

## **FCC FACT SHEET\***

### **Bridging the Digital Divide for Low-Income Consumers**

Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry – WC Docket Numbers 17-287, 11-42, and 09-197

**Background:** The Lifeline program helps bring affordable voice telephony and high-speed broadband to low-income households. In this item, the Commission takes a fresh look at the program to focus on how the program can more effectively and efficiently help close the digital divide by directing Lifeline funds to the areas where they are most needed. The item also seeks to ensure that the Lifeline program operates consistent with the authority granted to us by Congress in the Communications Act, provides greater certainty to providers and consumers alike, and addresses ongoing waste, fraud, and abuse that undermines the integrity of the program and limits its effectiveness.

### **What the Fourth Report and Order, Order on Reconsideration, and Memorandum Opinion and Order (Orders) Would Do:**

- Target enhanced Lifeline support to residents of rural areas on Tribal lands, establish mapping resources to identify rural “Tribal lands” for enhanced Lifeline support, require independent certification of residency on rural Tribal lands, and direct enhanced support to facilities-based providers.
- Increase Lifeline benefit portability by eliminating the port freezes for voice and broadband Internet access services.
- Clarify that “premium Wi-Fi” and other similar networks of Wi-Fi-delivered broadband Internet access service do not qualify as mobile broadband under the Lifeline program rules.

### **What the Notice of Proposed Rulemaking (NPRM) Would Do:**

- Seek comment on ending the preemption of states’ role in designating certain eligible telecommunications carrier (ETC) designations, and removing the Lifeline Broadband Provider designation.
- Propose to target Lifeline funds to facilities-based broadband-capable networks offering both voice and broadband services.
- Propose to adopt a self-enforcing budget cap for the program.
- Seek comment on improvements to the eligibility verification and recertification processes to end the waste, fraud, and abuse that have been too common in this program since 2009.

### **What the Notice of Inquiry (NOI) Would Do:**

- Seek comment on potential changes to the Lifeline program funding paradigm to more efficiently target funds to areas and households most in need of help in obtaining digital opportunity.

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\* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 17-287, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. *See* 47 CFR § 1.1200 *et seq.*

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Bridging the Digital Divide for Low-Income Consumers	)	WC Docket No. 17-287
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197

**FOURTH REPORT AND ORDER, ORDER ON RECONSIDERATION, MEMORANDUM  
OPINION AND ORDER, NOTICE OF PROPOSED RULEMAKING, AND NOTICE OF  
INQUIRY\***

**Adopted:** [ ]

**Released:** [ ]

**Comment Date:** [ ]

**Reply Comment Date:** [ ]

By the Commission:

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\* This document has been circulated for tentative consideration by the Commission at its November open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s *ex parte* rules apply and presentations are subject to “permit-but-disclose” *ex parte* rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

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## I. INTRODUCTION

1. Today, the Commission takes a fresh look at how the Universal Service Fund's (USF or Fund) Lifeline program can effectively and efficiently help close the digital divide for low-income consumers. Our efforts are three-pronged. First, we seek to direct Lifeline funds to the areas in which they are most needed, to encourage investment in networks that enable 21<sup>st</sup> Century connectivity for all Americans. Second, we seek to ensure that the program operates consistent with the authority granted to us by Congress in the Communications Act and to clarify and streamline our rules to provide greater certainty to providers and consumers alike. These reforms will improve the overall administration of the program, lessen the burdens on providers by removing unnecessary regulations, reduce the demands on ratepayers, and enhance consumer choice. Third, we look to address ongoing waste, fraud, and abuse that undermines the integrity of the program and limits its effectiveness. By curbing these abuses, we extend the reach of the program and are better able to help low-income families access the Internet so they may take full advantage of the educational, employment, civic, social, and other benefits broadband offers. The actions and proposals in this item aim to facilitate the Lifeline program's goal of supporting affordable voice telephony and high-speed broadband for low-income households.

## II. FOURTH REPORT AND ORDER

2. In this Report and Order, we adopt several reforms to our Tribal Lifeline policies to increase the availability and affordability of high-quality communications services on Tribal lands.<sup>1</sup>

### A. Targeting Enhanced Support on Tribal Lands to Rural Areas

3. We first target enhanced Lifeline support on Tribal lands to residents of rural areas on Tribal lands. Since 2000, the Lifeline and Link Up programs have provided an enhanced subsidy of up to an additional \$25 per month for service provided to qualified residents of Tribal lands, and a Link Up reduction of up to \$100 for the cost to initiate supported service for qualifying residents of Tribal lands.<sup>2</sup> This targeted support is in recognition of not only the low income levels but also the particularly poor connectivity on many Tribal lands.<sup>3</sup> When it adopted the enhanced Lifeline Tribal subsidy, the Commission noted that the “unavailability or unaffordability of telecommunications service on Tribal lands is at odds with our statutory goal of ensuring access to such services to ‘[c]onsumers in all regions of the Nation, including low-income consumers,’”<sup>4</sup> and explained that the added Lifeline and Link Up support would help lead to the deployment of more robust networks.<sup>5</sup> While the Commission provided the enhanced support as a discount on services, that support was focused to most efficiently encourage “investment and deployment” in facilities, especially since all Lifeline providers in the program at the time were facilities-based.<sup>6</sup> Because of an overly-broad definition of the geographic areas eligible for the enhanced subsidy, however, many areas where this enhanced subsidy is currently available are *not* lacking in either voice or broadband networks. To remedy this, we refine our approach to target enhanced Lifeline support to residents of rural areas on Tribal lands. Focusing the enhanced subsidy for Tribal lands on rural areas is consistent with the enhanced subsidy’s purpose and will ensure that the Fund is better directed toward the residents of Tribal lands who typically have the least choice for communications services.

4. We believe that targeting enhanced support toward rural, facilities-based providers is consistent with the intent of the *2000 Tribal Order*. While the *2000 Tribal Order* referenced reducing the

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<sup>1</sup> In the *2016 Lifeline Order*, the Commission noted that many of the issues related to Lifeline support on Tribal lands on which the Commission had sought comment remained open for consideration in a future proceeding. *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4038, para. 211 (2016) (*2016 Lifeline Order*) (citing *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7827-91, paras. 14-223 (2015) (*2015 Lifeline FNPRM* or *2015 Lifeline Order*)).

<sup>2</sup> *Federal-State Joint Board on Universal Service et al.*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12223-24, 12230, paras. 26, 42 (2000) (*2000 Tribal Order*). See also 47 CFR § 54.413(a), (a)(1)-(2), (b).

<sup>3</sup> See *2000 Tribal Order*, 15 FCC Rcd at 12230-31, paras. 42, 44. See also *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2016 Broadband Progress Report, 31 FCC Rcd 699, 732, para. 79 & Table 1 (2016) (*2016 Broadband Progress Report*) (“[A]pproximately 41 percent of Americans living on Tribal lands . . . lack access to advanced telecommunications capability as compared to 10 percent of the U.S. population as a whole.”); *2016 Lifeline Order*, 31 FCC Rcd at 4036-37, para. 206; *2015 Lifeline FNPRM*, 30 FCC Rcd at 7873-74, paras. 159-161; *Improving Communications Services for Native Nations*, Notice of Inquiry, 26 FCC Rcd 2672, 2673-83, paras. 1-19 (2011); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17868, para. 636 (2011) (*USF/ICC Transformation Order*).

<sup>4</sup> See *2000 Tribal Order*, 15 FCC Rcd at 12221, para. 21 (citing 47 U.S.C. § 254(b)(3)).

<sup>5</sup> See *id.* at 12213, 12223-24, 12235-36, paras. 5, 26, 53.

<sup>6</sup> See *id.* at 12227, para. 30.

costs of telecommunications services,<sup>7</sup> it also specifically discussed the importance of deploying telecommunications networks.<sup>8</sup> The Commission's creation of an enhanced Lifeline benefit in the *2000 Tribal Order* both reduced telecommunications costs *and* supported the deployment of networks because, at the time, all ETCs were facilities-based.<sup>9</sup> While the Commission must consider and address appropriate distinctions between support for facilities-based and non-facilities-based providers, we do so in a way that continues to follow the principles identified in the *2000 Tribal Order* and Section 254 of the Act.<sup>10</sup>

5. To identify rural areas on Tribal lands, we adopt the definition of "rural" used in the E-rate program rules, which define "urban" as "an urbanized area or urban cluster area with a population equal to or greater than 25,000." We define all other areas as "rural."<sup>11</sup> In the *2015 Lifeline FNPRM*, the Commission asked for comment on "what level of density" and at "what level of geographic granularity" we should define such rural areas.<sup>12</sup> After consideration of the comments, including comments by numerous Tribal stakeholders, and evaluation of the practicality of implementation, we believe this definition will reasonably identify the Tribal areas the Commission intends to benefit from additional Lifeline funding. Accordingly, we amend sections 54.403(a)(3), 54.413, and 54.414 of the Lifeline program rules and direct the Universal Service Administrative Company (USAC) to develop a tool that will allow Lifeline service providers to determine whether a subscriber residing on Tribal lands resides in a rural area according to this definition. USAC shall update this tool pursuant to the same update schedule used for the E-rate rurality tool.<sup>13</sup>

6. Selection of the E-rate program's "rural" definition is based on consideration of the record and matters of administrative efficiency. In the *2015 Lifeline FNPRM*, the Commission sought comment on focusing enhanced support to those Tribal lands with lower population densities.<sup>14</sup> Specifically, the Commission sought comment on "focus[ing] enhanced support only on areas of low population density that are likely to lack the facilities necessary to serve subscribers."<sup>15</sup> The Commission also sought comment on the approach taken by the United States Department of Agriculture's Food Distribution Program on Indian Reservations (FDPIR), which excludes from eligibility residents of towns or cities in Oklahoma with populations of 10,000 or more, and sought comment on whether the Commission "should implement a similar approach that excludes urban areas on Tribal lands from receiving enhanced Tribal support."<sup>16</sup> Some commenters expressed concerns with a population density

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<sup>7</sup> See *id.* at 12231, para. 44.

<sup>8</sup> See *id.* at 12221, para. 20 (noting the "inadequate telecommunications infrastructure and the cost of line extensions and facilities deployment in *remote, sparsely populated areas*") (emphasis added); 12235, para. 52 (noting that enhanced support would lead ETCs to "construct telecommunications facilities").

<sup>9</sup> Petition of TracFone Wireless, Inc. for Forbearance, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*).

<sup>10</sup> See U.S.C. § 254(b)(3).

<sup>11</sup> 47 CFR § 54.505(b)(3); *Modernizing the E-rate Program for Schools and Libraries et al.*, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15592-96, paras. 136-43 (2014) (*2014 E-rate Order*).

<sup>12</sup> *2015 Lifeline FNPRM*, 30 FCC Rcd at 7876, para. 170.

<sup>13</sup> *2014 E-rate Order*, 29 FCC Rcd at 15595, para. 141 & n.361 (directing USAC to update the E-rate rurality tool "as necessary to reflect the most recent decennial census data and nationwide population estimates and update its system within 90 days of any change" but not more than once in a twelve-month period).

<sup>14</sup> *2015 Lifeline FNPRM*, 30 FCC Rcd at 7876, para. 169.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 7876-77, para 170. See also 7 CFR § 254.5(b) ("No household living in an urban place in Oklahoma shall be eligible for the Food Distribution Program on Indian Reservations. However, an ITO can request the Department

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approach, but provided alternative density-based proposals ranging from limiting enhanced support to areas with fewer than 10,000 people and a county population density of less than 125 people per square mile,<sup>17</sup> or “only to Tribal lands that are located outside of a Metropolitan Statistical Area and that have less than 100 persons per square mile.”<sup>18</sup> These proposals are more restrictive than the E-rate program definition of rural. Other commenters opposed limiting the enhanced Tribal subsidy based on population density.<sup>19</sup> We disagree with those commenters because their path would preserve the status quo of providing enhanced support to Lifeline subscribers on Tribal lands in densely populated areas where service providers already have sufficient incentive to deploy broadband facilities as in non-Tribal areas.<sup>20</sup>

7. We agree that focusing enhanced support on less-dense areas will improve the Tribal support mechanism and better serve the goals of enhanced Tribal Lifeline support to incent deployment in areas that need it most and to increase the affordability of Lifeline services for Tribal lands residents. Based on the record, however, we decline to adopt a population-density threshold to identify the Tribal areas that are eligible for enhanced Tribal support. Instead, we take an approach similar to the approach used by the FDPIR and use the E-rate program definition of “rural” to identify Tribal areas that are eligible for enhanced Lifeline support. This approach provides consistency between the E-rate and Lifeline programs. In addition, the Commission’s definition of “rural” in the E-rate program serves the goals of enhanced Tribal Lifeline support by focusing enhanced support where communications services are more costly.<sup>21</sup> As explained in the *2014 E-rate Order*, the Commission adopted the current E-rate program definition of “rural” after numerous parties demonstrated that a narrower definition would result in an urban classification for numerous schools and libraries in small towns and remote areas where E-rate supported services are more costly.<sup>22</sup> Using the E-rate definition of “rural” to identify Tribal areas that are eligible for enhanced support would ensure that the enhanced support is available for Tribal lands in these small towns and remote areas where supported services are more costly. Further, the E-rate definition of “rural” is less restrictive than the alternative population density-based methodologies proposed by Smith Bagley and the Navajo Nation Telecommunications Regulatory Commission.

8. We also conclude that identifying less-dense areas by using the same definition of “rural” as the E-rate program (which was adopted in December 2014 and implemented for E-rate Funding Year

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to grant individual exemptions from this limitation upon proper justification submitted by the ITO as determined by FNS”); 7 CFR. § 254.2(h) (“Urban Place means a town or city with a population of 10,000 or more.”).

<sup>17</sup> Navajo Nation Telecommunications Regulatory Commission (NNTRC) Comments at 12-13.

<sup>18</sup> Smith Bagley Inc., Comments at 16.

<sup>19</sup> Gila River Telecommunications, Inc. Comments at 5; Absentee Shawnee Tribe of Indians of Oklahoma Reply at 3; National Congress of American Indians Comments at 5; Assist Wireless Comments at 4.

<sup>20</sup> See, e.g., Letter from Catherine Sandoval, Commissioner, California Public Utilities Commission, et al., to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42, Attach. at 2 (Feb. 22, 2016) (“Some tribal lands in California are near or in large cities or towns, and it is not reasonable to give the Enhanced Lifeline support where there is no additional cost to providing service to the eligible tribal customers.”); Public Utility Division of the Oklahoma Corporation Commission Comments at 14 (stating that Tribal Lifeline subscribers in Oklahoma City and Tulsa are eligible for enhanced support under the current rules and that “[i]t would be reasonable for the FCC to investigate further refinement of the availability of the enhanced Lifeline support in order to synchronize the support with the most pressing deployment needs.”).

<sup>21</sup> See *2014 E-rate Order*, 29 FCC Rcd at 15594-95, paras. 140-41.

<sup>22</sup> See *2014 E-rate Order*, 29 FCC Rcd at 15592, 15594, paras. 136, 140 & n.342 (citing to comments on various petitions for reconsideration discussing the impact of the Commission’s initial decision to adopt the Census Bureau definition of rural (i.e. areas that are not urbanized (Census tracts or blocs with population of 50,000 or more) or urban clusters (adjacent areas with population of 2,500 to 50,000)). See also Census Bureau Website, <https://www.census.gov/geo/reference/ua/uafaq.html> (defining urbanized and urban clusters) (last visited Oct. 24, 2017).

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2015)<sup>23</sup> will allow for more accurate, efficient administration by USAC. We expect that consistency between the two USF programs will simplify the urban/rural determinations for carriers and eligible households. Specifically, standard program definitions of rurality would allow USAC to develop master data sources and simplify the development and updating of service provider tools for identifying addresses that qualify for enhanced support. We therefore decline to adopt commenters' proposals to create an entirely new definition of rurality based directly on the number of persons per square mile in a particular geographic area. Those proposals would create unnecessary administrative difficulties and uncertainty for Lifeline providers, which we believe would in turn create confusion and fewer choices for eligible low-income consumers.

9. We also conclude that the provision of enhanced support in more densely populated Tribal lands, such as large cities (e.g., Tulsa, Oklahoma or Reno, Nevada<sup>24</sup>) or suburban communities, is inconsistent with the Commission's primary purpose of the enhanced support. Approximately 98 percent of Americans in urban areas already have access to fixed broadband Internet access service at speeds of 25 Mbps/3 Mbps,<sup>25</sup> including residents of both Tulsa<sup>26</sup> and Reno.<sup>27</sup> Directing enhanced support to Tribal lands in urban areas is unlikely to materially increase the deployment of facilities in such areas and, therefore, risks wasting scarce program resources. In contrast, rural Americans, particularly those residing on Tribal lands, are much less likely to have access to high-speed Internet access services, with Commission data showing that 63 percent of Americans living on rural, Tribal lands lack access to fixed broadband services at speeds of 25 Mbps/3 Mbps,<sup>28</sup> making enhanced support more likely to incentivize deployment to serve low-income, rural residents on Tribal lands. This policy supports our view that enhanced Tribal support should be targeted to rural areas where the need is greatest.

#### **B. Mapping Resources for Enhanced Rural Tribal Lands Support**

10. We next identify mapping resources that can be used to locate "Tribal lands" under our rules.<sup>29</sup> These maps can then be intersected with the maps delineating rural areas in order to create a map showing where enhanced Tribal lands Lifeline support is available. We direct USAC to make these mapping resources available to providers.

11. Our rules define Tribal lands as "any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Home Lands—areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et. seq., as amended; and any land designated as such by the Commission for purposes of this subpart."<sup>30</sup> Before 2015, the Commission had not established any mapping resources to provide ready access to the boundaries of these Tribal lands.

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<sup>23</sup> See 2014 E-rate Order, 29 FCC Rcd at 15594-95, paras. 140-41.

<sup>24</sup> Despite being "The Biggest Little City in the World," Reno, NV has a population of 446,154 and, according to Form 477 data, 97.5% percent of the population in its county have access to fixed broadband speeds of at least 25 Mbps/3 Mbps. Tulsa, OK has a population of 637,215 and 100% percent of the population in its county has access to fixed broadband speeds of at least 25 Mbps/3 Mbps. See Fixed Broadband Deployment Data, Deployment (last visited Oct. 24, 2017), <https://www.fcc.gov/maps/fixed-broadband-deployment-data/>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> 47 CFR § 54.400(e).

<sup>30</sup> *Id.*

12. The geographic areas described in section 54.400(e) of the Lifeline program rules correspond with the map of Hawaiian Home Lands maintained by the Department of Hawaiian Home Lands (DHHL),<sup>31</sup> the U.S. Census Bureau's American Indians and Alaska Natives Map,<sup>32</sup> the Oklahoma Historical Map 1870-1890, as amended by the Commission to include the Cherokee Outlet,<sup>33</sup> and the Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act.<sup>34</sup>

13. To assist carriers and subscribers, we identify specific maps of these Tribal lands. In the *2015 Lifeline FNPRM*, the Commission interpreted the term "former reservations in Oklahoma" to establish boundaries for Tribal lands in the Lifeline program for residents in Oklahoma.<sup>35</sup> The Commission and USAC later provided a map and shapefile for carriers to use in determining whether their customers reside on Tribal lands in Oklahoma.<sup>36</sup> We believe making this map available has successfully given clarity to providers and subscribers about the boundaries of Tribal lands in Oklahoma. We thus believe providing additional maps and data, including in shapefile format, is appropriate for the other Tribal lands listed in section 54.400(e) of the Commission's rules. By providing carriers the information they need to quickly and accurately determine if an enrolling customer qualifies for enhanced support under the Lifeline rules, these maps and data will help prevent waste, fraud, and abuse in the program. These maps and data will also help Lifeline providers avoid situations in which the provider improperly requests enhanced Tribal support for customers who self-certified their Tribal residence but did not actually reside on Tribal lands.<sup>37</sup>

14. The Hawaiian Homes Commission Act of 1921<sup>38</sup> delineated the boundaries of "Hawaiian Home Lands" and tasked the DHHL with maintaining those boundaries, along with the responsibility of promulgating rules under that Act. As part of its responsibilities, the DHHL makes available a map and shapefile that precisely defines the geographic areas within the state of Hawaii considered "Hawaiian Home Lands."<sup>39</sup> Using this map will assist both Lifeline providers and consumers. Likewise, the Census Bureau maintains a map of every "federally recognized Indian tribe's reservation, pueblo, or colony," called the American Indian and Alaska Native Areas Map.<sup>40</sup> This map, and its accompanying shapefile, comports with the data sources the Commission uses regularly<sup>41</sup> and will also provide clear guidance for Lifeline providers and consumers.

15. In light of these identified mapping resources, as well as the expected need for a reasonable transition period, we direct USAC to prepare a map and the corresponding shapefiles to

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<sup>31</sup> See Department of Hawaiian Home Lands, GIS Maps, <http://dhhl.hawaii.gov/po/maps/> (last visited Oct. 24, 2017).

<sup>32</sup> See *2016 Broadband Progress Report*, 31 FCC Rcd at 731, n.238.

<sup>33</sup> *2016 Lifeline Order*, 31 FCC Rcd at 4118-19, para. 434.

<sup>34</sup> 85 Stat. 688.

<sup>35</sup> *2015 Lifeline FNPRM*, 30 FCC Rcd at 7904, para. 260.

<sup>36</sup> See Universal Service Administrative Company, Oklahoma Tribal, <http://www.usac.org/li/tools/rules-orders/2015-order/oklahoma-tribal.aspx> (last visited Oct. 24, 2017).

<sup>37</sup> See *Blue Jay Wireless, LLC*, Order, 31 FCC Rcd 7603 (EB 2016).

<sup>38</sup> 42 Stat. 108.

<sup>39</sup> See Department of Hawaiian Home Lands, GIS Maps, <http://dhhl.hawaii.gov/po/maps/> (last visited Oct. 24, 2017).

<sup>40</sup> See 47 CFR § 54.400(e).

<sup>41</sup> See *2016 Broadband Progress Report*, 31 FCC Rcd at 731, n.238.



delineate the areas on which subscribers may receive enhanced Lifeline support for rural Tribal lands.<sup>42</sup> USAC shall make this map and data available at least sixty (60) days before the effective date of this Order's rule changes for enhanced Lifeline support on Tribal lands. If, in the future, any of the sources identified in this section issue updated maps or shapefiles, we direct USAC to make an updated map and the underlying data available within a reasonable time period but no later than ninety (90) days after the updated map or shapefile is issued.

16. We also direct USAC to incorporate the map discussed above in its administration and implementation of the National Lifeline Accountability Database (NLAD) and National Eligibility Verifier (NV).<sup>43</sup>

### C. Independent Verification of Residency on Rural Tribal Lands

17. In the *2015 Lifeline FNPRM*, the Commission sought comment on requiring additional evidence of Tribal residency beyond the current self-certification requirement and placing the obligation to confirm Tribal residency with the Lifeline provider.<sup>44</sup> To see that enhanced Lifeline support for rural Tribal lands is actually directed to subscribers who verifiably reside on Tribal lands, we now establish that only subscribers whose residential address or location is shown to fall within the boundary of the enhanced Tribal Lifeline map discussed above may receive enhanced support. Previously, the Commission had permitted providers to accept subscribers' self-certifications that they reside on Tribal lands according to the Commission's Lifeline rules, which made the program vulnerable to fraud and abuse and resulted in a \$2 million settlement with one provider for claiming enhanced Tribal support for subscribers who did not reside on Tribal lands.<sup>45</sup> We find that the provision of maps delineating the boundaries of areas eligible for enhanced Tribal Lifeline support will give consumers and providers a more effective and simpler means of determining rural Tribal residency, thereby eliminating the need for reliance on self-certification. Accordingly, going forward, Lifeline providers will be required to independently verify and document subscribers' rural Tribal residency according to the map and data sources identified above. An ETC may seek enhanced reimbursement only for subscribers whose residential address is located within the bounds of that map.

18. In response to the *2015 Lifeline FNPRM*, some commenters urged the Commission to continue to permit consumers to self-certify their residence on Tribal lands. Commenters supporting this approach argue that there is no evidence of abuse of the self-certification mechanism, and eliminating self-certification would only increase subscriber costs.<sup>46</sup> However, the Commission has recently found concrete evidence of abuse of the self-certification mechanism, resulting in improper payments that had to be reclaimed through an enforcement proceeding.<sup>47</sup> In that instance, a Lifeline provider relied on subscriber self-certifications to improperly enroll several thousand customers as residents of Tribal lands, and continued to do so even after being informed that it was apparently over-claiming enhanced Tribal

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<sup>42</sup> See Appendix E (Enhanced Tribal Support Map); U.S. Census Bureau, Cartographic Boundary Shapefiles - American Indian/Alaska Native Areas/Hawaiian Home Lands, [https://www.census.gov/geo/maps-data/data/cbf/cbf\\_aiannah.html](https://www.census.gov/geo/maps-data/data/cbf/cbf_aiannah.html) (last visited Oct. 24, 2017).

<sup>43</sup> See *2016 Lifeline Order*, 31 FCC Rcd at 4006-21, paras. 126-66.

<sup>44</sup> *2015 Lifeline FNPRM*, 30 FCC Rcd at 7877, para. 171; see also *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6727-28, paras. 164-66 (2012) (*2012 Lifeline Reform Order*).

<sup>45</sup> See *Blue Jay Wireless, LLC*, Order, 31 FCC Rcd 7603 (EB 2016).

<sup>46</sup> See NNTRC Comments at 15; Boomerang Wireless Comments at 19-20 (noting that the Commission had not at that point made available a reliable mapping tool for carriers to use).

<sup>47</sup> See *Blue Jay Wireless, LLC*, Order, 31 FCC Rcd 7603 (EB 2016).

support.<sup>48</sup> We also find that providing a map against which providers can verify eligibility for enhanced Tribal support provides greater certainty to providers and consumers alike, and thus eliminates questions about how to handle a consumer's self-certification if that consumer seems to reside outside Tribal lands.

19. We conclude that a process by which providers determine enhanced eligibility by comparing the subscriber's residential address to data sources delineating rural Tribal lands is a more accurate method of verifying that a subscriber is entitled to enhanced Tribal reimbursement. If a subscriber does not reside within the bounds of the map that the Commission now provides, permitting that subscriber to receive reimbursement by simply certifying that she or he lives on Tribal lands leaves the program open to improper payments, waste, and possibly fraud and abuse.

20. We are also sensitive to Tribal residences that have not been assigned conventional addresses and instead use descriptive addresses that are not recognized by the U.S. Postal Service. For those residences, a Lifeline subscriber may provide a descriptive address when enrolling in the program.<sup>49</sup> A provider enrolling a subscriber with a descriptive residential address in a state where the National Verifier is not responsible for eligibility determinations must retain records documenting compliance with the program rules, including the rules we amend in this Order limiting enhanced Lifeline support to rural Tribal lands and removing subscriber self-certification of Tribal lands residency. Accordingly, we remind providers that they must retain the documentation demonstrating how the provider determined that a subscriber with a descriptive address resides on rural Tribal lands to claim the enhanced Tribal Lifeline support. For example, as providers do today to verify the accuracy of consumers' self-certification, providers may note if a subscriber has a ZIP code that is entirely located in an area eligible for enhanced support, or may record the latitude and longitude of the subscriber's residence to compare against a map identifying areas eligible for enhanced support. We direct USAC to develop a process for subscribers with descriptive addresses who reside on Tribal lands for use in the National Verifier, and to make public the steps in that process to better inform providers about acceptable methods of determining whether such subscribers are eligible for enhanced support.

#### **D. Targeting Enhanced Lifeline Tribal Support to Facilities-Based Providers**

21. In the *2015 Lifeline FNPRM*, the Commission sought comment on limiting enhanced Tribal support to facilities-based service providers.<sup>50</sup> We now conclude that such a limitation is appropriate. Accordingly, we amend section 54.403(a)(3) of the Lifeline program rules to effectuate this change.

22. We find that last-mile facilities are critical to deploying, maintaining, and building voice- and broadband-capable networks on Tribal lands and Lifeline funds are more efficiently spent when supporting such networks.<sup>51</sup> When the Lifeline discount is applied to a consumer's bill for a facilities-based service, those funds go directly toward the cost of providing that service, including provisioning, maintaining, and upgrading that provider's facilities. In contrast, Lifeline funds disbursed to non-facilities-based providers will still lower the cost of the consumer's service, but cannot directly support the provider's network because the provider does not have one. For the purposes of the Lifeline program,

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<sup>48</sup> See *id.*, 31 FCC Rcd at 7608, paras. 7-11.

<sup>49</sup> See *2012 Lifeline Reform Order*, 27 FCC Rcd at 6696, para. 87.

<sup>50</sup> *2015 Lifeline FNPRM*, 30 FCC Rcd 7875-76, paras. 166-70.

<sup>51</sup> See, e.g., *Access Charge Reform et al.*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14278-79, paras. 101-102 (1999) (arguing that special access channel terminations to end users are more costly to construct than interoffice transport); *Policies Regarding Mobile Spectrum Holdings*, 29 FCC Rcd 6133, 6133, para. 1 (2014) (noting that wireless competition is reliant on access to spectrum); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Seventeenth Report, 29 FCC Rcd 15311, 15366, para. 110 (2014) (noting that "a specialized communications tower industry has developed to provide and manage support structures for the cell sites required by mobile wireless providers by leasing space to them.").

to enforce our revised section 54.403(a)(3), we limit enhanced Tribal support to (1) mobile wireless facilities-based Lifeline service provided on Tribal lands with wireless network facilities covering all or a portion of the relevant Lifeline ETC's service area on Tribal lands; and (2) facilities-based fixed broadband or voice telephony service provided through the ETC's ownership or a long-term lease of wireline loop facilities capable of providing Lifeline service to all or a portion of the ETC's service area on Tribal lands. For purposes of enhanced Lifeline support, a wireless provider must hold usage rights under a spectrum license or a long-term spectrum leasing arrangement<sup>52</sup> along with wireless network facilities that can be used to provide wireless voice and broadband services. For wireline providers, we consider a "long-term lease" as an indefeasible right of use (IRU) of 10 years or more over the last-mile facility in question. The Commission has found that IRUs carry many of the same indicia of control as full ownership and therefore are considered fully owned facilities in other regulatory contexts.<sup>53</sup>

23. We conclude that, in the Lifeline program, an ETC's use of tariffed and un-tariffed special access services, resold services offered pursuant to sections 251(b) and (c), commercially available resold services, or unbundled network elements (UNEs) does not demonstrate that the service is "facilities-based" because such services do not reflect investment in broadband-capable networks in the service area by the ETC. Previously, the Commission found that competitors' use of incumbent local exchange carrier (LEC) special access services is not relevant to whether there is sufficient facilities-based competition in a market to justify forbearance from the incumbent LEC's obligation to provide UNEs. Additionally, UNEs themselves are only available in those cases where competitors are "impaired" without access—that is, UNEs are available to competitive carriers for those network components that a "reasonably efficient" competitor would not likely be able to construct on its own and without which market entry would likely be uneconomic.<sup>54</sup>

24. If an ETC offers service using its own as well as others' facilities in its service area on rural Tribal lands, it may only receive enhanced support for the customers it serves using its own last-mile facilities. We find this definition is technology-neutral as between fixed and mobile services.

25. Limiting enhanced Lifeline support to facilities-based service provided to subscribers residing on Tribal lands will focus the enhanced support toward those providers directly investing in voice- and broadband-capable networks on rural Tribal lands. We find that this result comports with the Act's direction to the Commission to base its policies on the principle that "low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services... that are reasonably comparable to those services provided in urban areas..."<sup>55</sup> Directing enhanced Lifeline funds to facilities-based services makes those services more affordable and competitive for low-income consumers and also encourages investment that will ultimately provide more robust networks and higher quality service on rural Tribal lands. Doing so also ensures that the payments Lifeline providers receive from the Fund to serve rural Tribal lands will be reinvested in the "provision, maintenance, and upgrading" of facilities in those areas.<sup>56</sup> A number of Tribal Nations, Tribally-owned

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<sup>52</sup> We consider a long-term spectrum leasing arrangement as long-term *de facto* transfer spectrum leasing arrangements as defined and identified in 47 CFR §§ 1.9003, 1.9030, and long-term spectrum manager leasing arrangements as defined and identified in 47 CFR §§ 1.9003, 1.9020(e).

<sup>53</sup> See, e.g., *Special Access for Price Cap Local Exchange Carriers et al.*, Report and Order, 28 FCC Rcd 13189, 13211, para. 53 (2013).

<sup>54</sup> See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8641, para. 35 (2010) (*Qwest Order*). See *Unbundled Access to Network Elements et al.*, Order on Remand, 20 FCC Rcd 2533, 2545-50, paras. 20-28 (2004); *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, 3476, para. 34 (2017).

<sup>55</sup> 47 U.S.C. § 254(b)(3).

<sup>56</sup> 47 U.S.C. § 254(e).

Lifeline providers, and other Lifeline providers agree with this decision and favor limiting enhanced support to providers with facilities, arguing that it will ensure that the enhanced subsidies reach the Tribal lands and residences that have never been connected and will support those network facilities already constructed.<sup>57</sup>

26. We disagree with resellers who argue that their purchase of wholesale services from carriers that own facilities increases the incentive of those carriers to deploy and maintain their networks.<sup>58</sup> Resellers offer little evidence beyond their own assertions that funneling Lifeline enhanced support funding through middle men will spur facilities-based carriers to invest in their rural, Tribal networks. Moreover, even if revenue from resellers marginally increases the ability and incentive of other providers to deploy or maintain facilities, we conclude that this benefit is outweighed by our need to prudently manage Fund expenditures.<sup>59</sup> Indeed, these resellers cannot explain how passing only a fraction of funds through to facilities-based carriers will mean more investment in rural Tribal areas than ensuring that facilities-based carriers receive 100 percent of the support. We conclude that providing the enhanced support to Lifeline providers deploying, building, and maintaining critical last mile infrastructure is a more appropriate way to support the expansion of voice- and broadband-capable networks on Tribal lands.

27. To ensure compliance with this requirement and prevent potential waste, fraud, and abuse, we direct USAC to take appropriate measures to verify that any ETC claiming enhanced rural Tribal support satisfies the facilities requirement outlined in this section prior to disbursing the enhanced support.

28. We also clarify that the “facilities-based” standard we describe bears only on whether the Lifeline provider is eligible to receive enhanced rural Tribal support. Whether a provider is “facilities-based” under the Act for purposes of seeking a Lifeline-only ETC designation and must obtain approval for a compliance plan to take advantage of blanket forbearance from the facilities requirement is unaffected by this standard and remains the same.<sup>60</sup>

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<sup>57</sup> See, e.g., Confederated Tribes of the Colville Reservation Reply at 6 (“[We] agree with the Commission’s proposal to limit enhanced Lifeline support to those providers that deploy, build, and maintain infrastructure on Tribal lands.”); The Sovereign Councils of Hawaiian Homelands Assembly Comments at 4 (arguing that by restricting the enhanced benefit to facilities-based providers “the Commission may be able to further the goal of promoting deployment of facilities to Tribal lands.”); The Affiliated Tribes of Northwest Indians Reply at 5; Gila River Comments at 5; WTA-Advocates for Rural Broadband Comments at 19; Smith Bagley Inc. Comments at 14; Coquille Indian Tribe Comment at 2; Coeur D’Alene Tribe Comments at 2; Organized Village of Saxman Comments at 2; Okhay Owingeh Reply at 2; Leech Lake Telecommunications Reply at 2; Mescalero Apache Telecom., Inc. Reply at 3; San Carlos Apache Telecommunications Utility Reply at 3; Red Lake Band of Chippewa Indians at 3; Alatna Village Council at 2.

<sup>58</sup> See Letter of John J. Heitmann, Counsel, Boomerang, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., Attach. at 8 (filed Dec. 2, 2015); Letter of John J. Heitmann, Counsel, Easy Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Feb. 24, 2016); Boomerang Reply at 6 (“By generating demand, wireless resellers like Boomerang help to improve the business case for... Tier 1 providers to make investments to achieve more extensive and reliable coverage in Tribal lands.”).

<sup>59</sup> *High-Cost Universal Service Support et al.*, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4088, para. 29 (2010) (the Commission has a “responsibility to be a prudent guardian of the public’s resources”), *aff’d Vt. Pub. Serv. Bd. v. FCC*, 661 F.3d 54 (D.C. Cir. 2011).

<sup>60</sup> See 47 U.S.C. § 214(e)(1)(A) (requiring ETCs to offer service “either using its own facilities or a combination of its own facilities and resale of another carrier’s services”); *2012 Lifeline Reform Order*, 27 FCC Rcd at 6813-17, paras. 368-81 (providing conditional forbearance from the facilities requirement to ETCs filing and obtaining Bureau approval of their compliance plans).

### **E. Effective Dates for Changes to Enhanced Tribal Support**

29. To ensure all impacted parties have sufficient time to make the necessary changes adopted in this Fourth Report and Order, we provide a transition period. The changes made in this Fourth Report and Order for enhanced Lifeline support on Tribal lands shall be effective 90 days after the Wireline Competition Bureau announces that the Commission has received approval from the Office of Management and Budget (OMB) for the new information collection requirements in this Fourth Report and Order subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. We direct ETCs to notify, in writing, any customers who are currently receiving enhanced support who will no longer be eligible for enhanced support as a result of the changes in this Order. This notice must be sent no more than 30 days after the announcement of PRA approval.<sup>61</sup> This notice must inform any impacted customers that they will not receive the enhanced Lifeline discount beginning 90 days after the announcement of PRA approval, and that customers residing on rural Tribal lands who are currently receiving service from a non-facilities-based provider have the option of switching their Lifeline benefit to a facilities-based provider to continue receiving enhanced rural Tribal support. The notice must also detail the ETC's offerings for Lifeline subscribers who are not eligible for enhanced support.

### **III. ORDER ON RECONSIDERATION**

30. In this Order on Reconsideration, we address several issues pending before the Commission to encourage competition in the Lifeline market and decrease administrative burdens on providers. Specifically, we eliminate the codified Lifeline benefit port freeze for voice and broadband services, clarify the application of Lifeline support, and amend our rules to minimize unnecessary document retention for providers in states where the National Verifier has launched.

#### **A. Increasing Lifeline Benefit Portability**

31. By this Order, we eliminate the port freeze for voice and broadband Internet access services found in section 54.411 of the Commission's rules. We take this action in response to significant concerns regarding the port freeze raised in Petitions for Reconsideration and other recent filings in the docket. In the *2016 Lifeline Order*, the Commission codified port freezes lasting 12 months for broadband Internet access service and 60 days for voice telephony service.<sup>62</sup> After reconsideration of certain findings in the *2016 Lifeline Order*, we now eliminate the Lifeline port freeze for voice and broadband Internet access service.

32. The Commission established the extended port freeze for broadband Internet access service “[t]o facilitate market entry for Lifeline-supported BIAS [broadband Internet access service] offerings, provide additional consumer benefits, and encourage competition” by “allowing broadband providers the security of a longer term relationship with subscribers...”<sup>63</sup> Since the Commission adopted these requirements, multiple parties have filed Petitions for Reconsideration raising a variety of concerns regarding the port freeze rule.<sup>64</sup> Petitioners argue that the port freeze requirements adversely impact

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<sup>61</sup> Or, if the Commission has not received approval from the Office of Management and Budget (OMB) for the new information collection requirements in this Order subject to the Paperwork Reduction Act of 1995 (PRA), once OMB approval has been received.

<sup>62</sup> *2016 Lifeline Order*, 31 FCC Rcd at 4105, para. 385.

<sup>63</sup> *Id.* at 4106, para. 389. The Commission adopted a 60-day port freeze for voice services for reasons similar to those outlined for Lifeline-supported broadband service. *Id.* at 4107, para. 392.

<sup>64</sup> Petition for Reconsideration/Clarification of NTCA – The Rural Broadband Association and WTA – Advocates for Rural Broadband, WC Docket No. 11-42 et al. (filed June 23, 2016) (NTCA/WTA Petition); USTelecom Association Petition for Reconsideration and Clarification, WC Docket No. 11-42 et al. (filed June 23, 2016) (USTelecom Petition).

consumers by restricting consumer choice<sup>65</sup> and the record lacks evidence that demonstrates new entrants were or are having difficulty entering the Lifeline market.<sup>66</sup> Petitioners also argue that the port freeze requirements were imposed without adequate notice, as required under the Administrative Procedure Act (APA);<sup>67</sup> and raise concerns regarding the challenges ETCs will face from an administrative perspective in attempting to comply with the 12-month port freeze requirement.<sup>68</sup> Because we grant the petitions for reconsideration on other grounds below, we do not address the APA and administrative burden arguments here. Additionally, since implementation of the port freeze rule, other parties have raised concerns regarding the alleged improper invocation of consumer port freezes by certain Lifeline providers, which limits consumer choice, especially with regard to the 12-month port freeze for broadband service.<sup>69</sup>

33. We agree with arguments raised by Petitioners and others that the disadvantages to consumers of the port freeze rule, in practice, outweigh the anticipated advantages; accordingly, we eliminate the codified Lifeline benefit port freeze for voice and broadband Internet access service.<sup>70</sup> We conclude that restricting the ability of Lifeline consumers to transfer their Lifeline benefit between service providers ultimately disadvantages Lifeline consumers. Such a restriction limits Lifeline consumers' ability to seek more competitive offerings and obtain those services that best meet their needs. In addition, restricting consumers' ability to transfer their Lifeline benefit will not promote competitive service offerings and, in fact, may diminish providers' motivation to provide higher quality service after enrolling a Lifeline-supported broadband subscriber, because the provider is assured a 12-month commitment from the subscriber.<sup>71</sup> We also agree that the record evidence does not clearly support the view that a 12-month port freeze is necessary to ease market entry, and indeed can discourage new providers from entering the Lifeline market or a new geographical area because a significant portion of Lifeline subscribers would not be able to transfer their benefit to otherwise compelling new services offerings.<sup>72</sup> Nor do we believe that the 60-day port freeze for voice services adopted in the *2016 Lifeline Order*, while leading to these disadvantages, is effective in furthering its desired goals. In general, parties

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<sup>65</sup> NTCA/WTA Petition (“Low-income consumers deserve the same right as any other consumer to abandon service plans and providers that do not meet their needs.”) Other parties support these arguments. GVNW Consulting, Inc., for example, argues, “It is a strange economic proposition that the Commission contends that competition will be enhanced by limiting consumer choice. Lifeline customers should have the same ability to find a better deal, either with a higher level of service or lower price, as customers not eligible to access the Lifeline discount.” GVNW Consulting, Inc. Opposition to Petitions for Reconsideration, WC Docket No. 11-42 et al., at 8 (filed July 29, 2016) (“GVNW Opposition”).

<sup>66</sup> NTCA/WTA Petition at 17.

<sup>67</sup> USTelecom Petition at 4.

<sup>68</sup> USTelecom Petition at 5-7 (referencing administrative burdens associated with the port freeze). Because we grant the petitions for reconsideration on other grounds, we do not address the administrative burden arguments here.

<sup>69</sup> See, e.g., Letter from Mitchell F. Brecher, Greenberg Traurig, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Jan. 18, 2017) (TracFone Request); Letter from Norina T. Moy, Government Affairs Director, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Jan. 19, 2017) (Sprint Request); Letter from John J. Heitmann, Kelley Drye & Warren LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Jan. 27, 2017) (Telrite Jan. 27 *ex parte*).

<sup>70</sup> See 47 CFR § 54.411.

<sup>71</sup> See Reply to Opposition of NTCA – The Rural Broadband Association and WTA – Advocates for Rural Broadband, WC Docket No. 11-42, et al., at 9 (filed Aug. 8, 2016) (NTCA/WTA Reply) (“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”).

<sup>72</sup> NTCA/WTA Petition at 17. NTCA/WTA argue that there was no evidence in the record, “beyond unsubstantiated claims that the ETC designation process was too burdensome,” that new entrants are having difficulty entering the Lifeline market.

(continued....)

that filed in support of a longer port freeze argued that carriers will be willing to make more significant investments as a result of longer term customer-carrier relationships and that a longer port freeze will discourage consumers from “flipping.”<sup>73</sup> Although we acknowledge these would be positive benefits of a port freeze, on balance we believe these benefits are outweighed by the harms caused to consumers by limiting consumer choice. Supporters of the port freeze generally did not assert the 12-month port freeze was needed to address impediments to entering the market.

34. We disagree with those commenters who contend that removing the 12-month broadband Internet access service port freeze will reduce provider participation in the Lifeline program and make it “impossible to meet the Commission’s minimum service standards and handset requirements at a cost that is affordable for low-income consumers.”<sup>74</sup> The Commission adopted minimum service standards after considering the record and concluding that minimum service standards are not unduly burdensome.<sup>75</sup> Affordability was an important factor in adopting minimum service standards, and the standards the Commission adopted struck “a balance between the demands of affordability and reasonable comparability.”<sup>76</sup> While the Commission considered concerns raised by some providers that they would not be able to offer services that meet the minimum standards, the Commission ultimately concluded that allowing the Lifeline benefit to be used on services that do not meet minimum service standards would lead to the type of “second class” service that the minimum service standards are meant to eliminate.<sup>77</sup> Furthermore, prior to the *2016 Lifeline Order*, the shorter USAC-administered 60-day benefit port freeze for voice service did not drive providers out of the program. Indeed, we are now acting in response to requests from *Lifeline providers* to eliminate or shorten the port freeze due to the administrative burdens associated with compliance.<sup>78</sup>

35. The Commission codified the port freeze in part because it anticipated that consumers would benefit from greater choice and innovative service offerings as a result. In addition, the Commission envisioned benefits would accrue to consumers from a longer term relationship with their service providers. Since the implementation of the port freeze, the Commission has been presented with evidence, however, that it has not delivered the consumer benefits the Commission envisioned when it codified the requirement, but instead has incited certain providers to enroll consumers in offerings that provide little meaningful residential broadband access while locking in their Lifeline benefit with that provider for the following 12 months.<sup>79</sup> These providers have used the port freeze to prevent customer churn, asserting that the service falls within the 12-month port freeze timeframe, even when offering plans with only 10 MB of guaranteed mobile cellular data.<sup>80</sup> As a result, although the port freeze rule has in some instances resulted in longer term relationships as anticipated, any benefits have come at the expense of consumers who find themselves trapped in low-quality plans for a full year. Parties such as

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<sup>73</sup> See Letter from David A. LaFuria, Counsel, Smith Bagley, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 14 (filed Dec. 7, 2015); Comments of the Lifeline Joint Commenters, WC Docket No. 11-42 et al., at 16-17 (filed Aug. 31, 2015); Lifeline Joint Commenters Reply, WC Docket No. 11-42 et al., at 22-24 (filed Sept. 30, 2015); Telscape Communications, Inc. and Sage Telecom Communications, LLC Comments, WC Docket No. 11-42 et al., at 15-16 (filed Aug. 31, 2015).

<sup>74</sup> See Joint Lifeline ETC Respondents’ Opposition at 7-8.

<sup>75</sup> *2016 Lifeline Order*, 31 FCC Rcd at 3990, para. 75.

<sup>76</sup> *Id.* at 3989, para. 71.

<sup>77</sup> *Id.* at 4000, para. 104 (citing Native Nations Broadband Task Force Reply at 3).

<sup>78</sup> See USTelecom Petition at 5-7 (referencing administrative burdens associated with the port freeze); GVNW Opposition at 7-9.

<sup>79</sup> See TracFone Request (requesting clarification of certain aspects of the 500 MB minimum standard for mobile broadband Internet access service and the applicability of the 12-month port freeze); Sprint Request.

<sup>80</sup> See Telrite Corporation Comments at 6 (filed Mar. 2, 2017).

Consumer Action and the National Consumers League have urged the Commission “to stop the abuse of the so-called ‘port freeze’ rule, which is now being used to limit consumer choice and access to true broadband service and broadband-suitable devices.”<sup>81</sup> Because implementation of the port freeze has not, on balance, resulted in the anticipated benefits to Lifeline consumers and instead appears to have harmed consumers, we now determine that this rule should be eliminated.

36. Finally, we clarify the application of the Commission’s rolling recertification rule in the absence of the port freeze rule and the port freeze exceptions.<sup>82</sup> For purposes of rolling recertification, the subscriber’s service initiation date is twelve months from the date of the most recent transfer or enrollment with the subscriber’s current service provider, and recertification will be required every twelve months thereafter.<sup>83</sup>

37. These changes to section 54.411 of the Commission’s rules will become effective 60 days after publication of this Order in the Federal Register.

### **B. Application of Lifeline Support**

38. To ensure that qualifying low-income Americans receive quality, affordable Lifeline-supported broadband service, we revise our rules concerning the application of Lifeline support. Section 54.403(b)(1) of the Commission’s rules requires ETCs “that charge federal End User Common Line charges or equivalent federal charges” to apply federal Lifeline support to waive such charges for Lifeline subscribers.<sup>84</sup> The rule is silent, however, on the application of Lifeline support for subscribers receiving the Lifeline benefit for broadband Internet access service, either in a bundle with qualifying voice telephony service or on a standalone basis, which does not have an End User Common Line charge.<sup>85</sup> We hereby clarify that section 54.403(b)(1) of the Commission’s rules only applies to subscribers receiving Lifeline-supported standalone voice telephony service or a bundled offering where the ETC is requesting reimbursement from the Lifeline program for the voice telephony component of the bundle.

39. USTelecom has filed a petition for reconsideration requesting, in relevant part, that we eliminate section 54.403(b) of the Commission’s rules to resolve the rule’s ambiguity with regard to Lifeline-supported broadband Internet access service.<sup>86</sup> USTelecom argues that broadband Internet access service does not have a federal End User Common Line charge or intrastate service, creating confusion as to how ETCs may comply with section 54.403(b) of the Commission’s rules when the customer is receiving Lifeline-supported broadband Internet access service.<sup>87</sup> No parties filed in opposition to USTelecom’s petition on this issue.

40. We decline to eliminate the rule, as requested by USTelecom, so that ETCs seeking reimbursement for Lifeline voice telephony service, either on a standalone basis or in a bundle, will continue to apply the Lifeline discount to the EUCL. Instead we now modify section 54.403(b)(1) to

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<sup>81</sup> Letter from Ken McEldowney, Consumer Action, and Sally Greenberg, National Consumers League to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 (filed Mar. 2, 2017) (Consumer Action Letter). *See also* Comments of the Public Utility Division of the Oklahoma Corporation Commission, WC Docket No. 11-42 (filed Mar. 2, 2017); Letter of Betsy E. Huber, President, National Grange to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 (filed Mar. 8, 2017).

<sup>82</sup> 47 CFR § 54.410(f).

<sup>83</sup> *See Wireline Competition Bureau Provides Guidance on Rolling Recertification Pursuant to the Lifeline Modernization Order*, Public Notice, 31 FCC Rcd 11895 (WCB 2016).

<sup>84</sup> 47 CFR § 54.403(b)(1).

<sup>85</sup> *Id.*

<sup>86</sup> USTelecom Petition at 18.

<sup>87</sup> *Id.* at 19.



clarify that this rule only applies to subscribers receiving standalone voice telephony service or a bundled offering where the ETC is requesting reimbursement from the Lifeline program for the voice telephony component of the bundle. By not addressing whether and how section 54.403(b)(1) applies to Lifeline-supported broadband Internet access service, the rule causes unnecessary uncertainty for ETCs and may result in less affordable offerings for subscribers without any corresponding benefit for Lifeline subscribers. This revision of section 54.403(b)(1) also comports with the longstanding Commission goal of simplifying administration of the Lifeline program and reflecting current marketplace conditions.<sup>88</sup> Accordingly, we amend section 54.403(b)(1) to clarify that ETCs are only required to apply the Lifeline discount to the End User Common Line charge or equivalent federal charges where the ETC is receiving Lifeline support for that subscriber's voice telephony service.

### C. Minimizing Unnecessary Document Retention Burdens for Providers

41. The *2016 Lifeline Order* modified section 54.410(b)(2)(ii), (c)(2)(ii), and (e) to require the National Verifier, where it is responsible for determining subscriber eligibility or conducting recertification, to provide a copy of the subscriber's certification to the provider.<sup>89</sup> We now resolve an apparent conflict in our rules and alter section 54.410(b)(2)(ii), (c)(2)(ii), and (e) of the Commission's rules to eliminate the requirement that the National Verifier provide copies of certifications to ETCs where the National Verifier is responsible for eligibility determinations.

42. USTelecom filed a petition for reconsideration requesting, in relevant part, modifications to section 54.410(b)(2)(ii), (c)(2)(ii), and (e) of the Commission's rules to properly reflect the *2016 Lifeline Order's* intent with regard to the National Verifier.<sup>90</sup> USTelecom argues that the text of the rule is in direct conflict with the *2016 Lifeline Order's* language and intent.<sup>91</sup> The *2016 Lifeline Order* states: "[t]he National Verifier will retain eligibility information collected as a result of the eligibility determination process" and that "Lifeline providers will not be required to retain eligibility documentation for subscribers who have been determined eligible by the National Verifier."<sup>92</sup> However, sections 54.410(b)(2)(ii), (c)(2)(ii), and (e) require Lifeline providers to retain eligibility documentation and certifications even when the National Verifier was responsible for the enrollment process.<sup>93</sup> USTelecom adds that the cost and burden to providers of maintaining duplicative subscriber eligibility information from the National Verifier are unsupported by any "sound policy basis."<sup>94</sup> Further, the rule may actually subvert program goals of ". . . 'ensur[ing] that the National Verifier will incorporate robust privacy and data security best practices in its creation and operation of the National Verifier.'"<sup>95</sup> No parties filed in opposition to USTelecom's petition on this issue.

43. We now modify section 54.410(b)(2)(ii), (c)(2)(ii), and (e) to clarify that where the National Verifier is responsible for the consumer's initial eligibility determination or recertification, the National Verifier is not required to deliver copies of those certifications to the ETC. We find that this amendment to the rules is consistent with the goals of the National Verifier to ease burdens on Lifeline providers while improving privacy and security for consumers applying to participate in the program. This amendment also brings section 54.410 of the Commission's rules in line with the Commission's

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<sup>88</sup> See *2012 Lifeline Reform Order*, 27 FCC Rcd at 6682-83, paras. 54-58.

<sup>89</sup> 47 CFR § 54.410(b)(2)(ii), (c)(2)(ii), (e).

<sup>90</sup> USTelecom Petition at 10-11.

<sup>91</sup> *Id.*

<sup>92</sup> *2016 Lifeline Order*, 31 FCC Rcd at 4017, para. 151.

<sup>93</sup> See 47 CFR § 54.410(b)(2)(ii), (c)(2)(ii), (e).

<sup>94</sup> Letter of USTelecom to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-2 (filed May 18, 2017).

<sup>95</sup> *Id.* at 2.

stated intent in the *2016 Lifeline Order* that Lifeline providers would not be required to retain eligibility documentation for eligibility determinations made by the National Verifier.<sup>96</sup> Additionally, we agree with USTelecom that requiring Lifeline providers to maintain duplicative subscriber enrollment documentation presents unnecessary risk to the privacy and security of subscriber information.

#### IV. MEMORANDUM OPINION AND ORDER

44. To fully realize the Commission's objectives of providing Lifeline-support for broadband services, we provide clarity to ensure that service providers claiming Lifeline support for broadband service actually provide Lifeline customers with the level of broadband service intended in the *2016 Lifeline Order*. In February 2017, the Wireline Competition Bureau solicited public comment on a TracFone Wireless, Inc. (TracFone) request for clarification regarding sections 54.408 and 54.411 of the Commission's rules.<sup>97</sup> We now remove any uncertainty in the record with respect to whether certain Wi-Fi technologies qualify for Lifeline reimbursement by clarifying that broadband Internet access delivered via Wi-Fi is not eligible for reimbursement as mobile broadband under the Lifeline program rules, and we reiterate that mobile broadband service eligible for Lifeline reimbursement must be provided on a network using at least 3G (Third Generation) mobile technologies.<sup>98</sup> We also clarify that a provider does not directly serve a customer with fixed broadband service under the Lifeline rules if that customer cannot access the services at their residential address and, therefore, Wi-Fi offerings like the "premium Wi-Fi" service described in the record also do not qualify for Lifeline support as fixed broadband service offerings.

45. In its request for clarification, TracFone sought clarification regarding the types of service that meet the minimum service standards for Lifeline-supported mobile broadband and qualify for the twelve-month benefit port freeze.<sup>99</sup> In response, several commenters expressed concerns that interpreting the minimum service standards for Lifeline-eligible mobile broadband to allow for Wi-Fi-delivered broadband as described in the request would inhibit the Commission's goal of supporting quality service to low-income consumers,<sup>100</sup> while others supported an interpretation of the Commission's rules that would permit Lifeline support for "premium Wi-Fi" access offerings.<sup>101</sup>

46. We clarify that "premium Wi-Fi" and other similar networks of Wi-Fi-delivered broadband Internet access service do not qualify as mobile broadband under the Lifeline program rules.<sup>102</sup> In the *2016 Lifeline Order*, the Commission focused on "mobile network technologies" and mobile service offerings over different generations of mobile technologies in adopting rules for Lifeline-eligible mobile broadband service.<sup>103</sup> Against this backdrop, the Commission established minimum service

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<sup>96</sup> *2016 Lifeline Order*, 31 FCC Rcd at 4017, para. 151.

<sup>97</sup> *Wireline Competition Bureau Seeks Comment on TracFone Request for Clarification*, Public Notice, 32 FCC Rcd 1389 (WCB 2017) (*citing* TracFone Request); Letter from Mitchell F. Brecher, Greenberg Traurig, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Jan. 18, 2017) (TracFone Request). *See also* Sprint Request; Letter from John J. Heitmann, Kelley Drye & Warren LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Jan. 27, 2017).

<sup>98</sup> *2016 Lifeline Order*, 31 FCC Rcd at 3995, para. 92.

<sup>99</sup> TracFone Request at 2.

<sup>100</sup> Sprint Corporation Comments at 1-2; Consumer Action Letter at 1-2; Public Utility Division of Oklahoma Corporation Comments at 2-3 (Oklahoma PUC Comments); TracFone Wireless Reply at 2 (TracFone Reply Comments); National Grange Reply at 1.

<sup>101</sup> *See* Telrite Corporation Comments at 12-21; ETC Joint Commenters Reply Comments at 2; Telrite Corporation Reply Comments at 2-6.

<sup>102</sup> *See* 47 CFR §§ 54.400 *et seq.*

<sup>103</sup> *See* 47 CFR § 54.408(b)(2)(i).

standards, including minimum 3G (Third Generation mobile network) speeds, to qualify for Lifeline support. There is no evidence in the record that Wi-Fi-only technology, as deployed today, is a “mobile technology” or one of the “generations” of mobile technologies,<sup>104</sup> as contemplated by the Commission in the *2016 Lifeline Order*.<sup>105</sup> Further, nothing in the record demonstrates that Wi-Fi, including “premium Wi-Fi,”<sup>106</sup> as deployed today, should be treated as an industry accepted generation of mobile technology.<sup>107</sup>

47. We also disagree with Telrite that the use of the term “3G” in the section 54.408(b)(2)(i) of the Commission’s rules was only intended as a proxy for a particular minimum network speed threshold and not a generation of mobile technology. In the *2016 Lifeline Order*, the Commission’s discussion makes it clear that it was incorporating industry mobile technology generations, and that 3G was not just a proxy for a speed threshold. The Commission, for example, stated that “[f]or the mobile broadband minimum service standard for speed, we rely on Form 477 data while also incorporating *industry mobile technology generation (i.e. 3G, 4G)*.”<sup>108</sup>

48. Unlike Wi-Fi, mobile networks provide ubiquitous mobility with large service area coverage.<sup>109</sup> Wi-Fi access, however, can be a complement to a consumer’s primary broadband service.<sup>110</sup> Lifeline-eligible mobile broadband requires a mobile service provided through 3G mobile broadband technologies or subsequent and superior generations of mobile broadband technologies.<sup>111</sup> Accordingly, the rules governing Lifeline support for a “mobile broadband service” contemplate not just a minimum of “3G” mobile network threshold speeds, but also a mobile network.<sup>112</sup> As noted above, mobile networks, unlike current Wi-Fi networks, provide ubiquitous mobility within a large service area. Were we to interpret the minimum service standard otherwise, an ETC could offer any fixed service with an arguably

<sup>104</sup> See e.g., GSMA, The GSMA Spectrum Primer Series, available at <https://www.gsma.com/spectrum/wp-content/uploads/2014/03/The-Spectrum-Policy-Dictionary-Online-HighRes.pdf> (last visited Oct. 24, 2017).

<sup>105</sup> *2016 Lifeline Order*, 31 FCC Rcd at 3995-97, paras. 91-98; FCC Form 477, Local Telephone Competition and Broadband Reporting Instructions, <https://transition.fcc.gov/form477/477inst.pdf> (last visited Oct. 24, 2017).

<sup>106</sup> “Premium Wi-Fi” service, as offered by providers seeking Lifeline reimbursement, allows users to access the Internet through a virtual private network (VPR) operating through Wi-Fi hotspots at a number of public venues. See Telrite Corporation Comments at 12-21; ETC Joint Commenters Reply at 2; Telrite Corporation Reply at 2-6.

<sup>107</sup> FCC Form 477, Local Telephone Competition and Broadband Reporting Instructions, <https://transition.fcc.gov/form477/477inst.pdf> (last visited Oct. 24, 2017) (stand-alone Wi-Fi not included as one of the mobile technologies); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Nineteenth Report, 31 FCC Rcd 10534, Web Appendix to Section III: Overall Mobile Wireless Industry Metrics (WTB 2016), [https://www.fcc.gov/sites/default/files/19thReport\\_webappendix-3-TablesCharts.pdf](https://www.fcc.gov/sites/default/files/19thReport_webappendix-3-TablesCharts.pdf).

<sup>108</sup> *2016 Lifeline Order*, 31 FCC Rcd at 3995, para. 92 (emphasis added). We note that we collect Form 477 mobile broadband coverage data by technology. Wi-Fi is not one of the mobile broadband technologies listed in the Form 477. FCC Form 477, Local Telephone Competition and Broadband Reporting Instructions, <https://transition.fcc.gov/form477/477inst.pdf> (last visited Oct. 24, 2017).

<sup>109</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 17-69, Twentieth Report, Web Appendix I: Coverage Maps, Web Appendix III: Elements of Interfirm Rivalry (Coverage based on Form 477 Data) (WTB 2017), available at <https://www.fcc.gov/20th-mobile-wireless-report-web-appendices>.

<sup>110</sup> *2016 Lifeline Order*, 31 FCC Rcd at 4100, para. 376 (requiring providers that provide both Lifeline-supported mobile broadband service and devices to ensure that the devices are Wi-Fi enabled); Sprint Comments at 2.

<sup>111</sup> See e.g., *2016 Lifeline Order*, 31 FCC Rcd at 3997, para. 96.

<sup>112</sup> 47 U.S.C. § 153(33) (defining “mobile service”); 47 CFR § 20.3 (same).

fast-enough speed, limit it to serve end users primarily using mobile devices, and claim that such a service was in fact “mobile” broadband because it offers speeds faster than “3G.” As a result, the section establishing Lifeline minimum service standards for fixed broadband service would have no meaningful application, because ETCs could simply offer the much lower data allowances permitted under the mobile broadband standards, supplement that amount with Wi-Fi-delivered data, and receive the same Lifeline support amount.<sup>113</sup>

49. We also clarify that a provider does not directly serve a customer with fixed broadband service under the Lifeline rules if that customer cannot access the service at their residential address.<sup>114</sup> The *2016 Lifeline Order* contemplates Lifeline-supported fixed broadband service as a residential service.<sup>115</sup> A service that, for example, purports to offer Lifeline-supported fixed broadband service but only provides customers with access to hotspots that a qualifying low-income subscriber cannot access from their own residence undermines the Commission’s requirement that carriers directly provide service to receive reimbursement. A review of the Wi-Fi service disputed in the record before us indicates that the iPass network used to provide the premium Wi-Fi service keeps customers connected in “hotels, airports, and other business venues,” trains, airplanes, and convention centers, and in many towns only includes hotspots at establishments with pre-existing free public Wi-Fi offerings, like McDonald’s, Burger King, and Walmart.<sup>116</sup> Some commenters indicated that these hot spot locations are “likely to be of little use to most Lifeline customers” because few of the hot spots are located in low-income residential areas, and the hot spot locations “may not be common areas in which Lifeline customers would find themselves trying to utilize their Lifeline supported [broadband Internet access service].”<sup>117</sup> TracFone also states that based on its sample testing for one Florida ZIP Code, “[l]ess than one percent of the 10,223 Lifeline households within that ZIP Code reside within areas covered by iPass hotspots” and that nine of the twelve iPass hot spots within that ZIP Code “are located inside business locations (typically, restaurants and hotels, and only available to patrons of those businesses).”<sup>118</sup> Accordingly, these types of premium Wi-Fi services would be functionally inaccessible to many Lifeline consumers and, thus, offering such services does not directly serve a Lifeline customer with fixed broadband service as required by section 54.407(a) of the Lifeline rules.

## V. NOTICE OF PROPOSED RULEMAKING

50. In this Notice of Proposed Rulemaking, we propose and seek comment on reforms to ensure that the Commission is administering the Lifeline program on sound legal footing, recognizing the important and Congressionally mandated role of states in Lifeline program administration, and rooting out waste, fraud, and abuse in the program. These steps must precede broader discussions about how the Lifeline program can be updated to effectively bring digital opportunity to those who are currently on the wrong side of the digital divide.

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<sup>113</sup> See 47 CFR § 54.408(b)(1).

<sup>114</sup> See 47 CFR § 54.407(a) (“Universal service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers it serves directly as of the first day of the month.”).

<sup>115</sup> See *2016 Lifeline Order*, 31 FCC Rcd at 3978, 3981-84, 3988, 3990-91, paras. 45, 54, 56, 70, 77.

<sup>116</sup> See The iPass Global Wi-Fi Network, iPass (last visited Oct. 24, 2017), <https://www.ipass.com/mobile-network/>. See also, e.g., iPass hotspot locations in Indianola, Iowa, and Forrest City, Arkansas, <https://hotspot-finder.ipass.com/united-states/indianola-iowa>, <https://hotspot-finder.ipass.com/united-states/forrest-city-arkansas> (last visited Oct. 24, 2017).

<sup>117</sup> TracFone Reply at 7 & n. 12; Oklahoma PUC Comments at 4.

<sup>118</sup> TracFone Reply at 7.

## A. Respecting the States' Role in Program Administration

51. We first seek comment on ways the Commission can better accommodate the important and lawful role of the states in the Lifeline program. We propose to eliminate the Lifeline Broadband Provider category of ETCs and the state preemption on which it is based. We also seek comment on ways to encourage cooperative federalism between the states and the Commission to make the National Verifier a success.

### 1. Reauthorizing State Commissions to Designate Lifeline ETCs

52. In this section, we address the serious concerns that have been raised that the Commission's creation of Lifeline Broadband Provider (LBP) ETCs and preemption of state commissions' designations of such LBPs was inconsistent with the role contemplated for the states in Section 214 of the Act.<sup>119</sup> In the *2016 Lifeline Order*, the Commission established a framework to designate providers as Lifeline Broadband Providers (LBPs), eligible to receive Lifeline reimbursement for qualifying broadband Internet access service provided to eligible low-income consumers, but not Lifeline voice service.<sup>120</sup> The Commission's role in this framework was premised on the Commission's authority to designate a common carrier "that is not subject to the jurisdiction of a State commission."<sup>121</sup> And to effectuate that policy goal, the agency preempted state authority in a manner wholly inconsistent with Section 214 of the Communications Act, which gives primary responsibility for designation of eligible telecommunications carriers to the states.<sup>122</sup> Based on these circumstances and on further review, we believe the Commission erred in preempting state commissions from their primary responsibility to designate ETCs under section 214(e) of the Act and seek comment on this issue.<sup>123</sup>

53. The *2016 Lifeline Order*'s preemption of state designation of LBPs was challenged by the National Association of Regulatory Utility Commissioners (NARUC) and a coalition of states led by the State of Wisconsin (State Petitioners).<sup>124</sup> Among other issues, NARUC and the State Petitioners contend the Commission's decision to preempt states from exercising any authority to designate broadband providers as LBPs violates the Act and the Administrative Procedure Act. The United States Court of Appeals for the D.C. Circuit has remanded the legal challenges to the Commission for further proceedings.<sup>125</sup> The legal challenges to the LBP designation process question the Commission's legal authority to create an LBP designation process and designate providers under that process. Additionally, members of Congress have introduced legislation to reverse the Commission's preemption and clarify that the Communications Act of 1934 and the Telecommunications Act of 1996 cannot be interpreted to limit the jurisdiction of any state to designate an ETC.<sup>126</sup> Would reversing the preemption in the *2016 Lifeline Order* resolve the legal issues surrounding LBPs and their designation process? How would reversing the preemption in the *2016 Lifeline Order* impact the future of LBPs in the Lifeline program? Should ETCs be designated through traditional state and federal roles either for purposes of only Lifeline

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<sup>119</sup> See generally *National Association of Regulatory Commissioners v. FCC*, Pet. for Review, Case No. 16-1170 (filed D.C. Cir. June 3, 2016), <http://pubs.naruc.org/pub/7DC24780-CCC2-F594-7AEE-9C4250CD861D>; National Association of Regulatory Commissioners Comments, WC Docket Nos. 09-197, 11-42 (Mar. 16, 2017).

<sup>120</sup> See *2016 Lifeline Order*, 31 FCC Rcd 3962, 4040-68, paras. 217-89.

<sup>121</sup> *Id.* at 4048, para. 240 (citing 47 U.S.C. § 214(e)(6)).

<sup>122</sup> 47 U.S.C. § 214(e)(2), (3).

<sup>123</sup> See 47 U.S.C. § 214(e).

<sup>124</sup> See *NARUC v. FCC*, Case No. 16-1170 (D.C. Cir., filed June 3, 2016); *Wisconsin v. FCC*, Case No. 16-1219 (D.C. Cir. filed June 30, 2016).

<sup>125</sup> *NARUC v. FCC*, Case No. 16-1170, Order (D.C. Cir., Apr. 19, 2017) (granting the Commission's motion for voluntary remand).

<sup>126</sup> See Preserving State Commission Oversight Act of 2017, S. 421, 115<sup>th</sup> Cong. (2017).

(continued....)

or for both the high-cost and Lifeline programs?<sup>127</sup> What rule changes would be needed to restore the traditional state and federal roles for ETC designations? We seek comment on this proposal and on any alternatives.

54. The *2016 Lifeline Order* “applaud[ed] state programs for devoting resources designed to help close the affordability gap for communications services.”<sup>128</sup> Although not formally constraining how states administer those state programs for voice and/or broadband support, the Order recognized that its approach to ETC designations could create inconsistencies with the operation of those state programs.<sup>129</sup> States continue to play an important role in ensuring affordability of voice, and also supporting broadband; accordingly, reversing the preemption in the *2016 Lifeline Order* may resolve inconsistencies between state and federal efforts and provide benefits to the operation of state and federal programs. We seek comment on these issues.

55. We also propose eliminating stand-alone LBP designations to better reflect the structure, operation, and goals of the Lifeline program, as set forth in the Communications Act, as well as related state programs. For example, the existence of an LBP designation enables entities to participate in the Lifeline program without assuming any obligations with respect to voice service.<sup>130</sup> We seek comment on this proposal.

## **2. Partnering with States for the Successful Implementation of the National Verifier**

56. In the *2016 Lifeline Order*, the Commission established the National Verifier to make eligibility determinations and perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline Program. As outlined in the *2016 Lifeline Order*, “[t]he Commission’s key objectives for the National Verifier are to protect against and reduce waste, fraud, and abuse; to lower costs to the Fund and Lifeline providers through administrative efficiencies; and to better serve eligible beneficiaries by facilitating choice and improving the enrollment experience.”<sup>131</sup> A strong cooperative effort between the Commission and its state partners is critical to advancing these laudable objectives.<sup>132</sup> In this Notice of Proposed Rulemaking, we seek comment on ways to ensure the Commission can partner with states to facilitate the successful implementation of the National Verifier.

57. We seek comment on ways states can be encouraged to work cooperatively with the Commission and USAC to integrate their state databases into the National Verifier without unnecessary delay. Because the National Verifier is a critical part of improving the integrity of the Lifeline program, it is important all states join the National Verifier in a timely manner. To protect the integrity of the enrollment and eligibility determination process, we seek comment on whether new Lifeline enrollments should be halted in a state at any point if the launch of the National Verifier has been unnecessarily delayed in that state. For example, when the plan for National Verifier initiation in a state falls behind schedule, what steps should be taken to ensure no ineligible subscribers enroll in the program because of the delay? What is the proper response when the scheduled launch of the National Verifier in a state is not accomplished by the announced date and carriers relying on the launch announcement are unprepared

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<sup>127</sup> See 47 U.S.C. § 214(e).

<sup>128</sup> *2016 Lifeline Order*, 31 FCC Rcd at 4067-68, para. 287.

<sup>129</sup> See *id.* at 4067-68, paras. 286-89.

<sup>130</sup> *Id.* at 4094, para. 361.

<sup>131</sup> *2016 Lifeline Order*, 31 FCC Rcd at 4007, para. 128.

<sup>132</sup> See Testimony of Chris Nelson, Public Utilities Commissioner from the State of South Dakota, Senate Committee on Commerce, Science, and Transportation, at 2 (Sept. 6, 2017), <http://puc.sd.gov/commission/News/2017/nelsontestimony.pdf> (“State commissioners believe in cooperative federalism. That means we believe that state and federal regulators share a role in properly managing programs such as Lifeline.”).



to handle eligibility determinations? Should enrollments be halted for all consumers in the state or only for those whose eligibility must be verified using a state database?

58. We seek comment on other steps to encourage cooperation and collaboration between the states, the Commission, and USAC to ensure the National Verifier is launched in a state in a timely fashion. Should the Commission adopt specific benchmarks or proposed timelines to guide this process? Are there ways to streamline the process of developing and executing the agreements necessary to allow data sharing between states and the Commission? In the event a state has demonstrated an unwillingness to engage in the effort to deploy the National Verifier or to do so at reasonable costs, are there other measures the Commission should take? In these situations, USAC is able to conduct a manual review of all eligibility documentation for potential Lifeline subscribers in that state but that measure is costly, burdensome, and inefficient; we believe program expenses would be better directed towards electronic connections between state systems and the National Verifier platform. How can we encourage states to work cooperatively with USAC to avoid unnecessary costs?

## **B. Improving Lifeline's Effectiveness for Consumers**

59. The Lifeline program has an important role in bringing digital opportunity to low-income Americans. We believe that changes to Lifeline policies are warranted to ensure the Commission's administration of Lifeline support is faithful to Congress's stated universal service goals and is focused on helping low-income households obtain the benefits that come from access to modern communications networks. In this section, we propose policy changes to focus Lifeline support on encouraging service provider investment in networks that offer quality, affordable broadband service. We also seek comment on the Commission's legal authority for these proposed changes.

### **1. Focusing Lifeline Support to Encourage Investment in Broadband-Capable Networks**

60. *Lifeline Support for Facilities-Based Broadband Service.* We seek comment on focusing Lifeline support to encourage investment in broadband-capable networks. As explained in the *2016 Lifeline Order*, broadband service is increasingly important for participation in the 21st Century economy.<sup>133</sup> However, broadband service is not as ubiquitous or as affordable as voice service.<sup>134</sup> This is particularly true in rural and rural Tribal areas, where broadband deployment lags behind other areas of the country.<sup>135</sup>

61. Section 254(b) of the Act requires the Commission to base its policies for the preservation and advancement of universal service on the principles that "[q]uality services should be available at just, reasonable, and affordable rates," "[a]ccess to advanced telecommunications and information services shall be provided in all regions of the Nation" and "[c]onsumers in all regions of the

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<sup>133</sup> *2016 Lifeline Order*, 31 FCC Rcd at 3966, para. 13.

<sup>134</sup> See *2016 Lifeline Order*, 31 FCC Rcd at 3982, para. 55; Monica Anderson, Pew Research Center, Digital Divide Persists Even as Lower Income Americans Make Gains in Tech Adoption (2017), <http://www.pewresearch.org/fact-tank/2017/03/22/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>; Pew Research, Internet/Broadband Fact Sheet (2017), <http://www.pewinternet.org/fact-sheet/internet-broadband/>; Adie Tomer, Elizabeth Kneebone, Ranjitha Shivaram, Brookings Institute, Signs of Digital Distress, Mapping Broadband Availability and Subscription in American Neighborhoods, at 11 (2017), [https://www.brookings.edu/wp-content/uploads/2017/09/broadbandreport\\_september2017.pdf](https://www.brookings.edu/wp-content/uploads/2017/09/broadbandreport_september2017.pdf); John Horrigan, Maeve Duncan, Pew Research Center, Home Broadband 2015, at 3 (2015), <http://www.pewinternet.org/2015/12/21/home-broadband-2015/>.

<sup>135</sup> See, e.g., *2016 Broadband Progress Report*, 31 FCC Rcd at 702, 731-35, 738-40, 750-51, paras. 6, 79-80, 82-83, 90-91, 119-21, 126, & Tables 1, 2, 4, and 8; Adie Tomer, Elizabeth Kneebone, Ranjitha Shivaram, Brookings Institute, Signs of Digital Distress, Mapping Broadband Availability and Subscription in American Neighborhoods, at 15-17 (2017), [https://www.brookings.edu/wp-content/uploads/2017/09/broadbandreport\\_september2017.pdf](https://www.brookings.edu/wp-content/uploads/2017/09/broadbandreport_september2017.pdf); Andrew Perrin, Pew Research Center, Digital Gap Between Rural and Nonrural America Persists (2017), <http://www.pewresearch.org/fact-tank/2017/05/19/digital-gap-between-rural-and-nonrural-america-persists/>.

Nation ... should have access to ... advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>136</sup>

62. Mindful of the direction given to the Commission by Congress, we believe Lifeline support will best promote access to advanced communications services if it is focused to encourage investment in broadband-capable networks. We therefore propose limiting Lifeline support to facilities-based broadband service provided to a qualifying low-income consumer over the ETC’s voice- and broadband-capable last-mile network. We believe this proposal would do more than the current reimbursement structure to encourage access to quality, affordable broadband service for low-income Americans. In particular, Lifeline support can serve to increase the ability to pay for services of low-income households. Such an increase can thereby improve the business case for deploying facilities to serve low-income households. In this way, Lifeline can serve to help encourage the deployment of facilities-based networks by making deployment of the networks more economically viable. Furthermore, the competitive impacts of having multiple competing facilities-based networks can also help to lower prices for consumers.<sup>137</sup> If Lifeline can help promote more facilities, it can then indirectly also serve to reduce prices for consumers.

63. We seek comment on this proposal. What rule changes would be necessary to implement this proposal? How can the Commission ensure Lifeline support is only disbursed to ETCs that provide broadband service over facilities-based networks? How would this proposal impact the availability and affordability of Lifeline broadband services? Are there other steps the Commission should take to focus Lifeline support to encourage investment in broadband networks?

64. *Discontinuing Lifeline Support for Non-Facilities-Based Service.* Next, we seek comment on discontinuing Lifeline support for service provided over non-facilities-based networks, to advance our policy of focusing Lifeline support to encourage investment in voice- and broadband-capable networks. We propose limiting Lifeline support to broadband service provided over facilities-based broadband networks that also support voice service. Under this proposal, Lifeline providers that are partially facilities-based may obtain designation as an ETC, but would only receive Lifeline support for service provided over the facilities they own. We seek comment on how the Commission should define “facilities” for this purpose. Should the Commission adopt the same definition of facilities that the Fourth Report and Order uses for enhanced support on rural Tribal lands? If the Commission adopts different facilities-based criteria for Lifeline generally, should we also use that definition of “facilities” for purposes of enhanced Tribal support? We seek comment on any other rule changes that would be necessary to implement this proposal.

65. How would this proposal impact the number of Lifeline providers participating in the program and the availability of quality, affordable Lifeline broadband services? Are there other means of providing broadband service that should be considered facilities-based for purposes of the Lifeline program? How should the facilities-based requirement apply in a situation where a reseller and a facilities-based provider form a joint venture to provide Lifeline services? How should the Commission ensure Lifeline support is only issued to ETCs that satisfy the facilities requirement? Would the facilities-based requirement further the Commission’s goal of eliminating waste, fraud, and abuse in the Lifeline program? On this last point, we note that the vast majority of Commission actions revealing waste, fraud, and abuse in the Lifeline program over the past five years have been against resellers, not facilities-based

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<sup>136</sup> 47 U.S.C. § 254(b)(1)-(3).

<sup>137</sup> See Letter from Thomas J. Navin, Counsel to Corning Inc., to Marlene Dortch, Secretary FCC, WC Docket No. 17-84, Attach. A (Oct. 20, 2017), <https://ecfsapi.fcc.gov/file/1020823627435/Corning%20Ex%20Parte.pdf> (Hal Singer, Ed Naef, Alex King, Economists Incorporated and CMA Strategy Consulting, *Assessing the Impact of Removing Regulatory Barriers on Next Generation Wireless and Wireline Broadband Infrastructure Investment*, at 42-5 (June 2017) (discussing consumer price declines resulting from increased competition, including “a decline in the monthly standard broadband price of between approximately \$13 and \$18 for plans for download speeds between 25 Mbps and 1 Gbps” when a competitor offering Gigabit Internet is present).



providers. And the proliferation of Lifeline resellers in 2009 corresponded with a tremendous increase in households receiving multiple subsidies under the Lifeline program. How do the incentives of resellers differ from those who use their own last-mile facilities? Why have waste, fraud, and abuse increased—including multiple-subsidies-per-household problems, self-certification problems, authentication-of-subscriber problems, phantom-subscriber problems, and eligibility problems—since the advent of multiple resellers within the program in 2009?

66. We do not expect that this approach would impact the forbearance relief from section 214(e)(1)(A)'s facilities requirement. However, we recognize that not reversing this forbearance relief may create a tension that could be relieved by making the requirements for obtaining a Lifeline-only ETC designation under section 214(e)(1)(A) match the facilities requirement for receiving Lifeline reimbursement. We seek comment on such matters.

67. We also seek comment on the transition period for implementing this approach. If Lifeline support is only provided to ETCs that provide Lifeline broadband services over facilities-based voice- and broadband-capable networks, what should the transition period and transition process be for non-facilities-based providers currently participating in the Lifeline program and their customers?

68. Finally, we seek comment on how to determine whether existing or future resellers have fully complied with the statute's exhortation that universal service funding must be spent "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>138</sup> Have Lifeline resellers passed through all Lifeline funding to their underlying carriers to ensure federal funding is appropriately spent on the required "facilities and services" rather than non-eligible expenses like free phones and equipment? What accounting measures have Lifeline resellers instituted to ensure that Lifeline funding has only been used for eligible expenses? Would eliminating resellers from the program address any concerns about the appropriate use of federal funds by Lifeline providers? Would limiting payments to resellers to what they pay their wholesale carriers fully effectuate the congressional intent of section 254(e)? What auditing or other review should the Commission or USAC carry out to ensure that resellers that have been receiving funds used them properly?

69. *Continuing the Phase Down of Lifeline Support for Voice Service.* We also seek comment on continuing the phase down of Lifeline support for voice-only services. In the *2016 Lifeline Order*, the Commission adopted rules to gradually phase out Lifeline support for voice-only services to further the Commission's goal of transitioning to a broadband-focused Lifeline program.<sup>139</sup> The current rules provide that Lifeline support will decrease to zero dollars on December 1, 2021, with an exception permitting Lifeline voice support to continue in Census blocks where there is only one Lifeline provider.<sup>140</sup> In deciding to phase down Lifeline support for voice-only service, the Commission explained that continuing to provide Lifeline support for voice-only service may "artificially perpetuate a market with decreasing demand" and may incent Lifeline providers to "avoid providing low-income consumers with modern services as Congress intended."<sup>141</sup> The Commission also cited the declining prices of fixed and wireless voice-only services and the availability of a wide-range of voice-only services in the marketplace.<sup>142</sup>

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<sup>138</sup> 47 U.S.C. § 254(e).

<sup>139</sup> *2016 Lifeline Order*, 31 FCC Rcd at 3981, 3982-83, 4004, paras. 52, 55, 119. *See also* 47 CFR §§ 54.403(a)(2)(i)-(iv).

<sup>140</sup> 47 CFR §§ 54.403(a)(2)(iv).

<sup>141</sup> *2016 Lifeline Order*, 31 FCC Rcd at 3984, para. 57.

<sup>142</sup> *See 2016 Lifeline Order*, 31 FCC Rcd at 3982, para. 55 ("Even outside the Lifeline program, costs decreases have led to a large variety of reasonably priced voice options provided by providers."); *Id.* at 3983, para. 56 ("Technological evolution and market dynamics have also resulted in more choices and decreasing prices for fixed voice service."); *Id.* at 3984, para. 57 ("Mindful of Congress's section 254 mandate that '[q]uality services should be

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70. Continuing the phase down of Lifeline support is faithful to section 254(b)'s mandates and would support our proposal to focus Lifeline support to encourage investment in broadband-capable networks.<sup>143</sup> We acknowledge that some parties have argued against the phase down of Lifeline support for voice service, citing, among other concerns, the lack of affordability of voice service.<sup>144</sup> However, we expect that even without Lifeline voice support, low-income consumers would be able to obtain quality, affordable voice service in urban areas. Based on the *2017 Urban Rate Survey*, several providers charge monthly rates of ten dollars or less for fixed voice-only service, and the national average monthly rate for fixed voice-only service is \$22.49.<sup>145</sup> The *2016 Universal Service Monitoring Report* indicates that telephone expenses represent under four percent of after-tax income for low-income households.<sup>146</sup> Therefore, we expect that even without Lifeline support for voice-only service, the monthly cost of such service in urban areas would represent a small percentage of low-income households' after-tax income. We seek comment on continuing the phase down of Lifeline support for voice-only service. Should the Commission make any changes to the current schedule for phasing out Lifeline support for voice services to support the policy changes we propose in this section? Should the Commission retain the exception permitting Lifeline support for voice services after December 1, 2021 in areas where there is only one Lifeline provider?<sup>147</sup> Would retaining this exception impede the adoption of Lifeline broadband service or investment in broadband-enabled networks?

71. In contrast, it is unclear whether low-income consumers would be able to obtain quality, affordable voice service in rural areas without Lifeline voice support. The Commission's rules require high-cost ETCs to offer voice service at rates that are reasonably comparable to the rates for similar services in urban areas.<sup>148</sup> Although such rates may be affordable in theory, they may not be in practice:

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available at just, reasonable and affordable rates', we believe that the Lifeline program should directly support those services that are otherwise unaffordable to consumers, but for a Lifeline discount.").

<sup>143</sup> See 47 U.S.C. § 254(b)(1)-(3). See also *2016 Lifeline Order*, 31 FCC Rcd at 3982, para. 55; Monica Anderson, Pew Research Center, *Digital Divide Persists Even as Lower Income Americans Make Gains in Tech Adoption* (2017), <http://www.pewresearch.org/fact-tank/2017/03/22/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>; Pew Research, *Internet/Broadband Fact Sheet* (2017), <http://www.pewinternet.org/fact-sheet/internet-broadband/>; Adie Tomer, Elizabeth Kneebone, Ranjitha Shivaram, Brookings Institute, *Signs of Digital Distress, Mapping Broadband Availability and Subscription in American Neighborhoods*, at 11 (2017), [https://www.brookings.edu/wp-content/uploads/2017/09/broadbandreport\\_september2017.pdf](https://www.brookings.edu/wp-content/uploads/2017/09/broadbandreport_september2017.pdf); John Horrigan, Maeve Duncan, Pew Research Center, *Home Broadband 2015*, at 3 (2015), <http://www.pewinternet.org/2015/12/21/home-broadband-2015/>.

<sup>144</sup> See, e.g., NTCA/WTA Petition for Reconsideration, WC Docket No. 11-42 et al., at 6-7 (filed June 23, 2016); TracFone Petition for Reconsideration, WC Docket No. 11-42 et al., at 2-6 (filed June 23, 2016); Petition for Reconsideration of the National Association of State Utility Consumer Advocates (NASUCA), WC Docket 11-42 et al., at 3-4 (filed June 23, 2016) (NASUCA Petition); Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification, WC Docket No. 11-42 et al., at 9-11 (filed June 23, 2016).

<sup>145</sup> See 2017 Urban Rate Survey, Voice Data, Column E, Rows 256, 424, 646, 686, <https://www.fcc.gov/general/urban-rate-survey-data-resources>; *Wireline Competition Bureau Announces Results of 2017 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations*, Public Notice, 32 FCC Rcd 1358, 1358 (WCB 2017) (*Urban Rate Survey Public Notice*).

<sup>146</sup> See *Universal Service Monitoring Report*, CC Docket No. 96-45, et al., at 57, Table 6.12 (2016), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-343025A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf).

<sup>147</sup> 47 CFR § 54.403(a)(2)(v).

<sup>148</sup> *USF/ICC Transformation Order*, 26 FCC at 17693, para. 81 *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); 47 C.F.R. § 54.313(a)(2) ("Any recipient of high-cost support shall provide the following...A certification that the pricing of the company's voice services is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the most recent public notice issued by the

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the 2017 reasonable-comparability benchmark for voice services is \$49.51—more than twice the average urban rate. We accordingly seek comment on eliminating the phase down of Lifeline support for voice-only service in rural areas. Would eliminating the phase down be the best way to ensure that consumers in rural areas are offered affordable voice services? Should voice-only support be limited to a subset of rural areas where voice rates are actually above the urban average? If so, by how much? And how should we determine the areas where voice-only support is available? Would offering voice-only support to rural Tribal lands ensure more affordable voice services in those areas? If so, what should be the level of support offered compared to the amount of support available for broadband?

72. *Legal Authority.* We believe the Commission has authority under Section 254(e) of the Act to provide Lifeline support to ETCs that provide broadband service over facilities-based broadband-capable networks that support voice service. Section 254(e) provides that a carrier receiving universal service support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>149</sup> Our proposed changes to Lifeline support comport with the Commission’s authority under Section 254 because voice service would continue to be defined as a supported service under the Commission’s rules, and the networks receiving Lifeline support would also support voice service.<sup>150</sup> Thus, under the proposed changes, Lifeline support would be used “for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>151</sup> This legal authority does not depend on the regulatory classification of broadband Internet access service and, thus, ensures the Lifeline program has a role in closing the digital divide regardless of the regulatory classification of broadband service.

73. Relying on the Commission’s authority under Section 254(e) for the proposed changes to Lifeline support would also better reconcile the Commission’s authority to leverage the Lifeline program to encourage access to broadband with the Commission’s efforts to promote access to broadband through high-cost support.<sup>152</sup> In the universal service high-cost program, the Commission relied on section 254(e) as its authority to require ETCs receiving support through the Connect America Fund (including the Mobility Fund) or the existing high cost-support mechanisms to invest in broadband-capable networks, but declined to add broadband Internet access service to the list of supported services.<sup>153</sup> In adopting this requirement, the Commission explained that Section 254(e) grants the Commission the authority to “support not only voice telephony service but also the facilities over which it is offered” and that Congress’s use of the words “services” and “facilities” in Section 254(e) provides the “Commission the flexibility not only to designate the types of telecommunications services for which support would be provided, but also to encourage the deployment of the types of facilities that will best achieve the principles set forth in section 254(b) and any other universal service principle that the Commission may adopt under section 254(b)(7).”<sup>154</sup> The Commission further explained that it has a “‘mandatory duty’ to adopt universal service policies that advance the principles outlined in section 254(b) and we have the authority to ‘create some inducement’ to ensure that those principles are achieved.”<sup>155</sup> In 2014, the U.S. Court of Appeals for the Tenth Circuit upheld the Commission’s interpretation of its section 254(e)

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Wireline Competition Bureau and Wireless Telecommunications Bureau.”). The current reasonable comparability benchmark for fixed voice service is \$49.51. *Urban Rate Survey Public Notice*, 32 FCC Rcd at 1358.

<sup>149</sup> 47 U.S.C. § 254(e).

<sup>150</sup> 47 CFR § 54.401(a)(2).

<sup>151</sup> 47 U.S.C. § 254(e).

<sup>152</sup> *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17685-87, paras. 64-65 (2011), *aff’d sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>153</sup> *See USF/ICC Transformation Order*, 26 FCC Rcd at 17686-87, para. 65.

<sup>154</sup> *Id.* at 17685, para. 64.

<sup>155</sup> *Id.* at 17685, para. 65.

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authority in the *USF/ICC Transformation Order*.<sup>156</sup>

74. We seek comment on the Commission’s legal authority to adopt the proposed changes to Lifeline support. Are there other sources of authority that allow the Commission to make these changes to Lifeline support proposed in this section?

## 2. Enabling Consumer Choice

75. We seek comment on ways the Lifeline program can responsibly empower Lifeline subscribers to obtain the highest value for the Lifeline benefit through consumer choice in a competitive market. In particular, we seek comment on a request from TracFone Wireless, Inc. (TracFone) to allow providers to meet the minimum service standards through plans that provide subscribers with a particular number of “units” that can be used for either voice minutes or broadband service.<sup>157</sup> TracFone argues that the Bureau’s previous guidance that such “units” plans do not meet the minimum service standards was given without public comment and represented an improper reading of the relevant rule.<sup>158</sup> Should the Commission now allow “units” plans to receive reimbursement from the Lifeline program? What impact would these plans have on consumer choice in the Lifeline market? Would such a decision require a change in the Commission’s rules? If the Commission permits such plans, how should the Commission determine the appropriate support amount for those plans that combine voice and broadband options when the support level for voice service decreases to \$7.25 while the support amount for broadband service remains at \$9.25?<sup>159</sup>

76. We also seek comment on eliminating the Lifeline program’s “equipment requirement.”<sup>160</sup> That rule mandates that any Lifeline provider that “provides devices to its consumers[] must ensure that all such devices are Wi-Fi enabled,” prohibits “tethering charge[s],” and requires mobile broadband providers to offer devices “capable of being used as a hotspot.”<sup>161</sup> The Commission never sought comment on such requirements before imposing them on all Lifeline providers and appears to lack the statutory authority to adopt or enforce such requirements.<sup>162</sup> And although well-intentioned, the equipment mandate appears unnecessary if not affirmatively harmful. As the *2016 Lifeline Order* recognized, a “substantial majority” of Americans already own Wi-Fi enabled smartphones, suggesting such mandates are not needed.<sup>163</sup> And even those Lifeline providers that appear to support offering Wi-Fi-enabled devices or hotspot-enabled equipment acknowledge the increased cost of such equipment,<sup>164</sup> and fail to explain why consumers should not be free to choose lower-cost options. For example, the equipment mandate would prohibit a cable Lifeline provider from offering a low-cost modem rather than an integrated modem-Wi-Fi-router, even if a Lifeline consumer wanted to use a desktop computer to access the Internet. What is more, the *2016 Lifeline Order* lacked record evidence suggesting that these

<sup>156</sup> See *In re: FCC 11-161*, 753 F.3d at 1046-1048.

<sup>157</sup> See Letter from Mitchell F. Brecher, Counsel for TracFone Wireless, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42 (filed Sept. 7, 2017).

<sup>158</sup> See *id.* at 1; 47 CFR § 54.408.

<sup>159</sup> See 47 CFR § 54.403(a).

<sup>160</sup> See 47 CFR § 54.408(f).

<sup>161</sup> See 47 CFR § 54.408(f)(1)-(3).

<sup>162</sup> See *2016 Lifeline Order*, 31 FCC Rcd at 4099, para. 374 (relying on a comment by an outside party to connect the *Notice*’s discussion of closing the homework gap to its imposition of three separate equipment mandates); *id.* at 4099-100, para. 375 (reciting several provisions of the Act, none of which discuss consumer premises equipment or equipment mandates).

<sup>163</sup> *Id.* at 4100, para. 376.

<sup>164</sup> See, e.g., TracFone Petition for Reconsideration at 15-16 & n.21 (noting the high-cost of postpaid broadband plans that incorporate hotspot capabilities).

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mandates would have any meaningful impact on the homework gap—their nominal purpose. As such, it appears these mandates are more likely to widen the digital divide than close it. And so, for the first time, we seek comment on whether the Commission may or should retain the equipment mandates in our rules, or whether they instead should be eliminated.

### 3. Removing Unnecessary Regulation

77. In the interest of removing regulations that no longer benefit consumers, we propose to eliminate section 54.418 of the Commission’s rules, and we seek comment on this proposal.<sup>165</sup> When enacted, section 54.418 required ETCs to notify their customers about the then-upcoming transition for over-the-air full power broadcasters from analog to digital service (the “DTV transition”) over the course of several months in 2009. The DTV transition has since occurred, and it appears that the rule is no longer relevant. We seek comment on this proposal.

#### C. Steps to Address Waste, Fraud, and Abuse

78. As the Commission embarks on an effort to reform the incentives and effectiveness of the Lifeline program, it is incumbent on the Commission to consider ways we can continue to fight and prevent waste, fraud, and abuse in the program. To that end, we seek comment on a number of proposals to improve the Lifeline program’s administration to preserve program integrity.

##### 1. Improving Program Audits

79. We propose to adjust the process that USAC currently uses to identify which service providers will be subjected to Lifeline audits by transitioning to a fully risk-based approach. We propose to transition the independent audit requirements required by section 54.420 of the Commission’s rules away from a \$5 million threshold and, instead, to move toward identifying companies to be audited based on established risk factors and taking into consideration the potential amount of harm to the Fund. We propose modifying section 54.420 to allow companies to be selected based on risk factors identified by the Wireline Competition Bureau and Office of Managing Director, in coordination with USAC. This approach allows for adaptable, independent audits that respond to risk factors that change over time. We believe this new audit approach will better target waste, fraud, and abuse in the program and also utilize administrative resources more efficiently and effectively than in prior years.

80. USAC’s current audit program consists of audits targeted to high-risk participants as well as mandatory audits of certain carriers, such as all carriers offering Lifeline for the first time and any carrier receiving more than \$5 million in program support in a given year. Recognizing that some mandatory audits were unnecessary, the Commission in the *2016 Lifeline Order* directed the Office of Managing Director to work with USAC to modify the approach for determining the first-year Lifeline providers to be audited.<sup>166</sup> The Commission intended this direction to prevent wasteful auditing of companies with limited subscriber bases, for example, and to allow USAC to more efficiently direct audit resources to higher risk providers.<sup>167</sup> The Commission’s rules still require carriers drawing more than \$5 million annually from the program to obtain independent biennial audits.<sup>168</sup>

81. We seek comment on transitioning from the mandatory \$5 million threshold for the biennial independent audits under section 54.420(a) of the Commission’s rules to a purely risk-based model of targeted Lifeline audits. Under this approach, the Wireline Competition Bureau and Office of Managing Director, with support from USAC, would establish risk factors to identify the companies required to complete the biennial independent audits. The independent audits would then follow the same

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<sup>165</sup> See 47 CFR § 54.418.

<sup>166</sup> *2016 Lifeline Order*, 31 FCC Rcd at 4118, para. 427.

<sup>167</sup> *Id.*

<sup>168</sup> 47 CFR § 54.420.

process currently outlined in the rules with the identified carriers obtaining an independent auditor and following a standardized audit plan outlined by the Commission.<sup>169</sup> We believe this approach would be more efficient and more effective at rooting out waste, fraud, and abuse in the program because the identified risk factors would better target potential violations than merely focusing on companies receiving large Lifeline disbursements. A wider range of risk factors would be more responsive to identified program risks.

82. We also seek comment on the impact and burdens the current audit program imposes on providers and whether this risk-based approach reduces those burdens. What resources have the current, non-risk-based audits consumed in terms of employee time, recordkeeping systems, and other related audit costs? Would transitioning all Lifeline audits to a risk-based model improve the accountability of the program? What factors are key indicators of potential abuse in the program? Are there other risk factors the Wireline Competition Bureau, Office of Managing Director, and USAC should consider when identifying companies that should be subject to audit? How many companies should be required to obtain independent audits?

83. In its recent report, the Government Accountability Office (GAO) identified significant fraud and an absence of internal controls by performing undercover work to determine whether ETCs would enroll subscribers who are not eligible for Lifeline support.<sup>170</sup> We seek comment on conducting similar undercover work as part of the audits administered by USAC or a third-party auditor acting on USAC's behalf. Would such auditing techniques be a cost-effective way to eliminate fraud in the program? What administrative challenges would the Commission or USAC face in undertaking such undercover work?

84. Finally, we seek comment on how Lifeline program audits can ensure that Lifeline beneficiaries are actually receiving the service for which ETCs are being reimbursed. What documentation should an audit require to demonstrate that service is being provided? How should an audit detect and report instances where the subscriber's equipment makes it difficult or impossible for the subscriber to use the relevant service? Would changes to auditing methods on this issue require any changes to the Lifeline program rules?

## **2. Improving Program Integrity in Eligibility Verification**

85. The Lifeline enrollment and recertification processes continue to demonstrate significant weaknesses that open the program to waste, fraud, and abuse that harms contributing ratepayers and fails to benefit low-income subscribers. We therefore seek comment on a number of potential changes to the eligibility verification and reverification processes in the Lifeline program.

86. *ETC Representatives.* We seek comment on prohibiting agent commissions related to enrolling subscribers in the Lifeline program and on codifying a requirement that ETC representatives who participate in customer enrollment register with USAC. We believe these measures may benefit ratepayers by reducing waste, fraud, and abuse in the program. Many ETCs compensate sales employees and contractors with a commission for each consumer enrolled, and these sales and marketing practices can encourage the employees and agents of ETCs to enroll subscribers in the program regardless of eligibility, enroll consumers in the program without their consent, or engage in other practices that increase waste, fraud, and abuse in the program.<sup>171</sup>

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<sup>169</sup> 47 CFR § 54.420(a).

<sup>170</sup> See GAO, Telecommunications: Additional Action Needed to Address Significant Risks in FCC's Lifeline Program, GAO-17-538, at 44-46 (2017), <http://www.gao.gov/products/GAO-17-538>.

<sup>171</sup> See *Total Call Mobile, Inc.*, Order, 31 FCC Rcd 13204 (EB 2016); Testimony of FCC Commissioner Ajit Pai Before the Subcommittee on Communications and Technology of the United States House of Representatives Committee on Energy and Commerce, Oversight of the Federal Communications Commission, at 4-5 (July 12,

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87. We seek comment on codifying in the Commission's rules the USAC administrative requirement that ETCs' customer enrollment representatives register with USAC in order to be able to submit information to the NLAD or National Verifier systems. We also seek comment on the scope of the use of representatives' information. USAC is currently implementing an ETC representative registration database to help detect and prevent impermissible activity when enrolling or otherwise working with USAC to enroll Lifeline subscribers.<sup>172</sup> We are aware of certain practices of sales representatives resulting in improper enrollments or otherwise violating the Lifeline rules.<sup>173</sup> These practices include data manipulation to defeat NLAD protections, using personally identifying information (PII) of an eligible subscriber to enroll non-eligible subscribers, and obtaining false certifications from subscribers. USAC's current administrative efforts to create this database of ETC representatives would also combat waste in the event a representative using impermissible enrollment tactics is engaged by multiple ETCs. We seek comment on codifying the ETC representative registration requirement. How should we define an ETC enrollment representative for these purposes? What information would be necessary for the creation of this database? What privacy and security practices should be used to safeguard this information?

88. We also seek comment on our ability to take appropriate enforcement action against registered ETC representatives who violate the rules governing Lifeline enrollment. For the Commission to exercise its forfeiture authority for violations of the Act and its rules without first issuing a warning, the wrongdoer must hold (or be an applicant for) some form of authorization from the Commission, or be engaged in activity for which such an authorization is required.<sup>174</sup> Toward this end, we seek comment on whether we should implement a certification or blanket authorization process applicable to ETC representatives who register with USAC. How would this blanket authorization coincide with the Commission's existing authority over Lifeline providers' officers, agents, and employees under Section 217 of the Act?<sup>175</sup>

89. We also seek comment on whether the Commission should require ETCs to implement procedures that prohibit commission-based ETC personnel from verifying eligibility of Lifeline subscribers. By prohibiting commissions, we hope to dis-incent improper, fraudulent, or otherwise illegal enrollment processes sometimes utilized by ETCs' representatives. We propose that those employees, agents, or third parties who receive a significant portion of their compensation based on the number of Lifeline subscribers they enroll in the program be precluded from determining eligibility. We are concerned that ETCs implementing procedures barring commission-based personnel from reviewing and verifying subscriber eligibility certifications and documentation will reduce financial incentives for commission-based personnel to enroll ineligible subscribers. Should this proposal preclude ETCs from using commission-based personnel altogether, or should it instead require ETCs to simply implement procedures precluding commission-based personnel from determining eligibility?

90. *NLAD Dispute Resolution.* We seek comment on requiring USAC to directly review

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2016), available at <https://www.fcc.gov/document/commissioner-pai-statement-house-oversight-hearing> (*Pai Testimony*).

<sup>172</sup> See Letter from Ajit V. Pai, Chairman, FCC, to Vickie Robinson, Acting Chief Executive Officer and General Counsel, USAC, at 4 (July 11, 2017), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0711/DOC-345729A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0711/DOC-345729A1.pdf).

<sup>173</sup> *Id.* at 1-4; GAO, Telecommunications: Additional Action Needed to Address Significant Risks in FCC's Lifeline Program, GAO-17-538 (2017), <http://www.gao.gov/products/GAO-17-538>.

<sup>174</sup> See 47 U.S.C. § 503(b).

<sup>175</sup> See 47 U.S.C. § 217 ("In construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.").

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supporting documents for manual NLAD dispute resolutions, including information regarding the ETC agent submitting the documentation. We believe this requirement would reduce improper enrollments in the program. Currently, manual documentation review is required when a subscriber wishes to dispute an NLAD denial.<sup>176</sup> An NLAD denial occurs when a subscriber fails one of the protective checks contained in the NLAD system.<sup>177</sup> For example, if USAC's automated identity check rejects a consumer's application, that consumer may produce documentation verifying their identity, because the databases that are available to automatically verify identity are not comprehensive.<sup>178</sup> A Lifeline subscriber may dispute an NLAD denial by submitting the appropriate documentation to the ETC.<sup>179</sup> The ETC then reviews the documents, verifies the information at issue in the dispute, and processes the dispute resolution with USAC.<sup>180</sup>

91. The current system's reliance on carrier certification for dispute resolution has been questioned for making the Lifeline program vulnerable to waste, fraud, and abuse.<sup>181</sup> Having USAC conduct actual document review associated with NLAD dispute resolutions would increase the accountability of the resolutions. We seek comment on this proposal. Do the associated costs and administrative burdens associated with such review justify this additional step? If the Commission directed USAC to adopt this measure, what would be the optimal response time for USAC to process such disputes? How should USAC collect the documentation and what privacy safeguards should be taken to protect that information? Should USAC offer a list of acceptable documentation, and what documentation should qualify?

92. *Subscriber Recertification.* We seek comment on prohibiting subscribers from self-certifying their continued eligibility during the Lifeline program's annual recertification process if the consumer is no longer participating in the program they used to demonstrate their initial eligibility for the program. Section 54.410(f) of the Commission's rules allows subscribers to self-certify that they continue to be eligible for the Lifeline program if their eligibility cannot be determined by querying an eligibility database.<sup>182</sup> This is true even where the subscriber is seeking to recertify under a different qualifying program than the one they used to demonstrate their initial eligibility. Requiring eligibility documentation to be submitted in such cases would help to ensure the self-certification option for the eligibility recertification process is accurate and the subscriber is still eligible to participate in the Lifeline program through a different eligibility path. Should we amend the Commission's rules to require documentation be submitted when the subscriber attempts to recertify by self-certification only when the subscriber seeks to recertify under a different program than the one through which they initially demonstrated eligibility and cannot be recertified through an eligibility database? Should we require USAC to review that documentation?

93. *Independent Economic Household Forms.* We next seek comment on limiting ETCs' use

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<sup>176</sup> See USAC, National Lifeline Accountability Database: Dispute Resolution, <https://usac.org/li/tools/nlad/dispute-resolution/default.aspx> (last visited Oct. 24, 2017).

<sup>177</sup> See *id.*

<sup>178</sup> See USAC, Third Party Identity Verification (TPIV) Failure Resolution, <http://www.usac.org/li/tools/nlad/dispute-resolution/tpiv-failure-dr.aspx> (last visited Oct. 24, 2017).

<sup>179</sup> See USAC, National Lifeline Accountability Database: Dispute Resolution, <https://usac.org/li/tools/nlad/dispute-resolution/default.aspx> (last visited Oct. 24, 2017).

<sup>180</sup> See *id.*

<sup>181</sup> Testimony of FCC Commissioner Ajit Pai Before the Subcommittee on Communications and Technology of the United States House of Representatives Committee on Energy and Commerce, Oversight of the Federal Communications Commission, at 4-5 (July 12, 2016), available at <https://www.fcc.gov/document/commissioner-pai-statement-house-oversight-hearing> (*Pai Testimony*).

<sup>182</sup> 47 CFR § 54.410(f)(2).



of the Independent Economic Household (IEH) worksheet only when the consumer shares an address with other subscribers already enrolled in the Lifeline program. The *2016 Lifeline Order* amended the language of section 54.410(g) of the Commission's rules to require a prospective subscriber to complete an IEH worksheet upon initial enrollment and during any recertification in which the subscriber changes households and as a result shared an address with another Lifeline subscriber.<sup>183</sup> The intended purpose of the IEH worksheet was for use when multiple independent households reside at the same residence.<sup>184</sup> If an ETC collects an IEH worksheet from all subscribers regardless of whether another Lifeline subscriber resides at the same address, it is more difficult for USAC to monitor aggregate trends and particular ETCs' use of the IEH worksheet to detect improper activity. Prophylactic use of the household worksheet can therefore subvert the duplicate address protections and may result in increased waste, fraud, and abuse. We seek comment on amending the language of section 54.404(b)(3) to only permit the use of an IEH worksheet after the ETC has been notified by the NLAD, or state administrator in the case of NLAD opt-out states, that the prospective subscriber resides at the same address as another Lifeline subscriber.

94. Additionally, we seek comment on other methods to prevent abuse of the IEH worksheet process. Should the Commission direct USAC to develop a list of addresses known to contain multiple households? The addresses would primarily be assisted-living and retirement facilities, homeless shelters, public housing, and similar institutions. This list would enable USAC or the Commission to more effectively investigate addresses with high numbers of enrollments that do not appear to be physically or organizationally capable of housing many independent economic households. How should this list of known multiple-household addresses impact whether an ETC may collect an IEH worksheet from the prospective Lifeline consumer? What administrative approaches would reduce burdens on subscribers without creating vulnerabilities in the program's integrity?

95. More broadly, we seek comment on other dispute resolutions or "overrides" to Lifeline enrollment requirements that should be restricted or eliminated. Are there other points of the enrollment process that rely on the consumer's certification or manual document review in a way that irreparably weakens the integrity of the enrollment process? We note that, currently, a consumer may go through a dispute resolution process if that consumer is not found in a third-party identity verification database, has the same address as another Lifeline subscriber, has an address not recognized by the U.S. Postal Service, or cannot be found in an available eligibility program database. What additional steps should we institute as part of this resolution process to reduce the opportunity for abuse? Should the Commission limit the ability of providers or subscribers to override those initial failures with additional documentation to prevent fraudulent or abusive practices?

96. *Other Measures.* Finally, we seek comment on whether there are other measures the Commission could take to further reduce waste, fraud, and abuse and improve transparency in the program. Should the Commission require USAC to conduct ongoing targeted risk-based reviews of eligibility documentation or dispute resolution documentation?<sup>185</sup> Should the Commission codify a requirement that subscribers be compared to the Social Security Master Death Index during the enrollment and recertification processes?<sup>186</sup> Should the Commission amend its rules to require that a provider's Lifeline reimbursement be based directly on the subscribers it has enrolled in the NLAD to prevent claims for "phantom" subscribers?<sup>187</sup> Are there additional measures the Commission should take to address waste, fraud, and abuse in the program? We seek on these proposals.

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<sup>183</sup> 47 CFR § 54.410(g); *2016 Lifeline Order*, 31 FCC Rcd at 4138-39.

<sup>184</sup> *2015 Lifeline FNPRM*, 30 FCC Rcd at 7886, para. 204; *2012 Lifeline Reform Order*, 27 FCC Rcd 6690-91, para. 77.

<sup>185</sup> See Letter from Ajit Pai, Chairman, FCC, to Vickie Robinson, Acting CEO and General Counsel, USAC, at 1-3 (July 11, 2017), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0711/DOC-345729A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0711/DOC-345729A1.pdf).

<sup>186</sup> See *id.* at 4.

<sup>187</sup> See *id.* at 2-3.

### 3. Transparency and State Partnerships

97. We seek comment on additional reports USAC could make public or available to state agencies to increase program transparency and accountability. We seek comment on directing USAC to periodically report suspicious activity or trends to the Wireline Competition and Enforcement Bureaus, as well as the Office of Managing Director, and any relevant state agencies. Suspicious activity would include trend analysis of NLAD exemptions, subscriber churn, TPIV failure rates, and IEH worksheet rates. It will also include information gained from analytics on the National Verifier data. In addition to more transparent reporting of NLAD exemptions, what information would state agencies need to access to increase the effectiveness of state enforcement in the Lifeline program? Further, what information should USAC make accessible to other Lifeline stakeholders to increase the effectiveness and transparency of the program?

98. We seek comment on what additional reports USAC should make available for state agencies. USAC currently makes available a number of Lifeline program statistics and reports showing eligible Lifeline population estimates, Lifeline participation, and ETCs receiving Lifeline support.<sup>188</sup> In addition to this information, state agencies may request NLAD access for their respective state.<sup>189</sup> This access allows the state agency to review detailed subscriber information in the NLAD to aid their own program administration and enforcement, including information regarding which carriers are providing service.<sup>190</sup> In the *2016 Lifeline Order*, the Commission directed USAC to publish Lifeline subscriber counts on the study area code (SAC) level to “increase[] transparency and continue[] to promote accountability in the program.”<sup>191</sup>

#### D. Adopting a Self-Enforcing Budget

99. In the *2016 Lifeline Order*, the Commission implemented a budget process for the Lifeline program.<sup>192</sup> This budget approach, however, does not include any mechanism that automatically curtails disbursements beyond the budget amount absent further action by the Commission. Instead, if Lifeline disbursements in a given year meet or exceed 90 percent of that year’s budget, initially set at \$2.25 billion, the Bureau is required to issue a report to the full Commission detailing the reasons for the increased spending and recommending next steps.<sup>193</sup>

100. We propose to adopt a self-enforcing budget mechanism to ensure that Lifeline disbursements are kept at a responsible level and to prevent undue burdens on the ratepayers who contribute to the program. We believe a self-enforcing budget is appropriate to ensure the efficient use of limited funds.<sup>194</sup> We therefore propose to replace the approach adopted in the *2016 Lifeline Order* and require an annual cap for Lifeline disbursements. We intend for the program to automatically make adjustments in order to maintain the cap in the event the budget is exceeded.

101. We seek comment on the operation of such a self-enforcing budget. What is the

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<sup>188</sup> See USAC, Lifeline Program: Process Overview Program Statistics, <http://www.usac.org/li/about/process-overview/program-stats.aspx> (last visited Oct. 24, 2017).

<sup>189</sup> See USAC, National Lifeline Accountability Database: State Agency Access, <http://www.usac.org/li/tools/nlad/state-agency-access.aspx> (last visited Oct. 24, 2017).

<sup>190</sup> See *id.*

<sup>191</sup> *2016 Lifeline Order*, 31 FCC Rcd at 4117, para. 423.

<sup>192</sup> *2016 Lifeline Order*, 31 FCC Rcd at 4108-10, paras. 395-403.

<sup>193</sup> *Id.* at 4110, para. 402.

<sup>194</sup> See Jerry Ellig, Mercatus Center at George Mason University, Reforming the FCC’s Low-Income Phone Subsidies, at 4 (2013), available at [https://www.mercatus.org/system/files/Ellig\\_FCC-phone-subsidy\\_MOP\\_101813.pdf](https://www.mercatus.org/system/files/Ellig_FCC-phone-subsidy_MOP_101813.pdf).

appropriate period over which we should measure and enforce the cap? Would a six-month period be appropriate? For example, under this proposal, for each upcoming six-month period, USAC would forecast expected Lifeline and Link Up disbursements, as well as administrative expenses attributable to the operation of these programs. If projected disbursements and expenses are expected to exceed one half of the annual cap, USAC would proportionately reduce support amounts during the upcoming six-month period to bring total disbursements under one half of the annual cap. If, however, total payments in the upcoming six-month period are projected to be less than one half the annual cap, USAC would provide the full support amounts as determined by the Commission and collect only what is necessary to fund the demand. We seek comment on this proposal. What administrative difficulties should USAC anticipate when forecasting disbursements? What steps should USAC take, if any, in the midst of a six-month period in the event forecast disbursements and expenses vary significantly from actual disbursements and expenses? We note that USAC currently projects quarterly requirements for the Lifeline program and submits those projections to the Commission.<sup>195</sup> What can we learn from the accuracy of USAC's past forecasts that would inform how this proposal would work? Alternatively, would another period of time be more appropriate? Would a one-year period be more suitable for the Lifeline market? In particular, we seek comment on the concept of measuring the budget over a 12-month period and whether that concept fully protects the ratepayer from excessive spending.

102. Alternatively, we seek comment on a different self-enforcing budget mechanism that would allow Lifeline spending in a given period to exceed the cap, but would result in Lifeline disbursements being reduced in the next period to accommodate the excessive spending. In this mechanism, disbursements would be reduced proportionally throughout the following period to ensure the disbursements and expenses do not exceed the budget less the amount by which the previous period's disbursements and expenses exceeded the budget. We seek comment on this approach, noting that it has the benefit of not requiring a forecast or handling the inevitable under- or over-shooting of the actual demand. Under this proposal, when should the cap for the second period of time be set? At the beginning of the first period, or the second one? We also seek comment on whether it is acceptable to allow disbursements to exceed the budget in a given period, even where adjustments made in the following period mean the program spends less than the total budgeted amount over the two periods. Would any of the proposed budget mechanisms result in a significant variance in the disbursement cap for consecutive funding years, and if so, what impact would that have on Lifeline consumers and providers?

103. We also seek comment on whether Lifeline spending should be prioritized in the event that the cap is reached or USAC projects will be reached in a funding year. If so, we propose that the Commission prioritize funding in the following order if disbursements are projected to exceed the cap: (1) rural Tribal lands, (2) rural areas, and (3) all other areas. We seek comment on this prioritization scheme and whether any other factors should weigh in our analysis. For example, should we prioritize Lifeline spending in low-income areas where the business case for deployment is harder to make? If the Commission adopts such funding prioritizations, how should we implement such a system? Should the Commission adjust all of the support amount categories to different extents, or should categories with less prioritization receive no support before the support of the category with the next-highest prioritization is adjusted? We seek comment on these issues.

104. We also seek comment on the appropriate initial amount for this cap. Would historical disbursement levels be instructive in determining the appropriate annual cap? In 2008, when the Commission first allowed a non-facilities-based ETC to receive Lifeline support, Lifeline expenditures

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<sup>195</sup> See Universal Service Administrative Company, Federal Universal Service Support Mechanism Fund Size Projections for Fourth Quarter 2017, at 23-25 (2017), <http://www.usac.org/about/tools/fcc/filings/2017/q4.aspx>.

totaled approximately \$820 million.<sup>196</sup> By 2012, that amount had grown to over \$2.1 billion.<sup>197</sup> The Commission's initial steps to eliminate waste, fraud, and abuse within the program have reduced Lifeline disbursements to just over \$1.5 billion in 2015.<sup>198</sup> If the Commission adopted a previous disbursement level as the annual disbursement cap, which disbursement level would be appropriate? We seek comment on these issues and other relevant matters, such as whether this cap should include USAC's expenses for administering the Lifeline program. If so, how should we incorporate these administrative expenses?

105. We also seek comment on whether and how the program's cap should be adjusted in subsequent years. Should the cap remain the same, absent further action by the Commission, or should the cap be automatically indexed to inflation? Should the cap be tied to other metrics, like the growth or decrease of poverty nationwide or participation in means-tested programs?<sup>199</sup>

#### **E. Regulatory Impact Analysis**

106. We seek comment on the need for regulatory action to address the problems identified here, as well as the costs and benefits of our proposals along with data and other information that can be used to quantify these. Specifically, we seek comment on the need for and costs and benefits of regulatory action of the following proposals, relative to the status quo: permitting states with their own eligibility determination processes to opt out of the National Verifier; directing Lifeline support to facilities-based providers; adopting a self-enforcing budget; enhancing targeted audits of participating providers; and acting on the other interpretive and policy changes for which we seek comment above. Commenters proposing alternatives to our proposals should discuss the need for and costs and benefits of their proposal, including relative costs and benefits of their proposal as compared to those set forth here, and should provide supporting evidence. We also seek comment on options to achieve the most effective use of resources to achieve the purposes of the Lifeline program, and specifically to lower the cost of adoption to lower-income subscribers. We seek data and information commenters believe is necessary for these analyses and comment on specific methodologies commenters believe are best suited for this purpose. We also seek comment generally on how to evaluate the relative importance of public interest outcomes that are not readily susceptible to quantification, such as "equity, human dignity, fairness, and distributive impacts."<sup>200</sup>

### **VI. NOTICE OF INQUIRY**

107. The Lifeline program is an important means of achieving universal service. In the *2016 Lifeline Order* the Commission took the step of allowing Lifeline to support broadband to help low-income Americans obtain access to quality, affordable service.<sup>201</sup> However, we remain concerned about the well-documented digital divide for low-income Americans, and in particular, low-income individuals who have not adopted broadband service, and low-income Americans residing on rural Tribal and or rural lands.<sup>202</sup>

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<sup>196</sup> See *Universal Service Monitoring Report*, CC Docket No. 96-45 et al., at 26, Table 2.4 (WCB 2016), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-343025A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf).

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> See Florida Public Service Commission Comments, WC Docket No. 11-42, at 4-5 (filed Aug. 31, 2015).

<sup>200</sup> See Executive Order 13563, 76 Fed. Reg. 3821, 3821-23 (Jan. 18, 2011).

<sup>201</sup> *2016 Lifeline Order*, 31 FCC Rcd at 3972-77, paras. 38-43.

<sup>202</sup> Several studies indicate that the current Lifeline program is not well targeted. See, e.g., Olga Ukhaneva, *Universal Service in a Wireless World*, at 4-5, 20-21, 23 (2015), <https://www.aeaweb.org/conference/2016/retrieve.php?pdfid=1011>; Daniel A. Ackerberg, David R. DeRemer, Michael H. Riordan, Gregory L. Rosston, and Bradley S. Wimmer, Center for Economic Studies, *Estimating the Impact of Low-Income Universal Service Programs*, CES 13-33, at 6, 26, 27 (2013),

(continued....)

108. To ensure that the Lifeline program achieves universal service for 21<sup>st</sup> Century services, it is necessary to evaluate the ultimate purposes of the Lifeline program and identify the policies that will best accomplish those purposes. Sharpening the focus of the Lifeline program would further promote digital opportunity for low-income individuals, and in particular for low-income Americans who have not adopted broadband, or who reside in rural Tribal or rural areas.

**A. Improving Provider Incentives for Lifeline Service**

109. To focus the Lifeline program on supporting affordable communications service for the nation's low-income households and on improving the economic incentives of providers serving them, we begin a proceeding to reexamine the Lifeline program's support structure to encourage affordable access to high quality services for low-income consumers while we continue to discourage the practices leading to program waste, fraud, and abuse. Accordingly, we seek comment on potential changes to the Lifeline program funding paradigm that will help the Lifeline program more efficiently target funds to areas and households most in need of help obtaining digital opportunity.

110. Ensuring that service providers have appropriate incentives to deploy and provide services to these populations can further the Commission's efforts to bring digital opportunity to low-income Americans who have not yet adopted broadband and low-income Americans residing in rural or rural Tribal areas who typically experience difficulty obtaining access to affordable, quality broadband. We seek comment on actions the Commission could take to create better economic incentives for providers participating in the Lifeline program. We also seek comment on how those incentives would impact the program's effectiveness at reaching certain subsets of the low-income population. The Lifeline program was originally created to promote low-income consumers' access to affordable services.<sup>203</sup> What changes could the Commission make to target consumers who have not yet adopted broadband, and to what extent should the Commission weigh efforts that facilitate reaching those consumers specifically? We seek comment on whether and how the Commission should adopt a support framework that encourages adoption of high quality communications service by low-income consumers.

111. *Maximum Discount Level.* We first explore whether to apply a maximum discount level for Lifeline services above which the costs of the service must be borne by the qualifying household. Today, many service providers use the monthly Lifeline support amount to offer free-to-the-end-user Lifeline service, for which the Lifeline customer has no personal financial obligation.<sup>204</sup> In 2016, certain wireless Lifeline service providers estimated that 11 million Lifeline participants (85 percent of all Lifeline program participants) subscribed to plans providing free-to-the-end-user Lifeline service.<sup>205</sup> In contrast, the Commission's other universal service support programs all require beneficiaries or support recipients to pay a portion of the costs of the supported service.<sup>206</sup> For example, the E-rate program

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<https://www2.census.gov/ces/wp/2013/CES-WP-13-33.pdf>. See also, e.g., John Mayo, Olga Ukhaneva, and Scott Wallsten, *Toward a More Efficient and Effective Lifeline Program*, Economic Policy Vignette, at 2-4, 6 (2015), <http://cbpp.georgetown.edu/sites/cbpp.georgetown.edu/files/Mayo-Macher-Ukhaneva-toward-more-efficient-lifeline-program.pdf>; Daniel Lyons, American Enterprise Institute, *To Narrow the Digital Divide, the FCC Should Not Simply Extend Lifeline to Broadband*, at 1, 3-4, 6 (2016), <http://www.aei.org/wp-content/uploads/2016/03/To-Narrow-the-Digital-Divide.pdf>.

<sup>203</sup> See *2016 Lifeline Order*, 31 FCC Rcd at 4003, para. 116.

<sup>204</sup> See, e.g., Assurance Wireless, *Lifeline Program Description*, <http://www.assurancewireless.com/Public/MorePrograms.aspx> (last visited Oct. 24, 2017); TAGMobile, *Why TAG*, <https://www.tagmobile.com/Support/WhyTag> (last visited Oct. 24, 2017).

<sup>205</sup> See Letter from John Heitmann, Kelly Drye & Warren LLP, to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (Feb. 3, 2016).

<sup>206</sup> See 47 CFR §§ 54.505(b) (E-rate Program), 54.602(a), 54.633(a) (Rural Health Care Program); *Connect America Fund High Cost Universal Support*, Report and Order, 29 FCC Rcd 3964, 4035-36, para. 171 (2014) (High Cost Program).

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discount levels range from 20 percent to 90 percent of the costs of eligible goods and services, and E-rate beneficiaries are required to pay the remaining costs of the supported goods and services.<sup>207</sup> Should the approach that the Commission has taken in other universal service support programs be instructive in the Lifeline context? Do the users of the supported service value that service more if they contribute financially? Are such users more sensitive to the price and quality of the service? Is there any particular approach taken by another universal service support program that should inform the Commission's analysis for the Lifeline program? Under the Commission's rules, providers of video relay service (VRS) are compensated for the reasonable costs of providing VRS.<sup>208</sup> Do the policies underlying that approach apply in the Lifeline context?

112. The concept of maximum discount levels and mandatory contributions is not limited to federal benefit programs administered by the Commission. For example, many participants in the U.S. Department of Housing and Urban Development's (HUD's) Public Housing and Housing Choice Voucher programs and the U.S. Department of Health and Human Services' (DHHS') Low-Income Home Energy Assistance Program (LIHEAP) are required to pay a portion of the costs of their utilities or rent.<sup>209</sup> We seek comment on the utility of comparing these programs to the Lifeline program, and if the Commission should consider the approach undertaken in other benefit programs with capped support amounts. For those other benefit programs, has the efficacy of mandatory end user payments been evaluated? Did the requirement of end user payments impact services provided to the consumer, program enrollment, or competition in the relevant market? Importantly, did such a requirement reduce the waste, fraud, and abuse in those programs that would have occurred absent the cap?

113. We also seek comment on the impact of this possible change to the program. What impact would a maximum discount level have on the affordability, availability, and quality of communications service for low-income consumers? How would a maximum discount level for the Lifeline program impact the types of services that consumers obtain through the program? Would it change the quality of broadband service that Lifeline providers offer, including speed and data allowances? Would this change affect the availability of certain types of service more than others, for example, mobile versus fixed service? Would a maximum discount level help ensure that Lifeline funds are targeted at high-quality broadband service offerings that truly help close the digital divide for low-income consumers? Would adopting a maximum discount level encourage consumers to more carefully investigate and evaluate the service to which they wish to apply their Lifeline benefit, thereby decreasing Lifeline subscriber churn or violations of the one-per-household rule and helping further reduce waste, fraud, and abuse in the Lifeline program?

114. One proposal is to adopt a maximum discount level to improve the Lifeline program's efficiency and further reduce waste, fraud, and abuse in the program.<sup>210</sup> Under the current structure,

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<sup>207</sup> 47 CFR §§ 54.505(b), 54.504(a)(1)(iii).

<sup>208</sup> 47 CFR § 64.604(c)(5)(iii)(E)(1).

<sup>209</sup> See, e.g., HUD Public Housing Program, [https://portal.hud.gov/hudportal/HUD?src=/topics/rental\\_assistance/phprog](https://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog) (last visited Oct. 24, 2017) ("Your rent, which is referred to as the Total Tenant Payment (TTP) in this program, would be based on your family's anticipated gross annual income less deductions, if any."); Housing Choice Vouchers Fact Sheet, [https://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](https://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8) (last visited Oct. 24, 2017) ("The housing voucher family must pay 30% of its monthly adjusted gross income for rent and utilities, and if the unit rent is greater than the payment standard the family is required to pay the additional amount" not to exceed 40% of the family's monthly adjusted gross income.); LIHEAP Frequently Asked Questions for Consumers <https://www.acf.hhs.gov/ocs/resource/consumer-frequently-asked-questions#Q1> (last visited Oct. 24, 2017), ("LIHEAP is not meant to pay for all of your energy costs for the year, season, or even the month.").

<sup>210</sup> See, e.g., Remarks of FCC Commissioner Ajit Pai at the Citizens Against Government Waste Policy Breakfast (July 28, 2014), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-328469A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-328469A1.pdf); Commissioner Michael O'Rielly, Sound Principles for Lifeline Reform (Feb. 23, 2015), <https://www.fcc.gov/news->



service providers may engage in fraud or abuse by using no-cost Lifeline offerings to increase their Lifeline customer numbers when the customers do not value or may not even realize they are purportedly receiving a Lifeline-supported service. We seek comment on whether Lifeline's current benefit structure fails to ensure that the program supports services that consumers value. Would a maximum discount level curtail such practices and prevent universal service funds from being spent on services of little to no value for the Lifeline consumer?

115. If the Commission established a maximum discount level requirement for Lifeline, how should such a requirement operate? Are there specific pricing data or other data that would help the Commission determine an appropriate maximum discount level? Should the required end user payment be a flat amount or a percentage of the price of the service? How would a maximum discount level apply for prepaid services or consumer payment structures that otherwise do not require a monthly billing relationship between the provider and the consumer? Should there be any exceptions to the maximum discount level and, if so, what is the justification for these exceptions? How could the Commission implement a maximum discount level with minimal increases in Lifeline service provider costs and administrative burdens? Are there specific data that would help the Commission evaluate the potential impact of a maximum discount level on the Lifeline participation rate of qualifying low-income consumers? Finally, are there other alternatives we should consider to ensure that the Lifeline program supports services that Lifeline customers value?

116. In the *2016 Lifeline Order*, the Commission adopted minimum service standards to make sure that Lifeline customers receive quality Lifeline-supported services.<sup>211</sup> A maximum discount level may also achieve this goal because consumers who pay a portion of the costs may be more sensitive to the price and quality of the service. Would a maximum discount level therefore make minimum service standards unnecessary? Do the minimum service standards serve additional purposes that would not be served by a maximum discount level? If the Lifeline program rules included both a maximum discount level and minimum service standards, should the Commission revise the formulas used to determine the minimum service standards or adjust the mechanisms by which the minimum service standards are updated?

117. *Benefit Limit.* We next ask about implementing a benefit limit that restricts the amount of support a household may receive or the length of time a household may participate in the program. The objectives of such restrictions include encouraging broadband adoption without reliance on the Lifeline subsidy and controlling the disbursement of scarce program funds. Such a limit would provide low-income households incentives to not take the subsidy unless it is needed, since taking the subsidy in a given month will forfeit the opportunity to use it in a future month. We seek comment on whether the Commission should adopt a benefit limit for the Lifeline program.

118. If the Commission established a benefit limit or time limit for Lifeline, how should such a requirement operate and how should it be enforced? Are there specific data that would help the Commission determine an appropriate monetary or temporal limit in support? Currently in the Lifeline

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[events/blog/2015/02/13/sound-principles-lifeline-reform/](https://www.fcc.gov/events/blog/2015/02/13/sound-principles-lifeline-reform/); Jerry Ellig, Mercatus Center at George Mason University, *Reforming the FCC's Low-Income Phone Subsidies*, at 4-5 (2013), [https://www.mercatus.org/system/files/Ellig\\_FCC-phone-subsidy\\_MOP\\_101813.pdf](https://www.mercatus.org/system/files/Ellig_FCC-phone-subsidy_MOP_101813.pdf); Letter from Senator Claire McCaskill, U.S. Senate, to the Honorable Tom Wheeler et al., Chairman, FCC, at 1 (Mar. 1, 2016), <https://www.mccaskill.senate.gov/imo/media/doc/McCaskill%20Letter%20to%20FCC%20on%20Lifeline.pdf>; California Emerging Technology Fund Comments, WC Docket No. 11-42 et al., at 22, 24 (Aug. 31, 2015); Nebraska Public Service Commission Comments, WC Docket No. 11-42 et al., at 8-9 (Apr. 21, 2011) (supporting the adoption of minimum consumer charges for the Lifeline program); Indiana Utility Regulatory Commission Comments, WC Docket No. 11-42 et al., at 5-6 (Apr. 21, 2011) (same).

<sup>211</sup> See *2016 Lifeline Order*, 31 FCC Rcd at 3988-4000, paras. 69-103. See also 47 C.F.R. § 54.408.

program, households remain enrolled for 1.75 years on average.<sup>212</sup> How should this information affect our decision to impose this restriction? Should the limit be applied to households or individuals, and how would the Commission or USAC track benefits received if consumers transfer to different providers? Should there be any exceptions to the benefit limit or time limit and, if so, what is the justification for these exceptions? How could the Commission implement a benefit limit or time limit with minimal increases in the costs or administrative burdens for Lifeline service providers? Are there specific data that would help the Commission evaluate the potential impact of a benefit or time limit on the Lifeline participation rate of qualifying low-income consumers? Are there other alternatives to a benefit limit that we should consider to better focus Lifeline funds on those households who need it most?

## **B. Lifeline Support that Targets the Digital Divide**

119. We also seek comment on how the Commission could leverage the Lifeline program to encourage broadband deployment in areas that have found themselves on the wrong side of the digital divide. Where a provider has already invested in building a broadband-capable network, that provider often has incentives to create mutually beneficial offerings that make affordable connectivity options available to low-income households within the network's footprint.<sup>213</sup> We seek comment on whether the Commission should shape its Lifeline support structure to provide enhanced support in areas where providers do not have sufficient incentive to make available affordable high-speed broadband service.

120. We seek comment on whether and how the Commission should adopt rule changes to target Lifeline support to bring digital opportunity to areas that offer less incentive for deployment of high-speed broadband service, such as rural areas and rural Tribal areas. Rural and rural Tribal areas have higher percentages of broadband non-adopters compared to other areas.<sup>214</sup> It is also well documented that lower-income households have lower broadband adoption rates and lower in-home broadband connectivity rates compared to higher-income households.<sup>215</sup> Some have suggested that the Commission should therefore target Lifeline support primarily to nonadopters to improve the

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<sup>212</sup> See USAC 2015 Annual Report at 11, <https://www.usac.org/res/documents/about/pdf/annual-reports/usac-annual-report-2015.pdf>.

<sup>213</sup> See, e.g., Comcast Internet Essentials, <https://www.internetessentials.com/> (last visited Oct. 24, 2017) (offering broadband at speeds of 15 Mbps to qualifying low-income households); Charter Spectrum Internet Assist Program, <https://www.spectrum.com/browse/content/spectrum-internet-assist.html> (last visited Oct. 24, 2017) (offering broadband at speeds of 30 Mbps to qualifying low-income households); CenturyLink, CenturyLink Internet Basics, <http://www.centurylink.com/home/internetbasics/> (last visited Oct. 24, 2017) (offering broadband at speeds of up to 1.5 Mbps to qualifying low-income households); AT&T, Access from AT&T <https://www.att.com/shop/internet/access/#/> (last visited Oct. 24, 2017) (offering broadband at speeds as high as 10 Mbps to qualifying low-income households).

<sup>214</sup> See, e.g., Andrew Perrin, Pew Research Center, Digital Gap Between Rural and Non-rural America Persists (May 19, 2017), <http://www.pewresearch.org/fact-tank/2017/05/19/digital-gap-between-rural-and-nonrural-america-persists/>; Edwin Carlson and Justin Goss, National Telecommunications and Information Administration, The State of the Urban Rural Digital Divide (Aug. 10, 2016), <https://www.ntia.doc.gov/blog/2016/state-urbanrural-digital-divide>; 2016 Broadband Progress Report, 31 FCC Rcd 744, at para. 100 & Table 10; Lennard G. Kruger, Congressional Research Service, Tribal Broadband: Status of Deployment and Federal Funding Programs at 14-15, (2016), <https://fas.org/sgp/crs/misc/R44416.pdf>; Letter from M. Theresa Hopkins, Executive Director, Navajo Nation Telecommunications Regulatory Commission, to Thomas Wheeler, Chairman, FCC, WC Docket No. 11-42, at 1 (Feb. 24, 2016).

<sup>215</sup> See, e.g., Monica Anderson, Pew Research Center, Digital Divide Persists Even as Lower-Income Americans Make Gains in Tech Adoption (Mar. 22, 2017), <http://www.pewresearch.org/fact-tank/2017/03/22/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>; U.S. Department of Housing and Urban Development, Office of Policy Development and Research, Evidence Matters, Digital Inequality and Low-Income Households, at 1, 3 (Fall 2016), <https://www.huduser.gov/portal/periodicals/em/fall16/highlight2.html>; 2016 Broadband Progress Report, 31 FCC Rcd at 744-45, para. 102 & Table 11.

(continued....)



effectiveness and efficiency of the Lifeline program.<sup>216</sup> In light of these analyses, we seek comment on whether the Lifeline program could better reach nonadopters of broadband by focusing Lifeline support in areas where providers need additional incentive to offer high-speed broadband service.

121. *Rural and Rural Tribal Areas.* We specifically seek comment on whether and how the Commission should adjust the Lifeline support amount to encourage affordable broadband access for low-income consumers in rural areas. Low-income consumers in rural or rural Tribal areas may have difficulty obtaining affordable, quality broadband service because service providers have less incentive to incur the costs to deploy advanced facilities or to provide a wide range of services at competitive prices in these areas.<sup>217</sup> In rural areas, higher deployment costs can also lead to fewer service options and higher prices that disproportionately impact low-income consumers.<sup>218</sup> We also focus on rural Tribal areas in which affected stakeholders have suggested that the current Lifeline Tribal enhanced subsidy amount is insufficient to incentivize broadband deployment in rural Tribal areas.<sup>219</sup> Although broadband

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<sup>216</sup> See, e.g., Commissioner Michael O’Rielly and Rep. Marsha Blackburn, FCC’s Lifeline Program Ripe for Fraud, Abuse, *Politico* (July 12, 2015) (“Second, the program must be better targeted to eligible low-income individuals who would not otherwise sign up for service”), <http://www.politico.com/magazine/story/2015/07/fccs-lifeline-program-expansion-without-reform-120008>; John Mayo, Olga Ukhaneva, and Scott Wallsten, Toward a More Efficient and Effective Lifeline Program, *Economic Policy Vignette*, at 3 (2015) (“A reformed Lifeline program should focus on better targeting consumers that would not subscribe to voice/broadband without a subsidy, thereby increasing its cost effectiveness.”), <http://cbpp.georgetown.edu/sites/cbpp.georgetown.edu/files/Mayo-Wallsten-Ukhaneva-toward-more-efficient-lifeline-program.pdf>; Daniel Lyons, American Enterprise Institute, To Narrow the Digital Divide, the FCC Should Not Simply Extend Lifeline to Broadband, at 6 (2016) (“[P]olicy makers should study the profile of low-income non-broadband households in particular and design an application system tailored to this segment of the population. This will reduce the risk of spending program dollars on those who would have bought Internet access anyway.”), [http://www.aei.org/publication/to-narrow-the-digital-divide-the-fcc-should-not-simply-extend-lifeline-to-broadband/?utm\\_source=tpd&utm\\_medium=publink&utm\\_campaign=cicct](http://www.aei.org/publication/to-narrow-the-digital-divide-the-fcc-should-not-simply-extend-lifeline-to-broadband/?utm_source=tpd&utm_medium=publink&utm_campaign=cicct).

<sup>217</sup> See, e.g., *2016 Broadband Progress Report*, 31 FCC Rcd at 702, 731-35, 738-40, 750-51, paras. 6, 79-80, 82-83, 90-91, 119-21, 126, & Tables 1, 2, 4, and 8; Lennard G. Kruger, Congressional Research Service, Tribal Broadband: Status of Deployment and Federal Funding Programs at 1 (2016), <https://fas.org/sgp/crs/misc/R44416.pdf>; Lennard G. Kruger and Angele A. Gilroy, Congressional Research Service, Broadband Internet Access and the Digital Divide: Federal Assistance Programs, at 1, 7-8 (2016), <https://fas.org/sgp/crs/misc/RL30719.pdf>; Oregon Business Development Department, Strategies for Broadband Infrastructure Deployment, Adoption and Utilization in Rural Cities and Counties, at 7 (2016), <http://www.orinfrastructure.org/Infrastructure-Programs/Telecommunications/OBAC/Reports/RuralBbStrategiesRpt16.pdf>.

<sup>218</sup> See Andrew Perrin, Pew Research Center, Digital Gap Between Rural and Nonrural America Persists (May 19, 2017), <http://www.pewresearch.org/fact-tank/2017/05/19/digital-gap-between-rural-and-nonrural-america-persists/> (stating that 63 percent of rural Americans report that they have a home broadband connection, compared to 73 percent in urban areas and 76 percent in suburban areas); Emily Guerin, High Country News, Rural Americans Have Inferior Internet Access (2014), <http://www.hcn.org/issues/46.2/rural-americans-have-inferior-internet-access>; Jeremy Craig, Georgia State University, In Rural America a Lingering Digital Divide at 2 (2016), <http://www.gsu.edu/2016/03/03/in-rural-america-a-lingering-digital-divide/>; Allan Holmes et al., The Center for Public Integrity, Rich People Have Access to High-Speed Internet; Many Poor People Still Don’t at 8 (2016), <https://www.publicintegrity.org/2016/05/12/19659/rich-people-have-access-high-speed-internet-many-poor-people-still-dont>; Letter from Michael R. Romano, Senior Vice President, and Brian Ford, Senior Regulatory Counsel, NTCA, to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42, at 2 (July 14, 2017) (“[T]he average rural low-income consumer pay[s] tens or even hundreds of dollars more per month for standalone broadband service than what the average urban consumer pays.”).

<sup>219</sup> See Nez Perce Tribe Comments, WC Docket No. 11-42 et al., at 2 (Aug. 31, 2015) (“[I]n extreme rural and high cost areas of Indian Country, the Enhanced Lifeline value of \$25.00 per household is an insufficient amount to incentivize broadband infrastructure buildout.”); Coeur D’Alene Tribe Reply, WC Docket No. 11-42 et al., at 3 (Sept. 30, 2015) (stating the enhanced Tribal subsidy “has not been raised since it was established in 2000” and urging the Commission to “increase the subsidy to appropriate levels that would bring [broadband] services to unserved and underserved tribal lands....”).

(continued....)

deployment in both rural and rural Tribal areas is lagging compared to other areas, the current Lifeline program rules only provide targeted enhanced monthly Lifeline support (up to an additional \$25 per month) for Lifeline customers residing on Tribal lands.<sup>220</sup>

122. We are also mindful about the need to establish the correct support amounts. If the Commission establishes enhanced Lifeline support for consumers living in rural and rural Tribal areas, how could the Commission provide targeted support while also promoting the interests of fiscal responsibility and minimizing the burden on the ratepayers who support the Fund? Are there specific pricing data or other data that we should consider in determining the appropriate enhanced monthly support amounts for Lifeline subscribers in rural and rural Tribal areas? Should a single enhanced monthly support amount apply in all rural areas or should Lifeline consumers in rural areas on Tribal lands or another subset of rural residents receive a higher monthly support amount? How should the enhanced monthly support amounts compare to the monthly support amount for Lifeline subscribers who do not live in rural areas? What data or metrics should the Commission use to identify the rural areas that qualify for enhanced support? What geographic level (e.g., county, Census tracts, Census block groups) should the Commission use to identify these rural areas? Is the E-rate program's definition of "rural" the best option for identifying rural areas in the Lifeline program, or should the Commission consider some other definition to identify rural areas?<sup>221</sup>

123. *Digital Redlining.* We next seek comment on whether and how the Commission should also target Lifeline support to bring digital opportunity to low-income areas where service providers have less incentive to deploy facilities or offer robust broadband offerings compared to other areas. Recent reports argue that some service providers engage in "digital redlining" in low-income areas—a practice that results in certain low-income areas experiencing less facilities deployment when compared to other areas, and that low-income consumers in those areas may experience increased difficulty obtaining affordable, robust communications services.<sup>222</sup>

124. We seek comment on how the Commission can address this issue with the Lifeline program. If the Commission permits an enhanced subsidy amount for households in these areas, how should we define digital redlining for the purpose of this enhanced support, and how should we identify the areas where this practice has resulted in a lack of access to broadband service for low-income consumers? What data could inform the Commission as to the prevalence of digital redlining and the areas in which digital redlining has occurred? What types of broadband deployment, service offering, or adoption data or other measures could we use to determine whether digital redlining is occurring in a specific area? Are there certain income levels or other markers in a geographic area that could help the Commission reliably identify where digital redlining is likely to occur? For example, could the Commission address digital redlining by offering enhanced Lifeline support in areas where the median household income and/or broadband deployment rates are significantly lower than the national average?

125. What changes should the Commission make to the Lifeline program support structure to

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<sup>220</sup> 47 CFR § 54.403(a)(3).

<sup>221</sup> 47 CFR § 54.505(b)(3)(i)-(ii). *See also* 2014 E-rate Order, 29 FCC Rcd at 15592-95, paras. 136-41 (2014).

<sup>222</sup> *See, e.g.*, Press Release, Advocates for Basic Legal Equality, Inc., AT&T Fails to Invest in Low-Income Montgomery County Neighborhoods (Mar. 21, 2017), <http://ablelaw.org/media-room/news-and-press-releases/3403-att-fails-to-invest-in-low-income-montgomery-county>; Allan Holmes, Center for Public Integrity, DSL Providers Save Faster Internet for Wealthier Communities (Oct. 14, 2016), <https://www.publicintegrity.org/2016/10/14/20341/dsl-providers-save-faster-internet-wealthier-communities>. *See also* Clare Malone, Lots of People in Cities Still Can't Afford Broadband, FiveThirtyEight (Aug. 2, 2017), <https://fivethirtyeight.com/features/lots-of-people-in-cities-still-cant-afford-broadband/> (discussing potential causes of low broadband adoption rates in low-income urban areas); Clare Malone, The Worst Internet in America, FiveThirtyEight (July 27, 2017), <https://fivethirtyeight.com/features/the-worst-internet-in-america/> (discussing broadband deployment and adoption in rural areas).

target support to digital redlining areas? Are there specific pricing or other data we could use to determine the appropriate support amount for digital redlining areas? How should the targeted support for digital redlining areas compare to and interact with the support amounts for rural or Tribal areas? What level of geographic granularity (e.g., county, Census tracts, Census block groups) should the Commission use to identify areas that qualify for enhanced Lifeline support for digital redlining areas? How frequently should the Commission update the threshold for areas that qualify for enhanced digital redlining support?

### **C. Program Goals and Metrics**

126. This Notice of Inquiry seeks comments on potential ways to sharpen the focus of the Lifeline program to further promote digital opportunity for all Americans. We now seek comment on the program's goals and metrics that would allow us to better determine if Lifeline support is truly achieving the purpose of closing the digital divide. In 2015, the GAO reported that "outcome-based performance goals and measures will help illustrate to what extent, if any, the Lifeline program is fulfilling the guiding principles set forth by Congress."<sup>223</sup> In 2016, the Commission revised its Lifeline program goals by including the affordability of voice and broadband service, as measured as the percentage of disposable household income spent on those services, to the goals established in the Commission's *2012 Lifeline Order*.<sup>224</sup> We agree outcome-based performance goals and measures have an important role ensuring Lifeline support is achieving Congress's universal service goals. We seek comment on how the Commission should determine and define the Lifeline program's goals and metrics and how those goals should inform the Commission's efforts to sharpen the focus of the Lifeline program, as discussed in this Notice of Inquiry.

## **VII. PROCEDURAL MATTERS**

### **A. Final Regulatory Flexibility Analysis**

127. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>225</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Fourth Report and Order, Order on Reconsideration, and Memorandum Opinion and Order. The FRFA is set forth in Appendix C.

### **B. Paperwork Reduction Act Analysis**

128. This Fourth Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,<sup>226</sup> the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

### **C. Congressional Review Act**

129. The Commission will include a copy of this Fourth Report and Order, Order on

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<sup>223</sup> GAO, Telecommunications: FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program, GAO-15-335, at 13 (2015), <http://www.gao.gov/assets/670/669209.pdf>.

<sup>224</sup> See *2016 Lifeline Order*, 31 FCC Rcd at 4111-13, paras. 404-10. See also *2012 Lifeline Order*, 27 FCC Rcd at 6670-80, paras. 24-50.

<sup>225</sup> See 5 U.S.C. § 604. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996.

<sup>226</sup> See 44 U.S.C. § 3506(c)(4).

Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry in a report to be sent to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act.<sup>227</sup>

#### **D. Initial Regulatory Flexibility Analysis**

130. As required by the Regulatory Flexibility Act of 1980, as amended,<sup>228</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for the Notice of Proposed Rulemaking (NPRM), of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The IRFA is in Appendix D. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>229</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>230</sup>

#### **E. Initial Paperwork Reduction Act Analysis**

131. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### **F. Ex Parte Rules – Permit-But-Disclose**

132. The proceeding for this NPRM and NOI initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>231</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

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<sup>227</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>228</sup> See 5 U.S.C. § 603.

<sup>229</sup> See 5 U.S.C. § 603(a).

<sup>230</sup> See *id.*

<sup>231</sup> 47 CFR §§ 1.1200 *et seq.*

### G. Comment Filing Procedures

133. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

134. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be publicly available online via ECFS.<sup>232</sup> These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CYA257 at FCC Headquarters, 445 12<sup>th</sup> Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

135. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

### VIII. ORDERING CLAUSES

136. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, and 403, and section 1.2 of the Commission's rules, 47 CFR § 1.2, this Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry IS ADOPTED effective thirty (30) days after the publication of this Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry in the Federal Register, except to the extent provided herein and expressly addressed below.

137. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, and 403, Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments to sections 54.403(b) and 54.410 of the Commission's rules shall be effective thirty (30) days after the publication of this Fourth Report and

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<sup>232</sup> Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry in the Federal Register.

138. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, and 403, that the removal and reservation of section 54.411 of the Commission's rules shall be effective sixty (60) days after the publication of this Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry in the Federal Register.

139. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, and 403, Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments to sections 54.403(a)(3), 54.413, and 54.414 of the Commission's rules are subject to the PRA and shall be effective ninety (90) days after announcement in the Federal Register of OMB approval of the subject information collection requirements.

140. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-5 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155 and 254, and section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration filed by United States Telecom Association on June 23, 2016 and the Petition for Reconsideration/Clarification of NTCA – The Rural Broadband Association and WTA – Advocates for Rural Broadband ARE GRANTED to the extent described above.

141. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

142. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry including the Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

APPENDIX A
FINAL RULES

1. Amend § 54.403 to revise paragraphs (a)(3) and (b)(1) to read as follows:

§ 54.403 Lifeline support amount.

(a) \* \* \*
\* \* \* \* \*

(3) Tribal lands support amount. Additional federal Lifeline support of up to \$25 per month will be made available to a eligible telecommunications carrier providing facilities-based Lifeline service to an eligible resident of Tribal lands, as defined in § 54.400(e), if the subscriber’s residential location is rural, as defined in § 54.505(b)(3)(i)-(ii), and the eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tribal lands support amount to the qualifying eligible resident of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(b) Application of Lifeline discount amount.

(1) Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges must apply federal Lifeline support to waive the federal End User Common Line charges for Lifeline subscribers if the carrier is seeking Lifeline reimbursement for eligible voice telephony service provided to those subscribers. Such carriers must apply any additional federal support amount to a qualifying low-income consumer’s intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers must apply the federal Lifeline support amount, plus any additional support amount, to reduce the cost of any generally available residential service plan or package offered by such carriers that provides at least one supported service as described in § 54.101(a), and charge Lifeline subscribers the resulting amount.

2. Amend § 54.410 to revise paragraphs (b)(2), (c)(2), (e), and (f)(4) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

\* \* \* \* \*
(b) \* \* \*
(2) \* \* \*
\* \* \* \* \*

(ii) If a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber’s eligibility, a copy of the subscriber’s certification that complies with the requirements set forth in paragraph (d) of this section.

\* \* \* \* \*
(c) \* \* \*
(2) \* \* \*
\* \* \* \* \*

(ii) If a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber’s eligibility, a copy of the subscriber’s certification that complies with the requirements set forth in paragraph (d) of this section.

\* \* \* \* \*



(e) State Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber's eligibility for Lifeline must provide each eligible telecommunications carrier with a copy of each of the certification forms collected by the state Lifeline administrator or other state agency for that carrier's subscribers.

\* \* \* \* \*

3. Remove and reserve § 54.411.

4. Amend § 54.413 to read as follows:

**§ 54.413 Link Up for rural Tribal lands.**

(a) Definition. For purposes of this subpart, the term "Tribal Link Up" means an assistance program for eligible residents of Tribal lands, if the subscriber's location is rural, as defined in § 54.505(b)(3)(i)-(ii), seeking telecommunications service from a telecommunications carrier that is receiving high-cost support on rural Tribal lands, pursuant to subpart D of this part, that provides:

(1) A 100 percent reduction, up to \$100, of the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence imposed by an eligible telecommunications carrier that is also receiving high-cost support on rural Tribal lands, pursuant to subpart D of this part. For purposes of this subpart, a "customary charge for commencing telecommunications service" is the ordinary charge an eligible telecommunications carrier imposes and collects from all subscribers to initiate service with that eligible telecommunications carrier. A charge imposed only on qualifying low-income consumers to initiate service is not a customary charge for commencing telecommunications service. Activation charges routinely waived, reduced, or eliminated with the purchase of additional products, services, or minutes are not customary charges eligible for universal service support; and

(2) A deferred schedule of payments of the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence imposed by an eligible telecommunications carrier that is also receiving high-cost support on rural Tribal lands, pursuant to subpart D of this part, for which the eligible resident of rural Tribal lands does not pay interest. The interest charges not assessed to the eligible resident of rural Tribal lands shall be for a customary charge for connecting the telecommunications service of up to \$200 and such interest charges shall be deferred for a period not to exceed one year.

(b) An eligible resident of rural Tribal lands may receive the benefit of the Tribal Link Up program for a second or subsequent time only for otherwise qualifying commencement of telecommunications service at a principal place of residence with an address different from the address for which Tribal Link Up assistance was provided previously.

5. Amend § 54.414 to read as follows:

**§ 54.414 Reimbursement for Tribal Link Up.**

\* \* \* \* \*

(b) In order to receive universal support reimbursement for providing Tribal Link Up, eligible telecommunications carriers must use the maps made available by the Administrator to determine an eligible resident of rural Tribal lands' initial eligibility for Tribal Link Up. Eligible telecommunications carriers must obtain a certification form from each eligible resident of Tribal lands that complies with § 54.410 prior to enrolling him or her in Tribal Link Up.

\* \* \* \* \*



APPENDIX B
PROPOSED RULES

- 1. Amend § 54.201 to remove paragraph (j).
2. Amend § 54.202 to remove paragraphs (d)-(e).
3. Amend § 54.205 to remove paragraph (c).
4. Amend § 54.404 to revise paragraph (b) to read:

§ 54.404 The National Lifeline Accountability Database.

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(3) If the Database indicates that another individual at the prospective subscriber’s residential address is currently receiving a Lifeline service, the eligible telecommunications carrier must not seek and will not receive Lifeline reimbursement for providing service to that prospective subscriber, unless the prospective subscriber has certified, pursuant to § 54.410(d) that to the best of his or her knowledge, no one in his or her household is already receiving a Lifeline service. This certification may only be obtained after the eligible telecommunications carrier receives a notification from the Database or state administrator that another Lifeline subscriber resides at the same address as the prospective subscriber.

- 5. Amend § 54.408 to remove paragraph (f).
6. Amend § 54.410 to remove paragraph (g) and revise paragraph (f) to read:

§ 54.410 Subscriber eligibility determination and certification.

\* \* \* \* \*

(f) Annual eligibility re-certification process.

\* \* \* \* \*

(2) \* \* \*

\* \* \* \* \*

(iii) If the subscriber’s program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more state databases containing information regarding enrollment in qualifying assistance programs, then the eligible telecommunications carrier may obtain a signed certification from the subscriber on a form that meets the certification requirements in paragraph (d) of this section. The subscriber must present documentation meeting the requirements in sections (b)(1)(i)(B) or (c)(1)(i)(B) to establish continued eligibility. If a Federal eligibility recertification form is available, entities enrolling subscribers must use such form to re-certify a qualifying low-income consumer.

\* \* \* \* \*

(3) \* \* \*

\* \* \* \* \*

(iii) If the subscriber’s eligibility for Lifeline cannot be determined by accessing one or more databases containing information regarding enrollment in qualifying assistance programs, then the National Verifier, state Lifeline administrator, or state agency may obtain a signed certification from the subscriber on a form that meets the certification requirements in paragraph (d) of this section. The subscriber must present documentation meeting the requirements in sections (b)(1)(i)(B) or (c)(1)(i)(B) to establish continued eligibility. If a Federal eligibility recertification form is available, entities enrolling subscribers must use such form to recertify a qualifying low-income consumer.

\* \* \* \* \*

(g) \* \* \*

1. Remove and reserve § 54.418.

## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>233</sup> the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *2015 Lifeline FNPRM* in WC Docket Nos. 11-42, 09-197, 10-90.<sup>234</sup> The Commission sought written public comment on the proposals in the *2015 Lifeline FNPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>235</sup>

**A. Need for, and Objectives of, the Final Rules**

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.<sup>236</sup> The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T.<sup>237</sup> On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.<sup>238</sup> Since the 2012 *Lifeline Reform Order*, the Commission has acted to address waste, fraud and abuse in the Lifeline program and improved program administration and accountability.<sup>239</sup> In this Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (Order), the Commission takes steps to focus Lifeline program support to effectively and efficiently bridge the digital divide for low-income consumers while minimizing the contributions burden on ratepayers. We resolve questions regarding enhanced Lifeline support for Tribal lands, which were raised in the *2015 Lifeline Further Notice of Proposed Rulemaking* but left unaddressed by the *2016 Lifeline Order*.<sup>240</sup> We resolve Petitions for Reconsideration to improve competition and efficiency in the Lifeline program. We enable competition and empower Lifeline consumers by increasing their ability to switch their Lifeline benefit to a new provider. We also clarify how Lifeline providers should apply the Lifeline discount to service offerings that include Lifeline-supported broadband Internet access service.

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<sup>236</sup> See 47 U.S.C. § 254 *passim*.

<sup>237</sup> See *MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985) (*MTS and WATS Market Structure Report and Order*).

<sup>238</sup> See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9006-9008, paras. 431-34 (1997) (*Universal Service First Report and Order*).

<sup>239</sup> See *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*2012 Lifeline Reform Order*); *2015 Lifeline FNPRM*; 47 U.S.C. § 254 (b)(1),(3). See also 47 U.S.C. § 151.

<sup>240</sup> *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (*2016 Lifeline Order*); *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7873-77, paras. 158-71 (2015) (*2015 Lifeline FNPRM*).

(continued....)

**B. Summary of Significant Issues Raised by Public Comments to the IRFA**

3. The Commission received one comment specifically addressing the IRFA from the Small Carriers Coalition (Coalition).<sup>241</sup> In the *2015 Lifeline FNPRM*, in order to increase eligible telecommunications carrier (ETC) accountability and compliance with the Lifeline rules, the Commission proposed a requirement that all company employees and third-party agents interfacing with customers receive sufficient training on the Lifeline rules, and that such persons receive training annually.<sup>242</sup> The Coalition notes that the Commission's analysis of the compliance burden of this requirement on small entities was insufficient.<sup>243</sup> Specifically, the Coalition asserts that, while the burden of executing a certification that appropriate training has been received may be minor, the burden of arranging and paying for such training, and requiring employees and agents to undergo such training, is much higher.<sup>244</sup>

4. In this Order or the *2016 Lifeline Order*, the Commission did not adopt this proposal as a final rule. We recognize the additional compliance burden and cost imposed upon small entities of this requirement. As an alternative measure to increase eligible telecommunications carrier (ETC) accountability and compliance with the Lifeline rules, the Commission has established the National Verifier in the prior *2016 Lifeline Order* with its primary function being to verify customer eligibility for Lifeline support.<sup>245</sup> The National Verifier will also perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline program, such as, but not limited to, enabling access by authorized users, providing support payments to providers, and conducting recertification of subscribers, to add to the efficient administration of the Lifeline program.<sup>246</sup>

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.<sup>247</sup>

6. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which the Final May Apply**

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>248</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>249</sup> In addition, the term "small business" has the

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<sup>241</sup> See Small Carriers Coalition Comments at 5-6.

<sup>242</sup> See *2015 Lifeline FNPRM*, 30 FCC Rcd at 7888-89, paras. 210-14.

<sup>243</sup> See Small Carriers Coalition Comments at 5-6.

<sup>244</sup> *Id.* at 6.

<sup>245</sup> See *2016 Lifeline Order*, 31 FCC Rcd at 4006-21, paras. 126-66.

<sup>246</sup> *Id.*

<sup>247</sup> 5 U.S.C. § 604(a)(3).

<sup>248</sup> 5 U.S.C. § 603(b)(3).

<sup>249</sup> 5 U.S.C. § 601(6).

same meaning as the term “small business concern” under the Small Business Act.<sup>250</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>251</sup> Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.<sup>252</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>253</sup>

8. *Small Entities, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.<sup>254</sup> As of 2016, according to the SBA, there were 28.8 million small businesses in the U.S., which represented 99.9 percent of all businesses in the United States.<sup>255</sup> Additionally, a “small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field.”<sup>256</sup> Nationwide, as of 2014, there were approximately 2,131,200 small organizations.<sup>257</sup> Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand”.<sup>258</sup> U.S. Census Bureau data published in 2012 indicates that there were 89,476 local governmental jurisdictions in the United States.<sup>259</sup> We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”<sup>260</sup> Thus, we estimate that most governmental jurisdictions are small.

### 1. Wireline Providers

9. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers.

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<sup>250</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>251</sup> See 15 U.S.C. § 632.

<sup>252</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (last visited Oct. 24, 2017).

<sup>253</sup> 5 U.S.C. § 601(4).

<sup>254</sup> See 5 U.S.C. § 601(3)-(6).

<sup>255</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (last visited Oct. 24, 2017).

<sup>256</sup> 5 U.S.C. § 601(4).

<sup>257</sup> Independent Sector, *The New Nonprofit Almanac and Desk Reference* (2015).

<sup>258</sup> 5 U.S.C. § 601(5).

<sup>259</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2012* at 267, Table 428 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf> (citing data from 2007).

<sup>260</sup> The 2012 U.S. Census Bureau data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. See U.S. Census Bureau, *City and Town Totals Vintage: 2011*, <http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

(continued....)

Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>261</sup> According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>262</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. 1,307 Incumbent LECs reported that they were incumbent local exchange service providers.<sup>263</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>264</sup> Thus using the SBA's size standard the majority of Incumbent LECs can be considered small entities.

10. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate category for this service is the category Wired Telecommunications Carriers. Under the category of Wired Telecommunications Carriers, such a business is small if it has 1,500 or fewer employees.<sup>265</sup> U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>266</sup> Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>267</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.<sup>268</sup> In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>269</sup> Also, 72 carriers have reported that they are Other Local Service Providers.<sup>270</sup> Of this total, 70 have 1,500 or fewer employees.<sup>271</sup> Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

11. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate category for IXCs is the category Wired Telecommunications Carriers. Under that size standard, such a

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<sup>261</sup> 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>262</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>263</sup> See FCC, Trends in Telephone Service, at Table 5.3 (Sept. 2010), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf) (*Trends in Telephone Service*).

<sup>264</sup> *Id.*

<sup>265</sup> 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>266</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>267</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

business is small if it has 1,500 or fewer employees.<sup>272</sup> Census Bureau data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>273</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>274</sup> Of this total, an estimated 317 have 1,500 or fewer employees.<sup>275</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules proposed.

12. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate category for Operator Service Providers is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>276</sup> Census Bureau data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>277</sup> Thus, under this size standard, the majority of firms in this industry can be considered small. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services.<sup>278</sup> Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>279</sup> Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by the rules proposed.

13. *Local Resellers*. The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>280</sup> Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.<sup>281</sup> 2012 Census Bureau data shows that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.<sup>282</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale

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<sup>272</sup> 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>273</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>274</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>275</sup> *Id.*

<sup>276</sup> 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>277</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>278</sup> *Trends in Telephone Service*, tbl. 5.3.

<sup>279</sup> *Id.*

<sup>280</sup> <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>281</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>282</sup> U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517911.



services.<sup>283</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>284</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the rules adopted.

14. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.<sup>285</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>286</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>287</sup> 2012 Census Bureau data shows that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>288</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>289</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>290</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

## 2. Wireless Carriers and Service Providers

15. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>291</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>292</sup> 2012 Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year.<sup>293</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>294</sup> Thus under this category and the associated size

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<sup>283</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>284</sup> See *id.*

<sup>285</sup> <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>286</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>287</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>288</sup> [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table)

<sup>289</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>290</sup> *Id.*

<sup>291</sup> NAICS Code 517210. See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210>.

<sup>292</sup> 13 CFR § 121.201, NAICS code 517210.

<sup>293</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210” (rel. Jan. 8, 2016).

<sup>294</sup> See U.S. Census Bureau, American Factfinder, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ2&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table) (last visited Oct. 24, 2017). Available census data does not provide a more precise estimate of the

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standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today.<sup>295</sup> The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>296</sup> Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.<sup>297</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

16. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>298</sup> The SBA has approved these definitions.<sup>299</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

17. *Satellite Telecommunications Providers.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>300</sup> The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.<sup>301</sup> For this category, 2012 Census Bureau data shows that there were a total of 333 firms that operated for the entire year.<sup>302</sup> Of this total, 299 firms had annual receipts of less than \$25 million.<sup>303</sup> Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

18. *Common Carrier Paging.* As noted, since 2007 the Census Bureau has placed paging

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number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>295</sup> See <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

<sup>296</sup> See *Trends in Telephone Service*, at tbl. 5.3, [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>297</sup> See *id.*

<sup>298</sup> *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>299</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

<sup>300</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/naics/2007/def/ND517410.HTM>.

<sup>301</sup> 13 CFR § 121.201, NAICS code 517410.

<sup>302</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410 [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodTpe=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodTpe=table).

<sup>303</sup> *Id.*

(continued....)

providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).<sup>304</sup>

19. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>305</sup> A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>306</sup> The SBA has approved this definition.<sup>307</sup> An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>308</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>309</sup> A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.<sup>310</sup> One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.<sup>311</sup>

20. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 291 carriers reported that they were engaged in the provision of “paging and messaging” services.<sup>312</sup> Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>313</sup> We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

21. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite)<sup>314</sup> and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>315</sup> 2012

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<sup>304</sup> See U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”, <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210> (last visited Oct. 24, 2017).

<sup>305</sup> *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, WT Docket No. 96-18 et al., Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732, 2811-12, paras. 178-81 (1997) (*Paging Second Report and Order*); *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085-88, paras. 98-107 (1999).

<sup>306</sup> *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

<sup>307</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (dated Dec. 2, 1998).

<sup>308</sup> See *929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>309</sup> See *id.*

<sup>310</sup> See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2001).

<sup>311</sup> See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

<sup>312</sup> *2010 Trends Report* at Table 5.3, page 5-5.

<sup>313</sup> *Id.*

<sup>314</sup> 13 CFR § 121.201, NAICS code 517210.

<sup>315</sup> *Id.*

Census Bureau data shows that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms has 1000 employees or more.<sup>316</sup> Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>317</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>318</sup> Therefore, more than half of these entities can be considered small.

22. *All Other Telecommunications.* This category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>319</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>320</sup> For this category, U.S. Census data for 2012 shows that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>321</sup> Thus, a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

### 3. Internet Service Providers

23. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.<sup>322</sup> Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.<sup>323</sup> The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.<sup>324</sup> 2012 Census Bureau data shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>325</sup> Consequently, under this size standard the majority of firms in this industry can be

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<sup>316</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>317</sup> *2010 Trends in Telephone Service*, tbl. *Report* at Table 5.3, page 5-5.

<sup>318</sup> *Id.*

<sup>319</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>320</sup> 13 CFR § 121.201; NAICS Code 517919.

<sup>321</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>322</sup> *See*, 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition show the NAICS code as 517311. *See* <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

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considered small.

24. *Internet Service Providers (Non-Broadband)*. Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>326</sup> For this category, U.S. Census data for 2012 shows that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>327</sup> Consequently, under this size standard a majority of “All Other Telecommunications” firms can be considered small.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

25. A number of our rule changes will result in additional reporting, recordkeeping, or compliance requirements for small entities. For all of those rule changes, we have determined that the benefit the rule change will bring for the Lifeline program outweighs the burden of the increased requirement/s. Other rule changes decrease reporting, recordkeeping, or compliance requirements for small entities. We have noted the applicable rule changes below impacting small entities.

**F. Increase in Projected Reporting, Recordkeeping and Other Compliance Requirements**

26. *Compliance burdens*. All of the rules we implement impose some compliance burdens on small entities by requiring them to become familiar with the new rules to comply with them. For several of the new rules, such as the new budget and the revised audit procedures, the burden of becoming familiar with the new rule in order to comply with it is the only additional burden the rule imposes.

27. *Formally Delineate Tribal Lands*. Our rules define Tribal lands as “any federally recognized Indian tribe’s reservation, pueblo, or colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Home Lands—areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et. seq., as amended; and any land designated as such by the Commission for purposes of this subpart.”<sup>328</sup> Before 2015, we had not provided mapping resources to delineate the boundaries of “any federally recognized Indian tribe’s reservation, pueblo, or colony,” “former reservations in Oklahoma,” or “Hawaiian Homelands.” We now clarify the lands encompassed by section 54.400(e) of the Commission’s rules, and we limit enhanced support for Tribal lands to those areas encompassed by the maps discussed. ETCs will no longer be permitted to seek reimbursement for a subscriber whose residential address is not located within the bounds of the maps discussed below, regardless of any customer self-certification as to residency on Tribal lands. By providing a clearly drawn and accessible map of Tribal Lands as recognized by other federal agencies, the program will help eliminate improper payments of enhanced Tribal benefits. While this process will require an additional step for carriers to verify Tribal eligibility of its subscribers, the mapping functionality will improve the accuracy and reliability of the payments.

**G. Decrease in Projected Reporting, Recordkeeping and Other Compliance Requirements**

28. *Limiting the Lifeline Benefit Port-Freeze*. Modifying the 12-month Lifeline benefit port

<sup>326</sup> 13 CFR § 121.201; NAICS Code 517919.

<sup>327</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>328</sup> 47 CFR § 54.400(e).

freeze rule for broadband Internet access service to match the 60-day port freeze for both broadband and voice services decreases the burden of the recordkeeping requirement for small businesses by eliminating the need to process two different port-freeze periods for Lifeline subscribers based on service type. Thus, making the port-freeze process more manageable for small businesses and enable providers respond to any customers who need assistance with the port-freeze process without being confused by differing rules depending on service.

29. *Clarifying the Application of Lifeline Support.* Modifying section 54.403(b)(1) of our rules to only apply to subscribers receiving Lifeline-supported standalone voice telephony service or a bundled offering where the ETC is requesting reimbursement from the Lifeline program for the voice telephony component of the bundle simplifies the reimbursement requests for small businesses.

#### **H. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

30. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>329</sup>

31. This rulemaking could impose minimal additional burdens on small entities. In this Order, the Commission modifies certain Lifeline rules to target funding to areas where it is most needed. In developing these rules, the Commission worked to ensure the burdens associated with implementing these rules would be minimized for all service providers, including small entities. In taking this action, the Commission considered potential impacts on service providers, including small entities. We considered alternatives to the rulemaking changes that increase projected reporting, recordkeeping and other compliance requirements for small entities, including alternatives on how to define “rural” for purposes of describing rural Tribal lands and how the Commission and USAC could provide mapping resources to help small entities identify with certainty areas that are eligible for enhanced support. In developing our rules related to Tribal benefits, we carefully crafted the requirements to be easier on all service providers and determined that a specific carve-out for small businesses was not necessary.

#### **I. Alternatives Permitted, Considered, or Rejected**

32. No commenters specifically offered alternatives to the changes made in this Order. Further, given the narrow and targeted scope of the changes being made no alternative readily presents itself to limit the burdens on small business or organizations. The identified increase in burden is minimal and outweighed by the advantages in combating waste, fraud, and abuse in the program.

33. **Report to Congress:** The Commission will send a copy of this Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking and Notice of Inquiry, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA.<sup>330</sup> In addition, the Commission will send a copy of this Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking and Notice of Inquiry, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking and Notice of Inquiry, and the FRFA (or summaries thereof) will also be published in the Federal Register.<sup>331</sup>

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<sup>329</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

<sup>330</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>331</sup> See 5 U.S.C. § 604(b).



## APPENDIX D

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>332</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on the first page of the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>333</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>334</sup>

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.<sup>335</sup> The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T.<sup>336</sup> On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.<sup>337</sup> The Lifeline program is administered by the Universal Service Administrative Company (USAC), the Administrator of the universal service support programs, under Commission direction, although many key attributes of the Lifeline program are currently implemented at the state level, including consumer eligibility, eligible telecommunication carrier (ETC) designations, outreach, and verification. Lifeline support is passed on to the subscriber by the ETC, which provides discounts to eligible households and receives reimbursement from the universal service fund (USF or Fund) for the provision of such discounts.

**A. Need for, and Objectives of, the Proposed Rules**

3. When the Commission overhauled the Lifeline program in its *2016 Lifeline Order*, it included broadband Internet access service as a supported service; laid the groundwork for a National Verifier; strengthened protections against waste, fraud and abuse; improved program administration and accountability; and improved enrollment and consumer disclosures.<sup>338</sup> In this NPRM, the Commission proposes steps to focus Lifeline program support to effectively and efficiently bridge the digital divide for low-income consumers while minimizing the contributions burden on ratepayers. The actions and proposals in this NPRM aim to facilitate the Lifeline program's goal of supporting affordable, high-speed Internet access for low-income households.

4. In this NPRM, we seek comment on a number of significant reforms that will effectively

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<sup>332</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>333</sup> See 5 U.S.C. § 603(a).

<sup>334</sup> *Id.*

<sup>335</sup> See 47 U.S.C. § 254.

<sup>336</sup> See *MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985) (*MTS and WATS Market Structure Report and Order*).

<sup>337</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9006-9008, paras. 431-34 (1997) (*First Universal Service Report and Order*).

<sup>338</sup> See *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (*2016 Lifeline Order*).

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and responsibly leverage the Lifeline program to bridge the digital divide for low-income consumers. We seek comment on respecting the states' primary role in eligible telecommunications carrier designation by eliminating Lifeline Broadband Provider designations. We also seek comment on proposals to enable consumer choice and proposed policies to focus Lifeline support to encourage investment in broadband-capable networks. Finally, we propose several program accountability improvements to reduce waste, fraud, and abuse and improve transparency in the program.

## **B. Legal Basis**

5. The legal basis for the NPRM is contained in sections 1 through 4, 201-205, 254, and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 through 154, 201 through 205, 254, and 403.

## **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>339</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>340</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>341</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>342</sup> Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.<sup>343</sup> A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>344</sup>

7. *Small Entities, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.<sup>345</sup> As of 2016, according to the SBA, there were 28.8 million small businesses in the U.S., which represented 99.9 percent of all businesses in the United States.<sup>346</sup> Additionally, a "small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field."<sup>347</sup>

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<sup>339</sup> 5 U.S.C. § 603(b)(3).

<sup>340</sup> 5 U.S.C. § 601(6).

<sup>341</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>342</sup> See 15 U.S.C. § 632.

<sup>343</sup> See SBA, Office of Advocacy, "Frequently Asked Questions," [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (last visited Oct. 24, 2017).

<sup>344</sup> 5 U.S.C. § 601(4).

<sup>345</sup> See 5 U.S.C. § 601(3)-(6).

<sup>346</sup> See SBA, Office of Advocacy, "Frequently Asked Questions," [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (last visited Oct. 24, 2017).

<sup>347</sup> 5 U.S.C. § 601(4).

(continued....)

Nationwide, as of 2014, there were approximately 2,131,200 small organizations.<sup>348</sup> Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>349</sup> U.S. Census Bureau data published in 2012 indicates that there were 89,476 local governmental jurisdictions in the United States.<sup>350</sup> We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”<sup>351</sup> Thus, we estimate that most governmental jurisdictions are small.

### 1. Wireline Providers

8. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>352</sup> According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>353</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. 1,307 Incumbent LECs reported that they were incumbent local exchange service providers.<sup>354</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>355</sup> Thus using the SBA’s size standard the majority of Incumbent LECs can be considered small entities.

9. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate category for this service is the category Wired Telecommunications Carriers. Under the category of Wired Telecommunications Carriers, such a business is small if it has 1,500 or fewer employees.<sup>356</sup> U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of

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<sup>348</sup> Independent Sector, *The New Nonprofit Almanac and Desk Reference* (2015).

<sup>349</sup> 5 U.S.C. § 601(5).

<sup>350</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2012* at 267, Table 428 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf> (citing data from 2007).

<sup>351</sup> The 2012 U.S. Census Bureau data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. See U.S. Census Bureau, *City and Town Totals Vintage: 2011*, <http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

<sup>352</sup> 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>353</sup> [http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>354</sup> See FCC, *Trends in Telephone Service*, at Table 5.3 (Sept. 2010), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf) (*Trends in Telephone Service*).

<sup>355</sup> *Id.*

<sup>356</sup> 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

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that number, 3,083 operated with fewer than 1,000 employees.<sup>357</sup> Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>358</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.<sup>359</sup> In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>360</sup> Also, 72 carriers have reported that they are Other Local Service Providers.<sup>361</sup> Of this total, 70 have 1,500 or fewer employees.<sup>362</sup> Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

10. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate category for IXCs is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>363</sup> Census Bureau data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>364</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>365</sup> Of this total, an estimated 317 have 1,500 or fewer employees.<sup>366</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules proposed.

11. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate category for Operator Service Providers is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>367</sup> Census Bureau data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000

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<sup>357</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>358</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

<sup>362</sup> *Id.*

<sup>363</sup> 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>364</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>365</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>366</sup> *Id.*

<sup>367</sup> 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

(continued....)

employees.<sup>368</sup> Thus, under this size standard, the majority of firms in this industry can be considered small. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services.<sup>369</sup> Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>370</sup> Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by the rules proposed.

12. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>371</sup> Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.<sup>372</sup> 2012 Census Bureau data shows that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.<sup>373</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>374</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>375</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the rules adopted.

13. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.<sup>376</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>377</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>378</sup> 2012 Census Bureau data shows that 1,341 firms provided resale services during

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<sup>368</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>369</sup> *Trends in Telephone Service*, tbl. 5.3.

<sup>370</sup> *Id.*

<sup>371</sup> <https://www.census.gov/cgi-in/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>372</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>373</sup> U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517911.

<sup>374</sup> *See Trends in Telephone Service*, at Table 5.3.

<sup>375</sup> *See id.*

<sup>376</sup> <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>377</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>378</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

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that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>379</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>380</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>381</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

## 2. Wireless Carriers and Service Providers

14. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>382</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>383</sup> 2012 Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year.<sup>384</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>385</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today.<sup>386</sup> The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>387</sup> Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.<sup>388</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

15. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of

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<sup>379</sup> [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table)

<sup>380</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>381</sup> *Id.*

<sup>382</sup> NAICS Code 517210. See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210>.

<sup>383</sup> 13 CFR § 121.201, NAICS code 517210.

<sup>384</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210” (rel. Jan. 8, 2016).

<sup>385</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>386</sup> See <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

<sup>387</sup> See *Trends in Telephone Service*, at tbl. 5.3, [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>388</sup> See *id.*

(continued....)



\$15 million for each of the three preceding years.<sup>389</sup> The SBA has approved these definitions.<sup>390</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

16. *Satellite Telecommunications Providers.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>391</sup> The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.<sup>392</sup> For this category, 2012 Census Bureau data shows that there were a total of 333 firms that operated for the entire year.<sup>393</sup> Of this total, 299 firms had annual receipts of less than \$25 million.<sup>394</sup> Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

17. *Common Carrier Paging.* As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).<sup>395</sup>

18. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>396</sup> A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>397</sup> The SBA has approved this definition.<sup>398</sup> An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>399</sup>

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<sup>389</sup> *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>390</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

<sup>391</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/naics/2007/def/ND517410.HTM>.

<sup>392</sup> 13 CFR § 121.201; NAICS code 517410.

<sup>393</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410 [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodTpe=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodTpe=table).

<sup>394</sup> *Id.*

<sup>395</sup> See U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”, <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210> (last visited Oct. 24, 2017).

<sup>396</sup> *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, WT Docket No. 96-18 et al., Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732, 2811-12, paras. 178-81 (1997) (*Paging Second Report and Order*); *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085-88, paras. 98-107 (1999).

<sup>397</sup> *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

<sup>398</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Dec. 2, 1998).

<sup>399</sup> See *929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (WTB 2000).

(continued....)

Fifty-seven companies claiming small business status won 440 licenses.<sup>400</sup> A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.<sup>401</sup> One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.<sup>402</sup>

19. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 291 carriers reported that they were engaged in the provision of “paging and messaging” services.<sup>403</sup> Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>404</sup> We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

20. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite)<sup>405</sup> and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>406</sup> 2012 Census Bureau data shows that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms has 1000 employees or more.<sup>407</sup> Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>408</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>409</sup> Therefore, more than half of these entities can be considered small.

21. *All Other Telecommunications.* This category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in

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<sup>400</sup> *See id.*

<sup>401</sup> *See Lower and Upper Paging Bands Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2001).

<sup>402</sup> *See Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

<sup>403</sup> *2010 Trends Report* at Table 5.3, page 5-5.

<sup>404</sup> *Id.*

<sup>405</sup> 13 CFR § 121.201; NAICS code 517210.

<sup>406</sup> *Id.*

<sup>407</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>408</sup> *Trends in Telephone Service*, tbl. 5.3.

<sup>409</sup> *Id.*

(continued....)



this industry.<sup>410</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>411</sup> For this category, U.S. Census data for 2012 shows that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>412</sup> Thus, a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

### 3. Internet Service Providers

22. *Internet Service Providers (Broadband)*. Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.<sup>413</sup> Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.<sup>414</sup> The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.<sup>415</sup> 2012 Census Bureau data shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>416</sup> Consequently, under this size standard the majority of firms in this industry can be considered small.

23. *Internet Service Providers (Non-Broadband)*. Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>417</sup> For this category, U.S. Census data for 2012 shows that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>418</sup> Consequently, under this size standard a majority of “All Other Telecommunications” firms can be considered small.

#### D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

24. In this NPRM, we seek public input on new and additional solutions for the Lifeline program, including reforms that would bring the program closer to its core purpose and promote the

<sup>410</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>411</sup> 13 CFR § 121.201; NAICS Code 517919.

<sup>412</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>413</sup> See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition show the NAICS code as 517311. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>

<sup>414</sup> *Id.*

<sup>415</sup> *Id.*

<sup>416</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>417</sup> 13 CFR § 121.201; NAICS Code 517919.

<sup>418</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

availability of modern services for low-income families. The issues we seek comment on in this NPRM are directed at enabling us to meet our goals and objectives for the Lifeline program, and reducing waste, fraud, and abuse. Specifically, we seek comment on a number of potential changes that would increase the economic burdens on small entities, and also seek comment on proposals that would decrease those burdens. We have identified the applicable potential changes below that impact small entities.

25. *Focusing Lifeline Support to Encourage Investment in Broadband-Capable Networks.* We seek comment on several policy changes that would focus Lifeline support to encourage investment in broadband-capable networks, including limiting Lifeline support to facilities-based broadband service provided to Lifeline customers over the ETC's voice-and-broadband-capable network, discontinuing Lifeline support for non-facilities-based service, and continuing the phase down of Lifeline support for voice service in urban areas.

26. *Reforms to Increase Efficient Administration of the Lifeline Program.* We seek comment on a number of reforms to increase the efficient administration of the program, including requiring ETCs to supply documentation to USAC for National Lifeline Accountability Database (NLAD) dispute resolutions, ETCs to collect documentation for subscribers seeking to self-certify to continued eligibility, and limiting the use of independent economic household forms to only NLAD dispute resolutions.

#### **E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

27. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."<sup>419</sup>

28. The NPRM seeks comment on several policies that would bring the program closer to its core purpose and promote the availability of modern services for low-income families, and also reduce waste, fraud, and abuse in the program. As explained below, several of the policies would increase the economic burdens on small entities, and certain changes would lessen the economic impact on small entities. In those instances in which a policy would increase burdens on small entities, we have determined that the benefits from such changes outweigh the increased burdens on small entities because those proposed changes would facilitate the Lifeline program's goal of supporting affordable, high-speed Internet access for low-income Americans or would minimize waste, fraud, and abuse in the program. The Commission invites comments on ways in which the Commission can achieve its goals, but at the same time further reduce the burdens on small entities. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking action in this proceeding.

#### **F. Proposed Changes that Lessen Economic Impact on Small Entities**

29. *Eliminating Lifeline Device Requirements.* We seek comment on eliminating the Lifeline program's device requirements. This would decrease the burdens for small entities because they would no longer be required to meet criteria imposed by the rule, including the requirement that devices provided to consumers be Wi-Fi enabled and the requirement that mobile broadband providers offer devices that are "capable of being used as a hotspot." Eliminating these requirements should reduce compliance costs for small entities because they will no longer be required to include these capabilities.

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<sup>419</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

**G. Proposed Changes that Increase Economic Impact on Small Entities**

30. *Focusing Lifeline Support to Encourage Investment in Broadband-Capable Networks.* We seek comment on several potential policies that would focus Lifeline support to encourage investment in broadband-capable networks. These policies would change the services eligible for Lifeline support and would also change the type of providers that can receive Lifeline support. In particular, these policies would eliminate Lifeline support for ETCs that do not offer facilities-based broadband service over their own networks, or would continue the phase down of Lifeline support for voice-only service in urban areas. However, these policies would facilitate the Lifeline program goals of providing low-income consumers access to quality, affordable broadband services, in particular by encouraging service providers to invest in broadband networks in unserved and underserved areas. We also note that these policies may benefit small entities that operate facilities-based broadband-capable networks, whose services would be more affordable for low-income consumers through the application of the Lifeline discount. The benefits of these policies to Lifeline customers outweighs any impact of these changes on small entities.

31. *Reforms to Increase Efficient Administration of the Lifeline Program.* We seek comment on a number of reforms to increase the efficient administration of the program, including requiring ETCs to supply documentation to USAC for National Lifeline Accountability Database (NLAD) dispute resolutions, ETCs to collect documentation for subscribers seeking to self-certify to continued eligibility, and limiting the use of independent economic household forms to only NLAD dispute resolutions. These reforms could increase costs associated with ETCs' administrative processes. However, we expect these burdens to be manageable for ETCs. In addition, in states where the National Verifier will be implemented, these burdens would be temporary because the National Verifier would take over eligibility verification and recertification in those states. Further, these proposed changes would help minimize waste, fraud, and abuse in the Lifeline program, which in turn would benefit consumers and providers that pay into the Universal Service Fund. Therefore, the benefits of these proposed changes outweigh the impact of these proposed changes on small entities.

32. *Compliance burdens.* Implementing any of our proposed rules (e.g., requiring ETCs to supply documentation to USAC for National Lifeline Accountability Database (NLAD) dispute resolutions, ETCs to collect documentation for subscribers seeking to self-certify to continued eligibility, and limiting the use of independent economic household forms to only NLAD dispute resolutions) would impose some burden on small entities by requiring them to make such certifications and entries on FCC forms, and requiring them to become familiar with the new rules to comply with them. For many of proposed the rules, there is a minimal burden. Thus, these new requirements should not require small businesses to seek outside assistance to comply with the Commission's rule but rather are more routine in nature as part of normal business processes. The importance of bringing the Lifeline program closer to its core purpose and promoting the availability of modern services for low-income families, however, outweighs the minimal burden requiring small entities to comply with the new rules would impose.

**H. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

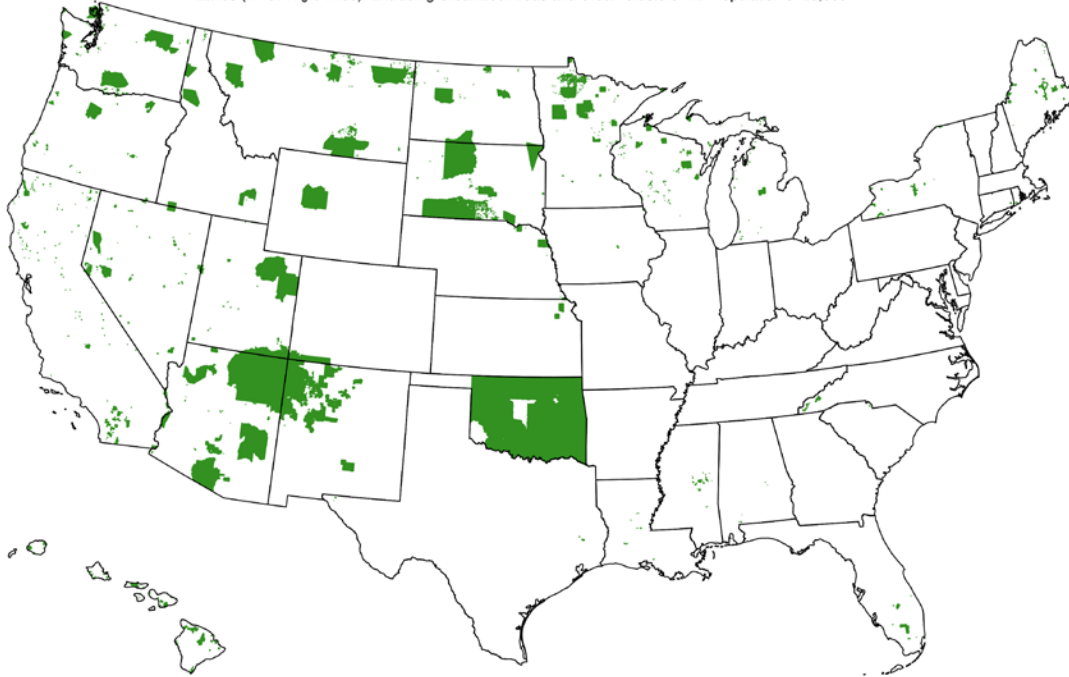
33. None.

APPENDIX E

Enhanced Lifeline Support on Rural Tribal Lands Map

Enhanced Lifeline Support

Any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act, Indian allotments, and Hawaiian Home Lands (47 CFR § 54.400). Excluding Urbanized Areas and Urban Clusters with Population of 25,000+



Note: Alaska mapped separately

Enhanced Support Area

**Enhanced Lifeline Support**

Any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act, Indian allotments, and Hawaiian Home Lands (47 § CFR 54.400). Excluding Urbanized Areas and Urban Clusters with Population of 25,000+

