

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

In the Matter of)
Lifeline and Link Up Reform and) WC Docket No. 11-42
Modernization)
Telecommunications Carriers Eligible for) WC Docket No. 09-197
Universal Service Support)
Connect America Fund) WC Docket No. 10-90

SECOND FURTHER NOTICE OF PROPOSED RULEMAKING, ORDER ON
RECONSIDERATION, SECOND REPORT AND ORDER, AND MEMORANDUM OPINION
AND ORDER

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statements.

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I. INTRODUCTION

1. For nearly 30 years, the Lifeline program has ensured that qualifying low-income Americans have the opportunities and security that voice service brings, including being able to find jobs, access health care, and connect with family.¹ As the Commission explained at the program’s inception,

¹ The Lifeline program was originally established in 1985 to ensure that low-income consumers had access to affordable, landline telephone service in the wake of the divestiture of AT&T. *See 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*).

“[i]n many cases, particularly for the elderly, poor, and disabled, the telephone [has] truly [been] a lifeline to the outside world.”² Thus, “[a]ccess to telephone service has [been] crucial to full participation in our society and economy which are increasingly dependent upon the rapid exchange of information.”³ In 1996, Congress recognized the importance and success of the program and enshrined its mission into the Telecommunications Act of 1996 (1996 Act).⁴ Over time, the Lifeline program has evolved from a wireline-only program, to one that supports both wireless and wireline voice communications.⁵ Consistent with our statutory mandate to provide consumers in all regions of the nation, including low-income consumers, with access to telecommunications and information services,⁶ the program must continue to evolve to reflect the realities of the 21st Century communications marketplace 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. The purpose of the Lifeline program is to provide a hand up, not a hand out, to those low-income consumers who truly need assistance connecting to and remaining connected to telecommunications and information services. The program’s real success will be evident by the stories of Lifeline beneficiaries who move off of Lifeline because they have used the program as a stepping stone to improve their economic stability.

2. Over the past few years, the Lifeline program has become more efficient and effective through the combined efforts of the Commission and the states. The Lifeline program is heavily dependent on effective oversight at both the Federal and the state level and the Commission has partnered successfully with the states through the Federal-State Joint Board on Universal Service (Joint Board) to ensure that low-income Americans have affordable access to voice telephony service in every state and territory.⁷ In addition to working with the Commission on universal service policy initiatives on the Joint Board, many states administer their own low-income programs designed to ensure that their residents have affordable access to telephone service and connections.⁸ These activities provide the states the opportunity and flexibility to develop new and innovative ways to make the Lifeline program more effective and efficient, and ultimately bring recommendations to the Commission for the implementation of improvements on a national scale. As we continue to modernize the Lifeline program, we deeply value the input of the states as we, among other reforms, seek to streamline the Lifeline administrative process and enhance the program.

3. The Commission’s *Lifeline Reform Order* substantially strengthened protections against waste, fraud, and abuse; improved program administration and accountability; improved enrollment and

² *Id.* at 941, para. 9.

³ *Id.*

⁴ *See* 47 U.S.C. § 254(b)(1)(3).

⁵ Changes to the Lifeline program were based upon Congress’s direction in the statute and recommendations provided by the Federal-State Joint Board on Universal Service (Joint Board). *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8952, paras. 326-28 (1997) (*Universal Service First Report and Order*). The Joint Board is comprised of Federal Communications Commission (FCC) commissioners, state utility commissioners, and a consumer advocate representative. *See* 47 U.S.C. §§ 254(a)(1), 410(c).

⁶ *See* 47 U.S.C. § 254 (b)(1),(3). *See also* 47 U.S.C. § 151.

⁷ *See, e.g., Federal-State Joint Board on Universal Service et al.*, CC Docket. No. 96-45 et al., Recommended Decision, 25 FCC Rcd 15598 (Jt. Bd. 2010) (*2010 Joint Board Recommended Decision*).

⁸ *See e.g., California Lifeline Program*, <https://www.californialifeline.com/en> (last visited June 18, 2015) (providing discounted home phone and cell phone services to eligible households); Florida Public Service Commission, Lifeline Assistance, <http://www.psc.state.fl.us/utilities/telecomm/lifeline/> (last visited June 18, 2015) (ensuring that all residents of Florida have access to telephone service and connections in their homes).

consumer disclosures; and took some preliminary steps to modernize the program for the 21st Century.⁹ These reforms provided a much needed boost of confidence in the Lifeline program among the public and interested parties, increased accountability, and set the Lifeline program on an improved path to more effectively and efficiently provide vital services to the Nation's low-income consumers. In particular, the reforms have resulted in approximately \$2.75 billion in savings from 2012 to 2014 against what would have been spent in the absence of reform.¹⁰ Moreover, in the time since the reforms were adopted, the size of the Lifeline program has declined steadily. In 2012, the Universal Service Administrative Company (USAC), the Administrator of the Fund, disbursed approximately \$2.2 billion in Lifeline support payments compared to approximately \$1.6 billion in Lifeline support payments in 2014.¹¹ These reforms have been transformational in minimizing the opportunity for Lifeline funds to be used by anyone other than eligible low-income consumers. We are pleased that the Commission's previous reforms have taken hold and sustained the integrity of the Fund. However, the Commission's work is not complete. In light of the realities of the 21st Century communications marketplace, we must overhaul the Lifeline program to ensure that it advances the statutory directive for universal service.¹² At the same time, we must ensure that adequate controls are in place as we implement any further changes to the Lifeline program to guard against waste, fraud, and abuse. We therefore, among other things, seek to revise our documentation retention requirements and establish minimum service standards for any provider that receives a Lifeline subsidy. We also seek to focus our efforts on targeting funding to those low-income consumers who really need it while at the same time shifting the burden of determining consumer eligibility for Lifeline support from the provider. We further seek to leverage efficiencies from other existing federal programs and expand our outreach efforts. By rebuilding the existing Lifeline framework, we hope to more efficiently and effectively address the needs of low-income consumers. We ultimately seek to equip low-income consumers with the necessary tools and support system to realize the benefits of broadband independent of Lifeline support.

4. Today, broadband is essential to participate in society.¹³ Disconnected consumers, which are disproportionately low-income consumers, are at an increasing disadvantage as institutions and

⁹ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order* or *Lifeline FNPRM*).

¹⁰ See *id.* at 6658-60, paras. 1-4 (indicating that the reforms adopted in the *Lifeline Reform Order* could save the Fund up to an estimated \$2 billion over the next three years).

¹¹ See USAC 2014 Annual Report, at 9, <http://www.usac.org/res/documents/about/pdf/annual-reports/usac-annual-report-2014.pdf> (last visited June 18, 2015) (USAC 2014 Annual Report). See also USAC 2015 Third Quarter Appendices Filing – LI05 Annual Low Income Support by State and Company – January 2012 through March 2015, <http://www.usac.org/about/tools/fcc/filings/default.aspx> (last visited June 18, 2015) (USAC 2015 3Q Filing).

¹² See 47 U.S.C. § 254 (b)(1),(3). Recently, the U.S. Government Accountability Office (GAO) recommended that the Commission evaluate the Lifeline program to determine whether it is effectively ensuring the availability of voice service while reducing the burdens on contributors to the USF Fund. See GAO, *Telecommunications: FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program*, GAO-15-335, at 35 (Mar. 2015) (GAO March 2015 Report). GAO also focused on a few reforms the Commission had previously identified, but had not yet fully implemented. See *id.* at 11-13. The report also identified some challenges faced by both providers and subscribers. See *id.* at 22-30. We note that the Commission has been and continues to evaluate the Lifeline program using measurements described in the *Lifeline Reform Order* and peer reviewed third-party studies on the effectiveness of the program. This Second FNPRM and Report and Order addresses the reforms which have not yet been fully realized, the challenges faced by subscribers and eligible telecommunications carriers (ETCs), and how broadband should be incorporated in the Lifeline program.

¹³ Throughout this document, we use the term “broadband” generally to mean access to the Internet that is not via a dial-up connection. See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, 80 Fed. Reg. 19738, 19791-92, para. 356 (2015) (*Open Internet Order*) (finding that broadband Internet access service, as offered by both fixed and mobile providers, is an offering of both high-speed access to the Internet and other applications and functions). Where we mean the term

schools, and even government agencies, require Internet access for full participation in key facets of society. Notwithstanding overall gains in the adoption of basic levels of broadband service, a disproportionate number of individuals who remain offline have lower than average incomes. Computer ownership and Internet use strongly correlate with a household's income; the higher the household income, the more likely it is for the household to subscribe to broadband service.¹⁴ In 2013, there were approximately 116 million U.S. households.¹⁵ Ninety-five percent of U.S. households with incomes of \$150,000 or more reported connecting to the Internet, while only about 48 percent of the households making less than \$25,000 and 69 percent of households with incomes between \$25,000 and \$49,999 subscribe to home Internet access.¹⁶

5. Broadband is necessary for even basic communications in the 21st Century, and offers improved access to and quality of education and health services, improved connectedness of government with society, and the ability to create jobs and prosperity.¹⁷ Broadband access thus is necessary for even basic participation in our society and economy:

- Schools utilize online learning both inside and outside of their classrooms to supplement learning and provide additional lessons.¹⁸ Without broadband at home, many students

“broadband” to refer to an Internet connection of a particular speed, we are more specific. The Commission has set a goal for the Nation that everyone should have access to a fixed broadband connection of 25 Mbps/3 Mbps or greater. *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, 1393-94, para. 26 (2015) (*2015 Broadband Progress Report*). Nothing in this document or in our use of the term “broadband” in a variety of contexts should be interpreted to have any implication for that goal.

¹⁴ See Thom File and Camille Ryan, *Computer and Internet Use in the United States: 2013*, American Community Survey Reports, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, at 3-4 (Nov. 2014), <http://www.census.gov/history/pdf/2013computeruse.pdf> (November 2014 Census Report) (last visited June 18, 2015). See also Economics and Statistics Administration and National Telecommunications and Information Administration (NTIA), *Exploring the Digital Nation: Computer and Internet Use at Home* (Nov. 2011), http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_computer_and_internet_use_at_home_11092011.pdf (NTIA Report) (last visited June 18, 2015).

¹⁵ See November 2014 Census Report at 3, Table 1.

¹⁶ See *id.* at 3-4, Figure 2. See also NTIA Report at 11-12, Table 6 (showing that 93 percent of households with incomes of \$100,000 or more subscribe to broadband service; whereas, only 43 percent of households that have less than \$25,000 subscribe to a broadband service).

¹⁷ See Letter from The Leadership Conference on Civil and Human Rights, to Chairman Wheeler, Chairman, FCC, WC Docket No. 11-42, at 2 (filed June 10, 2015) (The Leadership Conference June 10, 2015 Letter).

¹⁸ See, e.g., Helen Brunner, *Equal Internet Access is a K-12 Must-Have* (Jan. 29, 2103), <http://www.edweek.org/ew/articles/2013/01/30/19brunner.h32.html#> (last visited June 18, 2015) (Equal Internet Access). The Commission previously explored the merits and challenges of off-premises connectivity services for mobile learning devices as part of its Learning On-The-Go (LOTG) Pilot Program (also known as E-rate Deployed Ubiquitously (EDU2011) under the E-rate program (more formally known as the Schools and Libraries program)). See *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*). As part of the LOTG Pilot Program final reports, project participants described various benefits of wireless broadband access at home. See, e.g., City School District of New Rochelle, NY, EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (Oct. 22, 2013) (where, among other things, the school district utilized eBooks and various online simulated classrooms to engage students); Riverside Unified School District EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (Oct. 22, 2013) (the school district utilized Khan Academy for Math in order to meet students' individual needs).

and teachers face a “homework gap” that makes learning in the 21st Century even more difficult.¹⁹

- The job market increasingly requires Internet access. Over 80 percent of Fortune 500 companies, including companies like Target, require that job applicants apply through the companies’ online portals.²⁰ Online banking has become a standard practice, with most banks offering mobile applications to manage accounts and make deposits.²¹
- Government services are migrating to online administration both at the federal and local levels.²²
- Telemedicine connects those in remote areas with health care professionals in real time.²³

6. In the absence of home Internet access, smartphones are increasingly used to access online services. Sixty-four percent of American adults own a smartphone, up from 35 percent in the spring of 2011.²⁴ Out of these smartphone owners:

- 30 percent of smartphone owners report that they have used their smartphone to access online educational content.²⁵
- 57 percent of smartphone owners report using their smartphone to do online banking.²⁶
- 62 percent of smartphone owners report using their smartphone to access health care information online.²⁷

¹⁹ See Jessica Rosenworcel, How to Close the ‘Homework Gap’ (Dec. 5, 2014), <http://www.miamiherald.com/opinion/op-ed/article4300806.html> (last visited June 18, 2015) (How to Close the Homework Gap).

²⁰ See FCC Chairman Announces Jobs-Focused Digital Literacy Partnership Between Connect2Compete and the 2,800 American Job Centers (July 23, 2012), <http://blog.broadband.gov/?entryId=1718810> (last visited June 18, 2015). Additionally, nearly half of all Internet Essentials subscribers surveyed stated that their job or employer expects that they have Internet access. See, e.g., John Horrigan, *The Essentials of Connectivity: Comcast’s Internet Essentials Program and a Playbook for Expanding Broadband Adoption and Use in America*, at 6 (Mar. 2014) (Internet Essentials Report).

²¹ See, e.g., Internet Essentials Report at 18 (financial institutions were perceived by Internet Essentials subscribers as being the second most likely institution that would expect a person to have a home broadband connection).

²² For example, the federal government has established Benefits.gov as a portal where Americans can find information on the benefits they are eligible for. See Benefits.gov, <http://www.benefits.gov/> (last visited June 18, 2015).

²³ See, e.g., American Telemedicine Association, *What is Telemedicine?*, <http://www.americantelemed.org/about-telemedicine/what-is-telemedicine> (last visited June 18, 2015) (defining telemedicine as the use of medical information exchanged from one site to another via electronic communications to improve a patient’s clinical health status. Telemedicine includes a growing variety of applications and services using two-way video, email, smart phones, wireless tools, and other forms of telecommunications technology).

²⁴ See Aaron Smith, Pew Research Center, *U.S. Smartphone Use in 2015*, at 2 (Apr. 1, 2015), http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf (last visited June 18, 2015) (Pew 2015 Smartphone Use Report).

²⁵ *Id.* at 5.

²⁶ *Id.*

²⁷ *Id.*

- 43 percent of smartphone owners use their smartphone to look up information about a job, and 18 percent use their smartphone to apply for a job.²⁸

7. As these facts show, the combined realities risk leaving substantial segments of the population, particularly low-income consumers, behind as it has become clear that broadband access is critical if low-income consumers are to fully participate in our society. Approximately 13 percent of Americans with an annual household income of less than \$30,000 per year are smartphone-dependent.²⁹ These smartphone-dependent users rely on their smartphones as their access point to online services, but are less likely to own some other type of computing device or have home broadband access.³⁰ As Commissioner Rosenworcel notes, “[w]hile low-income families are adopting smartphones with Internet access at high rates, a phone is not how you want to research and type a paper, apply for jobs, or further your education.”³¹ Additionally, smartphone owners tend to experience numerous challenges, such as having to suspend or cancel service due to financial constraints, poor signal quality, and inadequate content display on the smartphone.³² Thus, the need for continual reform is evident given the extraordinary needs for educational, business, health, and social services among low-income consumers.³³ Taking action to close the broadband adoption gap also responds to Congress’s direction that “[c]onsumers in all regions of the Nation, including low-income consumers . . . should have access to . . . advanced telecommunications and information services.”³⁴ Moreover, technology is constantly evolving, so to be most effective, the Lifeline program must evolve to meet the current and future needs of low-income consumers.

8. Three years ago, the Commission took important steps to reform the Lifeline program.³⁵ The reforms, adopted in the *Lifeline Reform Order*, focused on changes to eliminate waste, fraud, and abuse in the Lifeline program by, among other things: setting a savings target; creating a National Lifeline Accountability Database (NLAD) to prevent multiple carriers from receiving support for the same household; and confirming a one-per-household rule applicable to all consumers and Lifeline providers in the program.³⁶ It also took preliminary steps to modernize the Lifeline program by, among other things: adopting express goals for the program; establishing a Broadband Adoption Pilot Program; and allowing Lifeline support for bundled service plans combining voice and broadband or packages including optional calling features.³⁷ Now, 30 years after the Lifeline program was founded, it is past time for a fundamental, comprehensive restructuring of the program.

9. In this Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order (Second FNPRM and Report and Order), we seek to rebuild the current framework of the Lifeline program and continue our efforts to modernize the Lifeline program so that all consumers can utilize advanced networks. We are joined in

²⁸ *Id.* NTIA also found that nearly 77 percent of job seekers use “smartphone apps to give them an advantage in job-seeking.” NTIA, *Exploring the Digital Nation: Embracing the Mobile Internet*, at 2 (Oct. 2014), http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_embracing_the_mobile_internet_1016_2014.pdf (last visited June 18, 2015).

²⁹ Pew 2015 Smartphone Use Report at 3.

³⁰ *Id.* at 3.

³¹ See *How to Close the Homework Gap*.

³² Pew 2015 Smartphone Use Report at 15.

³³ See *infra* paras. 18-29.

³⁴ 47 U.S.C. § 254(b)(3).

³⁵ See *Lifeline Reform Order*, 27 FCC Rcd 6656.

³⁶ *Id.* at 6690-91, paras. 77-78.

³⁷ *Id.*

this effort by the many stakeholders who have suggested that further programmatic changes are necessary.³⁸ We also take steps to promote accountability and transparency for both low-income consumers and the public at-large, and modernize the program. Our efforts in this Second FNPRM and Report and Order are consistent with the Commission's ongoing commitment to monitor, re-examine, reform, and modernize all components of the Fund to increase accountability and efficiency, while supporting broadband deployment and adoption across the Nation.³⁹

10. In the Second FNPRM, we propose and seek public input on new and additional solutions for the Lifeline program, including reforms that would bring the program closer to its core purpose and promote the availability of modern services for low-income families. The Second FNPRM is organized into five sections and, within those sections, we address various issues:

- In Section A, we propose to modernize the Lifeline program to extract the most value for consumers and the USF. First, we seek comment on establishing minimum service levels for both broadband and voice service under the Lifeline program to ensure low-income consumers receive “reasonably comparable” service per Congress’s directive in section 254(b)⁴⁰ and propose to retain the current subsidy to do so. Second, we seek comment on whether to set a budget for the program. Third, we seek comment on a transition period to implement these reforms. Fourth, we seek comment on the legal authority to support the inclusion of broadband into the Lifeline program.
- In Section B, we propose various ways to further reduce any incentive for waste, fraud, and abuse by having a third-party determine whether a consumer is eligible for Lifeline, and, in doing so, also streamline the eligibility process. First, we seek comment on establishing a national verifier to make eligibility determinations and perform other functions related to the Lifeline program. Second, we seek comment on leveraging efficiencies from other federal benefit programs and state agencies that determine eligibility, and work with such programs and agencies to educate consumers and potentially enroll them in the Lifeline program. Third, we seek comment on whether a third-party entity can directly transfer Lifeline benefits to individual consumers. Fourth, we seek comment on changing the programs through which consumers qualify for Lifeline to ensure that those consumers most in need can receive support. Fifth, we seek comment on putting in place standards for eligibility documentation and state eligibility databases.
- In Section C, we propose ways to increase competition and innovation in the Lifeline marketplace. First, we seek comment on ways to promote competition among Lifeline providers by streamlining the eligible telecommunications carrier (ETC) designation process. Second, we seek comment on whether to permit Lifeline providers to opt-out of providing Lifeline supported service in certain circumstances. Third, we seek comment on other ways to increase participation in the Lifeline program. Fourth, we seek comment on ways to encourage states to increase state Lifeline contributions. Fifth, we

³⁸ Generally, we have included the relevant commenters and reply commenters throughout the footnotes to the text of this item. See also WC Docket Nos. 11-42, 03-109, and 12-23, and CC Docket No. 96-45.

³⁹ See, e.g., *Lifeline Reform Order*, 27 FCC Rcd 6656; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17676 (*USF/ICC Transformation Order*); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Healthcare Connect Fund Order*). See also *MTS and WATS Market Structure Report and Order*, 50 Fed. Reg. at 941, para. 9 (stating that “[o]ur [Commission] responsibilities under the Communications Act require us to take steps, consistent with our authority under the Act and the other Commission goals in this proceeding, to prevent degradation of universal service and the division of our society into information ‘haves’ and ‘have nots.’”).

⁴⁰ 47 U.S.C. § 254(b).

seek comment on how to best utilize licensed and unlicensed spectrum bands to provide broadband service to low-income consumers. Sixth, as an alternative to streamlining the Commission's current ETC designation process, we seek comment on creating a new designation process for participation in Lifeline.

- In Section D, we propose measures to enhance Lifeline service and update the Lifeline rules to enhance consumer protections and reflect the manner in which consumers currently use Lifeline service. First, we seek comment on amending our rules to treat the sending of text messages as usage of Lifeline service and, thus, grant in part a petition filed by TracFone Wireless, Inc. (TracFone).⁴¹ Second, we propose to adopt procedures to allow subscribers to de-enroll from Lifeline upon request. Third, we seek comment on ways to increase Lifeline provider participation in Wireless Emergency Alerts (WEA).
- In Section E, we propose a number of ways to increase the efficient administration of the Lifeline program by, among other things, seeking comment on: changing Tribal enhanced support; enhancing the requirements for electronic signatures; using subscriber data in the NLAD to calculate Lifeline provider support; and rules to minimize disruption to Lifeline subscribers upon the transfer of control of Lifeline providers.

11. In the Order on Reconsideration, we

- Grant in part a petition for reconsideration filed by TracFone⁴² of the Commission's *Lifeline Reform Order* and require Lifeline providers to retain documentation demonstrating subscriber eligibility.

12. In the Second Report and Order, we take further steps to adopt rules and procedures in response to proposals on which the Commission sought comment in the *Lifeline FNPRM*, and other outstanding issues regarding administration of the program to root out waste, fraud, and abuse. We also take further actions to put in place measures that increase accountability, efficiency, and transparency in the program. Specifically, we:

- Establish a uniform "snapshot" date each month for Lifeline providers to calculate their number of subscribers for the purpose of reimbursement;
- Eliminate the requirement that incumbent local exchange carriers (LECs) must resell retail Lifeline-discounted service, and limit reimbursement for Lifeline service to Lifeline providers directly serving Lifeline customers;
- Interpret "former reservations in Oklahoma," as provided in the Commission's rules, as the geographic boundaries reflected in the Historical Map of Oklahoma 1870-1890 (Oklahoma Historical Map);
- Waive, on our own motion, the Commission's requirement to conduct desk audits on first-year ETCs for two Lifeline providers in order to maximize the use of audit program resources.

13. Lastly, in the Memorandum Opinion and Order, we

⁴¹ See TracFone Wireless, Inc. Petition for Rulemaking and for Interim Relief, WC Docket No. 11-42 (filed Oct. 1, 2014) (TracFone Texting Petition).

⁴² See Petition for Reconsideration and Clarification by TracFone Wireless, Inc., WC Docket No. 11-42 et al. (filed Apr. 2, 2012) (TracFone Petition for Reconsideration); Supplement to Petition for Reconsideration and Emergency Petition to Require Retention of Program-Based Eligibility Documentation, WC Docket No. 11-42 et al. (filed May 30, 2012) (TracFone Supplement).

- Deny an Application for Review by Nexus Communications, Inc. (Nexus) and request by Nexus for confidential treatment of two of its FCC Form 555 filings⁴³ and affirm the Bureau's decision that making this information publicly available would serve the public interest by furthering transparency in the Lifeline program.⁴⁴

II. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

14. In this Second FNRPM, we propose to modernize and restructure the Lifeline program. First, we propose to establish minimum service levels for voice and broadband Lifeline service to ensure value for our USF dollars and more robust services for low-income Americans consistent with our obligations in section 254.⁴⁵ Second, we seek to reset the Lifeline eligibility rules. Third, to encourage increased competition and innovation in the Lifeline market, we seek comment on ensuring the effectiveness of our administrative rules while also ensuring that they are not unnecessarily burdensome. Fourth, we examine ways to enhance consumer protection. Finally, we seek comment on other ways to improve administration and ensure efficiency and accountability in the program.

A. The Establishment of Minimum Service Standards

15. The *Lifeline Reform Order* established clear goals to enable the Commission to determine whether Lifeline is being used for its intended purpose. Specifically the Commission committed itself to: (1) ensuring the availability of voice service for low-income Americans; (2) ensuring the availability of broadband service for low-income Americans; and (3) minimizing the contribution burden on consumers and businesses.⁴⁶ In an effort to further these goals and extract the most value possible from the Lifeline subsidy, we propose to establish minimum service levels for all Lifeline service offerings to ensure the availability of robust services for low-income consumers. **The service standards we propose to adopt may require low-income consumers to contribute personal funds for such robust service.** We seek comment on these proposals.

1. Minimum Service Standards for Voice

16. While consumers increasingly are migrating to data, voice communications remain essential to daily living and may literally provide a lifeline to 911 and health care providers. Despite years of participation by multiple providers offering voice service in competition with one another, we do not see meaningful improvements in the available offerings. It has been over three years since the *Lifeline Reform Order*, and the standard Lifeline market offering for prepaid wireless service has remained largely unchanged at 250 minutes at no cost to the recipient.⁴⁷ Unlike competitive offerings for

⁴³ See Nexus Communications, Inc. Application for Review, WC Docket No. 11-42 (filed May 13, 2013) (Nexus AFR); Nexus Request for Confidential Treatment of FCC Form 555, WC Docket No. 11-42 (filed Jan. 31, 2014) and Nexus Request for Confidential Treatment of FCC Form 555, WC Docket No. 11-42 (filed Feb. 3, 2015); (collectively, Nexus 2014 and 2015 Confidentiality Request).

⁴⁴ See *Request for Confidential Treatment of Nexus Communications, Inc. Filing of FCC Form 555*, WC Docket No. 11-42, Order, 28 FCC Rcd 5535 (Wireline Comp. Bur. 2013) (*Nexus Confidentiality Order*).

⁴⁵ See 47 U.S.C. § 254.

⁴⁶ See *Lifeline Reform Order*, 27 FCC Rcd at 6671, para. 25. Universal service funds are a finite resource that is ultimately paid for by consumers and businesses across the country, and must be spent efficiently. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14557, para. 22, n.42 (2012) (*Fifth Order on Reconsideration*). See also 47 U.S.C. §§ 254(b)(1), (b)(4)-(5), (d), (e); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000).

⁴⁷ See, e.g., Total Call Mobile, *Free Mobile Phone Service Through Lifeline*, <https://www.totalcallmobile.com/lifeline.aspx> (last visited June 18, 2015); Budget Mobile Lifeline, *Lifeline Plans*, <http://www.budgetmobile.com/plans/> (last visited June 18, 2015); Assurance Wireless, *Program Description*, <http://www.assurancewireless.com/public/MorePrograms.aspx> (last visited June 18, 2015); Bluejay Wireless, *Our Plans*, <http://www.bluejaywireless.com/our-plans/> (last visited June 18, 2015). Some Lifeline providers are offering

non-Lifeline customers, minutes and service plans for Lifeline customers have largely been stagnant. The fact that service levels have not increased over time may also suggest that the current program is not structured to drive sufficient competition. We therefore believe it is necessary to establish minimum voice standards to ensure maximum value for each dollar of universal service and that consumers receive reasonable comparable service, and we seek comment on this analysis.

2. Minimum Service Standards for Broadband

17. The ability to use and participate in the economy increasingly requires broadband for education, health care, public safety, and for persons with disabilities to communicate on par with their peers. As we ensure that Lifeline is restructured for the 21st Century, we want to ensure that any Lifeline offering is sufficient for consumers to participate in the economy.

18. **Education.** As the Commission recognized in the E-rate (more formally known as the schools and libraries universal service support program) modernization proceeding, “schools and libraries require high-capacity broadband connections to take advantage of digital learning technologies that hold the promise of substantially improving educational experiences and expanding opportunity for students, teachers, parents and whole communities.”⁴⁸ Within schools, “high-capacity broadband connectivity . . . is transforming learning by providing customized teaching opportunities, giving students and teachers access to interactive content, and offering assessments and analytics that provide students, their teachers, and their parents, real-time information about student performance.”⁴⁹ However, the need for connectivity for educational purposes does not necessarily stop at the end of the school day.⁵⁰ Teachers often assign work to their students that requires broadband connectivity outside of school hours to more efficiently and effectively complete the assignment or project.⁵¹ Homework assignments requiring access

500 minutes for a limited time, but the minutes revert back to 250 per month after the promotional period ends. See SafeLink Wireless, *FreePhoneProgram*, <https://www.safelinkwireless.com/Enrollment/Safelink/en/NewPublic/index.html> (last visited June 18, 2015).

⁴⁸ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11305, para. 1 (2013) (*E-rate Modernization NPRM*).

⁴⁹ *Id.* at 11306, para. 3.

⁵⁰ While the recent modernization of the E-rate program, among other things, took major steps to close the Wi-Fi gap within schools and libraries, services used off school or library property are generally ineligible for E-rate support because they are not deemed to be used for “educational purposes.” See 47 U.S.C. § 254(h)(1)(B); 47 C.F.R. § 54.504(a)(1)(vii) (services purchased at discounts by a school must be “used primarily for educational purposes”); 47 C.F.R. § 54.500(b) (defining educational purposes as those “activities that are integral, immediate, and proximate to the education of students Activities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students”). Thus, the Commission’s rules presume that services used on school or library premises are serving an educational purpose. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, paras. 17-18 (2003) (*Schools and Libraries Second Report and Order*). But see *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-09, n.28 (identifying specific exceptions for offsite cost allocation of telecommunications services). Although the Commission sought comment on permitting students off campus access to E-rate supported serviced through wireless hotspots, it has not gone to order on that proposal. See *E-rate Modernization NPRM*, 28 FCC Rcd. 11304, 11397-99, paras. 319-323. As such, the Commission’s current E-rate rules prevent full utilization of the learning opportunities that wireless broadband can provide beyond the boundaries of the school day.

⁵¹ See, e.g., Helen Brunner, *Equal Internet Access is a K-12 Must-Have* (Jan. 29, 2103), http://www.edweek.org/ew/articles/2013/01/30/19brunner_h32.html#; Education Week, Michelle Davis, *District Extends Wi-Fi to Students in Public Housing* (Apr. 13, 2015), <http://www.edweek.org/ew/articles/2015/04/15/district-extends-wi-fi-to-students-in-public.html>; Detroit Free Press, Jessica Rosenworcel, *Limited Internet Access a Challenge for Detroit Kids* (Mar. 17, 2015), <http://www.freep.com/story/opinion/contributors/2015/03/16/internet-broadband-access/24849353/>; See Gale, *Low-Income Children Lack Digital Resources* (2013),

to the Internet allow teachers and students to work outside the bounds of paper and pencil – students can be assigned additional and individualized problems and concepts to practice specific skills through interactive learning environments that provide students instant feedback.⁵² Many homework assignments also require students to integrate technology when creating their own content, such as developing reports, designing PowerPoint presentations, or manipulating data. Online assignments and assessments also provide for immediate feedback from instructors, thus allowing teachers to better direct their focus when teaching and assessing individual student needs.⁵³ Students who lack broadband access outside of the classroom find it difficult and sometimes impossible to complete their homework assignments and to broadly explore the subjects they are learning in school.⁵⁴ As a result, lack of Internet access can lead to reduced academic preparedness and decreased academic performance and classroom engagement in school.⁵⁵ Lack of Internet access also puts some students at a competitive disadvantage with respect to their peers, and limits their educational horizons.⁵⁶ As a result, student access to the Internet has become a necessity, not a luxury.⁵⁷

19. Unfortunately, many low-income students do not have access to the Internet at home.⁵⁸ Computer ownership and Internet use strongly correlate with a household's income.⁵⁹ The higher a household's income, the more likely it is for that household to subscribe to broadband service.⁶⁰ In 2013, about 95 percent of the households with incomes of \$150,000 or more reported connecting to the Internet, compared to about 48 percent of the households making less than \$25,000.⁶¹ There are approximately 29 million American households with school-age children (ages 6 to 17).⁶² Approximately 31 percent of those American households with incomes below \$50,000 do not have a high-speed connection at home.⁶³

<http://ic.galegroup.com/ic/ovic/ViewpointsDetailsPage/DocumentToolsPortletWindow?displayGroupName=Viewpoints&jsid=74728b0809c5e11122754a07069ed605&action=2&catId=&documentId=GALE%7CEJ3010836204&uerr60700&zid=1e32e795916b6088fce738fc1625dea2> (Low-Income Children Lack Digital Resources).

⁵² See *supra* n.19.

⁵³ See, e.g., City School District of New Rochelle EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (filed Oct. 22, 2013) (noting that with online access, teachers could provide timelier feedback which increased student completion of homework to 98 percent); Sioux City Community Schools EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) and Piedmont School District EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (using virtual chat-rooms, email, and online “office hours” for students to communicate with teachers and other students to seek help or assistance with specific assignments).

⁵⁴ See Low-Income Children Lack Digital Resources.

⁵⁵ See, e.g., Piedmont City School District EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (noting increased participation rates and increased completion of assignments within their districts. With 24/7 access, students were able to post assignments online and finish missed work at home).

⁵⁶ See Tina Barseghian, *For Low-Income Kids, Access to Devices Could be the Equalizer* (Mar. 13, 2013), <http://ww2.kqed.org/mindshift/2013/03/13/for-low-income-kids-access-to-devices-could-be-the-equalizer/>; Low-Income Children Lack Digital Resources.

⁵⁷ See Equal Internet Access is a K-12 Must-Have.

⁵⁸ The Leadership Conference June 10, 2015 Letter at 1.

⁵⁹ See *supra* para. 4.

⁶⁰ *Id.*

⁶¹ See *supra* n.17.

⁶² See John Horrigan, *The Numbers Behind the Broadband ‘Homework Gap’* (Apr. 20, 2015), <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/>.

⁶³ See *id.* (noting that those households whose incomes fall below \$50,000 make up 40 percent of all families with school-age children in the United States).

Thus, while low-income students may be connected to the Internet while at school, they become digitally disconnected immediately upon exiting the school building. As noted in the National Broadband Plan, “[o]nline educational systems are rapidly taking learning outside the classroom, creating a potential situation where students with access to broadband at home will have an even greater advantage over those students who can only access these resources at their public schools and libraries.”⁶⁴ This lack of access to technology and broadband in low-income households has created a “homework gap” between low-income students and the rest of the student population.⁶⁵

20. The “homework gap” puts low-income students at a disadvantage.⁶⁶ “If you are a student in a household without broadband, just getting homework done is hard, and applying for a scholarship is challenging.”⁶⁷ Many students who do not have access to the Internet at home head to the library after school and on weekends in order to utilize the library’s broadband service to complete assigned homework.⁶⁸ However, library hours are limited and even when they are open, they may not be able to fully accommodate the needs of their users. Thus, in many communities, after the library and the computer labs close for the night, there is often only one place for students to go without Internet access at home—the local McDonald’s.⁶⁹ Some schools have attempted to extend the school day to help students with their homework or partner with after-school programs to ensure that students have the ability and resources needed to complete their assignments, but not all can do so.⁷⁰ Moreover, after school programs cannot provide students with the same kind of flexibility and opportunity to access the Internet as those students who do have home access. As technology continues to evolve and teachers continue to integrate technology into their teaching by supplementing their in-class projects and instruction with projects and assignments necessitating Internet access, the “homework gap” presumably will widen as many students in low-income households, with a lack of home Internet access, struggle to complete assigned homework and projects.

⁶⁴ See Federal Communications Commission, *Connecting America: The National Broadband Plan* at 236 (2010) https://apps.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (National Broadband Plan or NBP).

⁶⁵ See *How to Close the Homework Gap; Low-Income Children Lack Digital Resources*.

⁶⁶ See *id.* Additionally, a number of the LOTG Pilot program project participants found that their students’ district, state, standardized, and even classroom scores increased as a result of off-premises wireless connectivity. See, e.g., Haralson County Schools EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (showing a trend towards improved high school student performance in the areas of Math and graduation rates, and in the areas of critical thinking and communication/collaboration); San Diego Unified School District EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (stating that their Academic Performance Index scores increase by a gain of 43, the highest growth for any middle school in the district); Riverside Unified School District EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (noting a four percent increase in Math scores and a five percent increase in Language Arts scores); Michigan Technical Academy EDU2011 Pilot Project Final Report, WC Docket No. 10-222 (posted Oct. 22, 2013) (reporting gains in Math and Reading, as well as a near 20 percent increase in homework completion).

⁶⁷ See *How to Close the Homework Gap*.

⁶⁸ See, e.g., Jennifer Sami, *Community Effort Provides Students With MiFi Devices* (Nov. 4, 2013), <http://www.forsythnews.com/archives/20822/> (noting that of the roughly 40,500 students in the school district, approximately 7,000 students do not have Internet access at home and, in order to complete their homework, must rely on public libraries and businesses that offer free WiFi). See also *Low-Income Children Lack Digital Resources*.

⁶⁹ See, e.g., The Wall Street Journal, Anton Troianovski, *The Web-Deprived Study at McDonald’s* (Jan. 28, 2013), <http://www.wsj.com/articles/SB10001424127887324731304578189794161056954>.

⁷⁰ See, e.g., Mobile Beacon, *Case Studies, Anchorage School District*, <http://www.mobilebeacon.org/anchorage-school-district/> (last visited June 18, 2015) (story of a graduating senior taking seven classes during the school day and one more online in order to graduate with her class who stayed at school most days to use a computer).

21. Various successful initiatives have been improving broadband access to underserved groups, some of which contain low-income student populations. For example, Mobile Beacon’s Internet Inclusion Initiative, in partnership with EveryoneOn,⁷¹ provides students who do not have Internet access at home with unlimited 4G access and low-cost computers in order to put them on the path to digital opportunity and learning.⁷² Comcast’s Internet Essentials program provides qualifying low-income households with affordable access to high-speed service from their homes.⁷³ Additionally, in conjunction with the Knight Foundation, The New York Public Library (NYPL) has implemented a pilot program to expand its efforts to bridge the digital divide by allowing the public to borrow portable Wi-Fi hotspot devices for up to one year (students can borrow the devices for the school year).⁷⁴ The NYPL hopes to eventually provide 10,000 hotspots to people involved in their education programs.⁷⁵ The Chicago Public Library (CPL) also has implemented a pilot program to provide members of underserved communities in three locations access to both portable WiFi and laptop computers.⁷⁶ During the course of the two year pilot program, CPL plans to make 300–500 MiFi hotspots available in several library locations in areas with less than 50 percent broadband adoption rates.⁷⁷ While these initiatives are working toward closing the “digital divide” and expanding broadband access to underserved populations, including low-income students, none of these initiatives provide for a comprehensive, nationwide solution addressing the “homework gap” issue.

22. Building upon our recent modernization of the E-rate program, where we, among other things, took major steps to close the WiFi gap within schools and libraries,⁷⁸ we recognize the valuable role that the Lifeline program can play beyond the school day in the lives of elementary and secondary-school students living in low-income households. Lifeline can help to extend broadband access beyond the school walls and the school day to ensure that low-income students do not become digitally disconnected once they leave the school building. Lifeline can help to ensure that low-income students have access to the resources needed to complete their research and homework assignments, and compete in the digital age. We thus seek comment on how the Lifeline program can address the “homework gap” issue – the gap between those households with school-age children with home broadband access to complete their school assignments and those low-income households with school-age children without home broadband access. We recognize that no one program or entity can solve this problem on its own and what is needed is many different organizations, vendors, and communities working together to address this problem. We therefore seek creative solutions to addressing this gap so that eligible low-income students are provided with affordable, reliable, and quality broadband services in order to

⁷¹ See EveryoneOn, <http://everyoneon.org/> (last visited June 18, 2015).

⁷² See Mobile Beacon, Internet Inclusion Initiative, <http://www.mobilebeacon.org/services-devices/i3-programs/> (last visited June 18, 2015).

⁷³ See Comcast’s Internet Essentials Program, <https://www.internetessentials.com/> (last visited June 18, 2015).

⁷⁴ See Knight Foundation, Knight News Challenge, Check out the Internet, <http://www.knightfoundation.org/grants/201499901/> (last visited June 18, 2015).

⁷⁵ *Id.*

⁷⁶ Jessica Mckenzie, *Libraries Hope to Help Close the Digital Divide by Lending WiFi Hotspots* (June 27, 2014), <http://techpresident.com/news/25155/chicago-and-new-york-public-libraries-hope-help-close-digital-divide-lending-wifi> (last visited June 18, 2015).

⁷⁷ *Id.*

⁷⁸ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014) (*E-rate Modernization Order* or *E-rate Modernization FNPRM*); *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184 and 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538 (2014) (*Second E-rate Modernization Order*).

effectively complete their homework, and have the same opportunity as their classmates to reach their full potential and feel like they are part of the academic conversation.

23. *Participation in Lifeline by eligible households with school children.* Recognizing that when the Lifeline program provides support for broadband services, it will play an important role in closing the “homework gap” by helping children in low income families obtain the educational advantage associated with having home broadband service, we seek comment on how best to ensure that low income households that include school children are aware of and have the opportunity to participate in a broadband-focused Lifeline program.⁷⁹ As an initial matter, we seek comment on how best to identify such households.

24. We first seek comment on data we can use from the schools and libraries universal service support program (the E-rate program) to assist our efforts. Currently, school districts use student eligibility for free and reduced school lunches through the National School Lunch Program (NSLP) or an alternative discount mechanism as a proxy for poverty when calculating discounts on eligible services received under the E-rate program.⁸⁰ Thus, when requesting services under the E-rate program, a school district provides the total number of students in the school district eligible for NSLP and the calculated discount rate.⁸¹ How might we use this information to ensure that Lifeline eligible households with school children are aware of the opportunity provided by the Lifeline program? How does the fact that E-rate discount levels are based on the percentage of children eligible for both free and reduced school lunches impact the usefulness of E-rate data for identifying households that are eligible for Lifeline support which is limited to lower-income households?

25. We seek comment on sources of data that would be useful for identifying Lifeline eligible households with school-age children. Eligibility for free school lunches through the NSLP is already one way to demonstrate eligibility for the Lifeline program. Schools and school districts collect NSLP eligibility information, but they are already burdened with numerous administrative responsibilities and the introduction of other tasks may cause additional administrative burdens. In addition, more and more school districts have moved towards the community eligibility option in the NSLP program, which saves them from collecting individual NSLP eligibility data. How will the movement away from individual NSLP data collection affect our ability to identify Lifeline eligible households with school children?⁸² Are the state databases that directly certify some students’ eligibility to participate in NSLP a possible

⁷⁹ See *supra* paras. 18-22.

⁸⁰ See 47 C.F.R. § 54.505; Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806, at 8-9 (Oct. 2014) <http://www.usac.org/res/documents/sl/pdf/forms/471i.pdf> (FCC Form 471 Instructions). See also United States Department of Agriculture, Food and Nutrition Service, National School Lunch Program, <http://www.fns.usda.gov/cnd/lunch/> (last visited June 18, 2015); USAC, Schools and Libraries (E-rate), Applying for Discounts, Alternative Discount Mechanisms, <http://www.usac.org/sl/applicants/step04/alternative-discounts.aspx> (last visited June 18, 2015). Schools also now have the option to elect the Community Eligibility Provision, which neither requires nor permits schools to collect individual applications for free and reduced price meals. See United States Department of Agriculture, Food and Nutrition Service, School Meals, Community Eligibility Provision, <http://www.fns.usda.gov/school-meals/community-eligibility-provision> (last visited June 18, 2015).

⁸¹ See Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (Oct. 2014), <http://www.usac.org/res/documents/sl/pdf/forms/471.pdf> (last visited June 18, 2015) (FCC Form 471). This information is publicly available on USAC’s website. See USAC, Schools and Libraries (E-rate), Search Tools, <http://www.usac.org/sl/tools/default.aspx> (last visited June 18, 2015).

⁸² See USDA, School Meals, Community Eligibility Provision, available at <http://www.fns.usda.gov/school-meals/community-eligibility-provision> (last visited June 18, 2015) (“The Community Eligibility Provision (CEP) provides an alternative approach for offering school meals to local educational agencies (LEAs) and schools in low income areas, instead of collecting individual applications for free and reduced price meals.”).

source of information that could help us identify Lifeline eligible households with school children? Are there other non-burdensome methods to identify Lifeline eligible households with students and make sure that those households with school children are aware of the opportunity to receive Lifeline support?

26. We also seek comment on how we can incentivize Lifeline providers to reach out to those households with school children to provide Lifeline supported services. Commenters should indicate what, if any, practical or administrative implications there may be to utilizing existing data provided to USAC under the E-rate program for this purpose. Are there other ways to use the E-rate program and the data we already collect to address the “homework gap”?

27. **Health Care.** Congress directed the Commission to consider the extent to which “supported” services are “essential to . . . public health.”⁸³ Health care is a necessity that can represent a considerable barrier to low-income consumers due to the time and resource burdens it often presents to patients.⁸⁴ However, when patients utilize broadband in the interest of their personal health, it not only improves their own lifestyles, but also reduces health care-related costs for both the patient and the health care providers. Reduction in health care related costs represents a significant benefit for all consumers, but particularly for low-income consumers, who too often must make difficult decisions when deciding how and where to spend the limited money they have. For example, telehealth, the ability to connect with health care professionals remotely via broadband, has significant potential to enrich a patient’s life by reducing the need for frequent visits to the doctor and by utilizing e-visits and remote telemetry monitoring.⁸⁵ The Veterans Administration conducted a study of over 17,000 patients with chronic conditions, and found that by using telehealth applications, bed days of care were reduced by 25 percent and hospital admissions were reduced by 19 percent.⁸⁶ Even when a patient does not directly interact with a health care professional, health care software accessed through broadband can also provide significant benefits to patients. Research has shown that those with a lower socioeconomic status are more prone to develop type 2 diabetes.⁸⁷ But a study of type 2 diabetes patients concluded that utilization of software loaded onto broadband-capable mobile phones that provided mobile coaching in combination with blood glucose data, changes in lifestyle behaviors, and patient self-management substantially reduced negative symptoms of type 2 diabetes.⁸⁸ Access to broadband can lead to better health care outcomes. We seek comment on additional broadband health care related initiatives that can significantly improve the health outcomes for low-income consumers.

28. **Individuals with Disabilities.** Broadband adds significant benefit to the daily lives of those with disabilities through “access to a . . . universe of products, applications, and services that

⁸³ 47 U.S.C. § 254(c)(1)(A).

⁸⁴ See 47 U.S.C. §§ 254(b)(6), (c)(1)(A).

⁸⁵ The Commission, through the Rural Health Care Universal Service Program, increased the ability of health care professionals to access patients utilizing telehealth through broadband in its recent order with a stated goal of “increasing access to broadband for HCPs [Healthcare Professionals].” *Healthcare Connect Fund Order*, 27 FCC Rcd at 16696, para. 34.

⁸⁶ Adam Darkins et al., *Care Coordination/Home Telehealth: The Systematic Implementation of Health Informatics, Home Telehealth, and Disease Management to Support the Care of Veteran Patients with Chronic Conditions*, 14 *Telemedicine and e-Health* 1118, 1118-26 (2008), <http://online.liebertpub.com/doi/pdf/10.1089/tmj.2008.0021> (last visited June 18, 2015).

⁸⁷ Emilie Agardh et al., *Type 2 Diabetes Incidence and Socio-Economic Position: A Systematic Review and Meta-Analysis*, 40 *Int. J. Epidemiol.* 804, 804-18 (2011), <http://ije.oxfordjournals.org/content/40/3/804.long> (last visited June 18, 2015).

⁸⁸ Charlene Quinn et al., *Cluster-Randomized Trial of a Mobile Phone Personalized Behavioral Intervention for Blood Glucose Control*, 34 *Diabetes Care* 1934, 1934-42 (2011), <http://care.diabetesjournals.org/content/34/9/1934.full.pdf+html>.

enhance lives, save money, facilitate innovation, and bolster health and well-being.”⁸⁹ For example, broadband provides the ability to facilitate societal interaction and communications through email, instant messaging, and real-time video conferencing through services like Skype.⁹⁰ In fact, individuals who are deaf or hard of hearing rely on video relay service (VRS) to the same extent that other consumers rely on voice service; therefore, broadband must be sufficiently robust to meet this need.⁹¹ Living with a disability often coincides with a lower socioeconomic status because of the limited ability to work,⁹² but broadband “provides employment opportunities by enabling telecommuting and encourages entrepreneurship by providing a robust platform for conveniently launching and managing a home business[.]”⁹³ In addition, broadband significantly “[e]nhances the number and types of educational opportunities available to people with disabilities by enabling a [significant] universe of distance learning applications.”⁹⁴ The benefits of broadband to individuals with disabilities are countless, as broadband is a “flexible and adaptable tool” that can be used “to deliver affordable, convenient, and effective services,” and enable a “range of social, economic, and health-related benefits.”⁹⁵ Due to the limiting nature of many physical and intellectual disabilities, broadband may be further out of reach for individuals with disabilities than the average consumer. We seek comment on how to ensure the benefits of broadband reach low-income individuals with disabilities.⁹⁶ For example, are there unique outreach efforts or eligibility initiatives targeted towards individuals with disabilities that ensure the benefits of broadband are utilized by this community? Additionally, we seek comment on any data showing the use, benefits, and penetration of broadband for individuals with disabilities so that the Commission may identify trends across different types of communities and regions, particularly those that serve individuals with disabilities.

⁸⁹ See Letter from Douglas Orvis II, Counsel, Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1-2 (filed June 10, 2015) (TDI June 10, 2015 Letter). U.S. Chamber of Commerce, *The Impact of Broadband on People with Disabilities* at 2 (Dec. 2009). <http://www.onecommunity.org/wp-content/uploads/2010/01/BroadbandandPeoplewithDisabilities.pdf> (last visited May 26, 2015) (*The Impact of Broadband on People with Disabilities*).

⁹⁰ *Broadband Expanded, Broadband & People with Disabilities: Stats, Data & Observations*, at 10 (Jan. 2012). http://www.broadbandexpanded.com/policymakerfiles/disabilities/Disabilities_Stats&Data.pdf (last visited June 18, 2015).

⁹¹ Dr. I. King Jordan, the first deaf president of Gallaudet University, wrote in a 2013 op-ed, “I do not exaggerate when I say that VRS has changed my life.” See PR Newswire, *With Support of Deaf Consumers and Interpreters, VRS Providers Present FCC with Joint Proposal to Improve Service and Expand Offerings, Upholding ADA Promise of Functionally Equivalent Telecommunication Services* (Apr. 9, 2015), <http://www.prnewswire.com/news-releases/with-support-of-deaf-consumers-and-interpreters-vrs-providers-present-fcc-with-joint-proposal-to-improve-service-and-expand-offerings-upholding-ada-promise-of-functionally-equivalent-telecommunication-services-300063301.html> (last visited May 26, 2015). VRS has quickly become a very popular service. See Patricia Moloney Figliola, Congressional Research Service, *Video Relay Service: Program Funding and Reform*, at 1 (Oct. 22, 2013), <http://www.fas.org/sgp/crs/misc/R42830.pdf> (last visited June 18, 2015).

⁹² Persons with a disability are likely to have limited opportunities to earn income and often have increased medical expenses. Disabilities among children and adults may affect the socioeconomic standing of entire families. It is estimated that over 40 million people in America have some level of disability, and many of these individuals live in poverty. See American Psychological Association, *Disability & Socioeconomic Status*, <http://www.apa.org/pi/ses/resources/publications/factsheet-disability.aspx> (last visited June 18, 2015); TDI June 10, 2015 Letter at 2.

⁹³ *The Impact of Broadband on People with Disabilities* at 2.

⁹⁴ See *id.*

⁹⁵ See *id.* at 1; See TDI June 10, 2015 Letter at 1-3.

⁹⁶ See TDI June 10, 2015 Letter at 2-3.

29. *Public Safety.* Congress directs the Commission to consider the extent to which “supported” services are “essential to . . . public safety,”⁹⁷ and the National Broadband Plan enumerated several benefits that broadband technologies provide to a cutting-edge public safety communications network.⁹⁸ As the Plan observed, broadband “can help public safety personnel prevent emergencies and respond swiftly when they occur,” and “can also provide the public with new ways of calling for help and receiving emergency information.”⁹⁹ The transition to Next Generation 911 (NG911) networks based on broadband technology holds the potential to improve access to 911 through services such as text-to-911,¹⁰⁰ while providing public safety answering points (PSAPs) with more flexible and resilient options for routing 911 calls.¹⁰¹ In an NG911 environment, IP-based devices and applications will provide consumers with the ability to transmit and receive photos, video, text messages, and real-time telemetry information with first responders and other public-safety professionals.¹⁰² Broadband also ensures that consumers are notified of emergencies and disasters through advanced emergency alerts on a variety of platforms, including geographically-targeted Wireless Emergency Alerts warning wireless subscribers of imminent threats to safety in their area.¹⁰³ Yet, for these services to be available when they are needed most, they must also be reliable and resilient, and must provide sufficient privacy and security for consumers to have confidence in their everyday use.¹⁰⁴ Therefore, it is essential that all consumers, including low-income consumers, have access to broadband-capable devices that provide the ability to send and receive critical information, as well as broadband service with sufficient capacity, security, and reliability to be dependable in times of need. Through the Lifeline program, the Commission seeks to ensure that low-income consumers have access to critical broadband public safety communications during an emergency, and service levels comparable to those offered to other residential subscribers. We emphasize that providers must ensure that all Lifeline service offerings continue to be compliant with all applicable 911 requirements. We seek comment on the utilization of broadband by low-income consumers to receive public safety alerts and connect with public safety professionals.

30. *Low-Income Broadband Pilot Program.* In 2012, the Commission launched a pilot

⁹⁷ 47 U.S.C. § 254(c)(1)(A).

⁹⁸ See National Broadband Plan at 314-20.

⁹⁹ See *id.* at 313.

¹⁰⁰ See *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153 and 10-255, Second Report and Order and Third Further Notice of Proposed Rulemaking, 29 FCC Rcd. 9846 (2014) (requiring that Commercial Mobile Radio Service (CMRS) providers and other providers of interconnected text messaging applications be capable of supporting text-to-911 service by December 31, 2014).

¹⁰¹ See *911 Governance and Accountability; Improving 911 Reliability*, PS Docket Nos. 14-193 and 13-75, Policy Statement and Notice of Proposed Rulemaking, 29 FCC Rcd 14208, 14213, para. 10 (2014) (“NG911 has the potential to vastly improve 911 service by offering more flexible call routing and providing PSAPs with a greater range of information[.]”).

¹⁰² See Christopher Cook, Silicon Flatirons, *The Challenges and Opportunities for Public Safety Communications: The Adams County Case Study*, at 10 (Sept. 2012), <http://www.silicon-flatirons.org/documents/publications/report/201209PublicSafetyReport.pdf> (last visited June 18, 2015).

¹⁰³ See National Broadband Plan at 314-20; Federal Communications Commission, *Wireless Emergency Alerts (WEA)* (Oct. 8, 2104), <https://www.fcc.gov/guides/wireless-emergency-alerts-wea> (last visited June 18, 2015).

¹⁰⁴ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, Tenth Broadband Progress Notice of Inquiry, 29 FCC Rcd 9747, 9769, para. 47 (2014) (inquiring whether “concerns over personal privacy or security deter consumers from adopting broadband” and “[w]hat other factors or concerns about privacy and security may account for broadband adoption by consumers?”).

program to collect data on what policies might overcome the key broadband adoption barriers --- cost, relevance, and digital literacy --- for low-income consumers and how the Lifeline program could best be structured to provide support for broadband.¹⁰⁵ Each pilot project provided support for broadband service to qualifying low-income consumers for 12 months. In selecting the pilot projects, Commission staff struck a balance between allowing providers enough flexibility in the design of the pilots and ensuring the structure of each project would result in data that would be statistically and economically relevant.¹⁰⁶ On the one hand, the 14 pilot projects shared a set of common elements that reflect the current model of the Lifeline program — e.g., all relied on existing ETCs to provide service, and the ETCs had to confirm that individuals participating in the pilot were eligible and qualified to receive Lifeline benefits. On the other hand, each project tested different subsidy amounts, conditions to receiving service, and different outreach and marketing strategies. The result was a highly diverse set of 14 funded pilot projects that implemented different strategies and provided a range of services across varying geographies.

31. The Bureau prepared a report to assist the Commission in considering reforms to the Lifeline Program and released for public review and consumption all of the data reported by the participating carriers.¹⁰⁷ The Broadband Pilot Report summarizes each of the 14 pilot projects and the data collected during the course of the projects. As shown from the data summarized in the Broadband Pilot Report, the pilot projects provide an informative perspective on how various policy tools can impact broadband adoption by low-income consumers.¹⁰⁸ For example, patterns within the data indicate that cost to consumers does have an effect on adoption and which service plans they choose. Given the condition in the Pilot Program that participation was limited to consumers that had not subscribed to broadband within the last 60 days, Commission staff recognized that there was a risk of low enrollment in each of the projects relative to the initial provider projections. As a result of this limitation, providers had to market the limited-time project offerings to consumers that either could not afford broadband service or, until that time, did not understand the relevance of broadband. We seek comment on how this report and the underlying data will provide guidance to the Commission as it considers reforms to the Lifeline program.

32. *Current Offerings.* In the wireline market, some offerings specifically target low-income consumers and typically include a \$10 per month broadband product. Participation often is limited to consumers who have not had wireline broadband service from the provider within a certain time period, have no past due bills, and meet certain income and other eligibility restrictions.¹⁰⁹

33. In the wireless market, direct-to-consumer broadband wireless plans are limited for low-income consumers, and generally require pricey top-ups for minimal broadband.¹¹⁰ However, low-income consumers are able to receive discounted service on either a smartphone plan or a mobile hotspot plan through some innovative plans. For about \$10 per month, Mobile Beacon, a nonprofit licensee of EBS, provides mobile Internet to other nonprofit institutions.¹¹¹ We note Mobile Beacon is not itself a direct-

¹⁰⁵ See generally *Lifeline Reform Order*, 27 FCC Rcd at 6794-6810, paras. 321-354.

¹⁰⁶ See generally *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 27 FCC Rcd 15842 (Wireline Comp. Bur. 2012)

¹⁰⁷ See generally Broadband Pilot Report.

¹⁰⁸ *Id.*

¹⁰⁹ Eligibility restrictions typically require the consumer to have a member of the household participating in the NSLP. See EveryoneOn, *Eligibility*, <http://everyoneon.org/eligibility/> (last visited June 18, 2015).

¹¹⁰ For example, Virgin Mobile charges \$10 for a top-up of 100 MB of data. See Virgin Mobile Broadband2Go 100MB Topup, <http://www.walmart.com/ip/Virgin-Broadband-2Go-10-Topup-Email-Delivery/15443367> (last visited June 18, 2015).

¹¹¹ See Mobile Beacon, Company Overview, <http://www.mobilebeacon.org/who-we-are/company-overview/> (last visited June 18, 2015). Educational Broadcast Spectrum (EBS), formerly known as the Instructional Television Fixed Service, is an educational service that operates in 112.5 megahertz (MHz) of the spectrum between 2496 - 2690 MHz. EBS frequencies are available only to accredited educational institutions or governmental or non-profit

to-consumer wireless provider and consumers must have a relationship with a Mobile Beacon partner institution to receive service.¹¹² Kajeet offers a similar service to schools, where the school pays a single low monthly fee for a hotspot, CIPA-compliant filtering software and network management, and 4G wireless service. Schools provide the devices to those students which they identify as most in need of connectivity at home.¹¹³

3. Service Levels

34. We propose to establish minimum service levels for fixed and mobile voice and broadband service that Lifeline providers must offer to all Lifeline customers in order to be eligible to receive Lifeline reimbursement. We also seek comment on minimum standards for Tribal Lifeline, recognizing the additional support may allow for greater service offerings. We believe taking such action will extract the maximum value for the program, benefitting both the recipients as well as the ratepayers who contribute to the USF. It also removes the incentive for providers to offer minimal, un-innovative services that benefit providers, who continue to receive USF support above their costs, more than consumers. We also believe it is consistent with our statutory directives. We seek comment on this proposal.

a. Standard for Setting Minimum Service Levels

35. We seek comment on how to establish minimum service levels. We look first to the statute for guidance. Congress indicated that “[q]uality services should be available at just, reasonable, and affordable rates.”¹¹⁴ Specifically with regard to low-income Americans, Congress directed that they should have “access to telecommunications and information services, including interexchange services and advanced telecommunications and information services that are reasonably comparable to those services provided in urban areas.”¹¹⁵ Congress also stated that, in defining supported services, the Commission should consider the extent to which such services “are essential to education, public health, or public safety”; are “subscribed to by a substantial majority of residential customers”; and are “consistent with the public interest, convenience, and necessity.”¹¹⁶ We seek comment on how to develop minimum standards based on these principles. In particular, would it be appropriate to develop an objective, data-based methodology for establishing such levels? Could we establish an objective standard that could be updated on a regular basis? We also seek comment on minimum service levels for Tribal

organizations whose purposes are educational. See 47 C.F.R. § 27.1201(a). The Commission permits EBS licensees to lease unused channel capacity to commercial entities, subject to meeting the educational use requirement that the license be “used to further the educational mission of accredited schools offering formal educational courses to enrolled students.” 47 C.F.R. § 27.1203(b). See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission’s Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico*, WT Docket Nos. 03-66, 03-67, 02-68, MM Docket No. 97-217, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 18 FCC Rcd 6722, 6768, para. 109 (2003) (*BRS/EBS NPRM*).

¹¹² See generally Mobile Beacon, <http://www.mobilebeacon.org/> (last visited June 18, 2015).

¹¹³ Letter from Patrick R. Halley, Counsel to Kajeet, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed May 5, 2015).

¹¹⁴ 47 U.S.C. § 254(b)(1).

¹¹⁵ *Id.* § 254(b)(3).

¹¹⁶ *Id.* § 254(c).

Lifeline. Given the higher monthly subsidy, we expect more robust service and seek comment on how to do so. We seek comment on these or other approaches.

36. Given that the Lifeline program is specifically targeted at affordability, we seek comment on how to ensure that the minimum service levels we propose to adopt result in services that are affordable to low-income Americans. How should we establish minimum service levels that result in affordable but “reasonably comparable” offerings?¹¹⁷

b. Ensuring “Reasonably Comparable” Service for Voice and Broadband

37. We next seek comment on how minimum service standards based on statutory universal service principles could be applied to various Lifeline offerings to produce different service levels. We seek comment on whether and how service levels would vary between fixed and mobile broadband service. In addition, we propose to require providers to offer data-only broadband to Lifeline customers to ensure affordability of the service. In addition to the comment we solicit below, we seek explicit comment from the states on our proposed course of action. As our partners in implementation and administration of the Lifeline program, any views or quantifiable data specifically from a state perspective would be invaluable to the Commission as we move forward with these reforms.

38. *Voice-Only Service.* Some consumers may prefer to use their Lifeline discount for a voice-only service, and we seek comment on how to require providers to continue offering affordable stand-alone voice service to provide consumers’ access to critical employment, health care, public safety, or educational opportunities.¹¹⁸ We seek comment on how requiring providers to offer stand-alone voice service affects providers’ business models and affordability to the consumer.

39. In the *Lifeline Reform Order*, the Commission established the program goal of ensuring the availability of quality voice service for low-income consumers.¹¹⁹ Given the relatively stagnant Lifeline market offerings, we believe that it is appropriate to establish minimum service levels for voice-only service.¹²⁰ We seek comment on whether to establish a standard for mobile and/or fixed voice-only service based on objective data. What usage levels would result from these options? Since the cost of providing voice service has declined drastically,¹²¹ should we require mobile providers to offer unlimited talk and text to Lifeline consumers to maximize the benefit of the Lifeline subsidy?¹²² What other approaches should we consider?

40. The 17th *Mobile Competition Report* found that consumers average between 690 and 746 minutes per month, depending on the type of device they use.¹²³ And according to Nielsen, the average monthly minutes-of-use for a postpaid consumer is 644.¹²⁴ These figures suggest that a typical wireless

¹¹⁷ See 47 U.S.C. § 254(b)(3).

¹¹⁸ See *Lifeline Reform Order*, 27 FCC Rcd at 6666, para. 17.

¹¹⁹ See *id.* at 6671, para. 27. In adopting this goal, the Commission found that ensuring voice service is affordable is a component of ensuring it is available. See *id.* at 6671, para. 28, n.79. Compare GAO March 2015 Report at 14-15.

¹²⁰ See *supra* para 16.

¹²¹ See *id.*

¹²² See The Leadership Conference June 10, 2015 Letter at 2; see, e.g., Budget Mobile, *Welcome to California Budget Mobile*, <http://www.budgetmobile.com/california/> (last visited June 18, 2015); see also Assurance Wireless, *California Program Description*, https://www.assurancewireless.com/public/MorePrograms_CA.aspx (last visited June 18, 2015).

¹²³ See 17th *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Service*, 29 FCC Rcd 15311, 15347, Chart III.C.1 (17th *Mobile Competition Report*).

¹²⁴ See Nielsen, *Mobile Consumer Report 2013*, at 19, <http://www.nielsen.com/content/dam/corporate/uk/en/documents/Mobile-Consumer-Report-2013.pdf> (Nielsen)

voice consumer uses two-to-three times the amount of voice service offered on a standard plan by typical Lifeline wireless resellers and suggests that low-income consumers do not have comparable offerings. However, in California, where Lifeline consumers and providers benefit from an additional state subsidy, consumers may elect plans in progressively increasing tiers of minutes in exchange for providers receiving progressively larger combined state and federal subsidies.¹²⁵ We seek comment on whether the Commission should adopt a similar framework. We also seek comment on voice and text plans and whether we should use average usage as a baseline for minimum service. We seek comment on whether we should require unlimited talk and text for voice service.

41. We seek comment on how to ensure fixed voice service provides “reasonably comparable” service that is affordable for low-income consumers. Is there a price to the low-income consumer above which voice telephony service is no longer affordable?

42. A key component of ensuring service remains affordable to the end-user is ensuring Lifeline providers utilize universal service funds consistent with their intended purpose. We seek comment on whether Lifeline providers are currently passing on reductions in their costs to end-users. Specifically with respect to mobile voice service, the level of Lifeline service has not appreciably increased recently, while the cost per minute to wireless resellers has declined to less than two cents on the wholesale market.¹²⁶ The per-minute cost for facilities-based providers is likely lower still.¹²⁷ When the declines in costs are coupled with the average minutes of use and stagnant Lifeline service levels, it appears that Lifeline ETCs are not offering consumers “innovative and sufficient service plans”¹²⁸ or passing on their greater efficiencies to consumers. We seek comment on these conclusions. Further, we note that the Commission’s rules state that federal universal service support should be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹²⁹

43. *Fixed Broadband Service.* Next, we seek comment on the application of minimum service standards to fixed broadband offerings. Unlike mobile technologies, the prevailing benchmark for fixed broadband is the speed of the service. In addition to speed, we need to ensure that capacity is sufficient. We seek comment on whether the Commission should define an objective standard for fixed service by looking at what kinds of services are typically offered or subscribed to “in urban areas” or by a substantial majority of Americans. Could we establish an objective standard that could be updated on a regular basis simply by examining new data about fixed broadband service?¹³⁰ In the alternative, should the Commission look to the standard, as well as capacity and latency requirements, adopted in the Connect America Fund proceeding to determine the appropriate level of service? We seek comment on

Mobile Consumer Report) (last visited June 18, 2015). Similarly, CTIA-The Wireless Association (CTIA) found that the average consumer uses around 930 minutes per month. *See* CTIA, US Consumers Talked Nearly 5 Times More Than UK Users, <http://www.ctia.org/resource-library/facts-and-infographics/archive/us-consumers-talked-nearly-5-times-more-than-uk-users> (Nov. 20, 2014) (last visited June 18, 2015).

¹²⁵ *See CPUC Decision Adopting Revisions to Modernize and Expand the California Lifeline Program*, Rulemaking, 11-03-013 at 40-43 (Jan. 27, 2014), <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M086/K541/86541587.PDF>.

¹²⁶ *See* J.P. Morgan, Telecom Service Prepaid Overview: Growth Continues But Business Drivers Shifting Below the Surface (June 3, 2011); *see also* Federal Communications Commission, 2014 Universal Service Monitoring Report at Table 7.3 (2014), https://apps.fcc.gov/edocs_public/attachmatch/DOC-330829A1.pdf (2014 Monitoring Report).

¹²⁷ *See* 2014 Monitoring Report at Table 7.3; *see also* 17th Mobile Competition Report, 29 FCC Rcd 15311, 15375-80, 15391-93, paras. 126-39, 165-67.

¹²⁸ *See Lifeline Reform Order*, 27 FCC Rcd at 6680, para. 50.

¹²⁹ *See* 47 C.F.R. § 54.7.

¹³⁰ *See* The Leadership Conference June 10, 2015 Letter at 2.

how to address data caps and if we need to set a minimum level of capacity for fixed broadband service. Should we consider setting any minimum standards based on the Form 477 data, which is based on what most residential consumers subscribe to? What other criteria should we use? Should providers be required to make available any offering that is at or above a minimum speed to eligible low-income consumers?

44. *Mobile Broadband Service.* We seek comment on how to apply minimum service standards to mobile broadband offerings. We seek comment on whether the Commission should define an objective standard for mobile broadband service by looking at what kinds of services are typically offered or subscribed to “in urban areas”¹³¹ or by a substantial majority of Americans.¹³² For example, in December 2014, an average American consumer utilized roughly 1.8 GB of data across both 3G and 4G networks.¹³³ Should a mobile minimum service standard be tied to this average, or a similar metric? Would it be more appropriate to set a standard tied to a different level of consumer usage? Should we consider setting any minimum standards on criteria other than data usage? Today, mobile Lifeline providers may offer a specific service just for Lifeline but providers do not allow such customers to apply the Lifeline discount to other service offerings. Should providers be required to make available any offering that is at or above a minimum speed to eligible low-income consumers?

45. We note that low-income consumers that are more likely to only have mobile broadband service, likely due to affordability issues, may rely on that service more heavily than the majority of consumers who can offload some of their usage onto their residential fixed connection. We seek comment on how, if at all, this dynamic should affect our choice of minimum service levels.¹³⁴

46. We seek comment on how to ensure that this approach results in services that are affordable to low-income consumers. For example, we understand that providers in the Lifeline market have developed their businesses based on the premise that Lifeline was a voice-only market, including the distribution of primarily voice-only handsets at a low price point. Therefore, we seek comment on whether we should take into account the cost of wireless Consumer Premises Equipment (CPE) passed on to consumers by Lifeline providers in determining whether a particular level of service is affordable.¹³⁵ We seek comment on how these costs would influence affordability of mobile broadband service to low-income consumers.

47. *Minimum Service for Tribal Lifeline.* Low-income consumers living on Tribal lands may receive up to \$34.25 per month in a Lifeline discount.¹³⁶ Given the additional support, we expect that

¹³¹ 47 U.S.C. § 254(b)(3).

¹³² *Id.* at § 254(c)(1)(B). We note that in one of the broadband pilots, consumers used, on average, less than 1 GB per month. See Federal Communications Commission Wireline Competition Bureau, Low Income Broadband Pilot Program Staff Report, WC Docket No. 11-42, DA 15-624 at para. 23 (Wireline Comp. Bur. 2015) (Broadband Pilot Report).

¹³³ Mobidia, Network Usage Insights: A Short Review of Average Data Usage for LTE, 3G, and Wi-Fi of Wireless Subscribers in the USA. Q3 2014 at 2 (2014), http://cdn2.hubspot.net/hub/392646/file-2100718182-pdf/Mobidia_Network_Usage_Data_Q3_2014_final.pdf (last visited June 18, 2015) (Mobidia Report); Mobidia, U.S. iPhone Users Consume the Most LTE and Wi-Fi Data (Nov. 28, 2014), <http://www.mobidia.com/press-release/lte-network-usage-data-0> (last visited June 18, 2015).

¹³⁴ Mobidia found that approximately 80% of all mobile data is offloaded onto a Wi-Fi network, with average usage being approximately 7.25GB per month for offloaded mobile data. See Mobidia Report at 2. If a consumer does not have access to a fixed network to offload data onto, based on the data provided by Mobidia, the consumer would potentially be averaging 10GB or more per month on mobile networks. See *id.* at 2.

¹³⁵ We note that some consumers may have a strong preference for a smartphone over a data-only device. See *Broadband Pilot Report* at Executive Summary at 2.

¹³⁶ See 47 C.F.R. § 54.403(a)(2).

more robust service will be offered to consumers. We seek comment on establishing minimum levels of service for voice and broadband for low-income residents living on Tribal lands. We seek comment on the appropriate standards for mobile data as well as a fixed broadband service. What metric should be used and how should it evolve over time? We note that the Oklahoma Corporation Commission (OCC) requires wireless ETCs to provide a large number of minutes each month to Lifeline subscribers on Tribal lands, which is significantly higher than what ETCs typically offer to non-Tribal Lifeline consumers.¹³⁷ Are other states considering similar minimum service levels on Tribal lands? More generally, what is the level of service provided to residents of Tribal lands, and how does it compare to consumers nationwide?

c. Updating Standards and Compliance

48. We seek comment on how to set appropriate minimum service levels that evolve with technology and innovation, and how to ensure compliance with those levels. A comparison of subscription rates from 2011 to 2013 show a steady increase in adoption for fixed wireline at 10/1 Mbps level of service.¹³⁸ We expect these increases in adoption will continue because carriers will continue to build out networks offering at least 10/1 Mbps service. At the same time, we have seen a decline in the utilization of wireline voice service, but an increase in wireless voice service.¹³⁹ In light of this dynamic, we believe the Commission needs a mechanism to ensure that the minimum service levels we propose to adopt stay relevant over time.

49. We propose to delegate to the Wireline Competition Bureau (Bureau) the responsibility for establishing and regularly updating a mechanism setting the minimum service levels that are tied to objective, publicly available data. We seek comment on this proposal. We also seek comment on how best to regularly update service levels for both fixed and wireless voice and broadband services to ensure that Lifeline supports an “evolving level” of telecommunications service.

50. Alternatively, it may be appropriate to establish explicit procedures by which to ensure those minimum service levels are met and maintained. In the high-cost program, the Commission defined strict broadband performance metrics, and the Bureau recently sought comment on the best mechanism to measure these performance metrics.¹⁴⁰ We seek comment on whether it would be reasonable to subject Lifeline providers to similar broadband measurement mechanisms.

51. We also seek comment on how to monitor and ensure compliance with any voice and broadband minimum service levels. Should this be part of an annual certification by Lifeline providers? Should offerings be part of any application to become a Lifeline provider? What information and records should be retained for an audit or review? Should consumer or other credible complaints result in an audit or review of a Lifeline provider provisioning Lifeline service? Should complaints to state/local

¹³⁷ See OAC§ 165:55-23-15(o) (requiring Oklahoma ETCs serving on Tribal lands to offer a minimum of 1000 minutes of domestic calling per month).

¹³⁸ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15653, para. 23 (rel. Dec. 18, 2014) (*December 2014 Connect America Order*). (“We expect carriers planning upgrades to their networks today would take into account near term and future consumer demand [C]urrent data show that a majority of broadband subscribers today purchase at least 10/1 Mbps. A comparison of adoption rates from 2011 to 2013 show a steady increase in adoption for this level of service. We therefore find that it is reasonable to assume that many carriers upgrading their networks with Phase II support would aim to provide the capability to provide at least 10/1 Mbps, with higher speeds available to a subset of locations.”).

¹³⁹ Rich Smith, *More Are Dropping Landlines, for New, Cheaper Options* (Aug. 1, 2014), <http://www.dailyfinance.com/2014/08/01/more-drop-landlines-voip/> (last visited June 18, 2015).

¹⁴⁰ *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060 (Wireline Comp. Bur. 2013); *Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology Seek Comment on Proposed Methodology for Connect America High-Cost Universal Service Support Recipients to Measure and Report Speed and Latency Performance to Fixed Locations*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 12623 (Wireline Comp. Bur. rel. Oct. 14, 2014).

regulatory agencies, the Commission, and/or public watchdog organizations trigger audits? Are there other events that should trigger an audit? Proposed audit triggers should address both ensuring that performance standards are met and minimizing administrative costs.

d. Support Level

52. We propose to retain the current, interim non-Tribal Lifeline support amount that the Commission adopted in the *Lifeline Reform Order*,¹⁴¹ but we seek to extract more value for low-income consumers from the subsidy. When it set the interim rate, the Commission sought comment on a permanent support amount that would best meet the Commission's goals.¹⁴² The Commission sought comment on a number of issues associated with establishing a permanent support amount,¹⁴³ but received limited comments.¹⁴⁴ Recently, GAO noted that the Commission has not established a permanent support amount.¹⁴⁵ We tentatively conclude that we should set a permanent support amount of \$9.25, and seek comment on this tentative conclusion.¹⁴⁶ If we set a minimum service level where \$9.25 is insufficient to cover broadband service, would an end-user charge be necessary? Since a central goal of the Lifeline program is affordability, how can we assure both a sufficient level of broadband service while also ensuring the service is affordable to the consumer? We seek comment on if or how bundles should affect the support level.

53. We also seek comment on whether the support amount should be reduced for Lifeline supported mobile voice-only service. The cost of provisioning wireless voice service has decreased significantly since the *Lifeline Reform Order*. Therefore, the Commission questions whether it is necessary to support mobile voice-only Lifeline service with a \$9.25 subsidy, and we seek comment on the level of support needed for mobile voice-only service. We also seek comment on whether a different level of support would be appropriate for a voice and broadband bundle. If so, what would be appropriate?

¹⁴¹ This interim rate was composed of the average of three prior rates (Tiers One through Three). See *Lifeline Reform Order*, 27 FCC Rcd at 6683, para. 58.

¹⁴² See *id.* at 6844-46, paras. 462-73.

¹⁴³ See *id.*

¹⁴⁴ “The \$9.25 support amount selected in the Lifeline Reform Order represents a reasonable interim solution, and T-Mobile urges the Commission to study its effectiveness before modifying the support amount again.” See Comments of T-Mobile USA, Inc., WC Docket No. 11-42 et al., at 5 (filed Apr. 2, 2012); “Notwithstanding its concerns about the interim \$9.25 support amount, TracFone supports the Commission’s adoption of a uniform flat rate for Lifeline support. A uniform rate would facilitate administrative efficiency.” See Comments of TracFone Wireless, Inc., WC Docket No. 11-42 et al., at 12 (filed Apr. 2, 2012). US Telecom supported the \$9.25 interim rate, but stressed that the new discount level is just being implemented and the Commission should gather data as to the impact of that discount on voice penetration before it seeks to change it. See Comments of United States Telecom Association., WC Docket No. 11-42 et al., at 4-5 (filed Apr. 2, 2012). Verizon suggested that it will be necessary to assess the impact of this recent structural change to a single flat rate “over a period of time” before making any further changes. See Comments of Verizon, WC Docket No. 11-42 et al., at 4-5 (filed Apr. 2, 2012). i-wireless was in favor of a flat-rate of reimbursement, but suggested that the rate of \$9.25 does not accurately account for the overall costs to support the program, especially in light of the new requirements placed on carriers with the recent adoption of the Commission’s Lifeline and Link Up Reform Order. See Comments of i-wireless, LLC, WC Docket No. 11-42 et al., at 12 (filed Apr. 2, 2012). Sprint opposed the adoption of the proposed \$9.25 flat-rate and believed the rate should be higher. See Comments of Sprint Nextel Corporation., WC Docket No. 11-42 et al., at 8 (filed Apr. 2, 2012) (Sprint April 2012 Comments).

¹⁴⁵ See GAO March 2015 Report at 11-12.

¹⁴⁶ See *Lifeline Reform Order*, 27 FCC Rcd at 6683, para. 58 (setting the interim support amount at \$9.25). See also GAO March 2015 Report (noting that the Commission has not yet established a permanent support amount).

54. *Broadband Connection Charge Reimbursement.* We seek comment on whether to provide a one-time reimbursement to Lifeline consumers to cover any up-front broadband connection charges for fixed residential service. The costs associated with connecting a low-income consumer to fixed broadband exceed the costs of connecting that same consumer to mobile broadband service. For example, we find that it is more likely that a technician would need to visit a location to connect the consumer to broadband than would be the case for mobile service, resulting in an up-front charge.¹⁴⁷ Such fees may serve as a barrier for low-income consumers to adopt broadband, particularly if consumers pay an ongoing charge for robust Lifeline supported broadband service.¹⁴⁸ We also seek comment on how best to protect the Fund from any waste, fraud, and abuse if the Commission implements a one-time reimbursement for connection charges. Additionally, we seek comment on how to appropriately set the level of the broadband connection charge subsidy.

e. Managing Program Finances

55. The Commission in the 2012 *Lifeline Reform Order* adopted a number of reforms designed to combat waste, fraud, and abuse in the program.¹⁴⁹ These reforms have taken significant strides to address concerns with the program, including through the elimination of duplicate support. In 2012, USAC disbursed approximately \$2.2 billion in Lifeline support payments compared to approximately \$1.6 billion in Lifeline support payments in 2014.¹⁵⁰ The Commission in the 2012 *Lifeline Reform Order* also indicated that the reforms would put the Commission “in a position to determine the appropriate budget for Lifeline” after evaluating the impact of the reforms.¹⁵¹

56. Accordingly, in light of progress made on these reforms, and consistent with steps the Commission has taken to control spending in other universal service programs, we seek comment on a budget for the Lifeline program.¹⁵² The purpose of a budget is to ensure that all of our goals are met as the Lifeline program transitions to broadband, including minimizing the contribution burden on ratepayers, while allowing the Commission to take account of the unique nature and goals of the Lifeline program. We seek comment on this approach.

57. Adopting a budget for the Lifeline program raises a number of important implementation questions. For example, what should the budget be? We expect that efforts to reduce fraud, waste and abuse should limit any increase in program expenditures that may be associated with the reforms to modernize the program. What data would help ensure Lifeline-supported voice and broadband services

¹⁴⁷ While many providers offer broadband self-installation kits, these kits often times only work if a connection has previously been installed in the residence. In addition, these self-install kits also require a basic technical understanding of telecommunications equipment. Therefore, some consumers may not be adept in performing the self-install. See AT&T, *Installing Your AT&T High Speed Internet Service*, <http://www.att.com/esupport/article.jsp?sid=KB400719&cv=812> (last visited June 18, 2015). Also, a new broadband connection may require extension of the existing telecommunications network from the provider, thereby requiring a truck roll and significant network investment. See Cisco, *Bandwidth Consumption and Broadband Reliability* at Fig. 12 (2012), http://www.cisco.com/c/en/us/products/collateral/cloud-systems-management/prime-home/white_paper_c11-711195.pdf.

¹⁴⁸ See *supra* paras. 34-47.

¹⁴⁹ Among other changes to the program, the Commission enabled the de-enrollment of ineligible subscribers by affirmatively limiting the Lifeline benefit to one per household. See 47 C.F.R. § 54.409(c); *Lifeline Reform Order*, 27 FCC Rcd at 6689, para. 74, required documentation for proof of program or income eligibility, See 47 C.F.R. §§ 54.410(b)(1)(i)(B), 54.410(c)(1)(i)(B); *Lifeline Reform Order*, 27 FCC Rcd at 6697-6714, paras. 91-128, and created the National Lifeline Accountability Database (NLAD) to detect and eliminate duplicative support. See 47 C.F.R. § 54.404; *Lifeline Reform Order*, 27 FCC Rcd at 6734-6747, paras. 179-209.

¹⁵⁰ See USAC 2014 Annual Report at 9, USAC 2-15 3Q Filing; see also, *supra* para. 3.

¹⁵¹ See *Lifeline Reform Order*, 27 FCC Rcd at 6660, para. 4. See also *id.* at 6809-10, paras. 359-60.

¹⁵² See *id.* at 6810, para. 359.

are available to qualifying low-income households and that also minimizes the financial burden on all consumers? Today, not every eligible household participates in the Lifeline program. Thus, if we were to adopt the current size of the Lifeline program as a budget, it could foreclose some eligible households from participating in the program. And, there is no data to suggest that the particular size of Lifeline in a given year is the right approach. Ultimately the size of the Lifeline program is limited by the number of households living in poverty and, as we do better as a society to bring households out of poverty, the program should naturally reduce in size.

58. Additionally, the Lifeline program is a month-to-month program. We want to avoid a situation where the Commission would be forced to suddenly halt support for individuals that otherwise meet the eligibility requirements. How can we monitor and forecast demand for the program so that the Commission would be in a position to address any possible increases in advance of reaching the budget, should that necessity arise? We seek comment on these and other implementation questions that would be raised by a budget.

f. Transition

59. We seek comment on whether any transition is necessary to implement the reforms described in this section. If the Commission adopts the proposal to eliminate the provider from determining whether a consumer is eligible for Lifeline, as discussed, we seek comment in particular on the appropriate transition to ensure that the Lifeline program has sufficient protections against waste, fraud and abuse. For example, should we have a transition where the providers continue determining eligibility while the third-party process is being established and, if so, how long should there be an overlap to ensure that the third-party process is working as intended? For each of the possible program changes discussed in this Notice, we seek comment on whether a transition is necessary and, if so, how to structure any such transition to minimize fraud and protect the integrity of the program while maximizing the value and benefits to consumers.

60. The Commission also seeks to minimize any hardships on consumers affected by the proposed changes and we also seek to alleviate complications resulting from a transition on Lifeline providers. We seek comment on specific paths to transition that would minimize the impact on both consumers and Lifeline providers.

g. Legal Authority to Support Lifeline Broadband Service

61. In order to establish minimum service levels for both voice and broadband service, we propose to amend our rules to include broadband Internet access service, defined consistent with the *Open Internet Order*,¹⁵³ as a supported service in the Lifeline program.¹⁵⁴ Section 254(c) defines universal service as “an evolving level of telecommunications service.”¹⁵⁵ Broadband Internet access service is a “telecommunications service,”¹⁵⁶ therefore, including broadband Internet access service as a supported service for Lifeline purposes is consistent with Congress’s principles for universal service.¹⁵⁷ Moreover, defining broadband Internet access service as a supported service is also consistent with the criteria in section 254 (c)(1)(A)-(D).¹⁵⁸ Should we amend sections 54.101, 54.400, and 54.401 to include

¹⁵³ See *Open Internet Order*, 80 Fed. Reg. at 19764, para. 187.

¹⁵⁴ See 47 C.F.R. §§ 54.401-54.403 (defining the supported service in the Lifeline program as “voice telephony service” and explaining how the support amount should be allocated to a subscriber’s package).

¹⁵⁵ 47 U.S.C. § 254(c).

¹⁵⁶ See *Open Internet Order*, 80 Fed. Reg. at 19786-87, paras. 331-35.

¹⁵⁷ See 47 U.S.C. § 254(b).

¹⁵⁸ See 47 U.S.C. § 254(c)(1)(A-D) (“The Joint Board in recommending, and the Commission in establishing, the definition of services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services – (A) are essential to education, public health, or public safety; (B) have,

broadband as a supported service?¹⁵⁹ We seek comment on these views.

62. We also seek comment on other ways to support broadband within the Lifeline program. For example, should we condition a Lifeline provider's receipt of Lifeline support for voice service (a supported telecommunications service) on its offering of broadband Internet access service?¹⁶⁰ Could we provide the support for broadband-capable networks, similar to what the Commission did in the *USF/ICC Transformation Order*?¹⁶¹ For example, could we use a similar analysis to conclude that providing Lifeline support to facilities-based Lifeline providers encourages the deployment of broadband-capable networks, as does stimulating the demand for wholesale broadband services by providing Lifeline support to non-facilities-based Lifeline providers? Are there other sources of authority that could allow the Commission to adopt rules to provide support for broadband Internet access service in the Lifeline program? How should we view section 706 of the 1996 Act?¹⁶² We ask commenters to take federal appropriations laws into account as they offer their responses to these questions.¹⁶³

B. Third-Party Eligibility Determination

63. We propose to remove the responsibility of conducting the eligibility determination from the Lifeline providers and seek comment on various ways to shift this responsibility to a trusted third-party and further reduce waste, fraud, and abuse in the Lifeline program, and leverage other programs serving the same constituency to extract saving for the Fund. By removing that decision from the Lifeline provider, we remove one potential source of waste, fraud, and abuse from the program while also creating more efficiencies overall in the program administration. Doing so also brings much-needed dignity to the program, reduces administrative burdens on providers, which should help to facilitate greater provider participation and competition for consumers. A number of states have been proactive in their efforts to bring further efficiencies into the program by establishing state eligibility databases or other means to verify Lifeline eligibility. We commend these states for working to make the program a prime example of Federal/state partnership, and seek comment below on the best ways to build off of these successful efforts and extract benefits for Lifeline.¹⁶⁴ We seek comment on the costs and benefits of each approach for third-party eligibility including the costs to providers, the universal service fund, and the costs and timeframe to transition to an alternative mechanism. In particular, we seek comment on leveraging eligibility and oversight procedures that already exist within other benefit programs rather than recreating

through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (C) are being deployed in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience, and necessity.”).

¹⁵⁹ See Appendix A.

¹⁶⁰ See *In re FCC 11-61*, 753 F.3d 1015, 1046 (10th Cir. 2013) (holding that “nothing in the statute limits the FCC’s authority to place conditions, such as the broadband requirement, on the use of USF funds.”).

¹⁶¹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17685, para. 64.

¹⁶² 47 U.S.C § 1302.

¹⁶³ See, e.g., *Connect America Fund et al.*, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4578-79, paras. 62-67 (2011) (citing, e.g., U.S. CONST. art. I, § 9, cl. 7 (“[n]o money shall be drawn from the Treasury, but in consequence of Appropriations made by law”); 31 U.S.C. § 1301 (“[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law”); 31 U.S.C. § 1341(a)(1) (prohibiting an officer or employee of the federal government from making or authorizing “an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation,” or involving the government in an “obligation for the payment of money before an appropriation is made unless authorized by law”); 31 U.S.C. § 3302(b) (“an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim”).

¹⁶⁴ See Letter from Mitchell F. Brecher, Counsel to TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No 11-42 et al., (filed Sept. 13, 2013).

another mechanism just for Lifeline. We also seek comment on whether to provide eligible consumers with a portable benefit, provided by the third-party verifying eligibility, which they could use with any Lifeline provider. That approach could facilitate consumer choice while also reducing administrative burdens on Lifeline providers. We seek comment on these and other options below.

1. National Lifeline Eligibility Verifier

64. In this section, we seek comment on whether the Commission should establish a national Lifeline eligibility verifier (national verifier) to make eligibility determinations and perform other functions related to the Lifeline program.¹⁶⁵ A national verifier would review consumer eligibility documentation to verify Lifeline eligibility, and where feasible, interface with state eligibility databases to verify Lifeline eligibility. A national verifier could operate in a manner similar to the systems some states have already implemented. For example, California has chosen to place the duty of verifying Lifeline eligibility in the hands of a third-party administrator.¹⁶⁶ In California, the state's third-party administrator examines documentary proof of eligibility and verifies that the prospective subscriber has executed a proper Lifeline certification.¹⁶⁷ We seek comment on whether such an approach could be adopted on a national scale and the costs and timeframe to do so. Because a number of states have already implemented Lifeline eligibility verification systems, we seek comment and quantifiable data from the states to enrich our understanding of how such systems function when implemented. As our partners in administering the Lifeline program, the states can provide a unique perspective on these issues that may be overlooked elsewhere. We welcome and solicit comment from the states on the issues of Lifeline eligibility verification discussed below.

65. *Core Functions of a National Verifier.* We propose that a national verifier would, at a minimum, review consumers' proof of eligibility and certification forms, and be responsible for determining prospective subscribers' eligibility. We seek comment on the scope of this core function and other potential responsibilities associated with determining eligibility that the administrator could undertake. Consistent with the responsibilities of Lifeline providers to protect Lifeline applicants' personal information from misappropriation, breach, and unlawful disclosure,¹⁶⁸ we also seek comment on reasonable data security practices that should be adopted by a national verifier and whether a national verifier should notify consumers if their information has been compromised.

¹⁶⁵ While we recognize the value in a centralized fully electronic means of eligibility verification, and note that in response to the *FNPRM*, several commenters supported the establishment of a centralized electronic means of eligibility verification, such a system will not be implemented in the near term. See *Lifeline Reform Order*, 27 FCC Rcd at 6822, para. 399.

¹⁶⁶ See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 28 FCC Rcd 2012 (Wireline Comp. Bur. 2013).

¹⁶⁷ See *id.* California has asserted that its third-party administrator has a comprehensive system in place to verify subscribers' eligibility. According to California, the institution of a third-party program administrator has reduced waste, fraud, and abuse in the Lifeline program. See *Lifeline Reform Order*, 27 FCC Rcd at 6827, para. 414 n.1064. Other states, such as Texas, Oregon, and Washington have administrators that are involved in reviewing completed Lifeline applications, accessing relevant eligibility databases and/or reviewing eligibility documentation for programs not in a database. See, e.g., Letter from Jon Cray, OPUC Residential Service Protection Fund Program Manager, OPUC, to Marlene H. Dortch, Secretary, FCC, WC Docket 11-42 et al. (filed Sept. 24, 2013); Letter from Jay Stone, Program Administrator, Public Utility Commission of Texas, to Marlene H. Dortch, Secretary, FCC, WC Docket 11-42 et al. (filed Feb. 8, 2013); Letter from Steven V. King, Executive Director and Secretary, Washington Utilities and Transportation Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42 et al., (filed Nov. 27, 2013).

¹⁶⁸ See *TerraCom, Inc. and YourTel America, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13325 (2014) (*TerraCom NAL*). As discussed below, see *infra* paras. 234-35, this Order confirms the general interpretation of sections 201 and 222 reflected in the *TerraCom NAL*.

66. *Interfacing with Subscribers and Providers.* We seek comment on whether consumers should be permitted to directly interface with a national verifier, or whether only providers should be permitted to do so. If consumers are permitted to interface with a national verifier, they could compile and submit all required Lifeline eligibility documentation and obtain approval for Lifeline prior to contacting a provider for service. However, many consumers are likely unfamiliar with many of the Lifeline application documents and program requirements. Therefore, should interaction with a national verifier be limited to providers for reasons of efficiency and expertise? If interaction is limited to providers, how could information be collected and compiled in a manner that reduces administrative burdens on providers and maintains consumer privacy and dignity?

67. If subscribers are not able to directly interface with a national verifier to apply for a Lifeline benefit, are there other ways a national verifier could interact with consumers? For example, California has established a call center to answer consumers' questions about the Lifeline application process.¹⁶⁹ Are there other similar customer service functions the national verifier should implement as part of its responsibilities? Should we establish a process so that a potential subscriber contacts the national verifier to learn about the service and the providers that serve the subscriber's area? Are there any lessons that providers have learned from the implementation of, and their interaction with the NLAD?

68. *Processing Applications.* Next, we seek comment on whether a provider should be permitted to provision service to a consumer prior to verification of eligibility by a national verifier. Currently, providers are required to evaluate and verify a prospective subscriber's eligibility prior to activating a Lifeline service.¹⁷⁰ Under any implementation of a national verifier, where the verifier must review eligibility documentation, there will be a delay between a national verifier receiving documentation and the time a national verifier makes an eligibility determination. For example, in California, several days can pass between the time the Lifeline application and supporting documentation is received by the state's third-party verifier and when the consumer is approved for Lifeline.¹⁷¹ Would a similar, multi-day approval process on the national level negatively impact consumers? If so, does the benefit of reduced waste, fraud, and abuse in the program outweigh any harms a delay may cause? What additional costs would shortening the review process incur?

69. We also seek comment on whether we should implement a pre-approval process. To mitigate the effects of the delay from the time the consumer submits a Lifeline application and supporting documentation and an eligibility determination, California put a "pre-approval" process in place. It is the Commission's understanding that, in California, the pre-approval occurs subsequent to a duplicates check and ID verification, but before the third-party administrator performs a full review of the consumer's documentation for eligibility and occurs in a matter of minutes.¹⁷² We seek comment on whether we should implement a similar pre-approval process for the national verifier. Would pre-approval increase the chances for waste, fraud, and abuse in the program?¹⁷³

¹⁶⁹ See California Public Utilities Commission, *California Lifeline Contacts*, <http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/California+LifeLine+Contacts.htm> (last visited June 18, 2015).

¹⁷⁰ See generally *Lifeline and Link Up Modernization and Reform*, WC Docket No. 11-42, Order, 28 FCC Rcd 9057 (Wireline Comp. Bur. 2013).

¹⁷¹ Consumers in California receive a letter in the mail notifying them of their acceptance or rejection into the program. See California Lifeline Program, *Frequently Asked Questions*, <https://www.californialifeline.com/en/faq#faq1> (last visited June 18, 2015).

¹⁷² See CPUC Decision Adopting a Pre-Qualification Requirement for the California Lifeline Telephone Program and Resolving Remaining Phase 2 Issues 11, Rulemaking, 04-12-001 at 4.1 Customer Pre-Qualification (Aug. 21, 2008), http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/87063-03.htm#P105_11825.

¹⁷³ We note that in the context of Telecommunications Relay Service (TRS), the Commission initially allowed service to be provisioned pre-verification, but changed course due to the prevalence of waste, fraud, and abuse. See

70. We note that delay of several hours or even days can occur during the period between when the subscriber seeks to obtain Lifeline service from a provider and subsequently provides a completed application and supporting documentation to the third-party entity.¹⁷⁴ What assistance, if any, should providers or a national verifier give to the subscriber in completing a Lifeline application and compiling supporting eligibility documentation to shorten the eligibility verification process? For example, should verifier staff walk applicants through the enrollment process? Would permitting the national verifier to enroll subscribers directly without the subscriber having to apply through the provider shorten this period?

71. We also seek comment on how providers and/or consumers should transmit and receive Lifeline applications and proof documentation with a national verifier.¹⁷⁵ Should consumers be required to submit their Lifeline applications and proof documentation through a provider who ultimately sends the documentation to a national verifier, or could consumers submit their documentation directly to a national verifier? For example, should we permit consumers to directly submit their Lifeline application and supporting eligibility documentation to a national verifier via U.S. Postal Service, fax, email, or Internet upload? If consumers are not permitted to submit documentation on their own, how should providers submit consumer eligibility documentation to a national verifier? Are some forms of submission better than others in terms of ensuring an expedited response? What are the data privacy and security advantages and disadvantages of each approach, and how can any risk of unauthorized disclosure of personal information be mitigated? We seek comment on any other submission methods that may benefit consumers, providers, and a national verifier.

72. *Interacting with State Databases.* In this section we seek comment on the scope of a national verifier's operations and how or whether it should interact with states that have already put in place state eligibility databases and/or processes to check documentary proof of eligibility. The Commission is pleased and encouraged with the fact that several states already have in place eligibility databases and/or processes to check documentary proof of eligibility.¹⁷⁶

73. While many states have made significant strides in verifying Lifeline eligibility, some states' processes are limited in that they only verify eligibility against some, but not all, Lifeline qualifying programs.¹⁷⁷ We seek comment on how these states should interact with a national verifier.¹⁷⁸

Misuse of Internet Protocol (IP) Relay Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 12-138 and 03-123, First Report and Order, 27 FCC Rcd 7866 (2012).

¹⁷⁴ For example, in a number of states, the consumer provides the application directly to the state entity that examines subscribers' eligibility. Once the application is approved, the ETC selected by the consumer is notified by the state to enroll the consumer in Lifeline. See, e.g., Letter from Jon Cray, OPUC Residential Service Protection Fund Program Manager, Oregon Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42 et al. (filed Sept. 24, 2013).

¹⁷⁵ Comments of CompTel, WC Docket Nos. 11-42 et al., at 10 (filed Apr. 2, 2012). Sprint notes that "in the hands of a neutral third-party administrator, the eligibility verification process could have the effect of discouraging Lifeline-eligible consumers who require a high degree of assistance." Sprint April 2012 Comments at 5.

¹⁷⁶ Letter from Mitchell F. Brecher, Counsel to TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No 11-42 et al., CC Docket No. 96-45, (filed Sept. 13, 2013).

¹⁷⁷ ETCs in some states review eligibility documentation for some qualifying programs while the state determines eligibility for Lifeline through other qualifying programs through a state database. See, e.g., Public Utility Commission of Oregon and Oregon Telecommunications Association, Petition For Permanent Waiver, WC Docket 11-42 et al., at 7 n.15 (filed Nov. 25, 2013) (noting that the OPUC accesses a database to verify eligibility for all programs except for National School Lunch, LIHEAP, and Section 8; it reviews documentation of eligibility for these programs). See *supra* n.176.

¹⁷⁸ See, e.g., Public Utility Commission of Oregon and Oregon Telecommunications Association, Petition For Permanent Waiver, WC Docket 11-42 et al., at 7 n.17 (filed Nov. 25, 2013) (noting that Virgin Mobile and

How would a possible change in the number of qualifying programs, as discussed below, affect this analysis? We also seek comment on interim steps that could be taken to leverage state databases to confirm eligibility as the Commission moves away from providers determining eligibility. Could the Commission move faster in states that have existing databases and then phase-in the process for other states?

74. We also seek comment on ways a national verifier could access state eligibility databases to verify subscriber eligibility prior to review of consumer eligibility documentation. Would this step improve the efficiency of the enrollment process? How would requiring a national verifier to utilize a state eligibility database for eligibility verification interplay with any standards set for state databases, as discussed below? Could the national verifier use the NLAD database and have the state databases interface with NLAD? If so, how? Alternatively, what are the drawbacks if the duty to check such databases remains with the state, its agent, and/or individual providers in those states? We encourage interested parties to suggest cost-effective ways a national verifier could utilize state databases.

75. *Existing State Systems for Verifying Eligibility.* In this section we seek comment on the relationship between a national verifier and states with existing systems for verifying eligibility. We want to encourage the continued development of eligibility databases at the state level. We seek comment on whether states should be required to use a national verifier, or whether and how states could “opt-out” of a national verifier in those cases where the state has developed a process to examine subscribers’ eligibility and/or a state eligibility database and the state wishes to continue to perform the eligibility screening function on its own. The Commission currently permits states to opt-out of utilizing the NLAD, contingent upon a state’s system being at least as robust as the processes adopted by the Commission in the *Lifeline Reform Order*.¹⁷⁹ Similarly, we now seek comment on whether to adopt standards that state systems would have to meet in order to opt-out of a national verifier.

76. We also seek comment on standards for any database or state-led process used to verify Lifeline program eligibility and how the states must meet these requirements as part of their request to opt-out of a national verifier.¹⁸⁰ We seek comment on requirements for state eligibility databases generally in order for a state to qualify to opt out of a national verifier. Specifically, we seek comment on whether state eligibility databases should be required to verify eligibility for each Lifeline qualifying program, or whether such a requirement would impose an unreasonable burden.

77. To ensure the reliability and integrity of the state eligibility databases, we seek comment on whether we should set a requirement for updating eligibility data on a regular basis, and if so, what the appropriate time frame should be. For example, would the burden of a nightly refresh requirement outweigh the benefit of fully up-to-date data? What specific barriers prevent timely data updates?

78. We seek comment on whether and to what extent to include state database consumer privacy protections in any opt-out standard we adopt. Many of the state eligibility databases currently in use only return a “yes” or “no” response subsequent to an eligibility query.¹⁸¹ By doing so, the provider is unaware of which Federal Assistance program the consumer qualifies under for Lifeline. We seek comment on whether the Commission should require this type of “yes” or “no” response from Lifeline

TracFone perform an initial eligibility check in Oregon). *See also* Comments of Solix, Inc., WC Docket No. 11-42 et al., at 4 (filed Apr. 2, 2012) (advocating a multi-tiered eligibility verification approach using state review of eligibility and databases as well as a national verifier).

¹⁷⁹ *See Lifeline Reform Order*, 27 FCC Rcd at 6737-46, 6747-52, paras. 188-208, 212-21.

¹⁸⁰ *See* 47 C.F.R. §§ 54.410(b)(1)(i)(A), 54.410(c)(1)(i)(A). Pursuant to sections 54.410(b)(1)(i)(A) and 54.410(c)(1)(i)(A) of the Commission’s rules, if an ETC can determine a prospective subscriber’s eligibility for Lifeline by accessing one or more databases containing eligibility qualification information, the ETC must do so.

¹⁸¹ *See* Letter from Mitchell F. Brecher, Counsel to TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No 11-42 et al., CC Docket No. 96-45 (filed Sept. 13, 2013).

eligibility databases as a means to protect consumers' private information as part of our opt-out threshold.¹⁸² What other types of controls can the Commission adopt to protect consumer privacy?

79. The Commission and USAC may need to be able to audit state databases to monitor compliance.¹⁸³ Is direct access to the databases needed to perform a sufficient audit? What are the data privacy and security implications of allowing direct access? How can we reduce the administrative burden on states, while ensuring compliance? What state or Federal rules and statutes may limit the ability of USAC or the FCC to audit the state database?

80. Lastly, we seek comment on how states may fund and implement any standards for their eligibility databases. Pursuant to section 54.410(a) of the Commission's rules, providers are required to implement procedures to ensure their subscribers are eligible to receive the Lifeline benefit.¹⁸⁴ Could this rule be interpreted to require providers to fund any necessary implementation efforts for state eligibility databases? More generally, we seek comment on the sources and scope of Commission authority to require minimum standards for state databases so as to opt out of a national verifier.

81. *Alternative State Interaction.* In this section we seek comment on utilizing state eligibility systems as the primary means of verifying Lifeline eligibility, and utilizing a national verifier to promote and coordinate state eligibility verification efforts. As we note above,¹⁸⁵ a number of states have been proactive in their efforts to bring further efficiencies into the program by establishing state eligibility databases or other means to verify Lifeline eligibility. Therefore, it may be administratively inefficient to create a national verifier that would duplicate the functionality of these databases and systems already in place at the state level. We seek comment on this idea.

82. We acknowledge that the current tapestry of state eligibility systems is far from uniform and has some shortcomings. We note, as mentioned above,¹⁸⁶ that many states have Lifeline eligibility verification systems in place but these systems vary in functionality. In addition, other states do not have in place *any* means of verifying Lifeline eligibility.¹⁸⁷ We seek comment on how to incent states to develop dependable means-tested processes to verify consumer Lifeline eligibility. Does the Commission have the authority to utilize universal service funds to finance the development and implementation of Lifeline eligibility verification systems at the state level? Section 54.410(a) of the Commission's rules requires providers to implement procedures to ensure their subscribers are eligible to receive the Lifeline benefit.¹⁸⁸ Could this rule be interpreted to require providers to fund any necessary implementation efforts for state eligibility databases? We seek comment on the sources and scope of Commission authority to incent states, either through monetary or other means, to develop Lifeline eligibility verification systems. How can the Commission guarantee all state eligibility verification systems meet specific standards to ensure the reliability and integrity of those systems? If some states decline to develop systems meeting any minimum standards as set by the Commission, would a national verifier as envisioned act to verify consumer Lifeline eligibility? If a national verifier assumes the function of verifying consumer Lifeline eligibility for non-compliant states, what additional functions can a national

¹⁸² *See id.*

¹⁸³ *See* Letter from John J. Heitmann, Counsel to the Lifeline Reform 2.0 Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 7-8 (filed Apr. 14, 2014).

¹⁸⁴ 47 C.F.R. § 54.410(a).

¹⁸⁵ *See supra* para. 64, n.167.

¹⁸⁶ *See id.*

¹⁸⁷ *See* Letter from Mitchell F. Brecher, Counsel to TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No 11-42 *et al.*, CC Docket No. 96-45 (filed Sept. 13, 2013).

¹⁸⁸ 47 C.F.R. § 54.410(a).

verifier undertake to assist and encourage states to develop systems to verify Lifeline eligibility that meet Commission standards?

83. In addition, we seek explicit comment from the states on this alternative course of action. As our partners in implementation and administration of the Lifeline program, any views or quantifiable data specifically from a state perspective would be beneficial in determining whether to move forward with this alternative option for verifying Lifeline eligibility.

84. **Dispute Resolution.** We seek comment on any means or process for consumers or providers to contest a rejection of a prospective consumer's eligibility. We seek comment on a dispute resolution process that consumers may utilize should they believe that they have been wrongly denied Lifeline eligibility. **Should the provider act on behalf of the consumer to resolve any eligibility disputes, or should the consumer interface directly with the national verifier? Should resolution of disputes be addressed by the national verifier in the first instance, subject to an appeal to USAC?**¹⁸⁹ In developing a dispute resolution/exceptions management process for the national verifier, we generally seek comment on additional issues such as implementation, transition, and timing of decisions.

85. **Privacy.** Consumer privacy is of the utmost concern to us in establishing a national verifier, and we propose requiring that any national verifier put in place significant data privacy and security protections against unauthorized misappropriation, breach, or disclosure of personal information. We note that in response to the *Lifeline FNPRM*, several commenters raised consumer privacy concerns with having a third-party entity review and retain prospective Lifeline subscriber qualifying documentation.¹⁹⁰ Moreover, Lifeline providers must "take every reasonable precaution to protect the confidentiality of proprietary or personal customer information," including "all documentation submitted by a consumer or collected by a Lifeline provider to determine a consumer's eligibility for Lifeline service, as well as all personally identifiable information contained therein."¹⁹¹ In order to ensure that consumers' privacy is protected at all stages of the Lifeline eligibility verification process, we seek comment on how a national verifier can receive, process, and retain eligibility documentation while ensuring adequate protections of consumer privacy. We seek comment on how the functions of a national verifier would conform to government-wide statutory requirements and regulatory guidance with respect to privacy and information technology.¹⁹² **What privacy and data security practices should we require a national verifier to adopt with respect to its receipt, processing, use, sharing, and retention of applicant information?** Should we require a national verifier to adopt the minimum practices we require of Lifeline providers in the accompanying Order on Reconsideration?¹⁹³ Should a national verifier be required to provide consumers with a privacy policy, and what topics should such a policy include? What responsibility, if any, should a national verifier have to notify consumers of a data breach or other unauthorized access to information submitted to determine eligibility for Lifeline service? Are consumer

¹⁸⁹ We propose that any USAC dispute resolution determination will be considered an appealable USAC action. See 47 C.F.R. § 54.719.

¹⁹⁰ See Reply Comments of Verizon, WC Docket No. 11-42 *et al.*, at 3 (filed May 1, 2012); Comments of Leap Wireless International, Inc. and Cricket Communications, Inc., WC Docket No. 11-42 *et al.*, at 5 (filed Apr. 2, 2012); Comments of the National Association of State Utility Consumer Advocates, WC Docket No. 11-42 *et al.*, at 8-9 (filed Apr. 2, 2012).

¹⁹¹ *TerraCom NAL*, 29 FCC Rcd. at 13329-31, paras. 12, 13, 18 (finding that two ETCs apparently violated Section 222(a) of the Communications Act by failing to protect the confidentiality of proprietary information that consumers provided to demonstrate eligibility for Lifeline services and Section 201(b) of the Act by failing to employ reasonable data security practices).

¹⁹² See 5 U.S.C. § 552a. Depending on the final implementation and functionality of a national verifier, a system of records could be created pursuant to the Privacy Act. See *id.*

¹⁹³ See *infra* at paras. 232-34. (describing the minimum security measures necessary to protect subscriber eligibility documentation).

privacy concerns mitigated if the Commission adopts a mechanism for coordinated enrollment with other federal benefits programs?

86. *Additional Functions of a National Verifier.* We seek comment on additional functions that a national verifier could perform to further eliminate waste, fraud, and abuse. For example, should a national verifier become involved in the subscriber recertification process?¹⁹⁴ Given its likely role in determining initial subscriber eligibility, should the duty to recertify subscribers be transitioned from Lifeline providers and/or USAC's current process to the national verifier? If so, we seek comment on whether any recertification performed by a national verifier should be mandatory. We also seek comment on how the recertification process as performed by a national verifier should differ, if at all, from the current process as performed by USAC.¹⁹⁵

87. A national verifier could also interact with the NLAD to check for duplicates. The NLAD has been established to ensure that neither individual consumers nor households receive duplicative Lifeline support.¹⁹⁶ Now that the NLAD is fully operational, Lifeline providers and states are required to access the NLAD prior to enrolling a potential subscriber to determine whether the subscriber already is receiving service and load an eligible subscriber's information into the NLAD. Are there efficiencies if both the national verifier and the NLAD are operated by the same entity? Should a national verifier be required to access the NLAD to check for duplicates on behalf of or in addition to the Lifeline providers and/or states? Should a national verifier also be responsible for loading subscriber information into the NLAD on behalf of Lifeline providers? If so, what kinds of communication and coordination must occur between a national verifier, the NLAD and Lifeline providers? Should a national verifier assist in the process of generating or verifying the accuracy of the Lifeline providers' FCC Form 497s? Lifeline providers are generally designated by wire center and it may be difficult to determine if a particular address is within a wire center where the Lifeline provider is designated to serve. Could a national verifier implement a function so that a Lifeline provider could query a mapping tool to determine whether a prospective subscriber's address is within the Lifeline provider's service area and not be permitted to serve that subscriber if the tool indicates that the subscriber does not reside within the service area? We also seek comment on any other functions that could be undertaken by a national verifier.

88. Currently, we believe that the administrative burden that Lifeline providers face in verifying subscriber eligibility is significant. A national verifier will lift this financial burden from Lifeline providers. We propose to require Lifeline providers to reimburse the Fund for part or all of the operations of the national verifier. Under this proposal, how should support be allocated amongst the contributing Lifeline providers? Would Lifeline providers that utilize a national verifier more than other Lifeline providers be required to pay more? We seek additional comment on any other ways to fund a national verifier outside of utilizing USF funds.

89. Upon the establishment and implementation of a national verifier, we anticipate that Lifeline providers would no longer be permitted to formally verify subscriber eligibility for Lifeline purposes, and we seek comment on that approach. We also seek comment on how to handle the transition. Should the Commission define a transition path? If so, how long should such a period last?

90. In the alternative, if we do not adopt a national verifier, we seek comment on whether, once Lifeline providers review subscriber eligibility, they should be required to send the eligibility

¹⁹⁴ The Commission requires all ETCs to annually recertify the eligibility of their entire Lifeline subscriber base. See *Lifeline Reform Order*, 27 FCC Rcd at 6714-22, paras. 129-48. An ETC can choose to conduct recertification of its own subscribers or can have USAC perform the recertification on its behalf. See *id.* at 6716, para. 133.

¹⁹⁵ *Wireline Competition Bureau Provides Guidance to Eligible Telecommunications Carriers on the Process to Elect USAC to Perform Lifeline Recertification*, WC Docket No. 11-42, Public Notice, 29 FCC Rcd 2155 (Wireline Comp. Bur. 2014).

¹⁹⁶ See *Lifeline Reform Order*, 27 FCC Rcd at 6734, para. 179.

documents to USAC so that they can be easily audited and reviewed later. We seek comment on this approach, including the cost to Lifeline providers and USAC to transmit, store and review such documentation. Are there benefits for USAC to receive such documents in the normal course instead of asking for them at the time of an audit? Under this approach, are there ways that USAC can examine eligibility documents on a regular basis to detect patterns of fraud?

91. *Document Retention.* In the event the Commission establishes a national verifier or otherwise removes the responsibility for determining eligibility from the Lifeline provider, we seek comment on Lifeline providers' retention obligation for consumer eligibility documentation when the provider is no longer responsible for determining eligibility.¹⁹⁷ How and when should providers cease retaining Lifeline consumer eligibility documentation?¹⁹⁸ We also seek comment on transitioning to a third party. Should providers be required to send all retained Lifeline consumer eligibility documents to the third party verifier? What type of administrative burden would requiring providers to send retained Lifeline consumer eligibility documentation to a national verifier place on providers? How best can we ensure such documentation will remain available and accessible for the purpose of audits?

2. Coordinated Enrollment with Other Federal and State Programs

92. In this section, we seek comment on coordinating with federal agencies and their state counterparts to educate consumers about, or simultaneously allow consumers to enroll themselves in, the Lifeline program. We seek comment on this issue as an alternative, or supplement to, our inquiry regarding whether a third-party should perform consumer eligibility determinations rather than Lifeline providers. Other federal benefit programs which qualify consumers for Lifeline already have mechanisms to confirm eligibility. In this section, we seek comment on how to leverage such existing processes including verification and additional fraud protections in lieu of creating a separate national verifier to confirm Lifeline.

93. *Background.* One of the goals in the *Lifeline Reform Order* was to coordinate Lifeline enrollment with other government benefit programs that qualify low-income consumers for federal benefit programs.¹⁹⁹ Coordinated enrollment with other Federal and state agencies will generate efficiencies in the Lifeline program by increasing awareness in the program and making enrollment more convenient for eligible subscribers, while also protecting the Fund against waste, fraud, and abuse by helping to ensure that only eligible consumers are enrolled.²⁰⁰

¹⁹⁷ We note that a similar transition will be necessary if we adopted coordinated enrollment with federal or state agencies and we seek comment on such a transition as well. *See infra* paras. 92-103.

¹⁹⁸ *See infra* paras. 224-27.

¹⁹⁹ *See Lifeline Reform Order*, 27 FCC Rcd at 6732, para. 176. 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. *See* National Broadband Plan at 173. In the 2010 Joint Board Recommended Decision, the Joint Board recommended that coordinated and automatic enrollment should be encouraged as a best practice, 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. *See 2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15604-606, paras. 18-22.

²⁰⁰ In this regard, "coordinated enrollment" permits, but does not compel, consumers to enroll in Lifeline at the same time they enroll in, for example, the Supplemental Nutrition Assistance Program (SNAP). *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Notice of Proposed Rulemaking, 26 FCC Rcd 2770, 2831, para 199 (2011) (2011 Lifeline NPRM). 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 Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8318, para. 25 (2004) (2004 Lifeline Order). Coordinated enrollment is distinguishable from "automatic" or "automated" enrollment, which enrolls consumers in Lifeline without the consumer submitting a Lifeline application or expressly authorizing the enrollment. *See 2011 Lifeline NPRM*, 26 FCC Rcd at 2831-32, para 200 ("Unlike automatic or automated

94. In order to qualify for support under the Lifeline program, the Commission's rules require low-income consumers to have a household income at or below 135 percent of the Federal Poverty Guidelines,²⁰¹ or receive benefits from at least one of a number of federal assistance programs.²⁰² Consumers qualifying for Lifeline under program-based criteria receive documentation from that program tying the eligibility and participation of both programs.²⁰³

95. For example, the Supplemental Nutritional Assistance Program (SNAP) is a qualifying program where coordinated enrollment may be particularly helpful. SNAP, formerly known as Food Stamps, provides financial assistance to eligible households for food through an electronic benefit transfer (EBT) card, which functions like a debit card.²⁰⁴ Of roughly 33 million households eligible for traditional Lifeline support through participation in a federal assistance program, approximately 42 percent, or about 14 million households, are eligible for Lifeline through SNAP.²⁰⁵ In verifying the eligibility of a consumer, Lifeline providers may accept program participation in SNAP (for example through a SNAP EBT card) as acceptable program eligibility documentation.²⁰⁶ Approximately 40 states use the EBT cards not only to deliver SNAP benefits, but also to coordinate the delivery of other eligible benefits.²⁰⁷

96. *Discussion.* Coordinated enrollment with other federal agencies and their state counterparts could streamline our efforts, produce savings for the Lifeline program and providers, increase checks and protections against fraud, and greatly reduce administrative burdens.²⁰⁸ For example,

enrollment, coordinated enrollment requires eligible consumers to affirmatively choose to enroll in the Lifeline program.”).

²⁰¹ See 47 C.F.R. § 54.409(a)(1). See also, *infra* para. 111.

²⁰² See 47 C.F.R. § 54.409(a)(2). The federal assistance programs include: Medicaid; SNAP; Supplemental Security Income (SSI); Federal Public Housing Assistance; Low-Income Home Energy Assistance Program (LIHEAP); National School Lunch Program's (NSLP) 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 (BIA) general assistance; Tribally-administered TANF (TTANF); Head Start (only those meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR). See 47 C.F.R. § 54.409(b); see also, *infra* n. 228.

²⁰³ 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); 7 C.F.R. §§ 274.1, 274.2 (setting out how state agencies may issue SNAP benefits to households using an EBT system).

²⁰⁴ Food allotments are deposited into beneficiaries' EBT accounts and consumers can then use the EBT card at any participating retailer the consumer chooses to pay for certain food items. See USDA, Supplemental Nutrition Assistance, Electronic Benefit Transfer, <http://www.fns.usda.gov/ebt/general-electronic-benefit-transfer-ebt-information> (last visited June 18, 2015).

²⁰⁵ See generally U.S. Census Bureau, Current Population Survey (CPS) 2014 Annual Social and Economic Supplement, <http://www.census.gov/cps/data/> (last visited June 18, 2015) (CPS 2014 March Supplement); see also, *infra* n. 233.

²⁰⁶ *Lifeline Reform Order*, 27 FCC Rcd at 6702, para. 101.

²⁰⁷ See, e.g., Remarks of FCC Commissioner Mignon Clyburn, Reforming Lifeline for the Broadband Era, American Enterprise Institute (Nov. 12, 2014), <https://www.fcc.gov/document/commissioner-clyburn-remarks-american-enterprise-institute> (last visited June 18, 2015).

²⁰⁸ The record supports encouraging coordinated enrollment as a mechanism to streamline the eligibility process. See, e.g., Letter from Rick Boucher, Honorary Co-Chairman, Internet Innovation Alliance, to Tom Wheeler, Chairman, FCC, WC Docket No. 11-42, at 1 (filed June 11, 2015) (*Internet Innovation Alliance Ex Parte*) (urging the Commission to utilize coordinated enrollment since it will “shift program eligibility verification away from

coordinated enrollment with other Federal and state benefit programs could: 1) educate consumers about the possibility of signing up for Lifeline while they sign up for other programs, 2) leverage existing infrastructure and technologies further minimizing waste, fraud, and abuse, while confirming eligibility, 3) provide more dignity to the program and better protect consumer privacy, because it would limit the number of entities to which consumers would disclose personal information, 4) allow consumers to simultaneously apply for Lifeline as they enroll in other programs, and 5) work, together with other benefit programs to transfer Lifeline benefits directly to consumers allowing consumers to redeem Lifeline benefits with the Lifeline provider of their choice.

97. We seek comment on how best to leverage the existing technologies, databases, and fraud protections that already exist in other federal benefit programs. For example, the SNAP program requires states to cross check any potential subscriber against the Social Security Master Death File, Social Security's Prisoner Verification System, and FNS's Electronic Disqualified Recipient System, prior to certifying individuals for the program, to ensure that no ineligible people receive benefits. If we coordinate with other federal benefit programs, Lifeline receives the benefit of having another agency already conducted these checks, which increases protection against fraud while incrementally more efficient than creating a separate process.

98. How can the Commission better coordinate and build upon the work already invested by state and federal agencies to confirm consumers are eligible for programs. We seek comment on the incremental costs of adding Lifeline to an existing eligibility database in lieu of setting up a separate national framework. Would such administrative burdens and costs outweigh the benefits of such a proposal? Or would the Lifeline fund actually incur a net savings because of the administrative efficiencies that may result from coordinated enrollment? What are the various administrative, technological, or other barriers to implementation related to such coordinated enrollment? Should states be compensated for eligibility determinations and coordinated enrollment? If so, should it be per subscriber or another metric? Should such costs be borne equally by all Lifeline providers or should it be borne by the Lifeline program? We seek comment on the timeframe to implement such a change and whether the Commission should first start with a handful of states that already have coordinated enrollment across benefits programs. If so, we seek comment on how to identify these states.

99. We seek comment on how the Commission may best facilitate coordinated enrollment with other Federal benefit programs such as the USDA and its state agency counterparts (collectively, "SNAP Administrators"). For example, should SNAP Administrators merely educate consumers about Lifeline? If so, should SNAP Administrators limit their role to providing relevant materials to their SNAP consumers and informing them that eligibility in SNAP qualifies such consumers for Lifeline, while also directing these consumers to the appropriate sources to apply for Lifeline? If the Commission establishes a national verifier, how may the Commission facilitate coordinated enrollment with SNAP Administrators? In this context, should SNAP administrators play a role in which they "pre-approve" consumers who are eligible for SNAP and then forward the Lifeline application to a national verifier to complete the application? What responsibility, if any, should SNAP Administrators have for checking the NLAD prior to providing the consumer's application to a national verifier?

100. Should the Commission pursue coordinated enrollment in a manner that authorizes SNAP administrators to allow consumers who qualify for SNAP to simultaneously sign up for Lifeline as well? Since SNAP Administrators can perform eligibility verifications, does it make sense for the Commission or USAC to conduct these same checks again for Lifeline? Should the Commission establish a procedure where the Commission and the SNAP Administrators work together on a single, unified application? As we discuss *infra*,²⁰⁹ we seek comment on whether the Commission should work with SNAP

companies that are not accountable to the American people, and instead allow states to verify eligibility for Lifeline at the same time they determine consumer eligibility for other federal low-income programs.").

²⁰⁹ See *infra*, para. 107.

Administrators, to place Lifeline benefits directly on SNAP EBT cards, thereby transferring the benefit directly to consumers. This approach, in turn, allows consumers themselves to apply the Lifeline benefit to the Lifeline provider of their choice.²¹⁰ How may the Commission best facilitate coordinated enrollment under this approach?

101. Are there any legal and practical limitations of having the state or federal benefit administrators serve as agents for the Commission with respect to Lifeline? Are there other ways to coordinate enrollment with other Federal or state agencies? How does having SNAP Administrators or other Federal or state benefit programs affect the need for a national verifier? How can we best coordinate with or rely upon SNAP Administrators when verifying eligibility and enrolling subscribers?

102. We also seek specific comment on how to encourage coordinated enrollment with other Federal assistance programs that qualify participants for support under the Lifeline program – such as Medicaid; SSI; Federal Public Housing Assistance; LIHEAP; NSLP free lunch program; and Temporary TANF.²¹¹ As noted below,²¹² the Lifeline program has the potential to provide essential connectivity to the Nation’s veterans. We seek comment on how we can coordinate our outreach and enrollment efforts to reach low-income veterans. For example, the Veterans Affairs Supportive Housing (VASH) program, a joint effort between the Department of Housing and Urban Development and the Department of Veterans Affairs, provides support to homeless veterans and their families to help them out of homelessness and into permanent housing.²¹³ The program provides housing assistance and clinical and supportive services to veterans. These services require communication between veterans, veteran families and caseworkers. We seek comment on how we can coordinate outreach efforts related to the Lifeline program with the VASH program or other federal efforts designed to assist vulnerable veterans.

103. We recognize that individual states play an important role in the administration of various Federal assistance programs and seek specific comment from these states about their experiences, best practices, and how to encourage coordinated enrollment with these Federal programs, state administrative agencies, and the Lifeline program. For example, we understand that administration of the SNAP EBT card is performed at the state level and we seek specific comment from states on issues such as eligibility verification, placing Lifeline benefits on the SNAP EBT card,²¹⁴ and any other administrative issues. Because many individual states have implemented coordinated enrollment with Federal assistance programs,²¹⁵ we solicit specific comments from these states. We encourage coordinated enrollment and recognize how it can increase the effectiveness of state eligibility databases. We seek comments from

²¹⁰ *Id.*

²¹¹ *See supra* n.202.

²¹² *See infra*, para. 115.

²¹³ *See, e.g.*, U.S. Department of Housing and Urban Development, HUD-VASH Vouchers, http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/vash (last visited June 18, 2015).

²¹⁴ *See infra* para. 115.

²¹⁵ We note that a number of states that have implemented coordinated enrollment with programs other than SNAP for qualifying participants for Lifeline. *See e.g., Lifeline Reform Order*, 27 FCC Rcd at 6732, para. 175. 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. 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. If the consumer affirmatively enrolls in Lifeline, the consumer selects an ETC from a list. 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. Nebraska has a similar coordinated enrollment process in which at least some consumers apply for Lifeline at the Nebraska social services office where those consumers apply for and receive other qualifying benefits. *Id.*

states operating state eligibility databases and specifically ask how the Commission may work best with such states. If the Commission moves to a third party verification model, should the Commission first attempt to transition with a handful of states already operating eligibility databases before attempting such a transition on a national scale?

3. **Transferring Lifeline Benefits Directly to the Consumer**

104. In this section, we seek comment on whether designated third-party entities can directly transfer Lifeline benefits to individual consumers. As discussed, having a third-party make eligibility determinations removes this burden from Lifeline providers and should result in substantial cost savings and efficiencies. We now seek comment on establishing processes for the national verifier or another federal agency to transfer Lifeline benefits directly to consumers via a portable benefit.

105. *Background.* The Commission has long considered assigning Lifeline benefits directly to the consumer.²¹⁶ Under this approach, consumers can take their benefit to the Lifeline providers of their choosing and can receive Lifeline support for whatever service best meets their needs.²¹⁷ In the *Lifeline Reform FNPRM*, the Commission sought to further develop the record on MetroPCS's proposal that the Commission implement a voucher-based Lifeline program in which Lifeline discounts would be provided directly to eligible low-income consumers.²¹⁸ Under this approach, MetroPCS emphasized that "[b]y allowing the payment to be made directly to the consumer, it would permit the consumer to decide how and on what telecommunications service to spend the payment."²¹⁹ The Commission, in the *Lifeline Reform Order*, also considered, but ultimately declined to adopt, AT&T's proposal to transfer Lifeline benefits directly to the consumer by assigning subscribers with a unique identifier or Personal Information Number (PIN) that could be "deactivated" once a consumer is no longer eligible for Lifeline.²²⁰ In

²¹⁶ See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 295-96, para. 409 (1996) (considering proposals to make "Lifeline benefits 'portable,' i.e., assignable to the provider of the subscriber's choice").

²¹⁷ See, e.g., *Internet Innovation Alliance Ex Parte* at 1 ("[S]trengthening the eligibility process and ultimately enable subsidy recipients to receive a 'Lifeline Benefit Card' where consumers could apply the funds to the provider of their choosing. These reforms would make program participation for all service providers more attractive, thereby broadening consumer choice and stimulating competition for the low-income consumer purchasing power.").

²¹⁸ *Lifeline Reform Order* 27 FCC Rcd at 6856-57, para. 504; see also Letter from Carl Northrop, Telecommunications Law Professionals, on behalf of MetroPCS, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42 *et al.*, (filed Dec. 27, 2012) (*MetroPCS Ex Parte*); see also, Internet Innovation Alliance, White Paper, Bringing the FCC's Lifeline Program into the 21st Century, at 4 (Nov. 6, 2014), <http://apps.fcc.gov/ecfs/document/view?id=60001077925> (urging the Commission to "[m]ake the Lifeline Program more consumer-focused by providing eligible consumers with a 'Lifeline Benefit Card' that can be used as a voucher to buy a range of communications services, including broadband, wireline, or voice service.").

²¹⁹ Letter from Carl W. Northrop, Counsel to MetroPCS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 4 (filed Dec. 27, 2011). We note that under MetroPCS's proposal, qualified applicants may obtain Lifeline program benefits from *all* telecommunications providers, not just those that are currently designated as ETCs. While the Commission did not adopt such a proposal, further comment was sought on whether "modifications to this proposal [should be considered]." *Lifeline Reform Order*, 27 FCC Rcd at 6856-57, para. 504.

²²⁰ Comments of AT&T, WC Docket No. 11-42, at 11-12 (filed Apr. 21, 2011) (AT&T 2011 Comments). Under AT&T's PIN proposal, a third-party administrator would be required to implement and administer the Lifeline benefits. *Id.* at 11. The database administrator would provide a block of personal identification numbers (PINs) to the entity that each state has designated to manage Lifeline eligibility who, in turn, determines whether a particular customer is eligible for Lifeline support. Once the state makes the eligibility determination, it assigns a distinct PIN to that customer, updating the database accordingly. Under AT&T's proposal "Lifeline providers would access the database to determine whether a consumer is eligible for Lifeline, and (if so) to identify itself as that consumer's Lifeline Provider, thereby preventing the problem of duplicate support that plagues the existing program." *Id.* at 11-12. While we declined to adopt AT&T's PIN proposal in 2012, we again seek comment on a similar proposal in

declining to adopt AT&T's proposal, the Commission reasoned that "AT&T's proposal assumes that a third-party at the state level (e.g., state PUC) would issue and manage PIN numbers 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."²²¹

106. *Discussion.* Consistent with our goal to reduce waste, fraud, and abuse, we seek comment on having third parties directly assigns Lifeline benefits to individual consumers through a physical media (e.g., like a debit card) or a unique code (e.g., PIN). Should the Commission require a national verifier, or work with other interested Federal and state agencies, to transfer Lifeline benefits directly to the consumer in the form of a portable benefit?²²² Are there other entities that can serve this role or fulfill this task? What are the various administrative, technological, funding, or other barriers to implementation related to providing the portable benefit to the consumer? For example, how can a national verifier and other Federal and state agencies ensure that benefits are transferred to the consumer in a timely fashion following the submission of a Lifeline application? How can Lifeline providers best monitor continued eligibility of consumers once they are selected? How would a portable benefit work with the recertification requirement and permit a consumer to transfer the benefit from one Lifeline provider to another?

107. We also seek comment on the appropriate mechanism that should be used to transfer the Lifeline benefit directly from a third-party to the consumer. For example, what are the costs and benefits of placing Lifeline benefits on a physical card? We note that in some states, SNAP as well as other benefits are encoded on the SNAP EBT card, providing the consumer with a single card for several social service needs.²²³ Should the Commission work with SNAP administrators to place Lifeline benefits directly on a SNAP EBT card? If so, how would such a process be implemented? What costs have SNAP administrators or other agencies incurred in encoding non-SNAP benefits on the card and would such costs compare with other approaches we seek comment on today such as the National Verifier? As we discuss above, we seek comment on how to encourage coordinated enrollment with other Federal and state agencies that administer programs that also qualify participants for Lifeline.²²⁴ Because many individual states have implemented coordinated enrollment with SNAP benefits and other Federal assistance programs,²²⁵ we solicit specific comments from these states regarding their experiences and any best practices which they may have established.

108. We seek comment on approaches other than a physical card but using alternative approaches such as an online portal or application on a user's device to submit payment. What is the most appropriate way to use an EBT-type card for a communications service?²²⁶ What are the costs and

light of new marketplace realities and the Commission's stated goal in this item of moving towards third party eligibility determination.

²²¹ *Lifeline Reform Order*, 27 FCC Rcd at 6738, para. 192, n.497.

²²² See The Leadership Conference June 10, 2015 Letter at 2. As discussed in more detail, *infra*. Para. 111, out of the roughly 42 million eligible households, approximately 80 percent of those households (approximately 33 million households) were eligible to participate in the Lifeline program based solely on the federal assistance programs.

²²³ See e.g., National Conference of State Legislatures, Restrictions on Use of Public Assistance Electronic Benefit (EBT) Cards (May 8, 2015), <http://www.ncsl.org/research/human-services/ebt-electronic-benefit-transfer-card-restrictions-for-public-assistance.aspx> (last visited June 18, 2015) ("At least 37 states issue Temporary Assistance to Needy Families (TANF) cash benefits through electronic benefit transfer (EBT) cards.").

²²⁴ See *supra*, paras. 92-103.

²²⁵ See *supra*, para. 103. n. 215.

²²⁶ For example, we note that SNAP is piloting the use of EBT cards through online transactions. See Letter of Andrea Gold, Director, Retailer Policy and Management Division, Food And Nutrition Service, to SNAP Regional Directors, at 4 (Sept. 14, 2014) ("Section 4011 of the Agricultural Act of 2014 mandates demonstration projects for online purchasing. These pilots involve acceptance of SNAP EBT cards as payment at the time the online purchase

benefits to providers of moving to an EBT-type card? Can USAC pay Lifeline providers each month for EBT card is in use? How would USAC be informed that a card has been associated with a particular provider entitled to the benefit? What protections would need to be in place and how would USAC be notified when a consumer switches providers? Could the EBT card automatically notify USAC of a provider change?

109. If a portable benefit is offered to consumers through a national verifier or state or Federal agency, how would such a benefit be provided? How should secure physical cards be issued to the consumer? How may the Commission best facilitate coordination between third parties determining eligibility and Lifeline providers during the transition? What protections should be put in place to prevent fraud or abuse by, for example, automatically deactivating the card if it is not used for a certain period of time, if the consumer is no longer eligible, or if the consumer reports that the card has been lost or stolen? If the benefit is placed on a federal or state benefit card, can the FCC put in place such protections or must the FCC work within the structures and rules already established by the other relevant agencies? Would the customer need to “touch” the Lifeline provider on a monthly basis to reapply the discount?

110. As an alternative, or in addition to, the possibility of placing Lifeline benefits on a physical card, should consumers’ Lifeline benefits be distributed by a national verifier or state or federal agency through a unique identifier or PIN associated with individual consumers?²²⁷ We seek comment on the pros and cons of such an approach. A pin-based approach may be preferable to a physical card in those cases where the consumer signs up for Lifeline over the phone or online and cannot “swipe” the card with the Lifeline provider.

4. Streamline Eligibility for Lifeline Support

111. *Background.* Currently, in order to qualify for support under the Lifeline program, the Commission’s rules require low-income consumers to have a household income at or below 135 percent of the Federal Poverty Guidelines²²⁸ or receive benefits from at least one of a number of federal assistance programs.²²⁹ As of March 2014, roughly 42 million households were eligible for support under the Lifeline program with nearly 80 percent of those households (approximately 33 million) eligible based solely on participation in at least one of the federal assistance programs.²³⁰ In addition to income

is made. FNS is developing a work plan and expects to start piloting with several retailers in different States by April 2015.”).

²²⁷ 2011 AT&T Comments at 11-15.

²²⁸ See 47 C.F.R. § 54.409(a)(1). Based on the 2015 Federal Poverty Guidelines for the 48 contiguous states and Washington, DC, annual income of 135 percent of the guidelines is \$15,890 for a one-person household or family; \$21,506 for a two-person household or family; \$27,122 for a three-person household or family; and \$32,738 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 \$55,202. See Annual Update of the U.S. Department of Health and Human Services Poverty Guidelines, 80 Fed. Reg. 3236-37 (Jan. 22, 2015); USAC, 2015 Federal Poverty Guidelines, http://www.usac.org/res/documents/li/pdf/handouts/Income_Requirements.pdf (last visited June 18, 2015).

²²⁹ See 47 C.F.R. § 54.409(a)(2). The federal assistance programs include: 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 (NSLP) 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 (BIA) general assistance; Tribally-administered TANF (TTANF); Head Start (only those meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR). See 47 C.F.R. § 54.409(b).

²³⁰ See generally CPS 2014 March Supplement. The average household income for those households receiving benefits under one of the federal assistance programs is approximately \$44,000. See generally CPS 2014 March Supplement. Currently, the average income of households eligible for Lifeline support is roughly \$38,000. See generally CPS 2014 March Supplement.

qualification and the federal assistance programs, consumers may also gain entry to the Lifeline program if they are able to meet additional eligibility criteria established by a state.²³¹

112. *Discussion.* We seek comment on the prospect of modifying the way low-income consumers qualify for support under the Lifeline program to target the Lifeline subsidy to those low-income consumers most in need of the support.²³² In exploring these possible changes, we also seek to reduce the administrative burden on Lifeline providers to verify a low-income consumer's eligibility for Lifeline-supported service and any burden to the Fund as a whole,²³³ and reduce the likelihood of waste, fraud, and abuse. We seek comment on how to streamline the program while promoting our goals of universal service and ensure that all consumers, including our most vulnerable, are connected.

113. We first seek comment on which federal assistance programs we should continue to use to qualify low-income consumers for support under the Lifeline program.²³⁴ We specifically seek comment on any potential drawbacks in limiting the qualification criteria for Lifeline support exclusively to households receiving benefits under a specific federal assistance program(s). For example, if we no longer permit consumers to qualify through Tribal-specific programs, what would be the impact to low-income consumers on Tribal lands? In particular, as the Commission noted in the *Lifeline Reform Order*, because both SNAP and the Food Distribution Program on Indian Reservations (FDPIR) have income-based eligibility criteria, but households may not participate in both programs, some residents of Tribal lands did not qualify for Lifeline support simply because they chose to participate in FDPIR rather than SNAP.²³⁵ When adopting FDPIR as an additional assistance program that would qualify eligible residents of Tribal lands for Lifeline and Link Up, the Commission noted further that members of more than 200 Tribes currently receive benefits under FDPIR, and that elderly Tribal residents often opt for FDPIR benefits.²³⁶ What would become of these low-income consumers' access to affordable voice service

²³¹ See 47 C.F.R. § 54.409(a)(3).

²³² Compare John Horrigan, *Broadband Adoption and Use in America* (Feb. 2010), https://apps.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf (last visited June 18, 2015) (finding that households with incomes less than \$20,000 a year have a 40 percent home broadband adoption rate) with Thom File and Camille Ryan, *Computer and Internet Use in the United States: 2013*, American Community Survey Reports, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, at 3-4 (November 2014), <http://www.census.gov/history/pdf/2013computeruse.pdf> (last visited June 18, 2015) (finding that households with incomes less than \$25,000 a year have a 48 percent home broadband adoption rate) and Kathryn Zickuhr and Aaron Smith, Pew Research Center, *Home Broadband 2013* (Aug. 16, 2013), <http://www.pewInternet.org/2013/08/26/home-broadband-2013/> (last visited June 18, 2015) (finding that household with incomes less than \$30,000 a year have a 54 percent home adoption rate).

²³³ See *Lifeline Reform Order*, 27 FCC Rcd at 6675, para. 37 (adopting as the third goal of the Lifeline program minimizing the contribution burden on consumers and businesses).

²³⁴ For example, if we limit Lifeline eligibility to those households receiving benefits under the U.S. Department of Agriculture's SNAP program only, of the roughly 33 million households eligible for traditional Lifeline support through participation in one of the federal assistance programs, approximately 42 percent, or about 14 million households are eligible for Lifeline support through SNAP only. See generally CPS 2014 March Supplement. The annual income of those households eligible for Lifeline support through SNAP only is, on average, approximately \$23,000, which is significantly lower than the average annual household income of approximately \$44,000 for those households eligible for Lifeline support under one of the federal assistance programs. See generally CPS 2014 March Supplement. Alternatively, if we limit eligibility under the Lifeline program to include those households receiving benefits under NSLP as well as SNAP, because some families receive benefits under both NSLP and SNAP, there are currently about 19 million households eligible for Lifeline support under either NSLP and/or SNAP as compared to approximately 14 million households eligible for Lifeline support under SNAP only. See generally CPS 2014 March Supplement. The annual income of those households eligible for Lifeline support under either NSLP and/or SNAP is, on average, approximately \$30,000. See generally CPS 2014 March Supplement.

²³⁵ See *Lifeline Reform Order*, 27 FCC Rcd at 6724, para. 154.

²³⁶ *Id.*

under a change to the eligibility rules? What would be the impact on Medicaid recipients if households could no longer qualify for Lifeline support through Medicaid?²³⁷

114. We also seek comment on whether we should continue to allow low-income consumers to qualify for Lifeline support based on household income and/or eligibility criteria established by a state.²³⁸ Under the current program, less than four percent of Lifeline subscribers subscribe to the service by relying on income level.²³⁹ Given the relatively low number of consumers using income as their qualifying method, we seek comment on any changes we should consider to ensure that the Lifeline program is targeted at the neediest.

115. Further, we seek comment on whether low-income consumers should be permitted to qualify for Lifeline support through programs which do not currently qualify consumers for Lifeline benefits.²⁴⁰ For example, the Lifeline program has the potential to positively impact the lives of the veterans who have served this country. In the 2012 *Lifeline NPRM*, the Commission sought comment on whether to include homeless veterans programs as qualifying eligibility criteria for support under the Lifeline program.²⁴¹ We now seek comment on whether federal programs targeted at low-income veterans should be considered to qualify those individuals for Lifeline support. Specifically, we seek comment on whether veterans and their families eligible for the Veterans Pension benefit should qualify those individuals for Lifeline support.²⁴² To qualify for this program, veterans must have at least 90 days of active duty, including one day during a wartime period, and meet other means-tested criteria such as low-income limits and net worth limitations established by Congress.²⁴³ Should participation in the Veterans Pension program qualify an individual for Lifeline benefits? Given the income and net wealth limitations in the Veterans Pension program, we believe this program is sufficiently targeted to individuals in need to seek comment on whether it should serve as a qualifying program for Lifeline. We also seek comment on ways to increase the awareness of the Lifeline program to low-income veterans. Are veterans aware of and utilizing the Lifeline program? How can the Lifeline program be targeted to better reach low-income veterans? We further seek comment on how low-income consumers, including low-income veterans, would certify and recertify their eligibility under any proposed alternatives.

116. Additionally, we seek comment on the extent to which modifying eligibility criteria under the Lifeline program reduces and streamlines Lifeline providers' recordkeeping processes. We anticipate that streamlining the eligibility criteria will reduce the costs and time incurred by Lifeline providers and state administrators and any national verifier.²⁴⁴ We seek comment on these anticipated efficiencies and any other potential improvements associated with restructuring the eligibility criteria.

²³⁷ Approximately 26 million households receiving benefits under Medicaid qualify for Lifeline support. *See generally* CPS 2014 March Supplement.

²³⁸ *See* 47 C.F.R. § 54.409(a)(3).

²³⁹ *See generally* CPS 2014 March Supplement. We seek comment on whether the current means of proving eligibility through income is too burdensome and whether it should be streamlined.

²⁴⁰ Commenters should keep in mind our proposed objectives – to ensure that Lifeline subsidies are provided to those low-income consumers most in need of Lifeline support and to minimize the administrative burden on all program participants.

²⁴¹ *See Lifeline Reform Order*, 27 FCC Rcd at 6850-51, paras. 486-87.

²⁴² *See* U.S. Department of Veterans Affairs, Veterans Benefits Administration, Pension, <http://www.benefits.va.gov/PENSION/> (last visited June 18, 2015).

²⁴³ *See id.* (Eligibility Requirements). The other means-tested criteria to qualify for pension benefits include that a veteran must be: (1) age 65 or older with limited or no income, or; (2) totally and permanently disabled, or; (3) a patient in a nursing home receiving skilled nursing care, or; (4) receiving Social Security Disability Insurance, or (5) receiving Supplemental Security Income. *Id.*

²⁴⁴ *See supra* paras. 64-91.

117. In potentially limiting the number of eligible federal assistance programs under the Lifeline program, some current Lifeline consumers will no longer qualify for Lifeline benefits. We therefore recognize the need for a transition period to allow those low-income consumers to transition to non-supported service with minimal disruption. We thus seek comment on how such a transition should be structured. For example, should we transition subscribers off of Lifeline support as part of the annual recertification process following the effective date of this Second FNRPM and Report and Order?²⁴⁵

5. Standards for Eligibility Documentation

118. In this section, we propose requiring Lifeline providers to obtain additional information in certain instances to verify that the eligibility documentation being presented by the consumer is valid, including obtaining eligibility documentation that includes identification information or a photograph. We also seek comment on ways to further strengthen the qualification and identification verification processes to ensure that only qualifying consumers receive Lifeline benefits.

119. In the *Lifeline Reform Order*, the Commission adopted measures to verify a low-income consumer's eligibility for Lifeline supported services²⁴⁶ and required Lifeline providers to confirm an applicant's eligibility prior to enrolling the applicant in the Lifeline Program.²⁴⁷ However, program eligibility documentation may not contain sufficient information to tie the documentation to the identity of the prospective subscriber and often does not include a photograph.

120. We seek comment on requiring Lifeline providers to obtain additional information to verify that the eligibility documentation being presented by the consumer is valid and has not expired. Should the consumer be required to provide underlying eligibility documentation that includes subscriber identification information or a photograph? Should we only impose such a requirement in certain circumstances? Are there other more effective means for Lifeline providers to evaluate program eligibility documentation? We believe that requiring prospective subscribers to produce a government issued photo ID would improve the identification verification process and more easily tie the identity of the prospective subscriber to the proffered eligibility documentation. Additionally, in its recent report, GAO noted that many eligible consumers fail to complete the application process because they have difficulty providing information and do not have access to scanners and photocopiers.²⁴⁸ Therefore, we seek comment on how to address those factors in requiring consumers to provide additional information.

C. Increasing Competition For Lifeline Consumers

121. In this section, we seek comment on ways to increase competition and innovation in the Lifeline marketplace. We believe the best way to do this is to increase the number of service providers offering Lifeline services.²⁴⁹ We therefore seek comment on the best means to facilitate broader participation in the Lifeline program and encourage competition with most robust service offerings in the Lifeline market. We make these proposals consistent with our goal of avoiding waste, fraud, and abuse.

²⁴⁵ See 47 C.F.R. § 54.410(f) (requiring all eligible ETCs to 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).

²⁴⁶ *Lifeline Reform Order*, 27 FCC Rcd at 6697- 6719, paras. 91-133.

²⁴⁷ The Commission revised section 54.410 of its rules to require all ETCs, prior to enrolling a new subscriber, to access state or federal social services eligibility databases, where to available to determine a consumer's program-based eligibility. See *Lifeline Reform Order*, 27 FCC Rcd 6701, para. 98; 47 C.F.R. §54.417.

²⁴⁸ See GAO March 2015 Report at 28.

²⁴⁹ See The Leadership Conference June 10, 2015 Letter at 2.

1. Streamlining the ETC Designation Process

122. We seek comment on streamlining the ETC designation process at the state and federal levels to increase market entry into the Lifeline space. First, we seek comment on the Commission's authority under section 214(e) to streamline the ETC designation process at the Commission.²⁵⁰ In the *ETC Designation Order*, the Commission adopted requirements consistent with section 214 of the Act, which all ETC applicants must meet to be designated an ETC by the Commission.²⁵¹ In line with that decision, we believe we have substantial flexibility to design a more streamlined ETC designation process for federal default states. We seek comment on this conclusion.

123. Given this broad authority, we seek comment on ways in which to streamline the Commission's ETC designation process to best promote the universal service goals found in section 254(b).²⁵² We believe many entities, including many cable companies and wireless providers, are unwilling to become ETCs and some have in fact relinquished their designations.²⁵³ Are there certain requirements that are overly burdensome? Can we simplify or eliminate certain designation requirements while protecting consumers and the Fund? Will establishing a national verifier lessen the need to streamline the ETC designation process? We specifically seek input from the states on examples of requirements that could be simplified or eliminated in order to make it less difficult for companies to become ETCs under the Lifeline program and suggestions for how the Commission can best refine the ETC designation process.

124. Second, we seek comment on coordinating and streamlining federal and state ETC designation processes.²⁵⁴ What are the benefits and drawbacks to a uniform, streamlined approach at both the state and federal levels? How can we best encourage state commissions to adopt a path similar to a federal streamlined approach? We strongly value input from the states on the pros and cons of such an approach and what measures could be adopted to encourage state commissions to adopt a similar streamlined approach.

125. *Proposals for ETC Relief from Lifeline Obligations.* In this section, we seek comment on

²⁵⁰ 47 U.S.C. § 214(e). In the limited cases where a common carrier is not subject to the jurisdiction of a state commission, Section 214(e)(6) of the Act authorizes the Commission, upon request, to designate ETCs. 47 U.S.C. § 214(e)(6). Under Section 214(e)(6), the Commission may designate only common carriers "providing telephone exchange service and exchange access" as ETCs. *Id.* Because of the complex interrelationships among Tribal, state, and federal authority, providers may seek designation directly from the Commission to provide service in Tribal areas without an affirmative statement from the relevant state that it lacks jurisdiction. *Federal-State Board on Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12265-69, paras. 115-27 (2000).

²⁵¹ 47 U.S.C. § 214(e)(6). section 214(e)(6) of the Act directs the Commission to designate carriers when those carriers are not subject to the jurisdiction of a state commission.

²⁵² See 47 U.S.C. § 254(b).

²⁵³ *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, 30 FCC Rcd 297 (Wireline Comp. Bur. 2015); *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, 29 FCC Rcd 14368 (Wireline Comp. Bur. 2014); *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, 29 FCC Rcd 14372 (Wireline Comp. Bur. 2014).

²⁵⁴ Section 214(e)(2) assigns primary responsibility for designating ETCs to the states. 47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*) (the Commission declined to mandate that state commissions adopt the Commission's ETC designation requirements; rather, the Commission encouraged states that exercise jurisdiction over ETC designations to adopt the same requirements as the Commission when deciding whether a common carrier should be designated as an ETC); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999) (nothing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements in addition to those described in section 214(e)(1)).

proposals in the record that the Commission permit ETCs to opt-out of providing Lifeline supported service in certain circumstances.²⁵⁵ Pursuant to section 54.405 of the Commission's rules, carriers designated as ETCs are required to offer Lifeline supported service.²⁵⁶ AT&T, among others, notes in comments in response to the *Further Notice* that competition in the Lifeline program has resulted in multiple areas where several ETCs provision Lifeline supported service to the same potential customer base.²⁵⁷ We seek additional comment on whether the Commission should relieve ETCs of the obligation to provide Lifeline supported service, pursuant to their ETC designation,²⁵⁸ in specific areas where there is a sufficient number of Lifeline providers. In considering this approach, we seek comment on what constitutes a sufficient number of providers and any other appropriate conditions to protect the public interest.²⁵⁹ We also seek comment on how to define an appropriate geographic area. We ask that any party supporting such an opt-out mechanism comment on the process, transition, and other issues associated with permitting ETCs to opt-out of providing Lifeline supported service in areas served by a sufficient number of ETCs offering Lifeline support.

126. We note that these proposals are similar to those currently under consideration in two other Commission proceedings—the USTelecom forbearance proceeding, and the Connect America Fund proceeding.²⁶⁰ In both of those proceedings, AT&T and others have argued that the Commission should separate or “de-link” carriers’ Lifeline obligations from their ETC status.²⁶¹ To facilitate our consideration of relevant arguments previously raised in the Connect America Fund and USTelecom forbearance proceedings, we hereby incorporate by reference the pleadings in those proceedings.

127. *Other Measures to Increase Competition.* We seek comment on other ways to ease market entry. We recognize that there are many other requirements for new companies wishing to offer Lifeline service.²⁶² For example, non-facilities-based wireless providers must file and receive approval of a compliance plan prior to entering the market.²⁶³ We appreciate that these requirements may pose challenges for companies. We thus seek comment on other measures that can be taken to enhance competition and innovation in the market generally. Are there specific state or federal regulatory barriers

²⁵⁵ See, e.g., Comments of AT&T, WC Docket No. 11-42 *et al.*, CC Docket No. 96-45, at 19 (filed Apr. 2, 2012) (AT&T 2012 Comments).

²⁵⁶ 47 C.F.R. § 54.405.

²⁵⁷ See AT&T 2012 Comments at 19.

²⁵⁸ 47 C.F.R. § 54.405. See *Lifeline Reform Order*, 29 FCC Rcd at 6856-57, paras. 502-504.

²⁵⁹ We note that we seek to maintain a technology-neutral approach when defining competition. See *Lifeline Reform Order*, 29 FCC Rcd at 6765, para. 250.

²⁶⁰ See, e.g., Petition for Forbearance of the United States Telecom Association, WC Docket 14-192, at 66–67 (filed Oct. 6, 2014) (USTelecom Forbearance Petition) (arguing that “there is no reason to continue compelling price cap carriers to offer Lifeline service . . . in areas where they do not receive [Connect America Fund] support”); Comments of AT&T, WC Docket No. 10-90 *et al.*, at 29-33 (filed Aug. 8, 2014) (AT&T 2014 Comments) (presenting arguments in support of separating Lifeline obligations from ETC status); Comments of the United States Telecom Association, WC Docket No. 10-90 *et al.*, at 24 (filed Aug. 8, 2014) (USTelecom 2014 Comments) (“Lifeline ETC status should be de-linked from status regarding other programs such as CAF Phase II, frozen support, or the Mobility Fund.”).

²⁶¹ See *supra* n.260. In the *December 2014 Connect America Order*, we did not act to alter carriers’ existing Lifeline obligations, deferring a decision on commenters’ arguments regarding the proposal to entirely separate carriers’ Lifeline obligations from their ETC status—including with respect to three specific types of census blocks in which the order granted partial forbearance from carriers’ ETC obligations more generally. See *December 2014 Connect America Order*, 29 FCC Rcd at 15671, para. 70, n.158.

²⁶² See 47 C.F.R. §§ 54.400 *et seq.*

²⁶³ See *Lifeline Reform Order*, 29 FCC Rcd at 6818, para. 379.

that make it difficult for companies to participate and remain in the Lifeline program? Are there economic barriers? We seek comment generally on such barriers and recommendations to address them.

128. **State Lifeline Support.** We also seek specific comment on ways that we can increase competition and the quality of service by encouraging states to provide an additional subsidy for Lifeline service. Combined state and federal contributions to Lifeline have long been a critical part of the Lifeline program.²⁶⁴ We note that in states that provide a significant separate subsidy, service is more affordable for a given level of service and ETCs generally offer a higher level of service.²⁶⁵ Are there other ways that we can incent states to provide an increased level of support? Are there ways that we can reduce state Lifeline costs so that the savings can be used for an increased state subsidy? Does the establishment of minimum service levels encourage states to provide a separate subsidy because they understand that their subsidy will go towards robust, quality service? We specifically seek feedback from the states on ways in which we can increase competition and the quality of service among service providers providing service to low-income consumers under the Lifeline program.

129. *Innovative Services for Low-Income Consumers.* We also seek comment on how best to utilize unlicensed bands,²⁶⁶ such as television white space²⁶⁷ or licensed bands, such as EBS,²⁶⁸ for the purpose of providing broadband service to low-income consumers. Unlicensed spectrum allows providers to deliver a variety of unlicensed offerings, such as Wi-Fi hotspots, without having to comply with numerous regulations that apply to licensed services.²⁶⁹ While there is unlicensed spectrum at other frequencies, TV white spaces are uniquely important in that they are lower in frequency than other

²⁶⁴ For example, California provides up to an additional \$12.65 in subsidy per line, for a total of \$21.90, to ETCs serving qualifying low-income consumers. See California Lifeline Program, Discounts Comparison, https://www.californialifeline.com/en/discounts_comparison (last visited June 18, 2015). Kansas's additional discount results in a total discount of up to \$17.02 per line. See Kansas Corporation Commission, Kansas Lifeline Program, <http://www.kcc.state.ks.us/pi/lifeline.htm> (last visited June 18, 2015).

²⁶⁵ For example, several providers offer unlimited texting and talk plans in California. See, e.g., Assurance Wireless, California Program Description, https://www.assurancewireless.com/public/MorePrograms_CA.aspx, (last visited June 18, 2015); Budget Mobile, Budget Mobile Lifeline, <http://www.budgetmobile.com/california/>, (last visited June 18, 2015).

²⁶⁶ See Federal Communication Commission, Wireless Telecommunications Bureau, Accessing Spectrum, <https://www.fcc.gov/encyclopedia/accessing-spectrum> (last visited June 18, 2015).

²⁶⁷ TV white spaces are frequencies allocated to broadcasting services but that are left unused in particular areas of the country. Lyndsey Gilpin, White Space, The Next Internet Disruption: 10 Things to Know (Mar. 12, 2014), <http://www.techrepublic.com/article/white-space-the-next-internet-disruption-10-things-to-know/>.

²⁶⁸ See *supra* n.111.

²⁶⁹ For example, the Gigabit Libraries Network has helped communities across the country (and, most recently, internationally) deploy TV white space networks supporting remote public library Wi-Fi access points in parks, community centers, shelters, kiosks, underserved library branches, and other publicly accessible places. See Gigabit Libraries Network, <http://www.gigilibraries.net/> (last visited June 18, 2015); Lyndsey Gilpin, White Space Broadband: 10 Communities Doing Big Projects (Mar. 19, 2014), <http://www.techrepublic.com/article/white-space-broadband-10-communities-doing-big-projects/> (last visited June 18, 2015) (Gilpin White Space Article). Additionally, there are a number of communities currently experimenting with television white space broadband for innovative uses within the United States and internationally, especially for those consumers living in rural areas where there is free, available, unlicensed television white space spectrum to utilize. See Gilpin White Space Article (for example, Wilmington, North Carolina is using the network to connect to two local parks and several public gardens, monitor water levels, water quality, etc.; Pascagoula, Mississippi wanted to have the White Space technology available as a disaster recovery resource; Limpopo and Cape Town, South Africa implemented a White Space project to connect schools in rural areas using solar powered base stations to power the system.). See also Gilpin White Space Article.

unlicensed bands, which enables signals to better penetrate walls and trees and may enable a better consumer experience.²⁷⁰

130. Recognizing the value of both unlicensed and licensed spectrum as a community and educational asset that can be utilized to improve broadband access and provide for innovative uses among low-income Americans, we seek comment on how we can augment the Lifeline program through the use of wireless spectrum to extend the Lifeline program's reach to as many low-income consumers as possible. What, if any, additional costs may providers incur as part of employing unlicensed technology for the benefit of low-income consumers? How can we best support the use of these more unconventional ways of providing broadband access to the low-income community?

131. We also seek comment on other innovative wired or wireless technologies that may be similarly or better suited to provide low-income consumers with affordable broadband access than unlicensed or licensed spectrum or other, more traditional means of providing broadband. In proposing an alternative solution, commenters should describe how the alternative solution will complement the other programmatic changes and approaches we discuss within this item.

2. Creating a New Lifeline Approval Process

132. We also seek comment on alternative means by which we can increase competition in this space. The Commission's rules current require that a provider become an ETC prior to receiving Lifeline universal service support.²⁷¹ As discussed above, evidence in the record indicates that the ETC designation may be an impediment to broader participation in the Lifeline program.²⁷² **Would creating a process to participate in Lifeline that is entirely separate from the ETC designation process required to receive high cost universal service support encourage broader participation by providers?** We seek comment on a new process applying to all entities that provide Lifeline service and ask how to include sufficient oversight to address concerns about waste, fraud, and abuse. We seek comment on the policy benefits of such an approach, what responsibility the relevant Federal and state entities would have in such a scheme, and our legal authority to do so.

133. *Background.* In 1985, the Commission created the Lifeline program to reduce qualifying consumers' monthly charges, and created Link Up to reduce the amount eligible consumers would pay for initial connection charges. The Commission did so because it found that "[a]ccess to telephone service has become crucial, to full participation in our society and economy, which are increasingly depending upon the rapid exchange of information. In many cases, particularly for the elderly, poor, and disabled, the telephone is truly a lifeline to the outside world. Our responsibilities under the Communications Act require us to take steps to prevent degradation of universal service and the division of our society into information 'haves' and 'have nots.'"²⁷³ The Commission's legal authority for creating and amending the

²⁷⁰ Wireless Innovation Alliance, *Background on Unlicensed Spectrum*, <http://www.wirelessinnovationalliance.org/index.cfm?objectid=70F2AA30-485F-11E1-B23A000C296BA163> (last visited June 18, 2015).

²⁷¹ 47 C.F.R. § 54.201(a)(1).

²⁷² See, e.g., Letter from Christianna L. Barnhart, Counsel to Charter Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., (filed May 28, 2015) ("Charter . . . discussed potential barriers that could preclude broadband providers from participating in a Lifeline program for broadband, such as the burdensome ETC process."); Letter from Jennifer K. McKee, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., (filed May 20, 2015) ("We . . . discussed potential barriers, including an overly burdensome ETC designation process, that could preclude broadband providers from participating in a Lifeline universal service program for broadband.").

²⁷³ *MTS and WATS Market Structure*, CC Docket 78-72; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No 80-286, 50 Fed. Reg. 939 at 941, para 9 (1985).

Lifeline program was pursuant to sections 1, 4(i), 201, and 205 of the Communications Act.²⁷⁴

134. In the 1996 Act, Congress made explicit the universal service objective of “quality services” at “affordable rates”²⁷⁵ and that “low-income consumers ... should have access to ... advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas.”²⁷⁶ In so doing, Congress embraced the Commission’s Lifeline program and made clear that section 254 did not affect the pre-existing Lifeline program, stating “[n]othing in this section [254] shall affect the collection, distribution, or administration of the Lifeline Assistance Program.”²⁷⁷ The Commission has interpreted section 254(j) to give the Commission the authority and flexibility to retain or modify the Lifeline program even if the Lifeline program has “inconsistenc[ies] with other portions of the 1996 Act.”²⁷⁸ Moreover, the Commission found that, “by its own terms, section 254(j) applies only to changes made [to Lifeline] pursuant to section 254 itself. Our authority to restrict, expand, or otherwise modify the Lifeline program through provisions other than section 254 has been well established over the past decade.”²⁷⁹

135. Importantly, in 1997, when the Commission implemented the Telecommunications Act of 1996 and revised the Lifeline program, it found that it had the authority to provide Lifeline support to include carriers other than ETCs.²⁸⁰ At that time, however, the Commission decided that for administrative convenience and efficiency, it would only provide Lifeline support to ETCs.²⁸¹ The Commission did observe that it would reassess this decision if it appeared Lifeline was not being made available to low-income consumers nationwide.²⁸²

136. *Discussion.* Some commenters have argued that nothing in the statute requires ETC designation to receive Lifeline support and urged the Commission to revise its rules accordingly.²⁸³ Section 254(e) states that entities must be ETCs to receive “specific Federal universal service support” but does not specifically tie this requirement to Lifeline, even though Congress did explicitly mention the Lifeline program in other parts of section 254.²⁸⁴ Does the legislative history suggest that the Congress did not intend for the ETC to be a precondition to receive Lifeline support?²⁸⁵ The history of this

²⁷⁴ See *id.* at 78-72, 80-286.

²⁷⁵ 47 U.S.C. § 254(b)(1).

²⁷⁶ 47 U.S.C. § 254(b)(3).

²⁷⁷ 47 U.S.C. § 254(j).

²⁷⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 8954, para. 332

²⁷⁹ See *id.* at 8955, para. 337.

²⁸⁰ See *Universal Service First Report and Order*, 12 FCC Rcd at 8971, para. 369.

²⁸¹ See *id.* at 8971-72, paras. 369-70 (stating that “[w]e believe that we have the authority under sections 1, 4(i), 201, 205, and 254 to extend Lifeline to include carriers other than eligible telecommunications carriers,” but declining to “extend Lifeline to include carriers other than eligible telecommunications carriers,” given the advantages of “a single support mechanism with a single administrator following similar rules”).

²⁸² See *id.* at 8972, para. 370.

²⁸³ See, e.g., Reply Comments of AT&T at 12-13 (filed May 1, 2012). See also Letter from Jon Banks, USTelecom, to Marlene Dortch, Secretary, FCC, at 19, WC Docket Nos. 10-90, 05-337 (filed Mar. 14, 2014); AT&T Comments at 19-22 (filed April 2, 2012); AT&T Comments 6-9 (filed April 21, 2011).

²⁸⁴ See 47 U.S.C. § 254(e).

²⁸⁵ In particular, does the legislative history suggest that section 254(e) (“[o]nly eligible telecommunications carriers designated under 47 U.S.C. § 214(e) shall be eligible to receive specific Federal universal service support”) was not intended to apply to support to ensure that support is affordable? To this end, section 254(j) states that “Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission...” 47 U.S.C § 254(j). This text also echoes the Senate report’s statutory explanation that

provision suggests that the ETC was created to address concerns about cream skimming to ensure deployment in rural areas for high cost support was not compromised, concerns which are not present with an affordability program.²⁸⁶ We seek comment on these issues.

137. Given the Commission’s desire to promote competition for low-income consumers and the evidence that the ETC process is currently deterring such entry, we seek comment on revisiting the 1997 decision not to provide Lifeline support to non-ETCs to encourage broader participation in the Lifeline market. We seek comment on our legal authority to create a separate designation process for Lifeline. In particular, we seek comment on whether the Commission could provide Lifeline support based on universal service contributions made pursuant to section 254(d) authority, or would it need to adopt a separate mechanism relying on subsidies among rates as it used prior to the 1996 Act?²⁸⁷ The Commission has found that, “by its own terms, section 254(j) applies only to changes made pursuant to section 254 itself. Our authority to restrict, expand, or otherwise modify the Lifeline program through provisions other than section 254 has been well established over the past decade.”²⁸⁸ Do sections 1, 4(i), 201, and 205 give the Commission authority to do so? Does section 706 of the 1996 Act or other statutory provisions provide the Commission with authority to give certain non-ETCs Lifeline support?²⁸⁹ As above, we also seek comment on whether the collection and disbursement of funds under an approach based on section 706 (or other statutory provisions) would comport with federal appropriations laws.²⁹⁰

138. We seek comment on the process and mechanism to designate providers for participation in the Lifeline program and separate from the ETC designation process. What information should providers submit to participate in the Lifeline program? What certifications or other information should be required? Should the Commission use a process similar to certifications in the E-rate or rural health care programs today?

139. In this FNPRM, the Commission is proposing and seeking comment on fundamental structural changes to the Lifeline program that further mitigate incentives for waste fraud and abuse, including removing the provider from determining eligibility. How do these changes impact the type of information and oversight necessary for Lifeline providers? For example, if we reform Lifeline to provide the subsidy to the consumer as a portable benefit, how does that impact the oversight necessary on the provider? Should the Commission consider a “deemed grant” approach to streamline approval? Should the Commission retain the use of compliance plans and, if so, should they be modified or changed? We seek comment on how to ensure sufficient oversight and accountability to reduce waste, fraud and abuse.

140. We seek comment on the federal-state role in creating a new designation process. Lifeline and universal service generally has always involved federal-state partnerships and we seek

section 254(e) is “not intended to prohibit support mechanisms that directly help individuals afford universal service.” Conf. Rept. 104-230, 104th Cong., 2d Sess. at 129 (1996).

²⁸⁶ “The legislation pays special attention to the needs of rural areas. The bill allows States to adopt regulations to require competitors to obtain State approval before being permitted to compete in areas served by rural telephone companies and impose obligations on competitors to serve an entire service area.” *Sen. Report 104-023, 104th Cong., 1st Sess. at 15 (1995)*.

²⁸⁷ See 47 U.S.C. § 254(d).

²⁸⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 8955-56, para. 337. See also *id.* at para. 339 (“Section 254(j) indicates that Congress did not intend to require a change to the Lifeline program in adopting the new universal service principles. Presumably, Congress did not want to be viewed as *mandating* modifications to this worthy and popular program. Congress did not intend, however, to prevent the Commission from making changes to Lifeline that are sensible and clearly in the public interest.” (emphasis in original)).

²⁸⁹ See, e.g., *supra* para. 62 (discussing section 706).

²⁹⁰ See *id.*

comment on how to continue that work as we seek comment on a new framework. We seek comment on pros and cons of creating a national designation versus a state-by-state approach, or a combination thereof where states with individual Lifeline programs could supplement any federal Lifeline designation with additional conditions.

141. We seek comment on the process of transitioning from designating ETCs to a new designation process. We also seek comment on opening a window for new providers to participate to help minimize administrative burdens on federal and state agencies. We seek comment on alternative approaches and how best to ensure that the Commission has sufficient checks and safeguards to address potential waste, fraud and abuse.

D. Modernizing and Enhancing the Program

142. In this section, we seek comment on two proposals to update our rules to reflect the manner in which consumers use Lifeline service today. We find that all consumers, including low-income consumers, should have access to the same features, functions, and consumer protections.

1. TracFone Petition for Rulemaking Regarding Texting

143. In light of the widespread use of text messages, and as part of our continuing efforts to modernize the Lifeline program, we seek comment on amending our rules to treat the sending of text messages as usage for the purpose of demonstrating usage sufficient to avoid de-enrollment from Lifeline service. In so doing, we grant in part and deny in part a petition on this filed by TracFone.²⁹¹ Specifically, we grant that portion of TracFone's petition that requests the initiation of a rulemaking proceeding to amend section 54.407(c)(2) of the Commission's rules to allow Lifeline subscribers to establish usage of Lifeline service by sending text messages. We deny, however, the portion of TracFone's petition that requests the initiation of a rulemaking to also include receipt of text messages to count as usage. Because the subscriber cannot control whether others send texts, the receipt of such texts should not be used as a basis for concluding that the subscriber wishes to retain service. We also deny the portion of TracFone's petition that concerns a request for interim relief allowing subscribers to use text messaging to establish usage during the pendency of the requested rulemaking. While we think there is enough merit to TracFone's proposal to seek comment on a rule change, we are not yet certain enough to find good cause to waive the rule to allow text messaging to count as usage.

144. Our rules currently require subscribers of prepaid Lifeline services to use the service at least once every 60 days.²⁹² The Commission adopted that requirement to ensure that Lifeline providers do not receive Lifeline support for customers who do not actually use the service. The requirement only applies to prepaid services because the Commission found that subscribers to post-paid Lifeline providers do not present the same risk of inactivity as subscribers to pre-paid services.

145. In 2012, the Commission declined to include sending or receiving a text message in the list of activities that qualify as usage for purposes of section 54.407(c)(2) of the Commission's rules, on the basis that text messaging is not a supported service.²⁹³ While it is true that text messaging is not currently a supported service, it is widely used by wireless consumers for their basic communications needs.²⁹⁴ According to TracFone, the rapid increase in use of texting by subscribers of wireless service, and the reliance on text messaging by individuals who are deaf, hard of hearing, or have difficulty with

²⁹¹ See TracFone Texting Petition.

²⁹² 47 C.F.R. § 407(c)(2).

²⁹³ *Lifeline Reform Order*, 27 FCC Rcd at 6770, n.709.

²⁹⁴ *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 9846, 9852, para. 12 (2014).

speech, weigh in favor of amending the Commission's rules to allow text messaging as an activity that constitutes usage of service.²⁹⁵

146. Allowing text messages to constitute usage would be a reversal of the Commission's previous decision. However, in light of the changes in consumer behavior highlighted by the extensive use of text messaging, we propose to amend section 54.407(c)(2) of our rules to allow the sending of a text message by a subscriber to constitute usage. Is it appropriate to base a subscriber's intention to use a supported service on that subscriber's use of a non-supported service? We also seek comment on whether the distinctions between text messaging, voice, and email should remain relevant, for the purposes of the usage rules, given that all such transmissions may occur over the same broadband Internet access service. We also seek comment on the conclusion that we should not allow the receipt of text messages to qualify as usage, because this would leave control of whether the subscriber "intended" to use the service in the hands of others.

2. Subscriber De-enrollment Procedures

147. In this section, we propose to adopt procedures to allow subscribers to terminate Lifeline service in a quick and efficient manner. The Commission has received anecdotal evidence that some subscribers cannot readily reach their Lifeline provider to terminate service, or their request to terminate service is not followed. As a result, funds are wasted for services that are either not used or no longer desired.

148. *Background.* In the *Lifeline Reform Order*, the Commission codified rules requiring Lifeline providers to de-enroll any subscriber indicating that he or she is receiving more than one Lifeline-supported service per household, or if the subscriber neglects to make the required one-per-household certification on his or her certification form.²⁹⁶ In order to ensure consumers are fully informed about the terms of usage, we also adopted rules requiring pre-paid Lifeline providers to notify their subscribers at service initiation about the non-transferability of the phone service, its usage requirements, and that de-enrollment and deactivation will result following non-usage in any 60-day period of time.²⁹⁷ We also required Lifeline providers to update the database within one business day of de-enrolling a consumer for non-use.²⁹⁸ These rules were adopted, among other reasons, to substantially strengthen protections against waste, fraud, and abuse and improve program administration and accountability.²⁹⁹ The Commission reasoned that "[a]dopting 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."³⁰⁰

149. Although section 54.405(e)(1) requires Lifeline providers to de-enroll subscribers when an Lifeline provider has a reasonable basis to believe that the subscriber no longer meets the Lifeline-

²⁹⁵ TracFone Texting Petition at 5.

²⁹⁶ See *Lifeline Reform Order*, 27 FCC Rcd at 6712, para. 122; 47 C.F.R. § 54.405(e). Similarly, in the *2011 Duplicative Program Payments Order*, the Commission affirmed that an eligible consumer may only receive one Lifeline-supported service and therefore we established procedures to detect and de-enroll subscribers receiving duplicative Lifeline-supported services. *Lifeline and Link Up Reform and Modernization et al.*, Report and Order, WC Docket No. 11-42 *et al.*, 26 FCC Rcd 9022, 9026, para. 7 (2011) (*2011 Duplicative Program Payments Order*) (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).

²⁹⁷ See *Lifeline Reform Order*, 27 FCC Rcd at 6769, para. 257; see also 47 C.F.R. § 54.405(e)(3).

²⁹⁸ 47 C.F.R. § 54.405(e)(3).

²⁹⁹ *Lifeline Reform Order*, 27 FCC Rcd at 6769, para. 258

³⁰⁰ *Id.*

qualifying criteria (including instances where a subscriber informs the Lifeline provider or the state that he or she is ineligible for Lifeline), this provision does not cover those situations where, for whatever reason, subscribers themselves wish to terminate Lifeline services.³⁰¹

150. *Discussion.* We propose to require Lifeline providers to make readily available a 24 hour customer service number allowing subscribers to de-enroll from Lifeline services, for any reason, and codify the obligation that Lifeline providers must implement the subscriber's decision within two business days of the request. We seek comment on this proposal.³⁰²

151. We seek further comment on requiring Lifeline providers to publicize their 24-hour customer service number in a manner reasonably designed to reach their subscribers and indicate, on all materials describing the service that subscribers may cancel or de-enroll themselves from Lifeline services, for any reason, without having to submit any additional documents. For the purposes of this rule, we propose that 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 and materials sent confirming initiation of the service. We seek comment on a rule requiring Lifeline providers to record such requests for termination and make such records available to state and Federal regulators upon request. We also make clear that a Lifeline provider's failure to respect their subscribers' wishes to de-enroll from Lifeline service may subject the Lifeline provider to enforcement action.

152. We seek comment on whether the FCC should require a particular authentication process or leave that decision up to each Lifeline provider. In order to make this process easy for the subscriber wishing to terminate Lifeline service, we propose that ETCs authenticate subscribers solely through social security numbers, account numbers, or some other personal identification verifying the subscriber's identity. In order to minimize the burden on Lifeline providers implementing these de-enrollment procedures, including any customer authentication processes we adopt, we further propose that any rules regarding subscriber de-enrollment shall become effective six months after the release of an order implementing such rules, and seek comment on this proposal. However, we note that, prior to the effective date of any requirements in this section, a Lifeline provider's failure to de-enroll the subscriber within a reasonable period of time upon request may constitute a violation of the Act and our rules.³⁰³

153. We seek comment on alternative ways to achieve the same goals. Relatedly, we seek comment on revising section 54.405(e)(1) to require Lifeline providers to de-enroll subscribers within five business days.³⁰⁴ We also seek comment on any other barriers to implementation the Commission should consider related to subscriber de-enrollment. We believe that these rules will further our interest in reducing waste and fraud, improve program administration and accountability, and facilitate subscriber choice and ultimate control over their Lifeline service.

3. Wireless Emergency Alerts

154. Wireless Emergency Alerts (WEA) play an important role in our nation's alerting and public warning system. Participating carriers send, free-of-charge to their subscribers, text-like messages

³⁰¹ Section 54.405(e)(1) also requires ETCs to 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. 47 C.F.R. § 54.405(e)(1).

³⁰² We note simple number ports generally occur within one day. 47 CFR § 52.35(a).

³⁰³ See 47 U.S.C. § 201(b) ("All charges, practices, classifications, and regulations for and in connection with such communication service shall be just and reasonable."). Cf. *Advantage Telecommunications Corp.*, Apparent Liability for Forfeiture, EB-TCD-12-00004803, 28 FCC Rcd 6843, 6851, para. 20 (2013) (identifying apparent violations of section 201(b) when a carrier continued to bill consumers after the consumers had taken steps to switch back to their preferred carriers).

³⁰⁴ See Appendix A.

alerting subscribers of emergencies in their area, falling under one of the following three classes: 1) Presidential alerts, 2) imminent threats, and 3) child abduction emergency, or AMBER, alerts. This system (formerly known as the Commercial Mobile Alert System) allows authorized government agencies to send geographically targeted emergency alerts to commercial wireless subscribers who have WEA-capable mobile devices and whose commercial wireless service provider has elected to offer the service. Under the WARN Act, participation in WEA system by wireless carriers is widespread but entirely voluntary. As a result, not all CMS providers currently provide WEA service or do not intend to provide WEA service through their entire service areas.

155. We seek comment on ways to increase Lifeline provider participation in WEA. Are there measures we could take to encourage support of WEA, consistent with our legal authority and core mission to promote the safety of life and property through communications? **To what extent do Lifeline providers, both facilities-based and non-facilities-based, already support WEA today?** We observe that under the WARN Act, participation is voluntary;³⁰⁵ do providers have sufficient incentive to participate in WEA on a voluntary basis? In order to ensure that Lifeline service keeps pace with the IP-based network transitions, as well as evolving consumer needs, we seek comment on what additional public safety functionalities or capabilities we should consider as a critical component of Lifeline service offerings.

E. Efficient Administration of the Program

156. **In this section of the FNRPM, we seek comment** on a number of reforms to increase the efficient administration of the program.

1. Program Evaluation

157. The Government Accountability Office has recommended that the Commission conduct a program evaluation to determine how well Lifeline is serving its intended objectives.³⁰⁶ For example, one of the goals that the Commission has set for the Lifeline program is increasing the availability of voice service for low-income Americans, measured by the difference in the penetration rate (the percentage of households with telephone service) between low-income households and households with the next highest level of income. Without a program evaluation, however, GAO reports that the Commission is currently unable to determine the extent to which Lifeline has assisted in lowering the gap in penetration rates.³⁰⁷ **We therefore seek comment on whether a program evaluation is needed to determine the extent to which Lifeline has contributed towards fulfilling its goals, such as narrowing the gap in telephone penetration rates, and at what cost.** Is this the right goal for Lifeline program or should it focus on affordability? Should we focus on measuring program efficiency by determining the amount of people who no longer need Lifeline? In measuring the effectiveness of Lifeline on low-income broadband subscribers, how can we capture the benefits that flow from getting consumers connected, such as the ability to obtain employment, education and improve their health care? How should a program evaluation be structured? How expensive would it be to implement? **Moreover, if Lifeline is expanded to include broadband support, how could we evaluate the effectiveness of such an expansion? What metrics and timeframe should we use to determine whether such funds were being spent efficiently?**

2. Tribal Lands Support

158. We now turn to the universal service support provided to low-income recipients residing on Tribal lands, often referred to as enhanced Tribal support. Enhanced support provides a higher monthly subsidy amount as well as Link Up at service activation. In this section, we seek additional information on whether and how enhanced Tribal support is being utilized on Tribal lands, and whether

³⁰⁵ See *Warning, Alert, and Response Network Act, Title VI of the Security and Accountability for Every Port Act of 2006*, Pub. L. No. 109-347, 120 Stat. 1884 (2006) (WARN Act).

³⁰⁶ See GAO March 2015 Report at 35.

³⁰⁷ See, e.g., GAO March 2015 Report at 13.

the minimum service level for Tribal consumers should be different from the proposed minimum service levels for other consumers. We also seek comment on narrowly tailoring enhanced support to ensure that it actually supports the deployment of infrastructure. We finally seek comment on requiring additional documentation to demonstrate that a subscriber resides on Tribal lands.

159. *Background.* The Commission recognizes its historic federal trust relationship with federally recognized Tribal Nations, has a longstanding policy of promoting Tribal self-sufficiency and economic development, and has developed a record of helping ensure that Tribal Nations and their members obtain access to communications services.³⁰⁸ It is well documented that communities on Tribal lands historically have had less access to telecommunications services than any other segment of the U.S. population.³⁰⁹ Given the difficulties many Tribal consumers face in gaining access to basic services by living on typically remote and underserved Tribal lands, the Commission recognizes the important role of universal service support in helping to provide telecommunications services to the residents of Tribal lands.

160. Under the current rules, Lifeline providers that are authorized to provide service on Tribal lands may receive the \$9.25 per month that is offered for any eligible low-income consumer and an additional amount of up to \$25 per month for service provided to eligible low-income residents of Tribal lands – a total of up to \$34.25 per month for each eligible low-income consumer on Tribal lands.³¹⁰ Additionally, under the current enhanced Link Up program, Lifeline providers that receive high-cost support on Tribal lands may receive a one-time support payment of up to \$100 for each eligible low-income subscriber on Tribal lands enrolled in the Lifeline program to cover the cost of connecting a consumer to service.³¹¹

161. In the *2000 Tribal Order*, the Commission adopted several measures to improve low-income support for eligible residents living on Tribal lands, including the adoption of enhanced Lifeline and Link Up support.³¹² The Commission stated that the additional support might provide Lifeline providers an incentive to “deploy telecommunications facilities in areas that previously may have been regarded as high risk and unprofitable” and also to attract needed financing of facilities on Tribal lands.³¹³ The Commission noted that, “unlike in urban areas where there may be a greater concentration of both residential and business customers, carriers may need additional incentives to serve Tribal lands that, due

³⁰⁸ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080-81 (2000). See also *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12212-15, paras. 4-11(2000) (*2000 Tribal Order*); see generally *Improving Communications for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672 (2011) (*Native Nations NOI*) (reviewing Commission actions regarding Native Nations).

³⁰⁹ See *Native Nations NOI*, 26 FCC Rcd at 2673-74, 2681-82 (2011); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17868, para. 636; *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 11794, 11798 (2000); see also National Broadband Plan at 152, Box 8-4; see generally Letter from David A. Furia, Counsel, Smith Bagley, Inc., to Marlene H. Dortch Secretary, FCC, WC Docket No. 11-42 (filed Apr. 23, 2014) (*SBI Ex Parte*). See *2015 Broadband Progress Report*, 29 FCC Rcd at 1453 (concluding that people living in rural areas and on Tribal lands remain persistently behind their urban counterparts in terms of broadband adoption and deployment).

³¹⁰ See 47 C.F.R. § 54.403(a)(2).

³¹¹ See 47 C.F.R. § 54.413 (setting forth an assistance program that provides Tribal households a 100 percent reduction, up to \$100, of the customary charge for commencing telecommunications service imposed by an ETC that is receiving high-cost support on Tribal lands); see also *Lifeline Reform Order*, 27 FCC Rcd at 6848, para. 479.

³¹² See *2000 Tribal Order*, 15 FCC Rcd at 12219-51, paras. 20-80.

³¹³ *Id.* at 12235-36, para. 53.

to their extreme geographic remoteness, are sparsely populated and have few businesses.”³¹⁴ The Commission believed the enhanced Lifeline and Link Up support would encourage Lifeline providers to construct facilities on Tribal lands that lacked such facilities, encourage new entrants offering alternative technologies to seek ETC status, and address the high toll charges that Tribal residents incur.³¹⁵

162. In its 2012 Annual Report, the Commission’s Office of Native Affairs and Policy provided case studies that showed the benefits of enhanced Tribal support and what some Tribal Nations have been able to achieve in terms of affordable and accessible service on Tribal lands.³¹⁶ For many Tribally-owned ETCs, for example, the names Lifeline and Link Up resonate strongly, given the very high levels of unemployment in Tribal lands, the very high percentage of Tribal families with incomes well under the Federal Poverty Guidelines, and the remote nature of Tribal Reservations. For example, seventy-eight percent of Hopi Telecommunications Inc.’s (HTI) residential customers are eligible for Lifeline. The Lifeline and Link Up programs have been vital assets as HTI has expanded the reach and adoption of communications services across the Hopi Reservation.³¹⁷ While we recognize the benefits that enhanced Tribal support have provided to date, however, Tribal Nations have indicated that there is still much that can be done to encourage infrastructure build-out and improve the level of telecommunications service and affordability of those services for Tribal residents.³¹⁸

163. *Impact of Enhanced Lifeline and Link Up.* We seek additional information and data on the utilization of enhanced Lifeline and Link Up support for consumers on Tribal lands and the carriers that serve them. How is the enhanced Lifeline support utilized by carriers and how does it benefit consumers on Tribal lands? How much do residents of Tribal lands typically pay per month for voice service without enhanced Lifeline support? Does the additional \$25 per month subsidy achieve the intended goal of making voice service affordable for residents of Tribal lands? If not, how should we modify this to better effectuate the intended goal? What types of service plans are offered on Tribal lands, and how do they differ if the consumer receives enhanced Lifeline support from a wireless or a wireline carrier? How many minutes are offered to consumers on Tribal lands receiving enhanced Lifeline support?

164. We also seek comment, information, and data on the utilization of enhanced Link Up support for the benefit of consumers on Tribal lands and the carriers that serve such consumers. How is the subsidy utilized by carriers and how does it affect the services delivered to consumers on Tribal lands? How much do residents of Tribal lands pay and how much do carriers charge for connecting a Tribal resident to voice service? What are the variables affecting how much is charged? Does the Link Up subsidy achieve the intended goal of making telephone service available and affordable for residents

³¹⁴ *Id.*

³¹⁵ *See id.* at 12235, para. 52.

³¹⁶ Office of Native Affairs and Policy, CG Docket No. 11-41, 2012 Annual Report, at 2, 29-34, 48-51, 53 (Mar. 20, 2012), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-319767A1.pdf (2012 ONAP Annual Report) (discussing the benefit of and critical need for enhanced support and reviewing the telecommunications conditions of the Hopi and Standing Rock Sioux Tribes). Smith Bagley, Inc., a carrier that serves consumers on Tribal lands, also has filed information in the docket providing anecdotes about how enhanced Tribal support has helped individual Tribal consumers maintain affordable access to telephone service, the importance of having that service, and the importance of enhanced Tribal support to creating successful business models. *See generally SBI Ex Parte.*

³¹⁷ 2012 ONAP Annual Report at 32.

³¹⁸ *See 2000 Tribal Order*, 15 FCC Rcd at 12230-34, paras. 42-47 (creating enhanced Lifeline and Link Up support on Tribal lands); *see generally USF/ICC Transformation Order*, 26 FCC Rcd 17663 (adopting comprehensive high-cost reforms). Indeed, Chairman Wheeler recognized in a 2014 speech to the National Congress of American Indians that telephone service on Tribal lands is still a significant challenge. *See FCC Chairman Tom Wheeler Remarks to National Congress of American Indians*, Washington DC, at 2-3 (Mar. 12, 2014), <https://transition.fcc.gov/files/documents/Chairman-NCAI-Speech-031114.pdf>.

of Tribal lands? If not, how should the rule be modified to better effectuate the intended goal? If enhanced Tribal Link Up was eliminated, what effect would it have on affordability?

165. Additionally, we know there are many factors that contribute to whether telecommunications service is available and affordable for low-income consumers living on Tribal lands. What policies or practices should the Commission adopt to ensure that the Lifeline and Link Up programs are successful on Tribal lands? What measures should be implemented to prevent waste, fraud, and abuse?

166. *Infrastructure Deployment.* Recognizing that one of the Commission's original intentions in adopting enhanced Tribal Lifeline support was to encourage deployment and infrastructure build-out to and on Tribal lands, we seek comment on the extent to which new infrastructure development and deployment has resulted from enhanced Tribal support. In particular, we seek data and comment on where and what types of infrastructure deployments have occurred on Tribal lands in the last 14 years. What drives the successful build-out of telecommunications infrastructure on Tribal lands? Specifically, we seek comment on what measurable benefits the additional \$25 per month in Lifeline support and the \$100 in Link Up support provide towards infrastructure deployment and the decisions about where and how to build infrastructure on and to Tribal lands. For example, has enhanced support resulted in additional deployment in areas that may have been regarded as "high risk and unprofitable," or has it attracted needed financing of facilities on unserved Tribal lands, as the Commission originally intended?³¹⁹

167. Lifeline program data show that two-thirds of enhanced Tribal support goes to non-facilities-based Lifeline providers, and it is unclear whether the support is being used to deploy facilities in Tribal areas.³²⁰ We propose, therefore, to limit enhanced Tribal Lifeline and Link Up support only to those Lifeline providers who have facilities. Should there, for example, be different approaches to enhanced support provided to non-facilities-based Lifeline providers serving Tribal lands? One option would be to limit enhanced Lifeline support only to those ETCs currently receiving high-cost support, similar to the Commission's Link Up reforms. Another option would be to adopt the proposal of the OCC that the Commission limit enhanced Lifeline support to those Lifeline providers that are deploying, building, or maintaining infrastructure on Tribal lands, even if they do not or are not eligible to receive high-cost support.³²¹ We seek comment on the benefits and drawbacks to these proposed options. What would be the impact of such limitations on the provision of Lifeline-supported service to residents of Tribal lands? How can the Commission best accomplish the objective of encouraging build out to Tribal lands?

168. If we were to adopt a rule limiting enhanced Lifeline support as proposed above, we seek comment on whether the annual submission of FCC Form 481³²² would be sufficient to determine whether a Lifeline provider was deploying, building, or maintaining infrastructure on Tribal

³¹⁹ 2000 Tribal Order, 15 FCC Rcd at 12235-36, para. 53.

³²⁰ See generally USAC Quarterly Reports, 2014 Second Quarter Appendices, <http://www.usac.org/about/tools/fcc/filings/2014/q2.aspx> (providing ETC disbursements with a break-out of Tribal and non-Tribal support) (last visited June 18, 2015); see also USAC Disbursement Tool, <http://www.usac.org/li/tools/disbursements/default.aspx> (providing the disbursement amounts for ETCs by study area code (SAC) for each month) (last visited June 18, 2015); see also FCC, Lifeline Compliance Plans and Petitions (Apr. 16, 2015), <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions> (listing non-facilities based carriers and ETCs that have pending and approved compliance plans) (last visited June 18, 2015).

³²¹ See Letter from Maribeth Snapp, Telecom Policy Director, Oklahoma Corporation Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket. No. 11-42 (filed Feb. 20, 2014).

³²² ETCs receiving high-cost support are subject to enhanced reporting requirements pursuant to the *USF/ICC Transformation Order*, requiring the annual filing of FCC Form 481. See 47 C.F.R. § 54.422 (requiring filing of Form 481 for ETCs that receive low-income support).

lands. Would any changes to that form be required to document that the build-out was occurring on Tribal lands? For those Lifeline providers that either are not receiving or are not eligible for high-cost support, but seek to receive enhanced Lifeline support consistent with the OCC proposal, what documentation would be necessary to ensure that build out was occurring on Tribal lands? Should such a Lifeline provider have to demonstrate that it is continuing to build infrastructure on Tribal lands?

169. We also seek comment on whether we should focus enhanced Tribal support to those Tribal areas with lower population densities, on the theory that provision of enhanced support in more densely populated areas is inconsistent with the Commission's objectives. In the *2000 Tribal Order*, the Commission determined that the "unavailability or unaffordability of telecommunications service on tribal lands is at odds with our statutory goal of ensuring access to such services to '[c]onsumers in all regions of the Nation, including low-income consumers."³²³ In response, the Commission established the enhanced Tribal Lifeline subsidy of up to an additional \$25 available to qualified residents of Tribal lands in order to incentivize increased "telecommunications infrastructure deployment and subscribership on tribal lands."³²⁴ Given the Commission's desire to use enhanced support to incent the deployment of facilities on Tribal lands, we seek comment as to whether it is appropriate to provide such enhanced support in areas with large population densities where advanced communications facilities are widely available. We seek comment on whether it is appropriate, given the Commission's goals, to focus enhanced Tribal support in this manner. Should we focus enhanced support only on areas of low population density that are likely to lack the facilities necessary to serve subscribers?³²⁵ Should we exclude urban, suburban, or high density areas on Tribal lands?

170. Certain Tribal lands have within their boundaries more densely populated locations, such as Tulsa, Oklahoma, which is eligible for enhanced Tribal Lifeline support as it is within a former reservation in Oklahoma, but nonetheless has a comparatively high population density compared to many other Tribal lands.³²⁶ We note there are other potential locations on Tribal lands, such as Chandler, Arizona; Reno, Nevada; or Anchorage, Alaska. If we adopted an approach that focused Tribal support on less densely populated areas, what level of density would be sufficient to justify the continued receipt of enhanced Tribal lands support? What level of geographic granularity should we examine to apply any population density-based test? We note that, with respect to Tulsa, Oklahoma, the history of Tribal lands in Oklahoma has led at least one other federal program to exclude certain higher density Tribal lands from Tribal income assistance programs in Oklahoma. For instance, the United States Department of Agriculture's (USDA) Food Distribution Program on Indian Reservations (FDPIR) excludes from eligibility residents of towns or cities in Oklahoma greater than 10,000.³²⁷ We seek comment on whether we should implement a similar approach that excludes urban areas on Tribal lands from receiving enhanced Tribal support. We direct ONAP, in coordination with the Wireline Competition Bureau, and other Bureaus and Offices as appropriate, to engage in government-to-government consultation with Tribal Nations to develop the record and obtain the perspective of Tribal governments on this question.

171. *Changes to Self-Certification Requirement.* We seek comment on whether to require additional evidence of residency on Tribal lands beyond self-certification. We recognize that there may

³²³ See *2000 Tribal Order*, 15 FCC Rcd at 12221, para 21 (citing 47 U.S.C. § 254(b)(3)).

³²⁴ See *id.* at 12223-24, para. 26.

³²⁵ See *id.* at 12235-36, paras. 52-53.

³²⁶ See Census, 2010 Census Results - United States and Puerto Rico Population Density by County or County Equivalent, http://www2.census.gov/geo/pdfs/maps-data/maps/thematic/us_popdensity_2010map.pdf (last visited June 18, 2015).

³²⁷ See 7 C.F.R. § 254.2(h) ("Urban place means a town or city with a population of 10,000 or more,") (italics in original); *id.* § 254.5(b) (No household living in an urban place in Oklahoma shall be eligible for the Food Distribution Program on Indian Reservations. However, an ITO can request the Department to grant individual exemptions from this limitation upon proper justification submitted by the ITO as determined by FNS.).

be challenges in verifying Tribal residency, but we are concerned that a lack of verification may provide opportunities for waste, fraud, and abuse, particularly in light of the substantial enhanced support currently available to Lifeline providers operating on Tribal lands. We also seek comment on the manner in which residents of Tribal lands living at non-standard addresses should prove their residence on Tribal lands. Should the obligation to confirm Tribal residency rest with the Lifeline provider, rather than the subscriber? If we implement a requirement to verify Tribal lands residency, what impact will that have on potential eligible, low-income and current eligible, low-income subscribers of Lifeline? We specifically invite and will foster government-to-government consultation with Tribal Nations on these matters.

3. E-Sign

172. In this section, we seek comment on ways to strengthen the integrity of electronic signatures in a manner that is both consistent with the Electronic Signatures in Global and National Commerce Act³²⁸ and that increases protections against waste, fraud, and abuse. We also seek comment on reforms to ensure that the clear intent of the subscriber to enroll in Lifeline and his/her understanding of the rules is reflected in the completed Lifeline application.

173. *Background.* The *Lifeline Reform Order* clarified that Lifeline providers could obtain electronic signatures from potential or current subscribers certifying eligibility pursuant to section 54.410 of the Commission's rules.³²⁹ The Commission determined that electronic signatures and interactive voice response systems allow Lifeline providers to simplify their enrollment procedures for consumers applying for Lifeline service and that it is in the public interest to allow such signatures.³³⁰ While the E-Sign Act contains a strong presumption in favor of permitting electronic signatures or electronic records between private parties in transactions involving interstate or foreign commerce, it also permits federal and state agencies to issue rules and guidance pertaining to electronic signatures and records, consistent with the E-Sign Act.³³¹ We note that simply making a signature or record electronic does not inoculate the record from concerns about fraud or abuse. To the extent an electronic signature or record raises concerns about fraud or abuse in the Lifeline context, the Commission and/or USAC may investigate how the signature was obtained and the record (e.g., certification or recertification form) finalized. Illegible signatures, similarities between signatures, or automatically generated signatures, in the absence of more information about how the signature was generated, may well raise questions about whether the named subscriber in fact had "the intent to sign the record."³³²

174. *Discussion.* We recognize the ever increasing use of tablets and other electronic devices to sign up potential Lifeline subscribers, and laud Lifeline provider efforts to reach out to legitimate subscribers who can benefit from Lifeline service. Nevertheless, given our responsibility to safeguard the Fund from waste, fraud, and abuse, we must ensure that new technologies are deployed with adequate protections and mechanisms that permit oversight. Thus, we seek comment at this time on the types of techniques or processes whose use might, in the event of an investigation or audit, show that an electronic signature is valid.

175. In responding to this query, commenters may also take note of other proposals in this *Further Notice*³³³ and state whether coupling certain signature verification processes with additional

³²⁸ See Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7031 (2000) (E-Sign Act).

³²⁹ See *Lifeline Reform Order*, 27 FCC Rcd at 6730, para. 168-69; 47 C.F.R. § 54.410.

³³⁰ See *id.*

³³¹ See 15 U.S.C. §7004(b)(2)(A); *Lifeline Reform Order*, 27 FCC Rcd at 6729, para. 168. California, for example, has issued regulations setting forth the elements of a recognized digital signature. See California Digital Signature Regulations, 2 CCR §§ 22000-22005 (1998).

³³² See 15 U.S.C. § 7006(5).

³³³ See *supra* paras. 64-91.

proposed safeguards may help in demonstrating that a signature is in fact a valid “electronic signature.” In other words, does the signature shown on the electronic certification form in fact reflect the subscriber’s intent to sign up for Lifeline service?

176. We seek comment on whether adopting regulations based on what state governments³³⁴ or other federal agencies³³⁵ have done would be suitable in this context. We recognize that in many instances state and federal regulations concern transactions between a state or federal agency and the public, perhaps allowing for greater government leeway in determining what specific technology should be used. While we do not wish to dictate the use of technologies, we cannot permit a system where a random stray mark, attributed to stylus difficulties, or an automatically generated signature, without more constitute valid signatures. In this regard, we seek comment on what safeguards Lifeline providers have adopted to date to ensure that an electronic signature represents the named subscriber’s “intent to sign the record.”³³⁶ We also seek comment on the utility of requiring service providers to retain the IP, or other unique identifier, such as a MAC address, affiliated with the e-mail or device that was used for signing up a subscriber. We seek comment on whether such mechanisms might be useful in detecting and ultimately curtailing fraud. For example, would retaining the MAC addresses associated with iPads used by sales agents enable service providers and, if the need should arise, regulators to better monitor the sign-up practices of such agents? Such an approach would assist companies and auditors in determining patterns of fraudulent behavior by agents or a subset of agents within the company.

177. Moreover, as an added protection, to ensure all subscribers truly understand the certifications they are making, we propose that all written certifications (irrespective of whether they are in paper or electronic form) mandate that subscribers initial their acknowledgement of each of the requirements contained in 47 C.F.R. § 54.410(d)(3).³³⁷ In proposing these requirements, we emphasize that Lifeline service providers remain mindful of their obligation under 15 U.S.C. § 7001(e) to ensure that an electronic record be in a form that is capable of being retained and accurately reproduced for later reference.³³⁸ In this regard, we find that it is consistent with section 7001(e) of the E-Sign Act that Lifeline providers be able to reproduce their certification and recertification forms, along with the actual signatures placed on the forms, in the event of a federal or state inquiry. We seek comment on these proposals.

4. The National Lifeline Accountability Database: Applications and Processes

178. As part of our ongoing efforts to guard against waste, fraud, and abuse in the Lifeline program, we propose a number of additional applications to the NLAD, including the use of the NLAD to calculate Lifeline providers’ monthly Lifeline reimbursement. We seek comment on this proposal and others below.

179. *Using the NLAD for Reimbursement.* We seek comment on the legal and administrative aspects of transitioning to a process whereby Lifeline providers’ support is calculated based on Lifeline provider subscriber information in the NLAD. For example, how would officers continue to make the monthly certifications now required on the FCC Form 497 in the NLAD? Should we consider requiring officers to make a separate electronic certification? The Commission in the *Lifeline Reform Order*

³³⁴ See, e.g., California Digital Signature Regulations, 2 CCR §§ 22000-22005 (1998); New York Electronic Signatures and Records Act Regulations, 9 NYCRR §§ 540.1-540.7 (2012).

³³⁵ See e.g., Food and Drug Administration Regarding Electronic Records; Electronic Signatures, 21 C.F.R. §11 (2014); and IRS Guidance Regarding Electronic Signatures, <http://www.irs.gov/uac/Electronic-Signature-Guidance-for-Forms-8878-and-8879> (last visited June 18, 2015).

³³⁶ See 15 U.S.C. § 7006(5).

³³⁷ Under this approach, a Lifeline provider must separately enumerate each of the requirements listed in 47 C.F.R. § 54.410(d)(3).

³³⁸ 15 U.S.C. § 7001(e).

permitted states to opt out of the NLAD by demonstrating that they had a comprehensive system in place to check for duplicative federal Lifeline support.³³⁹ To date, four states and one territory have received permission to opt out of the NLAD and Lifeline providers serving Lifeline subscribers in those states are not required to submit subscriber information to the NLAD.³⁴⁰ If the Commission decides to calculate Lifeline support based on Lifeline provider submissions to the NLAD, would Lifeline providers operating in states that opted out of the NLAD be required to continue to file FCC Form 497s for those states?

180. We note that in the national verifier section above,³⁴¹ we sought comment on whether it would be equitable and non-discriminatory pursuant to section 254(d) to require only those Lifeline providers that will benefit from the functions of the national verifier to contribute to its implementation and operation through additional USF funds.³⁴² Since only certain Lifeline providers will utilize the NLAD, just as the national verifier, we seek comment on whether it is equitable and non-discriminatory to require Lifeline providers that will utilize the benefits of the NLAD to contribute additional USF funds pursuant to section 254(d).³⁴³ Under this proposal, how would support be allocated amongst the contributing Lifeline providers? Would Lifeline providers that utilize the NLAD more than other Lifeline providers be required to pay more? What methodology should the Commission use if implementing this support mechanism?

181. We also ask about methods to address situations in which there is a dispute about a Lifeline provider's subscribership. The Commission's rules, for example, currently require that the NLAD be updated with subscriber de-enrollments within one business day.³⁴⁴ If Lifeline providers receive reimbursement from the NLAD, should this rule be modified to ensure that Lifeline providers do not receive reimbursement for subscribers that they no longer serve? The NLAD incorporates a dispute resolution process whereby Lifeline providers have an opportunity to ensure that eligible subscribers are not inadvertently rejected by the NLAD as ineligible. How should support for subscribers in the dispute resolution process be treated for the purpose of determining Lifeline support? What additional safeguards against fraud, if any, should be implemented in the NLAD in light of a direct relationship between subscriber counts in the NLAD and receipt of payment?

182. *Transition Period.* We recognize that using information in the NLAD to generate Lifeline provider support payments may constitute a substantial change in the way Lifeline providers operate and USAC administers the program. We therefore propose to establish a transition period to ensure that Lifeline providers and USAC have put in place the necessary systems and processes. We seek comment on the length and contours of such a transition period.

183. *Fees for Using the NLAD TPIV Search.* To date, the costs associated with developing the NLAD, maintaining the applications and all of its functionalities, including the Third-Party Identification Verification (TPIV) check, have come from the Fund. We seek comment on whether Lifeline providers should pay some or all of the cost for TPIV checks and whether the Commission has the authority to impose such a requirement. These costs are incurred on a per-transaction basis and are paid for by the

³³⁹ See *Lifeline Reform Order*, 27 FCC Rcd at 6752, para. 221 (stating that the comprehensive system must be at least as robust as the processes adopted by the Commission and cover all ETCs operating in the state and their subscribers).

³⁴⁰ Texas, Oregon, California, Vermont, and the territory of Puerto Rico have each received approval from the Commission to opt out of the NLAD.

³⁴¹ See *supra* para. 88.

³⁴² 47 U.S.C. § 254(d).

³⁴³ See *id.*

³⁴⁴ See 47 C.F.R. § 54.404(b)(10).

Fund to the TPIV vendor.³⁴⁵ At the request of the industry, USAC implemented a process to permit Lifeline providers to submit subscriber information through the TPIV check prior to enrolling the subscriber. Running the TPIV check prior to determining whether to enroll a potential subscriber might be considered a routine customer acquisition cost and, viewed in this light, it might be appropriate to require Lifeline providers to pay this cost. In addition, the TPIV check is run again when the subscriber is actually enrolled in the NLAD. We seek comment on whether some or all of the costs associated with running a TPIV check within the NLAD should be paid for by Lifeline providers. Are there other ways that the NLAD can recoup the cost of TPIV functionality? We seek comment on whether the NLAD should recoup the cost of TPIV functionality through additional contributions from Lifeline providers to the Fund that utilize the TPIV functionality. We seek comment on whether recouping the costs of TPIV functionality through contributions from those Lifeline providers that utilize the functionality would be equitable and non-discriminatory pursuant to section 254(d).³⁴⁶ Similarly, the Fund currently pays for the recertification process for those Lifeline providers that elect to use USAC. Should Lifeline providers be required to pay for some or all of that cost?

184. *Additional Applications of and Changes to NLAD and Related Processes.* We also seek comment on using the information stored in the NLAD for other aspects of the Lifeline program. For example, should USAC use subscriber information in the NLAD to perform recertification in those instances where a Lifeline provider selects USAC to perform the recertification?³⁴⁷ We seek comment on the manner in which the NLAD currently works and whether there are changes that could be made that would further limit the potential for waste, fraud, and abuse.

5. Assumption of ETC Designations, Assignment of Lifeline Subscriber Base and Exiting the Market

185. We propose rules to minimize the disruption to Lifeline subscribers associated with the transfer of control of ETCs or the sale of assets and lists of customers receiving benefits under the program, as well as the transfer of ETC designations between providers. We seek comment on proposals for when we should permit an ETC to assume an ETC designation from another carrier. We also propose establishing notification requirements when a carrier sells or otherwise transfers Lifeline subscribers to another provider or exits the market. Today, in order to receive reimbursement for providing Lifeline service to qualified-low-income consumers, a carrier must be an ETC.³⁴⁸ Although state commissions have primary responsibility for designating ETCs under section 214(e)(2) of the Act,³⁴⁹ that responsibility shifts to the Commission for carriers “providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”³⁵⁰ The Bureau has previously determined that the transfer of control of licenses and other authorizations from an entity already designated as an ETC to another entity that has not been designated as an ETC is insufficient for the transferee to assume the ETC

³⁴⁵ The GSA price for LexisNexis’s Identity Proofing Solutions product is \$0.35 per query. See LexisNexis, *General Services Administration Federal Supply Service Authorized Federal Supply Schedule Price List* at 104, https://www.gsaadvantage.gov/ref_text/GS02F0048M/0OGVPK.36D83V_GS-02F-0048M_GS02F0048MMAY2015.PDF (last visited June 18, 2015).

³⁴⁶ 47 U.S.C. § 254(d).

³⁴⁷ Currently, ETCs that elect to use USAC must provide their subscriber information to USAC at the time of election. See, e.g., *Wireline Competition Bureau Provides Guidance to Eligible Telecommunications Carriers on the Process to Elect USAC to Perform Lifeline Recertification*, Public Notice, 30 FCC Rcd 2797, 2799 (Wireline Comp. Bur. 2015).

³⁴⁸ We note that we seek comment in the attached FNRPM on providing support to non-ETCs. See *supra* paras. 136-41.

³⁴⁹ 47 U.S.C. § 214(e)(2).

³⁵⁰ 47 U.S.C. § 214(e)(6). Currently, the Commission is responsible for designating wireless carriers as ETCs in 11 states and the District of Columbia.

status of the acquired ETC.³⁵¹ Rather, the transferee must petition the proper designating authority for its own designation. The transferee is an ETC only after the relevant authority determines that the transferee satisfies all the requirements of the Act.³⁵²

186. The Commission also requires any non-facilities-based carriers seeking to offer Lifeline service to submit to the Bureau and receive approval of a compliance plan.³⁵³ The approval of a compliance plan is limited to the entity, and its ownership, as they are described in the compliance plan approved by the Bureau, and any material changes in ownership or control require modification of the compliance plan that must be approved by the Bureau in advance of the changes.³⁵⁴ The Commission has not otherwise addressed specific requirements on ETCs that seek to transfer a Lifeline subscriber to another entity.

187. Finally, section 214 of the Act requires domestic telecommunications carriers to obtain authorization to undertake acquisitions of assets such as by the purchase of transmission lines or customers, or through acquisition of corporate control, such as by acquisitions of equity ownership.³⁵⁵ The Commission treats acquisitions, whether they are through a stock or asset transaction, in the same manner by requiring section 214 approval prior to consummation of the transaction.³⁵⁶ In cases in which a carrier does not transfer its subscriber base to another entity but instead discontinues service for those customers, the carrier must obtain authorization from the Commission prior to discontinuing the service.³⁵⁷ In practice, however, today these rules apply to wireline or fixed wireless service ETCs, either facilities-based or resellers.³⁵⁸ The Commission has forbore from imposing the section 214(a) requirements on commercial mobile radio service (CMRS) providers' provision of domestic telecommunication services.³⁵⁹

³⁵¹ See 47 U.S.C. § 214(e)(2), (e)(6) (providing state commissions and the Commission, respectively, with authority to designate entities as ETCs); see also *Allied Wireless Communications Corporation Petition for Eligible Telecommunications Carrier Designations in the State of North Carolina*, WC Docket No. 09-197, Order, 25 FCC Rcd 12577, 12580, para. 8 (Wireline Comp. Bur. 2010) (considering the petitioner's request for ETC designation and stating that although the petitioner had received the transfer and control of licenses and other authorizations from another provider, neither the Commission nor the relevant state commission had previously determined whether the petitioner met the requirements of the Act to be designated an ETC); see also *Wireline Competition Bureau Reminds Carriers of Eligible Telecommunications Carrier Designation and Compliance Plan Approval Requirements for Receipt of Federal Lifeline Universal Service Support*, WC Docket Nos. 09-197, 11-42, Public Notice, 29 FCC Rcd 9144, 9144-45 (Wireline Comp. Bur. 2014) (*Bureau PN Regarding Transfers*) (reminding carriers of their obligations associated transfers involving ETC).

³⁵² See *id.*

³⁵³ See *Lifeline Reform Order*, 27 FCC Rcd at 6813, para. 368

³⁵⁴ *Bureau PN Regarding Transfers*, 29 FCC Rcd at 9145.

³⁵⁵ 47 U.S.C. § 214(a); *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, 17 FCC Rcd 5517, 5546-49, paras. 57-64 (2002) (*Section 214 Streamlining Order*). In considering transfer applications, the Commission has employed a public interest standard under section 214(a) that involves an examination of the potential public interest harms and benefits of a proposed transaction. See, e.g., *Applications of Softbank Corp., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation for Consent to Transfer of Control of Licenses and Authorizations*, IB Docket No. 12-343, 28 FCC Rcd 9642, 9650-52, paras. 23-25 (2013) (explaining the Commission's standard of review for license and customer transfers).

³⁵⁶ *Section 214 Streamlining Order*, 17 FCC Rcd at 5547-49, paras. 61-64; 47 C.F.R. §§ 63.03-04.

³⁵⁷ *Id.* at 5548, para. 63; 47 C.F.R. § 63.71.

³⁵⁸ *Id.* at 5531-32, para. 28, n.62.

³⁵⁹ In 1994, the Commission determined to forbear from applying section 214 market exit requirements to CMRS providers. See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of*

188. *Assumption of ETC Designations.* We propose requirements to facilitate assumption of ETC designations in which the Commission is the designating authority (FCC Designated ETCs). In circumstances when an entity seeks to acquire an FCC Designated ETC, we propose to continue to require an acquiring entity that has not been designated as an ETC by the Commission to file a petition with the Commission seeking ETC designation for the jurisdictions subject to the proposed transaction involving the FCC Designated ETC and await Commission action in determining whether such petition satisfies all the requirements of the Act just as carriers are required to do today.³⁶⁰ For the questions below, we also seek comment on applying a similar process if the Commission provides Lifeline support to non-ETCs or creates a separation designation.

189. We propose that these requirements would apply when the acquiring entity becomes the ETC using a different corporate name or operating entity, and also would apply when the acquiring entity maintains the acquired ETC's corporate name or operating entity.³⁶¹ In proposing such requirements, we seek comment on the approval process and obligations for all impacted entities, including the acquired ETCs. We also propose that these requirements would not apply to designations in which the acquired entity was designated by the state and the state continues to exercise authority to designate such carriers (State Designated ETCs).³⁶² We are persuaded that entities we have never evaluated as an ETC should continue to have the obligation to file their own ETC petition and that a more streamlined approach is better suited for transactions where the acquiring entity is an existing FCC Designated ETC.

190. We propose a more streamlined approach for transactions where the acquiring entity is also an FCC Designated ETC. The Commission has already evaluated whether such entities satisfy the requirements of the Act so there is a presumption it is unnecessary for the Commission to undertake the same analysis again. We seek comment on requiring an acquiring entity that is an FCC Designated ETC, and where such designation has not been relinquished or revoked, to notify the Commission of its intent to assume control of the FCC Designated ETC held by the acquired entity, details of the transaction, how the acquiring entity is financially and technically capable to offer Lifeline service to the selling carrier's Lifeline subscribers, and how allowing the acquiring entity to assume the selling carrier's ETC designation is in the public interest. To comply with a Commission notification requirement, we seek comment on the period of time that an acquiring entity would notify the Commission of its intent to acquire or assume the selling carrier's ETC designation and the details contained in such notice, including whether such transaction involved high-cost support prior to consummation of the transaction.³⁶³ If the

Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1480-81, para. 182 (1994) (*CMRS Forbearance Order*); see also 47 C.F.R. § 20.15(b)(3) (CMRS providers are not required to “[s]ubmit applications for new facilities or discontinuance of existing facilities”). In granting forbearance, the Commission concluded that section 214 could harm firms lacking market power since both certification procedures and discontinuance rules could deter entry of competitors in the market. See *CMRS Forbearance Order*, 9 FCC Rcd at 1481, para. 182. The Commission has found that mobile resale service falls within the definition of CMRS. *Id.* at 1425, para. 37.

³⁶⁰ See *Bureau PN Regarding Transfers*, 29 FCC Rcd at 9144-45 (reminding carriers of their obligations to obtain their own ETC designations). Before the acquiring entity may receive reimbursement from the Fund and acquire the subscribers of the ETC it seeks to purchase, the Commission or Bureau must grant the acquiring entity's petition for designation as an ETC. These rules would apply to all ETCs, including those that receive high-cost support.

³⁶¹ We would view an entity undertaking a corporate restructuring, reorganization, or change in internal business operations that does not result in a change in the ultimate ownership or control of the holder of the ETC as falling outside the scope of this proposal.

³⁶² See 47 U.S.C. § 214(e)(2). State Designated ETCs and entities that intend to assume State Designated ETCs are subject to all relevant rules and regulations imposed by the states in those jurisdictions in which the state is the designated authority. See *id.*

³⁶³ The Commission currently is responsible for designating wireless ETCs in the following jurisdictions: Virginia, Alabama, Connecticut, Florida, Delaware, District of Columbia, Maine, New Hampshire, New York, North Carolina, Tennessee, and Texas. See 47 U.S.C. § 214(e)(6).

Commission or Bureau does not act on the ETC's notification within a certain period, we propose that the transaction would be deemed approved and seek comment on that period of time. If the Commission or Bureau acts on the ETC's notification within the designated period of time via Public Notice or other type of notice to impacted entities, the proposed transaction would not take effect until the Commission or Bureau take affirmative action on the proposed transaction. We seek comment on this process for the Commission or Bureau to act regarding such transactions, and whether the process should change if there is an underlying transaction connected with the assumption or transfer of the ETC designations (e.g., transfer of licenses required to provision wireless service, obligations specific to section 214 of the Act).

191. We recognize that states, as designating authorities, have their own procedures to address the assumptions and transfers of ETC designations. We seek comment from states and third parties on whether we should consider certain state procedures addressing transfer of ETC designations in modifying our processes.

192. *Requirements for the Assignment of Subscriber Base.* In addition to procedures for the assumption or transfer of ETC designations, we propose to adopt rules to govern the sale or transfer of its Lifeline subscriber list to another service provider, including any rules regarding the transfer of subscribers between ETCs within the NLAD. To make certain all relevant authorities and the affected Lifeline subscribers are aware of a transaction in which one provider acquires another ETC or its Lifeline subscriber base, we seek comment propose rules to ensure adequate notice is given to relevant parties.

193. Specifically, we propose requiring an acquiring carrier that is not currently subject to the 214 requirements, or already subject to Commission approval of the underlying transaction (i.e., transfer of licenses required to provision wireless service), to provide notice to the affected customers, Commission, USAC, and the state designating authority of the transaction involving assignment of the Lifeline subscriber base. The Commission has previously adopted rules to implement section 214 that require telecommunications carriers other than CMRS providers to seek authorization from the Commission of forthcoming transfers of control or assignment of assets such as subscriber lists from one provider to another.³⁶⁴ By extension, we are persuaded that the Commission, USAC, state designating authorities, and, most importantly, affected Lifeline subscribers, should have notice of such transactions (including those involving CMRS providers) to ensure that subscribers have the option of choosing alternative providers and that the relevant authorities are on notice of such transfers to ensure compliance with Lifeline program rules. If we were to adopt such requirements, we seek comment on the time period and content for such notice to each of the affected parties – affected subscribers, the Commission, USAC, and the state designating authority.

194. *Exiting the Lifeline Market.* In some circumstances, a Lifeline provider may stop providing Lifeline service and we propose in such situations that the Lifeline provider's subscribers be provided notice of the upcoming event. For example, when ETCs decide to exit the market or transfer to a non-ETC, we seek comment on whether the ETC should give affirmative notice to the Commission and its affected Lifeline subscribers that it will no longer be providing Lifeline service, if it is not already subject to such an obligation. We note that CMRS-provider ETCs, for example, are not subject to our discontinuance rules. We seek comment on applying this requirement to any ETCs or non-ETCs that are not subject to our discontinuance rules.³⁶⁵ We are concerned that the absence of such notification rules in the circumstances described above could lead to consumer disruption or encourage waste and abuse of the

³⁶⁴ See generally 47 C.F.R. § 63.04(a).

³⁶⁵ 47 C.F.R. § 63.71(a) (“Any domestic carrier that seeks to discontinue, reduce or impair service shall . . . notify affected customers of the planned discontinuance, reduction, or impairment of service and shall notify and submit a copy of its application to the public utility commissioner and to the Governor of the State in which the discontinuance, reduction, or impairment of service is proposed . . .”).

Lifeline program.³⁶⁶ What form should such notices take? Should notices also be sent to states, USAC, or other entities?

195. We propose that this requirement would be a condition of receipt of Lifeline support. Under this scenario, we are not proposing to reinstate the discontinuance authorization rules for which the Commission has forborne for CMRS providers. The notice requirements we seek comment on here are not pre-approval requirements but are intended to ensure that Lifeline consumers have the opportunity to seek an alternative provider. The notice provisions would also support our efforts against waste by requiring providers to inform regulators before exiting the market and attempting either to benefit from exit transactions or to shift funds away before USAC or the Commission could obtain repayment, if appropriate. We seek comment on such requirements and the impact to the affected subscribers.

196. *Other Requirements.* We also seek comment on any other notice requirements for the transfer of Lifeline subscribers or discontinuance of service. We note that some states have specific requirements concerning the transfer of Lifeline subscribers and we seek comment on whether we should look to a certain state to serve as a model for national rules governing transfer of subscribers among ETCs.

197. In regards to transfers among entities, we also note that any material changes in ownership or control of entities with approved compliance plans require modification of those compliance plans, which in turn, must be approved by the Bureau in advance of changes.³⁶⁷ To facilitate transfers between entities with approved compliance plans, should we consider other rules that will minimize disruption to Lifeline subscribers? Should we also consider other rules to minimize disruption to Lifeline subscribers associated with the transfer of control of ETCs receiving benefits under the program, as well as the transfer of ETC designations between providers? Given that a majority of states designate competitive ETCs, we seek comment from states on these matters. We seek comment on whether states impose discontinuance of service requirements on CMRS ETCs and if so, whether those states' requirements should serve as a model for our rules.

6. Shortening the Non-Usage Period

198. As part of our ongoing efforts to reduce waste and inefficiency in the Lifeline program, we propose to reduce the non-usage interval to 30 days. In the *Lifeline Reform Order*, the Commission amended its rules to prevent ETCs from receiving Lifeline support for inactive subscribers.³⁶⁸ At that time, the Commission determined that imposing a 60-day usage period appropriately balanced the interests of subscribers and commenters, as well as the risks associated with potential waste in the program.³⁶⁹ However, we now seek comment on whether the 60-day period of time is too long and should be reduced to 30 days. Would reducing the time period benefit the program and help us to better achieve our goals to reduce waste, fraud, and abuse in the program? How would this change affect consumers? If we modified the non-usage period, should we also modify the notice period?

199. We further seek comment on how this change would impact ETCs. Would a reduction in the usage period cause administrative burdens for ETCs? If yes, what are the burdens and would there be

³⁶⁶ For example, an ETC with questionable practices could attempt to avoid Commission enforcement by exiting the business without notice to the Commission or subscribers and still benefit financially by selling its subscriber base to a non-ETC.

³⁶⁷ See *Bureau PN Regarding Transfers*, 29 FCC Rcd at 9145.

³⁶⁸ See *Lifeline Reform Order*, 27 FCC Rcd at 6767-71, paras. 255-63.

³⁶⁹ *Id.* at 6769, para. 258. Commenters largely supported the imposition of a 60-day non-usage period. See e.g. Comments of Leap Wireless Int. and Cricket Communications, Inc., WC Docket No. 11-42, at 5 (filed Apr. 21, 2011); Reply Comments of TracFone Wireless, Inc., WC Docket No. 11-41, at 2-3 (filed May 10, 2011); Comments of the Missouri Public Service Commission, WC Docket No. 11-42, at 7-8 (filed Apr. 20, 2011).

ways to minimize these burdens? Are there benefits to reducing the non-usage period, for example, to 30 days instead of the current 60 days?

7. Increasing Public Access to Lifeline Program Disbursements and Subscriber Counts

200. To increase transparency and promote accountability in the program, we propose to direct USAC to modify its online disbursement tool to display the total number of subscribers for which the ETC seeks support for each SAC, including how many are subscribers for which it claims enhanced Tribal support. Making this data more accessible will allow the public to more easily ascertain the number of subscribers that each ETC serves within each SAC on a monthly basis.

201. Within the Lifeline program, ETCs provide discounts to eligible households and receive support from the Fund for the provision of such discounts.³⁷⁰ ETCs submit an FCC Form 497 to USAC on a monthly or quarterly basis, which lists the number of subscribers it served for the previous month(s) and the requested support amount. USAC has a disbursement tool available on its website that provides the disbursement amounts that are authorized for payment for a particular month within each study area code (SAC) based on the ETC's submission of its FCC Form 497.³⁷¹ While the FCC Form 497 includes the number of subscribers the ETC served for the previous month(s), the USAC website does not currently display this information.

202. Even though the public can already derive Lifeline subscriber counts from USAC's website and Quarterly Reports, we propose this additional transparency step so the public, including state commissions and policymakers at the state and federal levels, can more easily examine these aspects of the program through one resource.³⁷² In proposing these modifications, we seek comment on the impact to ETCs. We also seek comment on whether there are other modifications to USAC's disbursement tool that should be made to promote transparency and accountability in the program.³⁷³ For example, should USAC modify the disbursement tool to provide more clarity on an ETC's adjustments made to its Form 497 filings within the last 12 months?

8. Universal Consumer Certification, Recertification, and Household Worksheet Forms

203. In this section, we seek comment on adopting forms approved by the Office of Management and Budget (OMB) that all consumers, ETCs, or states, where applicable,³⁷⁴ must use in order to certify consumers' initial and ongoing eligibility for Lifeline benefits.³⁷⁵ We believe that

³⁷⁰ Today, Lifeline provides discounts of an interim rate of \$9.25 on non-Tribal lands and up to \$25 more on Tribal lands. See 47 C.F.R. § 54.403(a) (setting forth the support amount for non-Tribal and Tribal support). USAC disburses low-income support to ETCs based on an ETC's number of Lifeline subscribers it served for the previous month(s).

³⁷¹ See generally USAC Funding Disbursement Tool, <http://www.usac.org/li/tools/disbursements/default.aspx> (last visited June 18, 2015).

³⁷² See e.g., USAC Quarterly Reports, <http://www.universalservice.org/about/tools/fcc/filings/2012/q1.aspx> (last visited June 18, 2015) (providing number of non-Tribal and Tribal subscribers by state or jurisdiction, disbursement amounts by ETC and state or jurisdiction, which also breaks out Tribal and non-Tribal for prior months).

³⁷³ The Leadership Conference June 10, 2015 Letter at 2-3.

³⁷⁴ In states that determine subscribers' eligibility for Lifeline services, the state administrator provides prospective subscribers with the certification forms, collect completed forms from subscribers, and provide them to ETCs.

³⁷⁵ Prior to the *Lifeline Reform Order*, "certification" 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 enrolled in and is receiving support from the program. See, e.g., *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15606-11, paras. 23-34. In the *Lifeline Reform Order*, the Commission replaced that approach with a process requiring ETCs to make and obtain certain initial and annual attestations

standardization of subscriber certification forms will save time by avoiding the need to analyze each form to make sure it contains all of the requirements of the federal rules, and allow for easier compliance checks. We specifically seek comment on whether the Commission should adopt standard forms for consumers' initial and annual certifications of consumer eligibility as well as the "one-per-household worksheet" for when multiple households reside at the same address and seek Lifeline benefits.

204. All ETCs must obtain a signed certification from the consumer that complies with section 54.410 of our rules.³⁷⁶ ETCs are required to annually recertify each subscriber's eligibility for Lifeline,³⁷⁷ and may recertify subscribers by requiring each subscriber to submit an annual re-certification form to the ETC.³⁷⁸ In instances where multiple households reside at the same address, the consumer must affirmatively certify through the "one-per-household worksheet" 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.³⁷⁹

205. Currently, ETCs (or states, where applicable) may create and use their own forms, so long as their forms comply with our rules.³⁸⁰ The Commission has received anecdotal evidence expressing concerns that the forms for these purposes are inconsistent, deficient, or are difficult for consumers to understand.³⁸¹ To increase compliance with the rules, facilitate administration of the program and to reduce burdens placed upon ETCs, we propose creating an official, standardized initial certification form, annual recertification form and "one-per household" worksheet.³⁸² Standardized forms would allow ETCs, the states, and consumers to better interface with any national verifier or state or federal agency that assists with enrollment, as proposed elsewhere in this item.³⁸³ We seek comment on potential drawbacks to adopting a standardized form. In GAO's most recent report on Lifeline, it notes that many eligible consumers may struggle to complete an application due to lack of literacy or language skills.³⁸⁴ We thus seek comment on how to improve the language used on such forms so that consumers are better able to understand their and the ETC's obligations.

206. In the footnote below is a URL that displays sample forms that USAC currently uses for

relating to consumer eligibility for Lifeline. The Commission therefore now uses 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. *See Lifeline Reform Order*, 27 FCC Rcd at 6697, para. 91, n.245.

³⁷⁶ *See Lifeline Reform Order*, 27 FCC Rcd at 6709, para. 111.

³⁷⁷ 47 C.F.R. § 54.410(f); *Lifeline Reform Order*, 27 FCC Rcd at 6715, paras. 130-31.

³⁷⁸ ETCs or states may also recertify the subscriber by querying an eligibility database. 47 C.F.R. § 54.410(f)(2)(i); *see also Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 131.

³⁷⁹ *Lifeline Reform Order*, 27 FCC Rcd at 6690-91, para. 77. If the consumer resides at an address where someone is already receiving a Lifeline benefit, the consumer must complete the household worksheet upon initial enrollment in the program, and the consumer must annually certify thereafter whether he lives at a residence with multiple households. If, at initial enrollment, the consumer does not reside at an address where someone is already receiving a Lifeline benefit but then moves to an address where someone is already receiving a Lifeline benefit, the consumer is required to inform her ETC and complete a household worksheet. *See id.* at 6691, n.208.

³⁸⁰ *Lifeline Reform Order*, 27 FCC Rcd at 6712-13, paras. 120-24.

³⁸¹ *See, e.g., Cox Communications, Inc. 2013 Biennial Audit Report*, WC Docket No.11-42, at 10 (filed Mar. 31, 2015).

³⁸² The Leadership Conference June 10, 2015 Letter at 2-3.

³⁸³ *See supra* paras. 64-91, 92-103.

³⁸⁴ *See GAO March 2015 Report* at 28.

recertification and provides to ETCs to use for the household worksheet.³⁸⁵ While we do not propose to adopt these specific forms, we seek comment on the sample forms displayed at the URL as a starting point.³⁸⁶ What are the shortcomings of these forms, if any? What other information should be included on these forms? Are there other mechanisms by which the Commission can increase consistency and uniformity in our certification and recertification practices?

9. Execution Date for Certification and Recertification

207. We propose to require Lifeline providers to record the subscriber execution date on certification and recertification forms. In the *Lifeline Reform Order*, the Commission required consumers to make a number of standardized certifications at the time of enrollment.³⁸⁷ Consumers are required to certify under penalty of perjury that they are eligible to receive Lifeline supported service and that they understand the Lifeline program rules before enrolling in the program.³⁸⁸ ETCs must also collect specific information about the certifying consumer on the certification form,³⁸⁹ such as the consumer's date of birth and the last four digits of the consumer's Social Security number or Tribal government identification card number.³⁹⁰ The *Lifeline Reform Order* did not, however, require ETCs to obtain from the consumer the date on which the certification form was executed ("execution date") or to record such date. The lack of an execution date can create confusion regarding which rules should apply to a given subscriber's enrollment.³⁹¹

208. We seek comment on requiring Lifeline providers to record the subscriber execution date on certification and recertification forms. Mandating an execution date produces a number of benefits for ETCs and regulators. An execution date will ensure that USAC, the Commission, and independent auditors can, among other things, determine the relevant rules that apply to the enrollment or recertification of that subscriber. Obtaining the execution date will also allow USAC to recover funds for enrollment and recertification rule violations more accurately.

209. We seek additional comment on the manner in which the execution date should be collected and retained. For example, should the execution date appear in a particular designated area on

³⁸⁵ See USAC, *Lifeline Forms*, www.usac.org/li/FCCForComment (last visited June 18, 2015). The *Lifeline Reform Order* directed USAC to develop and submit to the Bureau a form to assist ETCs in providing Lifeline to low-income households sharing an address. See 27 FCC Rcd at 6692, para. 79.

³⁸⁶ See USAC, *Lifeline Forms*, www.usac.org/li/FCCForComment (last visited June 18, 2015).

³⁸⁷ See *Lifeline Reform Order*, 27 FCC Rcd at 6709-12, paras. 111-19; 47 CFR § 54.410(d).

³⁸⁸ For example, required certifications include acknowledgment of the one-per-household requirement (47 CFR § 54.410(d)(3)(vi); *Lifeline Reform Order*, 27 FCC Rcd at 6711, para. 117), the annual recertification requirement (47 CFR § 54.410(d)(3)(ix); *Lifeline Reform Order*, 27 FCC Rcd at 6711, para. 116), and an attestation that information provided to the ETC is true and correct (47 CFR § 54.410(d)(3)(vii); *Lifeline Reform Order*, 27 FCC Rcd 6710-11, para. 115).

³⁸⁹ 47 CFR § 54.410(d)(2).

³⁹⁰ See *Lifeline Reform Order*, 27 FCC Rcd at 6711, para. 118.

³⁹¹ Several states provide certification forms for consumers to complete, and those forms require the consumer to record the date he or she filled out the enrollment form. See, e.g., Vermont Department of Children and Families, 2013 Application for Lifeline Telephone Service Credit, <http://dcf.vermont.gov/sites/DCF/files/pdf/esd/lifeline.pdf> (last visited June 18, 2015); Florida Public Service Commission, Application for Lifeline Assistance, <http://www.psc.state.fl.us/utilities/telecomm/lifeline/lifelinepdfs/applicationenglish.pdf> (last visited June 18, 2015); State of Iowa, Iowa Lifeline Assistance Certification Form, https://iub.iowa.gov/sites/default/files/files/records_center/forms/telecom/LifelineInfo%26Form.pdf (last visited June 18, 2015). These states can easily determine the relevant state and federal rules that should apply to the subscriber's enrollment.

the certification or recertification form?³⁹² How would this requirement be implemented for subscribers that complete a certification or recertification form online or through other electronic means? How would this obligation interact with the E-Sign Act and any additional requirements we propose to implement for electronic signatures?³⁹³

10. Officer Training Certification

210. In order to increase ETC accountability and compliance with the Lifeline rules, we propose to 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. In the 2012 *Lifeline Reform Order*, the Commission required all subscribers to show documentation of eligibility upon enrollment.³⁹⁴ The Commission also considered whether to require ETCs, rather than their agents or representatives, to review all documentation of eligibility, but the Commission declined to adopt such a rule at that time.³⁹⁵ The Commission reasoned that such a measure was unnecessary because ETCs remain responsible for ensuring the agent's or independent contractor's compliance with the Lifeline rules.³⁹⁶

211. Subsequent to the *Lifeline Reform Order*, there have been allegations of agents hired by ETCs abusing program rules by enrolling unqualified consumers in the Lifeline program.³⁹⁷ The Indiana Regulatory Commission expressed concern about the acts of agents in the field,³⁹⁸ and in July 2013, two ETCs fired 700 agents that enrolled consumers in the Lifeline program because the ETCs were uncertain if the agents were complying with the Lifeline rules.³⁹⁹ The Commission has also acted to increase oversight over the Lifeline enrollment process. The Enforcement Bureau released an enforcement advisory reminding ETCs that they are responsible for the actions of their agents and of ETCs' obligations to ensure compliance with the Lifeline rules.⁴⁰⁰ In addition, the Bureau codified the requirement that ETCs verify a Lifeline subscriber's eligibility for Lifeline service prior to activating such service.⁴⁰¹

212. Interested parties have suggested additional reforms to the Lifeline program intended to reduce agent abuses. In June 2013, the Lifeline Reform 2.0 Coalition filed a petition urging the Commission to establish a rule that requires all ETCs to have only their employees review and approve consumers' documentation of eligibility, rather than an agent or independent contractor, before the ETC

³⁹² See Appendix A.

³⁹³ See *supra* paras. 172-77.

³⁹⁴ See *Lifeline Reform Order*, 27 FCC Rcd at 6702, para. 99.

³⁹⁵ *Id.* at 6708-09, para. 110.

³⁹⁶ *Id.* at 6709, para. 110.

³⁹⁷ See e.g., Jennifer Loren, Oklahoma is Ground Zero for Government Cell Phone Fraud, Oklahoma's Own News on 6 (Oct. 12, 2012), <http://www.newson6.com/story/19914572/oklahoma-is-ground-zero-for-government-cell-phone-fraud>.

³⁹⁸ See *Indiana Utility Regulatory Commission's Investigation of TerraCom*, Cause No. 44332, Submission of Verified Prefiled Direct Testimony and Attachments at 11-12 (Nov. 27, 2013) (describing how TerraCom, a Lifeline-only ETC, terminated all of its sales force based on agent abuses).

³⁹⁹ See Rafael Sanchez, TerraCom Fires All Sales Forces Employees Nationwide, *The Indy Channel*, <http://www.theindychannel.com/news/call-6-investigators/terra-com-fires-all-sales-force-employees-nationwide> (last visited June 18, 2015) (TerraCom, a Lifeline-only ETC, fired 700 sales force personnel in July 2013).

⁴⁰⁰ See generally 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. Jun. 25, 2013).

⁴⁰¹ See generally *Lifeline and Link Up Modernization and Reform*, WC Docket No. 11-42, Order (June 5, 2013).

activates Lifeline service or seeks reimbursement from the Fund.⁴⁰² To minimize any improper financial incentives, the Lifeline Reform 2.0 Coalition argued that the Commission should implement a rule to no longer permit employees who are paid on a commission to review and approve applicants of the program.⁴⁰³ In responding to the June 2013 Lifeline Reform 2.0 Coalition petition, the Michigan Public Service Commission suggested that the Commission require ETCs to develop quality control procedures tailored to their particular business plan in lieu of having the Commission impose one specific set of procedures.⁴⁰⁴

213. Consistent with the Michigan PSC's suggestion, we now propose to 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. Under this proposal, ETCs would be required to affirmatively certify on each FCC Form 497 that all individuals, both company employees and third-party agents ("covered individuals"), interfacing with consumers on behalf of the company have received sufficient training on the Lifeline program rules.⁴⁰⁵ We seek comment on how an ETC can show sufficiency of training. The Commission believes that this requirement will not only help to ensure that covered individuals are adequately trained but will also create an environment of compliance at all levels of the company, thereby reducing the risk of waste, fraud, and abuse. In addition, adequate training will have the additional benefit of reducing consumer confusion during the enrollment process.⁴⁰⁶ We seek comment on these views.

214. We propose to require that ETCs obtain a signature of all covered individuals certifying that the covered individual has completed such training. This would allow auditors, the FCC, and other interested government agencies to ensure that the ETC is acting in accordance with its Form 497 certification. We seek comment on alternative means to document the training of covered individuals. To ensure that covered individuals remain aware of the current rules, we propose that every covered individual must receive such training before taking part in the enrollment process on behalf of the company and again every twelve months thereafter in order to ensure that every person involved in enrolling and verifying consumers for Lifeline has been adequately educated about the program and its requirements. We seek additional comment and solicit ideas for any additional safeguards that may be necessary to ensure that agents or other employees enrolling subscribers do not have the opportunity or incentive to defraud the Fund.

215. As the Lifeline program enters its fourth decade, it must continue to evolve to ensure that it is serving its statutory mission. The proposals and questions included herein are intended to solicit the kind of record that will allow the Commission to ensure that it is meeting the requirements of section 254 while strengthening protections against waste, fraud, and abuse.

11. First-year ETC Audits

216. To ensure the Lifeline audits are the best use of Commission resources, do not unduly burden Lifeline providers and accurately demonstrate a Lifeline provider has complied with Commission

⁴⁰² See Lifeline Reform 2.0 Coalition's Petition for Rulemaking to Further Reform the Lifeline Program, WC Docket Nos. 11-42 *et al.*, 7-9 (filed Jun. 28, 2013).

⁴⁰³ See *id.* at 8-9.

⁴⁰⁴ See Comments of Michigan Public Service Commission, WC Docket No. 11-42 *et al.*, at 3 (filed Aug. 14, 2013).

⁴⁰⁵ For example, those employees, agents, or contractors who enroll or recertify consumers and those who deal with customer service inquiries. We propose to make the necessary modifications FCC Form 497 to enable ETCs to make such a certification.

⁴⁰⁶ We decline at this time to seek comment on the Lifeline 2.0 Coalition's proposal to restrict enrollments to non-agents. ETCs are already responsible for the actions of their agents and we do not believe that their proposal increases the incentive of ETCs to comply with the rules with the same force as the proposed officer certification.

rules, we propose to revise our rule requiring all first-year Lifeline providers to undergo an audit within the first year of receiving Lifeline benefits.

217. The Commission has directed USAC to establish an audit program for all of the universal service programs, including Lifeline.⁴⁰⁷ As part of the audit program, in the *Lifeline Reform Order*, the Commission required USAC to conduct audits of new Lifeline carriers within the first year of their participation in the program, after the carrier completes its first annual recertification of its subscriber base.⁴⁰⁸ The Commission specifically declined to adopt a minimum dollar threshold for those audits and instead directed USAC to conduct a more limited audit of smaller newly established ETCs.⁴⁰⁹

218. Since the adoption of the *Lifeline Reform Order*, USAC has audited a number of first-year Lifeline providers. Many of those Lifeline providers are still ramping up operations within that first year and the number of subscribers they are serving results in a sample size too small to draw conclusions regarding compliance with Commission rules. For example, USAC has two Lifeline providers that it is preparing to audit – Glandorf Telephone Company and NEP Cellcorp, Inc. – that have only one or two subscribers as of March 2015. In addition, although USAC is conducting limited-scope “desk audits” of these Lifeline providers, these still impose costs on the Commission, USAC, and Lifeline providers that might not be warranted by the benefits of audits in particular circumstances. If the audits are made even more limited in scope, it would reduce the costs, but it would not further limit their utility.

219. Given the three years of experience auditing these carriers since the adoption of the *Lifeline Reform Order*, we now believe that, in limited instances, it is not the best use of USF resources to audit every Lifeline provider within the first year of its operations. Instead, if the Lifeline providers have sufficiently limited operations, we propose to delay the audit until such time it is useful to audit the Lifeline provider.⁴¹⁰ As such, we seek comment on our proposal to revise section 54.420(b) of our rules to allow the Office of Managing Director (OMD) to determine if a Lifeline provider should be audited within the first year of receiving Lifeline benefits in the state in which it was granted ETC status.⁴¹¹ We believe this slight change to our audit requirement will allow for the best use of audit resources and protect against waste, fraud and abuse. We seek comment on this conclusion.

220. Instead of adopting a bright-line threshold to identify those audits of first-year Lifeline providers that should be delayed, we propose to delegate authority to OMD, in its role of overseeing the USF audit programs, to work with USAC to identify those audits of first-year Lifeline providers that will not result in useful audits and permit those carriers to be audited after the one-year deadline, when the auditors can evaluate sufficient data to identify non-compliance and when it might be more cost-effective. We seek comment on this proposal. Are there particular metric(s), threshold(s), or criteria that the Commission should identify to provide more specific guidance to inform OMD’s determination of when

⁴⁰⁷ See FCC IPJA Letter. The Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA) directs all federal agencies to ensure payment recapture audits are cost-effective. 31 U.S.C. § 3321 note. See also Office of Management and Budget M-15-02, Appendix C to Circular No. A-123, *Requirements for Effective Estimation and Remediation of Improper Payments* (Oct. 20, 2014) at 30 (“These payment recapture audits should be implemented in a manner designed to ensure the greatest financial benefit to the Federal government.”).

⁴⁰⁸ See 47 C.F.R. § 54.420; *Lifeline Reform Order*, 27 FCC Rcd 6656, 6781-82 at paras. 289-90.

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.* Even limited desk audits involve time and financial resources, both on the part of the Lifeline provider and USAC’s auditors.

⁴¹¹ See Appendix A.

an audit is unlikely to be useful given the scope of the Lifeline provider's operations,⁴¹² perhaps based on considerations of the sort discussed below?⁴¹³

221. We also seek comment on whether, if an audit is delayed, we should establish a deadline by which the audit must be conducted, even if the Lifeline provider still has limited operations. We note the Commission can audit any beneficiary at any time.⁴¹⁴ Is there some benefit to a Lifeline provider in knowing that it will definitely be audited within its first year? Alternatively, or in addition, are there procedures that OMD, Bureau, or USAC should follow beyond those typically used in the case of other audits under section 54.707 of the rules? For example, should a letter or other notification be sent to the Lifeline provider to set a period of time in advance of when the audit was scheduled to occur notifying the provider it will be delayed? After a delay, should USAC notify the Lifeline provider when it has been determined that an audit will be announced? If so, how far in advance? Should any such notification simply inform the Lifeline provider of the forthcoming audit pursuant to section 54.420(b) of the rules, or is there additional information that should be included?

222. Instead of setting a specific time frame by which an audit must be conducted after the current one-year deadline or delegating authority to OMD, to determine when an audit should be conducted, should the Commission instead adopt a minimum threshold under which audits should not be conducted because they are unlikely to be useful? If so, what metric(s) should be used to define the threshold(s)? Should it be measured in dollars or subscribers, some other metric(s), or some combination? Under such an approach, what metrics would best enable an evaluation of the usefulness of a section 54.420(b) audit, in terms of both substance (i.e., the metric(s) bear a strong relationship to whether the audit is likely to be useful) and ease of administration (e.g., the data needed to evaluate the metric are readily available and verifiable, and the metric(s) otherwise can be readily implemented in practice). What should the magnitude of any such threshold(s) be (whether dollars, subscribers, other metric(s), or some combination)? We believe allowing OMD some discretion in determining which carriers should be exempt from the audit requirement will allow for situations in which an audit may be warranted for a first-year Lifeline provider with limited Lifeline operations. We seek comment on this conclusion.

223. Finally, we seek comment on whether there are variations or combinations of the forgoing options or other alternatives that the Commission should consider. Commenters advocating particular alternatives should explain how readily they can be used to identify whether an audit is likely to be useful and how readily administrable the alternatives would be.

III. ORDER ON RECONSIDERATION

A. Retention of Eligibility Documentation

224. In this Order, we require ETCs to retain documentation demonstrating subscriber eligibility for the Lifeline Program as well as documentation used in NLAD processes and revise sections 54.404 and 54.410 of the rules.⁴¹⁵ In doing so, we grant in part a petition and supplement filed by TracFone, which requests reconsideration of the prohibition on retention of eligibility documentation.⁴¹⁶

⁴¹² See *infra* para. 268. (calling for OMD to evaluate when a quality audit would be useful under the totality of the circumstances).

⁴¹³ See *infra* paras. 221-22.

⁴¹⁴ See 47 C.F.R. § 54.707.

⁴¹⁵ See Appendix B.

⁴¹⁶ See TracFone Petition for Reconsideration; TracFone Supplement. This Order only addresses the issues related to retention of eligibility documentation raised by TracFone and does not address the other issues raised by TracFone's Petition for Reconsideration regarding usage, handsets, temporary addresses, and the support amount. See *TracFone Petition for Reconsideration* at 3-25.

We take these actions as another important step to significantly reduce waste, fraud, and abuse in the Lifeline program.

225. In the 2012 *Lifeline Reform Order*, the Commission adopted uniform eligibility criteria for the federal Lifeline program.⁴¹⁷ Consumers must qualify based on either their income or their participation in at least one of a number of federal assistance programs.⁴¹⁸ The Commission required ETCs to examine certain documentation to verify a consumer's program or income based eligibility, but prohibited ETCs from retaining copies of the documentation.⁴¹⁹ Instead, the Commission directed ETCs to review the documentation and keep accurate records detailing how the consumer demonstrated his or her eligibility.⁴²⁰ In support of its decision to prohibit the retention of eligibility documents, the Commission cited to comments that raised concerns such as the risk related to retaining sensitive subscriber eligibility documentation and the burden on ETCs.⁴²¹

226. Subsequent to the *Lifeline Reform Order*, TracFone filed a petition for reconsideration and supplement.⁴²² In its petition for reconsideration, TracFone argues that the Commission should not have required consumers to produce documentation to prove eligibility.⁴²³ In its late-filed supplement to its petition for reconsideration, TracFone argues that given that the Commission had not reconsidered the new rule requiring proof of eligibility, the Commission should require all ETCs to retain the program eligibility documentation for not less than three years, in accordance with the rules on record retention.⁴²⁴ Recently, in a petition for waiver, TracFone broadened its original request to allow ETCs to retain documentation related to both program and income-based eligibility.⁴²⁵

227. *Procedural Issues.* Section 1.429 of the Commission's rules states that late filed supplements to petitions for reconsideration are not considered, "except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement."⁴²⁶ TracFone filed a separate pleading requesting that the Commission accept and consider the late-filed supplement because the arguments raised in the supplement are a logical outgrowth of the issues raised in the *2011 Lifeline*

⁴¹⁷ Prior to the *Lifeline Reform Order*, eligibility requirements for the Lifeline program varied from state to state. See *Lifeline Reform Order*, 27 FCC Rcd at 6684, para. 62. The federal default Lifeline eligibility criteria—which applied in eight states and two territories (*i.e.*, "federal default states") required consumers to either 1) have a household income at or below 135 percent of the Federal Poverty Guidelines; or 2) participate in at least one of a number of federal assistance programs. See *id.* The District of Columbia and the 42 remaining states and three territories with their own programs established their own eligibility criteria based on income or factors directly related to income. See *id.* The Lifeline Reform Order required all states to utilize at a minimum the income and program criteria used by the federal default states for the Lifeline program. See *id.* at 6685, para. 65.

⁴¹⁸ See *id.* at 6684, para. 62.

⁴¹⁹ See *id.* at 6703, para. 101. Consistent with the *Lifeline Reform Order*, currently section 54.410 prohibits the retention of program or income based eligibility documentation. See 47 C.F.R. §§ 54.410(b)(1)(ii), 54.410(c)(1)(ii).

⁴²⁰ 47 C.F.R. §§ 54.410(b)(1)(i)(B), 54.410(c)(1)(i)(B).

⁴²¹ See *Lifeline Reform Order*, 27 FCC Rcd at 6703, para. 101, n.275.

⁴²² See generally TracFone Petition for Reconsideration; TracFone Supplement.

⁴²³ See TracFone Petition for Reconsideration at 3.

⁴²⁴ See TracFone Supplement at 5. TracFone's supplement was filed past the 30 day deadline required by the Commission's rules. See 47 C.F.R. § 1.429(d).

⁴²⁵ See also Petition for Waiver of Lifeline Rules Prohibiting Retention of Income-Based and Program-Based Eligibility Documentation, WC Docket No. 11-42 et al. (filed Jan. 22, 2014) (TracFone Petition for Waiver). We need not rule on TracFone's Petition for Waiver because our partial grant of the TracFone petition for reconsideration renders the waiver request moot.

⁴²⁶ See 47 C.F.R. § 1.429(d).

NPRM.⁴²⁷ TracFone notes that its proposal was subject to public comment and all but one of the commenters supported its position to permit retention of eligibility documentation.⁴²⁸ We find that TracFone has stated adequate grounds to justify consideration of its supplement. We view the argument raised in TracFone's supplement as an alternative argument to TracFone's petition for reconsideration.⁴²⁹ We also note that both the petition for reconsideration and the supplement were the subject of public comment, and that the issue of eligibility documentation retention was directly discussed in the *Lifeline Reform Order*.⁴³⁰ We therefore accept TracFone's supplement to its petition for reconsideration and discuss the substantive issues below.

228. *Substantive Issues.* In its petitions, TracFone argues that retention of eligibility information is necessary to prevent waste, fraud, and abuse because the current rules do not provide the Commission or USAC with a way to verify through an audit or other mechanism whether an ETC has in fact reviewed the eligibility documentation provided by the Lifeline applicant.⁴³¹ TracFone argues that by prohibiting ETCs from retaining documentation, the Commission created an opportunity for ETCs to fabricate records which indicate that they have reviewed valid documentation.⁴³² In a related petition, TracFone argues that ETCs should retain documentation reviewed to verify the identity or information of a subscriber as part of the NLAD dispute resolution process for the NLAD.⁴³³ For these reasons, TracFone argues in its petitions that the Commission should change its rules to require ETCs to retain eligibility documentation in accordance with Commission retention rules.⁴³⁴

229. All but one of the *commenters* filed in support of the TracFone petitions,⁴³⁵ asserting among other things that retention of documentation is in the public interest,⁴³⁶ and that requiring the

⁴²⁷ See Motion Requesting Acceptance and Consideration of Supplement to Petition for Reconsideration and Emergency Petition to Require Retention of Program-Based Eligibility Documentation, WC Docket No. 11-42 et al., at 5 (filed Oct. 30, 2014).

⁴²⁸ See *id.* at 6.

⁴²⁹ See TracFone Petition for Reconsideration at 3; TracFone Supplement at 1.

⁴³⁰ See *Lifeline Reform Order*, 27 FCC Rcd at 6701 para. 98.

⁴³¹ See TracFone Petition for Reconsideration at 2.

⁴³² See *id.* at 3.

⁴³³ See TracFone Petition for Waiver at 7-9 (discussing the third-party identification verification and address checks in the NLAD).

⁴³⁴ See *id.*

⁴³⁵ See, e.g., Comments of i-Wireless, LLC, WC Docket No. 11-42 et al., at 1 (filed July 24, 2012) (i-Wireless Comments); Comments of Joint Commenters, WC Docket No. 11-42, et al., at 1-2 (filed July 24, 2012) (Joint Commenters Comments); Comments of Nexus Communications Inc., WC Docket No. 11-42 et al., at 1 (filed July 24, 2012) (Nexus Comments); Comments of Sprint Nextel Corporation, WC Docket No. 11-42 et al., at 1-2 (filed July 24, 2012) (Sprint Comments); Supporting Comments of NTCH, Inc., WC Docket No. 11-42 et al., at 2 (filed July 24, 2012) (NTCH Comments); Reply Comments of YourTel America, Inc., WC Docket No. 11-42 et al., at 2 (filed Aug. 8, 2012) (YourTel America Reply Comments). *But see* Comments of The Gila River Indian Community and Gila River Telecommunications, Inc., WC Docket No. 11-42 et al., at 4 (filed July 24, 2012) (Gila River Comments) (stating that TracFone's request will increase administrative costs to ETCs and will not increase telephone penetration rates). See also Comments of Center for Democracy & Technology, WC Docket No. 11-42, at 1-2 (filed July 12, 2015) (taking no position on the issue of eligibility documentation). Compare Comments of Smith Bagley, Inc., WC Docket No. 11-42, at 8 (Mar. 18, 2014) (arguing that ETCs should be permitted but not required to keep eligibility documentation). Recently, AT&T, Verizon, Century Link, and Cox Enterprises filed ex partes with the Commission expressing concerns about the privacy implications involved in requiring retention of subscriber documentation. See Letter from Anisa A. Latif, Associate Director, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 2 (filed May 13, 2015) (May 13, 2015 AT&T Ex Parte); Letter from Alan Buzacott, Executive Director, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1

retention of eligibility documents will curb waste, fraud, and abuse in the Lifeline program.⁴³⁷ Commenters also agree that the current requirement is difficult to audit.⁴³⁸ They explain that there is uncertainty in the industry with respect to what an ETC's records must contain and what auditors would consider when finding that an ETC is or is not compliant with the rules.⁴³⁹ Commenters agree that ETCs have methods to securely maintain customer eligibility documentation in an encrypted, electronic format and to limit access to such documentation to only certain employees.⁴⁴⁰ Some commenters also note that the administrative costs associated with retaining the documentation are minimal and, in all events, justified by the protection afforded against waste, fraud, and abuse.⁴⁴¹

230. *Retention of Subscriber Eligibility Documentation.* Based on the record before us, we grant in part TracFone's request for reconsideration and require carriers to retain both program and income-based eligibility documentation.⁴⁴² Under section 1.429 of the Commission's rules, petitions for reconsideration will only be granted when the petitioner shows that the facts or arguments relied on have changed since the last opportunity to present such matters, the facts or arguments were not known at the time of the last opportunity to present such matters, or the Commission determines that consideration of the facts or arguments relied on is required in the public interest.⁴⁴³ For the reasons set forth below, we find that TracFone has demonstrated that "consideration of the facts or arguments relied on is required in the public interest."⁴⁴⁴

231. Based upon the record before us and for the reasons set forth below, we find that the overall benefits of requiring the retention of eligibility documentation outweigh the costs. We thus revise section 54.410 of the rules to require retention of eligibility documentation.⁴⁴⁵ We conclude that reversal of the eligibility documentation prohibition is in the public interest because it will improve the auditability and enforceability of our rules, significantly reduce falsified records, and provide certainty in the industry regarding the documents that need to be retained in the event of an audit or investigation.⁴⁴⁶

(filed June 10, 2015); Letter from Melissa Newman, Senior Vice President, Century Link, to Marlene H. Dortch, Secretary FCC, WC Docket No. 11-42, at 1-2 (filed June 10, 2015); Letter from Jenny Prime, Director, Cox Enterprises, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1-2 (filed June 11, 2015).

⁴³⁶ See, e.g., i-Wireless Comments at 1; Joint Commenters Comments at 1-2; Nexus Comments at 1; Sprint Comments at 1-2; NTCH Comments at 2; YourTel America Reply Comments at 2.

⁴³⁷ See, e.g., i-Wireless Comments at 4 (stating that without the requirement to retain documentation, ETCs would be able to falsify records to obtain Lifeline support); Sprint Comments at 3, YourTel America Reply Comments at 2.

⁴³⁸ See, e.g., i-Wireless Comments at 4; Joint Commenters Comments at 2-4; NTCH Comments at 2; Sprint Comments at 2.

⁴³⁹ See, e.g., i-Wireless Comments at 4; Joint Commenters Comments at 2-4.

⁴⁴⁰ See, e.g., Nexus Comments at 3; Sprint Comments at 2-3.

⁴⁴¹ See Reply Comments of Nexus at 2-3 (noting the minimal costs associated with scanning and storing documentation and that such costs are minimal and greatly outweighed by the importance of maintaining integrity in the program.). See also Sprint Comments at 3 (also stating that costs of document retention in this instance are justified because doing so protects the fund against waste, fraud, and abuse). See also GAO March 2015 Report at 22-23 (noting that the majority of ETCs interviewed support the retention of eligibility documentation). But see Gila River Comments at 4 (opposing TracFone's Petition because of the inevitable rise in administrative costs borne by ETCs). But see May 13, 2015 AT&T Ex Parte at 2.

⁴⁴² See TracFone Supplement at 1.

⁴⁴³ See 47 C.F.R. § 1.429(b)(1)-(3).

⁴⁴⁴ See 47 C.F.R. § 1.429(b)(3).

⁴⁴⁵ See Appendix B.

⁴⁴⁶ See *id.*

232. We also find that the concerns that led us to prohibit such retention in 2012, while still relevant, are largely overshadowed by the enormous benefits of requiring ETCs to retain eligibility documentation. For example, while we are still concerned with the privacy and security of subscriber information, most ETCs themselves argue that there are IT and access security measures that can be taken to minimize the risks associated with maintaining sensitive subscriber eligibility documentation.⁴⁴⁷ In fact, in the GAO's recent report on the Lifeline Program, the ETCs interviewed reiterated their comments that subscriber information can be protected using multiple measures such as, but not limited to, firewalls and other boundary protections to prevent unauthorized access, authentication requirements for users, and usage restrictions for authorized users.⁴⁴⁸ Furthermore, while there still will be an additional burden on ETCs to retain eligibility documentation, the majority of ETCs contend that the burden is worth the benefits to the program and we agree.⁴⁴⁹ We find that the burdens of retention can be mitigated with electronic storage capabilities and we conclude that the burden is outweighed by the benefits to the integrity of the program. While we seek comment on establishing a national verifier for the program, overall, we find that the Fund will be better protected, if at this time, ETCs are required to both retain and present the eligibility documentation to the Commission or USAC and that the revised rules will prevent significant waste, fraud, and abuse in the Lifeline program.

233. *Retention of Documentation Used in the NLAD Resolution Processes.* For the reasons set forth above, we revise section 54.404 of the rules and also require ETCs to retain documentation that was reviewed to verify subscriber information for the NLAD dispute resolution process.⁴⁵⁰ The NLAD dispute resolution process requires ETCs to review additional documentation to verify the identity or information of a subscriber who has failed the third-party identification verification, and address or age check for the NLAD.⁴⁵¹ All but one of the comments received support TracFone's position that ETCs should be allowed to retain documents reviewed for NLAD processes.⁴⁵² In addition to the record support for this action, we also find that there is overlap between the documents reviewed by ETCs for the NLAD dispute resolution process and the eligibility documents listed in section 54.410.⁴⁵³ Furthermore, the Commission's rules on record retention mandate that ETCs retain documents demonstrating compliance with federal Lifeline requirements.⁴⁵⁴

234. We therefore revise sections 54.404 and 54.410 of the rules and require that all ETCs retain documentation demonstrating subscriber income-based or program-based eligibility for

⁴⁴⁷ See, e.g., *supra* n.441.

⁴⁴⁸ See GAO March 2015 Report at 20. Some ETCs told GAO that information is stored in a secure software application on rather than on tablets and is transmitted to a back office for review. See *id.* at 22.

⁴⁴⁹ See *supra* n.435.

⁴⁵⁰ See Appendix B.

⁴⁵¹ See USAC, Dispute Resolution, <http://www.usac.org/li/tools/nlad/nlad-dispute-resolution.aspx> (last visited June 18, 2015).

⁴⁵² See, e.g., Comments of the Lifeline Reform Coalition 2.0 on TracFone Petition for Waiver, WC Docket 11-42 et al., at 3-4 (filed Mar. 3, 2014); Comments of Nexus Communications, Inc., WC Docket 11-42, at 4 (filed Mar. 3, 2014); Comments of Free State Foundation, WC Docket 11-42 et al., at 3 (filed Mar. 3, 2014); Comments of Budget Pre-Pay, Inc., WC Docket 11-42, at 3 (filed Mar. 18, 2014); Comments of Comptel, WC Docket 11-42 et al., at 2 (filed Mar. 3, 2014). See also Wireline Competition Bureau Seeks Comment on Petition for Waiver of Lifeline Rules Prohibiting Retention of Income-Based and Program-Based Eligibility Documentation, Public Notice, 29 FCC Rcd 923 (Wireline Comp. Bur. 2014). But see Reply Comments of Smith Bagley, Inc., WC Docket No. 11-42, at 1 (filed Mar. 18, 2014) (opposing mandatory retention of documentation, but supporting permissive retention of documentation).

⁴⁵³ See 54 C.F.R. § 54.410(b)-(c).

⁴⁵⁴ See 54 C.F.R. § 54.417(a).

participation in the Lifeline program for the purposes of production during audits or investigations or to the extent required by NLAD processes, including the dispute resolution processes that require verification of identity, address, or age of subscribers.⁴⁵⁵ We remind ETCs that pursuant to section 222 of the Act, they have a duty to protect “the confidentiality of proprietary information” of customers.⁴⁵⁶ In this context, this includes all documentation submitted by a consumer or collected by an ETC to determine a consumer’s eligibility for Lifeline service, as well as all personally identifiable information contained therein.⁴⁵⁷

235. The Act’s requirement that such practices be “just and reasonable,” also imposes a duty on ETCs related to document retention security practices.⁴⁵⁸ Accordingly, we expect ETCs to live up to the assurances made in their comments in this proceeding that they can take appropriate measures to protect this data.⁴⁵⁹ In particular, we expect that, at a minimum, ETCs must employ the following practices to secure any subscriber information that is stored on a computer connected to a network: firewalls and boundary protections; protective naming conventions; user authentication requirements; and usage restrictions, to protect the confidentiality of consumers’ proprietary personal information retained for this or other allowable purposes.⁴⁶⁰ However, if the facts warrant further investigation, we still will evaluate the security measures employed by ETCs on a case by case basis.

236. We note that the Commission sought comment on extending to ten years the record retention requirement generally in the 2012 FNPRM.⁴⁶¹ We do not take action on that proposal at this time. Therefore, Lifeline providers must retain documentation demonstrating compliance with the Commission’s rules for three years.⁴⁶² Documentation required by sections 54.404(b)(11), 54.410(b), 54.410(c), 54.410(d) and (f) must be retained for as long as the subscriber receives Lifeline service from the ETC, but no less than three calendar years. Documents covered under sections 54.404(b)(11), 54.410(b), and 54.410(c) are those documents in existence as of the effective date of this rule.⁴⁶³

⁴⁵⁵ See Appendix B.

⁴⁵⁶ See 47 U.S.C. § 222(a). Additionally, we endorse the Commission’s prior analysis that applicants are due the same privacy protections as customers and ETCs must protect their information both at the application stage when a consumer provides his or her personal information as well as after the consumer becomes a subscriber. See *TerraCom NAL*, 29 FCC Rcd at 13331-35. While we endorse the Commission’s general interpretation of sections 201 and 222 of the Act as reflected in the *TerraCom NAL*, we do not here resolve the issue of whether the companies at issue in that *NAL* in fact violated those requirements, as the Commission found apparently was the case in the *NAL*.

⁴⁵⁷ See *TerraCom NAL*, 29 FCC Rcd at 13331-32.

⁴⁵⁸ See 47 U.S.C. § 201(b).

⁴⁵⁹ See *supra* n.441-48.

⁴⁶⁰ See *supra* n.448. Compare *TerraCom NAL*, 29 FCC Rcd at 13335-37 (describing that the ETCs there had failed to take just and reasonable data security measures to protect customer information). For example, the ETCs subject to the *TerraCom NAL* stored customer information on servers that were accessible over the public internet, allowed anyone to access the information through a basic search, failed to protect the data with passwords encryption, and used URLs that contained the names of subscribers in plain text. *Id.*

⁴⁶¹ See *Lifeline Reform Order*, 27 FCC Rcd at 6857, para. 505.

⁴⁶² See Appendix B.

⁴⁶³ See *id.* This interpretation is a permissible, perspective application of a new rule because it does not affect or penalize past behavior but instead affects only conduct going forward. Cf. *Connect America Fund et al.*, WC Docket No. 10-90, et al., Third Order on Reconsideration, 27 FCC Rcd 5622, 5628, para. 14 (2012) (Making a similar interpretation in the high-cost context).

237. Finally, given our decision in this Second Report and Order to limit Lifeline support to ETCs directly serving Lifeline customers,⁴⁶⁴ we also amend section 54.417 to require non-ETCs that have provided Lifeline service through resale to retain records establishing compliance with state and federal rules for at least three calendar years.⁴⁶⁵ Non-ETCs should also retain documentation required by section 54.404(b)(11), 54.410(b), 54.410(c), 54.410(d) and (f) for as long as the subscriber receives Lifeline service from the ETC, but no less than three calendar years.⁴⁶⁶ Such retention will allow the Commission to verify non-ETCs' past compliance with the Lifeline rules.

IV. SECOND REPORT AND ORDER

A. Establishing a Uniform Snapshot Date Going Forward

238. In the *2011 Lifeline NPRM*, the Commission proposed to codify a rule that would require all ETCs to report partial or pro-rata dollar amounts when claiming reimbursement for Lifeline subscribers who received service for less than a month.⁴⁶⁷ The Commission reasoned that since ETCs are able to bill customers on a partial month basis, they should also be able to tell if a customer was a Lifeline subscriber for the full month of requested support.⁴⁶⁸

239. The majority of comments received in response to the *2011 Lifeline NPRM* opposed such a requirement and raised arguments regarding significant resources and cost involved if the Commission mandated pro-rata support reporting.⁴⁶⁹ For example, commenters explained that fundamental changes to systems, such as programming updates, additional storage requirements, and/or creating new internal IT systems may be necessary to comply with such a requirement.⁴⁷⁰ The commenters noted that the Commission should not assume that ETC billing systems could readily implement pro-rata support calculations.⁴⁷¹ In contrast, commenters noted that the system of using a single snapshot date to calculate support amounts would alleviate the need for partial support requests.⁴⁷² Some commenters noted that the

⁴⁶⁴ See *infra* paras. 244-56.

⁴⁶⁵ See Appendix B.

⁴⁶⁶ See *id.*

⁴⁶⁷ See *2011 Lifeline NPRM*, 26 FCC Rcd at 2793-94, paras. 65-67.

⁴⁶⁸ See *id.* at 2793-94, para. 67.

⁴⁶⁹ See Comments of Verizon and Verizon Wireless, WC Docket No. 11-42 et al., at 11 (filed Apr. 21, 2011); AT&T 2011 Comments at 24-25; Comments of Cincinnati Bell Inc. WC Docket No. 11-42 et al., at 14 (filed Apr. 22, 2011); Comments of Consumer Cellular, Inc., WC Docket No. 11-42 et al., at 11 (filed Apr. 21, 2011); Comments of Cox Communications, Inc., WC Docket No. 11-42 et al., at 8 (filed Apr. 21, 2011); Comments of General Communication, Inc., WC Docket No. 11-42 et al., at 28 (filed Apr. 21, 2011); Joint Reply Comments of the Montana Telecommunications Association and Montana Independent Telecommunications Systems, WC Docket No. 11-42 et al., at 7 (filed May 25, 2011) (noting that pro-rata reporting will add to the operational expenses of ETCs and that those expenses may be passed on to consumers or taxpayers). *But see* Comments of Leap Wireless International Inc. and Cricket Communications, Inc., WC Docket No. 11-42 et al., at 5 (filed Apr. 21, 2011) (supporting the pro-rata requirement). *Compare* Comments of YourTel America, Inc., WC Docket No. 11-42 et al., at 5-6 (filed Apr. 21, 2011) (arguing, *inter alia*, that it has always calculated pro-rata support amounts for its FCC Form 497).

⁴⁷⁰ See, e.g., Comments of Cincinnati Bell Inc. WC Docket No. 11-42 et al., at 14 (filed Apr. 22, 2011); Comments of Verizon and Verizon Wireless, WC Docket No. 11-42 et al., at 11 (filed Apr. 21, 2011). See also Comments of Cox Communications, Inc., WC Docket No. 11-42 et al., at 8 (filed Apr. 21, 2011).

⁴⁷¹ See, e.g., Comments of Cincinnati Bell Inc. WC Docket No. 11-42 et al., at 14 (filed Apr. 22, 2011); Comments of Verizon and Verizon Wireless, WC Docket No. 11-42 et al., at 11 (filed Apr. 21, 2011).

⁴⁷² See, e.g., Comments of Cincinnati Bell Inc. WC Docket No. 11-42 et al., at 15 (filed Apr. 22, 2011); Comments of Verizon and Verizon Wireless, WC Docket No. 11-42 et al., at 12 (filed Apr. 21, 2011); Comments of General Communication, Inc., WC Docket No. 11-42 et al., at 29 (filed Apr. 21, 2011).

creation of the database, which would track the number of days that subscribers received service and when they were activated and deactivated, could solve the issue permanently.⁴⁷³

240. After reviewing the comments received, we decline to adopt our proposal to require ETCs to calculate partial month support amounts. As the current FCC Form 497 does not collect pro-rata support requests, our actions today do not affect ETCs' FCC Form 497 filings currently pending with USAC.⁴⁷⁴

241. Instead of requiring pro-rata support requests, at this time, we revise section 54.407 of our rules to require ETCs to use a uniform snapshot date to request reimbursement from USAC for the provision of Lifeline support.⁴⁷⁵ As the commenters state, we agree that it is possible that subscribers who initiate service may offset those who terminate service mid-month. We find, therefore, that a uniform snapshot date will reduce waste in the program as effectively as partial support reporting would have done, but at much lower administrative and compliance cost to ETCs. We also find that a uniform snapshot date will be efficient for USAC to administer and will ultimately ease future changes to reimbursement processes if, for example, the Commission adopts proposals herein to reimburse based on the NLAD.⁴⁷⁶

242. Following the *Lifeline Reform Order*, USAC encouraged ETCs to select a single "snapshot date" during the month (e.g., the 15th of every month) to determine the number of eligible consumers for which it would seek reimbursement for that month.⁴⁷⁷ As a result, the snapshot dates vary from ETC to ETC. We now decide that ETCs should all use the same snapshot date to determine the number of Lifeline subscribers served in a given month and report that month to USAC on the FCC Form 497.⁴⁷⁸ We conclude that a snapshot date will produce substantial benefits. First, a uniform snapshot date will reduce the risk that two ETCs receive full support for providing service for the same subscriber in the same calendar month. Second, a uniform snapshot date will make it easier for USAC to adopt uniform audit procedures. Third, as described in the Second FNPRM section above, a uniform snapshot date will help ease the transition to a reimbursement process that calculates support based on the number of subscribers contained in the NLAD. Given the industry support and comment around the establishment of a snapshot date, compliance with our rules will be high and the administrative costs associated will be

⁴⁷³ See, e.g., AT&T 2011 Comments at 24.

⁴⁷⁴ See FCC Form 497 (Apr. 2012). We note that, in the future, if the Commission again considers requiring ETCs to request partial support, the NLAD may substantially ease implementation burdens and costs because it is already populated with critical information necessary for pro-rata reimbursement such as subscriber start and end-dates. In the Second FNPRM section above, we seek comment on this concept and other proposals that will help us to fully utilize the NLAD.

⁴⁷⁵ See Appendix B.

⁴⁷⁶ See *infra* paras. 178-82.

⁴⁷⁷ See USAC Training, Changes to the Lifeline Disbursement Process and New FCC Form 497, Transition to Payment on Actuals and Filing New FCC Form 497 at 15 (Aug. 23, 2012) ("Carriers should take a 'snapshot' of their Lifeline subscriber base at a particular time each month and claim support for the number of Lifeline subscribers in the snapshot. Carriers must retain the 'snapshot' for their records in order to respond to audits and data validations.").

⁴⁷⁸ For example, on May 1, carriers would take a snapshot of the number of subscribers in their system on that day, which they would use on the FCC Form 497 for the April data month. For ETCs that file their FCC Form 497 electronically by May 8, they will receive reimbursement by the end of May. For ETCs that file their FCC Form 497 electronically after May 8 but by June 8, they will receive reimbursement by the end of June. For ETCs that file their FCC Form 497 by paper on any day in May, they will receive reimbursement by the end of June. See *Lifeline Reform Order*, 27 FCC Rcd at 6786, para. 303.

low. To promote efficiency and ease of administration, we revise section 54.407 and direct ETCs to take a snapshot of their subscribers on the first day of the month.⁴⁷⁹

243. Therefore, within 180 days of the effective date of this Second Report and Order, ETCs should transition to using the first day of the month as the snapshot date. Such a transition period is appropriate to ensure that ETCs have sufficient time to make whatever changes are necessary to their billing systems to take a snapshot on the first day of the month. In the interim, ETCs should use the same snapshot date of their choice from month to month.

B. Resale of Retail Lifeline Supported Services

244. We next attack a potential source of waste and abuse in the Lifeline program by addressing issues raised by the Commission in the 2012 *FNPRM* pertaining to resold Lifeline services. We now find that only ETCs providing Lifeline service directly to the consumer may seek reimbursement from the Lifeline program for the service provided. We revise sections 54.201, 54.400, 54.401, and 54.407 to reflect this change.⁴⁸⁰ We will no longer provide any Lifeline reimbursement to carriers for any wholesale services to resellers, and we therefore forebear, to the extent discussed herein, from the incumbent LECs' obligation under section 251(c)(4) to offer their Lifeline services to resellers.⁴⁸¹

245. By way of background, section 251(c)(4) of the Communications Act of 1934 as amended, states that 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."⁴⁸² In 1997, to encourage competition in the Lifeline market, the Commission concluded that resellers "could obtain Lifeline service at wholesale rates that include the Lifeline support amounts and could pass these discounts through to qualifying low-income consumers."⁴⁸³ In its 2004 *Lifeline Report and Order*, the Commission required non-ETCs that provide Lifeline-discounted service to eligible consumers through resold retail service arrangements with the incumbent LECs to comply with all Lifeline/Link Up requirements, including certification and verification of subscribers.⁴⁸⁴ As of February 2014, there are approximately 46,281 lines offered to resellers for which incumbent LECs are seeking reimbursement.⁴⁸⁵

246. In the *Lifeline Reform Order*, the Commission expressed concerns that permitting ETCs and non-ETCs to offer Lifeline-discounted service through resale of retail Lifeline service posed risks to the Fund.⁴⁸⁶ In particular, the Commission was concerned with the possibility of over-recovery by both wholesalers and resellers seeking reimbursement from USAC for the same Lifeline subscriber and the lack of direct oversight of non-ETC resellers by state and federal regulators.⁴⁸⁷ In the case where both the wholesaler and the reseller are ETCs, there is currently no way for USAC to determine whether both the

⁴⁷⁹ See Appendix B.

⁴⁸⁰ See *id.* Our revisions to section 54.201 of the Commission's Rules, also include ministerial changes to reflect the recodification of the high-cost universal service provisions from Part 36 to Part 54 of the Commission's Rules.

⁴⁸¹ To be clear, this decision has no impact on incumbent LECs' obligations to offer for resale services other than their retail Lifeline-discounted service, nor does it prohibit reseller ETCs from purchasing incumbent LEC resale products, offering them to Lifeline-eligible subscribers, and seeking the Lifeline reimbursement from USAC.

⁴⁸² See 47 U.S.C. § 251(c)(4).

⁴⁸³ See *Universal Service First Report and Order*, 12 FCC Rcd at 8972, para. 370.

⁴⁸⁴ See *2004 Lifeline Order*, 19 FCC Rcd at 8325, para. 40.

⁴⁸⁵ This data is taken from the most recent FCC Form 555 filings.

⁴⁸⁶ See *Lifeline Reform Order*, 27 FCC Rcd at 6840, para. 449.

⁴⁸⁷ See *id.* at 6840-41, paras. 449-50.

wholesaler and the reseller are seeking reimbursement for the same subscriber.⁴⁸⁸ Meanwhile, while non-ETC resellers do not pose the same risk of duplicate discounts, they may not be complying with federal and state Lifeline rules.⁴⁸⁹ Even though non-ETC resellers must retain records to demonstrate compliance with the Lifeline program rules, the Commission found it difficult to oversee compliance “where the entity with the retail relationship with the consumer is not interfacing directly” with regulators.⁴⁹⁰

247. In light of these concerns, the Commission sought comment in the Further Notice of Proposed Rulemaking section of the *Lifeline Reform Order* on a variety of proposals to reform or eliminate the resale of retail wireline Lifeline service.⁴⁹¹ First, the Commission proposed to restrict reimbursement from the Fund to ETCs when they provide Lifeline-discounted service directly to retail customers.⁴⁹² Under this proposal, if an ETC wholesaler provides retail telecommunications service to an ETC reseller for resale, only the ETC reseller can seek reimbursement from the Fund—the wholesaler ETC would not be permitted to take from the Fund on behalf of the reseller ETC.⁴⁹³ Second, the Commission proposed to eliminate incumbent LECs’ obligation to resell retail Lifeline-discounted service.⁴⁹⁴ The Commission sought comment on whether it should eliminate this requirement by either reinterpreting the section 251(c)(4) resale obligation to exclude the resale of retail Lifeline-discounted service or by forbearing from the incumbent LECs’ obligation to offer retail Lifeline service via section 251(c)(4) resale.⁴⁹⁵

248. Commenters overwhelmingly support eliminating the resale of retail Lifeline service.⁴⁹⁶ Parties agree that only ETCs that provide Lifeline-discounted service directly to subscribers should be eligible to receive Lifeline support from the Fund.⁴⁹⁷ Commenters also support the Commission’s

⁴⁸⁸ As explained below, the NLAD is not meant to detect duplicate support for the same service in this situation. *See infra* para. 251.

⁴⁸⁹ While section 54.417(b) of the Commission’s rules prior to the *Lifeline Reform Order* made clear that resellers must maintain records to document compliance with all the Lifeline rules, the rule was modified after the *Lifeline Reform Order* to include references to sections 54.405 and 54.410 of the Commission’s rules. *Compare* 47 C.F.R. § 54.417(b) (2004) *with* 47 C.F.R. § 54.417(c) (2012). However, in the *Lifeline Reform Order*, the Commission did not intend a substantive change to resellers’ obligations in 2012. Therefore, non-ETC resellers have a continuing duty to comply with all Lifeline program rules.

⁴⁹⁰ *See Lifeline Reform Order*, 27 FCC Rcd at 6840-41, para. 450.

⁴⁹¹ *See id.* at 6839-44, paras. 448-61.

⁴⁹² *See id.* at 6841, para. 451.

⁴⁹³ *See id.*

⁴⁹⁴ *See id.* at 6841-43, paras. 451-57.

⁴⁹⁵ *See id.*

⁴⁹⁶ *See, e.g.*, Comments of AT&T, WC Docket No. 11-42 et al., at 18 (filed Apr. 2, 2012); Comments of CenturyLink, WC Docket No. 11-42 et al., at 4 (filed April 2, 2012); Comments of Leap Wireless International, Inc. and Cricket Communications, Inc., WC Docket No. 11-42 et al., at 9 (filed Apr. 2, 2012); Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 11-42 et al., at 3 (filed Apr. 2, 2012); Comments of TracFone Wireless, Inc., WC Docket No. 11-42 et al., at 11 (Apr. 2, 2012). *But see* Reply Comments of Nexus Communications, Inc., WC Docket No. 11-42 et al., at 6-7 (filed May 1, 2012) (opposing the elimination of the resale model). *Compare* Comments of Verizon, WC Docket No. 11-42, at 4 (filed Apr. 2, 2012) (stating that while it agrees with the Commission’s proposal, it finds that Lifeline is not a “service,” and that it is a discounting obligation).

⁴⁹⁷ *See, e.g.*, Comments of Alabama Public Service Commission, WC Docket No. 11-42 et al., at 3 (filed Apr. 2, 2012); Comments of Alaska Rural Coalition, WC Docket No. 11-42, at 3 (filed May 1, 2012); Comments of AT&T, WC Docket No. 11-42 et al., at 11 (filed Apr. 2, 2012); Comments of California Public Utilities Commission, WC Docket 11-42 et al., at 6-7 (filed Apr. 2, 2012); Comments of CenturyLink, WC Docket No. 11-42 et al., at 4 (filed April 2, 2012); Comments of Leap Wireless International, Inc. and Cricket Communications, Inc., WC Docket No.

proposal to eliminate the incumbent LECs' obligation to resell retail Lifeline-discounted services.⁴⁹⁸ A few commenters suggest that if the Commission were to eliminate the resale of Lifeline retail service, it should provide a transitional period during which non-ETC providers could attempt to obtain ETC status.⁴⁹⁹

249. To promote transparency and to protect the Fund from potential waste and abuse, we now decide that only ETCs that provide Lifeline service directly to subscribers will be eligible for reimbursement from the Fund.⁵⁰⁰ We will no longer provide reimbursement to incumbent LECs who sell Lifeline-discounted service to resellers. Since we will not provide reimbursement to incumbent LECs for this purpose, we now forbear from requiring incumbent LECs to resell retail Lifeline-discounted service under section 251 of the Act.⁵⁰¹ Our revised rules will effectively eliminate non-ETC resellers. Therefore, we establish a 180-day transition period following the effective date of this order during which non-ETC resellers may either obtain ETC status or cease providing Lifeline-discounted service after complying with state and federal rules on discontinuance.⁵⁰² Following the 180-day period described below, we will no longer provide any reimbursement to carriers for any wholesale Lifeline services sold to resellers. In the transition period section below,⁵⁰³ we discuss potential issues such as amendments to interconnection agreements that may need to be resolved during the transition period and potential solutions for ETCs who need more time.

250. *Reimbursement Restricted to ETCs Directly Serving Lifeline Subscribers.* We first determine that ETCs can only receive reimbursement from the Fund in instances where they provide Lifeline service directly to subscribers.⁵⁰⁴ Pursuant to the revised rules, only a single entity that is registered with USAC will provide Lifeline service, maintain the relationship with the subscriber, seek reimbursement from the Fund, and be subject to state and Commission oversight. Our decision to only reimburse ETCs that directly serve subscribers is consistent with the Lifeline rules, the majority of which deal with the ETC-subscriber relationship.⁵⁰⁵

251. In addition, this restriction will further protect the Fund from the risk of two ETCs seeking funds for the same subscriber. There is currently no way for USAC to determine if a particular service for which an ETC wholesaler sought reimbursement is also being used as a basis for reimbursement by the reseller ETC. When an incumbent LEC provides Lifeline retail service for resale, it provides the retail service for the "wholesale rate" discount minus the Lifeline discount. The incumbent LEC then seeks reimbursement from the Fund for that line to make itself whole for the Lifeline discount

11-42 et al., at 9 (filed Apr. 2, 2012); Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 11-42 et al., at 3 (filed Apr. 2, 2012); Comments of Michigan Public Service Commission, WC Docket No. 11-42 et al., at 6 (filed Apr. 2, 2012); Sprint April 2012 Comments; Comments of TracFone Wireless, Inc., WC Docket No. 11-42 et al., at 11 (Apr. 2, 2012).

⁴⁹⁸ See *supra* n.496.

⁴⁹⁹ See, e.g., Comments of AT&T, WC Docket No. 11-42 et al., at 16 (filed Apr. 2, 2012); Comments of CenturyLink, WC Docket No. 11-42 et al., at 5 (filed April 2, 2012); Comments of Florida Public Service Commission, WC Docket No. 11-42 et al., at 3-8 (filed Apr. 2, 2012); Reply Comments of Nexus Communications, Inc., WC Docket No. 11-42 et al., at 6 (filed May 1, 2012).

⁵⁰⁰ See Appendix B (revising 47 C.F.R. §§ 54.201, 54.400, 54.401, and 54.407).

⁵⁰¹ See 47 U.S.C. § 251(c)(4).

⁵⁰² See e.g., 47 C.F.R. § 63.60 *et seq.*

⁵⁰³ See *infra* para. 256.

⁵⁰⁴ See Appendix B (revising 47 C.F.R. §§ 54.201, 54.400, 54.401, and 54.407).

⁵⁰⁵ See, e.g., 47 CFR §§ 54.407(a)-(e) (reimbursing ETCs based on the number of subscribers served and only after the ETC has certified compliance with the Lifeline rules).

passed-through to the ETC reseller. Regardless of any contractual agreements that the wholesaler and ETC reseller may have for the reseller to forgo reimbursement from the Fund for that same line, the reseller could seek reimbursement from the Fund. Currently, there is no way for USAC or the incumbent LEC wholesaler to determine if the reseller has in fact sought reimbursement for the same subscriber. The NLAD is not able or intended to detect duplicate reimbursement by the wholesaler and reseller because the incumbent LEC's wholesale "subscriber" in this instance is the reseller, not an end-user. The NLAD only shows the reseller and all its customers (i.e., end-users). For the foregoing reasons, we amend sections 54.201, 54.400, 54.401(a), and 54.407 of our rules to clarify that the ETC must have a direct service relationship with the qualifying low-income consumer to receive reimbursement from the Fund.⁵⁰⁶

252. *Forbearance from the Obligation to Provide Lifeline at Resale.* Since we will no longer provide reimbursement to the incumbent LEC for reselling retail Lifeline services, consistent with section 10 of the Act, we forbear from the incumbent LECs' obligation to provide Lifeline-discounted service at resale pursuant to section 251(c)(4) of the Act.⁵⁰⁷

253. Under section 10(a)(1) of the Act, we must consider whether enforcement of the 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.⁵⁰⁸ Even if incumbent LECs are not allowed to offer for resale Lifeline-discounted services at wholesale rates, low-income consumers will still be able to receive Lifeline-supported services from both wireless and wireline providers. The percentage of resold lines by incumbent LECs in the Lifeline program is minimal, and wireline CETCs have a variety of methods to offer service without using resold Lifeline-discounted service, such as, but not limited to, the use of unbundled network elements (UNEs), wholesale telecommunications service provided at generally available commercial terms, as well as non-Lifeline section 251 resale. We therefore conclude that applying the section 251(c)(4) requirements in this context is not necessary to ensure that the charges, practices, classifications, and regulations for Lifeline service are just and reasonable.

254. Section 10(a)(2) requires the Commission to consider whether requiring incumbent LECs to offer Lifeline-discounted services at wholesale under section 251(c)(4) is necessary to protect consumers. Even absent that requirement, low-income consumers will continue to have access to Lifeline-supported services from numerous providers. Furthermore, we note that, unlike ETCs, non-ETC resellers are not scrutinized by federal and state regulators prior to market entry. Non-ETC resellers are not required to obtain approval from the Bureau of their compliance plan nor, by definition, are they required to obtain an ETC designation. Therefore, following forbearance, consumers will be better protected because all providers of Lifeline will be required to comply with state and Federal Lifeline rules and be subject to direct USAC oversight. Requiring incumbent LECs to offer Lifeline-discounted services at wholesale rates is therefore not necessary for the protection of consumers.

255. Finally, section 10(a)(3) requires that we consider whether enforcement of section (c)(4) resale requirements for Lifeline-discounted service is in the public interest. The Commission has made clear its ongoing commitment to fight waste, fraud, and abuse in the Lifeline program. We find that it is in the public interest that Lifeline-discounted service be provided only by ETCs who have the federal or state designations. Furthermore, by limiting reimbursements to carriers that are directly subject to

⁵⁰⁶ See Appendix B.

⁵⁰⁷ At this time, we do not reinterpret the section 251(c)(4) resale obligation to exclude the Lifeline-discounted service because such a reinterpretation may have unintended consequences for other non-Lifeline service provided via section 251(c)(4) resale.

⁵⁰⁸ 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" in section 10(a)(2) means that there is a strong connection between the requirement and its regulatory goal).

regulation as ETCs, we will reduce the risk of 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-discounted services, we find that the market for Lifeline services is already competitive and will remain so following forbearance. Incumbent LECs, wireline CETCs utilizing means other than Lifeline resale to serve their subscribers, and wireless ETCs offer Lifeline consumers significant competitive choice.⁵⁰⁹

256. *Transition Period.* To provide for an orderly transition period for ETCs, non-ETCs and their consumers to move away from Lifeline resale services, the changes in this order will go into effect 180 days after the effective date of this Order.⁵¹⁰ The comments received noted that 180 days would be sufficient time for incumbent LEC wholesalers to make the necessary changes to tariffs, interconnection agreements, and other regulatory filings.⁵¹¹ Forbearance here may trigger change of law provisions in ILEC interconnection agreements. We remind ILECs and CETCs to negotiate in good faith to make appropriate amendments for such agreements.⁵¹² Therefore, starting 180 days after the effective date of this Order, incumbent LECs no longer have an obligation under section 251(c)(4) of the Act to offer for resale their Lifeline-discounted retail offerings. Also, starting at that time, USAC will no longer reimburse incumbent LECs for their section 251(c)(4) services.⁵¹³ Thereafter, USAC should only reimburse ETCs who directly provide Lifeline service to qualified low-income consumers, in accordance with all of the Lifeline program rules. This transition time will allow affected ETCs an opportunity to utilize other means of providing Lifeline service (e.g., UNEs or non-Lifeline resale service).⁵¹⁴ In order to participate in the Lifeline program, all ETCs and newly designated ETCs must be in compliance with all of our rules, including but not limited to, providing subscriber information into the NLAD, obtaining annual subscriber certifications, and de-enrolling subscribers in accordance with our rules.

C. Defining the “Former Reservations in Oklahoma”

257. *Background.* In this section, we depart from the staff’s prior informal guidance and interpret the “former reservations in Oklahoma” within section 54.400(e) of the Commission’s rules as the geographic boundaries reflected in the Historical Map of Oklahoma 1870-1890 (Oklahoma Historical Map).⁵¹⁵ We are convinced that this map, provided to us by BIA, is illustrative of the “former reservations in Oklahoma.” To ensure all impacted parties have sufficient time to transition to the new map, we provide a transition period of 180 days from the effective date of this Order. During this time, we will actively engage in consultation with the Tribal Nations of Oklahoma on the operational functionality and use of the Oklahoma Historical Map at the local and individual Tribal Nation level.

⁵⁰⁹ Currently, there are approximately 1,065 CETCs serving Lifeline subscribers. See USAC, FCC Filings, 2015 Third Quarter Appendices, LI03 – Eligible Telecommunications Carriers – 1Q2015.xlsx, <http://www.usac.org/about/tools/fcc/filings/2015/q3.aspx> (last visited June 18, 2015).

⁵¹⁰ See *infra* para. 256.

⁵¹¹ See, e.g., Comments of AT&T, WC Docket No. 11-42 et al., at 17-18 (filed Apr. 2, 2012).

⁵¹² See 47 U.S.C. § 252(a)(1). See also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 et al., First Report and Order, 11 FCC Rcd 15499, 15936, para. 875 (1996).

⁵¹³ If necessary, an ILEC may file a waiver to the Commission to request additional time for good cause shown in the case where it is unable to amend an interconnection agreement in time. See 47 C.F.R. § 1.3.

⁵¹⁴ We remind both ETC wireline providers and non-ETC wireline providers that they must comply with the relevant Federal and state discontinuance rules if they choose to discontinue service. See, e.g., 47 C.F.R. § 63.60 *et seq.*

⁵¹⁵ Oklahoma Historical Map, 1870-1890, Plate 6, Webb Publishing Company, Oklahoma City, OK (1917) (Copyright 1917, George Rainey, Enid, OK; Engraved George F. Cram Company, Chicago, IL).

258. When the Commission first adopted Tribal Lifeline and Link Up support, it adopted a rule that stated consumers were eligible to receive enhanced support if they lived on “Tribal lands.”⁵¹⁶ In further defining the term “Tribal lands,” the Commission stated in the *2000 Tribal Order* that the term included “any federally recognized Tribe’s reservation, Pueblo, or Colony, including former reservations in Oklahoma,” as well as “near reservation” areas.⁵¹⁷ The Commission, however, has not formally defined the boundaries of the “former reservations in Oklahoma” for the purpose of the Lifeline rules, and there are inconsistencies between various maps at the state and Federal level that define the boundaries of the former reservations in Oklahoma. In practice, USAC has distributed Tribal support in Oklahoma based on a map displayed on the OCC’s website, which was based upon informal guidance provided by FCC staff in 2004.⁵¹⁸

259. There is a vast and complicated legal history of Tribal property in the United States which involves “the whole range of ownership forms known to our legal system.”⁵¹⁹ A large part of Oklahoma was once Indian Territory, and as the Tribal Nations of Oklahoma experienced many changes to their land tenures, Tribal lands in Oklahoma are an excellent example of that intricate legal history.⁵²⁰ Our actions today comport with the complex legal history within Oklahoma and uphold our government-to-government responsibilities to the Oklahoma Tribal Nations, while also improving administration of the Lifeline program and distribution of enhanced Tribal support.

260. *Discussion.* To provide efficiency, transparency, and clarity within the Lifeline program, and to ensure that universal service funds are distributed as intended,⁵²¹ we depart from the staff’s prior informal guidance and interpret the “former reservations in Oklahoma” as the boundaries reflected in the Oklahoma Historical Map 180 days after the effective date of this Order.⁵²² We conclude that interpreting the “former reservations in Oklahoma” in section 54.400(e) of the Commission’s rules based on the Oklahoma Historical Map will provide clarity to both Tribal consumers and ETCs, and will also be an

⁵¹⁶ See *2000 Tribal Order*, 15 FCC Rcd at 12235, para. 42.

⁵¹⁷ See *id.* at 12218, para. 17 (citing 25 C.F.R. § 20.1(r),(v)). Tribal lands included areas described as “reservation” and “near reservation” by BIA. See *id.* at 12218-19, paras. 17-18. The *2000 Tribal Order* also defined “Tribal lands” as including “Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)” and “Indian allotments.” *Id.* at 12218, para. 17. In the *Lifeline Reform Order*, the Hawaiian Home Lands were included in the Tribal lands definition. See 27 FCC Rcd at 6660, para. 4 n.4; see also 47 C.F.R. § 54.400.

⁵¹⁸ See Indian Reservation Boundary Lines Shown with Respect to Oklahoma County Lines (1951), <http://www.occeweb.com/pu/2011OKTribalLandsMap.pdf> (last visited June 18, 2015). This map excludes only the Oklahoma panhandle and an area in the southwest of the state known as the “former Greer County.” The Oklahoma Historical Map, however, has different boundaries set for the “former reservations in Oklahoma” which exclude the “Unassigned Lands” covering much of the area within the municipal boundaries of Oklahoma City and the region known as the Cherokee Outlet. See Appendix E.

⁵¹⁹ See Cohen’s Handbook of Federal Indian Law at 965-67, § 15.02 (Nell J. Newton ed., 2005). “In the whole range of ownership forms known to our legal system, there is probably no form of property right that has not been lodged in an Indian tribe at one time or another. The term ‘tribal property,’ therefore, does not designate a single and definite legal institution, but rather a broad range within which important variations exist.” *Id.*

⁵²⁰ Oklahoma Tribal lands represent “the most extensive, complex, and difficult body of laws with which the practitioner has to deal”, as “all land titles in Oklahoma stem from treaties with Indian tribes and acts of Congress vitalizing treaty provisions” as well as subsequent acts of Congress, “statutes, ruling cases, and departmental regulations and interpretations.” See W.F. Semple, Oklahoma Land Titles Annotated at v-vi (1952).

⁵²¹ See 47 C.F.R. § 54.400(e) (definition of Tribal lands).

⁵²² See Appendix E.

accurate reflection of Tribal lands in Oklahoma.⁵²³

261. The Tribal lands of Oklahoma and “all land titles in Oklahoma stem from treaties with Indian tribes and acts of Congress vitalizing treaty provisions.”⁵²⁴ The U.S. Department of Interior, through the delegated authorities of its Bureau of Indian Affairs, is the lead federal agency with respect to delivering federal services based on provisions of those treaties with Tribal Nations, as well as the administration of the federal government’s trust relationship and responsibilities to Tribal Nations and Indians with respect to land titles and management. For these and other purposes, BIA maintains two Regional Offices in Oklahoma – the Southern Plains Regional Office⁵²⁵ in Anadarko, OK, and the Eastern Oklahoma Regional Office⁵²⁶ in Muscogee, OK, both of which have Land, Titles, and Records Departments. In inter-agency coordination, the Commission’s Office of Native Affairs and Policy (ONAP) and the Bureau received the Oklahoma Historical Map from the Land, Titles, and Records Department of the Southern Plains Regional Office.⁵²⁷ Therefore, to better address the difficult administrative and eligibility issues in Oklahoma law, and for the purpose of determining eligibility for enhanced Tribal Lifeline and Link Up support in the state of Oklahoma, the Commission identifies and relies upon the Oklahoma Historical Map to determine the boundaries of “former reservations in Oklahoma” for purposes of section 54.400(e) of the rules.

262. We recognize that, given the Department of Interior’s jurisdictional authority over many administrative trust responsibilities with respect to the Tribal lands in Oklahoma, adopting the Oklahoma Historical Map to identify the “former reservations in Oklahoma” is a more accurate representation of “former reservations in Oklahoma” than the map referenced on OCC’s website.⁵²⁸ The Oklahoma

⁵²³ Some commenters argue that if the area encompassed by the term the “former reservations of Oklahoma” reflects different boundaries than used in practice in the past, the Commission may only accomplish that through notice-and-comment procedures. See Letter from Danielle Frappier, Counsel to True Wireless, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 *et al.*, at 1-2 (filed June 10, 2015) (True Wireless June 10, 2015 *Ex Parte* Letter); Letter from John J. Heitmann, Counsel to Assist Wireless, LLC and Easy Wireless, LLC, to Market H. Dortch, Secretary, FCC, WC Docket No. 11-42 *et al.*, at 5 (filed June 11, 2015) (Assist Wireless/Easy Wireless June 11, 2015 *Ex Parte* Letter). The Commission, however, is not changing section 54.400(e) or adopting a construction inconsistent with the rule, but interpreting what is meant by “former reservations in Oklahoma” within section 54.400(e) based on the considerations discussed below. In this regard, we thus are simply “advis[ing] the public of the agency’s construction of the . . . rules which it administers.” *Perez v. Mortgage Bankers Assoc.*, 135 S.Ct. 1199, 1204 (2015) (quoting *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 99 (1995) (internal quotation marks omitted)). Consequently, notice and comment procedures are not required. See, e.g., *Perez v. Mortgage Bankers Assoc.*, 135 S.Ct 1199 (holding that agencies are only required to follow notice-and-comment procedures for legislative rules and not interpretive rules, even when modifying a past practice or interpretation). True Wireless also asserts that the Commission’s interpretation of “former reservations in Oklahoma,” and the associated fact that Oklahoma subscribers outside that area will not receive enhanced support will require the subscribers to forgo telephone service. True Wireless June 10, 2015 *Ex Parte* Letter at 2-3. True Wireless provides no support for that assertion, however, and in any case we conclude for the reasons stated below that the interpretation of “former reservations in Oklahoma” adopted here better reflects the areas where the Commission intended to target enhanced Lifeline support.

⁵²⁴ See W.F. Semple, *Oklahoma Land Titles Annotated at v* (1952).

⁵²⁵ See U.S. Department of the Interior, Indian Affairs, *Southern Plains Region Overview*, <http://www.bia.gov/WhoWeAre/RegionalOffices/SouthernPlains/index.htm> (last visited June 18, 2015).

⁵²⁶ See U.S. Department of the Interior Indian Affairs, *Eastern Oklahoma Region Overview*, <http://www.bia.gov/WhoWeAre/RegionalOffices/EasternOklahoma/index.htm> (last visited June 18, 2015).

⁵²⁷ ONAP and WCB meeting with the Deputy Regional Director and Land, Titles, and Records Office of the BIA So. Plains Regional Office on September 26, 2014.

⁵²⁸ One commenter argues that it would be improper for the Commission to rely on a map provided by BIA after it claims that the Commission departed from the BIA definition of “reservations” in the *2003 Tribal Order*. See generally Assist Wireless/Easy Wireless June 11, 2015 *Ex Parte* Letter. See also *Federal-State Joint Board on*

Historical Map is a clear and historically accurate representation of “former reservations in Oklahoma” at a time prior to Oklahoma statehood in 1907. While we conclude here that it was not unreasonable for USAC, the OCC, and ETCs to rely on the OCC website map for disbursing Tribal support consistent with prior informal staff guidance, going forward, we believe the Oklahoma Historical Map provides more clarity to both Tribal consumers and Lifeline providers to ensure that funds are allocated for the intended purpose of assisting those living on Tribal lands, which typically have lower adoption rates for telecommunications services.⁵²⁹

263. In addition, the Oklahoma Historical Map represents actual former reservation boundaries prescribed by Acts of Congress – both laws and treaties – as opposed to areas identified for statistical purposes reflected in the Census Bureau’s American Indians and Alaska Natives (AIAN) map of the Oklahoma Tribal Statistical Areas (OTSAs). Further, our inter-agency work with BIA reveals that the Oklahoma Historical Map is a more accurate representation of the individual former reservations of each Tribal Nation in Oklahoma. We believe, therefore, that it is proper and accurate to adopt the Oklahoma Historical Map, and that the use of this map for purposes of the Lifeline program, which is a household based program that relies in large part on addresses for determining eligibility, will facilitate verification that consumers are in fact residing on Tribal lands. To further improve on these efforts, we also seek comment above on other ways for Lifeline providers to more accurately verify that consumers are residing on Tribal lands.⁵³⁰

264. This clarification will result in a reduction in the geographical scope of “former reservations in Oklahoma.” In basic terms, use of the Oklahoma Historical Map will now result in:

- Exclusion from the “former reservations in Oklahoma” the region within central Oklahoma historically and commonly known as the “Unassigned Lands” – referred to in the Oklahoma Historical Map as “Oklahoma: Opened to settlement April 22, 1889” – which includes the majority of the area within the Oklahoma City municipal boundaries;
- Exclusion of the “Cherokee Outlet;”⁵³¹
- Continued exclusion from the “former reservations in Oklahoma” the “Panhandle,” also historically known as the “Cimarron Strip,” or “Neutral Strip,” – reflected in the Oklahoma Historical Map as the “Public Lands Strip” – which presently encompasses Cimarron, Texas, and Beaver counties; and
- Continued exclusion of the southwest corner of the state lying within the western bank of the North Fork of the Red River – referred to in the map as “Greer County: Disputed

Universal Service; Promoting Deployment and Subscriberhip in Unserved And Underserved Areas, Including Tribal and Insular Areas et al., Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10958, 10965, 10966-67, paras. 14, 17 (2003) (*2003 Tribal Order*) (retaining the “former reservations in Oklahoma” as part of the definition of “reservations” and what the Commission now refers to as “Tribal lands,” and declining to modify the Commission’s definition of “reservation” to mirror language from BIA’s revised definition of “reservation” and “near reservation”). This commenter’s position is unfounded. The Commission explained in the *2003 Tribal Order* that BIA’s revised definition of “reservation,” continued to include the “former reservations in Oklahoma” because BIA continued to provide financial assistance in those areas. *See 2003 Tribal Order*, 18 FCC Rcd at 10965-67, paras. 15-17. In all events, our reliance on the Oklahoma Historical Map today is consistent with our past and present recognition of the BIA’s expertise and its federal trust relationship and responsibilities to Tribal Nations and individual Indians with respect to their lands.

⁵²⁹ *See 2000 Tribal Order*, 15 FCC Rcd at 12235, para. 51.

⁵³⁰ *See supra* para. 171.

⁵³¹ The Cherokee Outlet is a 60 mile strip of land approximately 225 miles long on the northern edge of Oklahoma between the 96th and 100th meridians, into which, over time, certain Tribal Nations obtained their Tribal lands in Oklahoma.

Territory” – which presently encompasses Greer, Harmon, and Jackson counties and includes the portion of Beckham county south of the North Fork of the Red River.⁵³²

265. *Transition Period.* To ensure all impacted parties have sufficient time to transition to the Oklahoma Historical Map, we provide a transition period of 180 days from the effective date of this Order. While we believe that the Oklahoma Historical Map provides an accurate reflection of the “former reservations in Oklahoma” under the Commission’s rules, and we adopt this map, we direct the Bureau, in coordination with the Office of Native Affairs and Policy to actively seek government-to-government consultation with Tribal Nations in Oklahoma on the efficacy and appropriateness of other maps and geospatial information assets developed both by federal agencies⁵³³ and individual Tribal Nations.⁵³⁴ We recognize that, as rightful governmental entities, Tribal Nations are an important source regarding the efficacy of the mapped boundaries of their lands. We direct the Commission’s Office of Native Affairs and Policy to coordinate with the Bureau, and other Commission Bureaus and Offices, as appropriate, to engage in government-to-government consultation with the Tribal Nations in Oklahoma for the specific purposes of ensuring the accuracy and operational effectiveness of the boundaries as presented in the Oklahoma Historical Map.⁵³⁵

266. If, based on these consultations, the Bureau finds that the Oklahoma Historical Map should be departed from in any way to better reflect the complex legal history of the “former reservations in Oklahoma” for purposes of interpreting section 54.400(e) of the rules, we direct the Bureau, in coordination with ONAP, to recommend to the Commission an order based on that consultation that would – if adopted by the Commission –provide a further revised interpretation of the appropriate boundaries of the former reservations in Oklahoma. We anticipate that any such recommended order would also provide impacted parties an appropriate additional transition period prior to the new interpretation of the boundaries being applied.

267. We also seek the input of the OCC to ensure that the OCC and Tribal Nations in Oklahoma can work with ETCs to implement a seamless transition to the newly interpreted boundaries, which will impact those that receive enhanced Lifeline support under the boundaries that previously had been used in practice, but will no longer receive enhanced support under the Oklahoma Historical Map’s boundaries. The Commission will work closely with Tribal Nations, the OCC, ETCs, and consumers to make this transition as seamless as possible. We direct ETCs to work with the OCC to ensure Lifeline

⁵³² Use of the Oklahoma Historical Map will also result in: (1) 11 counties with partial eligibility for enhanced Tribal Lifeline (the “split” counties of Beckham, Canadian, Cleveland, Ellis, Kay, Kingfisher, Logan, Noble, Oklahoma, Pawnee, and Payne); (2) 11 counties fully ineligible for enhanced Tribal Lifeline (Alfalfa, Beaver, Cimarron, Garfield, Grant, Greer, Harmon, Harper, Jackson, Major, Texas, Woods, and Woodward Counties); and 53 counties fully eligible for enhanced Tribal Lifeline (all counties other than those listed above). Additional detail about the “split” counties can be found in Appendix E accompanying the Oklahoma Historical Map.

⁵³³ We recognize, for example, that the Regional Offices of the BIA in Oklahoma have their respective Land, Titles, and Records Offices that maintain more granular and searchable maps specific to each “former reservation in Oklahoma.”

⁵³⁴ See, e.g., Chickasaw Nation Department of GeoSpatial Information, Division of Housing & Tribal Development, *The Chickasaw Nation Official Map*. Scale not given. Ada, OK: The Chickasaw Nation, 2012-2013. (Sources: Department of GeoSpatial Information, Chickasaw Nation, and Oklahoma Department of Transportation.) See also Chickasaw Nation, Chickasaw GeoSpatial Information Wins Olympics of Mapmaking (Sept. 6, 2012), <https://www.chickasaw.net/News/Press-Releases/2012-Press-Releases/Chickasaw-GeoSpatial-Information-Wins-Olympics-of.aspx> (last visited June 18, 2015).

⁵³⁵ See Letter from Gary Batton, Chief, Choctaw Nation of Oklahoma, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 (filed June 11, 2015); see *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080-82 (2000) (*Tribal Policy Statement*) (reaffirming the principles of Tribal sovereignty and self-governance; the federal trust relationship; and that the Commission will endeavor to work with Indian Tribes on a government-to-government basis).

consumers have sufficient information regarding how the Oklahoma Historical Map's boundaries will affect them, so that consumers can adjust to any changes or alterations to the Lifeline service plans to which they currently subscribe.⁵³⁶

D. Conserving Audit Resources

268. We waive, on our own motion, the Commission's requirement in section 54.420(b) for two ETCs in order to maximize the use of audit program resources. The Commission has directed USAC to establish an audit program for all of the universal service programs, including Lifeline.⁵³⁷ As part of the audit program, in the *Lifeline Reform Order*, the Commission required USAC to conduct audits of new Lifeline carriers within the first year of their participation in the program, after the carrier completes its first annual recertification of its subscriber base.⁵³⁸ The Commission specifically declined to adopt a minimum dollar threshold for those audits and instead directed USAC to conduct a more limited audit of smaller newly established Lifeline providers.⁵³⁹

269. USAC has indicated that two first-year Lifeline providers that must be audited pursuant to the Commission's rule in the near future have one subscriber within the scope of the audit. The carriers are Glandorf Telephone Company in Ohio and NEP Cellcorp Inc. in Pennsylvania. We find that these carriers have so few subscribers that an audit is not warranted and, in fact, would not provide a sufficient sample size for the auditor to infer compliance with Commission rules. We also find that delaying the audits until they are more useful will avoid wasting the resources of the Commission, of USAC and of these two providers. As such, we waive the requirement that the audits for Glandorf Telephone Company and NET Cellcorp be conducted within a year of their receiving Lifeline support for their customers.⁵⁴⁰ We find that a waiver of our rules is in the public interest in these cases to more effectively and efficiently implement the Commission's overall audit strategy. We direct OMD to work with USAC to obtain the data necessary for OMD to determine when these carriers should undergo an audit to evaluate their compliance with Commission rules, and USAC should conduct the audit at that time. In particular,

⁵³⁶ See Assist Wireless/Easy Wireless June 11, 2015 *Ex Parte* Letter at 2 (filed June 11, 2015) (arguing, at a minimum, that the Commission should consider adopting a transition period of 180 days). Even if our interpretation here, against the backdrop of a prior implementation of the scope of "former reservations in Oklahoma" under section 54.400(e) of the rules that was based on informal staff guidance and USAC practice, does not rise to the level of substantiation of "new law for old law that was reasonably clear," we nonetheless find that retroactive application of this interpretation would result in manifest injustice under the particular circumstances presented here. *Qwest Services v. FCC*, 509 F.3d 531, 539 (D.C. Cir. 2007) (quoting *Am. Tel. & Tel. Co. v. FCC*, 454 F.3d 329, 332 (D.C. Cir. 2006)).

⁵³⁷ 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*).

⁵³⁸ See 47 C.F.R. § 54.420; *Lifeline Reform Order*, 27 FCC Rcd 6656, 6781-82 at paras. 289-90.

⁵³⁹ *Id.* The Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA) directs all federal agencies to ensure payment recapture audits are cost-effective. 31 U.S.C. § 3321 note. See also Office of Management and Budget M-15-02, Appendix C to Circular No. A-123, *Requirements for Effective Estimation and Remediation of Improper Payments* (Oct. 20, 2014) at 30 ("These payment recapture audits should be implemented in a manner designed to ensure the greatest financial benefit to the Federal government.").

⁵⁴⁰ The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166; *accord Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

OMD's determination should consider, based on the totality of the circumstances, when a quality audit of the relevant Lifeline provider would be useful considering, at a minimum, whether the Lifeline provider has a sufficient scope of Lifeline operations to provide a sufficient sample size for the auditor to infer compliance with Commission rules.

270. We also delegate to OMD the authority to waive the deadline for audits under section 54.420(b) as necessary in the future for similarly situated Lifeline providers, that is, those Lifeline providers for which OMD determine, based on a totality of the circumstances, that the first year audit specified in current section 54.420(b) of the rules would not be useful.⁵⁴¹ We emphasize that we do not intend for these Lifeline providers to avoid being audited, but OMD should grant appropriate waivers to delay the audits until such time as it would be possible to conduct a quality and cost-effective audit, as discussed above.⁵⁴² We note we are seeking comment on revising our rule accordingly in the further notice section of this item.⁵⁴³

V. MEMORANDUM OPINION AND ORDER

271. The Commission has before it for consideration an Application for Review filed on May 13, 2013, by Nexus Communications, Inc. (Nexus), Nexus Request for Confidential Treatment of its FCC Form 555 filed January 31, 2014 and February 3, 2015 (collectively, Nexus 2014 and 2015 Confidentiality Request) and Kingdom Telephone Company's (Kingdom Telephone) confidential filing of its FCC Form 555 filed January 22, 2014 (Kingdom Telephone's Filing).⁵⁴⁴ We affirm the Bureau's conclusion, and also find that making this information publicly available would serve the public interest by furthering transparency in the Lifeline program. As a result, we deny Nexus' Application for Review, the Nexus 2014 Confidentiality Request, and confidentiality of Kingdom Telephone's Filing.

272. *Background.* Nexus seeks review of a Bureau order denying its request for confidential treatment of its FCC Form 555 annual recertification and non-usage results filed with the Commission and USAC for data year 2012 and a pending request for confidentiality of its FCC Form 555 results for data year 2013.⁵⁴⁵ In the *Nexus Order*, the Bureau denied Nexus's request because it concluded that public inspection of the number of Nexus's subscribers that were de-enrolled under the Lifeline program rules would not cause Nexus substantial competitive harm.⁵⁴⁶

273. In the *Lifeline Reform Order*, the Commission required all ETCs to recertify annually the eligibility of their subscribers and required ETCs that do not charge a fee to the customer for the Lifeline

⁵⁴¹ The auditee should have enough subscribers and Lifeline support so that the auditors can make a determination regarding auditee compliance with Commission rules.

⁵⁴² See *supra* para. 269.

⁵⁴³ See *supra* para. 216.

⁵⁴⁴ See Nexus Communications, Inc. Application for Review, WC Docket No. 11-42 (filed May 13, 2013) (Nexus AFR); see also Nexus Request for Confidential Treatment of FCC Form 555, WC Docket No. 11-42 (filed Jan. 31, 2014); Nexus Request for Confidential Treatment of FCC Form 555, WC Docket No. 11-42 (filed Feb. 3, 2015); (collectively, Nexus 2014 and 2015 Confidentiality Request). The Nexus 2014 and 2015 Confidentiality Request raises the same arguments raised in the Nexus AFR regarding the confidential nature of information contained in the FCC Form 555. See generally Nexus 2014 and 2015 Confidentiality Request. Kingdom Telephone filed its FCC Form 555 for data year 2013 under confidentiality but did not submit any arguments substantiating its claim that its FCC Form 555 is highly confidential. See Kingdom Telephone Company FCC Form 555, WC Docket No. 11-42 (filed Jan. 22, 2014) (Kingdom Telephone Filing).

⁵⁴⁵ See *Nexus Confidentiality Denial Order*, 28 FCC Rcd 5535 (2013) (*Nexus Order*); Nexus AFR; Nexus 2014 Confidentiality Request.

⁵⁴⁶ See *Nexus Order*, 28 FCC Rcd at 5536-37, paras. 6-7.

service to ensure Lifeline subscribers are using the service on a regular basis.⁵⁴⁷ Subscribers who are no longer eligible or have not used the service in a 60-day period are subject to de-enrollment from the program.⁵⁴⁸ The Commission required ETCs to submit the results of their recertification and non-usage de-enrollments on FCC Form 555 by January 31 of each year.⁵⁴⁹ The FCC Form 555 required all carriers receiving Lifeline support to provide by study area code: (i) the number of subscribers claimed on FCC Form(s) 497 filed with USAC in May 2012 for data year 2012 and in February as the baseline going forward;⁵⁵⁰ (ii) the number of subscribers contacted to recertify eligibility and the number that were de-enrolled or are scheduled for de-enrollment for non-response or ineligibility; and (iii) the number of subscribers that were de-enrolled each month for non-usage of prepaid service (service for which ETC does not assess or collect a monthly fee from its subscribers) during the relevant calendar year.

274. The FCC Form 555 used by ETCs is approved by the Office of Management and Budget (OMB) under OMB Control No. 3060-0819. When submitting the request for approval of that form pursuant to the Paperwork Reduction Act,⁵⁵¹ the Commission stated that it was not requesting ETCs to submit confidential information to the Commission, and that if ETCs believed that the requested information was confidential they could request confidential treatment under section 0.459 of the Commission's rules any time during the Paperwork Reduction Act approval process.⁵⁵² After a sixty-day Commission comment period, and an additional thirty-day OMB comment period, no comments were submitted with regard to the Commission's statement that the information requested is not confidential.⁵⁵³

275. Nexus submitted its FCC Form 555s on January 31, 2013, January 31, 2014, and February 3, 2015, and Kingdom Telephone submitted its FCC Form 555 on January 22, 2014. Concurrently, Nexus filed a request for confidential treatment of the information contained in its FCC Form 555, claiming that the state-specific subscriber counts, including the number of subscribers that responded to recertification contacts, the number of ineligible subscribers, and other information regarding the company's communications services are confidential pursuant to sections 0.457 and 0.459 of the Commission's rules, as well as the Freedom of Information Act (FOIA) Exemption 4 and the Trade Secrets Act.⁵⁵⁴ Nexus claimed that divulging such sensitive information to the public would cause it to

⁵⁴⁷ See *Lifeline Reform Order*, 27 FCC Rcd at 6714-15, 6768-69, paras. 129-30, 257-58; see also 47 C.F.R. §§ 54.405(e)(3), 54.410(f).

⁵⁴⁸ The Commission noted in the *Lifeline Reform Order* that Lifeline support is wasted when an ETC seeks and receives Lifeline support for a consumer who has abandoned the service because "the program is not actually benefiting the consumer for which it was intended." *Lifeline Reform Order*, 27 FCC Rcd at 6768, para. 255.

⁵⁴⁹ See *id.* at 6715-16, 6722, 6767, paras. 130-32, 148, 257; see also 47 C.F.R. §§ 54.405(e)(3), 54.416.

⁵⁵⁰ See *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130; see also *Wireline Competition Bureau Provides Guidance Regarding the 2013 Lifeline Recertification Process*, WC Docket No. 11-42, Public Notice, DA 13-1188 (Wireline Comp. Bur. May 22, 2013) (*Lifeline Recertification PN*). When the Commission instituted the recertification requirement in the *Lifeline Reform Order*, the Commission required ETCs to use the May 2012 Form 497 and established May 2012 data as the baseline. While this baseline was appropriate for the initial recertification round, the *Lifeline Recertification PN* clarified that the Commission will use an ETC's February Form 497 data as the baseline going forward to ensure that nearly all subscribers subject to recertification in 2013 and future years were included in the baseline.

⁵⁵¹ See 44 U.S.C. § 3507.

⁵⁵² See Supporting Statement (Sept. 2012), <http://www.reginfo.gov/public/do/DownloadDocument?documentID=346743&version=2>; 47 C.F.R. § 0.459.

⁵⁵³ See OIRA Conclusion (Nov. 7, 2012), http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201207-3060-011 (last visited June 18, 2015).

⁵⁵⁴ See Nexus Request for Confidential Treatment of FCC Form 555, WC Docket No. 11-42, at 1-2 (filed Jan. 31, 2013); Letter from Christopher W. Savage, Counsel to Nexus, to Marlene H. Dortch, Secretary, FCC, WC Docket

suffer competitive harm. The Bureau denied Nexus' 2013 request, determining that release of state-by-state Lifeline subscriber count and de-enrollments would not cause Nexus competitive harm in the market.⁵⁵⁵

276. On May 13, 2013, Nexus submitted its Application for Review, asking the Commission to reverse the Bureau's determination and arguing again that the data contained in the FCC Form 555 is competitively sensitive and should be withheld from public disclosure.⁵⁵⁶ For data year 2013, Nexus filed a request for confidential treatment of its FCC Form 555.⁵⁵⁷ On January 22, 2014, Kingdom Telephone filed its FCC Form 555 for data year 2013 claiming such information was highly confidential.⁵⁵⁸

277. *Discussion.* Based on the record before us, we deny Nexus's Application for Review regarding confidentiality of its FCC Form 555 filed January 2013, deny Nexus's request for confidentiality of the FCC Form 555 filed January 2014 and February 2015, and deny confidentiality of Kingdom Telephone's FCC Form 555 filed January 2014. We are not persuaded by Nexus's arguments that the release of the FCC Form 555 data will place it at a competitive disadvantage and cause it substantial competitive harm. Additionally, when balancing the public and private interests at stake, we conclude that making this information available will serve the public interest by furthering transparency in the Lifeline program and that the public interest outweighs any countervailing interest that Nexus has in keeping the information confidential. We conclude that each of these reasons provide a sufficient basis for our denial of Nexus's and Kingdom Telephone's requests.

278. Nexus contends the information reported in its FCC Form 555 should be withheld from public disclosure pursuant to sections 0.457 and 0.459 of our rules, FOIA Exemption 4, and the Trade Secrets Act. The Trade Secrets Act acts as an affirmative restraint on an agency's ability to release business competitive information to the public and provides criminal and civil penalties for federal employees who disclose "information . . . [that] concerns or relates to trade secrets, processes, operations, style of work or apparatus," except to the extent that such disclosure is "permitted by law."⁵⁵⁹

279. FOIA Exemption 4 provides that information that is required to be submitted to the Government may be withheld by the Government "if the disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."⁵⁶⁰ In order for the latter criterion to apply, there must be a showing of actual competition and a likelihood of substantial competitive injury.⁵⁶¹ Information that is in the public domain, however, is not subject to protection as "confidential" under Exemption 4.⁵⁶² The United States Court of

No. 11-42 (filed Feb. 19, 2013) (Nexus Supplement); Nexus 2014 and 2015 Confidentiality Request; *see also* 5 U.S.C. § 552(b)(4) (FOIA Exemption 4); 18 U.S.C. § 1905 (Trade Secrets Act); 47 C.F.R. § 0.457.

⁵⁵⁵ *See Nexus Order*, 28 FCC Rcd at 5536-37, para. 6.

⁵⁵⁶ *See Nexus AFR*.

⁵⁵⁷ *See Nexus 2014 Confidentiality Request*.

⁵⁵⁸ *See Kingdom Telephone Filing*.

⁵⁵⁹ 18 U.S.C. § 1905.

⁵⁶⁰ *National Parks & Cons. Ass'n v. Kleppe*, 498 F.2d 765, 770 (D.C. Cir. 1974) (*National Parks*); *see also Mercury PCS II, LLC*, FOIA Control No. 98-85, 15 FCC Rcd 14559, 14562, para. 7 (2000) (*citing National Parks & Cons. Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976) (stating that, generally, business strategies or marketing plans that would enable competitors to devise counter-strategies are competitively sensitive materials within the meaning of Exemption 4), and *In the Matter of Johan Karlsen*, 24 FCC Rcd 12299 (2009) (upholding Enforcement Bureau's withholding of detailed financial statements, such as revenue data and tax returns).

⁵⁶¹ *See, e.g., CNA Fin'l Corp. v. Donovan*, 830 F. 2d 1132, 1152 (D.C. Cir. 1987).

⁵⁶² *Id.* at 1154.

Appeals for the D.C. Circuit has held that the Trade Secrets Act is “at least coextensive with” FOIA Exemption 4.⁵⁶³ Consequently, if an agency may withhold information under Exemption 4, the agency is barred from releasing it under the Trade Secrets Act, unless the disclosure is otherwise authorized by law.⁵⁶⁴

280. We do not find a basis on which to justify withholding this information under either Exemption 4 of the FOIA or the Trade Secrets Act. Each ETC’s Lifeline disbursement amounts are available on USAC’s website on a monthly basis for each study area code, and for most of the year, all ETCs were paid a flat rate amount of \$9.25 in non-Tribal areas, which gives the public an estimate of subscriber counts per study area code. Nexus argues that the USAC disbursement tool does not break down disbursements for Tribal and non-Tribal areas, which it claims makes it difficult to derive subscriber counts for states with a wide-mix of Tribal and non-Tribal subscribers.⁵⁶⁵ Although the disbursement tool on USAC’s website does not currently disaggregate disbursements, there are other sources of publicly available information from which the public can derive subscriber counts. Not only does the disbursement tool provide some highly useful information about disbursement amounts each month in each state for each ETC, but USAC’s Quarterly Reports provide the break-out of Tribal and non-Tribal subscribers by state, all of which could be used to estimate subscriber numbers within a limited range.⁵⁶⁶ Nexus’ subscriber counts for the period in question are therefore effectively public and thus cannot be considered to be confidential under the FOIA.⁵⁶⁷ Further, given that the public already has available estimates of Nexus’s subscriber counts, Nexus has not shown how the release of a slightly more accurate count would cause it substantial competitive harm.

281. Additionally, for data year 2012, Nexus’ claim of substantial competitive harm is undercut by the fact that every other ETC has publicly filed the same information Nexus claims would damage its competitive position in the marketplace without confidential treatment.⁵⁶⁸ This calls into

⁵⁶³ *Id.* at 1151-52.

⁵⁶⁴ *Id.*

⁵⁶⁵ Nexus AFR at 9. Nexus also argues that the USAC disbursement tool, which provides the disbursements based on the filed FCC Form 497s, may not represent a fully accurate count of subscribers because ETCs can file revisions to the data contained in the FCC Form 497s at a later date. *Id.* The USAC disbursement tool, however, is updated to account for revisions to the FCC Form 497 so this tool, along with USAC Low-Income Quarterly Reports, provide the public the ability to deduce with a high level of accuracy an ETC’s subscriber count. *See* USAC Funding Disbursement Search, <http://www.usac.org/li/tools/disbursements/default.aspx> (last visited June 18, 2015); USAC FCC Filings, 2012 First Quarter Appendices, <http://www.universalservice.org/about/tools/fcc/filings/2012/q1.aspx> (last visited June 18, 2015).

⁵⁶⁶ *See* USAC Quarterly Reports, <http://www.universalservice.org/about/tools/fcc/filings/2012/q1.aspx> (last visited June 18, 2015) (providing number of non-Tribal and Tribal subscribers by state or jurisdiction, disbursement amounts by ETC and state or jurisdiction which also breaks out Tribal and non-Tribal for prior months).

⁵⁶⁷ *Worthington Compressors Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981) (*Worthington*) (stating that, with regard to FOIA Exemption 4, “[i]f the information is freely or cheaply available from other sources, *such as reverse engineering*, it can hardly be called confidential and agency disclosure is unlikely to cause competitive harm” (emphasis added). Conversely, *Worthington* states that, if obtaining information from public sources “would be so expensive or arcane as to be impracticable,” Exemption 4 could apply. *Id.* Based on the record before us, we conclude that it would not be so expensive or arcane to be impracticable for the public to approximate subscriber counts contained in the FCC Form 555 based on publicly available data.

⁵⁶⁸ Under the Commission’s rules, ETCs are required to file the FCC Form 555 with the Commission and the Administrator. *See* 47 C.F.R. § 54.416. In filing with the Commission, USAC directed ETCs to submit to the Commission via the Electronic Comment Filing System in Docket 11-42. TracFone initially requested confidential treatment of its Form 555 information, but withdrew its request shortly thereafter. For calendar year 2014, Nexus and an incumbent local exchange carrier, Kingdom Telephone Company, were the only ETCs that filed their FCC Form 555 under confidentiality. *See* Nexus 2014 Confidentiality Request; Kingdom Telephone Company Letter claiming FCC Form 555 as Highly Confidential; WC Docket No. 11-42 (filed Jan. 22, 2014).

question whether Nexus' information is competitively sensitive and belies its arguments that the release places it at a competitive disadvantage. We also are not convinced that public inspection of de-enrollment counts for failure to recertify or failure of subscribers to use such service within 60 days will result in substantial competitive harm. In its Application for Review and 2014 and 2015 Request for Confidentiality, Nexus attempts to bolster its argument by analyzing the data of its competitors and making claims of how such data provides competitors insight into competitive business strategies.⁵⁶⁹ We are not persuaded that such speculative examples will place such competitors at a disadvantage, especially when, for data year 2013, no other competitors have raised such arguments. We therefore reject Nexus's assertion that public disclosure of the FCC Form 555 data will cause it substantial competitive harm in the marketplace. This conclusion is buttressed by the fact that the state of Iowa required that Nexus's Form 555 information be made public and Nexus complied with that requirement.⁵⁷⁰

282. As an independent reason for denying Nexus's and Kingdom Telephone's requests, we conclude that making the FCC Form 555 information available would serve the public interest by furthering transparency in the Lifeline program. Even if the Nexus data is covered by the Trade Secrets Act, the Commission may release such information where permitted by law. The Commission has determined that sections 0.457(d)(1) and 0.457(d)(2) of its rules can serve as authorization to release records otherwise falling within the scope of the Trade Secrets Act.⁵⁷¹ Under section 0.457(d)(2), the Commission will not release records that contain trade secrets or confidential commercial information and are subject to a request for confidential treatment, without a "persuasive showing" that release is warranted. The Commission has found that, consistent with the Supreme Court's decision in *FCC v. Schreiber*,⁵⁷² the rules contemplate a balancing of the public and private interests at stake prior to release of confidential records.⁵⁷³ Where such a balancing has taken place, and a persuasive showing that release is warranted is present, we may release properly exempt information on a discretionary basis.

283. Consistent with section 0.457(d)(2) of our rules, we find a strong public interest in ensuring that Lifeline funds are properly allocated and in understanding the extent to which ETCs are complying with the Commission's Lifeline rules.⁵⁷⁴ The information contained in the FCC Form 555 provides the public a view of how ETCs are implementing key provisions of the Commission's reform of the Lifeline program.⁵⁷⁵ These provisions are essential safeguards in protecting the Lifeline program from waste, fraud, and abuse. By implementing a recertification requirement that all ETCs de-enroll

⁵⁶⁹ See Nexus AFR at 16-18; Nexus AFR, Attach. 1; Nexus 2014 Confidentiality Request, Attachment.

⁵⁷⁰ Nexus has already publicly filed Iowa-specific FCC Form 555 information before the Iowa Utilities Board because that state commission has determined that such information is not deemed confidential. See Nexus FCC Form 555 Iowa, Iowa Utilities Board (filed Jan. 31, 2013), <https://efs.iowa.gov/cs/groups/external/documents/docket/mdaw/mtcw/~edisp/140164.pdf>.

⁵⁷¹ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Notice of Inquiry and Notice of Proposed Rulemaking, 11 FCC Rcd 12406, 12411-15, paras. 9-16 (1996); *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816, 24820, para. 5 (1998).

⁵⁷² *FCC v. Schreiber*, 381 U.S. 279 (1965).

⁵⁷³ 47 C.F.R. § 0.461(f)(4); *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 11 FCC Rcd at 12417, para. 21.

⁵⁷⁴ In their comments, NASUCA and NCLC argue that competition between ETCs will not guarantee that federal Universal Service Lifeline funds are well allocated. In order to assure Lifeline funds are well allocated, NASUCA and NCLC argue that reforms to the current Lifeline program should be the subject of public discourse and be information driven. Public access to ETC and state specific information as reported by Nexus and other ETCs through, among other vehicles, the FCC Form 555 is therefore critical to our ongoing Lifeline regulation. See Comments of NASUCA and NCLC, WC Docket No. 11-42 (filed June 6, 2013) (NASUCA Comments).

⁵⁷⁵ See NASUCA Comments at 10.

subscribers who are no longer eligible for the Lifeline program or who fail to respond to the ETC's efforts to determine subscriber eligibility, the Commission ensured "that support is not distributed where subscribers fail to evidence their ongoing eligibility for Lifeline."⁵⁷⁶

284. The FCC Form 555, and the information contained therein, is an important tool in allowing the Commission and the public to monitor and enforce these crucial provisions in the Lifeline program.⁵⁷⁷ In balancing the public and private interests at stake, we find that there is a strong public interest in favor of the release of Nexus's and Kingdom Telephone's FCC Form 555 information.⁵⁷⁸ Based on the determination that the public interest outweighs the risk of competitive harm to Nexus and Kingdom Telephone, we find a persuasive basis on which to release these documents.⁵⁷⁹

285. We delay the effective date of this Memorandum Opinion and Order because under section 0.459(g) of the Commission's rules, if an Application for Review of the denial of a confidentiality request is denied, the person who submitted the request may, within ten business days, seek a judicial stay of the ruling.⁵⁸⁰ The release of information, even under a protective order, will be delayed pursuant to section 0.459(g) unless and until any judicial stay request is resolved.⁵⁸¹

VI. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

286. As required by the Regulatory Flexibility Act of 1980 (RFA),⁵⁸² the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order on Reconsideration and Second Report and Order. The FRFA is set forth in Appendix D.

B. Paperwork Reduction Act Analysis

287. This Order on Reconsideration and Second 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 revised information collection requirements contained in this proceeding. In addition, we note that pursuant to

⁵⁷⁶ *Lifeline Reform Order*, 27 FCC Rcd at 6720, para. 142.

⁵⁷⁷ See 47 C.F.R. § 0.459(d)(2); *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 11 FCC Rcd at 12417, para. 21.

⁵⁷⁸ See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 11 FCC Rcd at 12417, para. 21.

⁵⁷⁹ See 47 C.F.R. §§ 0.459(d)(2), 0.461(f)(4). Although we do not believe that such a finding is necessary, we also conclude that the information constitutes a "necessary link in a chain of evidence" that will resolve an issue before the Commission. See *CBS Corp. v. FCC*, No. 14-1242, slip op. at 9-17 (D.C. Cir. May 8, 2015) (citing *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd at 24823, para. 8). Specifically, the public cannot monitor that Lifeline funds are properly allocated and ensure that ETCs are complying with the Commission's Lifeline rules without knowing the details of those expenditures. *Lifeline Reform Order* or *Lifeline FNPRM*

⁵⁸⁰ 47 C.F.R. § 0.459(g).

⁵⁸¹ See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816, 24883, para. 23 (1998) (noting "that where a request for confidential treatment is pending, release of information, even under a protective order, will be delayed pursuant to Section 0.459(g) to permit the submitting party to file an application for review with the Commission and then a judicial stay").

⁵⁸² See 5 U.S.C. § 604. 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, Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996.

the Small Business Paperwork Relief Act of 2002, Public Law 107-198,⁵⁸³ the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

C. Congressional Review Act

288. The Commission will include a copy of this Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁵⁸⁴

D. Initial Regulatory Flexibility Analysis

289. As required by the Regulatory Flexibility Act of 1980, as amended,⁵⁸⁵ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for the Second Further Notice of Proposed Rulemaking (FNPRM), of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Second FNPRM. The IRFA is in Appendix C. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Second FNPRM. The Commission will send a copy of the Second FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁵⁸⁶ In addition, the Second FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.⁵⁸⁷

E. Initial Paperwork Reduction Act Analysis

290. The Second FNPRM seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. § 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

F. Ex Parte Presentations

291. *Permit-But-Disclose*. The proceeding this Second FNPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁵⁸⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or

⁵⁸³ See 44 U.S.C. § 3506(c)(4).

⁵⁸⁴ See 5 U.S.C. § 801(a)(1)(A).

⁵⁸⁵ See 5 U.S.C. § 603.

⁵⁸⁶ See 5 U.S.C. § 603(a).

⁵⁸⁷ See *id.*

⁵⁸⁸ 47 C.F.R. §§ 1.1200 *et seq.*

arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

G. Comment Filing Procedures

292. *Comments and Replies.* We invite comment on the issues and questions set forth in the FNPRM and IRFA contained herein. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on this Second FNPRM on or before 30 days after publication of this Second FNPRM in the Federal Register and may file reply comments on or before 60 days after publication of this Second FNPRM in the Federal Register. **All filings related to this Second FNPRM shall refer to WC Docket Nos. 11-42, 09-197, and 10-90.** Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes 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.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

293. *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).

294. In addition, one copy of each paper filing must be sent to each of the following: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554; website: www.bcpweb.com; phone: (800) 378-3160; (2) Jonathan Lechter, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-B442, Washington, DC 20554; e-mail: Jonathan.Lechter@fcc.gov; and (3) Charles Tyler,

Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-A452, Washington, DC 20554; e-mail: Charles.Tyler@fcc.gov.

295. Filing and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its website: www.bcpi.com, by e-mail at fcc@bcpiweb.com, by telephone at (202) 488-5300 or (800) 378-3160 or by facsimile at (202) 488-5563.

296. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Second FNPRM in order to facilitate our internal review process.

297. For additional information on this proceeding, contact Jonathan Lechter at (202) 418-7387 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

VII. ORDERING CLAUSES

298. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 1302, this Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order IS ADOPTED effective thirty (30) days after the publication of this Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order in the Federal Register, except to the extent provided herein and expressly addressed below.

299. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 1302, Part 54 of the Commission's rules, 47 C.F.R. Part 54, is AMENDED as set forth in Appendix B, which are subject to the PRA, will become effective upon announcement in the Federal Register of OMB approval of the subject information collection requirements.

300. 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 Second Further Notice of Proposed Rulemaking on or before 30 days from publication of this item in the Federal Register, and reply comments on or before 60 days from publication of this item in the Federal Register.

301. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-5 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155 and 254, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Petition for Reconsideration and Clarification filed by TracFone Wireless, Inc. on April 2, 2012 and Supplement to its Petition for Reconsideration and Clarification filed on May 30, 2012 ARE GRANTED IN PART to the extent provided herein, and otherwise remain pending.

302. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, that section 54.420(b) of the Commission's Rules, 47 C.F.R. § 54.420(b), is WAIVED as provided herein and is EFFECTIVE IMMEDIATELY upon release.

303. IT IS FURTHER ORDERED, pursuant to sections 0.459(g) and 1.115 of the

Commission's rules, 47 C.F.R. §§ 0.459(g) and 1.115, that the Application for Review filed by Nexus Communications, Inc. on May 13, 2013, the Requests for Confidential Treatment of Nexus Communications, Inc.'s FCC Forms 555 filed on January 31, 2014 and February 3, 2015, and Kingdom Telephone Company's confidential filing of its FCC Form 555 filed on January 22, 2014 ARE DENIED.

304. IT IS FURTHER ORDERED, pursuant to section 0.459(g) of the Commission's rules, that the effective date of the Memorandum Opinion and Order is 10 business days after release of this item, unless either Nexus or Kingdom Telephone seeks a judicial stay of this ruling prior to the effective date. IT IS FURTHER ORDERED that a copy of this Order shall be sent by Certified Mail Return Receipt Requested to counsel for Nexus and Kingdom Telephone.

305. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-5 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155 and 254, and 1.401 of the Commission's rules, 47 C.F.R. § 1.401, the Petition for Rulemaking and Interim Relief filed by TracFone Wireless, Inc. on October 1, 2014 IS GRANTED IN PART AND DENIED IN PART to the extent provided herein.

306. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

307. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Second Report and Order, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

PART 54—UNIVERSAL SERVICE

Subpart B – Services Designated For Support

1. 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 and broadband Internet access 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.

PART 54—UNIVERSAL SERVICE

Subpart E – Universal Service Support for Low-Income Consumers

2. Amend § 54.400 by adding new paragraphs (l) and (m) to read as follows:

§ 54.400 Terms and Definitions.

(l) Broadband Internet access service. Broadband Internet access service is defined as a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

(m) Supported Services. Voice Telephony services and broadband Internet access services are supported services for the Lifeline program.

3. Amend § 54.401 by revising paragraphs (a)(2) and (b) to read as follows:

§ 54.401 Lifeline Defined.

(2) That provides qualifying low-income consumers with Voice Telephony service or broadband Internet access service as defined in § 54.400(1). 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 or broadband Internet access service, including bundled packages of both voice and broadband Internet access 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.

4. Amend § 54.405 by revising paragraph (e)(1) and adding paragraph (e)(5) to read as follows :

§ 54.405 Carrier obligation to offer Lifeline.

(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 de-enroll any subscriber who fails to demonstrate continued eligibility within five business days after the expiration of the subscriber's time to respond. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination must comply with the applicable state requirements.

(5) De-enrollment requested by subscriber. If an eligible telecommunications carrier receives a request from a subscriber to de-enroll, it must de-enroll the subscriber within two business days after the request.

5. Amend § 54.407 by revising paragraph (a), adding paragraph (c)(2)(v), revising paragraph (d) and adding paragraphs (d)(1), (d)(2), and (d)(3) 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 customers it serves directly as of the first day of the month in the NLAD.

(c) ***

(1) ***

(2) ***

(v) Sending a text message.

(d) In order to receive universal service support reimbursement, an officer of each eligible telecommunications carrier must certify, as part of each request for reimbursement, that:

(1) The ETC is in compliance with all of the rules in this subpart;

(2) The ETC has obtained valid certification and recertification forms to the extent required under this subpart for each of the subscribers for whom it is seeking reimbursement; and

(3) The ETC has provided sufficient training on all of the rules in this subpart to all individuals who interact with consumers during enrollment, recertification, or consumer information calls.

6. Amend § 54.410 by revising paragraphs (d), (d)(1), (d)(2), (d)(3), (f)(1), (f)(2)(iii), and (f)(3)(iii), and by adding paragraphs (d)(2)(ix) and (h) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

(d) FCC Form [XXX] Certification of Eligibility. 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 use FCC Form [XXX] to enroll a qualifying low-income consumer into the Lifeline program.

(1) The FCC Form [XXX] shall provide the following information in clear, easily understood language:

(2) The FCC Form [XXX] shall require each prospective subscriber to provide the following information:

(ix) The date on which the certification form was executed.

(3) The FCC Form [XXX] shall require each prospective subscriber to initial his or her acknowledgement of each of the following certifications individually and under penalty of

perjury:

(f) Annual eligibility re-certification process.

(1) All eligible telecommunications carriers must annually re-certify all subscribers using FCC Form [XXX], except for subscribers in states where a state Lifeline administrator or other state agency is responsible for re-certification of subscribers' Lifeline eligibility.

(2) ***

(iii) Obtaining a signed certification from the subscriber on the FCC Form [XXX] that meets the certification requirements in paragraph (d) of this section.

(3) ***

(iii) Obtaining a signed certification from the subscriber on the FCC Form [XXX] that meets the certification requirements in paragraph (d) of this section.

(h) The FCC Form [XXX] One-Per-Household Worksheet. The prospective subscriber will complete the FCC Form [XXX] One-Per-Household Worksheet upon initial enrollment. At re-certification, if there are changes to the subscriber's household that would prevent the subscriber from accurately certifying to paragraph (d)(3)(vi) of this section (that is, that 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 Lifeline service), then the subscriber must complete a One-Per-Household Worksheet.

7. Amend § 54.420 by revising paragraph (b) to read as follows:

§ 54.420 Low income program audits.

(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, unless otherwise determined by the Office of Managing Director.

APPENDIX B**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R. Part 54, Subparts C and E as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for Part 54 continues to read as follows:
Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

Subpart C – Carriers Eligible for Universal Service Support

2. Amend § 54.201 by revising paragraph (a)(1) to read as follows:

§ 54.201 Definition of eligible telecommunications carriers generally.

(a) Carriers eligible to receive support.

(1) Only eligible telecommunications carriers designated under this subpart shall receive universal service support distributed pursuant to subparts D and E of this part. Eligible telecommunications carriers designated under this subpart for purposes of receiving support only under subpart E of this part must provide Lifeline service directly to qualifying low-income consumers.

Subpart E—Universal Service Support for Low-Income Consumers

3. Amend § 54.400 by adding paragraph (k) to read as follows:

§ 54.400 Terms and definitions.

(k) Direct service. As used in this subpart, direct service means the provision of service directly to the qualifying low-income consumer.

4. Amend § 54.401 by revising paragraph (a) to read as follows:

§ 54.401 Lifeline defined.

(a) As used in this subpart, Lifeline means a non-transferable retail service offering provided directly to qualifying low-income consumers:

5. Amend § 54.404 by adding paragraph (b)(11) to read as follows:

§ 54.404 The National Lifeline Accountability Database.

(b) ***

(11) All eligible telecommunications carriers must securely retain subscriber documentation that the ETC reviewed to verify subscriber eligibility, for the purposes of production during audits or investigations or to the extent required by NLAD processes, which require, *inter alia*, verification of eligibility, identity, address, and age.

6. Amend § 54.407 by revising paragraphs (a) and (b) to read as follows:

§ 54.407 Reimbursement for offering Lifeline.

(a) Universal service support for providing Lifeline shall be provided to an eligible telecommunications carrier, based on the number of actual qualifying low-income consumers it serves directly as of the first day of the month.

(b) 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.

7. Amend § 54.410 by revising paragraphs (b)(1)(ii), (c)(1)(ii), removing paragraphs (b)(1)(iii) and (c)(1)(iii), and adding paragraphs (b)(2)(iii) and (c)(2)(iii) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

(b) ***

(1) ***

(ii) Must securely retain copies of documentation demonstrating a prospective subscriber's income-based eligibility for Lifeline consistent with § 54.417.

(2) ***

(iii) An eligible telecommunications carrier must securely retain all information and documentation provided by the state Lifeline administrator or other state agency consistent with § 54.417.

(c) ***

(1) ***

(ii) Must securely retain copies of the documentation demonstrating a subscriber's program-based eligibility for Lifeline services, consistent with § 54.417.

(2) ***

(iii) An eligible telecommunications carrier must securely retain all information and documentation provided by the state Lifeline administrator or other state agency consistent with § 54.417.

8. Amend § 54.417 by revising it 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. Eligible telecommunications carriers must maintain the documentation required in §§ 54.404 (b)(11), 54.410(b), 54.410 (c), 54.410(d), and 54.410(f) for as long as the subscriber receives Lifeline service from that eligible telecommunications carrier, but for no less than the three full preceding calendar years.

(b) Prior to [the publication date of this Second Report and Order in the Federal Register], 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. Beginning [the publication date of this Second Report and Order in the Federal Register], the eligible telecommunications carrier must retain the reseller certification for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request.

(c) Non-eligible telecommunications carrier resellers that purchased Lifeline discounted wholesale services to offer discounted services to low-income consumers prior to [the publication date of this Second Report and Order in the Federal Register] 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.

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ 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 the Second Further Notice of Proposed Rulemaking (Second 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 Second FNPRM provided in paragraph 291 of the item. The Commission will send a copy of the Second FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Second FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.⁴ The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T.⁵ On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.⁶ The Lifeline program is administered by the Universal Service Administrative Company (USAC), the Administrator of the universal service support programs, under Commission direction, although many key attributes of the Lifeline program are currently implemented at the state level, including consumer eligibility, eligible telecommunication carrier (ETC) designations, outreach, and verification. 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 (USF or Fund) for the provision of such discounts.

A. Need for, and Objectives of, the Proposed Rules

3. When the Commission overhauled the Lifeline program in its 2012 *Lifeline Reform Order*, it substantially strengthened protections against waste, fraud and abuse; improved program administration and accountability; improved enrollment and consumer disclosures; and took preliminary steps to modernize the Lifeline program for the 21st Century.⁷ While we are pleased that the Commission's previous reforms have taken hold and sustained the integrity of the Fund, we realize that the Commission's work is not complete. In light of the realities of the 21st Century communications marketplace, we must overhaul the Lifeline program to ensure it complies with the statutory directive to provide consumers in all regions of the nation, including low-income consumers, with access to

¹ 5 U.S.C. § 603. The RFA, 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).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See 47 U.S.C. § 254 *passim*.

⁵ See *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*).

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9006-9008, paras. 431-434 (1997) (*First Universal Service Report and Order*).

⁷ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 12-23, 11-42, 03-109, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order* or *Lifeline FNPRM*).

telecommunications and information services.⁸ At the same time, we must ensure that adequate controls are in place as we implement any further changes to the Lifeline program to guard against waste, fraud and abuse.

4. In this Second FNPRM, we therefore seek comment on a package of potential reforms to modernize and restructure the Lifeline program. First, we propose to establish minimum service levels for voice and broadband Lifeline service to ensure value for our USF dollars and more robust services for those low-income Americans who need them. Second, we seek to reset the Lifeline eligibility rules. Third, to encourage increased competition and innovation in the Lifeline market, we seek comment on ensuring the effectiveness of our administrative rules while also ensuring that they are not unnecessarily burdensome. Fourth, we examine ways to enhance consumer protection. Finally, we seek comment on other ways to improve administration and ensure efficiency and accountability in the Lifeline program. The rules we propose in this Second FNPRM are directed at enabling us to meet these goals and objectives for the Lifeline program.

B. Legal Basis

5. The legal basis for the Second FNPRM is contained in sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 through 154, 201 through 205, 254, 303(r), and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹¹ 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).¹² Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.¹³ A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁴

7. Nationwide, as of 2007, there were approximately 1.6 million small organizations.¹⁵ The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships,

⁸ See 47 U.S.C. § 254 (b)(1),(3). See also 47 U.S.C. § 151.

⁹ 5 U.S.C. § 603(b)(3).

¹⁰ 5 U.S.C. § 601(6).

¹¹ 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).

¹² See 15 U.S.C. § 632.

¹³ See SBA, Office of Advocacy, “Frequently Asked Questions,” http://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf (last visited June 18, 2015).

¹⁴ 5 U.S.C. § 601(4).

¹⁵ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2010).

villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁶ Census Bureau data for 2007 indicate that there were 87,476 local governmental jurisdictions in the United States.¹⁷ We estimate that, of this total, 84,506 entities were “small governmental jurisdictions.”¹⁸ Thus, we estimate that most governmental jurisdictions are small.

1. Wireline Providers

8. *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.¹⁹ Census Bureau data for 2007 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 employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.²⁰ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.²¹ Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.²²

9. *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 category for this service is the category Wired Telecommunications Carriers. Under the category of Wired Telecommunications Carriers, such a business is small if it has 1,500 or fewer employees.²³ Census Bureau data for 2007 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 1,000

¹⁶ 5 U.S.C. § 601(5).

¹⁷ U.S. Census Bureau, Statistical Abstract of the United States: 2012, Section 8, page 267, Table 428.

¹⁸ The 2007 U.S. Census data for small governmental organizations indicate that there were 89,476 “Local Governments” in 2007. (U.S. Census Bureau, Statistical Abstract of the United States 2011, Table 428.) The criterion by which the size of such local governments is determined to be small is a population of 50,000. However, since the Census Bureau does not specifically apply that criterion, it cannot be determined with precision how many of such local governmental organizations is small. Nonetheless, the inference seems reasonable that substantial number of these governmental organizations has a population of less than 50,000. To look at Table 428 in conjunction with a related set of data in Table 429 in the Census’s Statistical Abstract of the U.S., that inference is further supported by the fact that in both Tables, many entities that may well be small are included in the 89,476 local governmental organizations, e.g. county, municipal, township and town, school district and special district entities. Measured by a criterion of a population of 50,000 many specific sub-entities in this category seem more likely than larger county-level governmental organizations to have small populations. Accordingly, of the 89,746 small governmental organizations identified in the 2007 Census, the Commission estimates that a substantial majority is small.

¹⁹ 13 C.F.R. § 121.201, NAICS code 517110.

²⁰ 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*).

²¹ See *id.*

²² 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 June 17, 2015).

²³ 13 C.F.R. § 121.201, NAICS code 517110.

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.²⁴ 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.²⁵ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.²⁶ 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.²⁷ In addition, 72 carriers have reported that they are Other Local Service Providers,²⁸ seventy of which have 1,500 or fewer employees and two have more than 1,500 employees.²⁹ 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.

10. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate category for Interexchange Carriers is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁰ 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.³¹ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.³² Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.³³ 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.

11. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate category for Operator Service Providers is the category Wired Telecommunications Carriers. Under that size standard,

²⁴ U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, <http://factfinder.census.gov>, (find “Economic Census” and choose “get data.” Then, under “Economic Census data sets by sector...,” choose “Information.” Under “Subject Series,” choose “EC0751SSSZ5: Employment Size of Firms for the US: 2007.” Click “Next” and find data related to NAICS code 517110 in the left column for “Wired telecommunications carriers”) (last visited June 17, 2015).

²⁵ See *Trends in Telephone Service* at Table 5.3.

²⁶ See *id.*

²⁷ *Id.*

²⁸ See *id.*

²⁹ See *id.*

³⁰ 13 C.F.R. § 121.201, NAICS code 517110.

³¹ 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 June 17, 2015).

³² See *Trends in Telephone Service* at Table 5.3.

³³ See *id.*

such a business is small if it has 1,500 or fewer employees.³⁴ Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁵ Census Bureau data for 2007 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.³⁶ Thus under this category and the associated small business size standard, the majority of these interexchange carriers can be considered small entities.³⁷ 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.³⁸ Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

12. *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.³⁹ 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 1,000.⁴⁰ 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.⁴¹ Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.⁴² Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

13. *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.⁴³ 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 1,000.⁴⁴

³⁴ 13 C.F.R. § 121.201, NAICS code 517110.

³⁵ *Id.*

³⁶ *See Wired Telecommunications Data.*

³⁷ 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 June 17, 2015).

³⁸ *Trends in Telephone Service* at Table 5.3.

³⁹ 13 C.F.R. § 121.201, NAICS code 517911.

⁴⁰ 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 June 17, 2015).

⁴¹ *See Trends in Telephone Service* at Table 5.3.

⁴² *Id.*

⁴³ 13 C.F.R. § 121.201, NAICS code 517911.

⁴⁴ 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 June 17, 2015).

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,⁴⁵ 881 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.

14. *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.⁴⁶ 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 1,000.⁴⁷ 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.⁴⁸ Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.⁴⁹ 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.

15. *800 and 800-Like Service Subscribers.*⁵⁰ 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 category for these services is the category Telecommunications Resellers. Under that category and corresponding size standard, such a business is small if it has 1,500 or fewer employees.⁵¹ 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 1,000.⁵² 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.⁵³ According to our data, as 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

⁴⁵ See *Trends in Telephone Service* at Table 5.3.

⁴⁶ 13 C.F.R. § 121.201, NAICS code 517911.

⁴⁷ 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 June 17, 2015).

⁴⁸ See *Trends in Telephone Service* at Table 5.3.

⁴⁹ See *id.*

⁵⁰ We include all toll-free number subscribers in this category, including those for 888 numbers.

⁵¹ 13 C.F.R. § 121.201, NAICS code 517911.

⁵² 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 June 17, 2015).

⁵³ *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

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 affected 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

16. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.⁵⁴ The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees.⁵⁵ For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year.⁵⁶ Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.⁵⁷ Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.⁵⁸

17. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services 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.⁵⁹ The SBA has approved these definitions.⁶⁰ The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

18. *Satellite Telecommunications Providers*. Two economic census categories address the satellite industry. The first category has a small business size standard of \$32.5 million or less in average

⁵⁴ U.S. Census Bureau, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search> (last visited June 17, 2015).

⁵⁵ 13 C.F.R. § 121.201, NAICS code 517210.

⁵⁶ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

⁵⁷ See U.S. Census Bureau, American Factfinder, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table (last visited June 17, 2015). Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.” *Id.*

⁵⁸ *Id.*

⁵⁹ *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).

⁶⁰ 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*).

annual receipts, under SBA rules.⁶¹ The second has a size standard of \$32.5 million or less in annual receipts.⁶²

19. The category of *Satellite Telecommunications* “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁶³ Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.⁶⁴ Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.⁶⁵ Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

20. The second category, i.e. “All Other Telecommunications” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”⁶⁶ The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with gross annual receipts of \$ 32.5 million or less.⁶⁷ For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.⁶⁸ Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49, 999,999.⁶⁹ Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

⁶¹ 13 C.F.R. § 121.201, NAICS code 517410.

⁶² 13 C.F.R. § 121.201, NAICS code 517919.

⁶³ U.S. Census Bureau, 2007 NAICS Definitions, Satellite Telecommunications, <http://www.census.gov/naics/2007/def/ND517410.HTM> (last visited June 17, 2015).

⁶⁴ 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 June 17, 2015).

⁶⁵ *Id.*

⁶⁶ U.S. Census Bureau, 2007 NAICS Definitions, All Other Telecommunications, <http://www.census.gov/naics/2007/def/ND517919.HTM> (last visited June 17, 2015).

⁶⁷ *See* 13 C.F.R. § 121.201, NAICS code 517919.

⁶⁸ 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 June 17, 2015).

⁶⁹ *Id.*

21. *Common Carrier Paging.* As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).⁷⁰

22. In addition, in the Paging *Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁷¹ 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.⁷² The SBA has approved this definition.⁷³ An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.⁷⁴ Fifty-seven companies claiming small business status won 440 licenses.⁷⁵ A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁷⁶ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁷⁷

23. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 291 carriers reported that they were engaged in the provision of “paging and messaging” services.⁷⁸ Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees.⁷⁹ We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

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).⁸⁰ Under the SBA

⁷⁰ See *supra* para. 16; U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”, <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210> (last visited June 17, 2015).

⁷¹ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, WT Docket No. 96-18 et al., Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732, 2811-12, paras. 178-81 (1997) (*Paging Second Report and Order*); *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085-88, paras. 98-107 (1999).

⁷² *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

⁷³ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (dated Dec. 2, 1998).

⁷⁴ See *929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁷⁵ See *id.*

⁷⁶ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2001).

⁷⁷ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

⁷⁸ *2010 Trends Report* at Table 5.3, page 5-5.

⁷⁹ *Id.*

⁸⁰ 13 C.F.R. § 121.201, NAICS code 517210.

small business size standard, a business is small if it has 1,500 or fewer employees.⁸¹ According to the 2010 Trends Report, 413 carriers reported that they were engaged in wireless telephony.⁸² Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁸³ We have estimated that 261 of these are small under the SBA small business size standard.

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,⁸⁴ which has an SBA small business size standard of 1,500 or fewer employees.⁸⁵ The latter are within the category of All Other Telecommunications,⁸⁶ which has a size standard of annual receipts of \$32.5 million or less.⁸⁷

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

26. In this Second FNPRM, we propose and seek public input on new and additional solutions for the Lifeline program, including reforms that would bring the program closer to its core purpose and promote the availability of modern services for low-income families. The rules we propose in this Second FNPRM are directed at enabling us to meet our goals and objectives for the Lifeline program. Specifically, we seek comment on a number of proposed changes that would increase the economic burdens on small entities. These proposed changes include:

27. *Eligibility documentation.* In the *Lifeline Reform Order*, the Commission adopted measures to verify a low-income consumer's eligibility for Lifeline supported services and required Lifeline providers to confirm an applicant's eligibility prior to enrolling the applicant in the Lifeline Program. However, program eligibility documentation may not contain sufficient information to tie the documentation to the identity of the prospective subscriber and often does not include a photograph. In this Second FNPRM, we seek comment on requiring Lifeline providers to obtain additional information to verify that the eligibility documentation being presented by the consumer is valid and has not expired.

28. *Use of National Lifeline Accountability Database (NLAD) for reimbursement.* In this Second NPRM, we seek comment on whether the Commission should establish a national Lifeline eligibility verifier (national verifier) to make eligibility determinations and perform other functions related to the Lifeline program. As part of the proposed functions of the national verifier, we seek comment on using the national verifier to calculate ETCs' support.

29. *Reforms to Increase Efficient Administration of the Lifeline Program.* As part of this Second FNPRM, we seek comment on a number of reforms to increase the efficient administration of the program, including requiring an officer of an ETC to certify that individuals taking part in the ETC's

⁸¹ *Id.*

⁸² 2010 Trends Report at Table 5.3, page 5-5.

⁸³ *Id.*

⁸⁴ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers", <http://www.census.gov/naics/2007/def/ND517110.HTM#N5171100> (last visited June 17, 2015).

⁸⁵ 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

⁸⁶ U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications", <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>. (last visited June 17, 2015).

⁸⁷ See *supra* para. 25; 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

enrollment and recertification processes have received training, and requiring Lifeline providers to record the subscriber execution date.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed 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 and 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 such small entities.”⁸⁸

31. As indicated above, in this Second FNPRM, while we seek comment on several proposed changes that would increase the economic burdens on small entities, we also propose a number of changes that would lessen the economic impact on small entities. In those instances in which a proposed change would increase burdens on small entities, we have determined that the benefits from such changes outweigh the increased burdens on small entities.

1. Proposed changes that lessen economic impact on small entities

32. *National Lifeline eligibility verifier.* Our proposal to remove the responsibility of conducting the eligibility determination from the ETC and shift this responsibility to a trusted third-party lessens the recordkeeping and compliance burden on small entities by relieving them of the obligation to conduct eligibility determinations.

33. *Coordinated enrollment with other federal and state agencies.* Our proposal to coordinate enrollment with other government benefit programs that qualify low-income consumers, thus allowing consumers to enroll themselves, lessens the recordkeeping and compliance burden on small entities by shifting this responsibility to the low-income consumer along with other government benefit programs.

34. *New FCC Forms.* Our proposal to adopt standardized FCC Forms that all ETCs, where applicable, must use in order to certify a consumers’ eligibility for Lifeline benefits will decrease burdens on small entities, increase compliance with our rules, and facilitate administration of the Lifeline program.

35. *Use of National Lifeline Accountability Database (NLAD) for reimbursement.* In the long-term, our proposal to transition to a process where the NLAD is used to calculate ETCs’ support will ultimately reduce the burden on small entities, because they will no longer have to file the FCC Form 497 (Lifeline Worksheet).

36. *First-year ETC audits.* Our proposal to revise our rules to allow the Office of Managing Director to determine if a Lifeline provider should be audited within the first year of receiving Lifeline benefits in the state in which it was granted ETC status, rather than requiring all first-year Lifeline providers to undergo an audit within the first year of receiving Lifeline benefits, will minimize the burden on a substantial number of small entities to respond to requests for information as part of an audit.

2. Proposed changes that increase economic impact on small entities

37. *Eligibility documentation.* Our proposal to require ETCs to obtain additional information in certain instances to verify that the eligibility documentation being presented by the consumer is valid

⁸⁸ 5 U.S.C. § 603(c)(1)-(c)(4).

increases the recordkeeping burden on small entities. Such proposal, however, supports our objective to eliminate waste, fraud, and abuse in the Lifeline program.

38. *Use of National Lifeline Accountability Database (NLAD) for reimbursement.* Our proposal to transition to a process where the NLAD is used to calculate ETCs' support may initially increase the burden upon small entities to change the way in which they calculate support payments. However, we propose a transition period to ensure that entities and USAC have time to put in place the necessary systems and processes.

39. *Compliance burdens.* Implementing any of our proposed rules (e.g., requiring an officer of an ETC to certify that individuals taking part in the ETC's enrollment and recertification processes have received training, and requiring Lifeline providers to record the subscriber execution date) would impose some burden on small entities by requiring them to make such certifications and entries on FCC forms, and requiring them to become familiar with the new rules to comply with them. For many of proposed the rules, there is a minimal burden. Thus, these new requirements should not require small businesses to seek outside assistance to comply with the Commission's rule but rather are more routine in nature as part of normal business processes. The importance of bringing the Lifeline program closer to its core purpose and promoting the availability of modern services for low-income families, however, outweighs the minimal burden requiring small entities to comply with the new rules would impose

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

40. None.

APPENDIX D

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) included an 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 the *Lifeline FNPRM* in WC Docket Nos. 12-23, 11-42, 03-109, and CC Docket No. 96-45.² The Commission sought written public comment on the proposals in the *Lifeline FNPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Final Rule

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.³ The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T.⁴ On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.⁵ When the Commission overhauled the Lifeline program in its 2012 *Lifeline Reform Order*, it substantially strengthened protections against waste, fraud and abuse; improved program administration and accountability; improved enrollment and consumer disclosures; and took preliminary steps to modernize the Lifeline program for the 21st Century.⁶ In light of the realities of the 21st Century communications marketplace, we must overhaul the Lifeline program to ensure it complies with the statutory directive to provide consumers in all regions of the nation, including low-income consumers, with access to telecommunications and information services.⁷ At the same time, we must ensure that adequate controls are in place as we implement any further changes to the Lifeline program to guard against waste, fraud and abuse. In this Order on Reconsideration and Second Report and Order, we thus seek to rebuild the current framework of the Lifeline program and continue our effort to modernize the Lifeline program so that all consumers can utilize advanced networks. In doing so, we adopt several rules that may potentially economically impact a substantial number of small entities. Specifically, we: (1) require eligible telecommunications carriers (ETCs) to retain documentation demonstrating subscriber income-based or program-based eligibility and (2) limit reimbursement under the Lifeline program to ETCs for services provided directly to low-income consumers.

¹ 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. 847 (1996).

² *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 12-23, 11-42, 03-109, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order* or *Lifeline FNPRM*).

³ See 47 U.S.C. § 254 *passim*.

⁴ See *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*).

⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9006-9008, paras. 431-434 (1997).

⁶ See *Lifeline Reform Order*, 27 FCC Rcd 6656.

⁷ See 47 U.S.C. § 254 (b)(1),(3). See also 47 U.S.C. § 151.

3. *Retention of Eligibility Documentation.* In the 2012 *Lifeline Reform Order*, the Commission adopted uniform eligibility criteria for the federal Lifeline program.⁸ Consumers must qualify based on either their income or their participation in at least one of a number of federal assistance programs.⁹ The Commission required ETCs to examine certain documentation to verify a consumer's program or income based eligibility, but prohibited ETCs from retaining copies of the documentation.¹⁰ In this Order on Reconsideration, we require that all Lifeline ETCs retain documentation demonstrating subscriber income-based or program-based eligibility, including the dispute resolution processes which require verification of identity, address, or age of subscribers. We find that the concerns that led us to prohibit such retention in 2012, while still relevant, are largely overshadowed by the enormous benefits of allowing ETCs to retain eligibility documentation. ETCs themselves contend that the burden on ETCs is worth the benefits to the program and that there are information technology and access security measures that can be taken to minimize the risks associated with maintaining sensitive subscriber eligibility documentation.¹¹ Further, the new rules allowing retention will significantly reduce falsified records and will provide certainty in the industry regarding the documents that need to be retained in the event of an audit or investigation. We also find that the burdens of retention can be mitigated with electronic storage capabilities. Overall, the universal service fund will be better protected if ETCs are required to both retain and present the eligibility documentation to the Commission or the Universal Service Administrative Company (USAC), the Administrator of the Lifeline program, and the new rules will prevent significant waste, fraud and abuse in the Lifeline program.

4. *Resale of Retail Lifeline Supported Services.* In the 2012 *Lifeline Reform Order*, the Commission expressed concerns that permitting ETCs and non-ETCs to offer Lifeline-discounted service through resale of retail Lifeline service posed risks to the Fund.¹² In particular, the Commission was concerned with the possibility of over-recovery by both wholesalers and resellers seeking reimbursement from USAC for the same Lifeline subscriber and the lack of direct oversight of non-ETC resellers by state and federal regulators.¹³ In light of these concerns, the Commission sought comment in the 2012 *Lifeline FNPRM* on a variety of proposals to reform or eliminate the resale of retail wireline Lifeline service.¹⁴ In this Second Report and Order, in order to promote transparency and to protect the Fund from potential waste and abuse, we now decide that only ETCs that provide Lifeline service directly to subscribers will be eligible for reimbursement from the Fund.

B. Summary of Significant Issues Raised by Public Comments to the IRFA

5. No comments specifically addressed the IRFA.

⁸ See *Lifeline Reform Order*, 27 FCC Rcd at 6685, para. 65.

⁹ See *id.* at 6684, para. 62.

¹⁰ See *id.* at 6703, para. 101. Consistent with the *Lifeline Reform Order*, section 54.410 prohibits the retention of program or income based eligibility documentation. See 47 C.F.R. §§ 54.410(b)(1)(ii), 54.410 (c)(1)(ii).

¹¹ See, e.g., Comments of Nexus Communications Inc., WC Docket No. 11-42 et al., at 3 (filed July 24, 2012); Comments of Sprint Nextel Corporation, WC Docket No. 11-42 et al., at 2-3 (filed July 24, 2012) (Sprint Comments). See also Reply Comments of Nexus Communications, Inc. WC Docket No. 11-42 et al., at 2-3 (filed May 1, 2012) (noting the minimal costs associated with scanning and storing documentation and that such costs are minimal and greatly outweighed by the importance of maintaining integrity in the program); Sprint Comments at 3 (stating also that costs of document retention in this instance are justified because doing so protects the fund against waste, fraud, and abuse).

¹² See *Lifeline Reform Order*, 27 FCC Rcd at 6840, para. 449.

¹³ See *id.* at 6840-41, paras. 449-50.

¹⁴ See *id.* at 6839-44, paras. 448-61.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

6. We have described in detail in the Initial Regulatory Flexibility Analysis in this proceeding, *supra*, the categories of entities that may be directly affected by our proposals. For this Final Regulatory Flexibility Analysis, we hereby incorporate those entity descriptions by reference.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

7. Several of our rule changes will result in additional recordkeeping requirements for small entities. For those several rule changes, we have determined that the benefit the rule change will bring for the program outweighs the burden of the increased recordkeeping requirement. The rule changes are listed below.

- *Retention of Eligibility Documentation.* Requiring all Lifeline ETCs to retain documentation demonstrating subscriber income-based or program-based eligibility, including the dispute resolution processes which require verification of identity, address, or age of subscribers increases recordkeeping requirements and potential costs for ETCs. We find that any concerns related to the risk of retaining sensitive subscriber eligibility documentation and the burden on ETCs is outweighed by the enormous benefits of allowing ETCs to retain eligibility documentation, such as: significantly reducing falsified records; providing certainty in the industry regarding the documents that need to be retained in the event of an audit or investigation; and further reducing waste, fraud and abuse in the Lifeline program.
- *Resale of Retail Lifeline Supported Services.* Limiting reimbursement for Lifeline service to ETCs directly serving customers may increase compliance requirements for ETCs by potentially requiring ETCs to revise their interconnections agreements and other regulatory filings in order to comply with our rules. For non-ETCs, it may increase compliance requirements by requiring them to become ETCs to receive Lifeline support necessitating the completion of additional paperwork for those non-ETCs seeking ETC designations. By ensuring that only ETCs that provide Lifeline service directly to subscribers are eligible for reimbursement from the Fund, the Commission can also better promote transparency. Ultimately, the Commission can more efficiently and effectively protect the USF and prevent significant waste, fraud and abuse in the Lifeline program.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

8. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed 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 and 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 such small entities.”¹⁵

9. This rulemaking could impose minimal additional burdens on small entities. We have considered alternatives to the rulemaking changes that increase recordkeeping and documentation requirements for small entities. We find that any minimal burdens on small entities are outweighed by the enormous benefits of the rule changes.¹⁶ Further, we have encouraged ETCs to take advantage of

¹⁵ 5 U.S.C. § 603(c)(1)-(c)(4).

¹⁶ See *supra* para. 7.

electronic storage of documents to mitigate the additional expense of now having to retain documentation demonstrating subscriber income-based or program-based eligibility, including the dispute resolution processes.

Report to Congress: The Commission will send a copy of this Order on Reconsideration and Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA.¹⁷ In addition, the Commission will send a copy of the Order on Reconsideration and Second Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order on Reconsideration and Second Report and Order and the FRFA (or summaries thereof) will also be published in the Federal Register.¹⁸

¹⁷ See 5 U.S.C. § 801(a)(1)(A).

¹⁸ See 5 U.S.C. § 604(b).

APPENDIX E

Oklahoma Tribal Map



1870-1890

The Osage reservation was set apart by executive order March 27, 1871, and was purchased from the Cherokees as being a part of their reservation west of the 98th meridian. This reserve also included the Kaw reservation as shown on this plate

The Absentee Shawnees were provided a home on the Pottawatomie reservation by Act of Congress May 23, 1872.

Some of the Seminoles having settled east of the east line of their reservation as defined by treaty made in 1866, a purchase of an additional 175,000 acres was made for them from the Creeks in 1873. This purchase is designated on this plate by the number 13.

No. 8 shows land ceded for Modoc occupancy 1874.

No. 9 shows 13½ sections set apart for Chilocco Indian Industrial School 1884.

No. 10 Nez Perce reservation from 1878 to 1884. Tonkawas were placed on this reservation 1884.

No. 11 Poncas located here 1881.

No. 12 Otoes and Missourias located here 1881.

Nos. 1, 2, 3, 4, 5, 6 and 7 are shown on plate 5.

**STATEMENT OF
CHAIRMAN TOM WHEELER**

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90.

One of this agency's most fundamental responsibilities is to ensure that all Americans have access to vital communications services. We also have a duty to manage public resources in an effective, efficient manner that advances the public interest. Today's Lifeline item advances both objectives: exploring new ways to expand access to broadband, while strengthening protections against waste, fraud, and abuse.

The Lifeline program was established by the Reagan Administration's FCC in 1985 to help low-income Americans afford access to vital communications. Over a span of three decades, the program has helped tens of millions of Americans afford basic phone service. But as communications technologies and markets evolve, the Lifeline program also has to evolve to remain relevant.

This is what the Bush Administration did in the 2000s when the FCC took steps to open the program to mobile wireless service, including non-facilities-based mobile providers. Unfortunately, however, they took those steps without instituting the kinds of controls necessary to protect against waste, fraud, and abuse. As a result of these decisions, the program almost tripled in size from 2008 (about \$784 million) to 2012 (almost \$2.2 billion). The year before I arrived, Chairman Genachowski took action to begin to correct those earlier missteps. These reforms helped annual Lifeline spending drop from almost \$2.2 billion to \$1.7 billion, a 23 percent decrease.

But it's not just fixing the program's management that is necessary. There are basic design flaws that must be fixed, such as how today those who provide the Lifeline service certify the eligibility of those who sign up for the program. If ever there was a fox guarding the hen house, it would be this requirement.

Therefore, beginning with this NPRM we are taking the Lifeline program down to the studs. The program's rules need a hard look and an overhaul. This NPRM solicits the advice we need to do just that.

We all agree that we have entered the broadband era – except Lifeline has not. The transformation from a voice-based service to a broadband-based service is key to Lifeline's future. Broadband access is essential to find a job: more than 80 percent of Fortune 500 job openings are online. Americans need broadband to keep a job, as companies increasingly require basic digital literacy skills. Our kids rely on broadband to do their homework – whether it's completing an online assignment or researching a topic for their class. Broadband helps us save money – a 2012 study estimated that broadband helps a typical U.S. consumer save \$8,800 a year by providing access to bargains on goods and services.

But nearly 30 percent of Americans still don't have broadband at home, and low-income consumers disproportionately lack access. While more than 95 percent of households with incomes over \$150,000 have broadband, only 48 percent of those making less than \$25,000 have service at home.

Consider Nicole Tanis of Washington Heights in Upper Manhattan. This 60-year-old regularly takes a 40-minute subway ride to a public library on 34th Street because the wait time to use the Internet is shorter there than in the libraries in her neighborhood. She makes the trip to do small freelance data entry jobs on the library's computers, while looking for other part-time positions online.

Today's Lifeline NPRM also puts us on the path to finish the job of modernizing our major universal service programs. We've already adopted historic reforms to the Universal Service Fund to create the Connect America Fund, which just this week invested \$283 million to leverage Frontier's

deployment of broadband to 1.3 million Americans. We've also updated E-rate to support high-speed wired and wireless connectivity in our schools and libraries. We're hoping rate-of-return carriers will help us reform their support mechanisms by the end of the year, as well. It's Lifeline's turn to be updated for the Internet age.

The FCC has a statutory mandate to ensure "consumers in all regions of the country, including low-income consumers . . . should have access to . . . advanced telecommunications services." Lifeline has proven that a small subsidy for phone service can make a huge impact in people's lives. Lifeline support for broadband would likely have an even greater impact.

Getting Lifeline reform right won't be easy. I look forward to working with my colleagues to resolve the difficult questions before us.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90.

Technology is, in a word, remarkable. We marvel over how it is breaking down longstanding barriers, providing unprecedented access to jobs, world-class education, healthcare and innovative services. It literally is transforming lives. But the sad reality is that millions of our citizens are foreclosed from opportunities, trapped in digital darkness, and stranded on the wrong side of the affordability divide.

For the past 30 years, the FCC has possessed the tools needed to build a bridge for these struggling Americans ... a path that could aid in transporting consumers out of poverty and isolation to connectivity and independence. But, in recent years, despite having the ability to retrofit that bridge for the digital age, we were idle – allowing our fundamental tools to rust in the FCC’s woodshed.

Today, however, we begin a process that could rid us of these antiquated constructs and launch a 21st century program that will provide households that have fallen on hard times, more hope, more options and more opportunities.

When I made it known that reforming the Lifeline Program was a priority for me, I was literally asked if I were off my rocker. Does she not know how politically sensitive a topic this is, I was asked by another? The answers are no and yes.

The safe course would be one of inaction. But the oath that I took requires that I try to use all the tools in my regulatory arsenal to close chronic divides and stay true to those words in the statute. We must not wait, remain idle, or play it safe when it comes to this program, for we know that broadband is the greatest technology equalizer of our time, but it can only be so if everyone has access. If we fail or never try, the promises that broadband brings will be reserved only for the privileged.

Decision-makers cannot wait. We can ill afford to tuck our heads in the sand, throw our hands up in frustration or walk away from the challenge before us, particularly when we have a chance and means to craft good policy, institute sound management and deploy targeted efforts that may be the key to turning the tide in persistent poverty areas.

The FCC cannot wait. We displayed our capacity to be unwavering in our commitment to universal service with the other programs, and we must keep in mind that Congress’s dictate to the Commission, is simple and clear – services should be “affordable” and all consumers including “low-income consumers and those in rural, insular, and high cost areas should have access to ... advanced telecommunications and information services.”

I was proud to support reforms to our high cost universal service program. It put this country on a path to ubiquitous broadband availability. But deployment is only one part of the Congressional directive to ensure that both “rural” areas and “low-income consumers” have reasonably comparable service. The Commission should treat our universal service obligation for “low-income consumers” as the statute treats them: with equal weight.

The time is now to shed that 20th century Lifeline voice-only product and adopt a 21st century model, because a voice-only program is inconsistent with the statute’s directive to ensure that low-income consumers have access to “advanced” telecommunications and information services.

But first, we must design a future-proof program that enables low-income consumers to have access to broadband services comparable to everyone else. Second-class or inferior service is unacceptable and should not be eligible for universal service support.

Second, this program must be free of its current stigmas. Consumers should be treated with dignity. They no longer should be forced to turn over financially sensitive information to an unknown person, in front of a group of strangers, in a parking lot or tent. Seniors, veterans, the disabled, children, and others, deserve much better. We also must demand more than the *de minimis* service offerings by some.

Third, we need competitive options. We should encourage broader participation, by thinking outside the box, reducing unnecessary administrative burdens and rethinking the process for participation in the program.

Fourth, but just as important as the first, we need enhanced oversight to further eliminate all incentives for waste, fraud and abuse. A neutral third-party – not the carrier – should determine consumer eligibility and we also must plug any other loophole in the current Lifeline program.

Finally, we should reduce administrative burdens by leveraging efficiencies from other benefit programs, and seek comment on working with existing state programs to determine eligibility.

I will be among the first to admit that there have been issues with Lifeline in the past, but I will also be the first to proclaim that this agency has been denied the credit it deserves for the results of the tremendous bipartisan Lifeline reforms of 2012. We have saved the fund over \$2.75 billion, put the program on a sounder footing, eliminated duplicates and, according to reports since our reform, Lifeline has better efficiency indices when it comes to waste and fraud prevention, than most of our other universal service or Telecommunications Relay Service programs. While the statistics continue to confirm this, I realize that no report, no matter how credible, nor any words from me, will change current perceptions or rhetoric. But that will not deter me from remaining committed to endorse all necessary steps, to make the Lifeline Program a best practice benefits program.

The proposals in this notice, including eliminating carriers from determining customer eligibility and other steps to tighten up the program, are the first steps in ensuring program credibility. While establishing a budget or cap has been the call of many, the very best way in my opinion to discipline program expenditures is to focus on leveraging this program to reduce poverty in this nation, so that the number of eligible households decline, which means that Lifeline expenditures decline.

We should focus on making Lifeline part of a pathway out of poverty and make the program so successful and so enabling that recipients no longer need it or any other federal benefit program because they no longer qualify. I challenge us to be as bold and as visionary as those high tech companies we marvel over. If we are not careful and embrace an artificial budget, set it at an arbitrary amount, I fear we risk foreclosing eligible low-income households from connectivity when they need it most, and will ensure that too many of our citizens remain stuck in digital badlands and cycles of poverty for another block of years.

My staff and I have personally invested significant time over the last several weeks in attempts to reach a bipartisan compromise. In the spirit of compromise, despite my concerns, I not only offered to seek comment on a budget of \$1.6 billion, I offered to support proposing a budget if we could seek comment on what the appropriate budget should be. Even this was not enough and I find that this unwillingness to compromise, which where I come from is the settling of mutual differences, unfortunate.

But I am anxious to move forward in crafting a 21st century blueprint for Lifeline. A rebooted program could be the best investment this government makes because the network effects and reverberating benefits to society will be tremendous. One area I have been passionate about is health care and what technology can do to improve outcomes. The potential for Lifeline to be a catalyst here has been too often overlooked. In a recent telemedicine trial, for example, healthcare costs were reduced by 27 percent, acute and long-term care costs were reduced by 32 percent and hospitalizations were reduced by 45 percent. Just imagine the possibilities if everyone could afford broadband and make use of these technologies.

I look forward to moving from today's blueprint to adopting a foundation and building a new program as we move to Order. The time is now to build the bridge to empowerment, independence and connectivity. Let's sunset Lifeline and replace it with **iBridge Now!**

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90.

Thirty years ago, the Lifeline program got its start when President Ronald Reagan was in the White House and most communications involved a cord. For three decades, this program has helped the neediest among us connect—connect to family, jobs, healthcare, and help when emergency strikes. These connections make us stronger. That is why over time, the Commission updated the Lifeline program to include both wireline and wireless telephony. Today, we continue on this course—with a rulemaking to update the Lifeline program to include broadband.

I support this rulemaking because I believe a well-run, up-to-date Lifeline program is worth the effort. If we do it right, we will modernize the Lifeline program to incorporate broadband. If we do it right, we will increase accountability and internal controls. And if we do it right, we will expand opportunity for too many among us who for too long have been consigned to the wrong side of the digital divide.

There are so many reasons this rulemaking is important. But I want to bring laser-like focus on one of them: the Homework Gap.

When I was growing up, homework required nothing more than your siblings leaving you alone, a clear workspace, and a Number 2 pencil.

Those days are gone. Not just because the school year is winding down. They are gone because today as many as seven in ten teachers assign homework that requires access to broadband. But data from this Commission suggests one in three households do not subscribe to broadband service.

So let's do the math and think about those numbers. Where they overlap is what I call the Homework Gap. According to the Pew Research Center, the Homework Gap is real because five million households out of the 29 million households in this country with school-aged children lack access to broadband.

Now think about what it means to be a student in a household without broadband. Just getting basic schoolwork done is hard. Applying for a scholarship is challenging. Researching or typing a paper is tough. Borrowing a device and finding a signal that is not password protected becomes a prerequisite for getting any schoolwork done. This is a quest too many students struggle with every day.

The evidence is all around us. Earlier this year the Hispanic Heritage Foundation, Family Online Safety Institute, and My College Options found that nearly 50 percent of students say they have been unable to complete a homework assignment because they did not have access to the Internet or a computer. On top of that, 42 percent of students say they received a lower grade on an assignment because they didn't have access to the Internet or a computer.

We can do better than this. We must. Because students who lack regular broadband access are struggling to keep up—and their lack of access is holding our education system back. In fact, according to the Pew Research Center more than half of teachers in low-income communities have said that their students' lack of access to online resources at home presents a major challenge to integrating technology into their teaching.

That's a problem because one-half of all jobs now require some level of digital skills. By the end of the decade, that number will be 77 percent. School-aged kids without broadband access at home are not only unable to complete their homework, they enter the job market with a serious handicap. And that

loss is more than individual. It's a loss to our collective human capital and shared economic future that we need to address.

If soapbox statistics don't make this clear, stories will.

Take Citronelle, Alabama. After school, students head to McDonalds. They head to a fast food restaurant because it is one of the few places in town with Wi-Fi. So students who do not have broadband at home hunker down in booths to do their homework. They research and write their papers with fizzy drinks and a side of fries.

In Pinconning, Michigan, near Saginaw Bay, there is a fast food franchisee who says he can tell when exams are coming up in the local school district. That's because students without online access at home file into his restaurant with laptops in tow. Those who cannot afford food or drink simply sit with their devices in the parking lot. Often their parents drive them there, doing what they can on limited incomes to catch a signal to help their children complete basic school assignments.

In Cutler Bay, Florida, just south of Miami, parents of young kids who lack broadband at home shuffle into the library. Then they queue up for computers to get their children time online to do their schoolwork. The lines are long, the wait times tough. But the need is real—because there are Miami-Dade county high schools that use digital history textbooks and elementary schools that use a math program that requires online access.

Now these students in Alabama, Michigan, and Florida are actually the lucky ones. They do not have broadband at home—but with grit, ingenuity, and the help of their parents they have found ways to cobble together the connectivity they need to get their schoolwork done. But it's hard.

So what can we do? Back to Lifeline. Today, we start a process to modernize Lifeline and incorporate broadband into the program. We ask questions about putting in place minimum standards to make sure the program is cost-effective and fair. In addition, we seek to streamline the eligibility process and reduce the potential for fraud by taking enrollment out of the hands of carriers. We also seek input on a number of other commonsense changes to improve program administration and reduce waste, including improvements to the National Lifeline Accountability Database.

Of course, Lifeline is only part of the equation. Solving the Homework Gap requires more than modernizing the program we discuss here. But it's a start. Combine this effort with more Wi-Fi in more places—and innovative initiatives like the wireless hotspots available for loan at the New York Public Library and the routers added to school buses to assist with ride-time connectivity for homework by Coachella, a rural farming community in California—and we will develop new ways to help students get their homework done. We need more creative efforts like these—now.

Now is not a moment too soon. Because this is about the future. The future of our economy, our country, and our success is built on a digital and diverse workforce. We all know that science, technology, engineering, and math are the fastest growing fields in the economy. We also know that the diversity of our STEM workforce does not mirror the diversity of our population. It's time to fix this and make our kids—all our kids—not just digital consumers, but digital creators. And there are a lot of things we can do to make this happen. But we can start by making it possible for all students to do their homework. And we can begin with modernizing the Lifeline program right here, right now, today. Because the Homework Gap is the cruelest part of the digital divide, but it is within our power to bridge it.

So let me thank the Chairman for putting this rulemaking before the Commission today and thank Commissioner Clyburn for her dedication to raising the profile of this program. This rulemaking has my full support.

**DISSENTING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90.

Ronald Reagan once said: “Government is like a baby. An alimentary canal with a big appetite at one end and no sense of responsibility at the other.” That is an apt analogy for today’s Lifeline program. To be sure, Lifeline was established in 1985 during the Reagan Administration in order to help make telephone service more affordable for low-income Americans. But that Lifeline program was vastly different than the one we have now. To equate the two is like saying that *The Godfather: Part II* is the same as *Paul Blart: Mall Cop 2* because both are movie sequels. The reality is this: adjusting for inflation, the Lifeline program is over twenty-three times as large today as it was at the end of the Reagan Administration. And soon, it’ll be even larger.

For its first two decades, the Lifeline program largely worked without controversy. But a few years ago, it lost its way. Discounted service was replaced by free service and free phone giveaways. Unscrupulous operators exploited the program for their own benefit. Ineligible consumers signed up. Numerous people enrolled in Lifeline multiple times. The end result was massive waste, fraud, and abuse. The American people lost confidence in the program.

From 2008 to 2012, Lifeline spending grew from \$821 million to over \$2.1 billion, an increase of over 160%. And the number of consumers participating in the program exploded from about 6.7 million to about 17.2 million. Even Lifeline’s fiercest defenders were forced to acknowledge that the program was a mess and the FCC needed to bring it under control.

In 2012, the Commission enacted reforms designed to prevent individuals from receiving more than one Lifeline subsidy and to enforce the program’s eligibility limits. These changes have helped. But we still have a long way to go if we are going to fix the program. Today, Lifeline spending and enrollment are still almost double what they were at the end of 2008. Waste, fraud, and abuse are still rampant. And in a report issued earlier this year, the nonpartisan Government Accountability Office (GAO) “concluded that the Lifeline program, as currently structured, may be a rather inefficient and costly mechanism to increase telephone subscribership among low-income households.”¹

Here are just two examples of the program’s problems. Last November, the CBS affiliate in Denver discovered multiple Lifeline providers distributing free phones “like Halloween candy” at a city intersection.² Agents who received \$3 for every free phone they dispensed were signing up ineligible individuals. One enrolled an undercover producer using someone else’s food stamp card. And that producer was given a free phone on the spot. This is clearly illegal, but all of the available evidence suggests that Denver is not an anomaly. This is happening all over the country.

And aside from unlawful abuse of the program, Lifeline is plagued by waste that *is* lawful. Case in point: Oklahoma.

Across the country, the typical Lifeline subsidy is \$9.25 per month. But those who live on Tribal lands receive \$34.25 per month, whether or not they are members of a Tribe. This a big deal because the FCC currently treats virtually all of Oklahoma as Tribal land. So of the 307,434 Oklahomans receiving

¹ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-15-335, TELECOMMUNICATIONS: FCC SHOULD EVALUATE THE EFFICIENCY AND EFFECTIVENESS OF THE LIFELINE PROGRAM, 14 (Mar. 2015) (GAO 2015 REPORT).

² CBS4 Denver, *Government’s Free Phone Program Riddled With Abuse, Fraud* (Nov. 6, 2014), available at <http://cbsloc.al/1GwXqGV>.

Lifeline support at the end of 2014, only 339—0.11%—did not qualify for the enhanced Tribal subsidy.

How much does this cost consumers? The \$128 million in Lifeline funds bestowed upon Oklahoma in 2014 was the second highest of any state, despite the fact that Oklahoma ranks only 28th in population. Nationally, the Lifeline program spends about \$5 per person. But in Oklahoma, Lifeline spending is about \$33 a person, which is over six times the national average, and about ten times the amount that neighboring Kansas receives. If Lifeline spending in Oklahoma were only twice the national average, which would still be more than every state but Alaska, Americans would save over \$89 million a year, which is more than 5% of the total cost of the program.

The differences are also staggering at the household level. Currently, for example, a non-Native American in Tulsa is eligible for \$300 more per year in subsidies than a low-income person in East Los Angeles or Appalachia. This is outrageous!

My priorities for the Lifeline program, which I outlined almost a year ago,³ are clear. We must implement meaningful reforms to restore fiscal responsibility. We must root out waste, fraud, and abuse. We must target Lifeline spending on those who really need the help. And we must ensure that dollars coming from hard-working Americans' phone bills each month are wisely spent.

Unfortunately, this document does not reflect these priorities. This is disappointing. At a March 18 Senate Commerce Committee hearing, Senator Claire McCaskill asked us to “speak up for the record” if we objected to a list of four Lifeline reforms she set forth to promote fiscal responsibility—things like requiring beneficiaries to have “skin in the game” or imposing a fiscal “cap” on the program.⁴ And four of the five Commissioners did not speak up when she again asked whether “anybody disagrees with those four reforms.” But today, the Commission refuses, by and large, to include those reforms as proposals. Instead of fixing the program, it proposes to expand an open-ended, spendthrift entitlement. This is irresponsible.

Let me be clear. I am open to having a conversation about including broadband in the Lifeline program. But any such change must go hand-in-hand with the reforms that are necessary to producing a fiscally responsible program. And this proposal fails that basic test.

First, it does not even propose a specific budget to prevent future runaway spending and reduce fraud. As discussed above, since 2008, Lifeline spending has almost doubled, growing from \$821 million to \$1.6 billion per year today. And during this time, the universal service tax rate on every American's phone bill has increased by 83%, rising from 9.5% to 17.4%—even as Americans' median income has gone down in the same period. Yet Lifeline remains the *only one* of the four Universal Service Fund programs that has not been placed on a budget.

A budget induces careful spending. This is as true for the federal government as it is for a family. When spending is capped, funds are spent more wisely, and where they are most needed. And because a capped pool of funds improves accountability for each dollar spent, a budget increases the incentives for eliminating waste, fraud, and abuse. Moreover, if we expand the program to include broadband without a budget, little would prevent the program from doubling in size again—with American consumers on the hook for the increase.

Again, the nonpartisan GAO shares these concerns. In its Lifeline report, GAO observed that the “risk of significant costs to the program are even greater [with respect to broadband than voice] given that [the] FCC notes that a lesson learned from the broadband pilot program is that higher monthly subsidies

³ Remarks of FCC Commissioner Ajit Pai at the Citizens Against Government Waste Policy Breakfast (July 28, 2014), *available at* <http://go.usa.gov/3V7Ex>.

⁴ CSPAN, *Federal Communications Commission Oversight Hearing* (Mar. 18, 2015), *available at* <http://cs.pn/1BpUn41>.

have the highest participation rates.”⁵

Putting the Lifeline program on a budget is not a new or novel idea. In the *2012 Reform Order*, the Commission stated that it “fully expect[ed] to have the information to determine an appropriate budget for the program” in 2013.⁶ Two years after that deadline, we have that information. So at a minimum, we should have proposed setting the budget at the current spending level of \$1.6 billion. A \$1.6 billion cap, along with other critical reforms, would ensure a bigger bang for our bucks and promote fiscal responsibility.

For over two weeks, I pushed for this proposal. And the answer was no. But then, suddenly, late yesterday afternoon, the Chairman’s Office presented the Republican Commissioners with a last-minute offer out of the blue. They were prepared to propose an annual budget of \$1.6 billion to last through the end of 2016. But even if all goes smoothly, an expansion of the broadband program will not begin to be widely implemented until the end of 2016. So having a budget that would expire before the broadband expansion was completely operational was a joke.

But it gets worse. Even this one-year, \$1.6 billion budget had a gigantic loophole. It would have allowed up to 4.2 million new households to sign up for the program, irrespective of the budget. This could have cost up to \$465 million a year. So the one-year, \$1.6 billion budget was really a one-year, \$2.065 billion budget.

In the spirit of finding common ground, Commissioner O’Rielly and I offered a compromise: a proposal for a \$1.6 billion budget through the end of 2018 with an annual increase for inflation and no loopholes. This was a big concession. We were prepared to vote for a proposal to permanently expand the Lifeline program to include broadband in exchange for a three-year budget proposal. We were prepared to go more than halfway to find consensus. But our proposal was rejected (as were other bipartisan entreaties that would’ve sought comment on a budget in a neutral, not slanted, fashion). As a result, this item does not contain any budget proposal.

Second, the document does not propose requiring Lifeline subscribers to pitch in as a condition of getting service. We should have proposed requiring Lifeline recipients to make a minimum contribution of at least 25% of the cost of service.

This approach would have several advantages. It would cut down on waste, fraud, and abuse. It would ensure that everyone has a stake in the responsible stewardship of the program. It would help Lifeline return to its original purpose of discounted service, rather than free service. It would end Lifeline’s outlier status among universal service programs as the only one which offers free service. And it would be consistent with the commitment that virtually all of us publicly agreed to when Senator McCaskill asked us about a “skin in the game” requirement.

Third, the document does not propose targeting limited Lifeline resources on closing the digital divide. The average annual household income of those eligible for Lifeline support is roughly \$38,000. Numerous families with incomes at that level already subscribe to broadband. Under this proposal, therefore, the Commission could end up directing a huge amount of broadband subsidies to those who are already online. In my view, this is not efficient, productive, or fair. If we are going to refocus Lifeline on broadband, our goal should be increasing broadband adoption—that is, helping Americans without Internet access cross the digital divide, not supporting those who have already made the leap.

On a related point, roughly 42 million households are currently eligible for the Lifeline program. According to the U.S. Census Bureau, that is 34% of all households in the United States.

⁵ GAO 2015 REPORT at 34–35.

⁶ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 12-23, 11-42, 03-109, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6810, para. 359 (2012).

Notwithstanding the decline in economic fortunes since 2009, that is too many. The federal government should not be subsidizing broadband service for one-third of our nation's households. If we are going to expand the program to include broadband, Lifeline should target our neediest citizens. Yet the Commission proposes nothing of the sort.

Fourth, the item does not propose a real solution to the problem of Lifeline spending on Tribal lands. As I noted earlier, the typical Lifeline subsidy is \$9.25 per month while those who live on Tribal lands receive \$34.25 per month regardless of whether they are members of a Tribe. To be clear, I have no problem with providing an enhanced subsidy to those living on sparsely populated, remote Tribal lands where costs are high and communications infrastructure is lacking. But the current system yields absurd results.

Oklahoma is Exhibit A. It's become a magnet for those interested in perpetrating Lifeline fraud. Companies have taken advantage of excessive subsidies at ratepayers' expense. For instance, the owner of Icon Telecom was part of a scheme to defraud the Lifeline program out of more than \$25 million.⁷ Specifically, he knowingly asked the FCC for funds for tens of thousands of phantom customers—many of whom “received” the larger Tribal subsidy. The number of customers the company fabricated was astounding. In September 2011, Icon reported having 2,200 customers in the program. Just over a year later, that number was more than 135,000. Thankfully, the scheme was uncovered, and in early 2014 Icon's owner pleaded guilty to money laundering for transferring over \$20 million from the company to his personal account.

Today, the Commission should have proposed limiting the enhanced subsidy only to Tribal lands that are sparsely populated (for example, counties with less than 15 people per square mile). Limited resources should only go to high-cost Tribal lands, not to cities that have advanced telecommunications infrastructure and are in the top 50 in the United States in population, like Tulsa (2010 Census population: 391,906). Instead, we merely “seek comment” on various ideas—a pretty good sign of where the Commission is not likely to go.

To be sure, there are some things in this plan with which I do agree. For example, we should require Lifeline providers to retain documents demonstrating that consumers are eligible to participate in the program. It's bad enough that providers internally make eligibility determinations in which they have an obvious self-interest. But it's especially troubling that providers do not—and in fact may not—retain documentation to prove that the consumers who receive Lifeline support are, in fact, eligible for the program. How is it possible to perform eligibility audits if Lifeline providers don't keep documents proving customers' eligibility?

But despite some positive aspects to parts of this item, the Commission's main proposal would take us in the wrong direction. It would expand a broken program. It would waste even more money. And it would raise taxes on the American people.

For all of these reasons, I respectfully dissent.

⁷ Press Release, U.S. Attorney's Office for the W. Dist. of Okla., *Icon Telecom, Its Owner, and a Former Associate Charged In \$25 Million Fraud In Federal Wireless Telephone Subsidy Program* (June 4, 2014), available at <http://go.usa.gov/3V7mP>.

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90.

I will start by saying that this is not the version of this statement that I wanted to read today. This could—and should—have been a 5-0 vote. All four Commissioners and the Chairman had set forth their principles, planks, visions, or ideas well in advance of the circulation of this item. And, as my colleague Commissioner Pai just highlighted, all five of us sat in a U.S. Senate hearing room and publicly committed to basic tenets of a modernized Lifeline program just a few months ago. Hammering out the details should have been a simple matter, particularly on a Further Notice of Proposed Rulemaking. Instead, it appears that, on yet another item, the thinking evolved, and the desire to act in a bipartisan manner has evaporated. Sadly, I am no longer surprised when this occurs.

It is clear that the majority wants to spend as much as they possibly can without any hint of restraint before a possible change in Administration. And they certainly want to do this before contribution reform, which has been put on ice until all the spending increases can be put into place and hang around long enough to acquire that certain patina of inevitability. Why else would the Joint Board be almost three months behind in producing a recommendation? It's simple: the majority has to spend to the maximum before the Joint Board makes its one big move to obscure the shopping spree under the ideal of broadening the base – or as it is better known, taxing the Internet. Everyone knows there will not be a second bite at this apple.

My position on Lifeline has not changed. Adequate controls and deterrents should be in place against waste, fraud, and abuse *before* considering a revamp of the program to include broadband. After all, the FCC is still grappling with the consequences of its previous expansion. But seeing where this proceeding was headed, I was willing to proceed on two tracks: evaluating the current program and adopting further safeguards, while issuing a Further Notice on modernizing the program.

In return, I expected that my ten readily achievable principles would be included in the item. This was not an unreasonable or unfounded expectation. I made clear to all those who would listen that chief amongst my principles—my top priority—would be to establish a cap for the Lifeline program. Since the Commission previously contemplated setting a budget in the 2012 order, and because the Chairman and at least three Commissioners publicly committed to adopting “a cost cap” for the program, this seemed like an easy lift.

Specifically, I asked that: 1) we propose a spending cap or, at the very least, a firm budget; and 2) that we propose to set it at the current level, which is approximately \$1.6 billion. This data-driven and fact-based amount seemed to be the most appropriate based on our reforms and experience with this program. It is possible that the reforms contemplated in this item may lead to greater requests and demands than present spending, but I also expect that efforts to reduce waste, fraud and abuse, and to better target the support, should limit any increase in program expenditures. Not wanting to foreclose the views of my colleagues and outside parties, I was even willing to contemplate what data or information the Commission would need to consider in order to select a different number. It is unfathomable to me that this very reasonable offer was rejected.

In addition to our experience with the Lifeline program, setting a firm budget at \$1.6 billion seems more than adequate when compared to other programs. It 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 parts 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.

Moreover, I have heard time and time again that the Commission's strong preference is to include concrete proposals and tentative conclusions in order to generate a better record. And, as with any proposal, parties remain free to submit alternative viewpoints and data. Frankly, I would not have been surprised to see a proposed budget here only to see an attempt to increase it substantially, against my wishes, by the time we went to order. After all, the Commission was able to increase a previously adopted E-rate cap in the span of five months.

This simple ask was rejected even though every other universal service program lives within a cap or budget and there is bipartisan support outside of this building to impose one on Lifeline. See the many statements from those House Members and Senators with oversight responsibility of the FCC, including Senators McCaskill, Manchin, and Schatz. There is no good reason why this program should be any different from other USF programs. Contrary to the belief of some, this is not an entitlement program. Additionally, the FCC and courts have recognized that we have to balance USF spending against the burden on the consumers and businesses that pay to support USF lest the required contributions serve as a deterrent to adoption. Is there no realization that this funding comes directly out of the pockets of hard working Americans, many of whom have suffered greatly under the current economy and get by under financially tenuous situations?

The fact that a proposal for a firm budget was rejected is indicative of the current state of affairs at the Commission. Unless a majority of the FCC feels compelled, on occasion, to work with the other members to show that the Commission is still functional, which is presumably how a languishing VoIP numbering item suddenly ended up on today's agenda, there is little appetite for compromise.

In addition to the budget, I made clear that I am troubled by academic research, cited by the Government Accountability Office in its most recent Lifeline report, estimating that only 1 out of 8 subscribers (and 1 out of 20 wireless subscribers) wouldn't have service absent the Lifeline subsidy. Those are failure rates of almost 88 and 95 percent, respectively. Let me repeat: consumers are paying more on their phone bills each month to support service for people that would have signed up and paid in full without a subsidy. That is the very definition of an absurdly targeted program. My request to seek comment on this request was initially accepted but later rejected. Ultimately, it did not even merit a footnote.

There are other significant problems with the item that I had hoped to engage on assuming the budget and targeting issues had been favorably resolved. I will touch on just a few.

First, I do not support the view that so-called broadband Internet access service is a telecommunications service, so I do not support the primary legal theory put forward in this item for funding broadband. It's completely flawed. I also do not support the use of section 706.

Second, there is still no requirement that Lifeline consumers pay a minimum contribution for the service. Many of the problems with waste, fraud, and abuse in the program stem from the fact that, when wireless service was added to the program, the subsidized voice service became free to end users, along with the phone and even a data allowance. Setting a minimum contribution would deter these problems and better align the current program with the original goal of providing discounted (not free) service. Although the Further Notice seeks comment on setting minimum performance standards that may have the effect of requiring an end-user charge, there should be a default rule that, in no event should the service be free to end users.

Third, I am aghast that the Commission would even consider opening the door to Link Up round two. The Commission in 2012 wisely discontinued the original Link Up program, which had become a source of significant waste, fraud, and abuse. I caution against traveling down this road again. I understand the concern about whether a broadband connection charge could serve as a barrier to adoption,

but the Lifeline program isn't intended to cover every conceivable cost, and cannot do so within a reasonable budget.

Fourth, I am concerned about tying eligibility to the SNAP program. Participation in the SNAP program is highly variable meaning that we could see large swings in program spending. In addition, adding Lifeline benefits directly onto SNAP cards could raise new accountability concerns. Before tying eligibility to any particular program or set of programs, we need to better understand how these programs operate and interact with one another. Concerns have been raised, for example, about the Low Income Home Energy Assistance Program (LIHEAP), where states have provided token LIHEAP benefits in order to qualify consumers for other programs. In addition, the item notes that recent changes to the National School Lunch Program (NSLP) enable schools to provide free lunches to all students if a certain percentage would have qualified by the old rules. If these programs continue to be qualifying programs for Lifeline, we need to better understand how these issues could impact Lifeline eligibility (and, in addition, E-rate discounts in the case of NSLP).

Fifth, I continue to object to the delegation of substantive policy decisions to staff. In particular, the Further Notice contemplates delegating the responsibility of establishing and updating a mechanism that would set minimum service levels to ensure that Lifeline supports an "evolving level" of telecommunications service. While the Bureau is supposed to tie the levels to objective, publicly available data, I don't think that's much of a safeguard given our recent experience with the Commission's 2015 Broadband Progress Report (i.e., the Section 706 Report), where the Commission contorted publicly available data to reach a predetermined outcome. Moreover, the statute is quite clear that "the *Commission* shall establish" the definition of services supported by USF.

Sixth, I continue to object to the practice of citing NALs as if they have precedential value. They do not. They are not final orders and are often challenged vociferously by the affected parties.

I also find it incredible how quickly the Commission changed its mind on the utility of broadband access at public libraries. Less than a year after ramping up E-rate funding for libraries, specifically to ensure that students without Internet access at home could get online, the Commission now blithely observes that "library hours are limited and even when they are open, they may not be able to fully accommodate the needs of their users." Can we get a refund on the new, added money we are spending on libraries?

Finally, I recognize that a couple of my comments are reflected in the item despite my dissent. In particular, I appreciate that staff honored the promise made to me before the item circulated to seek comment on making participation in the Lifeline program voluntary for providers.

While some of my non-controversial points are reflected in this item, the true measure of any working relationship is what happens when there is disagreement. I offered compromise on my top priority and was met with rejection. And it happened so late in the process that there was no time to begin a conversation about my other, serious concerns. In this respect, my low expectations for this item were met. I dissent.