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

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

REPLY TO OPPOSITION OF NTCA–THE RURAL BROADBAND ASSOCIATION AND WTA – ADVOCATES FOR RURAL BROADBAND

Pursuant to Section 1.429 of the Commission's rules, NTCA–The Rural Broadband Association ("NTCA")[1] and WTA – Advocates for Rural Broadband ("WTA")[2] respectfully submit this reply to the oppositions filed by Joint Consumers[3] and Joint Lifeline ETC Respondents[4] regarding the Petition for Reconsideration filed by NTCA and WTA of aspects of the *Third Report and Order* adopted by the Federal Communications Commission ("Commission") in the above-captioned proceeding.[5]

---

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 Consumer Groups Consolidated Opposition, WC Docket No. 11-42 (filed July 29, 2016) ("Consolidated Opposition").

4 Joint ETC Respondent Opposition, WC Docket No. 11-42 (filed July 29, 2016) ("Joint ETC Opposition").

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

The Commission should reject the arguments made by the authors of the Consolidated Opposition. First, the Consolidated Opposition fundamentally misunderstands the NTCA/WTA Petition in claiming it argues for "second class" broadband service for rural low-income consumers. To the contrary, the NTCA/WTA Petition simply highlights the reality that there still remain many rural areas today where even 4/1 Mbps speeds are unavailable to *any* customer – rich, poor, residential, or business. In the face of that reality, the NTCA/WTA Petition simply stands for the notion that, where a network to provide higher speeds literally does not exist for *any* customer, 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 that is actually available in that service area.

NTCA and WTA agree in principle with the authors of the Consolidated Opposition that "ease of administration [of the Lifeline program] should not come at the cost of ease of participation by eligible consumers."[6] Thus NTCA and WTA have throughout this proceeding sought changes to the administration of the Lifeline program that will both streamline and strengthen the eligibility verification process to in order to expedite the process for consumers and reduce burdens for providers. The NTCA/WTA Petition therefore assert that the new "rolling recertification" program only increases the burden on providers with no benefit whatsoever to consumers. At the same time, a return to the *status quo ante* will have no effect on consumers as they will only have to recertify their eligibility for the program once per year under either the "rolling recertification" or the rules as they existed before that provision was adopted. In other words, contrary to the misunderstanding

[6] Consolidated Opposition at 3.

of the Consolidated Opposition, grant of the NTCA/WTA Petition is effectively invisible to, and changes absolutely nothing from the perspective of, any Lifeline subscriber.

Finally, the Commission should abandon the 12-month port freeze that substantially reduces the ability for Lifeline consumers to seek alternatives in the event that they receive poor service or are otherwise unhappy with their original voice or broadband provider.

I. ALL LIFELINE-ELIGIBLE CONSUMERS SHOULD BE PERMITTED TO PARTICIPATE IN THE LIFELINE PROGRAM REGARDLESS OF WHERE THEY LIVE OR WHAT LEVEL OF SERVICE IS AVAILABLE FROM LOCAL PROVIDER(S).

Joint Consumers state that the Industry Petitioners (NTCA/WTA and USTelecom) request changes that would "leav[e] program participants with sub-par, 'second-class' service."[7] However, the consumer groups fundamentally misunderstand the NTCA/WTA Petition – or the state of broadband availability in some rural areas. The NTCA/WTA Petition is simply an attempt to ensure that the Lifeline program is structured in a manner reflective of "facts on the ground" and does not deny a low-income consumer a chance to procure broadband because the only choice available to *any* consumer in that area is broadband of less than 4/1 Mbps.

Specifically, the NTCA/WTA Petition highlights that minimum speed standards adopted in the Lifeline program must take into account the realities of network availability in areas supported (or not) by the High Cost program. It is an unmistakable and unfortunate fact that there continue to be some rural areas that lack networks capable of delivering even 4/1 Mbps speeds. Work is underway through a combination of high-cost USF programs and private capital to edge out better broadband across rural America, and RLECs in particular

---

[7] *Id*. at 2.

have done a commendable job deploying higher-speed broadband in the face of difficult economics and uncertain and underfunded High-Cost USF programs.

Thus, nothing in the NTCA/WTA Petition is intended to foist “sub-par” or “second class” type speeds upon low-income consumers. To the contrary, the associations are stalwart supporters of “reasonable comparability” as a statutory mandate, and they believe that even 10/1 speeds – which is all that the current High-Cost USF budget will allow – will prove insufficient over time to ensure “reasonable comparability” of both services and prices between rural and urban America. But the fact is that there are areas today where even 4/1 speeds do not exist, and to structure a Lifeline program to provide discounts for only 10/1 service is to say in effect that consumers in areas lacking even 4/1 can procure no broadband at all; this presumably is not a result the Joint Consumers intend or desire either.

The NTCA/WTA Petition therefore simply stands for the notion that pending a much needed comprehensive discussion of how true “reasonable comparability” can be achieved in *all* rural areas for *all* consumers under current high-cost USF budget constraints – 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 in that service area.

Additionally, the application of the 150 GB minimum usage allowance to providers that rely on satellite backhaul would result in significantly higher than average end-user rates that would be simply unaffordable for any consumer, let alone low-income consumers in those areas. To be clear, NTCA and WTA are generally supportive of the notion of such a minimum usage allowance, consistent with their overarching belief that consumers of all kinds – rural or non-rural, low-income or otherwise – deserve “reasonably comparable” service. But, as with the discussion above regarding speeds, there are places in the United States – such as parts of Alaska and other remote locations throughout the country – where, in the absence of improved funding for high-cost networks, consumers today do not have and will not in the foreseeable future enjoy access to networks that enable true "reasonable comparability" for *any* consumer in that area, low-income or otherwise. Thus, an exemption from the 150GB minimum data usage allowance requirement in the very narrow and limited case of rural Lifeline providers specifically utilizing satellite backhaul technology to deliver BIAS to rural consumers would ensure that low-income consumers living in extremely remote areas where terrestrial backhaul services are not available are able to enjoy Lifeline-discounted broadband service rather than locking them out of the program due to a lack of sufficient support for costly middle-mile infrastructure deployment. Lifeline providers lacking terrestrial backhaul should be permitted to offer a Lifeline-discounted BIAS service with a usage allowance commensurate with usage allowances generally available to their overall customer base.

NTCA and WTA wholeheartedly agree that "Lifeline subscribers are entitled to the same level and quality of service as every other subscriber"[8] and will continue to work with the Commission to ensure that support for carriers serving rural and remote areas is sufficient to ensure that reasonably comparable services and prices are available to rural consumers consistent with the principles of universal service established in Section 254 of the Communications Act, as amended. Permitting Lifeline consumers to apply their discount to any broadband service otherwise available to non-Lifeline consumers from a Lifeline provider will ensure that Lifeline consumers are treated the same as every other similarly situated subscriber.

[8] *Id.* at 7.

II. RETAINING ANNUAL RECERTIFICATION CONTINUES THE STATUS QUO AND WILL NOT BE CONFUSING OR BURDENSOME FOR CONSUMERS.

The Consumers Group Opponents also oppose the Industry Petitioners' calls for the Commission to allow Lifeline providers to continue recertification of their Lifeline customers by December 31 of each year, arguing that rolling recertification simplifies the recertification process for consumers.[9] However, NTCA and WTA simply seek to maintain the status quo with respect to recertification pending the establishment and implementation of a national verifier. This proposal would result in absolutely no change in the burdens on existing Lifeline consumers, as under either an end-of-year or rolling recertification approach, consumers would only need to recertify their eligibility once per year.

Given the current implementation timeline for the rolling recertification requirement, however, it is worth noting that some Lifeline consumers will be required to recertify more than once during 2017 depending on their initial Lifeline enrollment date. The Commission notes in the *Third Report and Order* that during the transition to rolling recertification, "subscribers will be recertified in a period ranging from six months to 18 months from the subscriber's last recertification."[10] Such an occurrence would appear to be at odds with Joint Consumers' proposition that a return to end-of-year recertification would be "inconvenient and confusing for eligible participants who could end up being forced to recertify multiple times a year."[11] Indeed, the Commission recognizes that some Lifeline subscribers will be required to recertify twice in a six month period. An abandonment of rolling recertification would preserve the existing

---

[9] *Id*. at 5.
[10] *Third Report and Order* at ¶ 418, n. 1041.
[11] Consolidated Opposition at 5.

recertification process with which consumer are familiar, including the frequency in recertification.[12]

Regardless of the merits of rolling recertification, the Commission must nevertheless reconsider and seek comment on a transition to rolling recertification because it failed to provide any reasonable notice of its intention to adopt or even consider such a change. As stated in the NTCA/WTA Petition, the Commission sought comment only on whether and how the National Verifier should perform recertification, not whether or how to change recertification as currently conducted by providers and/or USAC or another entity. As a matter of due process and compliance with the Administrative Procedure Act, the Commission must reconsider the rule because requiring Lifeline providers to conduct recertification on a rolling-basis cannot reasonably be said to be a "logical outgrowth" of proposals or questions regarding the scope of duties of the National Verifier.

Accordingly, NTCA and WTA again urge the Commission to reconsider its rolling recertification requirement and at a minimum delay its implementation until the National Verifier is launched and provider involvement in eligibility verification beyond claiming subscribers in the database is eliminated. Alternatively, the Commission should adopt an exception that permits small carriers for whom rolling recertification will be an increased burden to continue conducting recertification across its subscriber-base once annually while still allowing large carriers that would experience administrative efficiencies through rolling recertification to do so.

---

12 Similarly, under existing rules Lifeline providers are required to verify Lifeline-eligibility for each new Lifeline applicant and the applicant must provide personal information to each new provider. Therefore, requiring that participants recertify every time they switched providers would not be an additional burden or privacy risk to consumers but rather would continue the status quo. Speedy and effective implementation of the National Verifier should resolve these and similar concerns.

III. THE 12-MONTH PORT FREEZE REDUCES CONSUMER CHOICE BY LIMITING THE ABILITY TO SEEK ALTERNATIVES TO POOR SERVICE AND WILL BE DIFFICULT FOR LIFELINE PROVIDERS TO ADMINISTER.

Joint ETC Respondents oppose requests by NTCA, WTA and USTelecom for the Commission to reconsider the adoption of a 12-month benefit port freeze that would prevent low-income consumers from switching providers and retaining their Lifeline benefit in a given 12-month period.[13] Joint ETC Respondents state that the port freeze is a "win" for low-income consumers because consumers often make the trade-off of longer-term contracts or financing plans in exchange for more advanced handsets and better service plans and the port freeze serves a similar purpose.[14] Furthermore, Joint ETC Respondents allege that the port freeze "is essential for wireless providers to meet the broadband minimum service standards and handset requirements."[15]

Increasing consumer choice and reducing barriers to switching providers has long been a priority for the Commission and locking low-income consumers into 12-month contracts by definition limits consumer choice in contravention of these goals.[16] On the other hand, full benefit portability would ensure that every provider – in particular any new entrant into the Lifeline market – has the incentive to vigorously compete for potential subscribers, and that low-income consumers have the ability to seek alternatives to poor service without facing loss of

---

13 USTelecom seeks reconsideration of the broadband port freeze asserting that the Commission failed to provide adequate notice under the APA. See USTelecom Petition for Reconsideration, WC Docket No. 11-42, at 4-5 (filed June 23, 2016).

14 Joint ETC Opposition at 8-9.

15 Joint ETC Opposition at 7.

16 *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶ 81 (2015) (noting long-term contracts among "high switching costs consumer face when seeking a new service" and describing that "when consumers face this kind of friction in switching to meaningful competitive alternatives, it decreases broadband providers' responsiveness to consumer demands and limits the provider's incentives to improve their networks."); *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Notice of Proposed Rulemaking, WC Docket 16-106, FCC 16-39, ¶ 128 (rel. Apr. 1, 2016) (recognizing high switching costs as having a negative impact on broadband providers' incentives regarding use and disclosure of customer information).

their Lifeline benefit. To the extent that keeping a customer for 12 months is necessary for wireless ETCs to recoup the cost of a handset, this is a business choice of the ETC and it should not be enabled via an artificial regulator-mandated lock on the customer. To the extent that competition in the Lifeline program is the goal, the Commission's Lifeline program rules should focus on value to consumers and the program in terms of both price and service quality – and not just sheer numbers of providers willing to participate in the program. The ability of low-income consumers to shop for better service should they find their provider to be unsatisfactory, which in turn gives providers more incentive to better serve their customers, will further that goal better than a "port-freeze" that only benefits providers concerned about recovering investment incurred as part of entering the Lifeline market.

In addition, the Commission should dismiss the argument that the port-freeze is necessary and a "win" for low-income consumers because "[f]or most consumers, the trade-off of a longer-term contract or financing plan in exchange for a more advanced handset and a better service plan is a reasonable one."[17] This argument misses the fact that such a choice in terms of "locking in" a provider is one made *willingly* by consumers not participating in the Lifeline program as part of the trade off and that a significant portion of the consumers making that choice can still switch carriers despite the fees involved in doing so. Such options are not available to low income consumers under the port-freeze. Thus it hard to see how the port-freeze is a "win" for anyone other than providers. Finally, Joint ETC Respondents' reference to California's lack of a port-freeze as the root of increased fraud in that state's program is unpersuasive, particularly as the state has opted out of NLAD as Joint ETC Respondents note. The Commission should of course seek out every opportunity to root out fraud – and it has done

---

[17] Joint ETC Opposition at 8-9.

so admirably in recent years including the creation of the NLAD that has had a significant impact on reducing fraud.[18] But it is difficult to see how locking in large numbers of low-income consumers and preventing them from seeking better service should they be unsatisfied is an efficient approach to catching individual, isolated instances of fraud. The continued improvement of the NLAD, improved Commission oversight of NLAD opt-out states, as well as the national eligibility verifier designed in part to limit fraud, should be the Commission's focus as it continues its admirable efforts to root out fraud and ensure integrity in the use of ratepayer dollars.

Respectfully submitted,

NTCA–The Rural Broadband Association
By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President – Policy

By: /s/ Brian J. Ford
Brian J. Ford
Regulatory Counsel

4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
703-351-2000 (Tel)

WTA – Advocates for Rural Broadband
By: /s/ Derrick B. Owens
Derrick B. Owens
Vice President of Government Affairs

By: /s/ Patricia Cave
Patricia Cave
Director of Government Affairs
400 7th Street NW, Ste. 406
Washington, DC 20004

[18] Press Release, FCC, National Lifeline Accountability Database Up and Running (Apr. 3, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0403/DOC-326432A1.pdf (noting $169 million in annualized savings made possible by NLAD flagging existing duplicates and preventing enrollments of new duplicates).