



January 17, 2017

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: WC Docket No. 11-42, Lifeline and Link Up Reform and Modernization

WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support

WC Docket No. 10-90, Connect America Fund

Dear Ms. Dortch:

On Thursday, January 12, 2017, the undersigned on behalf of NTCA–The Rural Broadband Association (“NTCA”),¹ along with Patricia Cave and Gerry Duffy on behalf of WTA – Advocates for Rural Broadband,² (the “Rural Associations”) met with Amy Bender, Wireline Legal Advisor to Commissioner Michael O’Rielly to discuss issues related to the Lifeline Universal Service Fund (“USF”) Modernization Order³ adopted by the Federal Communications Commission (“Commission”) in March 2016. The Rural Associations discussed their pending

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

² WTA – Advocates for Rural Broadband is a national trade association representing more than 350 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

³ Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197, Connect America Fund, WC Docket No. 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (“*Lifeline Modernization Order*”).

Petition for Reconsideration (“Petition”) filed on June 23, 2016⁴ in response to the Order as well as additional issues in need of clarification as implementation of the Order has begun.

The Rural Associations noted at the outset that the purpose of the meeting was to reiterate the need for the Commission to move forward expeditiously on resolution of the issues raised in the Petition for Reconsideration and still pending. While the disposition of the Rural Associations’ Petition for Temporary Waiver filed in this proceeding is a welcome development,⁵ resolution of the items raised in the Petition for Reconsideration is critical to a stronger Lifeline mechanism that better serves low-income consumers and limits the administrative burden of participating in the program for the small businesses that NTCA and WTA represent.

Clarification of the Applicability of the Access Recovery Charge

The Rural Associations first addressed the need for clarification of the applicability of the Access Recovery Charge (“ARC”) to Lifeline customers. As an initial matter, the associations maintain that the applicability of the ARC to any Lifeline customer (regardless of the service(s) they purchase) would be at odds with previous Commission policy and guidance. For instance, paragraph 134 of the *Lifeline Modernization Order* unambiguously states that rate-of-return carriers “are not required to impute an amount equal to their ARC rate for consumer broadband-only loops provided to Lifeline broadband customers.”⁶ As that footnote makes clear,⁷ this is in keeping with the policy first set forth in the *2011 USF/ICC Transformation Order* (which created the ARC in the first place), which stated that “we prevent carriers from charging any ARC on Lifeline customers or further drawing on the Lifeline program, so that ICC reform will not raise rates at all for these low-income consumers.”⁸ This policy is also reflected in the Commission’s rules, specifically Section 51.917(e)(6)(v) which states that the “Access Recovery Charge may not be assessed on lines of Lifeline customers.”⁹

As it is clear that it has always been the intention of the Commission to ensure that intercarrier compensation reform had no negative effect on any Lifeline customers (whether procuring voice or now broadband on a standalone basis), the application of the ARC should going forward continue to focus on the nature of the customer (Lifeline-enrolled or not) and not the service

⁴ NTCA & WTA Petition for Reconsideration and/or Clarification , WC Docket Nos. 11-42, 09-197, and 10-90 (fil. Jun. 23, 2016) (“ Rural Associations’ Petition”).

⁵ Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197, Connect America Fund, WC Docket No. 10-90, Order, DA 17-29 (rel. Jan. 6, 2017).

⁶ *Lifeline Modernization Order*, fn. 134.

⁷ *Id.*, stating that “[i]n the *USF/ICC Transformation Order*, the Commission made clear that carriers may not charge any Lifeline customers an Access Recovery Charge (ARC).” Citing, *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17989, para. 909 & n.1782 (2011) (*USF/ICC Transformation Order*).

⁸ *USF/ICC Transformation Order*, ¶ 36.

⁹ 47 C.F.R. 51.917(e)(6)(v).

taken by that Lifeline customer. As such, the ARC should not apply to any subset of Lifeline customers (even those buying a bundle of services), as it would substantially erode the \$9.25 discount that enhances the affordability of service for low-income consumers.

Minimum Service Standards

The Rural Associations then addressed the fixed broadband Internet access service (“BIAS”) minimum speed standard adopted in the Lifeline Modernization Order.¹⁰ Specifically, the Rural Associations in their still pending Petition seek reconsideration of the exception to the 10/1 minimum speed standard for fixed BIAS that makes a Lifeline discount available to qualifying low-income consumers only for service at speeds of no less than 4/1 Mbps. In adopting the exception, the Commission stated that providing Lifeline support to low-income consumers for speeds of less than 4/1 would “ensure that providers who offer ‘second-tier’ service are not rewarded for failure to upgrade their networks.”¹¹

The Rural Associations stated that while it is critical to ensure that limited USF resources are used to provide low-income consumers with broadband services comparable to other consumers, the Commission’s universal service policies must also be cognizant of the “facts on the ground.” Despite significant progress that RLECs have made in making high-quality broadband available to their rural areas, 19 percent of rural Americans (including some in RLEC-served areas) lack access to even a minimum 4/1 fixed broadband service today.¹² Indeed, the Commission itself recognized as much in its recent High Cost USF Reform Order where it accounted for the fact that a number of rural census blocks lack 4/1 today and acknowledged that funding provided pursuant to reforms to that mechanism will be insufficient to remedy that reality for some locations.¹³ Moreover, an RLEC or other provider may be able to meet the 4 Mbps (or 10 Mbps) download requirement but unable to deliver upload speeds of 1 Mbps or greater without further network upgrades – even as, in some cases, the rules governing High Cost support distribution may effectively deter or even preclude such upgrades. Thus, the exception to the minimum service speed standard must enable rural low-income consumers to apply the Lifeline discount to any standalone broadband or bundled voice and broadband service package they so choose and

¹⁰ *Lifeline Modernization Order*, ¶ 86.

¹¹ *Id.*, ¶ 111.

¹² *See*, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Improvement Act, GN Docket No. 15-191, 2016 Broadband Progress Report, FCC 16-6, at 34, n. 242 (Jan. 29, 2016).

¹³ *See*, Connect America Fund, *et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016) (“Rate-of-Return Reform Order”), ¶ 26 (stating that for RLECs electing model-based support, locations that are not fully funded – those with a calculated average cost above the funding cap – the requirement to offer broadband meeting the requisite performance standards including speed will be subject to the “reasonable request” standard); *See also*, *Id.*, ¶ 178 (stating that for carriers electing Connect America Fund Broadband Loop Support funding, “[i]n addition to defined obligations to extend service to a subset of locations within a five-year period, rate-of-return carriers remain subject to the reasonable request standard for their remaining locations.”).

that is otherwise generally available from that provider to any other consumer in that geographic area. Indeed, the Commission should not deny a consumer Lifeline support for which they are eligible simply because 4/1 is the only speed that they and their neighbors in that census block can obtain.

The Rural Associations reiterated that their position on the terms of the exception should not be taken as support for substandard service for any rural consumer. To the contrary, the principle of “reasonable comparability” is not only the backbone of the Rural Associations’ advocacy, it is a statutory mandate. Thus even 10/1 speeds – which is all that the current High-Cost USF budget will allow – will prove insufficient over time to ensure “reasonable comparability” between rural and urban America. Pending a more comprehensive assessment of whether current High Cost program rules and budgets can ensure the “reasonable comparability” of services for all consumers – low income or otherwise – in rural areas, the Commission’s Lifeline rules must be calibrated for the facts as they exist today and enable low-income consumers to apply the Lifeline discount to the same BIAS service as is available to their more affluent neighbors.¹⁴

Support for Standalone Voice Service

The Rural Associations then discussed their pending request that the Commission reconsider the phasing out of support for voice-only fixed and mobile service beginning December 1, 2019. The Commission should instead continue to provide consumers the option of subscribing to a voice-only service, particularly in circumstances in which a standalone or bundled broadband service is and will be unaffordable for the foreseeable future. Despite the fact that broadband is increasingly the dominant form of communications technology, the fact remains that the Lifeline program was first conceived and remains today in many cases as a literal “lifeline” for low-income Americans in a time of emergency. It is particularly perplexing that the Commission would phase-out support for standalone voice in the wake of numerous other Commission rulemakings that have stressed and adopted new voice-related requirements for backup power, network resiliency and reliability and access to 911 services.¹⁵ In that regard the phase down of support for standalone voice service in the Lifeline program represents a step backward in terms of public safety and one that threatens to effect most acutely low-income Americans.

Moreover, the phase-out of support for voice-only service is also particularly problematic for consumers living in areas served by RLECs. For one, the larger than average senior citizen population in rural areas may be particularly affected by the voice support phase out, as RLECs

¹⁴ With respect to minimum service standards adopted in the Lifeline program, the Rural Associations The Rural Associations’ Petition also highlighted the need for a limited exception to apply to circumstances in which ETCs lack access to sufficient terrestrial backhaul to comply with a 150GB monthly minimum data usage allowance.

¹⁵ See, Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, PS Docket No. 14-174, FCC 15-98, Report and Order, (rel. Aug. 7, 2015) (“Report and Order”). See also, Improving 911 Reliability, PS Docket No. 13-75, Report and Order, FCC 13-158 (rel. Dec. 12, 2013) (adopting “rules to improve the reliability and resiliency of 911 communications networks nationwide by requiring that 911 service providers take reasonable measures to provide reliable 911 service”); News Release: FCC Fines CenturyLink and Intrado \$17.4 million for Multi-State 911 Outage (Apr. 6, 2015) (“Delivering 911 calls is one of the most important public safety responsibilities a phone company has.”), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-332853A1.pdf.

report that many of their Lifeline voice subscribers currently skew toward older retired populations and seniors tend to rely on fixed incomes. In addition, local voice rates for most rural Americans are continuing to increase pursuant to the Commission's rules. Commission rules adopting a "local rate floor" currently produce end-user voice rates in RLEC service areas of \$18 per month plus state regulated fees,¹⁶ an increase of \$2 over 2015 levels.¹⁷ The Commission has given no indication that future rate floor increases are not forthcoming and thus a total loss of Lifeline support for stand-alone voice service will therefore be particularly harmful for low-income rural consumers in areas where their local provider is subject to the rate floor.

Finally, the Rural Associations noted that while support for voice service is available as part of a bundled voice and BIAS package, for many rural low-income consumers served by the Rural Associations' members, 10/1 Mbps or 4/1 Mbps broadband, even when bundled with voice service, will in many cases continue to be unaffordable despite the availability of the Lifeline discount. In those circumstances, a number of low-income consumers will be forced to decide between subscribing to a more expensive broadband and voice bundle or forgoing Lifeline support altogether.

The Rural Associations therefore urged the Commission to reconsider the phase out of support for standalone voice to ensure that access to public safety services is within reach of every American. Indeed, the Commission could adopt more targeted reforms to the extent that it seeks to address a windfall to carriers for whom costs to provide the most basic voice service are low.

Rolling Recertification

The Rural Associations also discussed their request for reconsideration of the "rolling recertification" requirement adopted in Lifeline Modernization Order that will require Lifeline providers to recertify their Lifeline customers' continued eligibility annually as measured from each individual subscriber's service initiation date.¹⁸ While ostensibly adopted to limit the burden on the National Verifier in terms of conducting recertification of Lifeline subscribers at the end of the year, this provision will be quite burdensome for the Rural Associations'

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

¹⁷ Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, Public Notice, DA 15-470 (rel. Apr. 16, 2015) ("To the extent that an ILEC's local rates (plus state regulated fees) in 2015 are less than \$16, that carrier's high-cost support will be reduced on a dollar-for-dollar basis.").

¹⁸ *Lifeline Modernization Order*, ¶ 416.

members. RLECs in many cases have not historically tracked subscribers' service initiation dates within their internal systems and therefore will need to access the National Lifeline Accountability Database ("NLAD") for every customer or conduct investigation of customer records to determine the date governing independent customer rolling recertification deadlines. For RLECs with a staff of approximately 25 or fewer employees the task of investigating and tracking subscriber initiation dates on a daily or monthly basis will be extremely time consuming. RLECs have long found it simpler to conduct the recertification all at once at the end of the year and typically already have internal administrative processes in place to conduct recertification by December 31. Amending existing processes will prove especially burdensome for the Rural Associations' members, however, this increased burden is not unique to small carriers.¹⁹

In addition to being an unduly burdensome and unnecessary change to the administration of the Lifeline program, the Commission failed to provide the public with notice and an opportunity to comment on a shift toward rolling recertification as required by the Administrative Procedure Act.²⁰ As described in the Rural Associations' Petition for Reconsideration, the Commission merely sought comment on the administrative functions of the National Verifier and omitted any indication that it intended to modify the existing recertification process before providers' duties are transferred to the National Verifier.²¹ Indeed no service providers in the record addressed rolling recertification prior to the Lifeline Modernization Order because the Commission gave no notice it was considering changes as to service providers' recertification procedures.

In the end, the fact that this provision was adopted in order to limited the burden of recertification on the National Verifier runs counter to one of the very reasons it was created in the first place – to limit the burden on Lifeline providers with respect to determining and managing consumers' eligibility for the program. Even worse, carriers forced to modify their administrative processes now will be required to do so again once the National Verifier begins operating in their state, while also ensuring that it updates billing records on a monthly basis to cease providing Lifeline discounts when a customer is no longer eligible and has been de-enrolled. The Commission should instead delay implementation of rolling recertification until the National Verifier has been launched in that provider's state to avoid placing unnecessary burdens on providers and causing confusion for consumers.

Port Freeze

Finally, the Rural Associations also reiterated their request for reconsideration of the "port-freeze" provisions contained in the Lifeline Modernization Order. Specifically, the Commission failed to provide proper notice of the intent to adopt a 12-month "port freeze" for Lifeline-supported BIAS service and administration of a new port freeze different from the 60-day voice

¹⁹ Rural Associations' Petition, pp. 13-14; USTelecom Petition, p.3; General Communication, Inc., Petition for Reconsideration and/or Clarification, p. 1-2 (fil. Jun. 23, 2016) (noting additional burdens on some ETCs and additional inconvenience for some subscribers arising from rolling recertification).

²⁰ 5 U.S.C. § 553(b)(3) (requiring that notices of proposed rulemaking include "either the terms or substance of the proposed rule or a description of the subjects and issues involved.").

²¹ Rural Associations' Petition, pp. 12-13.

port freeze will create a significant administrative burden for RLECs. RLECs today typically utilize one “Lifeline” billing code to denote subscribers to whom the Lifeline discount applies. Administration of the port-freeze provisions with separate durations will require RLECs to modify their billing systems to include at least two new billing codes to account for standalone BIAS subscribers and bundled voice and BIAS subscribers enrolled in the Lifeline program to accurately account for and report to USAC the applicable port freeze rule for each category of Lifeline enrolled subscribers.²² Additional codes will be necessary to the extent the provider also offers a wireless voice and/or broadband service. Incorporation of these additional billing codes will in some cases require software updates and/or modifications to billing systems by outside billing vendors at not inconsequential cost. Alternatively, carriers will be required to manually comb through customer accounts to determine the appropriate port freeze for NLAD reporting purposes and keep NLAD up-to-date with respect to each Lifeline subscriber’s service.

The Rural Associations urged the Commission to either harmonize the port freeze durations (i.e. 60 days for each), clarify that until the voice support phase down begins subscribers may be reported as obtaining a voice service, or delay the implementation of the port freeze for one year.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,
/s/ Brian Ford
Brian Ford
Senior Regulatory Counsel

cc: Amy Bender

²² Carriers will be required to report to NLAD whether a customer subscribes to voice-only service, a voice and broadband bundle where only the voice component meets the minimum service standard, a voice and broadband bundle where only the broadband component meets the minimum service standard, a voice and broadband bundle where both services meet the minimum service standards, or a broadband only service meeting the minimum service standards. Current billing systems are not structured to provide such detail.