

**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 THE NATIONAL ASSOCIATION OF STATE UTILITY  
CONSUMER ADVOCATES ON  
NOTICE OF PROPOSED RULEMAKING**

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## TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
II. THE JOINT BOARD’S RECOMMENDATIONS .....	2
III. FCC PROPOSALS .....	3
IV. PERFORMANCE GOALS .....	3
A. AVAILABILITY .....	3
B. SUBSCRIBERSHIP .....	4
C. AFFORDABILITY .....	5
D. SUFFICIENCY .....	6
E. BROADBAND PERFORMANCE GOALS .....	8
IV. IMMEDIATE REFORMS .....	9
A. DUPLICATE CLAIMS .....	9
B. PRO RATA REPORTING .....	10
C. TOLL LIMITATION .....	11
D. CUSTOMER CHARGES ELIGIBLE FOR LINK UP .....	12
E. CUSTOMER USAGE OF LIFELINE-SUPPORTED SERVICE .....	14
F. MINIMUM CUSTOMER CHARGES .....	15
G. AUDITS .....	16
V. CLARIFYING CONSUMER ELIGIBILITY RULES .....	17
A. ONE LIFELINE SERVICE PER RESIDENCE .....	17
B. DEFINITION OF RESIDENCE .....	18
VI. CONSTRAINING THE SIZE OF THE LOW INCOME FUND .....	19
VII. IMPROVING PROGRAM ADMINISTRATION .....	20
A. UNIFORM ELIGIBILITY STANDARDS .....	20

- B. CERTIFICATION AND VERIFICATION OF CONSUMER ELIGIBILITY FOR LIFELINE ..... 22
- C. SELF-CERTIFICATION..... 23
- D. COORDINATED ENROLLMENT..... 24
- E. NATIONAL DATABASE ..... 24
- VIII. CONSUMER OUTREACH & MARKETING..... 25
- IX. MODERNIZING THE LOW INCOME PROGRAM ..... 26
  - A. VOICE TELEPHONY SERVICE..... 26
  - B. SUPPORT AMOUNTS FOR VOICE SERVICE..... 27
  - C. MINIMUM SERVICE REQUIREMENTS FOR VOICE SERVICE ..... 29
  - D. SUPPORT FOR BUNDLED SERVICE..... 29
  - E. THE TRANSITION TO BROADBAND..... 30

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**I. INTRODUCTION**

On March 4, 2011, the Federal Communications Commission (“Commission” or “FCC”) issued a Notice of Proposed Rulemaking (“NPRM”) in these dockets. As described by the FCC, the context and purpose of the NPRM is:

For more than two decades, Lifeline and Link Up (together, “Lifeline/Link Up” or “the program”) have helped tens of millions of Americans afford basic phone service, providing a “lifeline” for essential daily communications as well as emergencies. But recent technological, market, and regulatory changes have put increasing strain on the program. Today, we begin to comprehensively reform and modernize the Lifeline and Link Up program. Building on proposals from the National Broadband Plan, as well as recent recommendations from the Federal-State Joint Board on Universal Service (“Joint Board”) and the Government Accountability Office (GAO), the reforms proposed here will significantly bolster protections against waste, fraud, and abuse; control the size of the program; strengthen program administration and accountability; improve enrollment and outreach efforts; and support pilot projects that would assist the Commission in assessing strategies to increase broadband adoption, while not increasing overall program size.<sup>1</sup>

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<sup>1</sup> FCC 11-32 (rel. March 4, 2011), ¶ 1, citing Federal Communications Commission, Omnibus Broadband Initiative, Connecting America: the National Broadband Plan (2010) (“National Broadband Plan”); *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Recommended Decision, 25 FCC Rcd 15598 (Jt. Bd. 2010) (“*2010 Recommended Decision*”); U.S. Government Accountability Office, Report to Congressional Requesters, GAO 11-11, Telecommunications: Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program (2010) (“2010 GAO Report”).

The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>2</sup> files these comments in response to the Commission’s request for comment. In many instances, NASUCA will simply refer the Commission to NASUCA’s prior comments on these issues, particularly those in response to the Joint Board’s 2010 request for comment on these issues.<sup>3</sup> NASUCA also attaches a copy of the June 2010 NASUCA resolution on Lifeline and eligible telecommunications carriers (“ETCs”) that is frequently referenced in the comments in response to FCC 10J-2.

## II. THE JOINT BOARD’S RECOMMENDATIONS

As described by the Commission,

[T]he Joint Board recommended that the Commission: (1) encourage automatic enrollment as a best practice for all states; (2) adopt uniform minimum verification procedures and sampling criteria that would apply to all ETCs in all states; (3) allow states to utilize different and/or additional verification procedures so long as these procedures are at least as effective in detecting waste, fraud, and abuse as the uniform minimum required procedures; (4) require all ETCs in all states to submit the data results of their verification sampling to the Commission, the states, and the Universal Service Administrative Company and make the results publicly available; and (5) adopt mandatory outreach requirements for all ETCs that receive low-income support and maintain advisory guidelines for states with respect to performing low-income outreach.<sup>4</sup>

The FCC seeks comment on these recommendations.<sup>5</sup> NASUCA provides comment in conjunction with the FCC proposals in the next section.

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<sup>2</sup> NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

<sup>3</sup> FCC 10J-2 (rel. June 15, 2010) (“Public Notice”), citing Order, FCC 10-72 (rel. May 4, 2010) (“*Referral Order*”).

<sup>4</sup> NPRM, ¶ 4, citing *2010 Recommended Decision*, 25 FCC Rcd at 15599, para. 2.

<sup>5</sup> NPRM, ¶ 4.

### **III. FCC PROPOSALS.**

The Commission, in conjunction with the Joint Board’s recommendations, makes its own proposals (which incorporate the Joint Board’s recommendations), as follows, and NASUCA comments on these issues.

### **IV. PERFORMANCE GOALS**

#### **A. AVAILABILITY**

The FCC proposes that its first performance goal be to preserve and advance the *availability* of voice service for low-income Americans.<sup>6</sup> “Availability” is defined as “access to voice service.”<sup>7</sup> While the goal is interesting, it is not one that should be imposed as an external measurement on the existing Lifeline program.

Telecommunications carriers have been required to make basic voice telephone service available to all portions of their monopoly service territories under state regulations. Federal statutes provide that all carriers receiving universal service funds (“USF”) are required to provide service throughout their service territories.<sup>8</sup>

If a state did away with its carrier-of-last-resort obligation and any requirements that carriers offer Lifeline service, there might be an issue regarding availability of Lifeline. It is likely, however, that any future market failure that might result in the absence of available voice service would be an issue applicable to all customers, and would not be restricted to low income customers.

If the Commission intends with this standard to differentiate between wireline

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<sup>6</sup> Id., ¶ 34 (emphasis added).

<sup>7</sup> Id.

<sup>8</sup> 47 U.S.C. § 214(e).

Lifeline – which seems to be universally available – and **wireless** Lifeline, or, more specifically prepaid wireless Lifeline, then that raises other issues. Prepaid wireless Lifeline is not available in all states, and not necessarily in all parts of the states where it is offered.<sup>9</sup> But the availability of prepaid wireless Lifeline service depends on the carriers’ selection of markets, and on state and federal regulatory processes; it would be difficult to make this availability a useful performance standard.

## **B. SUBSCRIBERSHIP**

In the context of availability, the FCC does, however, propose a target *subscribership* goal for low income households.<sup>10</sup> As described, the Commission proposes

to establish as an outcome measure the difference between voice service subscribership rates for low-income households eligible for the Lifeline and Link Up program and voice service subscribership rates for the households in the next higher income level as defined in the CPS. Based on the most recent information this would suggest a target subscribership rate for low-income households of 96.9 percent, which is the subscribership rate for households with incomes in the \$35,000-\$39,999 range.<sup>11</sup>

The proposal to adopt a subscription goal has merit, but the specific goal (of 96.9%) is problematic. Why should the goal be to achieve only the level of

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<sup>9</sup> There does not appear to be any central repository for this availability information.

<sup>10</sup> NPRM, ¶ 35. The Commission states that it “has historically measured telephone penetration, which measures voice service subscriptions, as a proxy for availability.” *Id.* This is somewhat misleading, as the WCB Report cited, as quoted in footnote 42 of the NPRM, implies that the analysis is more complex: “The specific questions asked in the [Census Bureau’s Current Population Survey] CPS are: ‘Does this house, apartment, or mobile home have telephone service from which you can both make and receive calls? Please include cell phones, regular phones, and any other type of telephone.’ And, if the answer to the first question is ‘no,’ this is followed up with, ‘Is there a telephone elsewhere on which people in this household can be called?’ If the answer to the first question is ‘yes,’ the household is counted as having a telephone ‘in unit.’ If the answer to either the first or second question is ‘yes,’ the household is counted as having a telephone ‘available.’”

<sup>11</sup> *Id.* (citations omitted).

subscriberhip of the next highest income level?<sup>12</sup> A better goal would be to achieve at least the average subscriberhip for all income levels above the level that makes a household income-eligible for Lifeline.<sup>13</sup>

Another problem is that the FCC subscriberhip report shows subscriberhip by household by income level and fails to capture the significant variation within those tables due to the failure to consider the number of persons in the household. For instance, the 2011 U.S. Federal Poverty Guidelines (“FPL”) established the poverty level used to calculate the 150% data based on the number of people in the household.<sup>14</sup> A family of two with income lower than \$22,065 falls below 150% of the FPL, while a family of six falls below 150% of FPL with a household income at or below \$44,985. Comparing subscriberhip by household income as compared to the poverty guidelines is an apples to oranges comparison.<sup>15</sup> The FCC should modify its data to identify the number of Americans falling below 150% of the FPL. The appropriate goal should be expressed in terms of a percentage of low income households falling below 150% of the current U.S. FPL.

### **C. AFFORDABILITY**

The FCC proposes a performance goal to ensure that low income customers can access supported services at rates that are affordable.<sup>16</sup> In the fifteen years that the FCC has been tracking universal service through subscriberhip and income data, there has

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<sup>12</sup> It would be as if, for broadband, the goal for unserved areas were to be to achieve the status of underserved areas.

<sup>13</sup> NASUCA is not able to calculate that number at present.

<sup>14</sup> Annual Update of the U.S. Dep’t. of Health and Human Servs. Poverty Guidelines, 76 Fed. Reg. 3,367, 3,637-38 (Jan. 20, 2011).

<sup>15</sup> The use of the income level for a family of four (NPRM, ¶ 35) would likely mask enough variation to make the performance measure of little value.

<sup>16</sup> Id., ¶ 36.

never been a corresponding comparison with rates. The directives of the 1996 Act referencing the goal of affordable rates have a clear connection between subscribership or penetration, rates and income.<sup>17</sup> A number of parties in the past have suggested that in managing universal service mechanisms consistent with the Act that a measurement including disposable income in comparison to rates is a valid data source that the Commission and the states could use to identify areas in need of additional support.<sup>18</sup> This is clearly not an issue applicable only to low income citizens, but also to all services that are subject to support from the USF. NASUCA agrees that the FCC should, at long last, begin tracking rates for all states and continue to aggressively track subscribership by income.

#### **D. SUFFICIENCY**

The FCC proposes to adopt a goal “to ensure that our universal service policies provide Lifeline/Link Up support that is sufficient but not excessive to achieve our goals.”<sup>19</sup> NASUCA is puzzled that the FCC is seeking a measurement that would basically be used as a reason to cap low income support because the FCC says it “must be mindful of the effects that expanded universal service mechanisms may have on consumers.”<sup>20</sup> In view of the “woeful under-subscription” in Lifeline by eligible low-income customers that NASUCA has noted,<sup>21</sup> it is difficult to imagine a Lifeline fund that would be excessive. The FCC references obligations of fiscal responsibility in this

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<sup>17</sup> 47 U.S.C. § 254(b)(1), (3).

<sup>18</sup> See, e.g., *First Report and Order*, ¶ 115.

<sup>19</sup> NPRM, ¶ 37.

<sup>20</sup> *Id.*

<sup>21</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, et al, Reply Comments of the National Association of State Utility Consumer Advocates in Response to Joint Board Request for Comment (July 30, 2010) at 3.

NPRM coupled with support “disbursed efficiently and effectively,”<sup>22</sup> and proposes use of a measurement goal for low income support calculated from a comparison of total households to low income support.<sup>23</sup> Such comparisons are of little value.

It must be recalled that Lifeline provides direct support to customers, as opposed to the substantially-higher support provided by the high-cost program. In that program, there is no necessary connection – except in certain states like Maine, West Virginia and Wyoming, as a result of state commission action – between the amount of support received by a carrier and the rates its customers pay.

The low participation rates in the Lifeline program by low income citizens constitute solid proof that we still have a long way to go. NASUCA supports measures to more effectively use existing Lifeline funding by the elimination of fraud, waste and abuse, while we would strongly oppose any move to even start in the direction of capping existing Lifeline programs and funding.

NASUCA proposes that the FCC should also track the percentage of Lifeline subscribers versus the number of Lifeline-eligible households. Another relevant data source that the FCC might consider would be a comparison of unemployment rates for Lifeline participants as opposed to the unemployment rates for all other Lifeline eligible low income households that do not participate in the Lifeline program. As noted by the FCC, the Commission should concentrate its efforts to establish performance goals based on data that is already, or readily available without imposing new regulatory burdens on the companies that provide Lifeline support.<sup>24</sup>

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<sup>22</sup> NPRM, ¶ 37.

<sup>23</sup> Id., ¶ 38.

<sup>24</sup> Id., ¶ 41.

## **E. BROADBAND PERFORMANCE GOALS**

The FCC seeks comment regarding broadband issues if broadband becomes a supported service.<sup>25</sup> If the definition of a supported service is modified to include broadband, then the FCC should establish a separate broadband fund with separate performance goals and objectives consistent with the Act. The Joint Board for Universal Service that is required to recommend changes to the definitions of supported services should be consulted in the development of adequate goals and objectives for the Broadband Fund that should be pursued in the public interest, consistent with the Act.

NASUCA should note that one of the goals announced by the Chairman with the release of the National Broadband Plan was a penetration rate for 100 Mbps service for 100 million Americans by a date certain. Long range universal service goals for the Broadband Fund should include far more than a single target. Goals should be established and monitored that include subscribership, offered and real speeds, rate affordability and comparability, low income penetration goals, availability and associated costs to name a few.

These goals for the Broadband Fund must be adopted first, before the dollars begin to be spent. Based on the data that has already been made available to the FCC, broadband subscribership is a more pressing issue than broadband deployment<sup>26</sup> and serious thought should be devoted to establishing performance goals that produce the greatest progress for the least amount of money, for all citizens and for low-income citizens as well. NASUCA sees none of these global issues teed up in either the current

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<sup>25</sup> Id., ¶¶ 43-45.

<sup>26</sup> See WC Docket 10-90, NASUCA Comments (April 18, 2011) at 49-57.

USF NPRM<sup>27</sup> or the Lifeline NPRM that are discussed in this document. NASUCA is concerned that the FCC is rushing to spend dollars on concepts and goals that are undefined and foggy at best, simply to spend available dollars that have been extracted from previous contributions to the existing voice fund, that could just as easily be returned to customers by a reduction in the contribution factor.

#### **IV. IMMEDIATE REFORMS**

##### **A. DUPLICATE CLAIMS**

NASUCA shares the Commission's concern about duplicate support<sup>28</sup> and supports adoption of a rule that would require all ETCs receiving federal Lifeline/Linkup support to provide formatted data to USAC to enable USAC to identify duplicate support at the same residential address. The data should be sufficient to identify duplicate support provided to the same household<sup>29</sup> or to the same person where Lifeline/Linkup support is provided to individuals residing in group homes.<sup>30</sup>

The FCC has already implemented procedures through USAC to resolve the issue of duplicate claims at the same address<sup>31</sup> and NASUCA supports the procedure that requires USAC to notify carriers in the event of duplicate support while requiring the carriers to notify the customer and resolve the issue. The FCC should be aware, however, that all efforts to resolve duplicate support payments involve administrative costs. The procedure already implemented by USAC represents additional enforcement cost

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<sup>27</sup> FCC 11-13.

<sup>28</sup> NPRM, ¶¶ 52-55.

<sup>29</sup> This includes data on unique residential addresses. *Id.*, ¶ 63.

<sup>30</sup> See the discussion on "households" in Section V.A. below.

<sup>31</sup> NPRM, ¶ 58.

obligations on the part of USAC that should effectively eliminate the problem.

ETCs should also be required to share the burden of dealing with their customers and eliminating violations of the “single support per residential address” rule. Requiring ETCs to notify the customer and eliminate duplicate support payments within a 30 days of notice should provide ETCs with additional incentives to take appropriate steps to avert duplicate claims in the first place.

NASUCA does not believe, however, that ETCs or their Lifeline customers should be penalized when duplicate support is being investigated. Therefore, a 30-day grace period following the date of notification to the ETC should be allowed. The FCC should consider automatically ceasing all Lifeline support payments following the 30-day notice to create an incentive for the two ETCs and the customer to resolve the problem. However, once resolved, the ETC selected to provide ongoing Lifeline service could be allowed to backdate the credit to the customer to the original date that the credit was removed and to submit requests to USAC for ongoing support. Offending ETCs that demonstrate a pattern of submitting duplicate support requests for Lifeline/Linkup support should be subjected to increased scrutiny via the USAC audit process. Punitive measures imposed on the assumption that the original duplicate support payment was somehow fraudulent, may be draconian. Prompt and decisive steps should be adopted, however, to deter repeat offenders and companies whose business plans may be inconsistent with the goals of the Lifeline program, particularly as they relate to the elimination of fraud, waste and abuse.

## **B. PRO RATA REPORTING**

The FCC discusses adoption of a clarifying rule to require ETCs to seek only Lifeline support from USAC that compensates the ETC for the actual number of days in a

month that the Lifeline service was provided (pro-rata billing).<sup>32</sup> NASUCA agrees that this rule should be adopted. Lifeline is a service and the Lifeline credit should be recoverable only for the actual number of days that the service is provided.

### **C. TOLL LIMITATION**

The FCC proposes to eliminate reimbursement for the cost of Toll Limitation Service, noting the significant variation in the “costs” that ETCs are currently receiving from USAC, ranging from \$0 to \$36 monthly.<sup>33</sup> NASUCA agrees with the FCC’s proposal to eliminate cost recovery for toll limitation services. There is a mountain of evidence in the FCC and within state regulatory bodies supporting the long-held ETC concept that the multiplicity of software-based service options that are offered by the ETCs are cost-free, or close to it. The current Lifeline rule provides that “Lifeline support for providing toll limitation shall equal the eligible telecommunications carrier’s incremental cost of providing either toll blocking or toll control, whichever is selected by the particular consumer.”<sup>34</sup> The fact that many ETCs have service offerings that include charges for toll limitation services does not mean that there are significant costs associated with the provision of toll limitation.

It must be stated, however, the requirement that companies be required to provide Lifeline service without a deposit is absolutely essential for the continued availability of Lifeline for millions of existing low income customers. All existing postpaid Lifeline customers may currently receive Lifeline service without payment of a deposit. ETCs protect themselves from perceived risk on an individual customer basis by blocking

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<sup>32</sup> Id., ¶¶ 65-67.

<sup>33</sup> Id., ¶¶ 68-70.

<sup>34</sup> 47 C.F.R. § 54.403(c).

more-costly long distance service. (Prepaid Lifeline service providers eliminate such risk by the very nature of their plan.) The FCC should continue to allow ETCs to implement toll limitation procedures to protect the carriers from unnecessary risk while guaranteeing that Lifeline customers will not be required to post a deposit for the provision of basic service with Lifeline support. The NASUCA position is based on the assumption that toll limitation is a procedure employed for the benefit of the ETC, not the customer. The purpose of toll limitation for the ETC that is providing a Lifeline service is for the benefit of the ETC. The purpose of toll limitation service as an option for non-Lifeline customers is for the benefit of the customers and most ETCs are allowed to provide such services at unregulated rates subject to little, if any, state regulation.

#### **D. CUSTOMER CHARGES ELIGIBLE FOR LINK UP**

The FCC asks for input on the compensation provided to ETCs under the Link Up program for the customary charges for commencing telecommunications service.<sup>35</sup> NASUCA is in agreement with the current rule that allows ETCs to “receive universal service support reimbursement for the revenue they forgo in reducing their **customary** charge for commencing telecommunications service....”<sup>36</sup>

The problem that has emerged in this part of the Lifeline program is the emergence of Lifeline-only wireless and Lifeline-only wireline resellers whose sole business is providing Lifeline service to low income customers. NASUCA believes that both the states and the FCC should pay more attention to the annual ETC certification process to ensure that Lifeline discounts are being paid to companies for both service installation and ongoing service at market rates that are not inconsistent with existing

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<sup>35</sup> NPRM, ¶¶ 71-79.

<sup>36</sup> 47 C.F.R. § 54.413(a) (emphasis added).

alternatives.

NASUCA agrees with the Commission’s proposed changes to the rule to include (a) defining “‘customary charge for commencing telecommunications service’ as the ordinary initiation charge that an ETC routinely imposes on all customers within a state”<sup>37</sup> and (b) making clear “that activation charges that are waived, reduced, or eliminated when activation is accompanied by purchase of additional products, services, or minutes are not customary charges eligible for universal service support.”<sup>38</sup> When postpaid wireline and wireless service providers require service activation charges from all of their customers, these should be recompensed as Link Up expenses. But when such charges are not imposed on all customers, they are not “customary.”<sup>39</sup>

Further, the Commission states,

In order to make Link Up reimbursement more transparent and limit potential waste of funds, we seek comment on whether we should require all ETCs seeking Link Up reimbursement to submit cost support to USAC for the revenues they forgo in reducing their customary charges. Since ETCs are required to keep accurate records of the revenues they forgo for Link Up, it may not be too burdensome to require the ETCs to submit such data to USAC.<sup>40</sup>

As with toll limitation, it would be appropriate for ETCs to be recompensed only for their costs – rather than their revenues – for activation charges.<sup>41</sup> But it would certainly be simpler for the Commission to establish a proxy cost for Link Up service activation fees that would be based on reasonable industry average rates developed by the FCC staff based on separate wireless industry averages and wireline industry averages.

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<sup>37</sup> NPRM, ¶ 73.

<sup>38</sup> Id., ¶ 74.

<sup>39</sup> Carriers that serve only Lifeline customers raise other issues. The Commission should look to these carriers’ affiliates, if any, to see what charges are imposed on customers subscribing to similar packages.

<sup>40</sup> Id., ¶ 79.

<sup>41</sup> Indeed, the issue is raised by NASUCA’s June 2010 Resolution whether all Lifeline reimbursements should be based on the costs of the services, rather than the revenues supposedly forgone.

In no event should the existing or proposed service establishment Link Up support paid by USAC be greater than the current \$30.00.

**E. CUSTOMER USAGE OF LIFELINE-SUPPORTED SERVICE**

The FCC proposes to eliminate Lifeline support for inactive customers.<sup>42</sup> The FCC's proposals in this regard are inappropriate for general application for Lifeline customers.

The Commission takes proper notice of the issue that has been confronted by many states with the filing of petitions by TracFone and Virgin Mobile to provide free prepaid Lifeline service in numerous states that are indentified in the NPRM.<sup>43</sup> Many states that received the petitions to provide prepaid Lifeline service were concerned about the implications of providing free service that is totally funded by the Universal Service Fund. Concerns were expressed about the possibility that the Lifeline recipient might sell the phone with available minutes or not live at the physical address provided at the time of the application. These concerns surrounded the need for appropriate controls to prevent fraud, waste and abuse within these new prepaid wireless Lifeline programs, while simultaneously recognizing the woeful failure of traditional ETCs to enroll a significant proportion of existing low income citizens in the Lifeline program.

NASUCA agrees with adoption of a rule that would require elimination of support for any prepaid wireless Lifeline customer who fails to use the service for a 60 or 90 day period of time. Indeed, it would make sense to remove any period of non-usage beyond the first thirty days from the prepaid wireless carrier's USAC reimbursement.

However, the FCC proposal to extend the rule to postpaid customers is directed

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<sup>42</sup> Id., ¶¶ 80-84.

<sup>43</sup> Id., ¶ 81.

toward a problem that does not exist. Traditionally, postpaid wireline customers receive a Lifeline credit for a portion of their total service charges. Whether the customer uses the service or not during any given period of time is totally irrelevant. This is in part because the Lifeline customer continues to be liable for the remainder of the bill for service, and if that bill is not paid will be disconnected. NASUCA is not aware of any existing or potential abuse that has been observed where wireline Lifeline customers have continued active service while not using their phones. USAC audits should be stepped up to identify wireline ETCs that fail to take Lifeline customers off their rolls if such non-usage is determined to be a major problem.

#### **F. MINIMUM CUSTOMER CHARGES**

The FCC requests comment on whether “to adopt a rule requiring all ETCs in all states to collect some minimum monthly amount from participating households.”<sup>44</sup> Although the notion of requiring all Lifeline customers to “have some skin in the game” may have some superficial attractiveness, that superficiality is far outweighed by the very real fact that the recent substantial growth in Lifeline subscription has been almost entirely the result of the availability of prepaid wireless service that is provided at no up-front cost to the Lifeline customer.<sup>45</sup> For the Commission to assume that such payments are needed “to ensure that Lifeline consumers genuinely want phone service”<sup>46</sup> is an unreasonably paternalistic attitude; as if a customer would obtain this vital means of communication frivolously and merely because it is free. Likewise the assumption that such payments are required to ensure “that low-income households have the incentive to make

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<sup>44</sup> Id., ¶ 86.

<sup>45</sup> See id., ¶ 27. These customers do incur charges if they want to use more than the carrier-allotted number of minutes or to use services that are not included in the carrier’s Lifeline plan.

<sup>46</sup> Id., ¶ 87.

appropriate use of their Lifeline-supported services....”<sup>47</sup>

The households at issue here are those whose every spending decision is constrained by their meager income. NASUCA sees no reason why, if carriers are able to offer service without charge to the Lifeline customer – with an assurance that the customers who pay into the USF are receiving fair value for their support – there should be a payment requirement for the Lifeline customers. There has been absolutely no showing that such payments are necessary “to guard against waste, fraud, and abuse in the Lifeline program....”

The various proposals for such minimum fees – whether “\$1 or some other [monthly] amount,”<sup>48</sup> or “half of the customary monthly Lifeline charges or half of the maximum subsidy provided for under our rules, whichever is less”<sup>49</sup> or “\$10 or \$15, on a one-time basis from each Lifeline household prior to commencing Lifeline service”<sup>50</sup> or an “amount vary[ing] based on the income of the qualifying low-income household”<sup>51</sup> – each have issues that make their imposition problematic, especially given the lack of showing for their necessity. In the end, it is likely that any such charge would have the effect of “detering eligible consumers from participating in the program”<sup>52</sup> and “create an unreasonable barrier to enrollment for households that need support but cannot afford to pay any fee....”<sup>53</sup> These proposals should not be adopted.

## **G. AUDITS**

The FCC discusses the need for increased audit activities to ensure that the USF provides support to recipients “to confirm that the right recipient is receiving the right

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<sup>47</sup> Id., ¶ 86.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id., ¶ 87.

<sup>51</sup> Id., ¶ 88.

<sup>52</sup> Id., ¶ 86.

<sup>53</sup> Id., ¶ 88.

payment for the right reason at the right time.”<sup>54</sup> NASUCA encourages the FCC to pursue this goal while protecting the USF from inadequate ETC procedures and protecting consumers from fraud and abuse. The USF must be protected by USAC, the FCC and the states from fraud, waste and abuse. Failure to protect the fund from fraud, waste and abuse results in increased costs for the consumers who support the fund. NASUCA applauds the Commission’s desire to extend and expand its surveillance over expenditures for this critical support.

## **V. CLARIFYING CONSUMER ELIGIBILITY RULES**

### **A. ONE LIFELINE SERVICE PER RESIDENCE**

The FCC seeks comment on the existing rule that limits Lifeline support to a single primary residential location.<sup>55</sup> While the goal of universal service is, at present, achievement of universal **voice** service, there is reason to believe that the Commission may soon include mobility and broadband along with voice service within the definition of supported services and, equally important, establish goals to achieve ubiquitous deployment of all three services.<sup>56</sup> The difficulty comes in attempting to make a clear distinction between the three. In today’s world, voice service may stand alone as a mobility or wireline service, or be coupled together with a broadband service that could be delivered by wireline or wireless infrastructure.

For Lifeline purposes, NASUCA believes that the program adopted by the Commission must be based on practical conclusions that are constrained by questions as

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<sup>54</sup> Id., ¶¶ 95-99.

<sup>55</sup> Id., ¶¶ 103-125.

<sup>56</sup> As discussed in NASUCA’s comments in WC Docket 10-90 (filed on April 19, 2011) at 27-35, support for broadband raises significant legal issues.

to how best to effectively administer the program in order to preserve and expand universal service while protecting the fund from fraud, waste and abuse. From a practical standpoint, a single Lifeline credit should be administered on a “One Per Residence” basis, but that the credit itself must consider the actual level of supported service that is provided to the customer. Thus, there would be one credit per household, but the credit could be different if the Lifeline customer received voice service only, as opposed to voice and broadband combined or for wireless service.

## **B. DEFINITION OF RESIDENCE**

As to the issue of the definition of a residence,<sup>57</sup> NASUCA is of the opinion that the greatest challenge for the states and the FCC is to develop an adequate system to encourage the provision of mobility services for a homeless population that lacks a primary residence. There are other “non-traditional” living arrangements that also may run afoul of the one-per-residence rule and deny eligible Lifeline customers access to telecommunications services.<sup>58</sup> NASUCA would encourage the FCC in this proceeding to take a position that encourages the states to adopt their own procedures and controls to extend Lifeline coverage to the homeless and others in non-traditional living arrangements with a flexible approach similar to that that has already been extended to Tribal Lands.<sup>59</sup>

NASUCA recommends specifically that flexible options be adopted by the Commission that would exclude the homeless from the specific rules adopted relating to

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<sup>57</sup> NPRM, ¶¶ 111-116.

<sup>58</sup> Id., ¶ 117. Although the Commission describes this as a “zoning” issue (id.), it seems clear that the issue is one where or more individuals represent a single “household” with more than one such “households” residing at the same address.

<sup>59</sup> See id., ¶ 119.

the definition of a residence. Further, residents of group homes who qualify for Lifeline support should not be excluded by any rule adopted by the Commission that would otherwise enable ETCs to offer the service to low-income consumers. The Commission should adopt new rules to accommodate residents of group homes.

## **VI. CONSTRAINING THE SIZE OF THE LOW INCOME FUND**

The FCC proposes that the existing Lifeline program be capped at the 2010 level of disbursements, while simultaneously proposing the development of a new broadband Lifeline program that would be disbursed to broadband subscribers for broadband purposes that do not qualify for support under existing rules and the Act.<sup>60</sup> NASUCA takes issue with the FCC's proposal to cap the Lifeline program that directly benefits low income consumers. The Commission has spent over a decade talking about, but doing little or nothing to eliminate waste, fraud and abuse by reforming the high cost fund that benefits ETCs.

The high-cost fund and the Lifeline program are entirely different programs that are aimed at different mandates embodied in the Act. CETC support from the high-cost fund was capped in order to provide time to deal with reform of a system that is "broken" and that often directs public funding to the wrong places at the wrong time and to the wrong people. Thus the cap was needed, to save the fund from excess. The low-income fund, conversely, is "threatened" because it has finally become successful in providing communications services to low-income Americans that they need and prefer. Instead of congratulating the ETCs – and the states that have authorized them<sup>61</sup> – that are providing

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<sup>60</sup> Id., ¶¶ 142-149.

<sup>61</sup> Of course, this Commission has also authorized such ETCs.

an essential public service, we somehow have come to the point where the FCC seeks to put a halt to Lifeline expansion because success is finally being achieved in reaching a long sought goal.

NASUCA believes that it is the job of the FCC, and states as well, to be thoroughly immersed in the development of appropriate rules to manage the Lifeline program effectively. Consumer advocates that include NASUCA and many others have been making suggestions for years to improve the Lifeline subscribership rates for low income consumers, consistent with the goals of the Act.

As discussed in Section IV.D., above, NASUCA knows of no rational process that the FCC can adopt to place a cap on Lifeline funding without harming low income consumers. Capping the fund would either deny additional eligible consumers access to Lifeline service, or would reduce the benefits to each customer enrolled.<sup>62</sup> Either measure would harm the low-income customers who are eligible for Lifeline.

Adopting a cap will not reduce the need to adopt fair and reasonable procedures to reduce or eliminate opportunities for waste, fraud and abuse of the Lifeline program. Contrariwise, adopting such measures to counter waste, fraud and abuse should obviate the need for a cap.

## **VII. IMPROVING PROGRAM ADMINISTRATION**

### **A. UNIFORM ELIGIBILITY STANDARDS**

The FCC proposes the adoption of uniform federal eligibility criteria for all states, and seeks comments on whether to allow states to individually adopt more permissive

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<sup>62</sup> The latter has been the impact of the cap on CETC funding in the high-cost fund.

criteria.<sup>63</sup> The NPRM also seeks comment on changing the default income eligibility criteria from 135% to 150%.<sup>64</sup>

A federal mandate requiring uniform eligibility standards for all states would be based on the logic that Lifeline is a federal program using federal funds and that it is the FCC's choice as to whether to implement federal standards or not to do so. NASUCA agrees with this logic. In the earlier days of Lifeline when all parties were seeking to find better ways to administer the program, states were encouraged to try new ideas and sharing of those ideas was encouraged in order to develop a set of best practices. Today, however, Lifeline administrators have tried a significant number of different approaches to most effectively and efficiently manage the Lifeline program. Some have failed. Many more have worked. It would appear that the time has now come to adopt a new program that is consistent for all. There are numerous reasons why nationwide conformity is appropriate, not the least of which is the fact that all states and all customers contribute to universal service.<sup>65</sup>

NASUCA also supports the concept that Lifeline should be expanded to serve a larger percentage of the low income base than is presently the case. While Lifeline subscribership is below 10 million customers today, as many as 25 to 30 million households may fall below the poverty level and be eligible for Lifeline support.

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<sup>63</sup> Id., ¶¶ 150-157.

<sup>64</sup> Id., ¶ 157.

<sup>65</sup> This uniform federal standard would apply to Tier One and Tier Two Lifeline service, where all the reimbursement comes from the federal fund. 47 C.F.R. § 54.403(A)(1) and (2). In Tier Three, the state contributes, with matching funds from the federal fund. 47 C.F.R. § 54.403(A)(3). It might be possible for a state that makes Tier Three contributions to be able to seek a waiver from the eligibility rule to have more restricted eligibility for its contribution. Such states should still be required to provide for Tier One and Tier Two Lifeline under the federal eligibility standard. Given that, overall, the total federal contribution is substantially larger than the Tier Three state contribution, the ease of standardization would justify a uniform national eligibility standard even for Tier Three.

Uniform Lifeline standards will make it easier and less costly for multi-state companies to provide Lifeline service. Thus, there would be an intrinsic incentive for companies to offer Lifeline services in their respective markets if the administrative expenses were lower, rather than higher.

**B. CERTIFICATION AND VERIFICATION OF CONSUMER ELIGIBILITY FOR LIFELINE**

The FCC proposes modifications to the certification and verification process that would require elimination of self-certification for all Lifeline applicants and implement a uniform national standard for default states and others, including a requirement that customers who are initially certified or subject to annual verification must affirm that only one Lifeline credit is being received per household.<sup>66</sup> The FCC proposes to eliminate all self-certification of eligibility and to require submission of an eligibility form for every new Lifeline applicant, and the rule proposal would require submission of the same form annually by the customer affirming that Lifeline credits are limited to one per household.<sup>67</sup>

These proposals would seem to ignore the fact that many commenters have already proposed the creation of a national data base, and that a number of states are already managing the eligibility screening process electronically, with some states having implemented a coordinated enrollment process. This FCC proposal also ignores the potential for USAC to screen for duplicate support at the same address, a process that would obviate the need to require customers to sign a paper and mail it back to their Lifeline provider to certify that only one Lifeline credit is being received per household.

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<sup>66</sup> NPRM, ¶¶ 158-171.

<sup>67</sup> Id., ¶¶ 167-171.

USAC screening or a national database could eliminate duplicate support. A form signed by a customer *might* eliminate some duplicate support but it will not eliminate outright fraud. NASUCA believes that the FCC should concentrate on automatic enrollment and electronic databases to confirm eligibility and eliminate duplicate support in a more cost-effective process. We await comment from Lifeline service providers regarding these proposals and we expect to visit this issue further in our reply.

### C. SELF-CERTIFICATION

The FCC proposes “to eliminate the self-certification option and require all consumers in all states to present documents to establish eligibility for the program.”<sup>68</sup> The Commission is “concerned that the self-certification process does not provide adequate assurance that support is being provided only to qualifying customers.”<sup>69</sup> This self-certification process is available only for customers who participate in certain federal assistance programs.<sup>70</sup>

In the first place, the FCC apparently has no data whatsoever on the number of customers who self-certify programmatic eligibility for Lifeline but turn out not to be receiving benefits from the program claimed.<sup>71</sup> That is not exactly a “data-driven” basis for a regulatory decision.

Given that the Commission has no idea of the size of the problem with current self-certification, the proposals to require documentation for enrollment from all Lifeline

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<sup>68</sup> Id., ¶ 170.

<sup>69</sup> Id.

<sup>70</sup> Id., ¶ 161. NASUCA does not object to the current rule that requires customers who claim eligibility based on income to provide documentation.

<sup>71</sup> There does appear to be data that, when reverification is undertaken, a significant number of Lifeline customers **fail to reverify**. This failure does not mean, of course, that these customers were ineligible either when they first enrolled or when asked to reverify.

customers are more than problematic. Among other things, the proposals would eliminate on-line and telephonic enrollment, or, at best, would delay the Lifeline customer's service until the documentation is provided.

#### **D. COORDINATED ENROLLMENT**

The FCC requests further comment on the process of coordinating enrollment in Lifeline with state and federal agencies that administer programs that qualify customers for Lifeline service.<sup>72</sup> The FCC should recommend this as a “best practice.” However, the FCC also asks whether it should mandate such coordination.<sup>73</sup> and NASUCA does not believe that the FCC has the power to mandate such activity through state government agencies that are not subject to FCC regulation.

#### **E. NATIONAL DATABASE**

The FCC seeks comment on its proposal to create a national database to verify consumer eligibility, track verification and check for duplicates to ensure greater program accountability.<sup>74</sup> The implementation of an automated system to determine eligibility would apparently require uniform eligibility standards if implemented on a national basis. The system must be capable of receiving automated input from state and federal agencies that are responsible for enrollment in Lifeline. And, finally, the system should be accessible by Lifeline service providers who should deal with Lifeline applicants in the processing of their service applications.

Some ETCs would propose that administration of the Lifeline program should be administered by state and federal agencies and that a governmental agency should be

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<sup>72</sup> Id., ¶¶ 199-204.

<sup>73</sup> Id., ¶ 201.

<sup>74</sup> Id., ¶¶ 205-222.

responsible for customer contacts and processing of the customer application for Lifeline eligibility. NASUCA suggests that the motivation of some service providers to assign the responsibility for Lifeline program management may be self-serving. NASUCA believes that the obligation of an ETC to provide Lifeline service throughout its service territory represents a critical national priority that is embodied in the Telecommunications Act. NASUCA further believes the ETC benefits that are liberally spread throughout the Telecommunications Act must be coupled with multiple obligations that are in the public interest, not the least of which is the expectation that each ETC will implement procedures to promote continued availability of Lifeline service to all low-income Americans. We believe that the national database being considered by the FCC should be coupled with an obligation for each ETC to manage its own Lifeline program to achieve the requirements of the Act. This expectation includes processing the customer application for service, providing an interface with the customer and coordinating the eligibility verification process to its conclusion.

It goes without saying that NASUCA would emphasize the need to maintain consumer privacy as a high priority in the establishment of a national data base. Therefore, any plan that is adopted must include sufficient controls that allow customers to provide documents needed to establish a financial relationship with a service provider and qualify for Lifeline without fear of losing the confidentiality contained in the data to third parties.

## **VIII. CONSUMER OUTREACH & MARKETING**

The FCC requests comment on the appropriate methods that should be adopted to satisfy the Commission's requirements for ETCs to advertise the availability of services

supported by universal service funds.<sup>75</sup> NASUCA endorses the proposals of the Joint Board that have been recommended to the FCC as an appropriate approach to the requirement that ETCs advertise the availability of Lifeline service throughout the ETC service area.<sup>76</sup> Clearly, it is the goal of the FCC in this portion of the NPRM to advertise, promote and expand Lifeline availability and subscribership among low income citizens. NASUCA would point out that these outreach proposals are not consistent with the proposal to cap Lifeline funding.

NASUCA would add that the Telecommunications Act places the obligations associated with universal service on both state and federal regulators. Lifeline outreach is a process that lends itself to state regulatory oversight. The FCC should establish standards for outreach and look to the states to implement those standards as part of the state responsibility for ETC certification.

## **IX. MODERNIZING THE LOW INCOME PROGRAM**

### **A. VOICE TELEPHONY SERVICE**

The FCC proposes adoption of a new definition of Lifeline to include the availability of “voice telephony service.”<sup>77</sup> The FCC proposes to adopt “voice telephony” within the definition of supported services, as a replacement for the existing definition that includes the nine functionalities associated with basic service.<sup>78</sup> NASUCA believes that the elimination of functionalities from the definition of supported services is a mistake and that “voice telephony service” is a term without meaning that will lead to

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<sup>75</sup> Id., ¶¶ 226-238.

<sup>76</sup> *2010 Recommended Decision*, 25 FCC Rcd at 15619, ¶ 60.

<sup>77</sup> Id., ¶¶ 239-244.

<sup>78</sup> Id.,

future confusion in the administration of the universal service program. One thing that has been learned in the years following the adoption of the '96 Act is that vague and undefined statutory and rule language inevitably leads to unintended consequences.

For example, as stated in NASUCA's comments in WC Docket 10-90 (filed on April 19, 2011),

The [*USF/ICC Transformation Notice*] by redefining supported voice services as "voice telephony services," opens the door for degraded levels of service. The NPRM indicates that USF recipients could partner with satellite service providers who offered "voice telephony services." The Commission should reject the use of satellite services to provide supported voice services. Current satellite voice services are subject to signal propagation delays that reduce call quality, and interfere with communication. While it may be the case that in competitive markets for products and services, some consumers choose lower quality at a lower price, the market envisioned by the NPRM will continue to be a monopoly market. Consumers subscribing to the supported service will have no choice, and it would not be in the public interest for the Commission to force consumers residing in high-cost areas to subscribe to low-quality voice services.<sup>79</sup>

Although there has been no hint that satellite providers will seek to offer Lifeline, the implications of this definitional change for Lifeline are unclear. NASUCA is comfortable with the definitional language as it stands.

## **B. SUPPORT AMOUNTS FOR VOICE SERVICE**

The FCC seeks input as to the existing four-tier support mechanism that is embedded in the Lifeline rules.<sup>80</sup> NASUCA believes that the various ETCs providing Lifeline service today will provide comments that will be useful in responding to this portion of the NPRM. Nevertheless, NASUCA would note that the current 4-tier support structure continues to be relevant and adequate for traditional ILEC service providers. Historically, ILEC Lifeline customers may have been considered a captive market by the ILECs. However, the popularity of prepaid wireless service among low income

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<sup>79</sup> WC Docket 10-90, NASUCA Comments (April 18, 2011) at 70 (footnotes omitted).

<sup>80</sup> NPRM, ¶ 245-251.

consumers and the rise of competitive Lifeline-only service providers may be erasing any notions the ILECs have regarding captive customers.

Competition is good for customers. The growth of prepaid wireless Lifeline offered by Lifeline-only service providers may be ascribed to the simple fact that a company with a business plan to promote Lifeline may do a better job than a company that perceives Lifeline only from the viewpoint that it is a statutory obligation to provide the service. NASUCA believes the Commission should continue to support alternatives for expanding Lifeline with the goal to achieve a higher percentage of Lifeline penetration within low income households than the existing 36% participation rate that was reported by USAC for 2009. Competitive Lifeline-only companies should have the opportunity for comparable support. Both the FCC and the states should ensure that competitive Lifeline service providers are required to pay all applicable state and federal fees and that supported services are comparable to those that are contained within the existing definition of supported services.

There is an issue for these prepaid wireless companies with regard to Tier Three support, however. As mentioned above, Tier Three requires a state contribution for the federal matching funds. In some areas this may be an actual contribution from the state; it may also be a contribution from the provider. For traditional wireline service, the “contribution” is typically an additional discount off the retail price of the service. For the prepaid wireless providers, however, there **is** no retail price for the service; that is, the carrier offers no services other than the “free” Lifeline service. Thus the source and the amount of the state (or carrier) contribution is not at all clear.

### **C. MINIMUM SERVICE REQUIREMENTS FOR VOICE SERVICE**

The FCC seeks comment on the need for minimum service standards for prepaid Lifeline service providers.<sup>81</sup> NASUCA supports the need for a minimum standard that would achieve comparable service capability along with comparable support between traditional ILEC and competitive prepaid wireless Lifeline service providers. Aspects of such comparable capabilities are set forth in the attached NASUCA resolution.

### **D. SUPPORT FOR BUNDLED SERVICE**

The FCC seeks comment on amending the Commission's rules to require that the Commission adopt a uniform federal requirement that Lifeline and Link Up discounts may be used on any calling plan offered by an ETC with a voice component, including bundled service packages.<sup>82</sup> NASUCA supports this proposal.

Prohibiting low income consumers from receiving Lifeline discounts on bundled services provided by ETCs that include a basic local service component is discriminatory. Low income consumers should have the same rights as all subscribers to purchase the communications services they need and want. Low income consumers should not have to forgo the receipt of Lifeline support that they are entitled to, simply because they need or want to purchase additional services from their ETC provider.

The FCC also asks whether allowing low income consumers to choose from an array of expanded packages creates a greater likelihood that Lifeline and Link Up consumers may be unable to pay for the remaining portion of their chosen calling plan.<sup>83</sup> Neither the federal government nor the states should dictate to low- income citizens how

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<sup>81</sup> NPRM, ¶¶ 252-254.

<sup>82</sup> NPRM, ¶¶ 255-263.

<sup>83</sup> Id., ¶ 263.

much money they should be spending and for what purpose. Nonetheless, as stated in the NASUCA resolution, the FCC should direct the states to study whether, in fact, Lifeline customers with bundles are disconnected at a significantly higher rate than those without bundles. If such higher levels of disconnection turn out to be the case, the Commission may consider further action to ensure that Lifeline customers maintain their connections to the telecommunications network.

#### **E. THE TRANSITION TO BROADBAND**

The FCC discusses the transition to broadband and proposes that the definition of Lifeline service be revised to include broadband support while also proposing the adoption of a Broadband Lifeline Pilot.<sup>84</sup> NASUCA opposes any use of universal service funds for any purpose that is not included in the current definition of supported services as prescribed by the Act. Thus, changing the definition of Lifeline service to include broadband would be simply an end-run around the problem facing universal service support for broadband under § 254. These definitional issues were discussed at length in NASUCA's recent WC Docket No. 10-90 comments<sup>85</sup>; that discussion will not be repeated here.

Lifeline support is universal service. The FCC has no choice but to change the definition of supported services to include broadband if it seeks to use universal service dollars to support Lifeline for broadband services.

Notwithstanding these barriers to the FCC's broadband Lifeline proposals, NASUCA would take note that the measure of progress in achieving the goal of universal service for "voice telephony" (as the Commission now wants to characterize what we all

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<sup>84</sup> NPRM, ¶¶ 266-302.

<sup>85</sup> WC Docket 10-90, NASUCA Comments (April 18, 2011) at 27-35.

know as “POTS”) is subscribership. When the Commission retargets the USF goals to include broadband services, then subscribership is the measure of success or failure. The lack of subscribership can be attributed to the lack of availability or affordability, or both.

In this section of the NPRM, the Commission lays out the fundamental case for the lack of subscribership among low income households. Rather than to simply aim to introduce a Lifeline program for broadband, USF managers must first determine that broadband is essential to the public health, safety and welfare, determine an ultimate goal for subscribership, determine how much money and how long it will take to achieve the ultimate goal, and then set priorities that must be balanced between infrastructure support and low income support. NASUCA would suggest that an unbiased review may reveal that expenditures for low income support may have more “bang for the buck” than many infrastructure expenditures. FCC trials may assist in the development of coordinated plans that should be adopted to prioritize spending for the purpose of increasing broadband subscribership.

On a related note, the FCC proposes use of universal service funds to support non-ETC funding for the broadband pilot.<sup>86</sup> NASUCA assumes that some portion of any broadband service provided in a pilot broadband project would involve a communications component, but: Non-ETCs have no obligation to serve; non-ETCs have no obligations to consumers; and non-ETCs have no regulators to report to. In the end, non-ETCs are not eligible to receive universal service support.

The FCC also seeks comment on the use of USF support for a broad list of possible purposes, including installation fees, activation fees, other upfront cost,

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<sup>86</sup> NPRM, ¶ 293.

hardware costs, aircards, modems, laptops, desktops , other mobile devices, training, outreach, testing, training and equipment costs.<sup>87</sup> NASUCA would warn against use of any universal service funding for any costs or services that are not part of a basic broadband service that is provided by an ETC. The laundry list of possible support should be rejected by the FCC and universal service funding mechanisms should be designed along the traditional Lifeline procedures that are applicable to “voice telephony”.

In no case should any broadband expenditures from universal service funding be allowed absent the collection of broadband contributions from the service providers who benefit from broadband support. That means that if any broadband service provider receives support via a broadband pilot, that the revenues collected in the broadband pilot area must be subject to the universal service contribution factor.

Respectfully submitted,

*/s/ David C. Bergmann*

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<sup>87</sup> Id., ¶ 296.