[97] Specifically, the Commission proposes to require Lifeline providers to make readily available a 24-hour customer service number allowing

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[92] *Id.* at ¶ 16.

[93] *Id.* at ¶ 40.

[94] *Id.* at ¶ 1.

[95] *Id.*

[96] *Id.* at ¶ 15.

[97] *Id.* at ¶ 147.

subscribers to de-enroll from Lifeline service.[98] The Commission also proposes to codify the obligation that Lifeline providers implement the subscriber's decision to de-enroll within two business days of the request[99] or, in the alternative, to require providers to de-enroll subscribers within five business days.[100] In addition, the Commission seeks comment on the manner in which Lifeline providers publicize their 24-hour customer service line to subscribers,[101] whether to require Lifeline providers to record requests for termination and make such records available to state and federal regulators upon request,[102] and whether to require a particular authentication process for de-enrollment.[103]

The Commission has not provided adequate justification for the proposed de-enrollment procedures given the burden they would place on providers. First, the Commission proposes these procedures based on "anecdotal evidence" that some subscribers cannot readily reach their Lifeline provider to terminate service.[104] This is not a sufficient basis on which to adopt the Commission's industry-wide proposals.

Moreover, there is no justification for requiring providers to maintain a 24-hour service line for de-enrollment requests. A 24-hour line is typically only available (or necessary) in emergencies. De-enrollment from Lifeline hardly rises to the level of an emergency. So long as consumers can reach their provider during regular business hours, that should be sufficient to ensure that subscribers can terminate Lifeline service in a timely manner. Limiting de-

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[98] *Id.* at ¶ 150.

[99] *Id.*

[100] *Id.* at ¶ 153.

[101] *Id.* at ¶ 151.

[102] *Id.*

[103] *Id.* at ¶ 152.

[104] *Id.* at ¶ 147.

enrollment to regular business hours would better ensure that providers have resources to handle such requests and that after-hours contact is limited to matters that are truly urgent.

Also, the Commission does not need to limit the window in which Lifeline providers must implement the subscriber's decision to two business days. Currently, Lifeline providers must de-enroll subscribers within five business days of (1) being notified that the subscriber is receiving duplicative support; or (2) the recertification deadline when a Lifeline subscriber has failed to recertify Lifeline service eligibility. Employing the same de-enrollment timeframe across all de-enrollment scenarios is simpler and more efficient for Lifeline providers to administer. Additionally, Lifeline support is a monthly subsidy. So long as the subscriber is de-enrolled prior to receiving any additional monthly subsidies, any concerns regarding waste and inefficiency are not likely to exist. Requiring Lifeline providers to de-enroll subscribers within five business days – in the same manner as de-enrollment for duplicative support and a subscriber's failure to recertify – should be sufficient to ensure that subscribers' wishes are timely honored and that funds are not wasted for services that either are not used or are no longer desired.

Furthermore, should the Commission affirmatively adopt de-enrollment procedures, it need not dictate the manner in which Lifeline providers publicize their customer service number or the process by which providers authenticate subscribers for purposes of de-enrollment. Nor should the Commission require Lifeline providers to comply with document retention requirements in connection with de-enrolling subscribers. Again, there appears to only be limited anecdotal evidence that some subscribers are unable to terminate Lifeline service. Moreover, matters relating to subscriber notice and the manner in which subscribers are authenticated for de-enrollment purposes are best left to the discretion of Lifeline providers, as they are in the best position to determine the most appropriate way to reach subscribers and the

most effective means to authenticate subscribers consistent with their individual business practices and day-to-day operations.

CONCLUSION

For the reasons provided above, ITTA respectfully requests that the Commission adopt its recommendations with respect to the proposals for Lifeline program reform contained in the *FNPRM*.

Respectfully submitted,

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