

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

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

**PETITION FOR RECONSIDERATION/CLARIFICATION
OF
NTCA–THE RURAL BROADBAND ASSOCIATION AND
WTA – ADVOCATES FOR RURAL BROADBAND**

June 23, 2016

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EXECUTIVE SUMMARY

Pursuant to Section 1.429 of the Commission's rules, NTCA and WTA submit this Petition for Reconsideration and/or Clarification of certain provisions of the *Third Report and Order* adopted in the Commission's Lifeline universal service proceeding.

The Commission should reconsider the exception to the fixed broadband minimum speed standard, as it represents a failure to properly leverage the High cost universal service program and will inadvertently punish certain low-income rural consumers. Rural areas persist today that lack networks capable of delivering even 4/1 Mbps speeds, and while RLECs have done a commendable job edging out higher-speed broadband as fast as they can in the face of difficult economics and underfunded High-Cost USF programs, this work is ongoing and is not complete. Thus, instead of viewing the exception as a method of not rewarding carriers for the failure to build out their networks, the Commission should instead take stock of the realities of current broadband availability in certain rural areas (and the timeframes and funding limits of its own High-Cost program) and avoid punishing low-income consumers in areas where 4/1 Mbps speeds remain unavailable (and may not soon be available in the absence of greater funding). This is not intended to pursue the argument that the Commission should accept "dial-up" type speeds as sufficient for low-income consumers. On the contrary, the associations are strong supporters of "reasonable comparability" as a statutory mandate, and they believe that a more meaningful and comprehensive discussion of whether that mandate can be achieved in rural areas under current constraints is much-needed.

The Commission should also reconsider the phasing out of support for voice-only fixed and mobile service. Low-income consumers should have access to the same public safety features as all Americans. While support for voice service is available as part of a bundled voice

and broadband package, this will be of little comfort to low-income rural consumers forced to purchase a broadband service they might not want or need or which is unaffordable to them simply to obtain access to emergency services and keep in contact with family and friends.

The Commission should reconsider the 150 GB minimum usage allowance standard and adopt an exemption in the limited case of rural Lifeline providers utilizing satellite backhaul technology as part of their delivery of broadband to rural consumers. The application of the 150 GB minimum usage allowance to providers that must rely on satellite backhaul as their only option would result in significantly higher than average end-user rates that would be simply unaffordable for any low-income consumer in those areas.

The Commission should reconsider the “rolling recertification” requirement, which will require Lifeline providers to recertify their Lifeline customers’ continued eligibility annually as measured from each individual subscriber’s service initiation date. Many of these carriers have only a handful of employees, and it is less burdensome to conduct recertification for each of their Lifeline subscribers all at once rather than track each individual’s service initiation date. Instead, the Commission should delay or consider possible exemptions regarding implementation of rolling recertification until the National Verifier has been launched in that provider’s state and permanently takes over all program enrollment, recertification and de-enrollment obligations.

The Commission should reconsider the “port freeze” provisions as applicable to the provision of broadband to Lifeline consumers. Low-income consumers deserve the same right to abandon service plans and providers that do not meet their needs, and it is difficult to find any discernible benefit to low income consumers or the program from this “port freeze” provision.

Finally, the Commission should clarify the rule allowing non-Lifeline-only ETCs to provide voice but not broadband. It is not clear from the Order whether this applies to RLECs that lose support due to competitive overlap rules or RLECs that elect A-CAM model-based support with census blocks excluded from funding under the model.

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**PETITION FOR RECONSIDERATION AND/OR CLARIFICATION
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NTCA–THE RURAL BROADBAND ASSOCIATION AND
WTA – ADVOCATES FOR RURAL BROADBAND**

Pursuant to Section 1.429 of the rules of the Federal Communications Commission (“Commission”), NTCA–The Rural Broadband Association (“NTCA”),¹ and WTA – Advocates for Rural Broadband² respectfully submit this Petition for Reconsideration and/or Clarification of certain provisions of the *Third Report and Order* adopted in the above-captioned proceeding.³ NTCA and WTA members are designated as Eligible Telecommunications Carriers (“ETCs”) and have a long history of providing service to rural

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

² WTA – Advocates for Rural Broadband is a national trade association representing more than 300 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

³ 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, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (“*Third Report and Order*”).

low-income consumers pursuant to the Universal Service Fund (“USF”) Lifeline program. The associations’ members share the Commission’s goals of promoting accountability and the effective use of resources in this and other Universal Service programs while also reducing the administrative burdens of participation in such programs.

I. THE COMMISSION SHOULD RECONSIDER THE EXCEPTION TO THE FIXED BROADBAND MINIMUM SERVICE SPEED STANDARD; THE EXCEPTION REPRESENTS A FAILURE TO PROPERLY LEVERAGE THE HIGH COST UNIVERSAL SERVICE PROGRAM AND WILL INADVERTENTLY PUNISH CERTAIN LOW-INCOME RURAL CONSUMERS

In designating broadband Internet access service (“BIAS”) as a Lifeline-supported service, the Commission rightly adopted minimum service standards to ensure that low-income consumers are not provided with “second-tier” (or worse) service. Such standards are critical to ensure that limited universal service resources are utilized to make available to low-income consumers, where possible, a comparable quality of broadband service as is available to any other consumer, urban or rural, low-income or otherwise. Thus, the Commission adopted, for the purposes of the Lifeline mechanism, a minimum speed standard applicable to fixed BIAS of 10 Mbps download and 1 Mbps upload. The *Third Report and Order* also adopted an exception to that standard, stating that under certain circumstances⁴ BIAS at speeds of no less than 4/1 Mbps would be eligible for Lifeline support.

NTCA and WTA challenge herein one provision of the exception given the effect it will have on certain Lifeline-eligible rural consumers. The *Third Report and Order* states that the exception level was set at 4/1 Mbps to “ensure that providers who offer ‘second-tier’ service

⁴ *Id.*, ¶¶ 109-11.

are not rewarded for failure to upgrade their networks.”⁵ The Commission should reconsider this conclusion, however, specifically as applied to rural areas in which the High-Cost program plays an essential and complementary role in attempting to deliver “reasonably comparable” voice and broadband services to all consumers. The Lifeline mechanism, while vital to ensuring that voice and broadband services are affordable for low-income consumers and thus perhaps helpful as one part of a broader business case for investment in economically depressed areas, cannot and does not *on its own* help justify network construction and ongoing operations – *i.e.*, the very availability and baseline affordability of services in the first instance – in areas where the costs can exceed thousands of dollars per location. Instead, in rural America, the High-Cost program solves for the economics in areas where the cost of deploying and operating a network would otherwise lead to end-user rates that far exceed what *any* consumer, low-income or otherwise, could afford to pay. Thus a well-functioning, sufficiently-funded High-Cost program is a condition precedent to an effective Lifeline program in rural America.

As the Commission is well aware, the High-Cost program is undergoing its own transition from a singular focus on support of voice services to a broader aim of enabling the availability and affordability of both voice and broadband in rural areas. This transition, however, is just underway – even the Connect America Fund (“CAF”) Phase II, which was first adopted in 2011 and is farthest along in implementation, has just started to distribute funds to incumbent price cap carriers for network upgrades. Potential distributions to non-incumbents under that program still require further Commission action and subsequent implementation. On the RLEC side, while the USF programs have for years supported multi-use networks, the

⁵ *Id.*, ¶ 111.

Commission has only recently adopted an order expressly intended to provide a greater broadband focus and (at least in theory) enable consumer adoption of broadband.

As a result, as the Commission is also well aware, the fact is that rural areas persist today that lack networks capable of delivering even 4/1 Mbps speeds. While work is underway and RLECs and other operators have done a commendable job edging out higher-speed broadband as fast as they can in the face of difficult economics and underfunded High-Cost USF programs,⁶ this work is ongoing and is not complete. Thus, far from ensuring that providers are “not rewarded for the failure to build out their networks,” the Commission should take stock of the realities of current broadband availability in certain rural areas (and the timeframes and funding limits of its own High-Cost program) and avoid punishing low-income consumers in areas where 4/1 Mbps speeds remain unavailable (and may not soon be available in the absence of greater funding).⁷

All of this is not intended to pursue the argument that the Commission should accept “dial-up” type speeds as sufficient for low-income consumers. On the contrary, the associations

⁶ As NTCA noted in a recently filed petition for reconsideration and/or clarification in the High-Cost USF proceeding, “where it is clear the rates that rural consumers can expect to pay for a supported service (such as standalone broadband) will not be reasonably comparable contrary to section 254(b)(3), support is by definition insufficient contrary to section 254(e).” NTCA Petition for Reconsideration and/or Clarification, WC Docket No. 10-90, WC Docket No. 14-58, CC Docket No. 01-92 (fil. May 25, 2016), p. 3.

⁷ Certain actions taken by the Commission in the High Cost universal service proceeding may undermine RLECs’ ability to meet even the 4/1 minimum speed standard “floor.” Limits on capital expenditures applicable to RLECs receiving CAF Broadband Loop Support (“BLS”) support going forward will, even if ostensibly targeted more toward unserved areas, limit carriers’ ability to direct sufficient resources in a rapid manner toward locations where consumers currently lack access to 4/1 broadband service. Similar results will occur in the case of RLECs that elect Alternative Connect America Fund (“ACAM”)-based support to the extent that support is not provided for census blocks where the Commission finds a “qualified competitor” or where locations in a census block are not fully funded. *See*, Connect America Fund, et al., WC Docket No. 10-90, et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016) (“*Rate-of-Return Reform Order*”). ¶¶ 17-63 and 105-115.

are strong supporters of “reasonable comparability” as a statutory mandate, and they believe that even 10/1 speeds – which is all that the current High-Cost USF budget will allow – will prove insufficient over time to ensure “reasonable comparability” between rural and urban America. A more meaningful and comprehensive discussion of whether that mandate can be achieved in rural areas under current constraints is much-needed and, in fact, must occur by law.⁸ But, “facts on the ground” today in rural areas and the current status of the High-Cost programs must also inform how the Commission structures, in turn, its Lifeline program.

In the short run, pending this more comprehensive assessment of whether current program rules and budgets can ensure the “reasonable comparability” of services for *all* consumers – low-income or otherwise – in rural areas, the Lifeline program must be structured in a manner reflective of these “facts on the ground.” In particular, minimum speed standards adopted in the Lifeline program must take into account the realities of network availability in areas supported (or not) by the High Cost program. For example, whereas an RLEC may be able to meet the 4 Mbps (or 10 Mbps) download requirement it may be unable to deliver upload speeds of 1 Mbps or greater because existing network infrastructure in those census blocks includes aged copper lines that have not been updated – and, in some cases, the High-Cost rules may effectively deter or even preclude such upgrades. In this circumstance, none of the low-income consumers in that census block would be eligible for Lifeline even under the existing exception.⁹ Likewise, the minimum speed standards must also recognize that while 10/1 Mbps

⁸ See, Rate-of-Return Reform Order, ¶ 148 (noting that the decision of the United States Court of Appeals for the Tenth Circuit with respect to the Commission’s USF budget for RLECs was premised in significant part upon the Commission “conducting a budget review by the end of six years”) (quoting *In Re: FCC 11-161*, 753 F.3d 1015, 1055-1060 (10th Cir. 2014)).

⁹ For example, one WTA member lacks the ability to provide 1 Mbps upload speeds throughout 68% of its census blocks. It is unknown whether locations in census blocks that currently lack access to

or greater service might be available to a rural low-income consumer, due to a lack of sufficient high-cost support (especially for standalone broadband), the retail rate will likely be unaffordable.

Until such time as true “reasonable comparability” is achieved throughout all areas in which the High-Cost program operates, rural low-income consumers should therefore have the option to apply the Lifeline discount to any standalone voice, standalone broadband, or bundled voice and broadband service package they so choose and that is otherwise available from that provider to any other consumer in that service area.¹⁰ Doing so will prevent a number of low-income consumers from having no choice whatsoever among much-needed communications “lifelines,” a result that would run contrary to the goal of adoption that stands at the heart of this proceeding.

II. THE COMMISSION SHOULD RECONSIDER THE PHASE-DOWN AND ELIMINATION OF SUPPORT FOR VOICE SERVICES BECAUSE VOICE REMAINS ESSENTIAL FOR PUBLIC SAFETY

The Commission should reconsider the phasing out of support for voice-only fixed and mobile service beginning December 1, 2019, and instead continue to provide consumers the option of subscribing to a voice-only service. NTCA and WTA agree that “low-income

4/1 Mbps today will receive improved service in the foreseeable future. For example, for carriers opting into the A-CAM, only 50% of partially funded locations must have 4/1 Mbps service after 10 years, with the remainder subject the provision of service upon a reasonable request. Additionally, RLECs opting to remain on the modified legacy rate-of-return system are required only to provide 10/1 Mbps to a specified number of new locations, with the remainder subject to reasonable request. Because carriers typically build in low-cost areas first, a substantial number of low-income consumers living in the highest-cost areas to serve will be ineligible for any Lifeline support at all. This is particularly concerning given the phase-out of support for voice-only service and the provision of Lifeline support for bundles that include voice only when the broadband component meets the Commission’s minimum standards in the Lifeline program.

¹⁰ This approach also aligns with the Commission’s existing rules directing application of the Lifeline discount to “any generally available residential service plan or package offered.” 47 C.F.R. § 54.403(b)(1).

consumers should have access to the same public safety features as all Americans.”¹¹ Although broadband “is now the dominant technology used to communicate, educate, inform, and entertain,”¹² a reliable and affordable voice service is and will remain critical for the majority of consumers for the foreseeable future, particularly with respect to public safety.

As an initial matter, the phase-down of support for standalone voice in the Lifeline proceeding is particularly perplexing as it comes less than one year after the Commission adopted battery backup power rules applicable to providers of facilities-based, fixed, non line-powered voice service.¹³ These rules were adopted in significant part due to a recognition of the importance of consumers’ access to emergency services and the recognition that access to a voice service could be the difference between life and death. Yet, the Commission’s action in this proceeding threatens to leave a number of low-income consumers that cannot afford a bundled voice and broadband service without access to a voice service at all.

With respect to bundled services, while support for voice service is available as part of a bundled voice and BIAS package, this will be of little comfort to low-income rural consumers forced to purchase a broadband service they might not want or need or which is unaffordable to them. For many rural low-income consumers served by NTCA and WTA members, 10/1 Mbps or even 4/1 Mbps (to the extent the exception discussed in Section II, *supra*, applies) broadband even when bundled with voice service will in many cases continue to be unaffordable despite the availability of the Lifeline discount. In those circumstances, a number of low-income consumers

¹¹ *Third Report and Order*, n.93.

¹² *Id.*, ¶ 12.

¹³ Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, *PS Docket No. 14-174*, FCC 15-98, Report and Order (rel. Aug. 7, 2015) (“Report and Order”).

will be forced to decide between subscribing to a more expensive broadband and voice bundle or forgoing Lifeline support altogether.

The phase-out of support for voice-only service beginning on December 1, 2019 is also particularly problematic for consumers living in areas served by RLECs, as their local voice rates are by rule continuing to increase.¹⁴ Commission rules adopting a “local rate floor” currently produce end-user voice rates in RLEC service areas of \$18 per month plus state regulated fees,¹⁵ an increase of \$2 over 2015 levels.¹⁶ The Commission has given no indication that future rate floor increases are not forthcoming. A total loss of Lifeline support for stand-alone voice service will therefore be particularly harmful for low-income rural consumers in areas where their local provider is subject to the rate floor.

Furthermore, Lifeline support was intended to reimburse carriers for waiving the subscriber line charge (“SLC”) for their low-income consumers.¹⁷ Even \$5.25 – an amount only

¹⁴ The Commission could adopt more targeted reforms to the extent that it seeks to address a windfall to carriers for whom costs to provide the most basic voice service are low.

¹⁵ Wireline Competition Bureau Announces Results of 2016 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowances for ETCs Subject to Broadband and Public Interest Obligations, Public Notice, DA 16-362 (rel. Apr. 5, 2016), p. 1 (“To the extent that an ILEC’s local rates (plus state regulated fees) in 2016 are less than \$18, that carrier’s high-cost support will be reduced on a dollar-for-dollar basis”). *See also*, Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service – Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (“*Transformation Order*”), ¶¶ 234-247.

¹⁶ Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, Public Notice, DA 15-470 (rel. Apr. 16, 2015) (“To the extent that an ILEC’s local rates (plus state regulated fees) in 2015 are less than \$16, that carrier’s high-cost support will be reduced on a dollar-for-dollar basis.”).

¹⁷ *Third Report and Order*, ¶ 23.

available in a census block where a RLEC is the only Lifeline provider¹⁸ – is insufficient to cover the SLC that carriers must charge, thus forcing RLECs to either provide voice service at a loss or pass additional costs onto rural low-income consumers.¹⁹

NTCA and WTA wholeheartedly agree with the Commission that consumer choice should be paramount and that low-income consumers should not be “forced to purchase services they may not want within a bundle.”²⁰ It is therefore particularly perplexing why the reforms are structured in such a way that effectively force bundles on low-income consumers that may want or need voice service for public safety reasons or to stay in touch with family members and friends or potential employers. Low-income consumers should be able to choose the services that best meet their needs, in light of what offerings are available and affordable, including an affordable and reliable fixed voice product that enables access to 911 without a bundled and more expensive broadband product. For example, a Lifeline-eligible senior citizen who is on a fixed income for whom a bundled 10/1 and voice service is available but costs an additional \$50-60 (or more) per month over their current standalone voice service should be permitted to continue their existing voice-only service plan.

Finally, the phase-out of Lifeline support for standalone voice service raises another troublesome issue that stems from the failure to properly coordinate the Lifeline and High Cost programs. Specifically, the Commission in the *Rate-of-Return Reform Order* declined to require “qualified competitors” to offer voice or broadband service to Lifeline-eligible consumers. This

¹⁸ *Id.*, ¶ 118.

¹⁹ *See* 47 C.F.R. § 54.407(e) (requiring ETCs to “keep accurate records of the revenues it forgoes in provision Lifeline services”).

²⁰ *Third Report and Order*, ¶ 50.

leads to the scenario where there is no Lifeline provider in a particular census block should the incumbent provider decline to continue providing service (for example, if the carrier receives no high-cost support and is no longer subject to carrier of last resort and/or ETC obligations) and the competitor chooses not to serve Lifeline-eligible consumers. Under such a patchwork quilt of Lifeline availability, low-income consumers have to count on being lucky enough to live in a census block where a provider is willing to serve them. Much like the minimum speed standard discussed above, the siloed manner in which the Commission has chosen to view the discreet but inextricably linked universal service mechanisms and the consumers that benefit from those mechanisms leads here to a Lifeline program that fails certain low-income rural consumers. Such a result need not be the case, and NTCA and WTA urge the Commission to properly calibrate and coordinate each program in order to achieve their important universal service goals.

III. THE COMMISSION SHOULD RECONSIDER THE MINIMUM USAGE ALLOWANCE STANDARD ADOPTED IN THE THIRD REPORT AND ORDER FOR CARRIERS THAT USE SATELLITE BACKHAUL TO DELIVER BROADBAND SERVICE TO REMOTE RURAL AREAS OF THE NATION

The Commission should reconsider the 150 GB minimum usage allowance standard adopted in the *Third Report and Order*, and adopt an exemption in the limited case of rural Lifeline providers utilizing satellite backhaul technology as part of their delivery of BIAS to rural consumers. Such a limited exemption would ensure that low-income consumers living in extremely remote areas where terrestrial backhaul services are not available are able to enjoy Lifeline-discounted broadband service.

As the Commission well knows, there are certain areas of the nation where terrestrial backhaul services are simply not available due to the isolated nature of the area. Alaska, of course, is one prominent example, as broadband providers in that state face “special circumstances, such as its remoteness, lack of roads, challenges and costs associated with

transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and a short construction season.”²¹ Rural areas outside of Alaska face these challenges as well, however, and the rural providers serving these areas have overcome them through, in part, the use of satellite backhaul facilities where such was the *only* choice available to them.

Certain limitations are inherent in the use of satellite transmission. Satellite transmission introduces latency and continuity issues, and weather too can limit the quality of services ultimately provided to the end-user customer. Recognizing these limitations, the Commission in 2011 adopted an exemption for carriers using satellite backhaul facilities with respect to their public interest obligations, indeed including exceptions to these carriers’ latency and capacity requirements due to their lack of access to terrestrial backhaul facilities.²² Cost is a concern as well, as satellite backhaul facilities are more expensive to the BIAS provider on a per megabit basis. As a result, the application of the 150 GB minimum usage allowance to providers that must rely on satellite backhaul would result in significantly higher than average end-user rates that would be simply unaffordable for any low-income consumer in those areas.

The Commission should therefore reconsider the 150 GB minimum usage allowance adopted by the *Third Report and Order* in cases where the Lifeline provider certifies a lack of access to terrestrial backhaul. In those circumstances, the Lifeline provider should be able to offer a Lifeline-discounted BIAS service with a usage allowance commensurate with usage allowances generally available to their overall customer base. Such a limited exemption would

²¹ *Transformation Order*, ¶ 508.

²² *Id.*, ¶ 101 (exempting carriers from latency and capacity requirements in cases where the provider is able to certify that terrestrial backhaul facilities are not available to them).

avoid forcing certain low-income rural consumers to choose between an unaffordable service and no service at all. Adoption of an exemption would not, on the other hand, undermine the Commission's goals of ensuring that the Lifeline program does not provide support for sub-standard service; if structured properly, that is applicable only to providers that have *no options* for terrestrial backhaul and expiring for individual providers once such facilities are constructed and available to them, the proposed exemption would operate in practice in only a limited number of circumstances. Thus the exemption would both preserve the Commission's stated goal of ensuring that Lifeline subscribers have access to quality service while ensuring that this valuable program is available to help as many rural low-income Americans as possible.

IV. THE COMMISSION SHOULD RECONSIDER BURDENSOME ROLLING RECERTIFICATION REQUIREMENTS AND SUSPEND THIS REQUIREMENT UNTIL THE NATIONAL VERIFIER IS LAUNCHED IN A STATE

The Commission should reconsider the "rolling recertification" requirement adopted in *Third Report and Order* which will require Lifeline providers to recertify their Lifeline customers' continued eligibility annually as measured from each individual subscriber's service initiation date.²³ Instead, the Commission should delay implementation of rolling recertification until the National Verifier has been launched in that provider's state.

As an initial matter, the Commission failed to provide interested parties notice of its intention to adopt or even consider such a rule. The Commission states that it "sought comment on whether [it] should make any changes to the recertification process as [it] modernize[s] the administration of the Lifeline program."²⁴ However, in its discussion of the role of the National Verifier in program administration the Commission sought comment on "additional functions

²³ *Third Report and Order*, ¶ 416.

²⁴ *Id.*

that a national verifier could perform to further eliminate waste, fraud, and abuse.”²⁵ The Commission asked whether the verifier should be involved in the recertification process, whether existing processes should be shifted to the verifier, and how the verifier’s recertification process should differ from existing Universal Service Administrative Company (“USAC”) and provider practices.²⁶ The Commission did not – in either the 2015 FNPRM or previous notices or Orders discussing the prospect of a national verifier – indicate that it intended to change the recertification process for providers before their duties are shifted to a national verifier and cites to no comments supporting the adopted change to recertification.

While there is no question that federal agencies are free to adopt final rules that are not identical to those described in an NPRM where any differences are sufficiently minor and could have been anticipated by interested parties,²⁷ in order to comply with its notice obligations under the APA, an agency must alert interested parties “to the possibility of the agency’s adopting a rule different than the one proposed.”²⁸ The adequacy of the notice, then, depends on whether the final rule is a “logical outgrowth” of the proposed rule.²⁹ The Commission sought comment on whether and how a national verifier should perform recertification, not whether or how to change recertification as currently conducted by providers and/or USAC or another entity.

²⁵ See, *Lifeline and Link Up Reform and Modernization, et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7851-52 ¶ 86 (2015) (“*Second Report and Order and FNPRM*”).

²⁶ *Id.*

²⁷ *Nat’l Cable Television Assn., Inc. v. FCC*, 747 F. 2d 1503, 1507 (D.C. Cir. 1984).

²⁸ *Kooritzky v. Reich*, 17 F.3d 1509, 1513 (D.C. Cir. 1994). See also *Sprint v. FCC*, 315 F. 3d 369 (D.C. Cir. 2003) (vacating a rule where the Commission failed to give adequate notice that it was considering a change in reporting requirements that were more burdensome under the new rule).

²⁹ *Fertilizer Inst. v. EPA*, 935 F.2d 1303, 1311 (D.C. Cir. 1991).

Accordingly, the Commission must reconsider and seek comment before adopting a rule requiring recertification individualized to each subscriber's initiation of service.

Although the move to a "rolling recertification" process may result in administrative efficiencies for certain providers, USAC, or the National Verifier, the change is unnecessary and will be more administratively burdensome for smaller Lifeline providers. Over the last five years, small Lifeline providers and their employees have been required to repeatedly modify their internal procedures to account for the administrative changes adopted by the Commission with respect to the Lifeline program. For example, carriers are still working through changes required to implement the Commission's "uniform snapshot" requirement later this year³⁰ despite the fact that the Commission decided in the *Third Report and Order* to direct a phase out of FCC Form 497.³¹ In light of the fact that carriers should be absolved of the vast majority of their verification and enrollment duties in a few short years – and indeed the reduction of Lifeline provider burdens was a key driver in the Commission's establishment of the national verifier – it would be unnecessarily burdensome for small carriers to retrain their employees and modify internal administrative practices now to comply with the "rolling recertification" rule and again in a few short years in order to interact with the verifier.

Furthermore, although it may be less burdensome for a large provider, USAC, or the national verifier to spread recertification throughout the year,³² the opposite is true for small

³⁰ *Second Report and Order and FNPRM*, ¶ 241 (requiring carriers to use a uniform snapshot date to request reimbursement from USAC for providing Lifeline support).

³¹ *Third Report and Order*, ¶ 143 (directing USAC to develop a transition plan to phase out FCC Form 497, currently used by providers to report Lifeline subscribers for reimbursement).

³² *Id.*, ¶ 417 (finding that rolling certification will make the process more manageable by preventing the entity responsible from processing recertification and potential de-enrollment procedures for all subscribers at the same time).

Lifeline providers such as NTCA and WTA's members. Many of these carriers have only a handful of employees, and it is less burdensome to conduct recertification for each of their Lifeline subscribers all at once rather than track each individual's service initiation date to conduct individualized recertification. Although carriers have the option to elect USAC to perform recertification, carriers that elect that option for recertification will still need to keep track of each subscriber's Lifeline initiation date, report accurate information to USAC and de-enroll subscribers within the necessary timeframe.

Furthermore, conducting de-enrollments on a monthly, rather than yearly, basis will be particularly burdensome for small carriers. In light of NTCA and WTA's member experiences utilizing the USAC recertification process, many subscribers must be de-enrolled from the National Lifeline Accountability Database ("NLAD") because they did not respond to recertification requests. Although this problem has been mitigated somewhat in the past year, consumers are still less likely to respond to USAC or National Verifier recertification requests than from the provider, leading to the need to de-enroll and subsequently re-enroll nearly 30% of eligible Lifeline subscribers. Spreading the need for a provider's employees to dedicate time to recertification throughout the year rather than just once is an unnecessary additional burden and the Commission never sought comment on the impact of such a requirement on Lifeline providers. Rather, the Commission sought comment on whether providers should be entirely removed from the recertification process.

Accordingly, the Commission should reconsider its rolling recertification requirement and delay or consider an exemption to its implementation until the National Verifier is launched

and provider involvement in eligibility verification and recertification (and corresponding de-enrollments) is eliminated in its entirety.³³

V. THE COMMISSION SHOULD RECONSIDER THE “PORT FREEZE” PROVISIONS THAT LOCK LOW-INCOME SUBSCRIBERS INTO 12-MONTH CONTRACTS FOR BROADBAND SERVICE IN THE NAME OF “FACILITATING MARKET ENTRY INTO THE LIFELINE BROADBAND MARKET” AND “PROMOTING COMPETITION”

The Commission should reconsider the “port freeze” provisions³⁴ adopted in the *Third Report and Order* as applicable to the provision of BIAS to Lifeline eligible consumers.³⁵ Low-income consumers deserve the same right as any other consumer to abandon service plans and providers that do not meet their needs.

In adopting the “port freeze” provisions at issue herein, the Commission states that this rule will “give providers greater certainty when planning new or updated Lifeline offerings.”³⁶ Despite recognizing that the rule “will decrease Lifeline providers’ incentive to compete for customers that have recently signed up with another Lifeline provider”³⁷ the *Third Report and Order* states that the “port freeze” will benefit low-income consumers because it “gives providers stronger incentive to vigorously compete for eligible customers through better

³³ For example, the Commission could permit small carriers to continue conducting de-enrollments arising out of recertification failures across its subscriber-base once annually while still allowing carriers that believe they would experience administrative efficiencies through rolling recertification to do so.

³⁴ The Commission should also clarify that the “12-month port freeze” does not impact the ability of a provider to re-enroll Lifeline subscribers who were de-enrolled due to failure to respond to USAC or other recertification efforts.

³⁵ *Third Report and Order*, ¶¶ 385-394.

³⁶ *Id.*, ¶ 385.

³⁷ *Id.*, ¶ 389.

broadband service offerings and outreach.”³⁸ Yet, full benefit portability would serve every low-income subscriber in the same manner, that is, ensuring that every Lifeline provider – including new entrants into the Lifeline market – has the incentive to offer the best service packages, features, and quality of service in order to compete for low-income subscribers should they make the affirmative choice to target that group of consumers for subscribership growth.

In the end, the 12-month “port-freeze” applicable to Lifeline BIAS subscribers only benefits providers concerned about recovering investment incurred as part of entering the Lifeline market and provides no discernable benefit to low-income consumers. The Commission should instead focus on quality of competition, looking at every turn to ensure that low-income consumers and the Lifeline fund itself receive value in terms of both price and service quality – and not just basic “availability” of service. Beyond that, there was no evidence in the record in response to the June 2015 further notice³⁹ that new entrants are having difficulty entering the Lifeline market – beyond unsubstantiated claims that the ETC designation process was too burdensome. Of course, with this issue resolved, one would be hard pressed to argue that new entrants need an additional leg up. Thus it is difficult to see how low-income consumers or the Lifeline program itself derives any value from this BIAS “port-freeze.”

Based on the forgoing, the Commission should reconsider the 12-month BIAS “port-freeze” adopted by the *Third Report and Order*. Low-income consumers dissatisfied with the quality of service they receive from their provider should be able to switch at will in the same manner as any other consumer. So too should low-income consumers that find a better value in another provider that offers them a better product and/or a lower rate. The Lifeline program

³⁸ *Id.*

³⁹ *Second Report and Order and FNPRM.*

should at every turn seek out *value as well as choice* for low-income subscribers and the program itself, and the 12-month “port-freeze” on BIAS support fails to achieve that result.⁴⁰

VI. THE COMMISSION SHOULD CLARIFY CERTAIN ASPECTS OF THE ETC FORBEARANCE PROVISIONS ADOPTED IN THIRD REPORT AND ORDER

The *Third Report and Order* “forbears” from the requirement that non-Lifeline-only ETCs provide BIAS, enabling these carriers to provide voice-only service.⁴¹ This forbearance does not apply in census blocks where the provider is subject to High-Cost program performance obligations.⁴² These provisions of the *Third Report and Order*, when viewed in tandem with the Commission’s recent *Rate-of-Return Reform Order*, raise points of clarification that the Commission should immediately address.

Specifically, it is not clear from the text of the *Third Report and Order* whether this forbearance option is available to RLECs that elect to receive high-cost support through the newly created CAF BLS mechanism that also lose support in census blocks where the Commission finds, after a challenge process that seems unlikely to be completed until sometime in 2017, the presence of a “qualified competitor.”⁴³ It also not clear whether RLECs that elect A-CAM model-based support can avail themselves of this forbearance relief in census blocks

⁴⁰ Lifeline customers should be permitted to subscribe to the same service plans and packages generally available to other residential customers of a provider offering Lifeline discounts.

⁴¹ *Third Report and Order*, ¶¶ 34-35 and 309-311.

⁴² *Id.*

⁴³ *Rate-of-Return Reform Order*, ¶¶ 116-145. See, *Third Report and Order*, ¶ 313 (requiring ETCs that plan to seek forbearance from the Lifeline-BIAS obligation to notify the Commission within 60 days after announcement of OMB approval of the *Third Report and Order* or 30 days of being designated as an ETC).

excluded from funding under the model.⁴⁴ The Commission should make clear that RLECs that lose all High-Cost support in a census block under either A-CAM-based support or non-model mechanisms may choose to avail themselves of forbearance from the obligation to offer Lifeline-supported BIAS in that census block at such time as that loss of support occurs, whether within the near term or months from now as the High-Cost reforms continue to be implemented.

VII. CONCLUSION

For all of the reasons discussed above, the Commission should reconsider the exemption to minimum speed standard for providers of Lifeline-supported, fixed BIAS, the phase-out of standalone voice service, and the minimum usage allowance for providers without any options for terrestrial backhaul service. The Commission should also reconsider the “rolling recertification” and “port freeze” rules and clarify certain aspects of the ETC forbearance rules adopted in this proceeding.

⁴⁴ The A-CAM will exclude from funding census blocks where the Commission finds a “qualified competitor” (after a challenge process), where the incumbent provider or an affiliate offers voice and broadband service meeting the minimum service standards using fiber-to-the-premise or cable technology, or where the census block has an average cost per location below the \$52.50 funding benchmark. *Rate-of-Return Reform Order*, ¶¶ 37, 48, and 56.

Respectfully submitted,

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