



March 18, 2016

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, Federal-State Joint Board on Universal Service Lifeline and Link Up Reform and Modernization

WC Docket No. 10-90, Connect America Fund

GN Docket No. 14-28, Protecting and Promoting the Open Internet

Dear Ms. Dortch:

On Wednesday, March 16, 2016, the undersigned and Brian Ford 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 Paul Kelly with Cordova Telephone Cooperative, Inc. and Dave Goggins with TelAlaska (collectively the “Rural Representatives”), spoke via telephone with Amy Bender, Legal Advisor to Commissioner Michael O’Rielly. The parties discussed the Universal Service Fund (“USF”) Lifeline modernization Order reportedly under consideration by the Federal Communications Commission (“Commission”).³ The Rural

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

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

³ *Chairman Wheeler & Commissioner Clyburn Propose Rules to Modernize Lifeline Program to Provide Affordable Broadband for Low-Income Americans* (“Lifeline Fact Sheet”) (rel. Mar. 8, 2016), available at: <https://www.fcc.gov/document/fact-sheet-lifeline-modernization-proposal>.

Representatives also discussed the Notice of Proposed Rulemaking reportedly being considered by the Commission contemplating the adoption of privacy rules for broadband providers.⁴

Minimum Service Standards

With respect to modernization of the Lifeline USF program, the Rural Representatives stated that expectations applicable to Lifeline providers—in the form of minimum service standards—must also promote consumer choice with respect to both voice and broadband services. The Rural Representatives understand and share the desire to ensure that Lifeline consumers have choices reasonably comparable to those available to other consumers. Thus, with respect to any broadband speed standards applicable to Lifeline providers, providers should be required to offer to Lifeline consumers each service they offer to other consumers. However, minimum standards should not inadvertently force low-income consumers to choose between a broadband service that is unaffordable despite the program discount or no broadband at all. Such an issue could arise to the extent that low-income consumers are precluded from choosing to purchase a broadband speed offered by their provider that is more in line with their personal budget. As merely one example, a 10/1 Mbps speed standard—should one be adopted—should not preclude a Lifeline subscriber from making the affirmative choice to purchase a 4/1 Mbps broadband service that costs less and is more affordable for that individual low-income consumer. Indeed, rural low-income consumers should have the option to apply the Lifeline discount to any standalone voice, standalone broadband, or bundled voice and broadband service package they so choose and that is otherwise available from that provider to any other consumer. Neglecting to empower low income consumers to make a choice that meets their individualized needs would be antithetical to the goal in this proceeding to promote broadband adoption amongst this group of consumers.

The parties then discussed the need for coordination between the rural local exchange carrier (“RLEC”) High Cost Program and the Lifeline program, particularly as modernization of both programs is concurrently underway. Minimum speed standards adopted in the Lifeline program must take into account the realities of network availability in areas supported by the High Cost Program, and cannot foist or accelerate buildout obligations on carriers that are inconsistent with “facts on the ground” or reforms being considered with respect to availability in the High Cost Program.

The Rural Representatives then stated that further coordination of the Lifeline and High Cost Programs—in particular, a consistent adherence to the principle of “reasonable comparability”—should lead to the minimum monthly fixed broadband usage allowance standard of 150GB per month reportedly under consideration for Lifeline also applying for all purposes in the RLEC High Cost program as well. For example, rural consumers residing in areas where a qualified competitor can demonstrate competitive presence (pursuant to standards set forth by the pending High Cost reform order) should be able to expect access to broadband service comparable to that available to low income consumers all across the nation under the Lifeline program. High Cost

⁴ *Chairman Wheeler's Proposal to Give Broadband Consumers Increased Choice, Transparency & Security With Respect to Their Data*, (“Privacy Fact Sheet”) (rel. Mar. 10, 2016) available at: <https://www.fcc.gov/document/broadband-consumer-privacy-proposal-fact-sheet>.

support should not be reduced or eliminated due to the presence of a competitor that offers services that would be considered substandard for Lifeline customers.

With respect to minimum usage allowances, however, the Rural Representatives also highlighted the unique cost and technical challenges for certain RLECs—such as those located in Alaska, in particular—to meet a 150GB per customer minimum data usage allowance for fixed broadband services and 2GB for mobile broadband. Mr. Kelly explained that while Cordova Telephone has invested in an undersea fiber optic cable, the majority of carriers in Alaska do not have the resources or ideal location that would enable similar infrastructure investments. Mr. Kelly further explained the challenge of providing 4G LTE service in Alaska and highlighted the fact that even reaching 2G and 3G standards in many portions of Alaska is difficult and cost prohibitive. Mr. Goggins described the challenge of providing broadband services using satellite backhaul, explaining that, although his company provides customers with a range of data packages for fixed services ranging from 4 GB to 50 GB per month, as a result of affordability issues none of his customers subscribe to the larger packages offered with most subscribing to 4GB to 8GB packages. The Rural Representatives accordingly urged the need for an Alaska-specific exemption from the monthly usage allowance minimum standard.

Coordination of USF Programs – Affordability of Services in Rural Areas Generally, and For Rural Low-Income Consumers Specifically

The Rural Representatives reiterated that the Commission must take explicit stock of the interconnected nature of the Lifeline and High-Cost programs. More specifically, the purpose of the High-Cost program is to ensure that rates in rural areas are “reasonably comparable” to those in urban areas – as called for by Section 254 of the Communications Act of 1934, as amended. As intended by Congress, the High-Cost program effectively aims to “normalize” for the difference in rates that would otherwise arise between rural and urban areas absent the program’s existence. Once “normalized,” this only means (at least in theory) that the rates for services between rural and urban areas are “reasonably comparable.” It does not mean that low-income Americans in rural areas can then actually afford to procure such services.

However, failure of the High-Cost program to in fact ensure the baseline availability of “reasonably comparable” rates for such service due to limits or budget controls (or other factors) will necessarily frustrate, if not completely undermine, the workings of the Lifeline program in rural areas. For example, the Rural Representatives noted that rates for 10/1 Mbps standalone broadband service in RLEC service areas, even in the wake of anticipated High-Cost reforms, is likely to still be \$100 or more per month, even as Commission data show that the average urban consumer pays \$63.52 per month for comparable service.⁵ This means the average rural consumer will still likely pay almost \$40 more than the average urban consumer for 10/1 Mbps broadband, and a \$9.25 discount for rural low-income consumers seems unlikely to overcome this already significant deterrent to broadband adoption. The Commission’s effort to improve broadband adoption among low income rural Americans in RLEC service areas is therefore contingent upon on a continued effort to ensure that the High Cost program meets the baseline

⁵ Federal Communications Commission, Result of 2015 Survey of Fixed Voice and Broadband Service Rates Offered to Consumers in Urban Areas. available at: <https://www.fcc.gov/general/urban-rate-survey-data-resources>.

“reasonable comparability” goals of the Communications Act. Such rates as currently projected will not accomplish that result. Put another way, if support available under or structural issues within the High-Cost program only enables the offering of voice or broadband services to consumers at rates that remain far in excess of those available in urban areas, it will remain difficult, if not impossible, for the “Lifeline discount” to somehow make those services affordable for the rural poor. We further noted that the use of an inflationary index to adjust the High-Cost budget over time, much as is being considered here for the Low-Income program and as already applies to the Schools and Libraries (“E-Rate”) Program,⁶ could provide much-needed progress toward addressing this concern and should presumably therefore be a shared objective of further reform.

The Rural Representatives further stated that any expansion of the category of Lifeline providers must be consistent with the statute and, once again, the coordinated and interconnected nature of the discrete universal service mechanisms. More specifically, proposals to allow “nontraditional providers such as schools, libraries and other anchor institutions to offer Lifeline service to low-income consumers,”⁷ are in direct conflict with the prohibition on the resale of E-rate supported services contain in section 254(h)(3) of the Act. This provision was designed to preserve the complementary relationship between the High Cost and E-rate programs. The former ensures that broadband networks are available in the first instance and affordable for residents and businesses in high cost rural areas, as well as sustainable over the long term. The E-rate mechanism was designed to leverage already existing infrastructure and ensure that schools and libraries have affordable access as well. Section 254(h)(3) ensures that each program works together to achieve their goals rather than at cross purposes with one another. The use of Lifeline support for infrastructure would also run counter to the complementary roles that the Lifeline and High Cost mechanisms were intended to play. The point of the High-Cost program is to solve for the economics in areas where the cost of deploying and operating a network far exceeds what *any* consumer—low-income or otherwise— could afford to pay. It ensures that broadband networks are available in rural areas and equalizes (theoretically) the rates between urban and rural areas. Lifeline was designed as an “add on” to then ensure that such rates are affordable for low-income rural consumers. Use of Lifeline funds for infrastructure turns the complementary nature of the two programs against each other, potentially using Lifeline resources to fund infrastructure that may compete against High Cost supported networks and perversely using Lifeline resources that would have assisted additional low-income consumers.

Availability of Voice Services

The Rural Representatives then stated that the enduring values of consumer choice and public safety should compel the Commission to require every Lifeline provider, fixed or mobile, to offer facilities-based voice service. Public safety demands that every low income consumer have at least the choice of access to an affordable voice service – fixed or mobile – with sufficient reliability and guaranteed access to public safety entities. The goal of streamlining the Eligible

⁶ *Modernizing the E-rate Program for Schools and Libraries*, FCC 14-189, Second Report and Order and Order on Reconsideration, WC Docket No. 13-184 (rel. Dec. 19, 2014), ¶ 114 (adopting a budget of \$3.9 billion plus annual inflationary adjustments).

⁷ SHLB Coalition, *ex parte* presentation, WC Docket No. 11-42 (fil. Mar. 11, 2016).

Telecommunications Carrier (“ETC”) designation process or the process of allowing additional providers to obtain designation as Lifeline-only providers should not leave *any* low-income consumer without access to an affordable voice service. The Lifeline program must continue to be recognized *as a literal lifeline* in the event of an emergency situation, and a move away from requiring all Lifeline providers to offer voice service moves away from that concept and the overall public safety goals of the Communications Act.⁸

Moreover, because the Lifeline program is ultimately aimed at “affordability,” requiring a low income subscriber who wants voice service to depend on an over-the-top (“OTT”) voice product that requires the procurement of broadband as a predicate – rather than a separate, standalone (and perhaps more affordable) voice offering – would seem to run counter to the purpose of the program, which is to provide a literal lifeline for low-income consumers. Requiring the purchase of a broadband connection and then an OTT voice product on top of that in an effective “bundle” may simply be unaffordable for a large number of low income consumers, particularly elderly populations on fixed incomes. We further observed that to the extent the concern giving rise to the notion of phasing out mobile voice service support was to address concerns about offerings that offer “free service” or other initiatives that run counter to the intent of the program, the Rural Representatives very much shared those concerns and urged the Commission to address them more directly and surgically by requiring consumer “skin in the game” with respect to procurement of mobile voice services rather than eliminating mobile voice support altogether for those consumers who need such service due to the acts of a selected few providers.

ETC Designations

With respect to the Lifeline Fact Sheet reference to a “Lifeline Broadband Provider,” the Rural Representatives noted the absence of a clear legal path or policy justification for sidestepping (or “forbearing from”) the statutory provisions governing ETC designations or the critical role that states play in the ETC designation proceedings they conduct. In particular, forbearance from Section 214(e)(2) of the Act would appear to remove state commissions from their vital role in conducting an individualized, fact-specific analysis of would-be ETCs’ capabilities, proposed service offerings, and commitment to and adherence with state and federal consumer protection provisions in the areas served by rural telephone companies.⁹ Moreover, states play a critical role in ensuring that both federal and state (to the extent that a state has a Lifeline fund) low income fund resources are used in an accountable manner.¹⁰ Perhaps more importantly, a process to create a vague and broad Lifeline Broadband Provider designation by forbearing from

⁸ 47 U.S.C. § 151 (discussing the purpose of the Federal Communications Commission, including “for the purpose of promoting safety of life and property through the use of wire and radio communications”).

⁹ National Association of Regulatory Utility Commissioners (“NARUC”), *ex parte* presentation, WC Docket No. 11-42 (fil. Mar. 16, 2016), p. 8 (noting that states are “better positioned to know a carrier’s coverage, reputation, level of complaints both before and after an ETC designation.”).

¹⁰ *Id.*, p. 4 (discussing “an example of a carrier in CA that was not complying with the requirement to advertise Lifeline Voice Services. California required that carrier to conduct educational outreach and to partner with other utilities in joint advertisements.”).

section 214(e)(2) could open up the possibility of sub-study area designations and enable such providers to pick and choose the easiest to serve low income consumers within the portion of rural carrier study areas, harming the ability of existing providers to serve the remaining consumers.

Eligibility Verifications

The Rural Representatives then reiterated support for removing providers from the eligibility verification process. This process imposes significant administrative burdens on their small staffs in states that do not already utilize coordinated enrollment or third-party verification. The use of a third-party verifier would offer additional advantages, such as obviating any need for continued document retention rules as applicable to subscribers' proof of eligibility. Moreover, should the third-party verifier interact with the National Lifeline Accountability Database ("NLAD"), this could serve as a method by which providers can confirm subscribers' eligibility for Lifeline. For example, a customer's name could be entered in NLAD by the verifier as "Lifeline service eligible," and providers would simply need to query the database to confirm that the customer is eligible and not already receiving service from another provider. Use of NLAD as a method of provider reimbursement would also eliminate the need for monthly 497 filings (and the corresponding the need for the "Snapshot" rule).¹¹ Finally, as the third-party verifier will obtain access to Lifeline subscribers' contact information as part of the eligibility verification process, it only makes sense to require the verifier to also complete the annual subscriber "recertification" process. This process imposes significant administrative burden on RLECs' small staffs.

The Rural Representatives also stated that the third-party verifier should be funded by the USF. While the Commission should apportion the cost of the verifier based on the size of each provider's Lifeline customer base should it decline to pay for the third-party verifier with USF resources, such an approach would create administrative complexities and would burden those providers whose states utilize coordinated enrollment or an existing third party verification system at no cost to Lifeline providers. Funding the third-party verifier through the USF is thus an issue of fairness and simplicity.

Broadband Privacy Regulations

The Rural Representatives finally discussed at a high level the Commission's impending rulemaking on broadband privacy and the information the Commission believes would fall within the scope of its authority under Section 222 of the Communications Act in the broadband context. The Rural Representatives noted that while applying existing CPNI provisions originally intended for voice services to broadband services poses several challenges on its own,

¹¹ In September 28, 2015, JSI, NTCA, and WTA stated that the "Snapshot Rule," which requires Lifeline providers to report their number of Lifeline subscribers as of the first of each month, will result in a number of situations where RLECs provide Lifeline benefits to eligible low-income consumers without receiving reimbursement for such service. It could also result in discrepancies between the number of Lifeline customers RLEC ETCs report on FCC Form 497 and the number of customers receiving Lifeline discounted service on carriers' billing dates. Comments of John Staurulakis, Inc ("JSI"), NTCA, and WTA, WC Docket No. 11-42 (fil. Sep. 28, 2015).

of even more concern is the expansion of duties pursuant to Section 222(a) to require data security practices that the statute does not contemplate.¹² The Rural Representatives also expressed concern with respect to confusion over the interplay of broadband privacy requirements and ongoing, explicitly voluntary measures to ensure enhanced cybersecurity practices. Finally, the Rural Representatives noted that if the intent of the Commission's proposals were to protect consumer data, it seemed incongruous to focus only on the networks over which such data pass while ignoring altogether the very real and even larger risks resident in the use of such data by those with whom the consumer exchanges such data.

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/ Michael Romano
Michael Romano
Senior Vice President – Policy

cc: Amy Bender

¹² NTCA and WTA previously questioned the authority of the Commission under Section 222(a) and 201(b) to require Lifeline providers to implement specific security measures to protect Lifeline eligibility documentation provided by consumers in the enrollment process. Reply to Opposition of NTCA, WTA, and JSI, WC Docket No. 11-42 (fil. Oct. 19, 2015). To the extent that the Commission removes providers from the eligibility and enrollment process, the Commission should also eliminate the document retention rules.