

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

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| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on Universal Service |) | CC Docket No. 96-45 |
| |) | |
| Lifeline and Link Up |) | WC Docket No. 03-109 |
| |) | |

RECOMMENDED DECISION

Adopted: November 3, 2010

Released: November 4, 2010

By the Federal-State Joint Board: Commissioner Baker and Senior Assistant Attorney General ffitich issuing separate statements; Commissioners Clyburn, Copps, and Board Member Burke approving in part, concurring in part, and issuing separate statements; Chairmen Baum and Cawley and Commissioner Landis concurring in part, dissenting in part, and issuing separate statements.

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I. INTRODUCTION

1. In its May 4, 2010 *Referral Order*, the Commission asked the Federal-State Joint Board

on Universal Service (Joint Board) to review the Commission's eligibility, verification, and outreach rules for the Lifeline and Link Up universal service programs, which currently provide discounts on telephone service for low-income customers.¹ This Recommended Decision addresses these issues and, in addition, recommends that the Commission take into consideration the issues of broadband, overall fund size, and prepaid wireless Lifeline service as it moves forward with universal service reform.

2. In this Recommended Decision, the Joint Board recommends that: (1) the Commission encourage automatic enrollment as a best practice for all states; (2) the Commission adopt uniform minimum verification procedures and sampling criteria that would apply to all eligible telecommunications carriers (ETCs) in all states; (3) states be allowed to utilize different and/or additional verification procedures so long as these procedures are at least as effective in detecting waste, fraud, and abuse as the uniform minimum required procedures; (4) all ETCs in all states be required to submit the data results of their verification sampling to the Commission, the states, and the Universal Service Administrative Company (USAC) and that the results be publicly available; (5) the Commission adopt mandatory outreach requirements for all ETCs that receive low-income support; and (6) the Commission maintain advisory guidelines for states with respect to performing low-income outreach.

3. Additionally, in this Recommended Decision, the Joint Board recommends that the Commission seek further comment on numerous universal service low-income program issues, including whether the current eligibility requirement of household income at or below 135 percent of the federal poverty guidelines (FPG) should be raised to 150 percent for the existing Lifeline and Link Up programs; the potential impact, costs, and benefits of minimum uniform eligibility requirements; and the costs and benefits of database certification and verification of low-income consumers' eligibility.

4. Finally, the Joint Board responds to other issues raised by the *2010 Referral Order*, including the request that the Joint Board "consider how the potential expansion of the low-income program to broadband would affect any of its recommendations."² While the Joint Board has found it difficult to consider whether any of the instant recommendations should be modified prior to the appropriate consideration of the broadband services that might be included in an extension of the low-income program, it reiterates the importance of broadband service to consumers. Indeed, consistent with the Joint Board's *2007 Recommended Decision* that universal service funding is appropriate for broadband network deployment, the National Broadband Plan's recommendation that the Commission reform the Universal Service Fund to support the provision of both voice and broadband communications, and section 254(b)(3) of the Communications Act of 1934, as amended (the Act), the Joint Board recommends that the Commission adopt an additional principle for universal service pursuant to section 254(b)(7) of the Act – that universal service support should be directed where possible to networks that provide both broadband and voice services. In particular, the Joint Board supports deployment and maintenance of broadband services in areas that are now unserved or underserved, although it remains important to continue support for existing voice networks. Further, the Joint Board acknowledges that the extension of universal service support to broadband raises a number of issues which the Joint Board highlights for the Commission to consider as it undertakes broader universal service reform. The Joint Board also raises additional issues for consideration that were raised in the record, including the need for close review of prepaid wireless service offerings and fund size.

¹ *Federal-State Joint Board On Universal Service; Lifeline and Link-Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order, 25 FCC Rcd 5079 (2010) (*2010 Referral Order*).

² *2010 Referral Order*, 25 FCC Rcd at 5088, para. 24.

II. CONSUMER ELIGIBILITY

A. Background

5. Currently, Lifeline and Link Up eligibility is based upon participation in means-tested programs and, in some states, upon income. In states that mandate Lifeline and Link Up support, the consumer must meet eligibility criteria established by the state, consistent with sections 54.409 and 54.415 of the Commission's rules.³ The current rules allow states with their own Lifeline and Link Up programs flexibility in establishing their own income-based eligibility criteria, though some of these states instead use the federal default eligibility criteria.⁴ Federal default criteria apply to eligibility for federal Lifeline and Link Up support in states that do not mandate state Lifeline support.⁵ The federal default eligibility criteria require consumers to certify that they participate in at least one of the following federal assistance programs: Medicaid; Food Stamps; Supplemental Security Income (SSI); Federal Public Housing Assistance; Low-Income Home Energy Assistance Program (LIHEAP); National School Lunch Program's free lunch program; or Temporary Assistance for Needy Families (TANF).⁶

6. In the *2004 Lifeline and Link Up Order*, the Commission adopted, upon the recommendation of the Joint Board, an additional eligibility criterion based on income level.⁷ This criterion is mandatory for federal default states, but optional for other states. Specifically, the Commission adopted the income-based standard of 135 percent of the FPG.⁸ The Commission adopted this standard for two main reasons: (1) Commission staff analysis projected that an income-based criterion would result in approximately 1.17 million to 1.29 million new Lifeline/Link Up subscribers of which roughly one in five would be new subscribers to telephone service; and (2) existing low-income subscribers would more easily be able to maintain their service.⁹

7. In the *2010 Referral Order*, the Commission asked the Joint Board "to undertake a thorough review of the existing consumer eligibility requirements, as well as the certification and documentation requirements imposed on ETCs."¹⁰ The Commission requested that the Joint Board "consider whether any changes should be made to the existing eligibility criteria in the Commission's rules."¹¹ Specifically, the Commission requested that the Joint Board examine "whether customers qualifying for low-income support based on income should be eligible to receive support if their income is at or below a percentage of the federal poverty guidelines different than the current 135 percent threshold."¹² Finally, the Commission asked the Joint Board to "consider whether certain classes of

³ 47 C.F.R. §§ 54.409, 54.415.

⁴ 47 C.F.R. § 54.409.

⁵ 47 C.F.R. § 54.409(b).

⁶ *Id.* Low-income consumers living on Tribal lands may qualify by participation in one of several additional assistance programs: Bureau of Indian Affairs general assistance; Tribally-administered TANF; or Head Start (only those meeting its income-qualifying standards). See 47 C.F.R. § 54.409(c).

⁷ See *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, 19 FCC Rcd 8302, 8308-09, para. 10 (2004) (*2004 Lifeline and Link Up Order*).

⁸ *Id.*

⁹ *Id.*

¹⁰ *2010 Referral Order*, 25 FCC Rcd at 5081, para. 6.

¹¹ *Id.*

¹² *Id.*

individuals, such as residents of homeless shelters, should be automatically eligible for participation in the low-income programs.”¹³

B. Discussion

8. *Eligibility requirements.* The Joint Board deliberated on the alternative income-based eligibility criterion and whether the Commission should adopt uniform minimum eligibility standards applicable to all states, including both income and program-based eligibility criteria. The Joint Board recommends that the Commission seek comment to identify and quantify the potential impact, costs, and benefits of minimum uniform eligibility requirements and where such burdens and benefits will occur. The Joint Board supports the concept of minimum uniform eligibility requirements, but acknowledges that there are potential difficulties in terms of cost and administration that must be explored before the Joint Board can conclude that such requirements should be adopted.¹⁴ The Joint Board’s support presumes that states would be able to set eligibility criteria in addition to the minimum requirements. The Joint Board recommends that the Commission adopt minimum uniform eligibility requirements only if the impacts on the states are not unreasonable.

9. Requiring all states to include participation in qualifying federal programs as eligibility criteria could simplify ETC certification of consumer eligibility. Further, a federal baseline of eligibility criteria may increase program participation. The Joint Board recognizes Qwest’s objections to uniformity of eligibility criteria – that states and providers need the flexibility of state rules¹⁵ – but the Joint Board’s recommendation would allow states to maintain and add eligibility standards beyond the minimum uniform requirements tailored specifically to each state’s unique situation. Additionally, allowing states to maintain and add eligibility standards beyond the minimum uniform requirements will prevent existing eligible Lifeline customers from losing Lifeline support.

10. *Income eligibility.* The Joint Board recommends that the Commission seek comment to determine whether the current eligibility requirement of household income at or below 135 percent of the federal poverty guidelines should be raised to 150 percent for the existing Lifeline and Link Up programs in states that include an eligibility option based only on household income. Comments filed in this proceeding, as explained below, suggest that 135 percent of the FPG may be too low a standard and that 150 percent may be more appropriate. Expansion of eligibility would also allow more of those in economic need of Lifeline and Link Up support to access these important services without unduly impacting the overall sustainability of the Universal Service Fund. This recommendation to seek comment on raising the income eligibility to 150 percent of the FPG does not apply to broadband Lifeline and Link Up support should broadband be included as a supported service. This is a separate issue discussed later in this recommendation. The Joint Board cannot, at this time, conclude that this eligibility requirement should apply if the Commission ultimately expands universal service and the Lifeline and Link Up programs to encompass broadband.

11. Many commenters favor raising the income eligibility criteria for end-user customers qualifying for low-income support to a level higher than the current 135 percent threshold of the FPG. NASUCA reiterates its long-standing support for moving the income eligibility standard to 150 percent of

¹³ *Id.*

¹⁴ *See, e.g.,* Consumers Groups Comments at 10. Additionally, not all states include all programs for eligibility that are currently required under federal default rules. Modifications to state program eligibility requirements will cost money, take time to implement, and may require changes to state laws. Only about half of the states currently have an income-based eligibility option for low-income consumers not participating in qualifying programs.

¹⁵ Qwest Reply Comments at 2.

the federal poverty guidelines.¹⁶ Benton agrees and notes that other federal low-income support programs, such as LIHEAP, already have a 150 percent threshold.¹⁷ The Consumer Groups express the same sentiment, arguing that the FPG formula has been criticized as a dated and inaccurate measurement of poverty, and that alternative studies have suggested income levels for economic “self-sufficiency” at 161 percent of the poverty level.¹⁸ The Consumer Groups note further that, during the past two fiscal years, the U.S. Congress has increased the maximum income eligibility for LIHEAP from the higher of 150 percent of FPG or 60 percent of state median income to 75 percent of state median income.¹⁹ Increasing the income eligibility criteria to 150 percent of the FPG, as suggested by many commenters, could help to increase the subscriber rate among low-income consumers, which is a long-standing goal of universal service. Conversely, Verizon and USTelecom argue against expansion of program eligibility. According to Verizon, “there is no demonstrable need” to do so, while USTelecom argues that such expansion is “unnecessary.”²⁰ According to US Telecom, there is no evidence that expansion of the federal eligibility rules will materially change the Lifeline take rates among low-income consumers, and low-income consumers already exhibit strong telephone subscribership rates. Relying on the FCC’s May 2010 Telephone Penetration by Income by State report, USTelecom asserts that the national telephone subscribership rate among low-income consumers in households with an annual income of less than \$20,000 amounted to 90.4 percent as of March 2009.²¹

12. *Serving the homeless community.* The Joint Board recommends that the Commission seek comment on how to increase participation in the low-income programs among homeless shelter residents (and possibly other segments of the low-income community) while maintaining a commitment to prevent waste, fraud, and abuse. The Commission should seek comment not only on when and how eligibility should be awarded to residents of homeless shelters, but also on when and how eligibility may be withdrawn should the consumer no longer be homeless. Additionally, the Joint Board recommends that the Commission seek comment on the feasibility of making Lifeline funding available to agencies or non-profit organizations that are able to provide communications services to homeless populations. Public comment will assist the Commission in determining how to serve these traditionally underserved individuals. The Joint Board recognizes that social welfare agencies and non-profit organizations do not qualify as ETCs eligible for low-income support, and therefore recommends that the Commission only seek comment on this issue if the Commission believes it could have the legal authority to extend universal service low-income support to non-ETCs.

13. The underlying rationale behind these recommendations is that members of certain communities, such as residents of homeless shelters, are frequently underserved due to high mobility and

¹⁶ Consumer Advisory Committee Reply Comments at 9; NASUCA Comments at 7; NASUCA Reply Comments at 11.

¹⁷ Benton Comments at 5-6.

¹⁸ Consumer Groups Comments at 7-8.

¹⁹ *Id.* at 8-9.

²⁰ USTelecom Comments at 5; Verizon Reply Comments at 5.

²¹ The Joint Board recognizes the importance of making Lifeline support available to low-income households in need. In addition, based on experiences in some states, only a small portion of customers participate in the Lifeline program based on income eligibility. Therefore, even though a 150 percent of the FPG threshold may potentially increase the disbursement of Lifeline support, the increase is unlikely to be substantial solely based on the income eligibility.

have difficulties in documenting and certifying eligibility.²² Certain groups commenting on the *2010 Referral Order* recognize this: Benton, the Consumer Advisory Committee, and Consumer Groups assert that low-income support should be extended to group housing, though not necessarily automatically.²³ The Florida PSC also supports the expansion of low-income programs to group living facilities.²⁴

14. Many of those filing comments with regard to the homeless shelter issue address the inherent difficulties of serving and verifying such highly mobile populations.²⁵ The Joint Board shares such reservations and, therefore, recommends that, as the Commission moves forward with any plans to make certain classes of individuals automatically eligible for participation in the low-income programs, it keep in mind its commitment to prevent fraud, waste, and abuse.

III. AUTOMATIC ENROLLMENT

A. Background

15. Some states employ “automatic enrollment” whereby an “electronic interface between a state agency and the carrier . . . allows low-income individuals to automatically enroll in Lifeline/Link-Up following enrollment in a qualifying public assistance program.”²⁶ Several states have reported that automatic enrollment is an efficient and effective means of increasing participation in the Lifeline and Link Up programs.²⁷ In 2004, the Commission agreed with the Joint Board’s recommendation and declined to require all states to adopt automatic enrollment, instead encouraging all states to adopt such an approach.²⁸ In so doing, the Commission agreed with the Joint Board’s concern that automatic enrollment could impose significant administrative, technological, and financial burdens on states and ETCs.²⁹

16. In the *2010 Referral Order*, the Commission asked the Joint Board to revisit the issue of whether the Commission should require automatic enrollment in all states in order to participate in the federal low-income program.³⁰ Further, the Commission asked that, should the Joint Board recommend such an approach, how the resulting administrative, technological, and financial challenges could be

²² Benton Comments at 6; Consumer Advisory Committee Reply Comments at 9-10; Ohio Commission Comments at 7.

²³ Benton Comments at 6; Consumer Advisory Committee Reply Comments at 9; Consumer Groups Comments at 12-14; Consumer Groups Reply Comments at 5.

²⁴ FL PSC Comments at 4.

²⁵ Ohio Commission Comments at 7; Smith Bagley Comments at 4; Smith Bagley Reply Comments at 8; Tracfone Comments at 4-5.

²⁶ *See Federal-State Joint Board on Universal Service Recommended Decision*, 18 FCC Rcd 6589, 6608, para. 38 (2003) (*2003 Recommended Decision*); *see also* LIFELINE ACROSS AMERICA WORKING GROUP, REPORT OF THE FCC/NARUC/NASUCA WORKING GROUP ON LIFELINE AND LINK-UP: “LIFELINE ACROSS AMERICA” 6 (2007), <http://www.lifeline.gov/LLLUREport.pdf> (WORKING GROUP REPORT). In its Report, the Working Group cited Iowa, New Mexico, New Jersey, New York, North Dakota, and Washington as states utilizing automatic enrollment in some fashion. WORKING GROUP REPORT at 6, 10.

²⁷ *See 2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8318, para. 25; *see also* WORKING GROUP REPORT at 9-10.

²⁸ *See 2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8318, para. 25.

²⁹ *Id.*; *see also 2003 Recommended Decision*, 18 FCC Rcd at 6608, para. 40.

³⁰ *See 2010 Referral Order*, 25 FCC Rcd at 5085, para. 9.

addressed.³¹

17. Commenters support a wide range of views regarding automatic enrollment. For example, AT&T is strongly opposed to implementing an automatic enrollment mechanism.³² In AT&T's view, the costs of implementing mandatory automatic enrollment could significantly increase the size of the low-income fund.³³ The Nebraska PSC also takes the position that automatic enrollment is cost prohibitive.³⁴ The California PUC supports a federal mandate for automatic enrollment conditioned on federal payment for the costs of electronic communications systems, provided that the systems are designed to ensure privacy and security of customer information.³⁵ The Florida PSC supports the use of automatic enrollment processes for Lifeline.³⁶ However, many commenters state that the Commission should not impose a mandatory automatic enrollment requirement for Lifeline on the states.³⁷

B. Discussion

18. The Joint Board recommends that automatic enrollment should be encouraged as a best practice by the states, but believes that there are issues that must be more fully understood prior to imposing mandatory requirements on all states. Specifically, as explained below, the Joint Board recommends that the Commission further develop the record with regard to the administrative, technological, and funding issues of automatic enrollment.

19. *Administrative issues.* Several commenters note that, should the Commission decide to mandate automatic enrollment, there may be compliance difficulties if such a mandate included increased costs to state social service agencies.³⁸ Many commenters suggest that there are likely to be significant up-front costs associated with the development of software interfaces between state and federal agencies and Lifeline providers. Others note, however, that some agencies have been able to implement automatic enrollment programs.³⁹ For instance, Florida required passage of a new state law requiring agencies and providers to cooperate in the establishment of electronic database transfer capabilities coupled with the need to protect consumer privacy.⁴⁰ Any changes in state laws necessary to effectuate automatic enrollment may impede the ability of the Commission to mandate nationwide automatic enrollment. Other commenters highlighted areas for particular attention, including ensuring that automatic enrollment does not direct consumers to some but not all of the Lifeline providers in a state;⁴¹ the need for prompt

³¹ *Id.*

³² AT&T Comments at 7-8.

³³ *Id.* at 8.

³⁴ Nebraska PSC Comments at 3-4.

³⁵ CPUC Comments at 13-14.

³⁶ FL PSC Comments at 2, 5-6.

³⁷ *Id.* at 2-5. Several other commenters support automatic enrollment without a Commission mandate. *See, e.g.* CG Comments at 15; CVM Comments at 3, GCI Reply Comments at 8; NASUCA Comments at 7; PIC Reply Comments at 6; PRWI Comments at 9-11; Qwest Reply Comments at 3; Smith Bagley Comments at 10; Smith Bagley Reply Comments at 14; TracFone Comments at 5; YourTel Comments at 1-3.

³⁸ Consumer Advisory Committee Reply Comments at 11; NASUCA Reply Comments at 8; PaPUC Comments at 5.

³⁹ FL PSC Comments at 4-5.

⁴⁰ *Id.* at 5-6.

⁴¹ TracFone Comments at 7.

notification of eligibility to carriers;⁴² and that an automatic enrollment program should not prevent eligible consumers from qualifying under the income criteria instead.⁴³ The Joint Board recommends that the Commission seek further comment on these issues.

20. *Technological issues.* The Missouri and Pennsylvania commissions point out that adoption of automatic enrollment procedures may have significant administrative, technological, and financial burdens, especially in view of the current realities of state and federal government budget deficits and fiscal constraints.⁴⁴ In view of the fact that automatic enrollment has already been implemented by some states, this past experience may assist other states in developing automatic enrollment processes. Nevertheless, each state may face unique technological circumstances and financial burdens that may make it impractical or unduly burdensome to implement automatic enrollment. For example, the ability of a state to implement automatic enrollment may depend upon the nature and capabilities of the state's existing data processing equipment, software, and data communication networks, as well as the need to invest in new systems to make automatic enrollment possible. The Joint Board recommends that the Commission seek further comment on these issues.

21. *Funding issues.* Numerous commenters point out the costs of interconnecting agency databases with carrier databases while simultaneously protecting consumer privacy.⁴⁵ AT&T's opposition to automatic enrollment is based on its conclusion that the increased costs associated with automatic enrollment would increase the size of the fund by several billion dollars, excluding broadband.⁴⁶ AT&T's scenario appears to include the costs of automatic enrollment systems, plus the impact of significant expansion of funding should participation in the Lifeline program increase dramatically as a result of automatic enrollment. Both NASUCA and the Florida PSC suggest that Lifeline participation increases significantly with implementation of automatic enrollment.⁴⁷ While fund size is a legitimate concern, the Joint Board notes that increased Lifeline participation is a significant program goal. The Joint Board also recommends that the Commission seek further comment on issues associated with funding of automatic enrollment.

22. *Other issues.* The overwhelming majority of commenters support continuation of the Commission's policy of encouraging states to develop automatic enrollment procedures but not requiring states to do so.⁴⁸ Many commenters suggest caveats that should be considered by the states in order to protect privacy, such as treating all ETCs in a like manner; allowing for continued eligibility through income criteria; and not allowing default selections that favor incumbents.⁴⁹ The need for cooperation between state and federal agencies is pointed out by a number of states engaged in the process of

⁴² *Id.* at 6.

⁴³ PRWI Comments at 10, Smith Bagley Reply Comments at 14. MoPSC points out the need to attempt to avoid reluctance on the part of federal agencies to allow any parties direct access to their data bases. MoPSC Comments at 5.

⁴⁴ MoPSC Comments at; PaPUC Comments at 5.

⁴⁵ Consumer Groups Comments at 15; CPUC at 13-14; FL PSC Comments at 4-5; PaPUC Comments at 5, PaPUC Reply Comments at 5-6.

⁴⁶ AT&T Reply Comments at 12.

⁴⁷ FL PSC Comments at 4-5; NASUCA Comments at 7.

⁴⁸ FL PSC Comments at 4-5; PRWI at 9-11, PRWI Reply Comments at 14; Smith Bagley at ii, 13.

⁴⁹ CPUC at 13-14; PRWI Comments at 11, PRWI Reply Comments at 15; Smith Bagley Comments at iii and at 9-10; Smith Bagley Reply Comments at 14.

implementing various state automatic enrollment programs.⁵⁰ Several states provided information on best practices and advice on automatic enrollment.⁵¹ The Joint Board recommends that this information be considered by those states that are proceeding to develop electronic interfaces to assist in administration of the Lifeline program.

IV. VERIFICATION

A. Background

23. Verification rules help to ensure the integrity of the low-income programs by determining whether participants remain eligible under program rules.⁵² The Commission's rules governing ongoing verification of consumers' continued eligibility for low-income support are bifurcated in a manner similar to the rules associated with initial eligibility and certification. Following the Joint Board's *2003 Recommended Decision*, in 2004, the Commission adopted changes to the initial verification rules, including requiring all states to verify continued eligibility, encouraging states to develop an on-line verification process, adopting federal default criteria for annually verifying program-eligibility including requiring 60 days notice of cancellation to consumers that do not return their verification form, and adopting federal default criteria for verifying income-eligibility.⁵³ Accordingly, the Commission's current verification rules require ETCs in states that have their own Lifeline programs to comply with state verification procedures.⁵⁴ ETCs in federal default states are required to implement procedures to verify annually the continued eligibility of a statistically valid random sample of their Lifeline consumers and provide results of that sample to USAC.⁵⁵ As a result, consumers qualifying for Lifeline benefits in federal default states may be required to verify with their ETC, on an annual basis, their continued eligibility to receive Lifeline support.⁵⁶ However, consumers in states that have their own Lifeline programs and verification procedures may or may not be subject to the same requirements, and those states may or may not provide the results of their verification samples to USAC.

24. A few states face even more complicated verification procedures due to the limitation of their jurisdiction over certain carriers. For example, some states have a state Lifeline program but

⁵⁰ MoPSC Comments at 5.

⁵¹ See, e.g., CPUC Comments; FL PSC Comments.

⁵² See, e.g., USAC, SECOND QUARTER APPENDICES - 2010, available at <http://usac.org/about/governance/fcc-filings/2010/quarter-2.aspx> (2010).

⁵³ See *2004 Lifeline and Link-Up Order*, 19 FCC Rcd at 8302, 8322-24, paras. 33-36; see also *2003 Recommended Decision*, 18 FCC Rcd at 6605-6611, paras. 31-46.

⁵⁴ See 47 C.F.R. § 54.410(c)(1). As explained above, the Commission recently concluded that when a state Commission mandates Lifeline support, but does not impose certification and verification requirements on certain carriers within the state, the affected carriers must follow federal default criteria for certification and verification purposes. See *Lifeline and Link-Up, Order and Declaratory Ruling*, WC Docket No. 03-109, 25 FCC Rcd 1641, 1641, 1645, paras. 1, 9 (Feb. 2, 2010) (*Lifeline Declaratory Ruling*).

⁵⁵ See 47 C.F.R. § 54.410(c)(2).

⁵⁶ See 47 C.F.R. § 54.410(c). For example, as a condition of designating TracFone Wireless as an ETC eligible to receive Lifeline support, the Commission requires TracFone's subscribers to self-certify at the time of service activation and annually thereafter that they are the head of household and that they receive Lifeline-supported service only from TracFone. See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15098-99, para. 6 (2005) (*TracFone Forbearance Order*); see also *TracFone ETC Designation Order*, 23 FCC Rcd at 6214-15, para. 21.

exclude the contribution from and participation of wireless ETCs. The Commission clarified in a recent order that when a state commission mandates Lifeline support, but does not impose certification and verification requirements on certain carriers within the state, the affected carriers must follow federal default criteria for certification and verification purposes.⁵⁷ In these states (e.g., Washington), wireline ETCs follow state Lifeline verification procedures while wireless ETCs follow the federal default procedures.

25. Based on the recent growth in federal low-income support and expansion of participating carriers, the Commission referred a number of issues regarding verification to the Joint Board.⁵⁸ Specifically, in order to reevaluate whether the Commission is taking all appropriate steps to ensure program integrity, the Commission asked the Joint Board to consider whether verification procedures should be more consistent across the states and whether any changes should be made to the existing verification procedures in the Commission's rules.⁵⁹

B. Discussion

26. The Joint Board recommends that the Commission adopt uniform minimum verification procedures and sampling criteria that would apply to all ETCs in all states. These uniform procedures would serve as a "floor" of minimum requirements upon which the states could impose stricter standards. Additionally, as part of the minimum verification procedures, the Joint Board recommends that all ETCs in all states be required to submit the data results of their verification sampling to USAC, the Commission, and their respective state(s), and that the results for each ETC be publicly available.⁶⁰ The Joint Board agrees with commenters that a uniform floor of minimum verification requirements across states could help improve low-income service and utilization across the states by reducing confusion, streamlining administration, and allowing consumers and ETCs to be treated more equally across states.⁶¹ Today, eight states and two territories are required to follow the federal default verification rules and procedures,⁶² while 42 states employ their own verification procedures.

27. Uniformity of verification requirements would help provide better instruction to both carriers and consumers seeking to utilize the Lifeline program by more clearly identifying what information and what steps are required to participate, would help improve consistency in data collection, and would further the goal of maintaining technological neutrality.⁶³ Further, the Joint Board agrees that requiring all ETCs across all states to submit their verification sampling data to USAC, the Commission, and their state would provide a more complete data set and allow for more accurate nation-wide program analysis. Gathering the same minimal data from all states would provide a more complete picture of how the Lifeline program is utilized and help identify verification issues on a regional and national basis. This

⁵⁷ See *Lifeline Declaratory Ruling*, 25 FCC Rcd at 1645, para.9.

⁵⁸ See *2010 Referral Order*, 25 FCC Rcd at 5088-89, paras. 25-30.

⁵⁹ See *id.* at 5088-89, paras. 27-28.

⁶⁰ The Joint Board received little, if any, comment directly on this issue. However, the DC Public Service Commission stated that audit results should be made available to state commissions, and the Joint Board agrees. See DC PSC Comments at 5-6.

⁶¹ See AT&T at 7; Consumer Groups Comments at 22; Leap Comments at 2, 6-7 (stating carriers are equally confused by varying procedures across states); NASUCA Comments at 5-6; PRWI at 9; Smith Bagley Reply Comments at 9, 11-12; Sprint Comments at 2; TracFone Reply Comments at 1; YourTel Comments at 1-3.

⁶² See USAC Low Income at <http://www.usac.org/li/low-income/eligibility/federal-criteria.aspx>.

⁶³ See Leap Comments at 2, 6-7; TracFone Reply Comments at 4; Verizon Reply Comments at 1-2.

more complete data set would also better inform the Commission on how best to prevent waste, fraud, and abuse. Moreover, making the data available to the public could help inform all parties, including those paying to support the program, about whether the support funds are being used for the intended purposes.

28. The Joint Board agrees that, while adopting uniform reporting and a set of uniform procedures and sampling criteria has definite advantages, those procedures should not be so constrained as to prohibit the use of mechanisms by individual states that would be more effective in reducing waste, fraud, and abuse. Individual states may have state-specific concerns or program requirements that necessitate targeted or different solutions that may not be applicable to all states. Accordingly, the Joint Board recommends that states be allowed to utilize different and/or additional verification procedures so long as these procedures are at least as effective in detecting waste, fraud, and abuse as the uniform minimum required procedures.⁶⁴ These procedures may include the use of real-time verification mechanisms or databases.

29. The Joint Board also recommends that the Commission seek further comment on what should comprise the uniform minimum verification procedures, including required minimum sample size, sampling methodology, sampling criteria, and regularity of verification. The Commission should also seek further comment on what would be the costs for state and third party verification, and whether the verification sampling results and data should be made public and available to all states. The Joint Board agrees that the increase in the number of Lifeline subscribers and the addition of new wireless technologies have created new challenges for effectively completing verification sampling under the current rules.⁶⁵

30. Therefore, in developing uniform minimum verification procedures, the Joint Board recommends that the Commission first reconsider both the required sampling size, and whether the previous statistically valid random sampling equation is still relevant.⁶⁶ A uniform minimum method of conducting the “statistically valid random sample” would help ensure accuracy, improve consistency among the sampling data, and assist in analyzing regional and national verification issues.⁶⁷ Some commenters have suggested that verification should be conducted for 100 percent of Lifeline recipients to further the goal of eliminating waste, fraud, and abuse in the program.⁶⁸ However, others argue that the cost of conducting such a thorough review outweighs the benefits.⁶⁹ The Joint Board’s proposal would

⁶⁴ See Consumer Groups Comments at 22; CPUC Comments at 3, 21; MDTC Comments at 2; *see also 2003 Recommended Decision*, 18 FCC Rcd at 6609, para. 41 (recognizing the unique state interests that may arise).

⁶⁵ See Nexus Comments at 6-7; Ohio Comments Commission at 13-14.

⁶⁶ See *2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8365, Appendix J-1. The size of a statistically valid random sample varies based on a number of factors, including the number of Lifeline subscribers (N) and the previously estimated proportion of Lifeline subscribers “inappropriately taking” Lifeline service (P). ETCs use the results of samples taken from previous years to determine the estimated proportion. In all instances, the estimated proportion, P, should never be less than .01 and never more than .06. For ETCs with large numbers of Lifeline subscribers (400,000 or more), a statistically valid random sample size is calculated as: $\text{Sample Size} = 2.706 * P * (1 - P) / .000625$. *Id.* For ETCs with less than 400,000 subscribers this formula can yield a sample size that is larger than necessary, and so a table of sample sizes is provided. *Id.* at 8366, Appendix J-2 and J-3. All ETCs must provide the estimated proportion for their sample size to USAC. *Id.*

⁶⁷ See Consumer Groups Comments at 22.

⁶⁸ See, e.g., Nebraska PSC Comments at 6; Ohio Commission Comments at 13 (stating that at least one carrier in that state verifies every customer).

⁶⁹ See NASUCA Reply Comments at 14; TracFone Comments at 9.

allow states to continue to verify 100 percent of their Lifeline customers' eligibility or to adopt such uniform minimum verification procedures. Minimum standards for determining sampling would be required for other states.

31. For purposes of determining the minimum, acceptable verification requirements, the Joint Board recommends that the Commission gather further data regarding the typical margin of error and confidence levels in verifying Lifeline subscribers and what are acceptable. The Commission should determine what minimum confidence levels and what maximum levels of sampling error and non-responsiveness, if any, are acceptable. Although the Joint Board received some comments on verification procedures in California, Florida, and Ohio, the record does not provide a sufficiently representative sample to advise on state best practices or to determine what method should be adopted as a minimum standard.⁷⁰ Accordingly, the Commission should gather further information on the best practice methodology for conducting random sampling.⁷¹ A few states have reported that they conduct random sampling.⁷² The Commission should reach out to those states for more information on their processes. The Commission should then consider whether to revise the statistically valid random sample equation and adopt a precise method of random sampling that can be uniform across all ETCs in all states.

32. Second, the Joint Board recommends that the Commission should also gather further information on whether the uniform minimum procedures should require ETCs to conduct verification directly with the consumer, or whether the state or the qualifying program administrator should conduct the verification. The Commission should also seek further comment on whether, alternatively, verification should be conducted by a neutral third-party. The Commission should specifically seek comment on the costs associated with implementing state or third-party verification procedures. Some commenters point out that verification by ETCs directly with the consumer may present challenges including lack of reliability in consumer responses and hesitancy of consumers to provide information to ETCs.⁷³ Additionally, some commenters argue that federal or state agencies administering the qualifying program may be able to provide more reliable and more accurate information for verifying program or income eligibility than consumers.⁷⁴ Certain states have reported that they periodically require submission of verification documents from their Lifeline recipients.⁷⁵ The Commission should seek out further information from these states on their processes and the reliability of their processes. Further, some commenters argue that ETCs should not be responsible for conducting verification.⁷⁶ For example,

⁷⁰ See AT&T Comments at 16 (providing some information on Florida's verification process for pre-paid wireless providers); Consumer Groups Comments at 25-26; CPUC Comments at 21 (providing some data on California's verification process); FL PSC Comments at 9-10; Ohio Commission Comments at 13.

⁷¹ See Nexus Reply Comments at 7-8 (suggesting various methods for conducting sampling).

⁷² Alaska, Arizona, Florida, Maryland, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Virginia, and West Virginia have reported that they conduct random audits of Lifeline recipients. See E-mail from states to Federal-State Joint Board (Aug. 18, 2010, 18:04 EST) (providing various state data on Lifeline eligibility, verification, and outreach procedures and practices) ("State Data").

⁷³ See TracFone Reply Comments at 6.

⁷⁴ See, e.g., CVM Comments at 3; Verizon Reply Comments at 1-2.

⁷⁵ Arizona, Florida, Idaho, Kentucky, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Vermont, Virginia, and Wyoming have reported that they require periodic submission of documentation from Lifeline recipients to provide their continued eligibility. See State Data.

⁷⁶ See AT&T Reply Comments at 9-11, 14-16; Nebraska PSC Comments at 6; PRWI Comments at 11; Qwest Reply Comments at 6; TracFone Comments at 8-9; USTelecom Comments at 7.

CTIA and AT&T support a centralized system managed by a neutral third party.⁷⁷ The Joint Board, in the *2003 Recommended Decision*, noted that on-line verification is being utilized by some states already.⁷⁸ However, while the Joint Board received some additional comments regarding a few state verification procedures, the Joint Board recommends that the Commission seek further cost information for implementing each option before evaluating which procedure should be adopted as the uniform minimum standard.⁷⁹

33. Third, the Joint Board recommends that the Commission seek further comment on whether verification should be conducted uniformly on an annual basis or at some other interval by all ETCs in all states. For example, the comments identify that, in certain instances, Florida requires verification every 60 days;⁸⁰ California requires annual verification;⁸¹ and Ohio conducts verification at different intervals depending on the type of provider.⁸² However, the overall record does not contain enough information to determine whether annual verification, or some other regular interval, would be most effective at furthering the goal of guarding against waste, fraud, and abuse without becoming overly burdensome. Therefore, the Commission should seek further comment on the benefits of varying methods, the costs, and the overall best practices for how often verification should be conducted before adopting a uniform minimum standard.

34. Lastly, the Joint Board recommends that the Commission seek further comment on what consumer information should be uniformly verified and collected. In addition to verifying continued eligibility, the Commission should inquire whether it is useful and feasible for the uniform minimum verification sampling procedures to require information regarding initial enrollment eligibility, the consumer's selected service (i.e., wireline or wireless), and whether a consumer is receiving Lifeline support for only one line per household. The Joint Board agrees with commenters who are concerned about strengthening the program and preventing waste, fraud, and abuse.⁸³ Likewise, the Joint Board agrees with commenters that suggest it is important to verify whether Lifeline recipients are receiving support in compliance with the Commission's one Lifeline-supported line per household rule.⁸⁴ The current federal default rules require that subscribers qualifying for Lifeline based on income eligibility self-certify regarding the number of individuals in their household.⁸⁵ The usefulness of this information is

⁷⁷ See CTIA Reply Comments at 2-6; see also generally AT&T Comments (outlining a possible framework for a national database); DC PSC Comments at 5-6 (supporting a third party audit program).

⁷⁸ See *2003 Recommended Decision*, 18 FCC Rcd at 6609, 6627, para. 42, Appendix E (identifying Illinois, Minnesota, and Tennessee as states already having implemented on-line verification procedures). Florida, Kentucky, Washington, Wisconsin and Wyoming have also recently reported they have adopted on-line verification procedures in their states. See State Data.

⁷⁹ See *supra* note 72 (identifying some of the verification procedures for CA, FL, and OH).

⁸⁰ See AT&T Comments at 16 (identifying Florida's procedures); FL PSC Comments at 9-10 (stating that for a six-month period in 2009, their procedures have saved the USF over \$8.5 million); see also NASUCA Comments at 14 (supporting 60 days for certain carriers).

⁸¹ See CPUC Comments at 21.

⁸² Ohio Commission Comments at 13.

⁸³ See, e.g., Consumer Groups Comments at 27; DC PSC Comments at 5; NASUCA Reply Comments at 10; Nexus Reply Comments at 2-4.

⁸⁴ See DC PSC Comments at 5-6; Nexus Reply Comments at 4; Qwest Comments at 3-4.

⁸⁵ See 47 C.F.R. § 54.4410(c)(2).

limited, however, both because it is provided only by ETCs in federal default states and because it is unclear whether that support is received for only one line per household. The Joint Board received information from only a few non-federal default states regarding the information collected through their verification procedures. Much of the information collected appears to be limited in scope. For example, California requires only verification of continued eligibility.⁸⁶ As such, the Joint Board recommends that the Commission seek further comment on whether the uniform minimum verification standards should require ETCs to request information regarding initial eligibility, the service selected, and more specific household information regarding how many lines are received per household. The Commission should also seek further comment on whether there are better or different eligibility criteria that should be verified during the process.

V. DATABASE

A. Background

35. Given the widespread transition from paper-based environments to those effectively managed with electronic systems, in its *Referral Order*, the Commission asked the Joint Board to review online mechanisms that would allow carriers to automate their interactions with states and the federal government to certify a customer's initial and ongoing eligibility for program discounts.⁸⁷ The National Broadband Plan suggests that the Commission should consider a centralized database for online certification and verification, based on numerous such proposals in the record.⁸⁸ The Commission asked the Joint Board to address how any national or state databases might streamline certification and verification of low-income consumers' eligibility for the Lifeline and Link Up programs.⁸⁹ The Commission further asked the Joint Board to review alternatives to a database, and to recommend mechanisms that are reasonably practical, efficient, accurate, secure, and respectful of customer privacy.⁹⁰

B. Discussion

36. The Joint Board recommends that the Commission seek further comment and information necessary to determine whether the Commission should adopt a national database, potentially requiring interaction with state and/or regional databases and resources. The Joint Board recommends that the Commission seek further comment as to specifically what information would be contained in the database and the feasibility of collecting this information. The Joint Board also recommends that the Commission develop the record regarding the feasibility and potential advantages and/or disadvantages of regional and/or state databases as opposed to, or in addition to, a national database. In particular, the Joint Board recognizes that, while creating centralized databases of some kind (whether at the national, regional, and/or state level) may lead to certain advantages, significant questions exist regarding this approach. Therefore, as detailed more fully below, the Joint Board recommends that the Commission seek comment

⁸⁶ See CPUC Comments at 21.

⁸⁷ 2010 *Referral Order*, 25 FCC Rcd at 5086, para. 20.

⁸⁸ See National Broadband Plan at 173; see also Nebraska Public Service Commission Comments in re NBP PN #19 at 9 (suggesting "the Commission should work with states to develop an accurate system that could be administered either at a central location or as a cooperative arrangement between states and the Universal Service Administrative Company for eligibility and verification of low-income participants"); NASUCA Comments in re NBP PN #19 at 35 (suggesting that "a universal database could be created to trap 'double-dippers'" who seek to obtain Lifeline-supported service from two different providers).

⁸⁹ 2010 *Referral Order*, 25 FCC Rcd at 5086, para. 20.

⁹⁰ *Id.*

on several key factors, including potential costs of building and maintaining a database, funding sources, administration, and security and privacy issues. Further, the Joint Board recommends that the Commission seek further comment as to what information should be contained in the database and the feasibility of collecting the information.

37. In response to the Joint Board's inquiry on these issues, a number of parties supported establishment of a centralized database for certification and verification of Lifeline consumers' eligibility.⁹¹ The ETC industry, in general, supports such a database, while others point out significant implementation issues with such an approach. The record in this proceeding does not include the level of operational details or associated tangible cost estimates necessary to implement a national database at this time.

38. *National database.* Commenters assert many advantages of a centralized database of eligible Lifeline customers.⁹² First, a national database could eliminate fraudulent and duplicate claims for Lifeline support because carriers no longer would rely solely on applicants' self-certification that they participate in one of the public assistance programs.⁹³ These commenters believe that a database could provide accurate and up-to-date information on customers' eligibility, and would also contain information on the applicant's current Lifeline enrollment status, thereby ensuring only one Lifeline-supported line per household.⁹⁴

39. Second, consumers could benefit through improved operational efficiency from the establishment of centralized electronic mechanisms for use in certifying and verifying Lifeline eligibility.⁹⁵ A national database system could potentially enable a real-time verification process to speed up the enrollment. In theory, the database would receive updates on changes in consumers' eligibility from appropriate social service agencies so that a customer's eligibility for Lifeline could be monitored in a timely manner, though it is less clear how the database would be updated to reflect changes in income eligibility.⁹⁶

40. Third, a centralized administrator could greatly reduce carriers' administrative burden.⁹⁷ In federal default states, carriers would no longer need to conduct the annual survey on randomly selected samples of customers.⁹⁸ In some non-federal default states, state Lifeline programs have various mechanisms to verify customers' eligibility on an ongoing basis, such as random surveys, collecting eligibility documentation from customers, and audits.⁹⁹ Carriers in these states could be relieved from such obligations (to the extent that those carriers' state obligations were fulfilled through the centralized

⁹¹ See Consumer Advisory Committee Reply Comments at 15.

⁹² See, e.g., AT&T Comments, Florida PSC Comments, Ohio Commission Comments, Qwest Comments, Sprint Comments, TracFone Comments.

⁹³ AT&T Comments at 14; FL PSC Comments at 3; Leap Comments at 6; Sprint Reply Comments at 5.

⁹⁴ PRWI Comments at 10.

⁹⁵ Smith Bagley Reply Comments at iii.

⁹⁶ AT&T Reply Comments at 3-4; Nebraska PSC Comments at 6.

⁹⁷ CPUC Comments at 17; Smith Bagley Reply Comments at 10

⁹⁸ AT&T Comments at 5; Qwest Reply Comments at 6.

⁹⁹ For example, the Missouri Public Service Commission conducts periodic, random audits to independently verify Lifeline customers' eligibility. Missouri also requires all Lifeline customers to provide documentation of participation in the applicable programs. Missouri Code of State Regulations, 4 CSF 240-31.050(3).

database). And, fourth, some commenters state that a dedicated administrator could also ensure privacy better than individual telecommunications service providers.¹⁰⁰

41. On the other hand, as some commenters point out, implementing a national database may pose significant administrative, technological, and financial challenges.¹⁰¹ Any material administrative burden associated with determining eligibility may not be eliminated, but may instead be shifted under the database approach. Specifically, the burden would shift to the organizations that collect and provide the input data and maintain the database.¹⁰² Significant questions remain as to which entities would be responsible for this function, whether those entities have the capability and willingness to perform the duties, and whether the Commission has the legal authority to require compliance. Further, data interoperability, privacy, and security should also be taken into serious consideration when constructing the electronic database.¹⁰³ The Joint Board shares these concerns and, therefore, recommends that the Commission seek comment or otherwise pursue these critical areas in advance of concluding that a national database should be implemented.

42. *Administration of a national database.* In general, comments from carriers show that they do not want the responsibility of ensuring Lifeline applicants' eligibility.¹⁰⁴ Some argue that such tasks are outside of their core competencies.¹⁰⁵ Carriers do not always have access to information ensuring applicants' eligibility or whether the applicants already receive Lifeline benefits from another company. Additionally, some carriers do not feel comfortable collecting applicants' sensitive income documentation.¹⁰⁶

43. Some commenters state that the optimum strategy would require the Commission to establish, and USAC to administer, a national customer eligibility and verification database.¹⁰⁷ For example, AT&T asserts that assigning government administrators the responsibility for determining eligibility for support would provide greater consistency in consumer eligibility determinations as the number of Lifeline providers increases.¹⁰⁸ According to some commenters, these government entities may be in the best position to safeguard a consumer's highly sensitive information, such as household income.¹⁰⁹

44. Other commenters, however, caution that a shift to a nationwide administrator sharing data with state-qualifying agencies would be a mammoth undertaking.¹¹⁰ Commenters further assert that it is not clear whether a national database would achieve better results than state-wide administration of

¹⁰⁰ See, e.g., AT&T Reply Comments at 10-11; TracFone Comments at 7.

¹⁰¹ MoPSC Comments at 5.

¹⁰² PaPUC Reply Comments at 6-7.

¹⁰³ *Id.*; see also Sprint Reply Comments at 5.

¹⁰⁴ See, e.g., AT&T Comments; TracFone Comments.

¹⁰⁵ CTIA Reply Comments at 2-6; Qwest Reply Comments at 9.

¹⁰⁶ AT&T Reply Comments at 10-11.

¹⁰⁷ AT&T Comments at 11; USTelecom Comments at 5.

¹⁰⁸ AT&T Reply Comments at 11.

¹⁰⁹ *Id.* at 10-11.

¹¹⁰ Consumer Groups Comments at 19.

Lifeline consumer eligibility.¹¹¹ For example, the Florida PSC considers impractical AT&T's proposal regarding the use of USAC-issued Personal Identification Numbers (PINs) for Lifeline applicants, and asserts that the issuance of PINs would be an additional burden for state agencies that deal with customer Lifeline eligibility.¹¹² Sprint states that AT&T's PIN system might reduce duplicate claims, but notes that some ETCs might not have the technical ability to interface with a centralized database.¹¹³ In addition, a nationwide database would need to accommodate the differences in state Lifeline practices, which include varying Lifeline eligibility criteria and verification mechanisms.¹¹⁴

45. Some commenters argue that states are in a better position to administer the Lifeline program and maintain the database.¹¹⁵ These commenters assert that state agencies work more closely with low-income consumers and may be able to respond to their needs more effectively. Commenters also stated that states should have the flexibility to administer their state Lifeline programs based on their unique needs and resources. In addition, commenters argue that, if states are in charge of supplying state-specific information in the national database, each state would be empowered to continue to determine the best method of determining eligibility.¹¹⁶

46. Qwest proposes that, because state agencies determine consumer eligibility, those same agencies should monitor or periodically review to determine if a customer is no longer eligible.¹¹⁷ When the state agency determines a consumer is not eligible because he or she no longer qualifies for the underlying programs, the state agency could notify the appropriate service provider, or if there is a national database, provide that information to the database to notify the provider.¹¹⁸ Further, Qwest argues, if state agencies monitor continued eligibility, it could eliminate or minimize the need for sample verifications and could potentially reduce the number of consumers that are legitimately eligible but are removed for not responding to verification requests.¹¹⁹ Given the complexity of the issues surrounding the administration of a national database, the Joint Board recommends that the Commission seek further comment on how a national database should be administered.

47. *Funding a national database.* Despite strong general support in the comments for the creation of a national database, there is little consensus on how to fund a database.¹²⁰ Whereas almost all carriers embrace the idea of a national database, there was no consensus on a funding mechanism.¹²¹

¹¹¹ *Id.*

¹¹² FL PSC Comments at 6-7.

¹¹³ Sprint Reply Comments at 4.

¹¹⁴ AT&T Comments at 3.

¹¹⁵ Qwest Reply Comments at 6.

¹¹⁶ Nebraska PSC Comments at 6.

¹¹⁷ Qwest Reply Comments at 6.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *See* Consumer Groups Comments at 18 (disagreeing about the workability of such a plan).

¹²¹ *See, e.g.,* AT&T Comments at 4 (advocating for state agencies to take responsibility for its proposed database); TracFone Reply Comments at 6 (stating that state and federal agencies are best placed to manage a national database); Verizon Reply Comments at 1 (suggesting that a national administrator would be the most effective method to proceed with a centralized database).

Some think that USAC should be the national administrator of a database, implying that the Universal Service Fund should provide the necessary resources.¹²² Some argue that state and federal governments should not charge ETCs unreasonable fees to cover the database costs.¹²³ On the other hand, while only a few states commented on the database proposal, those that did voiced serious concern about the possible state costs of such an undertaking.¹²⁴

48. Regardless of which entity would administer a centralized national database of eligible Lifeline customers, the database would need input from various parties on a frequent basis. The federal default criteria for program-based Lifeline eligibility include nine federal assistance programs.¹²⁵ Therefore, administrators of these programs would need to provide data on program participants to the Lifeline database. These administrators include, among others, the Social Security Administration, the U.S. Department of Housing and Urban Development, the U.S. Department of Education, state social service agencies, and local school districts. In addition, all Lifeline providers and state Lifeline program administrators would need to update data for customers already enrolled in Lifeline. This would involve a significant coordination of resources.

49. Other related costs for the states would include set-up, continuous operation and updating of the appropriate databases, as well as establishing the appropriate telecommunications and information links and electronic data interfaces (EDIs) with the national database. Additional issues would include whether existing state databases would need to be converted in order to be compatible with the national database and at what cost, and whether the national database would have the inherent capability to perform seamless data protocol conversions while interacting with the state databases. The existing proposals have not addressed how the related non-recurring and recurring costs would be allocated among the individual states, the national/federal level, and the ETC industry.¹²⁶

50. Given the necessary involvement of ETCs and state and local government agencies, the Joint Board recommends that the Commission seek further comment on the cost of providing data input services, and whether funding would be necessary for the service. The Joint Board recommends that the Commission also seek comment to estimate the cost of operating a national database, including both an IT backbone and ongoing administrative costs.

51. *State privacy and security laws.* Various commenters support a centralized database as long as it contains sufficient safeguards to protect consumer privacy and avoids any inadvertent disqualification of eligible consumers or anticompetitive effects.¹²⁷ A number of commenters emphasized the importance of ensuring data security if a national database is implemented because the database would contain a series of critical personal information such as name, address, social security number, and

¹²² AT&T Comments at 9-10; AT&T Reply Comments at 3-4.

¹²³ TracFone Reply Comments at 4.

¹²⁴ The PaPUC is particularly concerned by recent industry proposals that effectively shift various costs for eligibility, verification, and outreach to the states while the carriers obtain the benefit of resources obtained for the low-income programs. The PaPUC is opposed to a solution in which the states exclusively bear the burden of automatic enrollment and verification while the carriers secure the benefit of cash for delivering low-income supported services, including any potential broadband component. PaPUC Reply Comments at 6.

¹²⁵ 47 C.F.R. § 54.409.

¹²⁶ PaPUC Reply Comments at 6-7.

¹²⁷ Smith Bagley Reply Comments at 15.

participation in a public assistance program.¹²⁸ However, the record is currently incomplete with regard to the issue or solutions to address the data privacy and security concerns. For example, states may have different laws governing privacy of proprietary customer data. Some Lifeline providers explicitly require the applicant to authorize the service provider or appropriate social service agencies to verify the applicant's eligibility.¹²⁹ However, it is not clear whether customers' authorization on the application form is sufficient for qualifying assistance program administrators to release the information to a Lifeline provider in all states.

52. AT&T argues that adopting a national PIN database could solve customers' concerns on privacy and security.¹³⁰ For example, customers could avoid having to share sensitive customer information related to their participation in various government programs with private communications service providers.¹³¹ Providers would no longer need to share customer information with each other to resolve questions over which company should properly claim particular Lifeline subscribers, if a USAC audit finds that certain subscribers were receiving Lifeline support from multiple companies.¹³² Some commenters, however, are skeptical about the proposed PIN database.¹³³ Commenters expressed concern about maintaining the confidentiality of personal identifying information of the applicants and how Lifeline applicants using self-certification would obtain PINs.¹³⁴

53. The Joint Board recommends that the Commission seek further comment to better understand the differences in state privacy and security laws concerning Lifeline eligibility data. If the Commission decides to adopt a national database, further comment should be solicited to explore how to construct an IT platform that could ensure data security while enabling convenient access for all Lifeline providers across the country. If the Commission decides to facilitate a national database, the Commission should provide guidance on how to ensure privacy and security of electronic records. In sum, the Joint Board recommends that the various concerns described above should be addressed before the Commission moves forward with implementation of a national database to certify and verify Lifeline consumers' eligibility.

54. *State databases.* The Joint Board also recommends that the Commission develop the record regarding the feasibility and potential advantages and/or disadvantages of regional and/or state databases as opposed to, or in addition to, a national database. The Joint Board recommends that the Commission seek comment on several key factors that parallel the critical issues outlined above for a

¹²⁸ NASUCA Reply Comments at 9; Nebraska PSC at 6; Smith Bagley Reply Comments at 15.

¹²⁹ For example, in Missouri, Lifeline applicants are required to sign an authorization allowing the appropriate federal, state, or local agency to confirm the household's participation in qualifying programs. See Missouri Code of State Regulations, 4 CSF 240-31.050(3). In Wisconsin, Lifeline applicants have to provide signed authorization for ETCs to access state databases on their behalf. See Wisconsin Response to Government Accountability Office Survey on Lifeline. AT&T's wireless Lifeline and Linkup programs require all applicants to consent to the release of the information on the application form. See <http://www.wireless.att.com/learn/articles-resources/community-support/lifeline-link-up.jsp#Washington>. Sprint Nextel Corporation also requires Lifeline applicants to authorize the company to access any records to verify the applicants' eligibility. See http://shop.sprint.com/en/services/calling/universal_lifeline_program.shtml.

¹³⁰ AT&T Comments at 7.

¹³¹ *Id.* at 10-11.

¹³² *Id.* at 13.

¹³³ FL PSC Comments at 6-7.

¹³⁴ *Id.*

national database. Specifically, administration, funding, privacy, and security are issues that the Joint Board believes need to be explored in advance of the Commission taking further action.

55. Currently, a few states have implemented variations of centralized state databases. Potential models were provided by California, Florida, Maryland, and Ohio.¹³⁵ Mandating each state to establish and administer a state database faces limitations in state resources and legal hurdles. Currently, not all states have an automatic enrollment program or an electronic database query system. Even among states utilizing automatic enrollment or an electronic database, some do not provide the service to wireless ETCs either because they do not have jurisdiction over wireless carriers or because the state laws exclude wireless carriers from participating in state Lifeline programs.¹³⁶ If the Commission were to require each state to maintain a Lifeline database, the mandate would present challenges for those states that do not already have a state Lifeline program or do not include all types of carriers in their state program. In some states, legislative approval or rulemaking at the state level may be necessary before these states could implement federal mandates. The resources needed to coordinate data input from different agencies and to maintain a state-wide electronic database are significant.

VI. OUTREACH

A. Background

56. Section 214(e)(1)(B) of the Act requires all ETCs to advertise the availability of services supported by universal service funds and the charges for such services “using media of general distribution.”¹³⁷ In the *Universal Service First Report and Order*, the Commission clarified that “eligible telecommunications carriers will be required to advertise the availability of, and charges for, Lifeline pursuant to their obligations under section 214(e)(1).”¹³⁸ Recognizing the critical importance of effectively publicizing the Lifeline and Link Up programs to low-income consumers and the resulting effect on the telephone penetration rate, the Commission took several opportunities over the years to highlight the importance of outreach. For example, in the June 2000 *Tribal Order*, the Commission amended sections 54.405 and 54.411 of the rules to require that ETCs publicize the availability of Lifeline and Link Up “in a manner reasonably designed to reach those likely to qualify for the service.”¹³⁹ The Commission chose not to prescribe specific, uniform methods for ETCs to follow in publicizing their low-income programs; rather, the Commission gave carriers the discretion to determine how best to reach

¹³⁵ See CPUC Comment; FL PSC Comments; MD PSC Comments; Ohio Commission Comments (providing specific information about the states’ programs).

¹³⁶ For example, Alaska, Virginia and Washington states have state Lifeline programs, but they exclude wireless ETCs from state verification and certification rules. *Lifeline and Link-Up Petitions for Declaratory Ruling and Requests for Waiver by US Cellular Corporation, et al.* WC Docket No. 03-109, Order and Declaratory Ruling, 25 FCC Rcd 1641, 1644, para. 6 (2010).

¹³⁷ 47 U.S.C. § 214(e)(1)(B).

¹³⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 8993, para. 407.

¹³⁹ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas; Western Wireless Corporation, Crow Reservation in Montana, Smith Bagley, Inc., Cheyenne River Sioux Tribe Telephone Authority, Western Wireless Corporation, Wyoming Cellco Partnership d/b/a Atlantic Mobile, Inc. Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12250, para. 78 (2000) (*Tribal Order*).

qualifying low-income subscribers within their respective service areas.¹⁴⁰

57. In the *2004 Lifeline and Link Up Order*, the Commission implemented more detailed guidelines to assist states and carriers in performing outreach to potential Lifeline and Link Up customers.¹⁴¹ Based on the recommendation of the Joint Board,¹⁴² the Commission adopted the following outreach guidelines: (1) states and carriers should utilize outreach materials and methods designed to reach households that do not currently have telephone service; (2) states and carriers should develop outreach advertising that can be read or accessed by any sizeable non-English speaking populations within a carrier's service area; and (3) states and carriers should coordinate their outreach efforts with governmental agencies/tribes that administer any of the relevant government assistance programs.¹⁴³ The Commission emphasized the importance of outreach programs, noting that effective outreach programs had been shown to improve Lifeline and Link Up participation in several instances.¹⁴⁴ Additionally, the Commission sought comment on whether to prescribe rules to govern advertisement of the Lifeline and Link Up programs.¹⁴⁵

58. In July 2005, the Lifeline Across America initiative was created as a nationwide effort to increase consumer awareness of the federal and state Lifeline and Link Up programs.¹⁴⁶ As part of this initiative, staff from the Commission, NARUC, and NASUCA formed a working group to further outreach efforts and increase Lifeline and Link Up subscribership.¹⁴⁷ In 2006, the working group helped to enact joint resolutions concerning Lifeline and Link Up carrier outreach and best practices at the NARUC and NASUCA annual conventions.¹⁴⁸ Additionally, in 2007, the working group published a report detailing its observations and recommendations as to best practices for Lifeline and Link Up outreach.¹⁴⁹ More recently, the National Broadband Plan suggested that the Commission should encourage state social service agencies to take a more active role in consumer outreach and provide such

¹⁴⁰ *Id.* at 12250, para. 79. The Commission did require that ETCs “identify communities with the lowest subscribership levels within its service territories and make appropriate efforts to reach qualifying individuals within those communities.” *Id.*

¹⁴¹ *2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8326, para. 45.

¹⁴² *2003 Recommended Decision*, 18 FCC Rcd at 6612, para. 51.

¹⁴³ *2004 Lifeline and Link Up Order*, 19 FCC at 8326-28, paras. 45-48.

¹⁴⁴ *Id.* at 8325, para. 42. An August 2000 report by the Telecommunications Industries Analysis Project demonstrated that “the Lifeline/Link-Up take rate almost tripled from 13.1% to 39.6% when states implemented outreach initiatives designed to increase telephone penetration and participation.” *Id.* In Maine, for example, successful and aggressive outreach helped the telephone penetration rate among low-income households to increase from 90.5% in March 1997 to 96.5% in March 2002. *Id.*

¹⁴⁵ *Id.* at 8333, para. 58.

¹⁴⁶ WORKING GROUP REPORT at 1.

¹⁴⁷ *Id.*

¹⁴⁸ Lifeline Across America, About Us, <http://www.lifeline.gov/aboutus.html> (last visited May 3, 2010); see CA-1 Resolution on Furthering Lifeline Participation Through Outreach, NARUC (Nov. 15, 2006), available at http://www.naruc.org/Resolutions/ca1_res_furthering_lifeline_participation_through_outreach.pdf; Resolution 2006-01: Increasing Participation in Lifeline and Link-Up Telephone Assistance Programs Through Additional and More Effective Public Outreach, NASUCA (Nov. 2006), available at http://www.nasuca.org/archive/Resolutions/NASUCA_Lifeline-Resolution_2006-01.doc.

¹⁴⁹ See generally WORKING GROUP REPORT.

agencies with educational materials that could be used in such efforts.¹⁵⁰

B. Discussion

59. *Outreach requirements for ETCs.* When it last considered this issue in 2003, the Joint Board found that effective outreach initiatives have the potential to greatly improve Lifeline and Link Up participation rates.¹⁵¹ Although the Commission issued detailed outreach guidelines in April 2004, Lifeline participation rates have not significantly improved in subsequent years. In 2009, the nationwide Lifeline participation rate was 36 percent and, in some states, less than 10 percent of eligible consumers participated in the program.¹⁵² Such statistics raise concerns that ETCs are not using effective low-income outreach methods, or that, in some instances, ETCs are neglecting low-income outreach altogether.¹⁵³ In the absence of enforceable rules, however, the Commission cannot ensure that ETCs are making adequate efforts to reach eligible low-income consumers.

60. The Joint Board therefore recommends that the Commission adopt mandatory outreach requirements for all ETCs that receive low-income support from the Universal Service Fund. These requirements would constitute a minimum floor for outreach requirements that must be undertaken by ETCs in both federal default and non-default states. If desired, states could supplement the federal requirements with additional outreach rules designed to better target their respective populations.¹⁵⁴ However, it is imperative that a baseline level of Lifeline and Link Up information be available to low-income consumers in all states.

61. Commenters such as TracFone and Verizon / Verizon Wireless suggest that mandatory outreach rules would make the Lifeline and Link Up programs more expensive and disincentivize carriers from serving low-income consumers.¹⁵⁵ The Joint Board is not persuaded, however, that this is the case. ETCs will necessarily advertise their products in the normal course of business.¹⁵⁶ In fact, advertising is a

¹⁵⁰ See National Broadband Plan at 172-173.

¹⁵¹ *2003 Recommended Decision*, 18 FCC Rcd at 6611, para. 48.

¹⁵² See USAC, Lifeline Program Participation Data, <http://usac.org/li/about/participation-rate-information.aspx> (last visited Oct. 25, 2010).

¹⁵³ Several commenters assert that the existing outreach guidelines are insufficient to reach eligible low-income consumers. See, e.g., NHMC Comments at 2 (noting that “the current outreach initiatives have not been entirely successful in reaching their target recipients”); Consumer Groups Comments at 28-29 (“The fact that program participation rates range anywhere from 10 percent to 50 percent for the vast majority of states, means that outreach efforts have not been successful to date.”).

¹⁵⁴ See Consumer Groups Comments at 29-30; NASUCA Reply Comments at 16 (proposing that “the Commission . . . establish minimum requirements for outreach, which a carrier would be free to exceed”).

¹⁵⁵ See TracFone Comments at 11 (noting that “[i]ncreased outreach requirements, restrictions on offerings, and the other burdens contemplated throughout these proceedings, risk discouraging provider participation in Lifeline”); Verizon and Verizon Wireless comments at 11-12; cf. AT&T Comments at 17 (stating that “[w]hile it might be reasonable to ask Lifeline providers to post on their web sites Commission-supplied information about Lifeline discounts and to ensure that their customer service representatives are knowledgeable about these discounts, we do not believe the Commission should continue to rely on or require providers to advertise”); Smith Bagley Reply Comments at 20-21 (asserting that to the extent that ETCs are not meeting their outreach obligations, better enforcement, not more onerous requirements, is the solution).

¹⁵⁶ See Nebraska Public Service Commission Comments at 7 (“Carriers are in the best position to advertise as they already utilize advertisement in the normal course of business.”).

requirement of obtaining and maintaining ETC status.¹⁵⁷ As such, it is not apparent that it would substantially burden ETCs to include Lifeline and Link Up service offerings in the scope of their existing marketing efforts. Further, by expanding its advertising base to new consumers, an ETC can take advantage of marketing economies of scale, resulting in a lower cost per customer served.¹⁵⁸

62. As noted by several commenters, ETCs may employ a wide range of marketing methods to reach consumers.¹⁵⁹ While the Joint Board believes that mandatory outreach requirements are necessary, the requirements ultimately adopted by the Commission should provide ETCs with the flexibility to market their service offerings to eligible consumers in accordance with their respective business models. The Joint Board therefore recommends that the Commission seek comment on whether carriers, when seeking ETC designation, should be required to submit a marketing plan to the state or the Commission that outlines outreach efforts the carrier will use to reach eligible low-income consumers.¹⁶⁰ The Commission should also seek comment on how ETCs that have already been designated by states or the Commission could comply with any potential marketing plan requirement.

63. Additionally, the Joint Board recommends that the Commission seek comment on the issues to be addressed by a carrier's marketing plan. Responses to this question may draw on current carrier best practices. For example, the Commission should request comment on whether carriers seeking designation as low-income ETCs should address the following items:

- Publication on Internet home page: The carrier will have Lifeline and Link Up information clearly visible on its Internet home page, along with other available service offerings.
- Multiple outreach methods: The carrier will use multiple forms of outreach to reach eligible consumers. This could include (but would not be limited to) any combination of print media, broadcast media, Internet advertising, and marketing materials distributed at community centers and other community-based organizations.
- Outreach frequency: The carrier will perform outreach at a set frequency, in order to maximize the opportunities for eligible consumers to view and process the carrier's advertisements.
- Providing outreach materials to community institutions: The carrier will provide outreach materials to appropriate community institutions and educate those institutions, as needed, on the carrier's Lifeline and Link Up programs.
- Advertising in multiple languages: If the carrier serves a locality where a second language is predominant, the carrier must provide Lifeline and Link Up advertisements in that language,

¹⁵⁷ See 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).

¹⁵⁸ See Economies of Scale, Reference for Business, Encyclopedia of Business, 2nd Edition, <http://www.referenceforbusiness.com/encyclopedia/Eco-Ent/Economies-of-Scale.html> (last visited Oct. 13, 2010).

¹⁵⁹ See, e.g., Sprint Nextel Reply Comments at 10 (detailing the carrier's various outreach strategies); YourTel comments at 4 (describing a "pull strategy," where a carrier's marketing efforts "pull" consumers to the product).

¹⁶⁰ See 47 U.S.C. § 214(e)(2), (e)(6) (delegates to state commissions the primary responsibility for performing ETC designations; however, the Commission, upon request, can designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.").

in addition to English.¹⁶¹

- Clear and plain language: The carrier will use clear and plain language in its Lifeline and Link Up advertising.¹⁶²
- Annual certification: The carrier will file a notice once per year with the Commission stating what it has done in terms of Lifeline and Link Up outreach.
- Cooperative production and exposure: The extent to which literature and other advertising tools can be produced, used, and placed jointly by multiple ETCs.

64. The record also provides support for the role that community-based outreach can play in educating consumers about the Lifeline and Link Up programs. Nexus Communications, for example, “engages in extensive outreach efforts, including deploying mobile information centers directly to neighborhoods with high concentrations of qualifying consumers.”¹⁶³ Similarly, the National Hispanic Media Coalition believes it would be beneficial to require that ETCs “collaborate with state social service agencies, community organizations and churches that operate in target communities.”¹⁶⁴ At this juncture, the Joint Board recognizes that it may be beneficial to engage such entities in outreach efforts, but the Joint Board believes that more data is needed before it can recommend that the Commission mandate specific community-based outreach methods. For example, the Commission may wish to inquire about carrier best practices in this area. Accordingly, the Joint Board recommends that the Commission seek comment on additional community-based outreach methods that ETCs and states can use to reach eligible low-income consumers.

65. *Outreach requirements for states.* In the *2004 Lifeline and Link Up Order*, the Commission determined that it was not necessary to prescribe specific outreach requirements for states at that time.¹⁶⁵ The Joint Board believes that this position remains sound today and recommends that the Commission maintain advisory guidelines for states with respect to performing low-income outreach.

66. This is the case for several reasons. First, unlike carriers, states do not receive low-income support from the Universal Service Fund.¹⁶⁶ The Act requires that ETCs publicize their Lifeline and Link Up service offerings to eligible consumers; however, no such obligation exists for states.¹⁶⁷ Second, as noted by several commenters, states are well-positioned to supplement outreach efforts by ETCs.¹⁶⁸ State agencies often possess data, such as demographic information, that they can provide to

¹⁶¹ Consumer Advisory Committee Reply Comments at 12-13.

¹⁶² When seeking comment on this issue, the Joint Board recommends that the Commission specify that any “clear and plain language” requirement would not override state consumer protection laws, such as state Truth in Advertising requirements.

¹⁶³ Nexus Communications Comments at 4-5.

¹⁶⁴ NHMC Comments at 3.

¹⁶⁵ *Lifeline and Link Up Order*, 19 FCC Rcd at 8326, para. 44.

¹⁶⁶ See Benton Foundation et. al Comments at 8-9; NASUCA Reply Comments at 16.

¹⁶⁷ See 47 U.S.C. § 214(e)(1)(B); *Universal Service First Report and Order*, 12 FCC Rcd at 8993, para. 407; see also NASUCA Reply Comments at 16-17.

¹⁶⁸ See, e.g., NASUCA Reply Comments at 16 (noting that outreach should be a shared effort between carriers and states); Nebraska Public Service Commission Comments at 7 (“[C]oordination between state regulatory

(continued....)

ETCs as needed to best direct outreach efforts to unserved and underserved populations. Similarly, states can share information with one another, in order to gain a better understanding of best practices for conducting low-income outreach.¹⁶⁹ Additionally, state agencies may have relationships with local community organizations, such as homeless shelters or social service agencies, and can leverage those relationships to provide information on local ETCs' Lifeline and Link Up service offerings. Third, it is important to note that, unlike ETCs, states do not always have access to funds with which they can conduct low-income outreach.¹⁷⁰ The Joint Board recognizes that budgetary resources differ from state to state and that funding for marketing expenses may not be available in all instances. By maintaining advisory guidelines for states with respect to Lifeline and Link Up outreach, the Commission will ensure that states continue to supplement ETC outreach efforts in an economical way.

67. Based on the record, the Joint Board recommends that the Commission tailor the existing outreach guidelines to better clarify the role of states in performing low-income outreach. As noted above, the Joint Board recommends that these revised guidelines apply only to states, not to ETCs. Specifically, the Joint Board suggests that the Commission modify the existing outreach guidelines to contain the recommendations contained in the following paragraphs.

68. *Assisting ETCs in reaching unserved households.* The Joint Board recommends that states should assist ETCs in formulating methods to reach households that do not currently have telephone and/or broadband service. The Joint Board contemplates that states could aid ETCs in two primary ways, which the Commission may wish to include as part of any guideline it ultimately adopts. First, as several commenters suggest, states can identify appropriate community institutions to participate in public-private partnerships, and they can assist ETCs in coordinating with those institutions to maximize outreach opportunities.¹⁷¹ Building on this notion, states can also assist ETC outreach efforts by identifying unserved and underserved populations for whom outreach would be beneficial.¹⁷² Qwest, for example, states that as a percentage of its per-state customer base, the ETC's highest penetration of Lifeline enrollment is in the state of New Mexico.¹⁷³ In New Mexico, customers enrolling in LIHEAP may ask the New Mexico Human Services Department to share their eligibility information with the applicable local phone company(ies) for the purpose of being automatically enrolled in the Lifeline program.¹⁷⁴ The Joint Board foresees that such partnerships, if facilitated by the states, will help to

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commissions and state social service agencies to include information on Lifeline and Link Up programs along with information on other assistance programs is invaluable.”); Florida Public Service Commission Comments at 3 (suggesting that the Commission should “encourage state public service commissions to work with their designated social service agencies to . . . distribute Link Up and Lifeline educational materials”).

¹⁶⁹ Several states undertake their own outreach efforts, in addition to the outreach activities performed by carriers in those states. Alaska, for example, publicizes its Lifeline and Link Up programs through print advertising (i.e., a leaflet) and interaction with local community groups. *See* State Data. Florida conducts extensive Lifeline and Link Up outreach efforts, including the use of print advertisement, press releases, and outreach partnerships with federal and state agencies, local community groups, and non-profit organizations. *Id.*

¹⁷⁰ Iowa, for example, spent \$250 on Lifeline and Link Up outreach efforts in fiscal year 2009. At the opposite end of the scale, Wisconsin spent \$90,000 on outreach in fiscal year 2009. *See id.*

¹⁷¹ *See, e.g.*, Consumer Advisory Committee Reply Comments at 12-13; Media Action Grassroots Network Comments at 15.

¹⁷² United States Telecom Association Comments at 7.

¹⁷³ Qwest Communications Reply Comments at 3.

¹⁷⁴ *Id.*

increase awareness of and enrollment in the Lifeline and Link Up programs.

69. *Assisting ETCs in designing outreach materials.* Commenters assert that states can assist ETCs in designing outreach materials to reach unserved and underserved populations.¹⁷⁵ The Joint Board agrees, and recommends that the Commission adopt a guideline encouraging states to do as such. The Joint Board further recommends that the Commission identify specific ways in which states could assist with the creation of ETC outreach materials. For example, as the Nebraska Public Service Commission suggests, states can review ETC outreach materials to ensure that they are accurate, complete, and understandable.¹⁷⁶ This could include the use of clear and plain language, or even standardized language, to ensure that advertisements describe the Lifeline and Link Up programs in a simple, yet accurate, way. States can also assist carriers in identifying localities where it would be appropriate to advertise in a second language.¹⁷⁷

70. *Monitoring of ETC outreach efforts.* State review of ETC outreach efforts can help ensure that eligible consumers are reached in an effective and timely manner.¹⁷⁸ For instance, states may choose to have ETCs file a report that details the outreach efforts undertaken by the ETC in a set fiscal period. Alternatively, states could ask ETCs to file a certification describing the outreach efforts that the carrier intends to undertake on a going-forward basis. The Joint Board wants to ensure, however, that states maintain the flexibility to determine how best to review the outreach efforts of ETCs in their jurisdiction. Accordingly, the Joint Board recommends that the Commission adopt a guideline encouraging states to review the outreach efforts of ETCs in their geographic area to ensure that the promotion of Lifeline and Link Up service offerings is both effective and timely.

VII. OTHER ISSUES

A. Background

71. Throughout the *Referral Order*, the Commission requests recommendations from the Joint Board “to consider how the potential expansion of the low-income program to broadband would affect any of its recommendations.” The expansion of universal service to include broadband raises a number of overarching issues that impact future Lifeline funding for not only broadband services, but also existing voice and mobility services. Concerns have been raised that the referral fails to adequately deal with these issues.

72. The Joint Board reinforces those portions of the Joint Board’s *2007 Recommended Decision* dealing with the redefinition of supported services to include broadband and mobility services.¹⁷⁹ The *2007 Recommended Decision* includes the necessary legal underpinnings to justify

¹⁷⁵ See, e.g., Qwest Communications Reply Comments at 8 (“[T]he Commission should modify the existing requirement to ensure that providers and states have the necessary flexibility to learn from past outreach efforts and work together to design and implement more cost-effective outreach solutions.”).

¹⁷⁶ Nebraska Public Service Commission Comments at 7.

¹⁷⁷ See, e.g., California Public Utilities Commission Comments at 23 (noting that the CPUC advertises its Lifeline and Link Up programs in a variety of languages); Massachusetts Department of Telecommunications and Cable Reply Comments at 4 (MDTC states that it provides program application materials in multiple languages).

¹⁷⁸ See, e.g., Consumer Groups Reply Comments at 16 (stating that “at a minimum the states must have process and procedures to closely monitor the ETCs to ensure that they are conducting effective and sufficient outreach”).

¹⁷⁹ See *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (2007 Recommended Decision). The Commission put the *Recommended Decision* out for public comment on January 29, 2008. *High Cost Universal Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, (continued....)

modification of the definition of services supported by the Universal Service Fund. Specifically, the *2007 Recommended Decision* states:

The Joint Board now recommends that the nation’s communications goals include achieving universal availability of mobility services (defined as wireless voice), universal availability of broadband Internet services, and voice services at affordable and comparable rates for all rural and non-rural areas.¹⁸⁰

73. On March 16, 2010, the Commission released a Joint Statement on Broadband stating that “[t]he nearly \$9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.”¹⁸¹ In addition, the National Broadband Plan which was delivered to Congress the same day, recommended that the Commission reform the Universal Service Fund, while aiming to keep the overall size of the Fund close to current levels, to support the provision of both voice and broadband communications in areas of the nation that would be unserved without such support or that depend on universal service support for the maintenance of such service. Such proposed reform was based, in part, on the Joint Board’s *2007 Recommended Decision* to expand universal service support to broadband. Indeed, the Commission recently adopted a Notice of Proposed Rulemaking to create a Mobility Fund, which will seek to help overcome cost barriers to expanding advanced mobile wireless services, a recommendation in the Joint Board’s *2007 Recommended Decision* which the National Broadband Plan endorsed.¹⁸² Moreover, in April, the Commission initiated a Notice of Inquiry and Notice of Proposed Rulemaking to begin to develop a detailed analytic foundation necessary for reforming the Universal Service Fund.¹⁸³ Below the Joint Board recommends that the Commission adopt an additional principle, pursuant to its authority under section 254(b)(7), specifically finding that universal service support should be directed where possible to networks that provide both advanced and voice services. Moreover, the Joint Board identifies specific issues the Commission should fully consider and resolve prior to reforming the Universal Service Fund.

B. Discussion

74. *Broadband issues.* The Joint Board must start its discussion of broadband issues by pointing out the obvious: “broadband” is not currently included in the definition of either “universal service” or “Lifeline.”¹⁸⁴ The Joint Board must also recognize that, nevertheless, the National Broadband Plan recommends support for broadband, as a replacement over time for existing legacy High Cost

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23 FCC Rcd 1531 (2008).

¹⁸⁰ *2007 Recommended Decision*, 22 FCC Rcd at 20478, para. 4.

¹⁸¹ *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, 25 FCC Rcd 3420, 3421 (2010).

¹⁸² *In re Universal Service Reform Mobility Fund*, WT Docket No. 10-208; Notice of Proposed Rulemaking, FCC 10-182 (rel. Oct. 14, 2010).

¹⁸³ *See Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010).

¹⁸⁴ 47 C.F.R. § 54.101(a); 47 C.F.R. § 54.401(a)(3).

support.¹⁸⁵ Furthermore, the National Broadband Plan included recommendations for the Commission to facilitate broadband pilot programs for low-income customers, and as noted above, the establishment of a Mobility Fund to support infrastructure for mobility services in those areas that are not currently served.¹⁸⁶ These recommendations were based, in part, upon the Joint Board's *2007 Recommended Decision* that recognized the importance of broadband and mobility services for our nation.

75. In the almost three years that have passed since the Joint Board's *2007 Recommended Decision*, the importance of broadband services to consumers and our national economy has grown. In 2009, Congress directed the Commission to develop a National Broadband Plan to ensure that every American has "access to broadband capability."¹⁸⁷ The Joint Board believes that it is appropriate for the Universal Service Fund to support networks that provide broadband service, in addition to voice service. Thus, the Joint Board proposes that the Commission adopt an additional principle of universal service, pursuant to its authority under section 254(b)(7) of the Act. The Commission should specifically find that universal service support should be directed where possible to networks that provide advanced services, as well as voice services. Such a principle is consistent with section 254(b)(3) of the Communications Act. Historically, in light of the goals of ensuring that universal service support is "specific, predictable and sufficient," universal service support for high-cost areas has been targeted to support networks that deliver basic voice services, rather than networks that provide both advanced (*i.e.*, broadband) services and voice services, consistent with other universal service support principles.¹⁸⁸ This has been the case despite Congress's clear recognition of the need to promote the continued development of the Internet,¹⁸⁹ and to accelerate deployment of advanced telecommunications capability by, among other things, removing barriers to infrastructure investment. The Joint Board believes that universal service funding should recognize the importance of advanced services as well as voice services to consumers, including low-income consumers. An additional principle that emphasizes Congress' and the commissioners' commitment to providing access to advanced services, including broadband service, would serve the public interest.

76. Although the *Referral Order* requested that the Joint Board consider whether the extension of the Lifeline program to include broadband services would alter its recommendations in this Recommended Decision, it is difficult to consider whether any of the instant recommendations should be modified prior to the appropriate consideration of the broadband services that might be included in such an extension of the low-income program. Indeed, some members of the Joint Board would have preferred a more extensive referral on these issues, and at least one commenter noted that the Joint Board should have a more extensive role in the consideration of extending the Universal Service Fund's support to broadband.¹⁹⁰ At the same time, the Joint Board recognizes the need to ensure continued support for existing voice networks.

¹⁸⁵ See, e.g., NBP Recommendations 8.6 at 147 and 8.13 at 150.

¹⁸⁶ See, e.g., NBP Recommendations 8.6 at 148 and 8.15 at 151; see also *Wireline Competition Bureau Announces June 23, 2010 Roundtable Discussion to Explore Broadband Pilot Programs for Low-Income Consumers*, Public Notice, 25 FCC Rcd 7305 (2010).

¹⁸⁷ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

¹⁸⁸ 47 C.F.R. §§ 254(b)(2)-(3).

¹⁸⁹ See, e.g., 47 U.S.C. §230(b).

¹⁹⁰ The PaPUC notes that the referral's narrow focus on Lifeline and the low-income program detracts from the need to have the Joint Board, a board established pursuant to federal law, comprehensively consider major issues that are related to the National Broadband Plan. PaPUC Reply Comments at 3.

77. Neither the Commission nor this Joint Board can adequately address potential changes to create a Broadband Lifeline plan without initially determining the definition of the broadband services or functionalities to be supported, sources of funding, the funding and contribution rules, and the overall approach to using low-income support to achieve universal broadband service. In fact, the Joint Board would like to emphasize that, as the Commission moves forward with considering the National Broadband Plan's recommendations on these and other universal service related issues, there are many practical issues to be considered. They include, but are not necessarily limited to:

- Conceptually, how should “broadband” eligible for federal USF Lifeline support be defined and measured, including consideration of typical (actual) versus advertised upload and download speeds;
- Technology type and technology neutral funding mechanisms;
- Price, affordability, subscribership, and penetration;
- Broadband usage, when that usage is subject to some sort of data or usage cap;
- How best to ensure availability of broadband service in unserved and/or underserved areas;
- Terms and conditions for data plans that include some form of broadband Internet access or other broadband service; and
- Once broadband is defined and a determination is made as to what to support and how to provide that support, it would still be necessary to determine whether the Lifeline discount would be applied as a percentage or a fixed dollar discount off of some currently undefined price, or some other measure.

78. Furthermore, given the lack of a definition for the term “broadband” as a supported service, and how such service would be calculated and distributed, it would be extremely difficult, if not impossible, to comply with even the Commission's *de minimis* broadband-related requests that were included in the *Referral Order*.¹⁹¹ In fact, NASUCA points out in its comments that “it is difficult to comment on ‘broadband Lifeline’ because the details have not been fleshed out, adding further that reclassification is needed in order to ensure the legality of broadband Lifeline support.”¹⁹² The sheer number of issues relevant to defining broadband creates a great deal of uncertainty. This uncertainty is a significant issue, in and of itself, because it makes it impossible to predict the impact of adding support for broadband or the recommendations for possible changes to eligibility, verification, and outreach, or to measure the impact of such changes to the overall size of the fund. However, as the Commission moves forward on the consideration of this *Recommended Decision*, the Joint Board emphasizes that the Commission needs to consider these broadband issues, including the various cost concepts that will be relied upon by USF policymakers, in recommending appropriate expansion of existing universal service funding to include broadband services.

79. *Wireless issues.* In addition, the Joint Board and numerous commenters express concern about the impact on the Universal Service Fund of designation of prepaid wireless carriers to only offer Lifeline service.¹⁹³ In particular, the Joint Board supports the further examination of those Lifeline

¹⁹¹ 2010 *Referral Order*, 25 FCC Rcd at 5088, 5089, 5091, paras. 24, 30, 35.

¹⁹² NASUCA Reply Comments at 18.

¹⁹³ See Consumer Groups Comments at 14-15, 27; NASUCA Comments at 3-4; NASUCA Reply Comments at 4; PaPUC Reply Comments at 7.

offerings that are offered at no cost to the subscriber. The relevant decisions to expand USF Lifeline funding to include prepaid wireless Lifeline-only carriers were made largely by the FCC in the context of various forbearance and waiver petitions and without advice or consultation from the Joint Board.¹⁹⁴ The most recent statistics for Lifeline funding show rapid Lifeline funding growth from approximately \$1.0 billion in 2009 to a projected \$1.4 billion in 2010.¹⁹⁵ Our concerns include the implications of demand for a service or product that is essentially free. When the Commission last considered the issue of free service for Lifeline customers, it was determined that the local residential rate charged to Lifeline-eligible Tribal members should not fall below a monthly minimum of \$1.00, even if the Lifeline credit exceeded the amount of their bill for local service.¹⁹⁶ The Commission should develop a record, and determine whether this requirement for a minimum monthly rate should be made applicable to all Lifeline subscribers and not just to eligible Tribal members.

80. In addition, numerous concerns have been raised regarding prepaid wireless Lifeline issues relating to certification and verification practices, and procedures and the need for minimum standards of service for Lifeline recipients that guarantee fair value for consumers who benefit from Lifeline funding.

81. Consumer Groups states, “There is an urgent need for the Commission to undertake a very detailed look at the pre-paid wireless Lifeline product and adopt basic minimum standards to ensure adequate value to the Lifeline consumers and to the ratepayers who subsidize the Universal Service Fund.”¹⁹⁷ NASUCA, in its comments that are also supported by the Pennsylvania PUC,¹⁹⁸ CVM¹⁹⁹ and Consumer Groups,²⁰⁰ points out that the Commission should have referred the issue of adoption of minimum standards for prepaid wireless Lifeline services to the Joint Board.²⁰¹ NASUCA adopted a resolution calling for reform of the Lifeline program in June 2010 to establish minimum standards of service for prepaid wireless Lifeline, ensuring adequate value to prepaid Lifeline wireless customers and a heightened level of scrutiny of federal default rules.²⁰²

82. In addition to concerns expressed as to minimum service standards, others noted that there were other current issues relating to certification and verification of eligibility by prepaid wireless Lifeline providers. For example, the Massachusetts DTC notes a recent audit of TracFone Lifeline

¹⁹⁴ See, e.g., *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*); *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*) (designating TracFone as an ETC for its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia).

¹⁹⁵ See Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for Fourth Quarter 2010* (filed Aug. 2, 2010) (*4Q2010 Fund Size Projection Filing*) at 16-17.

¹⁹⁶ See 47 C.F.R. § 54.403(a)(4)(i).

¹⁹⁷ Consumer Groups Comments at 37.

¹⁹⁸ PaPUC Reply Comments at 7.

¹⁹⁹ CVM Comments at 2.

²⁰⁰ Consumer Groups Reply Comments at 3.

²⁰¹ NASUCA Comments at 2.

²⁰² *Id.* at 4-5.

customers, which revealed that only 51 percent of those sampled could be recertified for Lifeline eligibility.²⁰³ In the second and third quarters of 2009, 71,000 prepaid wireless customers were removed from the Florida Lifeline rolls through special verification procedures that have been implemented in Florida. Those procedures include dropping the Lifeline credit when a prepaid wireless phone fails to record any usage over a 60-day period.²⁰⁴

83. The Commission must consider all of these issues because they now have the potential to impact the viability of the entire fund, including achievement of our affordability mandates. It is not our intention through this recommendation to prejudge any of the concerns enumerated above since the Joint Board is clearly in support of the need for low-income support to achieve the goals of universal service. The Joint Board simply needs to express our concern and need for a thorough review as guardians of the significant federal and state dollars directed toward this purpose.

84. *Fund size.* Except for the impact of any proposed changes in eligibility that may be recommended by the Joint Board and then approved by the Commission, the issue of overall fund size is not a part of this referral. The Commission is well aware that the low-income fund grew by more than \$500 million over just the last two years -- from a level of \$822 million in 2008 to an estimated \$1.4 billion in 2010.²⁰⁵ If this average rate of growth of 30 percent per year continues, the low-income fund will reach \$2 billion within the next two years with no major changes in the existing program, and without even considering the potential unknown impact of Lifeline support for broadband customers. Citing the recent growth in the low-income fund, Verizon asserts that there is no demonstrable need to expand the eligibility for Lifeline or implement proposals that would make the Lifeline program bigger or more complicated.²⁰⁶

85. Modifying the definition of supported services to include broadband could, depending on the details of implementation, have significant implications on the potential overall federal USF fund size as well as the affordability of all services—both issues having considerable impact on consumers in general and low-income consumers in particular. The increased USF fund size also has interlinked implications that would affect the overall reform of both universal service and the reform of the crucial area of intercarrier compensation. The instant Lifeline referral excludes considerations of overall fund size or funding sources. If any single body has direct responsibility for properly presenting to the Commission needed changes in Lifeline programs to achieve the proper balance with the goals of universal service and the Telecommunications Act of 1996, then it must be the Federal-State Joint Board for Universal Service that includes appropriate representation for federal, state, and consumer stakeholders.

86. Other major factors that would play a significant role in determining the size of the fund could include some or all of the following (in no particular rank order):

- Modifying eligibility requirements over time;
- Violations of the “one per household“ rule;
- Automatically enrolling or otherwise significantly increasing take rates for customers

²⁰³ MDTC Comments at, Appendix A, 13-14.

²⁰⁴ Bob Casey, Presentation to NARUC 2010 Winter Meetings at 18.

²⁰⁵ See *USAC 4Q2010 Fund Size Projection Filing* at 16-17 and Appendix LI07 (Low Income Support Distributed by State in 2007 and through 1Q2010).

²⁰⁶ Verizon Reply Comments at 5-7.

deemed eligible;

- Adding support for broadband services; and
- Increasing, or even just retaining, existing average per-state levels of support for prepaid wireless providers, while more and more states certify prepaid wireless providers as ETCs.

87. California, the largest single state recipient of Lifeline funding, submitted significant comments in this docket regarding state experiences with the issues relating to consumer eligibility. The California PUC makes note of the extensive changes in its Lifeline program in recent years, including income documentation, a third party contract awarded to NECA (now Solix, Inc.) to establish procedures to ensure efficient processing of consumer applications and subsequent verification of eligibility, establishment of an interactive enrollment and verification of eligibility website, and electronic interfaces with carriers. The California procedures resulted in a significant reduction from the prior California Lifeline expenditures that were based primarily on self-certification.²⁰⁷

88. While estimates of fund size impacts resulting from specific modifications of existing rules may be relatively simple to develop, the overall fund impact from all of the proposals on the table requires a global view that exceeds the four corners of the current referral.

89. NASUCA believes that the low-income fund growth demands a more fundamental re-examination that goes beyond the mere review of the eligibility, verification, and outreach mechanisms. NASUCA references its own recently adopted resolution and brings forward the following issues with the advice that the Joint Board should recommend Commission action in these areas:²⁰⁸

- The requirement for carriers to offer discounted basic service while permitting Lifeline customers to purchase packages and bundles, and requiring carriers to apply the full federal Lifeline discount and any applicable state Lifeline discount to basic local service and to the price of any service package containing basic local service that they offer;
- Ensuring that Lifeline customers with packages are not disconnected at a significantly greater frequency than Lifeline customers without packages;
- Requiring any forbearance petition or petition for low-income ETC designation to include a complete description of the service to be offered;
- Considering establishing minimum standards of service for prepaid wireless Lifeline service that would apply to all prepaid wireless Lifeline services, facilities-based or not, and satisfy the public interest by providing adequate value for Lifeline recipients and comply with the universal service mandates of the Act;
- Adopting a minimum standard to ensure adequate value to prepaid Lifeline wireless customers from the service (i.e., minimum number of monthly minutes, maximum price for additional minutes and maximum price for text messages, etc.);
- A continued evaluation of appropriate federal default rules for ongoing support when there is no monthly billing, carrier contributions to state funds, quality of service obligations, double billing, protection from fraud, recertification, and audits; and
- Investigating whether the Lifeline discount should no longer be taken off the retail rate, but off some measure of wholesale or forward-looking cost, especially where

²⁰⁷ CPUC Comments at 3-7.

²⁰⁸ NASUCA Comments at 4-5.

the carrier's services are not price-regulated.

90. NASUCA also observes that the low-income portion of the federal USF has grown over time and that it has the potential of increasing to \$2.5 billion.²⁰⁹ NASUCA points out that the Commission placed a state-by-state cap on the high-cost funding for competitive ETCs where a similar growth had been observed. NASUCA does not deem such an action to be appropriate for the low-income fund. Fund size issues are policy matters that the Commission must deal with up front, preferably with the advice of the Joint Board, prior to embarking on new initiatives.

91. The Joint Board asks the FCC to develop a complete record on, and act upon, all of these issues as it moves forward in the future reform of the federal universal service funding mechanisms.

VIII. RECOMMENDING CLAUSE

92. For the reasons discussed herein, the Federal-State Joint Board on Universal Service, pursuant to sections 254(A)(1) and 410(c) of the Communications Act of 1934 as amended, recommends that the Commission adopt the recommendations set forth herein concerning the Universal Service Fund low-income programs.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁰⁹ NASUCA Comments at 3-4, and n. 10 (citing Billy Jack Gregg, "Determining the Potential Size of the Current USF Low-Income Fund and a Proposal to Mitigate the Impact of Adding Broadband as a Supported Service," Universal Consulting (February 2010)).

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN
APPROVING IN PART, CONCURRING IN PART**

***In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109***

Six months ago the Commission requested that the Federal-State Joint Board on Universal Service (the “Joint Board”) make recommendations to improve the Lifeline and Link Up programs, which serve to ensure that low-income consumers can obtain and maintain telephone service at affordable rates. Without this program, many consumers would not have phone service and as a result, would be disconnected and further isolated from participating in our society. The recommendations we make today are essential for improving the program, including making it more efficient so that our universal service dollars can be stretched even further.

With respect to its eligibility and verification recommendations, the Joint Board has identified certain issues that warrant additional comment so that we can fully understand the impact of our recommendations. It is prudent for the Commission to proceed in a judicious manner, fully weighing these issues prior to modifying its eligibility and verification rules so that they are uniformly applied across the states. Nonetheless, I believe that the Commission and states must work together to minimize waste, fraud and abuse in the program, and our rules should be adjusted as necessary to ensure that only eligible consumers are participating in the program. To that end, the exploration of a national database that would allow for real-time eligibility and verification checks through electronic processes is promising, and I encourage interested parties to continue working on this proposal. Such a database also has the potential to allow the program to better address and serve those populations living in group housing or in homeless shelters. I believe a collaborative process by all of the interested parties, including industry, consumer advocates, and federal and state governments, could lead to a more efficient program that better serves low-income consumers.

I am pleased that this Joint Board is building upon the work of the previous Joint Board in recommending that the Commission adopt an additional universal service principle pursuant to Section 254(b)(7), which states that support from the Universal Service Fund should be directed, where possible, to networks that are providing both broadband and voice services. Broadband has become an essential service, just like telephone service. As such, it is important that the limited resources available through the Fund be used to support networks that provide both broadband and voice services. The Commission should take up this issue and adopt this new principle in its upcoming consideration of the Universal Service Fund reform proceeding.

As an essential service, all households must not only have the ability to access broadband, they also need the ability to purchase it. Yet, we know that less than half of low-income Americans have subscribed to broadband. In addition, one-third of Americans who have not purchased broadband say they have not done so due to the expense of obtaining such service. As such, I believe the Commission should address low-income consumers’ ability to use their Lifeline discounts for services or packages that include voice and broadband, as recommended in the National Broadband Plan, as soon as possible.

During this proceeding, we heard some concerns from states and consumer advocates about prepaid wireless Lifeline services, and in particular, the need to consider minimum service standards in order to protect consumers. The number of competitive service offerings for Lifeline products have increased, and in general, I believe that this is a positive development for low-income consumers. Such consumers can now choose from a variety of service offerings, and they can pick the one that best fits their needs. However, I am concerned that Lifeline consumers may not have all of the information they

need to compare and choose between Lifeline offerings by various providers. Thus, the Commission should consider whether a comparative guide for Lifeline consumers would be a useful tool. We could encourage the states to offer such guides, and Lifeline providers could be encouraged to submit the description of their Lifeline products to the states for inclusion in such guides. With respect to minimum service standards for Lifeline products, the Commission must be careful not to ignore the universal service principles of technological and competitive neutrality. The Commission should review whether the current state of competition for Lifeline products is insufficient to protect consumers, and then consider whether a minimum service standard should be applied for all Lifeline products.

Collaboration has been the engine of this Joint Board. While we may not see eye to eye on every detail in the proceeding, we all agree that the Joint Board's work is critical for the Universal Service Fund's success in achieving affordable telephone service for low-income consumers. My fellow members on the Joint Board and both the federal and state staffs have worked tirelessly to complete this Recommended Decision within the timeframe originally requested by the Commission. I have been told that six months for a Recommended Decision is incredibly fast for the Joint Board. I want to express my gratitude for *everyone's* tremendous efforts to work together as a team to accomplish our mission, and to do so on time. You each have taken on the role to work on the Joint Board, in addition to your full-time jobs. I know you often did your Joint Board work at night and on weekends. Thank you for your personal sacrifices and excellent contributions to the Joint Board's recommendations.

I have enjoyed collaborating and working with State Chairman Baum and my fellow Joint Board members Commissioner Copps, Commissioner Baker, Commissioner Landis, Board Member Burke, Chairman Cawley, and Senior Assistant Attorney General ffitch. You each have uniquely contributed to this Decision. Thank you for your dedication and commitment to public service.

In particular, I want to acknowledge and thank the Joint Board's staff. Our federal and state staff leads, Irene Flannery and Kay Marinos, respectively, provided excellent leadership on the issues before us and kept us on task. In addition, our team leaders conducted outstanding work and helped guide the analysis and recommendations on their respective issues with their staff teams—Beth McCarthy and Christine Aarnes on Eligibility, Rebekah Bina and Natelle Dietrich on Verification, and Jamie Susskind and Kerri DeYoung on Outreach. In addition, we would not have been able to accomplish the task before us without the participation and contribution of each and every staff member to whom I am also grateful. They are Karl Henry, George Young, Labros Pilalis, Kathy Hagans, Denise Parrish, Earl Poucher, Peter Pescosolido, John Ridgway, Robert Haga, Vicki Helfrich, Brad Ramsay, Joel Shifman, Lori Kenyon, Jing Liu, Angie Kronenberg, Jennifer Schneider, Margaret McCarthy, Christi Shewman, Brad Gillen, Sharon Gillett, Carol Matthey, Alex Minard, Patrick Halley, Lisa Gelb, Trent Harkrader, Cindy Spiers, Robert (Beau) Finley, Kimberly Scardino, and Charles Tyler.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART, CONCURRING IN PART**

***In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109***

In today's Decision, the Joint Board takes some important steps to move us closer to our national goal of affordable access for all to the nation's communications networks by strengthening the Lifeline and Link-Up programs. On the heels of the wide-ranging and inclusive process that the FCC conducted to formulate the National Broadband Plan, I am proud to have had the opportunity to work again with this dedicated group of state and federal colleagues on the Joint Board whose hard work has produced this Decision. I particularly want to commend the leadership of the Joint Board, Joint Board Chair Mignon Clyburn and State Joint Board Chair Ray Baum, for all the effort they put into forging this document and managing the process, and all of the federal and state Commissioners whose input has been invaluable. Of course, our work would have been impossible without the long hours and excellent insight of all the federal and state staff. Collaboration and dialogue between federal and state partners in reform can and must continue as we move ahead to bring our Universal Service Fund and the intercarrier compensation system into the 21st century broadband world.

The principle of universal service – that all Americans, no matter who they are or where they live, should have access to reasonably comparable service at reasonably comparable rates – is a cornerstone of federal communications policy. The Lifeline and Link-Up programs help us meet that goal by getting and keeping low-income consumers connected. Since the FCC established the Lifeline program, telephone penetration rates for low-income households have increased from 80.1% to 89.7%. But what those statistics tell us is that millions of Americans remain without access to basic telephone service today.

I support the recommendations we make today that have the potential to increase participation in the Lifeline and Link-Up programs, in particular adopting mandatory outreach requirements for carriers participating in the programs. As I have said before, the potential of the low-income support programs is in large part linked with the success of our outreach efforts. We can build on the success that individual states have had with automatic enrollment when families sign up for other assistance programs by recommending it here as a best practice to other states. I believe that the information we could obtain by requiring all eligible carriers to submit their verification data to the Commission, USAC, and states would help us strengthen the impact of the low-income programs as well. At a time when the economic climate has left many American families in dire straits, I hope we will seriously consider raising the income eligibility criteria for consumers to 150% of the federal poverty guidelines. This could be a powerful tool as we renew our focus on the stubborn and persistent percentage of unconnected low-income Americans. I realize this raises important questions that must be addressed but the fact is our current economic distress has left many more of our citizens in need and they could benefit from this action.

We should also consider with some precision the extent to which prepaid wireless Lifeline service has helped the program achieve its mission, but I concur in part out of concern for isolating a particular technology and service plan in this Decision. I believe that those concerns raised here, especially in connection with the size of the Universal Service Fund writ large are appropriately examined in the context of comprehensive reform.

Finally, the Joint Board is once again expressing its support for broadband to be eligible for Universal Service. Since the last time the Joint Board took up this issue in 2007, the support – and need – for that change has only grown stronger. I would simply note here that the need for Universal Service support for broadband is one of many reasons I continue to urge Title II reclassification and our Decision

today does nothing to temper my support for that course of action. That said, I wholeheartedly support this renewed recommendation to add support for broadband as a Universal Service principle. As technology evolves, so too must the policies designed to help us achieve our constant goal: ensuring that all Americans, including low-income consumers, have access to services at just, reasonable, and affordable rates.

**STATEMENT OF
COMMISSIONER MEREDITH ATTWELL BAKER**

***In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109***

The Lifeline and Link Up programs have been critical tools to providing low-income Americans with the means to afford basic telephone service and to connect to jobs, schools, and critical 911 services. I support the Joint Board's continued efforts to improve the administration and operation of these low-income programs and to ensure their long-term sustainability.

The low-income programs have almost doubled in size in the past five years from approximately \$800 million in 2005 to a projected \$1.4 billion this year. This increase is a positive indicator of the programs' success in connecting low-income households, but it also raises important questions about the programs' overall solvency and the risk of waste, fraud, and abuse. The low-income programs lack a central enrollment, verification, and audit functionality inhibiting the ability of the FCC and states to conduct needed oversight and program management.

The Recommended Decision focuses properly on these challenges within the current system and moves towards a more uniform and standardized structure in a manner respectful of our partner states' own programs and statutory provisions. One proposal in particular that merits additional study is the potential establishment of a national database for certification and verification. The Joint Board's overall focus on operational considerations is timely: we must ensure that we have stable programs both financially and operationally before we consider adding the complexity and cost of broadband support to our universal service program.

I am grateful that the Joint Board highlighted critical questions about overall fund size and the inherent challenges of extending universal service support to broadband services. Moving forward, the Joint Board has also provided clear guidance to the Commission as to our legal ability to fund broadband within our existing statutory authority. I support the recommendation to adopt an additional universal service principle, pursuant to section 254(b)(7), to target support to networks that provide advanced and voice services. This is an important step, particularly when coupled with the Joint Board's 2007 recommendation to include broadband as a supported service. I appreciate the efforts of both federal and state staff and the willingness of my colleagues on the Joint Board to work towards a consensus approach to shape the future of these important programs.

**STATEMENT OF
CHAIRMAN RAY BAUM
CONCURRING IN PART, DISSENTING IN PART**

***In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109***

In 2007, the Joint Board took a fresh look at the high-cost component of the federal universal service fund and adopted several guiding principles. Among those principles were cost control, accountability, and state participation. Today, the Joint Board is focusing needed attention on the low-income fund and I believe the same principles should be applied here.

As the high-cost fund spiraled ever higher, the Joint Board recommended, and the FCC adopted, a cap on the amount of support available to competitive providers. Today it is the low-income fund's alarming growth rate that demands attention. In the past two years, the low-income fund has increased at an annualized rate of 30%. Left unchecked, the fund will easily reach \$2 billion within the next two years. To date, much of the attention given to the low-income program has been focused on increasing participation rates. In this referral, we were asked to consider widening eligibility requirements by making all states follow federal eligibility requirements as a minimum and by expanding the qualifying income levels. Given the recent efforts to relax the low-income fund requirements, and the stated desire to transition support to broadband services, it may be time to ask whether the program has sufficiently met its goals of enabling universal service. FCC data shows that 95.7 percent of all households in the country have phone service. Among low-income households, 90.4 percent have phone service, up from 80 percent when Lifeline was first established in 1985. Even among households with income under \$5000, 88 percent have phone service available. Rather than adopting less stringent income eligibility standards or forcing states to adopt expanded eligibility requirements, we should be focusing our efforts on determining why those customers who are currently eligible for support have chosen not to seek Lifeline service, and how to remove barriers to participation for eligible customers.

The tremendous growth rate of the low-income fund can be attributed to the FCC's granting of forbearance to wireless resellers, and the designation of new ETCs for the sole purpose of obtaining low-income support funds. Several of these ETCs offer prepaid wireless Lifeline services at no cost to the low-income consumer. This business model has arguably been successful in increasing Lifeline program participation rates among eligible low-income consumers. However, several states have reported that a significant number (nearly half in some cases) of the Lifeline customers of these new participants are not eligible to receive support. Providing public support to ineligible customers represents a waste of public support funds and is unacceptable. This waste not only harms the customers who pay into the low-income fund, but potentially denies needed support for those who are truly eligible. We must ensure there is accountability for those who benefit from the low-income fund.

I am disappointed that we did not offer specific recommendations for tougher eligibility verification standards, to be implemented now, to stem the waste, fraud and abuse that appears to be occurring. Taking more comments on the subject only prolongs the period before action will be taken. Meanwhile, the waste of support funds will likely continue. We should require that eligibility be based on participation in qualifying programs, and not on the household's income alone. We must maximize the amount of support funds that go to eligible low-income consumers and make sure that those customers are receiving those services from providers on just and reasonable terms that represent an efficient use of ratepayer dollars. I urge the Commission to act quickly and implement the measures necessary to stem this tide. States have taken the lead role in investigating and addressing these problems. The FCC must do the same and be forthcoming with the data necessary to determine whether the problems lie with all carriers, or just a very few.

The third guiding principle - state participation - could yield a large part of the solution. States such as California, Florida, Oregon, and others have been on the forefront of the battle against fraud, waste and abuse and ensuring only eligible consumers receive Lifeline support. Even if a national database were to be constructed to minimize such problems, state involvement would still be key to determining individual consumers' eligibility. While such a database would significantly decrease administrative costs for the carriers, it could not be successfully implemented without the efforts and diligence of the states where the benefiting consumers reside. Furthermore, the majority of states already provide matching state funds for Lifeline customers and therefore have a vested interest in the integrity of their funds and the welfare of their state residents. A partnership between the FCC and the states is the best way to ensure the integrity of the program. In states that are willing and capable of reviewing eligibility requirements, the FCC should be willing to pay its fair share of the costs. In states that cannot provide this assistance, the FCC should take reasonable steps to protect against waste, fraud, and abuse of the program.

In short, at this juncture, the Commission should focus on how to minimize the fraud, waste, and abuse in the current system in order to free up funds for those who are eligible to receive support, and to make funds available for the transition to broadband services without increasing the current funding level for the overall universal service fund.

More particularly, I concur in the concerns raised by Commissioner Landis in his separate statement as it relates to the potential impact of the growth of the low-income portion of the fund on the amount of support available to carriers that currently serve high cost rural areas and their customers under the high cost portion of the fund, as well as the other host of issues he raises that if not handled properly could hinder support of broadband deployment in those high cost areas. I also join in Commissioner Cawley's comments concerning the need to manage the impacts on the over-all size of the fund and the need for clarity in the regulatory treatment of broadband. Finally, I join in Commissioner Burke's separate statement in its entirety, and more particularly, as it relates to the need by the FCC to avoid creating a digital divide between urban and rural America.

**STATEMENT OF
COMMISSIONER LARRY S. LANDIS
CONCURRING IN PART, DISSENTING IN PART**

***In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109***

While the Recommended Decision that is issued today has much to commend it, at least two aspects of the underlying Lifeline referral need to be further addressed: The absence of a clearly defined problem with regard to existing eligibility, verification, and outreach rules and procedures; and the absence of metrics or standards for determining when we have achieved success in solving those problems.

The underlying Lifeline referral (and, hence, the Recommended Decision) did not arise in a vacuum. That referral can only be understood as an extension of, and largely integrated with, the National Broadband Plan (“NBP”) and related FCC documents, despite the fact that the NBP is intended as more road map than detailed policy document. This tight integration with the NBP has several important consequences. The potential consequences for RLECs and mid-size LECs is considerable, because the NBP does not confront either their important role in meeting the goal of enhancing broadband availability or the indirect harm that some of its proposed policies could do to those companies.

Too little attention has been paid to the financial health of RLECs (and mid-size companies) and the importance of existing High Cost support. The NBP contains a number of ambitious broadband deployment proposals that will require billions of dollars in new funding, likely significantly greater than projected, as required to bridge the Broadband Availability Gap (\$23.5 billion). Acknowledgment of the need for “significantly higher [amounts of funding] than the incremental calculation indicates” was included in a staff technical paper and a footnote in the USF NOI/NPRM. Had it been placed in the body of the NPRM instead, that would have allowed for a more robust debate of both the sources and uses of universal service funding, and whether sufficient funds remain to meet the legitimate ongoing needs of providers in rural, insular and high cost areas.

Thus far we have not fully identified the source of additional funding needed if Lifeline subscribership increases substantially (e.g., due to modifications to eligibility requirements and/or expanded outreach efforts). Setting aside the NBP, the RD itself notes that it would not be unreasonable to estimate that the size of the Low Income fund could grow to at least \$2 billion in the next few years, before including any growth attributable to adding support for broadband.

The NBP contains many recommendations and promises of additional broadband deployment efforts (in particular, the new **Connect America Fund**, which includes efforts to address the Broadband Availability Gap and other deployments to non-low-income households) coupled with the new **Mobility Fund**. However, the sources of funding are not always evident. The NBP solution, in too many cases, appears to be to repurpose money currently used in support of High Cost funding.

In general, there is a strong preference in the NBP in favor of wireless technologies and great optimism regarding the benefits that wireless technologies can provide, coupled with a lack of affirmation for the benefits that RLECs’ and mid-size providers’ wireline broadband access networks and in many cases, cable providers are already delivering to many locations.

Based upon a review of the NBP and other FCC documents, there will likely be new and expanded demands placed on universal service funding mechanisms over the next few years. Based on sometimes conflicting recommendations in the NBP, it appears that the FCC plans to dramatically revamp

or repurpose existing High Cost Fund support. Intercarrier compensation reform efforts are likely to result in the elimination or transformation of other USF components. The FCC has yet to address how the existing support will be used in the future, or whether the shifting of USF dollars away from traditional High Cost support will be linear over time.

While it is possible that the USF transformation, USF contributions, and/or intercarrier compensation reform NPRMs may provide answers to some of those questions, the action we take today could have implications, perhaps significant, for sizeable increases in USF support for Lifeline services, without a clear understanding of how those increases would be paid for, how the need for additional support would fit in with other new demands that will be placed on the fund, or additional sources of funding.

I am authorized to state that Commissioner John Burke of Vermont joins in this separate statement as I have joined with his. I also endorse and commend for review the separate statements of my fellow state members Chairman Ray Baum and Chairman James Cawley.

**STATEMENT OF
BOARD MEMBER JOHN D. BURKE
APPROVING IN PART, CONCURRING IN PART**

***In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109***

I agree in part and concur in part with the Recommended Decision; the changes to the Lifeline Program that the Joint Board recommends today should help more eligible consumers take advantage of the program, while simultaneously improving verification efforts so that the benefits are not extended to unqualified customers.

I write this concurrence to highlight one issue. The Recommended Decision proposes that the Commission take comments on whether to change the income-eligibility threshold for lifeline qualification from the existing 135% of FPG to 150%. In isolation, this change may be reasonable. However, the Lifeline Program is only one of the uses of the overall Universal Service Fund. If the fund size is not increased, any growth in the Lifeline Fund will come at the expense of other uses of the Fund, and, in particular, expansion of the fund to include broadband services.

The NBP makes clear that broadband is becoming a vital service for consumers in this country. For this reason, there is little real doubt that the broadband will be included as an eligible service under the Fund. I support this result, but as we move forward in this direction, it is essential that we do so in a way that does not create a rural Digital Divide. At this time, it is not clear how much funding will be necessary to enable ubiquitous broadband, notwithstanding the Commission's estimates in the NBP. Existing broadband deployment is not fully known. The Commission's cost estimates are also based, in part, upon a wireless solution that may or may not deliver adequate broadband services, particularly in rural, high-cost states. Moreover, as section 254(b)(3) requires, services in rural areas must be reasonably comparable to those in urban areas, as must the rates for those services; the disparity between the service levels proposed in the NBP for urban and rural areas do not appear to meet this test. Further pressure on the fund arises from the need to maintain high-cost support for existing networks in areas that do not have broadband services available.

For these reasons, I am concerned that it will be very difficult to achieve the goals of the NBP with the redirection of existing funding allocations. Raising the income eligibility provisions of the Lifeline Program from 135% of FPG to 150% may place additional pressure on a fund that is already unlikely to be large enough to achieve its needs. Although I support the Recommended Decision's conclusion that the Commission should take comment on the increase, I cannot support actually making such a change unless the Commission can simultaneously assure adequate universal service funding for ubiquitous broadband services and rate that are reasonably comparable between rural and urban areas. I am authorized to state that Commissioner Landis of Indiana joins in this separate statement as I have joined with his. I have read and applaud as thoughtful and well worth contemplating the separate statements of my fellow state members, Commissioner Cawley and Chairman Baum.

**STATEMENT OF
CHAIRMAN JAMES H. CAWLEY
CONCURRING IN PART, DISSENTING IN PART**

***In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109***

I am in agreement with most of the consensus recommendations that have been reached in the present deliberations and the issued Recommended Decision (R.D.) of the Joint Board. I have been particularly impressed with the dedication with which Commissioner Clyburn and the FCC staff have labored to guide our deliberations and capture them in an articulate decision.

I feel compelled, however, to address both the rationale and the approach of the referral to the Joint Board, and the alternative approaches that I believe should have been followed, recognizing that the members and staff of the FCC, like state public utility regulators and their staff members, daily face difficult policy choices and criticism as they try in good faith to do the public's business. Nothing said here diminishes my respect, personally and professionally, for them.

The National Broadband Plan. The Referral Order on Lifeline and Link Up made abundantly clear that the present deliberations of the Joint Board, as well as a large number of other recent and pending FCC regulatory initiatives, were based on the FCC's National Broadband Plan (NBP) that was released on March 16, 2010.²¹⁰ As the NBP acknowledges, the U.S. Congress "directed the FCC to develop a National Broadband Plan ensuring that every American has 'access to broadband capability'."²¹¹ The NBP explicitly recommended the expansion of the "Lifeline and Link-Up programs by allowing subsidies provided to low-income Americans to be used for broadband."²¹²

Interestingly, however, the Recovery Act directed only the preparation of a report to be submitted to designated House and Senate committees within one year of enactment of the Act, not implementation of the report, which presumably was to await further congressional direction after submission of the report.²¹³ Indeed, the section requiring the plan had as its main purpose the creation of the Broadband Technology Opportunities Program, under the direction of "[t]he Assistant Secretary of Commerce for Communications and Information (Assistant Secretary), in consultation with the Federal Communications Commission (Commission)",²¹⁴ to stimulate the nation's economy by means of grants to be awarded by the end of fiscal year 2010 with assurances by grantees "that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award."²¹⁵ It is apparent from the structure and content of Section 6001 that subsection (k)'s requirement

²¹⁰ *In re Federal-State Joint Board on Universal Service Lifeline and Link Up*, (FCC Released May 4, 2010), CC Docket No. 96-45 and WC Docket No. 03-109, ¶ 1, at 1. See also FCC, *Proposed 2010 Key Broadband Action Agenda Items*, available at <http://www.broadband.gov/plan/broadband-action-agenda.html>.

²¹¹ FCC, *Connecting America: The National Broadband Plan*, (Washington, DC, March 16, 2010), at 3 and n.4 citing American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 (2009) (Recovery Act).

²¹² NBP, Executive Summary, at XIII. See also Referral Order, ¶ 12, at 6 and n.36 citing NBP at 172-173.

²¹³ Recovery Act, § 6001(k)(1)-(3).

²¹⁴ *Id.*, § 6001(a).

²¹⁵ *Id.*, § 6001(d)(2)&(3).

of a “national broadband plan,”²¹⁶ positioned as the eleventh subsection of thirteen and the only provision requiring action only by the FCC, was not the primary purpose of the section. Nor was the plan, unlike the grants program, apparently intended to provide an immediate stimulus to the economy, but rather as a necessary tool to provide longer term economic benefits should the decision be made to implement it.

Nevertheless, the FCC, under its existing statutory authority, has adopted an ambitious agenda of regulatory reforms based on the NBP and centered on the universal availability and adoption of affordable and technologically sufficient broadband access services. Although the NBP contemplates that these ambitious goals can be accomplished through the reforms of existing regulatory structures and mechanisms (largely through the redirection of the existing federal universal service fund (USF) resources), it acknowledges that congressional funding may also be needed in order to accelerate broadband deployment.²¹⁷ Furthermore, the NBP identifies the so-called “broadband availability gap” and acknowledges (despite the availability of Recovery Act funds from Section 6001’s Broadband Technology Opportunities Program) that “[o]ther government support is required to complete the task of connecting the nation to ensure that broadband reaches the highest-cost areas of the country,” and that closing the “broadband availability gap and connecting the nation will require a substantial commitment by states and the federal government alike.”²¹⁸

Aside from the NBP itself, the FCC staff recognized in its September 29, 2009 presentation that the cost of any national broadband plan varies widely depending on the definition of “broadband.”²¹⁹ These costs range from approximately \$20 billion for 1.5 mbps to \$350 billion for 100 mbps. A proposed speed in the 1-4 mbps range could cost from \$20 to \$35 billion. It is difficult to see how the current \$9 billion federal USF can implement any of these proposed national broadband definitions, even with repurposing the entire current USF.

The magnitude of the “broadband availability gap” and the congressional directive for the NBP as a tool for possible future economic recovery measures on the broadband front raise the fundamental question of whether the FCC should have adopted its very ambitious agenda of national and universal broadband deployment and availability in the absence of a more precise congressional mandate and accompanying federal appropriations. The NBP’s contemplated redirection of the federal USF will not be sufficient to overcome the “broadband availability gap,” and the structural design of the federal USF was not intended to accomplish such a purpose. Thus, the goal of universal broadband within the United States will require a *national* funding commitment that clearly goes well beyond the existing size of the federal USF.

Redefinition of “Universal Service.” Consequently, a national funding commitment for the universal deployment and availability of broadband access services at the retail level is absolutely necessary because, as the R.D. demonstrates, the FCC is proceeding with a redefinition of the universal service concept supported by the federal USF in accordance with its NBP. This redefined concept of the

²¹⁶ *Id.*, § 6001(k)(2).

²¹⁷ NBP at 151.

²¹⁸ NBP at 139 and NBP Exh. 8-D.

²¹⁹ FCC, September Commission Meeting, September 29, 2009, Slide No. 45, available at <http://reboot.fcc.gov/open-meetings/2009/september>.

supported universal service includes broadband. Under Section 254(c) of the federal Telecommunications Act of 1996, 47 U.S.C. § 254(c), recommendations regarding the redefinition of the universal service concept and the inclusion of a broadband component are both legally and substantively within the purview of the Joint Board. In its 2007 Recommended Decision, the Joint Board indicated its preference for “ubiquitous broadband access” and posited the proposition that “it should be eligible for support under Section 254, with the goal of making it available to all.”²²⁰ However, the 2007 R.D. did not consider the numerous, interlinked implications of including a supported broadband access service component into a properly redefined universal service concept. Such implications, including the potential for a substantial increase in the size of the overall federal USF, need to be recognized and addressed with the FCC’s overall federal USF reforms and contemplated redirection of the USF. A timely comprehensive referral to the Joint Board during the development of the NBP or shortly after its issuance would have been appropriate.

Instead, the Joint Board was given a very narrow directive on Lifeline and Link Up issues, which are certainly pressing and important but still only a subset of supported universal service. The resulting R.D. contains a possibly broader redefinition of universal service by adopting the principle that universal service funding should recognize the importance of advanced (e.g., broadband access services) as well as voice services to consumers, including low-income consumers. I fundamentally disagree with this approach because the issues of redefinition and their implications should receive a more encompassing and detailed examination by the Joint Board. Without a more comprehensive referral, the statutorily prescribed advisory role of the Joint Board, and the justified role of the states, is marginalized. Because the issues and the implications of redefining supported universal service with an appropriate broadband access service component are inextricably linked with the contemplated reforms of the federal USF and the interstate intercarrier compensation mechanisms, the Joint Board should be materially involved through all-inclusive FCC referrals.

There may be general agreement that some abstract broadband access service component should be part of supported universal service given the economic importance of broadband. There may also be a need for a broadband Lifeline/Link Up component to eligible end-user consumers. To do that, however, there is a need to decide, designate, and live with the specific details of such a broadband access service addition. The R.D. already echoes some of these concerns within the narrow confines of the Referral Order.²²¹ These concerns are equally applicable to the overarching issues of a redefined universal service that includes broadband.

The Role of the States. The inclusion of an appropriate broadband access service component in a supported universal service concept in general and in Lifeline in particular raises significant issues about the appropriate role of the states. Although the R.D. recognizes the significant role that the states play in the maintenance and enhancement of universal service inclusive of Lifeline and Link Up (where this role includes appropriate bi-jurisdictional regulatory oversight and enforcement), the limitations of the Referral Order leave unanswered the questions of a future state role when and where broadband access services are involved. At present, because of past FCC decisions, the states have a very limited regulatory oversight role over the provision of retail broadband access services. However, as the R.D.

²²⁰ *In re High-Cost Universal Service Support Federal-State Joint Board on Universal Service*, (Joint Board, released November 20, 2007), WC Docket No. 05-337, CC Docket No. 96-45, ¶¶ 61-62, at 16 (2007 R.D.).

²²¹ Other concerns that touch upon the potential availability of federal USF support for Internet Protocol or IP-based services such as voice over IP (VoIP), and for broadband access capable devices and related distribution programs, may also affect related and future policy decisions at the federal and state levels.

indicates, the states will continue to play a significant oversight and enforcement role in the provision of Lifeline and Link Up services to eligible end-user consumers. The potential addition of a broadband component to Lifeline – and to supported universal service in general – creates the question of whether the states will be able to exercise their traditional roles of consumer protection and appropriate oversight and enforcement in this area given the current absence of a proper and clear regulatory mandate. For example, it is unclear if the states will be given any mandate to deal with carrier refusals to provide broadband access services to Lifeline eligible end-user consumers, or with broadband access providers who claim federal USF support for superior, but actually substandard, levels of service to Lifeline end-user consumers. As the Statement of Commissioner Baum notes, the recent growth in the low-income portion of the federal USF is a serious concern, and the inclusion of a supported broadband access service component in Lifeline and Link Up will only aggravate this concern absent appropriate bi-jurisdictional regulatory oversight and enforcement.

Potential state intervention in such operational matters may take place if a state has designated a provider of broadband access services as an eligible telecommunications carrier (ETC) under Section 214(e)(2) of the Act, 47 U.S.C. 214(e)(2). However, such state intervention may result in litigation that can easily reach the federal level for resolution in view of the proposed reclassification of broadband access facilities and services. The R.D. recommends that the FCC adopt the additional principle of universal service, pursuant to its authority under Section 254(b)(7) of the Act, 47 U.S.C. § 254(b)(7), which provides additional flexibility to the FCC in view of the parallel proceeding regarding Title II common carrier reclassification of broadband access facilities and services.²²² It does not, however, provide any concrete guideposts for the future role of the states in this area.

The Title I vs. Title II Reclassification Debate. The Title II reclassification debate is becoming increasingly intertwined with the FCC’s proposals on “network neutrality.” I acknowledge that there are various technical, operational, and legal aspects that cannot keep these two issue areas completely and distinctly separate. However, it appears that the increased focus on “network neutrality” not only delays finality of the Title II common carrier reclassification debate, but it also causes great levels of uncertainty and delays the resolution of other long-standing priorities, such as the reform of the federal USF and intercarrier compensation as well as the proper classification of the IP-based services. Simply put, even if the FCC commences its planned initiatives on federal USF and intercarrier compensation reform, these initiatives will proceed on a “parallel track” with the intertwined mix of “Title II” and “network neutrality” with all the uncertainty and risks of delay that this approach entails.

The lack of certainty and finality also holds the potential of adversely affecting individual state reform efforts for intrastate intercarrier compensation and state-specific USFs. For example, although the FCC wisely has not preempted the states from assessing state-specific USF contributions to interconnected VoIP providers, a federal appellate court decision has clouded this issue²²³ and an FCC proceeding is still pending on this matter.²²⁴

Meanwhile, the state public utility commissions continue to grapple with a variety of issues that

²²² *In re Framework for Broadband Internet Service*, (FCC Released June 17, 2010) Notice of Inquiry, GN Docket No. 10-127; Further Inquiry, GN Docket No. 09-191, WC Docket No. 07-52, September 1, 2010.

²²³ *Vonage Holdings Corp. v. Nebraska Pub. Serv. Comm’n*, 564 F.3d 900 (8th Cir. 2009).

²²⁴ *Petition of the Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, FCC WC Docket No. 06-122, filed July 16, 2009.

arise under the federal Telecommunications Act of 1996 and applicable state law. Increasingly, however, these state decisions are made in the absence of FCC final rulings and guidance in crucial areas of regulatory importance. For example, the lack of finality in the long-standing IP-based services proceeding continues to have implications for intercarrier compensation disputes and the legitimate function and viability of state-specific USFs. Potentially also in doubt are interconnection arrangements between competing carriers as well as between carriers and other communications services providers.

Therefore, it is imperative that the FCC conclude its Title II reclassification proceeding as soon as possible. Fundamental questions on the “common carrier” aspects of the FCC’s Title II inquiry must be answered. If the intertwined nature of “Title II” and “network neutrality” continues to delay such a decision, then the FCC should make a concerted effort to reach an immediate conclusion on the more fundamental aspects of its Title II inquiry and address the more intricate and stand-alone aspects of “network neutrality” at a later date.

I am afraid that unless there is a renewed focus, prioritization, and resolution of the fundamental aspects of the Title II proposal, any FCC initiatives on the structural reform of interstate intercarrier compensation and the federal USF will proceed in an environment of regulatory uncertainty for the FCC, the states, and many interested parties. Federal-State cooperation in the resolution of these matters is essential.

Inclusion of Broadband and the Size of the USF. The potential introduction of a yet undefined broadband access component in the Lifeline and Link Up supported services will create new and highly competing priorities for the existing federal USF dollars. It will also create a precedent that supports broadband for a discrete class of consumers that will be hard to deny to other consumers. The R.D. ascribes an historical focus of the High Cost Fund of the federal USF as supporting legacy networks that primarily provide traditional voice services. But it is common knowledge, especially for the rural ILEC recipients of High Cost Support, that the funds have been and continue to be utilized for the deployment of broadband networks and services. Furthermore, one of the NBP’s goals is not only to increase the availability of broadband access services in the rural areas *but also to support the continuing provision of* broadband access services in currently served areas. The continuous upgrading of broadband network facilities and services by recipients of federal USF High Cost Support is fully consistent with the stated goals of the NBP regarding national broadband deployment. Because of the continuous technological transformation of the networks that regulated landline telecommunications carriers have deployed and continue to deploy, the distinction between legacy networks that provide traditional voice services and broadband networks that provide a new and ever changing mix of services has become increasingly blurred. This development makes the contemplated redirection of federal USF High Cost Support under the NBP and other regulatory initiatives of the Commission even more challenging.

In this respect, I share the concerns expressed in the Statement of Commissioner Landis on whether and how the federal USF will be able to accommodate many and competing priorities (and overcome the “broadband availability gap”) while the FCC proceeds with its structural reform and redirection. These challenges may necessitate an unavoidable narrowing of the Commission’s focus on certain NBP tasks and final resolution of other long-standing proceedings, especially interstate intercarrier compensation reform and completion of the IP-enabled services proceeding.

Increasing Eligibility from 135% to 150% of the Federal Poverty Guidelines. I agree completely with the Statement of Commissioner Burke on this subject. Until the effects of including broadband as a supported service are better known, it is wiser to redouble efforts to reach presently eligible low income customers than to diminish the dollars available to them by expanding the program to include others who are somewhat better off.

In conclusion, I understand the importance of the FCC’s efforts to provide broadband in rural,

high cost areas and in lower income urban areas based upon my experience promoting that same policy in Pennsylvania. However, as a regulator from a net contributor state to the federal USF, I remain concerned about the cost to net contributor states, notwithstanding the need for a national broadband plan. Going forward, these considerations suggest a broader role for the Joint Board, which is composed of state members who remain convinced of the importance of maintaining a collegial Federal-State partnership.

**STATEMENT OF
SENIOR ASSISTANT ATTORNEY GENERAL SIMON FFITCH**

***In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link Up, WC Docket No. 03-109***

The Lifeline program addressed in this Recommended Decision is a key part of the universal service framework. While 96 percent of US households currently have telecom service in the home, penetration rates for limited income households lag behind at just over 90 percent. Indeed, penetration rates are significantly below the 90 percent level in the lowest income bands. Looking only at national averages masks this gap in universality. We cannot say that we have universal service in the United States as long as these disparities exist.

Just as high cost support has been important in helping to ensure that infrastructure and service is available in rural, insular and costly-to-serve geographic areas, the Lifeline program is essential in making service affordable for unserved and underserved limited income populations throughout the country. This is especially important during this time of economic hardship for many Americans. The telephone is a true lifeline for connecting customers with job opportunities, educational options and essential medical care. Unfortunately, for a range of reasons, the Lifeline portion of USF support has not been used to its full potential. While overall, 36 percent of the eligible population takes advantage of the program, in over half the states participation rates are at or below, sometimes well below, 25 percent. The recommendations in this Recommended Decision regarding eligibility levels, verification, and outreach are intended to make the program more effective and make the best use of the funds available.

As this Recommended Decision discusses, a new challenge faced by the Lifeline program is the impact of prepaid wireless ETCs. Prepaid wireless Lifeline programs have represented the first significant improvement in utilization of the Lifeline program in many years. Penetration rates have improved significantly in some areas and these gains should not be overlooked. After all, increased availability of affordable telecommunications service is the fundamental purpose of USF low income support.

At the same time, the dramatic success of these programs has created new problems. The fund is under substantial pressure and legitimate questions have been raised by many commenters about ineligible participants, and the level of service provided by carriers in return for federal support. These are “consumer issues” as well. Because all consumers pay for Lifeline and are impacted by fund growth, both for Lifeline and the overall USF, consumers have a strong interest in making sure that eligibility standards are rigorously enforced and that ongoing verification of continued eligibility is effective. Consumers also should be confident that carriers that receive Lifeline USF support for prepaid wireless service are providing service of adequate value (e.g. minimum number of monthly minutes) and quality in return for those funds.

In the process of addressing these issues, however, it is important to remember that any major increase in participation in Lifeline, even if simply a result of better outreach, will put pressure on the fund. Moreover, increased participation in Lifeline, whether through prepaid wireless programs, addition of income eligibility, or just more awareness, is not by itself evidence of fraud, waste, and abuse. Lifeline cannot properly be viewed as “right sized” today if only one third, at most, of the people who could benefit are participating. No record was made in this proceeding of any general problems with fraud, waste, and abuse in the Lifeline program. There was anecdotal evidence of concern presented of ineligible participants benefiting from newer prepaid wireless programs. There was also evidence that states are aware of and are addressing this issue. The record before us did not establish what portion of

fund growth, if any, is due to fraud, waste, or abuse. The verification recommendations of this Recommended Decision are aimed in part at seeking additional ways to address and control problems in that area.

The control of USF fund growth is not simply a Lifeline problem, it is a USF-wide problem, as the Joint Board recognized in its 2007 Recommended Decision. Both the Joint Board Recommended Decision and the National Broadband Plan have recognized the need for reform of universal service support and movement towards that reform has now begun. There is broad agreement that the USF, as currently constructed, needs to be refocused to eliminate unneeded, duplicative, and expensive subsidy flows. The federal universal service has grown very significantly in recent years. USF surcharges have reached highs of as much as 15%. This imposes substantial burdens on telecommunications customers, and has reached the point where the size of the fund itself threatens to undermine the very goals the fund is designed to achieve by further diminishing the affordability of service. While Lifeline should not be immune from scrutiny, it would be unfair and inappropriate to now ask Lifeline eligible customers to bear the brunt of fund size concerns, when major problems have long been identified in other parts of the fund. Indeed, addressing those problems will help ensure that USF funding can be transitioned from where it is no longer necessary or appropriate, and can be properly targeted to the remaining areas of legitimate need, including the Lifeline program.

Finally, I think it is important that this RD recognizes in the “Other Issues” section that the Lifeline issues are only a part of a much larger picture. Ultimately, Lifeline issues, including Lifeline support for broadband service, will have to be resolved as a part of the overall approach to universal service policy.

**APPENDIX A
LIST OF INITIAL COMMENTERS**

| <u>Commenter</u> | <u>Abbreviation</u> |
|--|----------------------------|
| Advocates for Basic Legal Equality, Inc., Community Voice Mail National Crossroads Urban Center Disability Rights Advocates The Low Income Utility Advocacy Project Minnesota Legal Services Advocacy Project The National Consumer Law Center, On Behalf of Our Low-Income Clients New Jersey Shares Ohio Poverty Law Center Pro Seniors Salt Lake Community Action Program Texas Legal Services Center The Utility Reform Network Twin Cities Community Voicemail | Consumer Groups |
| AT&T Services, Inc. | AT&T |
| Benton Foundation, et al. | Benton |
| Community Voice Mail National Office | CVMN |
| Public Service Commission of the District of Columbia | DCPSC |
| Florida Public Service Commission | FPSC |
| Leap Wireless International, Inc. and Cricket Communications, Inc. | Cricket |
| Media Action Grassroots Network | MAG-Net |
| Missouri Public Service Commission | MoPSC |
| National Association of State Utility Consumer Advocates | NASUCA |
| National Hispanic Media Coalition | NHMC |
| Nebraska Public Service Commission | NPSC |
| Nexus Communications, Inc. | Nexus |
| Public Utilities Commission of Ohio | Ohio PUC |
| PR Wireless, Inc. | PR Wireless |
| Smith Bagley, Inc. | Smith Bagley |
| TracFone Wireless, Inc. | TracFone |
| United States Telecom Association | USTelecom |
| Verizon and Verizon Wireless | Verizon |
| YourTel America, Inc. | YourTel |

**APPENDIX B
LIST OF REPLY COMMENTERS**

| <u>Commenter</u> | <u>Abbreviation</u> |
|--|----------------------------|
| Advocates for Basic Legal Equality, Inc., Community Voice Mail National Crossroads Urban Center Disability Rights Advocates The Low Income Utility Advocacy Project Minnesota Legal Services Advocacy Project The National Consumer Law Center, On Behalf of Our Low-Income Clients New Jersey Shares Ohio Poverty Law Center Pro Seniors Salt Lake Community Action Program Texas Legal Services Center The Utility Reform Network Twin Cities Community Voicemail | Consumer Groups |
| AT&T, Inc. | AT&T |
| CTIA–The Wireless Association | CTIA |
| Consumer Advisory Committee | |
| GCI Communication, Inc. | GCI |
| Leadership Conference on Civil and Human Rights | |
| Massachusetts Department of Telecommunications and Cable | MDTC |
| National Association of State Utility Consumer Advocates | NASUCA |
| National Hispanic Media Coalition Media Action Grassroots Network | |
| Office of Communication of the United Church of Christ, Inc., Benton Foundation, and Access Humboldt | Public Interest Commenters |
| Nexus Communications, Inc. | Nexus |
| Norma J. Torres | |
| Pennsylvania Public Utility Commission | PaPUC |
| PR Wireless, Inc. | PR Wireless |
| Qwest Communications International Inc. | Qwest |
| Smith Bagley, Inc. | Smith Bagley |
| Sprint Nextel Corporation | Sprint |
| TracFone Wireless, Inc. | TracFone |
| Verizon and Verizon Wireless | Verizon Companies |
| YourTel America, Inc. | YourTel |