

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109

**COMMENTS OF
ADVOCATES FOR BASIC LEGAL EQUALITY, INC.
COMMUNITY COUNSELING OF BRISTOL COUNTY
COMMUNITY VOICE MAIL
CROSSROADS URBAN CENTER
DISABILITY RIGHTS ADVOCATES
LEGAL SERVICES ADVOCACY PROJECT
LOW INCOME UTILITY ADVOCACY PROJECT
NATIONAL CENTER FOR MEDICAL-LEGAL PARTNERSHIP
NATIONAL CONSUMER LAW CENTER, On Behalf Of Our Low-Income Clients
NEW JERSEY SHARES
OHIO POVERTY LAW CENTER
OPEN ACCESS CONNECTIONS
PENNSYLVANIA UTILITY LAW PROJECT
PRO SENIORS, INC.
SALT LAKE COMMUNITY ACTION PROGRAM
TEXAS LEGAL SERVICES CENTER
VIRGINIA CITIZENS CONSUMER COUNCIL
("CONSUMER GROUPS")**

**IN RESPONSE TO THE NOTICE OF PROPOSED RULEMAKING ON THE LIFELINE AND
LINK UP REFORM AND MODERNIZATION**

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I. INTRODUCTION

The listed organizations (“Consumer Groups”) all represent low-income consumer groups and individuals who use the Lifeline and Link Up program. We welcome the opportunity

to comment on the FCC's Notice of Proposed Rulemaking on the Lifeline and Link-Up Reform and Modernization:¹

The Advocates for Basic Legal Equality (ABLE) is a regional non-profit law firm in Ohio that provides a full range of free, high quality legal services to low-income individuals and groups to help them achieve self-reliance, economic opportunity, and equal justice. ABLE serves clients in thirty-two counties in Northwest and Western Ohio as well as migrant farmworkers and immigrant workers statewide. Established in 1969, ABLE has a long history of representing low-income clients in all types of administrative advocacy and complex civil litigation, including consumer protection and utilities matters. Since 1995, ABLE attorneys have actively worked on behalf of community organizations to expand access and ensure affordability of telecommunications services.

Community Counseling of Bristol County (CCBC) is a non-profit organization based out of Taunton, MA. The purpose and mission of CCBC is to develop and deliver compassionate, responsive, culturally competent, and quality mental health and substance abuse services to meet the prevention, education, treatment, rehabilitation and recovery needs of those in our community. These services are based on the latest evidence-based approaches to respond to the complex needs of children, adolescents, adults, elders and families as part of a locally integrated health-care delivery system linked to regional and statewide delivery systems.

Community Voice Mail (www.cvm.org) helps people living in poverty, transition and homelessness rebuild their lives by providing voice mail and information services that connect them to jobs, housing, information and hope. Each year, more than 44,000 people in 43 U.S. cities receive reliable phone numbers and voice mail boxes through a network of 1,800 social service agencies. Community Voice Mail is a national nonprofit organization serving low-income and homeless individuals since 1993.

Crossroads Urban Center (CUC) is a multipurpose, grassroots, nonprofit organization serving Salt Lake City and the state of Utah. For over forty years Crossroads has helped organize low income, disabled, older and minority Utahns to be advocates on their own behalf in addressing essential issues affecting the quality of their lives. Telecommunication service is one of those issues.

Disability Rights Advocates (DRA) is a non-profit public interest law firm that specializes in high impact civil rights litigation and other advocacy on behalf of persons with disabilities throughout the United States. DRA works to end discrimination in areas such as access to public accommodations, public services, utility services, employment, transportation, education, and housing. DRA regularly represents low income people with disabilities before the California Public Utilities Commission to ensure that they have access to vital regulated services.

¹ FCC, In the Matter of Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109, (rel. March 4, 2011)(“NPRM”), published in 76 Fed. Reg. 16,482 – 16,519 (Mar. 23, 2011).

Legal Services Advocacy Project (LSAP), a division of Mid-Minnesota Legal Assistance, provides a voice for low-income Minnesotans by engaging in legislative and administrative advocacy, conducting research and policy analysis, and providing community education and training. LSAP has been active for more than a quarter-century, representing the interests of elders, persons with disabilities, and low-income individuals and families on utility, consumer, health, housing issues and other public policy matters affecting basic needs.

The Low Income Utility Advocacy Project (LIUAP) engages in administrative and legislative advocacy in Illinois in the utility/energy area on behalf of low income households and not-for-profits. It is a project of the Shriver Poverty Law Center, Voices for Illinois Children and Heartland Alliance for Human Needs and Human Justice.

National Center for Medical-Legal Partnership promotes the advancement of Medical-Legal Partnerships (MLP) to improve the health and well-being of vulnerable populations. The National Center supports the expansion and integration of MLP through technical assistance and support for partnership sites, facilitation of the MLP Network, promotion of leadership in law and medicine, and coordination of national research and policy activities related to preventive law, health disparities and the social determinants of health.

National Consumer Law Center (NCLC) is a non-profit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. NCLC has expertise in protecting low-income customer access to telecommunications, energy and water services and publishes *Access to Utility Service* (4th edition) as part of its Debtor Rights Series of legal manuals as well as NCLC's *Guide to the Rights of Utility Consumers* and *Guide to Surviving Debt*.

New Jersey SHARES (NJS) is a statewide nonprofit organization that provides energy, telephone and water assistance to New Jersey's vulnerable populations. Since 2005, NJ SHARES has partnered with Verizon New Jersey to provide outreach and enrollment services for the Verizon Communications Lifeline Program. NJ SHARES has helped 172,000 households with energy assistance grants totaling nearly \$70,000,000 since its inception in 1998 and has subsequently partnered with two water companies to provide assistance in New Jersey and in eight additional states.

Ohio Poverty Law Center (OPLC) is a nonprofit organization dedicated to using the law to fight poverty in Ohio. OPLC does systemic legal, policy, legislative, and administrative advocacy on poverty law issues and provides assistance to the Ohio legal aid community through litigation support, training, specialty assistance and consulting, task forces, publication and resource development, and other activities. OPLC has a long history of intervention and representing community organizations in southeastern

(Appalachian) Ohio in public utilities cases in rulemaking proceedings before the Public Utilities Commission of Ohio (PUCO).

Open Access Connections (formerly Twin Cities Community Voice Mail) advocates for the communications needs of very low income and homeless people. We directly provide free communications tools for people in need in Minnesota. We have provided over 58,000 very low income people with voice mail numbers; provide a limited number of cell phones to people who are homeless; operate a netbook lending library to provide internet access for people who are homeless, and provide information to the people we serve through voice mail broadcasts and a shelter hotline. The foundation of our work is the active involvement of our participants in everything that we do.

Pennsylvania Public Utility Law Project (PULP) is a non-profit legal aid provider exclusively focused on public utility and energy related issues that impact low income, residential utility consumers in Pennsylvania. PULP provides legal representation to individuals and groups appearing before the Pennsylvania Public Utility Commission (“PUC”); offers technical assistance, training, and support to legal aid and social service providers throughout Pennsylvania; and engages in policy analysis and advocacy. For thirty years, PULP has been the key voice speaking on behalf of low income, residential utility consumers and safeguarding their interests.

Pro Seniors, Inc., founded in 1975, is a non-profit organization that provides free legal and long-term care help to older adults. Pro Seniors operates an Ohio legal hotline for senior Ohio residents, age 60 and older. Pro Seniors also represents senior clients with respect to legal issues of high impact on Ohio senior citizens.

Salt Lake Community Action Program (SLCAP) is a community based non-profit organization that assists low income households in becoming self sufficient through the provision of direct services and advocacy.

Texas Legal Services Center (TLSC) is a statewide Legal Aid program that sponsors the TexasLawHelp.org website that provides Texans with free information concerning their legal rights. Pursuant to Texas law, TLSC established a Collaborative Community Network with the State Bar and public libraries known as the Partnership for Legal Access to ensure consumers have free access to consumer-oriented legal information.

Virginia Citizens Consumer Council (VCCC) is a statewide, grass-roots, consumer education and advocacy organization that has been active for over 40 years.

In this NPRM, the Commission sets forth a series of proposals to reform and modernize the Universal Service Fund programs directly assisting low-income consumers, the Lifeline and Link Up programs.² Consumer Groups will be using “Lifeline” as shorthand for both Lifeline and Link Up and while we cite to sections of our comments filed in response to the Joint Board’s

² 47 C.F.R. Part 54.

2010 request for comment on modifications to the Lifeline program, we incorporate those comments in full by reference.³

The Commission's proposed modification of the Lifeline program contains several fundamental alterations that Consumer Groups find harmful to low-income consumers and to the effectiveness of the Lifeline program. These proposals include capping the Lifeline fund, imposing a minimum charge for Lifeline service and requiring a unique residential address in order to receive Lifeline service. We focus in particular on those three proposals in these comments.

The Lifeline program has been valuable in expanding access to telephone service throughout the country. The existing Lifeline program is presently undersubscribed and millions of households are still reeling from the economic downturn. Now is not the time to cap Lifeline and Link Up; these services provide essential access to affordable phone service necessary to find work and housing, access to medical care, emergency services, schools, as well as maintain connections with family, friends and the larger community, including essential social services. Imposing a minimum charge on Lifeline customers will suppress Lifeline participation as the hassle of a \$1 bill payment will outweigh the benefit of the Lifeline program, especially for the large number of unbanked.

Consumer Groups are strongly opposed to a Lifeline eligibility rule that limits Lifeline to a unique residential street address. This is poor and ineffective policy because a consumer's housing status should not play a role in Lifeline eligibility determinations. The better starting point is to clarify that Lifeline is limited to one-benefit per household and to define "household" as "any individual or group of individuals who are living together as one economic unit." This is consistent with the current rules regarding income eligibility and certification determinations. The use of a street address to identify a Lifeline customer is not an eligibility determination, but rather part of the program design to address concerns about potential fraud, waste and abuse.

The Commission's proposed modifications would also establish program goals and performance metrics. Consumer Groups support the proposed program goals, but offer alternative performance metrics to more accurately measure the effectiveness of the Lifeline program in reaching its goals. The Commission seeks comment on customary charges that

³ Consumer Groups Comments to the Federal-State Joint Board on Universal Service, Lifeline and Link Up (Jul. 15, 2010) and reply comments (Jul.30, 2010).

should be eligible for Link Up reimbursement. The Commission also seeks comment on procedures for de-enrollment for non-usage. Consumer Groups focus on the need for strong consumer protections regarding the de-enrollment process that include notice of possibly de-enrollment for non-usage and the ability to cure.

The Commission also requests comment on proposals to improve Lifeline program administration and Consumer Groups support use of the current default criteria as the minimum standard eligibility criteria in all the states. Modifications to eligibility and verification processes must facilitate not hinder enrollment, while also protecting the integrity of the programs. We reiterate our strong support for increasing income eligibility to 150 percent of poverty. Consumer Groups are opposed to the elimination of self certification of program eligibility as the Commission's proposal to require the submission of additional documentation will pose a barrier to participation and is not necessary in light of alternative less-burdensome methods to verify eligibility. Consumer Groups are generally supportive of the proposed improvements to the verification sampling procedures and reporting requirements.

The Commission seeks comment on coordinated enrollment and the creation of a centralized national database for the administration of the Lifeline program. Consumer Groups continue their strong support for coordinated enrollment, but encourage the use of incentives to speed along this practice. Without incentives, coordinated enrollment will remain merely an aspiration goal in many parts of the country. Consumer Groups' maintain their concern that a national database will be a resource and time-intensive undertaking. In addition, if the database is not updated in real-time or near-real time, the database could actually pose a hindrance to the efficient and timely administration of the Lifeline program in situations where eligible households who move or attempt to shop around and switch providers.

The Commission seeks to comment on Outreach and Marketing and Consumer Groups are overall supportive of these proposals. Consumer Groups support coordinated enrollment and strengthened outreach and education about the Lifeline program to improve program participation. States and community organizations have important roles in the outreach and education of consumers about Lifeline products and the application and verification process. Requiring Lifeline products to have a common brand as a Lifeline product will also help with the consumer education and outreach for Lifeline service.

Consumer Groups also support the inclusion of broadband service in the list of covered services, but believe the Commission would be on more solid legal footing if it reclassified broadband (or broadband Lifeline) as a telecommunications service. We are strongly supportive of low-income broadband pilots, but urge the Commission to dedicate a funding stream for these pilots. Consumer Groups also comment on our concerns about the need for consumer protections with the application of Lifeline to bundled services.

II. The Commission Should Not Cap the Lifeline Program in These Challenging Times⁴

The Commission seeks comments on whether to cap the size of the low-income fund at 2010 levels of \$1.3 billion. Consumer Groups urge the Commission not to hastily impose a cap on the low-income fund. The ostensible reason for requesting a cap is two-fold: (1) most of the other major components of the fund are capped; and (2) the size of the low-income fund has grown significantly in recent years. Consumer Groups submit that neither of these serves as an adequate reason for capping the size of the Low-Income fund.

The Lifeline program has even more relevance now than ever before as the number of struggling households has grown during this recession, and unemployment is expected to remain at high levels in the near future. Enrollment in other low-income assistance programs is at record high levels. One in seven Americans (44 million) receives food assistance through the Supplemental Nutrition Assistance Program (SNAP) program (formerly called Food Stamps).⁵ The number of households receiving Low Income Home Energy Assistance Program (LIHEAP) assistance is also at record levels (9 million).⁶

According a Pew Fiscal Analysis Initiative report, as of December 2010, thirty (30) percent of the 14 million unemployed have been unemployed for a year or longer.⁷ While long-

⁴ NPRM ¶¶145-149.

⁵ Food and Research Action Center, *SNAP/Food Stamp Monthly Participation Data for January 2011*. Available at <http://frac.org/reports-and-resources/snapfood-stamp-monthly-participation-data/>.

⁶ National Energy Assistance Directors' Association, *Applications for Energy Assistance Again Reach Record Levels* (Feb. 8, 2011). Available at <http://www.neada.org/communications/press/2011-02-08PressReleaseEnergyAssistance.pdf>.

⁷ Pew Economic Policy Group Fiscal Analysis Initiative, *Addendum: A Year or More: The High Cost of Long-Term Unemployment*, January 27, 2011. Available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/long_term_unemployment_update_january_2011.pdf.

term unemployment has affected all age groups, older workers have been hit particularly hard by this downturn.⁸ CBO's budget and economic outlook report projects that unemployment will be 8.2 percent by the fourth quarter in FY 2012, far from the 5.3 percent that CBO estimates is the natural rate of unemployment.⁹ A recent Brookings Center on Children & Families analysis looks at the correlation between unemployment rates and poverty rates and estimates that the poverty rate will increase from 12.5 percent in 2007 to nearly 16 percent by 2014.¹⁰

The Congressional Budget Office's long-term budget and economic outlook explains the seriousness of the times we are living in:

The United States faces daunting economic and budgetary challenges. The economy has struggled to recover from the recent recession, which was triggered by a large decline in house prices and a financial crisis -- events unlike anything this country has seen since the Great Depression. During the recovery, the pace of growth in the nation's output has been anemic compared with that during most other recoveries since World War II, and the unemployment rate has remained quite high.¹¹

These are very challenging times for our struggling families, and access to affordable phone service is critical to achieving and maintaining self sufficiency. The phone is essential for finding work, finding affordable housing, accessing health care and emergency services, staying connected to family, community and schools, and being an engaged member of society. The Commission should not cap Lifeline, but instead should be aggressively removing barriers to participation and promoting this program.

The Low-Income fund is different than the other components the Universal Service because it is specifically designed to correct the seemingly intractable problem of direct access to basic telephone service for low-income households. Section 254 of the Communications Act of 1934, as amended (the Act),¹² codified the Commission's and the states' historical commitment

⁸ *Id.* ("More than 40 percent of unemployed workers older than 55 have been out of work for at least a year")

⁹ CBO, *The Budget and Economic Outlook: Fiscal Years 2011 to 2021*, Summary (January 2011 at Summary Table 2).

¹⁰ Emily Monea and Isabel Sawhill, Brookings Center on Children and Families, *An Update to "Simulating the Effect of the 'Great Recession' on Poverty"*, Brookings Center on children and Families (September 16, 2010). Available at: http://www.brookings.edu/papers/2010/0916_poverty_monea_sawhill.aspx.

¹¹ Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2011 to 2021*, Summary (Jan. 2011) at Summary Table 2. Available at: <http://www.cbo.gov/ftpdocs/120xx/doc12039/SummaryforWeb.pdf>.

¹² Pub. L. No. 104-104, 110 Stat. 56. The Telecommunications Act of 1996 (the 1996 Act) amended the Communications Act of 1934 (the Act).

to advancing the availability of telecommunications services for all Americans.¹³ Section 254(b) establishes principles upon which the Commission shall base policies for the preservation and advancement of universal service. Among other things, these principles state that consumers in all regions of the Nation, including low-income consumers, should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged in urban areas,¹⁴ and that “[t]here should be *specific, predictable and sufficient* Federal and State mechanisms to preserve and advance universal service.”¹⁵ These principles also recognize that ensuring rates are affordable is a national priority.

Consumer Groups submit that imposing a cap on enrollment in the low-income program is incompatible with these principles in light of the relatively low nationwide enrollment rate. Lifeline programs are undersubscribed. According to recent analysis, using each state’s eligibility criteria, USAC estimates that in 2009, 25.7 million households qualified for Lifeline support, but only approximately 8.2 million households were enrolled.¹⁶ This is a participation rate of approximately 32 percent. While less than half a dozen states had participation rates above 50 percent, over half the states had participation rates at or below, and often well below, 25 percent.¹⁷ With such low subscription rates, the Commission should be doing all that is in its power to increase enrollment not curtail enrollment, and a nationwide, statewide, or region-wide cap on enrollment would not advance the Commission’s required policy objectives to establish “sufficient” mechanisms to advance universal service.

A cap on the size of the fund is unwarranted in light of the dire economic times for struggling low-income families who need affordable phone service. The Commission is merely speculating about the reasons for the fund’s growth. While enrollment rates remain low, USAC’s 2009 analysis also indicates that there has been a growing interest in Lifeline, as thirty-one states have experienced an increase in Lifeline participation.¹⁸ Without pertinent data, there

¹³ 47 U.S.C. § 254.

¹⁴ 47 U.S.C. § 254(b).

¹⁵ 47 U.S.C. § 254(b)(5) (emphasis added).

¹⁶ FCC, *FCC Observes “National Lifeline and Link Up Telephone Discount Awareness Week,”* 2010. Available at: <http://www.fcc.gov/cgb/contacts/headlines/LifelineWeek2010.doc>

¹⁷ USAC, *Lifeline Participation Rates by State 2009*. Available at: <http://www.universalservice.org/li/about/participation-rate-information.aspx>.

¹⁸ *Id.* See also United States Gov’t Accountability Office Report, GAO 11-11, *Telecommunications: Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program*, (Oct. 2010) (“2010 GAO Report”). Available at: <http://www.gao.gov/new.items/d11111.pdf>. (According to the 2010 GAO

is no reliable way to measure whether the growth in the *cost* of the low-income fund is a result of waste and abuse or simply the success of the mission and an increase in the number of low-income households served. Thus, Consumer Groups contend that any discussion of a cap on the size of the low-income program is premature. The enrollment rates, despite some recent increases, remain unacceptably low. Imposing a cap on the size of the fund will erode these essential gains and prevent the Commission from fulfilling its requirement of ensuring sufficient access to universal service.

If the Commission makes it a priority to keep the universal services contribution at current levels, we encourage the Commission to consider directing 15 percent of the savings from the High Cost Fund Reform to cover expansion in the Lifeline program, Lifeline program improvement grant and part of the cost of the low-income broadband pilots. We discuss these proposals in our discussion of coordinated enrollment and broadband pilots.

III. The Proposal To Impose A Minimum Customer Charge For Lifeline Will Pose A Barrier To Lifeline Access

Consumer Groups strongly oppose the assessment of a minimum customer charge or a monthly fee on Lifeline subscribers. Each of the proposals put forth by the Commission would either create barriers to enrollment or continued participation in Lifeline and/or provide little to no costs savings to the fund.

As to the Commission's proposal that customers be assessed a \$1 per month fee to participate in Lifeline, it is difficult to see how this amount would prevent waste in the fund. While a monthly fee of \$1 from each Lifeline participant might not hurt participation rates, it would present logistical challenges for pre-paid wireless providers who collect no money from their customers, unless the customer chooses to purchase ancillary services or additional minutes. Even the proposal that such an amount could be direct debited from a customer's bank account poses difficulties as 18% of US households do not have a bank account. Many people in poverty rely on cash transactions.¹⁹ There are unintended and undesirable consequences that could stem from imposition of a minimum customer charge. For example, if a carrier imposed a monthly

Report, the total number of Lifeline participants was stable – between 6.9 million and 7.1 million annually – between calendar years 2005 and 2008, but increased to 8.6 million in 2009). *Id.* at 14.

¹⁹ See “FDIC National Survey of Unbanked and Underbanked Households,” December 2009. Available at: www.fdic.gov/householdsurvey/full_report.pdf.

fee for participation in Lifeline, unbanked consumers could end up paying more in transaction fees to pay a \$1 Lifeline bill²⁰ or end up being funneled to payday lending sites that take payments for utility companies.²¹

Consumer Groups also strongly oppose any plan that would assess this monthly \$1 fee by taking it out of the allotment of minutes provided each month. Those minutes are precious few for wireless Lifeline providers, and a loss of five minutes through the assessment of this fee is not an acceptable tradeoff for Consumer Groups given the mere specter of a correlation between the assessment of a fee of this sort and savings to the Fund. This reduction of minutes is really not a fee, rather it's a reduction in service. The obvious question begged by the Commission's proposal to assess this fee is: where is the evidence that low-income households are not making appropriate use of their Lifeline supported services? Without this evidence and anything connecting it to the fact that low-income folks are inappropriately using Lifeline services, the rationale for a monthly participation fee appears weak.

Consumer Groups also oppose the assessment of a one-time fee of \$10 or \$15 from each Lifeline household prior to commencing service. First, it is unclear whether this fee would be in addition to a service activation fee that companies are permitted to charge and seek partial reimbursement from Link Up. If Link Up funds would be available to pay up to 50% of this new fee it is difficult to see how the imposition of this fee dovetails with the Commission's stated desire to minimize strain on the fund, especially in light of the fact that the largest wireless ETCs do not currently charge service activation fees and therefore make no demands on the Fund at the time of enrollment.

Second, any fee imposed at enrollment which cannot be supported by Link Up would undoubtedly deter new low-income subscribers from enrolling. According to a recent USAC analysis, using each state's eligibility criteria, USAC estimates that in 2009, 25.7 million households qualified for Lifeline support, but only 8.2 million households were enrolled.²² This is a participation rate of approximately 32 percent. While less than half a dozen states had participation rates above 50 percent, over half the states had participation rates at or below, and

²⁰ See e.g., NCLC, *Unemployment Compensation Prepaid Cards: States Can Deal Workers a Winning Hand by Discarding Junk Fees* (expected release in 2011).

²¹ See NCLC, *Utilities and Payday Lenders: Convenient Payments, Killer Loans* (June 2007),

²² USAC, *Lifeline Participation Rate Study 2009*. Available at: http://www.nclc.org/images/pdf/pr-reports/report_payday_utility_2007.pdf. See also, FCC, *FCC Observes "National Lifeline and Link Up Telephone Discount Awareness Week,"* 2010. Available at: <http://www.fcc.gov/cgb/contacts/headlines/LifelineWeek2010.doc>

often well below, 25 percent.²³ Given these low participation rates, Consumer Groups oppose enrollment participation fees which would act to deter enrollment by additional low-income households.

The Commission has already recognized the potential that up-front fees will deter Lifeline participation rates. In its 1997 Order, the Commission adopted a rule prohibiting ETCs from requiring that Lifeline subscribers pay service deposits to initiate service if the Lifeline customer voluntarily elects toll-limitation service, and in so doing, the Commission acknowledged the deterrent effects of high-deposit requirements.²⁴ Consumer Groups believe that the imposition of an up-front fee on low-income household would pose the same deterrent risks. Absent data that Lifeline is subject to widespread abuse, there appears to be little value in imposing enrollment fees to deter such abuse.

The Commission also seeks comment on the proper amount of financial contribution from low-income households that would appropriately balance the dual objectives of deterring fraud, waste, and abuse, while enabling those in need to obtain phone service. Consumer Groups submit that the Commission's premise with this question is faulty because it presumes that low-income households are or will abuse or waste the Lifeline program if they do not contribute to it financially. This anecdotal assumption, without supporting evidence, should not be the basis for policy, especially policy which could very likely deter enrollment for needy households.²⁵

IV. The Commission's Proposed Performance Goals Are Appropriate, But the Proposed Performance Metrics Are Flawed²⁶

The Consumer Groups support the three performance goals proposed by the Commission. The first performance goal is to preserve and advance the availability of voice service for low-income consumers. By increasing the availability of voice service for low-income consumers the Lifeline program will close the availability gap between low-income and non-low-income consumers.²⁷ Consumer Groups agree that this is an appropriate performance goal for the

²³ *Id.*

²⁴ Federal Commc'ns Comm'n, *In re* Federal-State Joint Board on Universal Service, First Report and Order, C.C. No. 96-45, FCC 97-157 ¶ 398 (May 8, 1997). *See also* 47 C.F.R. § 54,401(c).

²⁵ To the extent that the Commission is intent on imposing either an enrollment fee or a monthly participation fee, Consumer Groups believe that it is essential the fee varies depending on income and that it be waived for those families who cannot afford even the smallest amount.

²⁶ NPRM ¶¶28-45.

²⁷ NPRM at ¶34.

Lifeline and Link Up programs as voice service is essential for public safety and public health as access to phone service is necessary to find and maintain employment and housing, as well as access to health and emergency services, education, civic engagement and other basic necessities of modern life. The proposal to define “availability” as actual personal access to phone service is also a critical distinction that Consumer Groups support. Relying on a next door neighbor’s phone service can be construed as having phone service “available,” but having “access” to phone service is the ability to receive and make phone calls at the consumer’s discretion and control.

Consumer Groups find the proposed measurement of this performance goal²⁸ inadequate, however. The Commission proposes to compare the phone subscribership rate of households with incomes between \$30,000 and \$34,999, with the subscribership rate for households with incomes in the \$35,000 - \$39,000 range. There are several problems with the proposed measurement. First, the average household size for owner-occupied units is 2.69 persons and the average household size for renter-occupied units is 2.4 persons.²⁹ The Lifeline income-eligibility for a household of three persons is \$25,016. Thus, the Commission’s proposal to use households with incomes between \$30,000 and \$34,000 is too high. Second, this measurement compares phone service subscribership for the high end of “low-income households” with the next higher income level as defined in the CPS. This provides a distorted picture.

Third, the income-eligibility criterion for Lifeline is a function of household size and income (a common measurement of poverty for benefits programs). Under the current Lifeline income eligibility rules, a household of one person at 135% of the Federal Poverty Guidelines is \$14,702 in 2011, \$19,859 for a household of two, \$25,016 for a family of three and \$30,173 for a family of four. The income ranges in the FCC’s subscribership report do not account for household size, just income per household, so could the data captures one-, two- and three-person households with incomes in the \$30,000 to \$34,999 range. These households are above the federal poverty limit for Lifeline. Thus, household income alone, when decoupled from household size, does not provide a meaningful measure of household financial hardship. The

²⁸ NPRM at ¶35.

²⁹ US Census, Profiles of General Demographic Characteristics: 2000 Census of Population and Housing (May 2001) at page 1. Available at: <http://www.census.gov/prod/cen2000/dp1/2kh00.pdf>.

ideal definition of “low-income” would include both income and household size and would be set at the Lifeline income eligibility level which is currently 135 percent of poverty.

Consumer Groups propose that the Commission compare the telephone subscribership rate for households with incomes between \$0 to \$24,999, weighted for number of households in each income tier, to the telephone subscribership rate for the rest of the households, weighted for number of households in each income tier. These alternative measurements better describes the size of the availability gap between low-income and non-low income. Whereas the Commission’s original proposal just compares one subset of struggling households to another subset that is only marginally on better economic footing.

The second performance goal is also appropriate for the Lifeline program: ensure that low-income consumers can access supported services at just, reasonable and affordable rates.³⁰ The proposed measurement to capture the relative aspect of affordability, whether the cost of phone service requires a disproportionate amount of income, is appropriate in intention, but falls short in execution. It suffers from the same problem as the performance measurement for the first performance goal. The appropriate comparison is between the average percent of income spent on phone service by “low-income” households versus the mean and median percent spent on phone service by “non low-income households.”

The third performance goal is to provide Lifeline and Link Up support that is sufficient, but not excessive to achieve the goals of the program.³¹ Consumer Groups note that the proposed measures focus on ways to measure “excessive” spending, but none to measure “sufficiency” of support. The measurement of “sufficiency” should compare how low-income consumers are using telecommunication services compared to non-low income households. The measurement should also look at the telephone subscribership rate for low-income versus non-low-income households. A large gap in these measures would reflect a current state of insufficiency of support. Without this side of the equation, the Commission’s “excessive” spending measurement would have no context.

The Commission also seeks comment on broadband performance goals if broadband becomes a supported service.³² Consumer Groups support a performance goal of advancing

³⁰ NPRM at ¶36.

³¹ NPRM at ¶37.

³² NPRM at ¶43.

broadband to low-income households.³³ Consistent with our comments on the appropriate measurement for phone subscribership above, the appropriate measurement for broadband availability should compare the subscribership rate for Lifeline-eligible households (“low income”) with the subscribership rate for all non-low income households as discussed above. This measurement better describes the size of the availability gap between low-income and non-low income consumers. Consumer Groups also support affordability measurements³⁴ similar to the phone affordability performance goals and measurements discussed above.

V. While the Lifeline Implementation Design Must Capture Instances of Duplicate Claims, the Commission’s Fraud, Waste and Abuse Proposals Go Too Far and Will Pose Barriers to Lifeline Participation

While it makes sense to institute program designs that will minimize the potential for fraud, waste and abuse the Commission’s one-per-address proposal goes too far and would erect barriers to Lifeline for some of the most vulnerable low-income households. Without a clear reason to move in this draconian direction, Consumer Groups urge more measured fraud, waste and abuse steps.

A. Program Designs To Flag Instances of Duplicate Claims

The use of a centralized database at the state level has the potential to flag instances of duplicate claims. Furthermore, if a state’s centralized Lifeline database was updated on a daily basis, it would allow states to investigate and limit the amount of duplicative reimbursement in a timely manner. We note that not all instances of duplicate claims will be due to fraud or abuse. We can envision cases where consumers have attempted to switch Lifeline providers and may appear on as a customer of two different carriers due to a failure to update customer data in a timely fashion. The remedies in such a situation should not lead to de-enrollment of the Lifeline recipient. A national database that is updated on a real-time basis could also achieve the same result, but it seems from the outset a far larger undertaking as the number of data files exchanged would be so much greater.

³³ Consumer Groups are concerned that unless the Commission reclassifies broadband as a telecommunication service for the purposes of the Lifeline program, or more broadly the Universal services program, the current law would prohibit the use of universal services support for broadband.

³⁴ NPRM at ¶44.

In states without a centralized database, a third-party, preferably a state agency or an agent of the state agency, should be required to gather and compare Lifeline enrollment lists for all the Lifeline providers in the state. Requiring a common set of standard data fields for Lifeline accounts would facilitate both the centralized database and the state agency Lifeline accounts review. As a starting point, the Commission should collect only as much information as is necessary for the purposes of administering the Lifeline program and the information should be retained for as limited a duration as is necessary.³⁵ Privacy research may shed some light into just how much data would need to be collected to identify individuals. Studies have looked at whether an individual can be identified through just a name, zip code and date of birth and concluded that those data fields can uniquely identify individuals 63 percent of the time.³⁶ This suggests that the Commission may not need to require a large amount of data be collected from Lifeline customers. The Lifeline recipient's full name, address and phone number and possibly date of birth may be enough. Consumer Groups have grave concerns about the use of a social security number/tax payer ID number because of the potential for harm in the case of identity theft and it may pose a deterrent for consumers who do not want to give their social security number/tax payer ID number to a carrier.

B. A Consumer's Housing Status Should Not Play a Role in Lifeline Eligibility Determinations³⁷

In an attempt to limit Lifeline benefits, the Commission proposes to add a new section 54.408 that would, in effect, require consumers provide a unique residential street address in order to receive Lifeline.³⁸ The FCC's NPRM proposes limiting the availability of Lifeline and Link-Up support to "one-per-address" as a bright line rule³⁹ and notes that this proposed rule is consistent with the original single-line-per-residence practice.⁴⁰ The FCC then proposes to allow very narrow exceptions in certain situations (e.g., group housing, commercially zoned buildings,

³⁵ See e.g., Robert Gellman, Fair Information Practices: A Basic History (Apr. 19, 2011). Available at <http://bobgellman.com/rg-docs/rg-FIPShistory.pdf>

³⁶ See Phillepe Golle, Palo Alto Research Center, Revisiting the Uniqueness of Simple Demographics in the US Population, WPES'06 (Oct. 30, 2006), Alexandria, VA. (Golle's paper discusses a similar, older study using the 1990 census data which found individuals could be identified 87 percent of the time).

³⁷ NPRM ¶¶ 103-125; 167-169.

³⁸ NPRM ¶ 106.

³⁹ *Id.*

⁴⁰ NPRM ¶ 107.

certain situations regarding residents of tribal lands). The effect of starting with the premise that you need a unique street address to qualify for Lifeline will be to erect barriers to Lifeline service for the sake of administrative efficiency. This provision would harm low-income households that live in group housing, have doubled-up because they cannot afford separate housing, use P.O. boxes or have a box on a rural route, etc. These customers will be presumed ineligible unless they can fit into a narrow exception. This provision would also exclude the homeless from participating in the Lifeline program. The National Low Income Housing Coalition's *Out of Reach* report finds that in no state can an individual working full-time at minimum wage afford a two-bedroom apartment at fair market value.⁴¹ In light of the insecure housing status of struggling low-income households, this rule would cause great harm and demonstrate insensitivity to a vulnerable subset of low-income households.

The more equitable starting point for a determination of Lifeline eligibility must focus on whether the applicant can afford phone service through the income and program eligibility criteria, not on the applicant's housing situation. The proposed language in 54.408 (2) "Lifeline and Link Up support is available only to establish service at the qualifying low-income consumer's primary residential address" does not accurately capture the mobility aspect of wireless Lifeline service. *Instead of tying the future Lifeline program to a design that evolved for wireline service, the Commission's rule should clarify that Lifeline is limited to one-benefit-per-household.*

C. The Commission Should Define Household and Residence in a Manner Consistent With the Goals of the Lifeline Program

We propose the Commission adopt the following definition of household: "*Any individual or group of individuals who are living together as one economic unit.*"⁴² This use of "household" would be consistent with the FCC's current eligibility and certification rules:

- The FCC's current income-eligibility criteria for default states is defined as "all income received by all members of the *household*."⁴³

⁴¹ See Megan DeCrappeo, Danilo Pelletiere, Sheila Crowley, Elisabeth Teater, National Low Income Housing Coalition, *Out of Reach 2010: Renters in the Great Recession, the Crisis Continues*, (June 2010). Available at: <http://www.nlihc.org/oor/oor2010/oor2010pub.pdf>.

⁴² cf the LIHEAP definition of household: "*any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments of energy in the form of rent.*" (42 U.S.C. § 8622 (5)) (emphasis added)

⁴³ 47 C.F.R. § 54.400(f) and 47 C.F.R. § 54.409(b).

- Consumers must present documentation of *household* income in the certification and verification process.⁴⁴
- The FCC’s certification and verification rules also require consumers to certify the number of individuals in their *household*.⁴⁵

The proposed 54.410 (c)(2) self-certification that the consumer is receiving support for only one line per residence⁴⁶ should be modified to refer to one benefit per household.

The use of the Lifeline applicant or customer’s address is appropriate when considering data points to identify a particular customer for the certification and verification process, but it should not be used in the proposed manner that would exclude so many vulnerable and underserved populations. To the extent the Commission uses “residence” or some other reference to a household’s housing, a definition should be created that is sensitive to the housing situations of low-income households.⁴⁷

As a starting point the Commission should define “residence” as “that portion of an individual house, building, apartment, dwelling unit that is occupied entirely by a single household. A room or portion of a dwelling unit occupied exclusively by a household not sharing equally as a member of the domestic establishment may be considered a separate residence for the purposes of Lifeline and Link Up. Residence includes residential units in commercially-zoned buildings such as single-room occupancies.”⁴⁸ This definition would preserve and advance the availability of voice service for the most vulnerable and hard to reach populations.

D. Homeless Persons Should Not be Prevented From Participating in Lifeline Solely Because They Lack a Unique Residential Street Address

It would be contrary to the Telecommunications Act and the proposed performance goal, *to preserve and advance the availability of voice service for low-income consumers*, to exclude some of the most vulnerable low-income households for the sake of administrative efficiency.

Deliberately limiting a federal assistance program based on the applicants housing situation also is contrary to other federal benefits program. For example, homeless persons are eligible for

⁴⁴ 47 C.F.R. § 54.410(a) and (c)(2).

⁴⁵ 47 C.F.R. § 54.410 (b)(3) and (c)(2).

⁴⁶ NPRM ¶¶ 167-169.

⁴⁷ NPRM ¶111.

⁴⁸ NPRM ¶¶ 117-118.

SNAP and states are expressly forbidden from requiring a permanent dwelling or fixed mailing address as a condition of eligibility for SNAP.⁴⁹ SNAP offices are required to have special procedures for homeless persons to facilitate access to SNAP.⁵⁰ Verification of residency for SNAP is required except in unusual cases such as homelessness and any documents or collateral contact (e.g., shelter worker) which can reasonably establish residency must be accepted and no requirement for a specific type of verification may be imposed.⁵¹ In addition, SNAP rules prohibit the establishment of a durational residency requirement.⁵² SNAP requires the identity of the applicant be verified by readily available documentary evidence or through a collateral contact.⁵³ The Lifeline program should allow for similar procedures for homeless applicants. In terms of program integrity, the SNAP program has a national average level of program payment accuracy of 95.64 percent.⁵⁴ Consumer Groups also note the U.S. Interagency Council on Homelessness is working on increasing access to low-income assistance programs for homeless individuals and families.⁵⁵ The Commission should seek to get Lifeline added into this discussion.

E. Additional Certification For Special Populations May Be Appropriate⁵⁶

If the Commission clarifies that the Lifeline and Link Up benefit is limited to one-per-household, designing an application and verification process for the provision of Lifeline to those

⁴⁹ See 7 C.F.R. 273.3(a) (“The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility.”)

⁵⁰ See 7 C.F.R. 273.2(a) (special procedures for processing applications of special needs groups); 7 C.F.R. 274.2(a) (special assistance in providing timely benefits to hard to reach populations); 7 C.F.R. 273(b)(1)(ii) (homeless and other special needs populations excluded from monthly reporting and retrospective budgeting).

⁵¹ 7 C.F.R. 273.2(f)(1)(C)(vi).

⁵² *Id.*

⁵³ 7 C.F.R. 273.2(f)(1)(C)(vii). The USDA defines “collateral contact” as “a source of information which can be used to verify household circumstances. Collateral contacts are generally individuals such as landlords and employers, but may also be documents such as those maintained in government offices. A collateral contact cannot be a person who was in the food stamp household under review, or a person or office within the State agency administering the program for purposes of primary or secondary evidence.” See USDA FNS Handbook 310, Supplemental Nutrition Assistance Program Quality Control Review Handbook (Oct. 2008).

⁵⁴ USDA FNS press release, *USDA Announces Efforts to Increase Nutrition Assistance to Low-Income Families: Access and Participation Key to Delivering Benefits for Americans in Need* (April 6, 2011). Available at: <http://www.fns.usda.gov/cga/pressreleases/2011/0154.htm>.

⁵⁵ See e.g., U.S. Interagency Council on Homelessness Webinar, *Increasing Access to Mainstream Assistance Programs for People Experiencing Homelessness* (while Lifeline is not raised as one of the programs, several case studies cite lack of phone service as a barrier to reaching individuals) (Feb. 23, 2011). Available at <http://www.usich.gov/2011.html#presentonaccess>.

⁵⁶ NPRM ¶¶117-125.

without a unique residential street address may require additional certifications from key service providers such as a rural low-income service provider, the head of a group living facility or a frontline service provider for homeless families. This would be analogous to the SNAP collateral contact avenue of identification and verification as discussed above. Such certifications would verify the housing situation for these special populations. For example, a rural box number or a support center for the homeless is indeed where the applicant receives mail. This would also provide an additional contact person to help reach the Lifeline customer to verify continued eligibility, and in the case of pre-paid wireless phones that the phone is still in use. Consumer Groups also incorporate by reference the comments filed on the one-per-household issue.⁵⁷

VI. Consumer Groups Support The Proposal To Require All States To Use The Default Eligibility Criteria⁵⁸

Consumer Groups have argued that the use of a federal floor for eligibility criteria will facilitate consumer participation in Lifeline. In Consumer Groups' comments to the Joint-Board on the Lifeline program, we noted that 31 states have more stringent eligibility criteria than the federal default criteria.⁵⁹ Thus, use of the default eligibility criteria will increase the number of avenues into the program for consumers in a substantial number of states. Under the Commission's proposal states would still be allowed to use state specific criteria and Consumer Groups support this as it would minimize disruption to enrollment in Lifeline and enhance access to Lifeline services. This proposal would help brand the Lifeline product as Lifeline consumers who move to other states would have familiarity with the program and not be frustrated by totally different eligibility criteria. It also opens up possibilities of development of more useful generic multi-state outreach materials about the Lifeline program. A common core set of eligibility criteria also helps make the administration of the Lifeline program more efficient for entities that administer the Lifeline program in multiple states (ETCs, but perhaps in the future, regional centralized administrators or a national administrator).

⁵⁷ Consumer Groups, Comments to the Federal-State Joint Board on Universal Service, Lifeline and Link Up, July 15, 2010. *See also* NCLC, Comments of the National Consumer Law Center, on Behalf of Greater Boston Legal Services, November 20, 2009. Available at: http://www.nclc.org/images/pdf/energy_utility_telecom/telecommunications/comments_nov2009.pdf.

⁵⁸ NPRM ¶154.

⁵⁹ Consumer Groups Comments to the Federal-State Joint Board on Universal Service, Lifeline and Link Up, July 15, 2010 at pages 6 -12.

Consumer Groups are already on record as strongly supporting increasing the Lifeline income eligibility from 135% of poverty to 150% of poverty.⁶⁰

VII. The Commission Should Provide Incentives To States to Fund Coordinated Enrollment⁶¹

Consumer Groups strongly support the use of coordinated enrollment.⁶² We have discussed our support of coordinated enrollment in earlier comments.⁶³ Our concern with the Commission’s proposal to encourage coordinated enrollment as a best practice⁶⁴ without provision of incentives or requiring the practice will result in little additional activity in this area. The SNAP program has funded projects aimed at simplifying the SNAP application and eligibility determination system or to improve access to SNAP benefits by eligible households.⁶⁵ The SNAP Participation Grants can cover projects that use technology to simplify the enrollment process.⁶⁶ The Commission should seriously consider funding similar types of competitive program improvement grants.

Other federal programs are also focusing on coordinated enrollment. The Children’s Health Insurance Program Reauthorization Act of 2009(CHIPRA) (Pub.L. 111-3) allows states to use participation in certain low-income programs to deem persons eligible enrollment into or renewal for Medicaid and CHIP. For this program, the process is called “Express Lane Eligibility.”⁶⁷

⁶⁰ NPRM ¶ 157. See Consumer Groups Comments to the Federal-State Joint Board on Universal Service, Lifeline and Link Up, July 15, 2010 at pages 7-9.

⁶¹ NPRM ¶¶199-204

⁶² We note that the use of the term “automatic enrollment” by the Commission in the NPRM in ¶200 may be confusing as what the Commission is describing is enrollment at first contact. The term “automatic enrollment” has been used to describe a data-matching process by which participants in one benefits program (e.g., cash assistance or SNAP) are matched against a customer database (e.g., residential customers of an electric gas utility) and where there is a match, those customers are automatically enrolled unto an assistance program (e.g., a low-income natural gas customer discount rate). See e.g. description of utility/energy discount programs at <http://www.massresources.org>.

⁶³ Consumer Groups Comments to the Federal-State Joint Board on Universal Service, Lifeline and Link Up, July 15, 2010 at pages 15-18.

⁶⁴ NPRM ¶ 201.

⁶⁵ See the FY06-FY 11 Participation Grants on the SNAP Program Improvement page at <http://www.fns.usda.gov/snap/government/program-improvement.htm>.

⁶⁶ See Fiscal Year 2011 Supplemental Nutrition Assistance Program Participation Grants, Request for Application, Fiscal Year 2011 Priorities at page 5. Available at http://www.fns.usda.gov/snap/government/grants/Grant_Announcement-2011.pdf.

⁶⁷ See The Children’s Partnership, Express Lane Update, (Feb. 5. 2010). Available at: http://www.childrenspartnership.org/AM/Template.cfm?Section=ELE_Library_and_Resources&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=14251.

CHIPRA also includes provisions for outreach and enrollment grants.⁶⁸ The Cycle II CHIPRA outreach and enrollment grants lists “Using Technology to Facilitate Enrollment and Renewal” as a focus area.⁶⁹ The Patient Protection and Affordable Care Act of 2010 includes provisions that require states to use technology to simplify, streamline and integrate enrollment in Medicaid, CHIP and the new Health Insurance Exchanges.⁷¹

There are also projects that are already coordinating enrollment into assistance programs and there needs to be some incentive for the Lifeline administrators to get Lifeline added to the programs covered, The Ohio Benefits Bank is an online service that is used by trained counselors in community and faith-based groups to one-stop shop 17 assistance programs (including LIHEAP and SNAP, TANF, SSI) as well as EITC and child tax credits. In Ohio there are 1,180 Benefit Bank Sites, 4,800 counselors and the program has assisted over 116,000 households.⁷²

VIII. The Proposal For a National Database Is a Mammoth Undertaking and Will be Expensive⁷³

Consumer Groups discussed the attractive aspects as well as the concern regarding the creation of a national centralized database in earlier comments on Lifeline reform and a preference for focusing on state and regional centralized administration as a more feasible starting point.⁷⁴ In addition to the concerns raised in those comments, we are also concerned that a poor national database design could create structural barriers to the Lifeline program. The database is only as good as the information that is fed into the database. Lifeline applicants

⁶⁸ See the Georgetown University Health Policy Institute, An Overview of the CHIPRA Outreach and Enrollment Grants (Jul. 10, 2009). Available at <http://ccf.georgetown.edu/index/cms-file-system-action?file=ccf%20publications/federal%20schip%20policy/outreach%20grants%20final.pdf>.

⁶⁹ See Children’s Health Insurance Program Reauthorization Act (CHIPRA) Outreach and Enrollment Grants – Cycle II at www.grants.gov. page 4. Available at: http://www.insurekidsnow.gov/professionals/reports/chipra/2010_grant_solicitation.pdf.

⁷¹ The Kaiser Commission on Medicaid and the Uninsured, Health Reform Roundtables: Charting a Course Forward: Coordinating Coverage and Care in Medicaid and Health Insurance Exchanges (Oct. 2010). Available at: <http://www.kff.org/healthreform/upload/8118.pdf>.

⁷² Jason Elchert, Ohio Association of Second Harvest Foodbanks, *The Work Support Initiative: Reducing Homelessness By Assessing Support Programs*, US Interagency Council on Homelessness Webinar: Increasing Access to Mainstream Assistance Programs for People Experiencing Homelessness (Feb. 23, 2011).

⁷³ NPRM ¶¶208-219.

⁷⁴ Consumer Groups Comments to the Federal-State Joint Board on Universal Service, Lifeline and Link Up, July 15, 2010 at pages 18-20.

should be able to access their information. If there is an error in the customer information, there should be prompt error resolution. There should be real-time updates of customer enrollment and verification status. If the national database only tracks certification and verification status, it could potentially add days or weeks to a Lifeline application process since some Lifeline administrator still needs to process the certification and verification applications. If the national database administrator is responsible for performing the eligibility and renewal determinations, it is unclear how this can be done efficiently given the large role state agencies play in administering federal benefits programs.

One possible benefit of a centralized database is portability of the Lifeline benefit. When a current Lifeline customer moves or changes ETCs, that customer should not have to reapply for the Lifeline program, rather that benefit should be portable for the duration of the lifeline eligibility. If the database does not have real-time data exchanges with the ETCs, it is not clear that it would help provide timely detection of multiple carriers claiming reimbursement for the same Lifeline customer. In the case of a customer shopping around for better Lifeline service, a database that is not updated daily could have periods of time where the old ETC and the new ETC are claiming reimbursement for the same customer.

IX. Consumer Groups Propose a Method for Verifying Program Eligibility That Facilitates Consumer Enrollment Through Program Eligibility⁷⁵

The Commission proposes to eliminate the ability of Lifeline applicants to self-certify Lifeline eligibility through participation in a qualifying program. Consumer Groups are strongly opposed to this proposal as the proposed requirement that the applicant submit proof of program participation will pose an additional hassle for consumers and will reduce the usefulness of existing on-line applications for Lifeline service as electronic versions of documentation will require an ability to scan and receive documents. Consumer Groups propose less burdensome methods for verifying program eligibility from the standpoint of the Lifeline consumer. Auditing a statistically random sample of program-eligibility applicants is a better way to address fraud, waste and abuse concerns. An even better, pro-consumer approach would be to provide incentives for states to move to coordinated enrollment. As discussed in earlier filed comments, there are

⁷⁵ NPRM ¶¶150-151.

an array of ways to coordinate the application and enrollment processes for overlapping benefit programs.⁷⁶ Consumer Groups feel it is more equitable for the states to establish memoranda of understanding with the various agencies administering qualifying programs to allow Lifeline program administrator(s) access to check for applicants program participation. There is movement within other federal benefits programs to coordinate enrollment with programs serving the same populations. We discuss this in our comments on coordinated enrollment.

If the Commission proceeds with the elimination of self-certification of program eligibility, we urge the Commission to exempt states that administer the Lifeline program (as opposed to ETCs) where those states have coordinated enrollment with programs serving similar populations or require a statistically random audit of program-eligible households.

X. Consumer Groups Support The Proposal to Modify Annual Verification Procedures⁷⁷

Consumer Groups have argued for uniform sampling methodology and the collection and submission of verification sampling data and we support the Commissions proposal to move in this direction.⁷⁸ We urge extreme caution in the implementation of the proposal to require ETC's to de-enroll consumers who decline to respond to the ETC's verification attempts.⁷⁹ Consumer Groups foresee a large number of eligible Lifeline recipients being kicked off the program at once if the Commission fails to require a robust outreach and education component on the Lifeline verification process. This could harm the image of the Lifeline program. To avoid this, we recommend a phase-in of this rule, if it is adopted, to allow the outreach and education to occur and have an affect. In well established Lifeline programs, such as the California Lifeline program, there was a conscious effort to “brand” the California Lifeline program and invest in a large outreach and education campaign for the program. The design of the California verification process has been very thoughtful. The state administers the program through a third-party administrator, so the certification and verification process is the same,

⁷⁶ Consumer Groups Comments to the Federal-State Joint Board on Universal Service, Lifeline and Link Up, July 15, 2010 at pages 15-18.

⁷⁷ NPRM ¶¶ 173-198.

⁷⁸ Consumer Groups Comments to the Federal-State Joint Board on Universal Service, Lifeline and Link Up, July 15, 2010 at pages 21-28.

⁷⁹ NPRM ¶192.

regardless of Lifeline carrier. California has built in a substantial amount of lead time to submit the verification form and the third-party administrator provides multiple customer “touches” to remind customers to return their verification form by the due date.⁸⁰ This thoughtful design is yielding a verification form return rate of 81 percent.⁸¹ The Consumer Groups believe this is what the Commission should expect and demand from Lifeline administrators.

XI. Restricting Reimbursement to Customary Charges Eligible for Link Up Is Sound Program Design

The recently adopted resolution by the National Association of State Utility Consumer Advocates (NASUCA), *Reform of the Lifeline Program, Including Reform for Prepaid Wireless Lifeline Services*, points out that the Commission and a great number of states have approved, on an ad hoc basis, a category of pre-paid, wireless Eligible Telecommunications Carriers (ETCs) to be designated as a Lifeline only ETCs who receive reimbursement from the Universal Service Fund’s Low-Income Program and not from its High Cost Program.⁸² These pre-paid wireless Lifeline offerings have resulted in substantial growth to the Low-Income Program and the Universal Service Fund, yet there has been no determination of whether the products are of adequate value to Lifeline customers. As the NASUCA resolution indicates, there must be a balance between providing the maximum value for low-income customers and minimizing the costs imposed on all the customers who pay for the Lifeline programs. This is certainly true when it comes to Link Up support.

A. Definition Of “Customary Charge” Should Clarify That Link Up Support Is Available To Reimburse Wireline And Wireless ETCs *Only* For Those Actual Charges

⁸⁰ See California Public Utilities Commission Decision Adopting Strategies to Improve the California Lifeline Certification and Verification Processes, and Reinstating Portions of General Order 153, D.07-05-030 (May 3, 2007). See also, California Public Utility Commission Communications Division Staff Report on September 29, 2008 Workshop Regarding Implementation of California Lifeline Telephone Program’s Pre-Qualification Requirements, R.04-12-001 (Feb. 27, 2009).

⁸¹ See California Public Utilities Commission Lifeline Working Group Minutes (Mar. 23, 2011). Available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/LifeLine+Meeting+Minutes.htm>.

⁸² NASUCA Resolution 2010-02, Calling for Reform of the Lifeline Program, Including Reform for Prepaid Wireless Services (App’y’d June 15, 2010). Available at: <http://www.nasuca.org/archive/Low-income%20Resolution-%20FINAL%202010-02.doc>.

Pursuant to the Commission’s applicable regulations, the Link Up program is defined, in part, to include:

- (a) . . .
 - (1) A reduction in the carrier’s customary charge for commencing telecommunications service for a single telecommunications connection at a consumer’s principal place of residence. The reduction shall be half of the customary charge or \$30.00, whichever is less; and
 - (2) A deferred schedule for payment of the charges assessed for commencing service, for which the consumer does not pay interest. . . . Charges assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network. . . .⁸³

Consumer Groups support a reading of this regulation to mean that Link Up support is available to reimburse wireline and wireless ETCs *only* for those *actual* charges – such as service activation fees – they impose on *all* customers, not just Lifeline customers. Link Up advances universal service by assisting low-income consumers in obtaining affordable telephone service, and is an essential program in dealing with the seemingly intractable low penetration rates in some areas of the United States.⁸⁴ Yet Link Up support should not be unlimited, and Consumer Groups support the FCC’s desire to eliminate any incentive or opportunity for ETCs to seek reimbursement from the Universal Service fund for charges that would not be assessed on other customers.

In its Notice, the Commission proposes to define “*customary charge for commencing telecommunications service,*” and thus qualify for Link Up reimbursement, in part, as:

[T]he ordinary charge an ETC routinely imposes on all customers within a state to initiate service. Such a charge is limited to an actual charge assessed on all customers to initiate service with that ETC. A charge imposed only on Lifeline and/or Linkup customers to initiate service is not a customary charge for commencing telecommunications service. . . .⁸⁵

Consumer Groups support this clarification. Since Link Up is designed to reimburse ETCs for the revenue they forgo in signing up Lifeline customers, there is no justification for paying service activation charges that exist simply because Link Up will reimburse

⁸³ 47 C.F.R. § 54.411(a) .

⁸⁴ USAC, Lifeline Participation Rates by State 2009.

⁸⁵ See Appendix A of Notice, proposed 47 C.F.R § 54.400(e).

the charges. Many ETCs, including Tracfone and Virgin Mobile USA, do not charge service activation fees to initiate service and appear to be doing just fine in both attracting customers, covering costs, and remaining competitive. Nevertheless, Consumer Groups realize that some wireline and wireless ETCs may legitimately and actually incur costs and customarily assess charges to activate services for all of its customers, including its Lifeline customers. Thus, the continued availability of Link Up support for customary and usual activation charges is crucial.

We recognize the proposed definition may mean that some Lifeline-only ETCs will have difficulty demonstrating that the service activation fee they impose is customary and usual, and imposed upon all customers, because by definition they only have Lifeline and/or Link Up customers. Accordingly, we encourage the Commission to permit Lifeline-only ETCs, which seek approval for Link Up support for reimbursement of service activation fees, be permitted to submit evidence that an affiliated company, providing similar service to non-Lifeline customers, charges the same or higher activation fees to its customers. Doing so will protect the integrity of the Universal Service Fund by not encouraging sham fees imposed only because they can be reimbursed by Link Up. At the same time, such a proposal allows ETCs to be reimbursed from the Universal Service Fund up to the Link Up maximum for actual service activation fees which are customarily charged.

B. Consumer Groups Urge The Commission To Adopt A More Nuanced Rule Concerning The Waiver, Reduction Or Elimination Of Activation Charges With The Purchase Of Additional Products.

The second part of the proposed definition of “*customary charge for commencing telecommunications service,*” is a blanket rule which currently states:

Activation charges waived, reduced, eliminated with the purchase of additional products, services, or minutes are not customary charges eligible for universal service support.⁸⁶

Consumer Groups urge the Commission to adopt a more nuanced rule concerning the waiver, reduction or elimination of activation charges with the purchase of additional products.

⁸⁶ See Appendix A of Notice, proposed 47 C.F.R § 54.400(e).

Certainly, if it is the customary practice of an ETC to waive *all* of its service activation fee for non-Lifeline customers who purchase additional products, services, or minutes then it should waive its entire fee for Lifeline customers who do the same, and it should not be permitted to seek reimbursement of those cost from the Universal Service Fund. However, if only a portion of the fee is waived for *all* customers purchasing additional services, then ETC should be permitted to seek reimbursement for the non-waived portion of the fee, subject up Link Up maximums, for its Lifeline customers. This model puts Lifeline customers on the same playing field as other customers and a waiver in these instances may actually further the mission of Link Up support by making phone service more accessible.

C. Link Up support should be available to low-income consumers a second and subsequent time, notwithstanding the fact that they remain in their original residence

Section 54.411(c) of the applicable regulation states:

(c) A carrier's Link Up program shall allow a consumer to receive the benefit of the Link Up program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Link Up assistance was provided previously.⁸⁷

The Commission carved out this exception in the 1997 Universal Service Order to assist “migrant farmworkers and low-income individuals who have difficulty maintaining a permanent residence.”⁸⁸ Thus, the ability of a low-income consumer to obtain Link Up support more than once relates to a change in the consumer’s principal place of residence, not the consumer’s decision to switch to another carrier or to reconnect service at the same address.

Consumer Groups submit that this restriction worked reasonably well in the context of wireline ETCs, whose presence in a customer’s life was tied to the customer’s residence. However, with the increasing prevalence of wireless ETCs, a residence-based restriction may be too restrictive unless some discretion is written into the rules. To that end, Consumer Groups submit that Link Up support should be available to low-income consumers a second and

⁸⁷ 47 C.F.R. § 54.411 (c).

⁸⁸ See, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 (1997) (“1997 USF Order”), ¶382.

subsequent time, notwithstanding the fact that they remain in their original residence. To be clear, our position should not be read to reflect an expectation that each low-income consumer acquired equals Link Up reimbursement to the ETC. Instead, in order for an ETC to be eligible for Link Up reimbursement it must otherwise meet the requirements addressed above – i.e., the charges must be customarily assessed on all customers -- and, if this is a second request for Link Up reimbursement for this customer, he or she would be eligible only if it is for a different residential address *or* the ETC can demonstrate a greater utility to the customer than the previously supported service.⁸⁹

Consumer Groups are aware that the effect of its proposed change would likely increase the requests for Link Up reimbursement, but it suggests this change in order to achieve the policy objectives of the Lifeline program by recognizing that customers may have legitimate reasons to change providers while at the same residence.

D. Certification By ETCs Regarding Connection and Activation Charges and Prohibition On Resellers' Fees are Appropriate Requirements

In its Notice, the Commission seeks comment about whether it should require an ETC which seeks Link Up reimbursement for connection/activation charges to submit a certification that it imposes the same fees on all customers. Consistent with our comments above, Consumer Groups support such a requirement. The requirement of a certification would hold an ETC accountable for seeking reimbursement only for those revenues which it forgoes by enrolling a Lifeline customer, because it would attest that it is seeking reimbursement for an ordinary and customary charge. A certification of this sort, with appropriate penalties devised by the Commission for those ETCs who falsely certify, could very well serve as a deterrent to those companies who impose fees only because of the availability of Link Up reimbursement, and, therefore, would prevent waste and abuse of the Universal Service Fund. Consumer Groups do not believe that this requirement would be unduly burdensome to ETCs if the certification is narrowly tailored to seek only the required information.

Consumer Groups also support the prohibition of a reseller of service assessing a connection charge on consumers when the reseller itself is charged no such fee. Absent some

⁸⁹ By way of example only, Consumer Groups submits that evidence of greater utility could be in the form of more available minutes per month, more features which enhance communication, or a broader service calling territory.

showing of additional costs for connecting the subscriber to the service, there is no basis for the reseller to impose a fee and seek reimbursement of that fee through Link Up. This is true even if the reseller nominally charges all of its customers. At the very least, prior to permitting a fee under these circumstances, the Commission should place the burden on the reseller to demonstrate that it incurs costs in connecting the customer to the services which it resells when it pays no fee itself. Absent such a showing, the imposition of a fee serves no apparent purpose other than lining the pockets of the reseller at the expense of customers and the Universal Service Fund.

E. Consumer Groups do not support the use of Link Up funds to reimburse ETCs for marketing and customer acquisition expenses

In its 1997 Universal Service Order, the Commission concluded that federal universal service support will not be given to carriers to cover outreach to promote awareness of Lifeline and Link Up assistance.⁹⁰ Consumer Groups support this interpretation and urge the Commission not to change its position.

Consumer Groups do not support the use of Link Up funds to reimburse ETCs for marketing and customer acquisition expenses generally. All ETCs are required to advertise the availability of and charges for, Lifeline pursuant to their obligations under section 214(e) (1). This is the cost of doing business and should not be reimbursed by the Fund, particularly for those ETCs whose business model is Lifeline-only who have a business incentive to engage in such marketing. Accordingly, we support the Commission's current position that money from Link Up should not support marketing and customer acquisition costs, but rather only the limited, provable, costs associated with activating a phone line or establishing a billing relationship.

While it is certainly the case that low-income subscribership levels would likely increase if there were more information available to low-income consumers about the existence of assistance programs, the states are in a better position to supply such information than either the Commission or the ETCs themselves. To that end, while Consumer Groups do not support the use of Link Up money to go to ETCs for marketing and outreach purposes, it supports and

⁹⁰ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 (1997) ("1997 USF Order"), ¶ 407.

encourages the Commission to develop ways for the Fund to support outreach efforts by the states.

XII. The Commission's Proposed De-enrollment Procedure Must Include Safeguards to Protect Against Unnecessary and Inappropriate Loss of Lifeline Service

The Commission proposes rules requiring ETCs to de-enroll Lifeline customers or households when: (1) the subscriber is receiving duplicate support and fails to select one ETC in the allotted time after being notified of a duplicate claim; (2) the subscriber does not use his or her Lifeline supported service for 60 days and fails to confirm continued desire to maintain the service; or (3) the customer does not respond to the eligibility verification survey.⁹¹

Consumer Groups support the Commission's proposal to require ETCs to de-enroll Lifeline subscribers in these three circumstances *only after providing notice and an opportunity to cure the deficiency*, and we specifically support the requirement that such notice provide not less than 60 days for the subscriber to cure the defect or otherwise notify the ETC of his or her desire to maintain service. Consumer Groups also urge the Commission to require notice be provided after de-enrollment with specific instructions about how the subscriber can re-enroll in a Lifeline program either with the same or different ETC. Consumer Groups caution that notice should be offered and provided in multiple formats as no one format alone is adequate.⁹² Consumers should be allowed to choose how they would like to receive notice. Furthermore, consistent with Consumer Groups position earlier in these comments, we encourage the Commission to require ETCs to waive any service activation fees and not to seek Link Up reimbursement for any subscriber who re-enrolls with the ETC within a reasonable period of time after the subscriber has been automatically de-enrolled.

A. Failure to use for 60 consecutive days

Consumer Groups recognize the unique challenges posed by ETCs providing pre-paid

⁹¹ NPRM ¶ 93.

⁹² Reliance on mailed notice alone could miss customers because the mail is mistaken as junk mail or the consumer may move. Text messages would not reach those who do not have texting plans or phones that receive texts. Voicemail messages rely on the consumer having an answering machine or voicemail capability. Accessibility of notice is key, consumers may need Braille, large-type or notice in a particular language.

wireless plans. Because they do not send monthly bills, it is a concern that such ETCs could potentially continue to receive Lifeline support for a customer who has abandoned the service months before. On the other hand, there are many legitimate and permissible reasons why a consumer would choose not to use their available minutes or be unable to do so. For example, they may simply decide to use an alternate method of telephone communication – like a landline – for the bulk of their calling; or they may have lost the charger to their phone and be unable to use the phone for a limited period of time; or they may be sick and hospitalized, or otherwise lack access to their phone for a significant period. The key is determining the customer’s intent. While we certainly share the Commission’s concern that ETCs should not be seeking reimbursement for individuals who have abandoned service, the Commission should also recognize that at certain times, for legitimate reasons, a customer may choose not to use their Lifeline phone.

Accordingly, in balancing these interests, Consumer Groups believe that the Commission’s proposal to prohibit reimbursement by ETCs for any customer who has failed to use his or her service for 60 consecutive days is appropriate *provided* that sufficient pre- and post-discontinuation notice be given to the customer. Thus, we support the Commission’s proposal that ETCs be required to alert customers if their subsidized service will be discontinued due to non-use. Specifically, Consumer Groups submit that customers who have 30 consecutive days of non-use should be notified by the ETC that continued non-use for a subsequent 30-day period will result in de-enrollment from the Lifeline program. This notice should come in the same manner as any and all other notices delivered by the ETC to the customer, and the customer should be permitted to choose his or her form of notice at the time of enrollment.⁹³ Regardless of the method chosen, the notice should plainly and conspicuously state that the customer’s continued non-use for a consecutive 60-day period will result in de-enrollment, unless they notify the ETC that they continue to desire service. It is essential that this information be provided to the customer at the time of enrollment so that he or she is aware of the obligation to use the service.

⁹³ By way of example, the customer should be permitted to choose, at the time of enrollment, that he or she be notified by United States mail, e-mail, or text message of important information from the ETC, including information about possible de-enrollment. Such a system mirrors the choice that consumers have in almost every other area of their lives, including sensitive issues such as banking and bill payment.

In addition to providing a notice to its customers after 30 days of non-use, the Commission should require ETCs to provide notice within 10 days of de-enrollment based on non-use. This notice, at a minimum, should inform the customer the reason for the customer's de-enrollment and the steps needed for the customer to reestablish eligibility. The Commission should require ETCs to provide a 60-day window to re-enroll eligible customers without charging those customers a reactivation fee or seeking Link Up reimbursement for any reactivation fee. This post-deprivation process will not be unduly burdensome and will ensure that customers who have been de-enrolled have sufficient opportunity to re-enroll without penalty.

Finally, Consumer Groups support the continuation of the requirement that all wireless carriers ensure that their phones are capable of transmitting all 911 calls, including those from non-service initialized phones, to Public Safety Answering Points. Additionally, Consumer Groups encourage the Commission to require ETCs to ensure that the handsets that they issue to Lifeline subscribers are Enhanced 911 (E911) capable.

B. Failure to Chose an ETC or Return a Verification Form in a Timely Manner

Consumer Groups have touched on both of these issues elsewhere in these comments. We again emphasize the need for adequate advance notice (so there is time to cure) and consumer education about the consequences of failure to respond in a timely manner will result in the loss of Lifeline.

XIII. CONSUMER OUTREACH & MARKETING

Consumer Groups are grateful to the Commission for recognizing the distinction between outreach and marketing. In fact, the NPRM effectively explains that outreach increases public awareness of the program whereas marketing involves selling a specific USF-supported product to consumers. Consumer Groups strongly agree with the Commission's statement that it is essential that eligible consumers are made aware of the availability of Lifeline and Link Up, and that outreach be increased significantly. The fact that program participation rates ranges anywhere from 10 percent to 50 percent for the vast majority of

states, means that outreach efforts have not been successful to date.⁹⁴ The Commission should attempt to correct the current failings in the system through a set of comprehensive and aggressive recommendations that include:

- ❖ Adopt specific outreach requirements as a federal floor that must be performed before an ETC is reimbursed from the federal fund;
- ❖ Revise current Outreach Guidelines to be more direct and comprehensive;
- ❖ Impose specific reporting requirements to the Commission detailing ETCs' and/or state administrators' outreach efforts and budgets;
- ❖ Look at best practices and design recommendations that significantly rely on one-on-one outreach through nonprofits, community based organizations and social service agencies.
- ❖ Impose marketing guidelines on ETCs to ensure that consumers fully understand the benefit being offered.

A. Current Outreach Is Insufficient

In 2004, the Commission declined to impose specific outreach requirements; instead it developed unenforceable guidelines for states and carriers stating that, “[w]e do not believe it is necessary at this time to prescribe specific outreach procedures.... States and carriers will still have the flexibility to determine the most appropriate outreach mechanisms for their consumers.”⁹⁵ Unfortunately, over the years, states and carriers did not develop their own detailed outreach mechanisms on a wide scale. Importantly, data shows that where states and/or carriers took aggressive action with regard to outreach, the customer participation rate increased significantly. Therefore, the Commission must take this opportunity to develop a more comprehensive and concrete outreach program for Lifeline. Consumer Groups recognize, however, that designing an outreach program inevitably creates tension between cost and effectiveness. One way to ensure cost effectiveness is to develop a federal floor of requirements that would serve as the bare minimum a carrier or state agency must put in place for an outreach program. This federal floor should not replace the federal Outreach Guidelines, nor should it prevent states from designing more robust state-specific outreach programs of their own. However, if every Lifeline provider performed outreach at a basic and consistent level, there would be more certainty that these programs are being properly publicized.

⁹⁴ USAC 2009 Participation Rate by State report.

⁹⁵FCC, Report and Order and Further Notice of Proposed Rulemaking (April 2, 2004) at ¶44.

Consumer Groups propose that the following basic elements of an outreach program be required from the ETC itself or from a state administrator or a combination of the two entities.

- ❖ Include a reference about discounted telephone programs on the home page of the website of each carrier (or state agency), with comprehensive information about the program only one “click” away either on the carrier’s website or a third party website.
- ❖ Provide state-specific and program-specific material about Lifeline, translated into languages other than English and in formats accessible to those with disabilities. These materials should be available on the ETC’s and/or state agency’s website or upon request in hard copy from the carrier or state agency.
- ❖ The ETC must inform new customers about the discounted telephone program either verbally or through a separate mailing at the time they sign up for telephone service or, at the latest within 14 days from the customer’s service initiation.
- ❖ Provide additional annual notice to all subscribers of the availability of the program, its basic eligibility requirements, and a reference to the website or to a phone number to call for more information.
- ❖ Provide additional notice to customers who are at risk of service termination due to non-payment.⁹⁶

These requirements are focused and cost-effective. They only require the ETC to maintain a website or phone number for information, to provide in-language materials, and to provide specific notices to their own customers about the Lifeline programs. While the current Outreach Guidelines encourage carriers not to rely on the Internet or hotlines as a “primary means” of outreach, websites and hotlines can be a valuable and cost-effective part of a larger outreach strategy. The Commission must impose some basic requirements regarding outreach, and these methods are appropriate as more and more customers have access to on line information. It is unfortunate that as web-based material becomes an increasingly important source of consumer information, carriers have not done more to increase access to information about Lifeline on their websites as they have to information about bundles and triple plays on each and every page.⁹⁷ Another important consumer protection is to prohibit carriers from

⁹⁶ See, NARUC Committee on Consumer Affairs, *Resolution on Furthering Lifeline Participation Through Outreach* (November 15, 2005) wherein NARUC provides a substantial number of recommendations including the recommendation to encourage all ETCs to include information about Lifeline on disconnection notices and payment plan confirmation letters. See also, companion NASUCA, Resolution 2006-01: Increasing Participation in Lifeline and Link-Up Telephone Assistance Programs Through Additional and More Effective Public Outreach. Available at http://www.nasuca.org/archive/Resolutions/NASUCA_Lifeline-Resolutionpercent202006-01.doc.

⁹⁷ By way of example, AT&T makes no mention of Lifeline or discounted home phone service on their home page. It is only after clicking through a minimum of three pages (if you chose the “right” links) do you come to a very bland and vague paragraph that says,

requesting personal information from consumers as a pre-condition of accessing information on the carrier's Lifeline products via the phone or website.

Smaller carriers, or carriers that have made Lifeline an important part of their business model, may already have prominent material on their websites, but clearly a requirement for use of web-based outreach is necessary because the ETCs themselves have not been motivated to develop their own workable solutions.⁹⁸

Naturally, annual notices and web pages cannot be the only methods used for outreach by either the ETC or the state agency. The existing Outreach Guidelines must be improved so that ETCs and state agencies can use them to develop effective state-specific or carrier-specific outreach programs. Also, as the Commission acknowledges, a more comprehensive and concrete set of guidelines would allow the Commission to enforce the publicity requirements for federal funding. The Guidelines should be revised to include the following categories; within each category specific activities could be specified as *examples* of effective outreach efforts:

- ❖ Development and distribution of outreach materials, including in-language materials and accessible materials for disability communities;
- ❖ Development of contacts and coordination with local, state and federal social service agencies;
- ❖ Development of contacts and coordination with local, state, and federal nonprofit and community based organizations;
- ❖ Development of incentive programs for customer service representatives or outreach partners to enroll new participants in the Lifeline program;
- ❖ Development of public service announcements and other media advertising; and,
- ❖ Participation in statewide, regional or national outreach activities such as community advisory board, coalitions, and task forces (Lifeline Awareness Week is an example of a national outreach effort).

B. Commission Should Require Outreach Reporting and Provide a Standardized Form to ETCs and Lifeline Administrators

AT&T CALIFORNIA ALSO OFFERS CALIFORNIA LIFELINE: A discounted program for eligible low income customers. If you qualify, you will receive a discount on the new service connection fee and the monthly rate for basic local service. To find out more information about qualifying for California LifeLine, please visit www.att.com/lifeline or call 1-800-288-2020.

Verizon's website requires even more "clicks" and has buried vague references to Lifeline in the "Support" link of their website.

⁹⁸ Even Tracfone prepaid wireless, a company with significant business plans to offer Lifeline telephone service, makes no mention of the service on their website. Customers would have to know to search for the company's specific product name, Safelink, in order to find information about Lifeline. The Safelink website is appealing, but would be difficult to find without a direct link from the TracFone home page or prior knowledge of the product name.

Once the Outreach Guidelines are revised, the Commission should require ETCs and state agencies to provide specific data about their outreach efforts. The Commission should develop a standardized form, perhaps a matrix with each outreach category. Carriers should be required to fill out the matrix annually detailing the types of outreach projects embarked upon within each category and the general level of spending for each category. This detailed analysis would help the Commission monitor the outreach activities for different carriers or different areas of the country and compare that data with participation rates for those carriers or areas to determine if the outreach has been effective. In addition, Consumer Groups hope that the requirement to report outreach activities in such a specific and detailed manner, even if just to the Commission or USAC, would motivate carriers to commit additional resources to the task.

A reporting requirement may identify those carriers attempting to blur the distinction between comprehensive and effective outreach versus carrier public relations and advertising of that carriers' services. When revising the Outreach Guidelines and looking at the specific categories of outreach, Consumer Groups recommend that the Commission specify types of materials and activities that would **not** be considered effective outreach, but would instead constitute heavy marketing and advertising of a specific carriers' service.

There is a fine line between outreach and marketing, but the distinction between the two is an important one. ETCs cannot use the advertising and marketing requirements as an excuse to merely promote their own services; moreover, an emphasis on non-Lifeline services that may be included in Lifeline promotions should not be allowed. This is particularly a concern for those ETCs whose business model is Lifeline-only; marketing is not outreach. Marketing is designed to nudge the consumer towards your product as opposed to a competitor's. In contrast, outreach is product neutral and is designed to inform eligible low-income consumers about Lifeline and of *all* of their Lifeline options so as to permit them to choose the one that best suits their needs. Outreach should be non-biased and include straightforward facts about the carrier's program and services that qualify for a Lifeline discount.

C. Commission Should Encourage The Use Of Third Party Resources For Outreach Including State Agencies And Community Based Outreach.

Because it is a fine line that separates marketing and outreach, Consumer Groups recommend that outreach efforts be delegated wherever possible to a third-party contractor or to

the state agency administering the program. While Consumer Groups are very sensitive to the extra cost associated with retaining a third-party organization, we believe the cost benefit results would justify any additional burden. The involvement of a third party could cover a wide spectrum of scenarios. On one end of this spectrum, a state agency responsible for administering the Lifeline program could serve merely as a centralized resource or coordination point for ETC outreach efforts.⁹⁹ On the other end of the spectrum a third-party contractor could be made responsible for all outreach and marketing activities, including the design and distribution of material, coordination of community groups, and other state agency efforts.

For many states the right mix of third party involvement and carrier outreach may be the middle of the spectrum. In states where carriers have the primary responsibility to administer the certification and verification process, it makes sense to maintain most outreach activities with those same carriers. However, a third party could be employed to help standardize outreach materials, monitor carrier outreach to ensure its fairness and objectivity, help coordinate outreach activities on a statewide level to ensure consistency and coverage and to serve as a resource for nonprofits, community based organizations and other social service agencies for information on Lifeline generally and referrals to proper carriers.

The Commission should look at best practices in the area of outreach and is encouraged to look closely at the California model in particular. For many years the California Commission has relied on some type of third-party contractor to conduct outreach for its Lifeline program and has also required the carriers to send annual notices and notices to new customers about Lifeline. Prior to 2005, individual carrier participants were responsible for administering the Lifeline program for their own customers. Even under that model, the Commission paid for a contractor to conduct numerous types of outreach activities with a particular emphasis on limited English speaking and hard-to-reach populations. The contractor was paid out of the state's Lifeline Fund created by end user surcharges. In addition, marketing and outreach efforts were coordinated and overseen by a board that consisted of members from the carrier community, nonprofit agencies and the Commission.

In 2005, when the California Commission moved to a third-party administrator, the Commission also changed its marketing and outreach efforts. It has several contracts with third-

⁹⁹ Consumer Groups note that in the existing Outreach Guidelines USAC already sees itself as a resource for carriers.

party contractors to administer a toll free hotline, to do outreach on Lifeline and handle Lifeline complaints, to conduct a comprehensive media buying campaign, and to do outreach on a variety of telecommunications issues, including Lifeline. As an example of this aggressive outreach, in January 2009, the California Commission reported that it purchased over 2,300 T.V. and radio spots, 29 percent of which were free. These spots reached over 9.3 million people. Numerous other outreach efforts, including one-on-one outreach using community based organizations, have been handled by these third parties. Here again, however, the tension between cost and effectiveness exists.

In 2005 NARUC, NASUCA and the Commission formed a Working Group to obtain information on existing Lifeline outreach strategies. This Working Group made several observations regarding Lifeline outreach in a 2006 study. As part of their investigation into the effectiveness of various outreach techniques, the Working Group found that “one-on-one outreach is critical.”¹⁰⁰ The Working Group saw that door-to-door canvassing, work with community organizations that have direct contact with customers such as Meals on Wheels or Head Start, and outreach through community centers were very effective in getting the word out about the program and perhaps more importantly providing detailed and direct information to consumers about the certification process and eligibility requirements.¹⁰¹ This Working Group also helps coordinate outreach activities on a nationwide-scale including the creation and promotion of Lifeline Awareness Week, reaching millions of households. Consumer Groups also note that coordination between Lifeline and LIHEAP makes lots of sense. LIHEAP applications are often filled out at community action agency sites and education about the Lifeline assistance program at the same time a consumer applies for energy assistance would be an efficient way to reach out to low-income households.

Consumer Groups urge the Commission to place heavy emphasis on outreach tools and programs that utilize nonprofit and community based organizations to not only educate their constituencies about the program, but to assist potential Lifeline recipients with the application process. In order to encourage these organizations to dedicate their own resources to Lifeline outreach, the Joint Board should look at the potential to provide different types of reimbursement

¹⁰⁰ *Report of the FCC/NARUC/NASUCA Working Group on Lifeline and Link Up: “Lifeline Across America”, 2007* at p. 9. Available at <http://www.lifeline.gov/LLLUReport.pdf>.

¹⁰¹ *Id.*

or incentives to these organizations for the time spent by their staff promoting the program and helping with sign ups, recognizing that these groups are essentially performing the outreach duties of either an ETC or state agent.

The Commission must develop creative solutions for outreach efforts. Because the success of these types of incentive programs is very dependent on the circumstances in a specific state, Consumer Groups recognize that the Commission may not be able to *require* states to develop these programs. However, the Commission should strongly encourage states to investigate this option and consider the possibility of an incentive program from them to do so.

D. The Commission Should Require That Lifeline Products Have a Common Label to Brand the Product as a Federal Lifeline Product

Consumer Groups strongly support making it clear to consumers that, by enrolling in the programs offered by Tracfone (Safelink) and Virgin Mobile (Assurance), they are signing up for Lifeline products. We believe that this could very likely reduce the number of consumers who inadvertently sign up for multiple subsidies. Consumer Groups also support the requirement that ETCs expressly identify their services as Lifeline-supported services in all of their marketing and outreach materials. Doing so would have the effect of increasing the awareness that these products are competing with one another, and that customers should look around to ensure that they are getting the most appropriate Lifeline product for their needs. Consumer Groups do not believe that doing so would hamper competition between ETCs.

IX. Consumer Groups Support Minimum Service Requirements for Voice Service¹⁰²

Consumer Groups support the adoption of minimum standards for voice service. Consumer Groups have been on record supporting the NASUCA resolution on reforming Lifeline and prepaid wireless Lifeline.¹⁰³ Minimum standards would help to ensure that there is at least a decent baseline for wireless Lifeline service, prepaid wireless Lifeline in particular. For example, minimum standards could prohibit charging Lifeline customers to calls to the carrier's

¹⁰² NPRM ¶252.

¹⁰³ Consumer Groups Comments to the Federal-State Joint Board on Universal Service, Lifeline and Link Up, July 15, 2010 at pages 43-44.

customer service line. Reliance on the marketplace to solve these problems is misplaced. There is a lack of ETC neutral outreach and education and instead a heavy reliance of ETC advertising of Lifeline products. The lack of uniform identification of wireless products as Lifeline products adds to the confusion of which products to compare with what. The end result is that it is entirely foreseeable that consumers who want wireless Lifeline may be exposed to ads for a pre-paid product with only 67 minutes and not be aware of better service options. This is not the best use of scarce Lifeline funds.

Consumer groups in Ohio recently described the following vision of a minimum service offering for prepaid wireless Lifeline service to their state utility commission:

CETCs should be required to meet all of these proposed standards for at least one of the CETC's service plans. If CETCs wish to offer additional calling plans with additional features, or plans with more minutes than described there, this should be permissible so long as the minimum standards are met for one of the CETC's plans.

These minimum standards include at least 250 free airtime minutes per month¹⁰⁴, with rollover; a free basic wireless handset; a recurring discount that provides for the maximum contribution of federally available assistance; waiver of all nonrecurring service charges for establishing service; free blocking of toll service (applies to post-paid CETCs only); blocking of 900 service and 976 service; a waiver of the federal universal service fund end user charge; and a waiver of the telephone company's service deposit requirement, if any. Any CETCs that offer post-paid, rather than pre-paid service, must also be required to offer the special payment arrangements as described in [Ohio Administrative Code] 4901:1-6-19(D). The customer should also be given a phone number which is local to his/her area¹⁰⁵; meaning that local callers must be able to call the CETC's customer without a toll charge. In addition, the CETC customer should have the ability to block any features or service which will use up available free minutes, such as text messages, roaming charge, and overage charges (if applicable). Finally, CETCs should be required to offer Lifeline customers a way to contact the CETC's customer service free of charge (i.e., no deduction of airtime minutes)

¹⁰⁴ This is the minimum for prepaid service that is offered at no cost to the customer. Notably, when TracFone first offered its service in Ohio, the "free" offering was limited to 68 minutes. Since then, of course, TracFone and the other carriers have increased their offering to 250 minutes. That level should become the current minimum standard, which should be reviewed, due to changing technology and markets, no less frequently than every two years.

¹⁰⁵ The CETC's local calling area should at least mirror the local calling area of the ILECs in which the CETC customer is located.

for calls placed from landlines or wireless phones, including the CETC's own wireless headsets.¹⁰⁶

We urge the Commission to adopt minimum standards for voice service to ensure funds for Lifeline are applied to quality Lifeline service and products. This makes sense for Lifeline customers as well as the ratepayers that support the Lifeline program.

X. Support for Low Income Broadband Pilots

A. Consumer Groups Support the Inclusion of Broadband as a Supported Service

Consumer Groups support the inclusion of broadband as a supported service. The small size of the Lifeline assistance raises issues about whether Lifeline could bring the cost of broadband service within an affordable range for low-income households. However, we can envision the near-term possibility that a low-income household with a child in the National School Lunch program would want to apply their Lifeline assistance to the low-income broadband product that Comcast will be offering as one of its conditions in its recent merger with NBCU. While this does not come close to resolving the low-income broadband access gap, it is movement in the right direction. Consumer Groups also urge the Commission to fund low-income pilots that look at wireless broadband as well as cable broadband.

B. Reclassification of Broadband Service Is Necessary for Broadband to Receive Universal Service Support

Consumer Groups have concerns about the Commission's ability to provide universal services support to broadband. Consumer Groups urge the Commission to put its authority on solid legal footing by reclassifying broadband (or some form of Broadband Lifeline) as a telecommunication service. The Telecommunications Act describes universal service as "an evolving level of telecommunications services"¹⁰⁷ and that universal service support goes only to

¹⁰⁶ Comments by The Office of the Ohio Consumers' counsel, Communities United for Action, Edgemont Neighborhood Coalition, Ohio Poverty Law Center and Pro Seniors, Inc., Before the Public Utility Commission of Ohio, In the Matter of the Commission Investigation into the Provision of Prepaid Lifeline Service by Competitive Eligible Telecommunication Carriers, Case No. 10-2377-TP-COI (Dec. 20, 2010).

¹⁰⁷ 47 U.S.C. § 254(c)(1) ("universal service is an evolving level of telecommunication services . . .").

“telecommunications carriers”¹⁰⁸ Consumer Groups find NASUCA’s analysis on this matter in the High Cost Fund/Intercarrier Compensation Docket persuasive.¹⁰⁹

C. Fund LI Broadband Pilots With Some of the Funds from the High Cost Reform

Consumer Groups support the Commission’s decision to learn more about how to design a low-income broadband assistance program through the funding of pilots and is concerned about the need to commit funds to the pilots. In addition to any savings from reform of the Toll Limitation Service, we urge the Commission to also dedicate to the low-income broadband pilots, 15 percent of the savings funds from the High Cost Fund reform that are slated to fund the Connect America Fund.

XI. Consumer Protections Must Be Explicit Where Lifeline is Applied to Bundled Services

Consumer Groups are skeptical that the modest federal Lifeline benefit will make bundled service affordable, but we understand there will likely be Lifeline consumers that would want to use their Lifeline in this manner. Our primary concern is that the bundled service will not be affordable and that the Lifeline consumer will face situations where only a partial payment is possible. In the interest of promoting and preserving access to phone service, it is essential that the Commission’s rules are explicit that in situations of partial payment, the payment (which includes the Lifeline support) is first applied to preserve phone service. Consumers will need to know how much they must pay to preserve voice service. This information should appear on the bill. Without these protections, applying Lifeline support to bundled services provides far less assurance of voice connectivity than other Lifeline products.

¹⁰⁸ 47 U.S.C. §214(e)([O]nly an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support . . .”).

¹⁰⁹ Comments of the National Association of State Utility Consumer Advocates, In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link Up, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, CC Docket No 01-92, CC Docket No 96-45, WC Docket No. 03-109 (April 18, 2011) at pages 27- 35.

It is also foreseeable that a Lifeline consumer that applies his or her Lifeline to a bundled service would have buyer's regret because the bundled services are too expensive or because a better Lifeline product is available. The Commission should make portability of the Lifeline benefit a priority in the design of the Lifeline program administration.

XII. Conclusion

These comments reflect the collective experience of our consumer organizations from throughout the country. We look forward to working with the Commission to strengthen and improve the federal Lifeline and Link Up Program.

Respectfully submitted,

on behalf of the Consumer Groups,

_____/s/_____

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