

Oklahoma Water Resources Board (OWRB) Section 785:35–7–2. After review of this OWRB regulation, an EPA groundwater expert finds the Oklahoma rules to be more stringent than the requirements under 40 CFR 257.91(e). EPA preliminarily finds these changes to be minor because the key aspects of the CCR program including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification and internet posting requirements are not substantially changed or reduced by the Oklahoma revisions and in one example is more stringent. These changes do not keep the overall program from being at least as protective as 40 CFR part 257, subpart D. EPA's full analysis of Oklahoma's CCR permit program can be found in the Technical Support Document (TSD) located in the docket for this notice.

#### IV. Proposed Action

In accordance with 42 U.S.C. 6945(d), EPA is proposing to wholly approve ODEQ's CCR permit program application.

Dated: January 3, 2018.

**Barry N. Breen,**

*Principal Deputy Assistant Administrator,  
Office of Land and Emergency Management.*

[FR Doc. 2018–00474 Filed 1–12–18; 8:45 am]

BILLING CODE 6560–50–P

---

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[WC Docket Nos. 17–287, 11–42, 09–197; FCC 17–155]

#### **Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) proposes and seeks comment on reforms to ensure the Lifeline program rules comport with the authority granted to the Commission in the Communications Act and to curb wasteful and abusive spending in the Lifeline program. The Commission also seeks comment on how Lifeline might more efficiently target funds to areas and households most in need of help in obtaining digital opportunity.

**DATES:** Comments are due on or before January 24, 2018, and reply comments are due on or before February 23, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit comments, identified by WC Docket Nos. 17–287, 11–42, and 09–197, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's website:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Jodie Griffin, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking and Notice of Inquiry (NPRM and NOI) in WC Docket Nos. 17–287, 11–42, 09–197; FCC 17–155, adopted on November 16, 2017 and released on December 1, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db1201/FCC-17-155A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1201/FCC-17-155A1.pdf). The Fourth Report and Order, Order on Reconsideration and Memorandum Opinion and Order that was adopted concurrently with the NPRM and NOI are published elsewhere in this issue of the **Federal Register**.

#### I. Introduction

1. In this Notice of Proposed Rulemaking, the Commission proposes and seeks comment on reforms to ensure the Lifeline program rules comport with the authority granted to the Commission in the Communications Act and to curb wasteful and abusive spending in the Lifeline program. Specifically, the NPRM seeks comment

on ending the Commission's previous preemption of states' role in designating certain eligible telecommunications carriers and removing the Lifeline Broadband Provider designation; targeting Lifeline funds to facilities-based broadband-capable networks offering both voice and broadband services; adopting a self-enforcing budget cap for the program; improving the eligibility verification and recertification processes to further prevent waste, fraud, and abuse in the program; and improving providers' incentive to provide quality communications services by establishing a maximum discount level for Lifeline-supported service. In the Notice of Inquiry, the Commission seeks comment on how Lifeline might more efficiently target funds to areas and households most in need of help in obtaining digital opportunity.

#### II. Notice of Proposed Rulemaking

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

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

4. In this section, the Commission addresses the serious concerns that have been raised that the Commission's creation of Lifeline Broadband Provider (LBP) ETCs and preemption of state commissions' designations of such LBPs was inconsistent with the role contemplated for the states in Section 214 of the Act. In the *2016 Lifeline Order*, 81 FR 33026, May 24, 2016, the Commission established a framework to designate providers as Lifeline Broadband Providers (LBPs), eligible to receive Lifeline reimbursement for qualifying broadband internet access

service provided to eligible low-income consumers, but not Lifeline voice service. The Commission's role in this framework was premised on the Commission's authority to designate a common carrier "that is not subject to the jurisdiction of a State commission." And to effectuate that policy goal, the agency preempted state authority in a manner wholly inconsistent with Section 214 of the Communications Act, which gives primary responsibility for designation of eligible telecommunications carriers to the states. (47 U.S.C. 214(e)(2), (3)). Based on these circumstances and on further review, the Commission believes it erred in preempting state commissions from their primary responsibility to designate ETCs under section 214(e) of the Act and seek comment on this issue. (See 47 U.S.C. 214(e)).

5. The *2016 Lifeline Order's* preemption of state designation of LBPs was challenged by the National Association of Regulatory Utility Commissioners (NARUC) and a coalition of states led by the State of Wisconsin (State Petitioners). (See *NARUC v. FCC*, Case No. 16–1170 (DC Cir., filed June 3, 2016); *Wisconsin v. FCC*, Case No. 16–1219 (DC Cir. filed June 30, 2016). Among other issues, NARUC and the State Petitioners contend the Commission's decision to preempt states from exercising any authority to designate broadband providers as LBPs violates the Act and the Administrative Procedure Act. The United States Court of Appeals for the DC Circuit has remanded the legal challenges to the Commission for further proceedings. (*NARUC v. FCC*, Case No. 16–1170, Order (DC Cir., Apr. 19, 2017), granting the Commission's motion for voluntary remand.) The legal challenges to the LBP designation process question the Commission's legal authority to create an LBP designation process and designate providers under that process. Additionally, members of Congress have introduced legislation to reverse the Commission's preemption and clarify that the Communications Act of 1934 and the Telecommunications Act of 1996 cannot be interpreted to limit the jurisdiction of any state to designate an ETC. (See Preserving State Commission Oversight Act of 2017, S. 421, 115th Cong. (2017)). Would reversing the preemption in the *2016 Lifeline Order* resolve the legal issues surrounding LBPs and their designation process? How would reversing the preemption in the *2016 Lifeline Order* impact the future of LBPs in the Lifeline program? Should ETCs be designated through traditional state and

federal roles either for purposes of only Lifeline or for both the high-cost and Lifeline programs? (See 47 U.S.C. 214(e)). What rule changes would be needed to restore the traditional state and federal roles for ETC designations? The Commission seeks comment on this proposal and on any alternatives.

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

7. The Commission also proposes eliminating stand-alone LBP designations to better reflect the structure, operation, and goals of the Lifeline program, as set forth in the Communications Act, as well as related state programs. For example, the existence of an LBP designation enables entities to participate in the Lifeline program without assuming any obligations with respect to voice service. The Commission seeks comment on this proposal.

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

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

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

11. The Lifeline program has an important role in bringing digital opportunity to low-income Americans. The Commission believes that changes to Lifeline policies are warranted to ensure the Commission's administration

of Lifeline support is faithful to Congress's stated universal service goals and is focused on helping low-income households obtain the benefits that come from access to modern communications networks. In this section, the Commission proposes policy changes to focus Lifeline support on encouraging service provider investment in networks that offer quality, affordable broadband service. The Commission also seeks comment on the Commission's legal authority for these proposed changes.

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

13. Section 254(b) of the Act requires the Commission to base its policies for the preservation and advancement of universal service on the principles that "[q]uality services should be available at just, reasonable, and affordable rates," "[a]ccess to advanced telecommunications and information services shall be provided in all regions of the Nation" and "[c]onsumers in all regions of the Nation . . . should have access to . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." (47 U.S.C. 254(b)(1)–(3)).

14. Mindful of the direction given to the Commission by Congress, the Commission believes Lifeline support will best promote access to advanced communications services if it is focused to encourage investment in broadband-capable networks. The Commission therefore proposes limiting Lifeline support to facilities-based broadband service provided to a qualifying low-income consumer over the ETC's voice- and broadband-capable last-mile network. The Commission believes this proposal would do more than the current reimbursement structure to encourage access to quality, affordable broadband service for low-income Americans. In particular, Lifeline support can serve to increase the ability to pay for services of low-income households. Such an increase can

thereby improve the business case for deploying facilities to serve low-income households. In this way, Lifeline can serve to help encourage the deployment of facilities-based networks by making deployment of the networks more economically viable. Furthermore, the competitive impacts of having multiple competing facilities-based networks can also help to lower prices for consumers. If Lifeline can help promote more facilities, it can then indirectly also serve to reduce prices for consumers.

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

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

17. How would this proposal impact the number of Lifeline providers participating in the program and the availability of quality, affordable Lifeline broadband services? Are there other means of providing broadband service that should be considered facilities-based for purposes of the

Lifeline program? How should the facilities-based requirement apply in a situation where a reseller and a facilities-based provider form a joint venture to provide Lifeline services? How should the Commission ensure Lifeline support is only issued to ETCs that satisfy the facilities requirement? Would the facilities-based requirement further the Commission's goal of eliminating waste, fraud, and abuse in the Lifeline program? On this last point, the Commission notes that the vast majority of Commission actions revealing waste, fraud, and abuse in the Lifeline program over the past five years have been against resellers, not facilities-based providers. And the proliferation of Lifeline resellers in 2009 corresponded with a tremendous increase in households receiving multiple subsidies under the Lifeline program. How do the incentives of resellers differ from those who use their own last-mile facilities? Why have waste, fraud, and abuse increased—including multiple-subsidies-per-household problems, self-certification problems, authentication-of-subscriber problems, phantom-subscriber problems, and eligibility problems—since the advent of multiple resellers within the program in 2009?

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

19. Alternatively, should the Commission reverse the forbearance from section 214(e)(1)(A)'s facilities requirement? If the Commission found that forbearing from the facilities-based requirement was no longer in the public interest, what other findings, if any, would the Commission need to make under section 10? If the Commission rescinded this forbearance, what effective date would give impacted ETCs and their customers an appropriate amount of time to make the transition? Furthermore, if the Commission were to rescind forbearance from the facilities requirement, should it reconsider its interpretation of that requirement? For example, § 54.201(g) of our current rules states that an ETC's facilities need not be located within the relevant service area as long as the carrier uses them within the designated

service area. But the Commission has previously noted that “[s]everal ETCs, some of which call themselves ‘facilities-based resellers,’ have previously maintained they are facilities-based based on facilities that provision operator and/or directory assistance services, which are provided in conjunction with their retail offering.” The Commission seeks comment on revising those rules to make clear that a carrier is only facilities-based under our rules if its facilities are located in its service area and it uses those facilities to provide last-mile service to its supported customers. The Commission also notes that the Act defines a facilities-based carrier as one that offers service “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.” (47 U.S.C. 214(e)(1)(A)). The Commission seeks comment on how to balance Congress’s expectation that ETCs would invest universal service support in the areas they serve (*See* 47 U.S.C. 254(e)) and its recognition that some amount of resale should be permissible. The Commission seeks comment on any other formulations of this rule it should consider to ensure that facilities-based Lifeline carriers are in fact reinvesting the support they receive in facilities in the communities they serve.

20. The Commission also seeks comment on the transition period for implementing this approach. If Lifeline support is only provided to ETCs that provide Lifeline broadband services over facilities-based voice- and broadband-capable last-mile networks, what should the transition period and transition process be for non-facilities-based providers currently participating in the Lifeline program and their customers? Should the transition process consider whether there is a facilities-based provider in a specific market that intends to continue providing Lifeline service? If so, what geographic area would be the appropriate focus of this determination? What sources could the Commission use to determine whether a facilities-based Lifeline provider is present in and plans to continue offering Lifeline service in a particular geographic market? What other factors should the Commission consider in developing the transition process? What would be an appropriate transition period for impacted ETCs and their customers? Should the Commission provide a three-year support phase down period for non-facilities-based ETCs participating in the Lifeline program, or would a shorter period be appropriate? How would the

transition process and period differ if the Commission reversed the forbearance from section 214(e)(1)(A)’s facilities requirement?

21. The Commission also seeks comment on how to determine whether existing or future resellers have fully complied with the statute’s exhortation that universal service funding must be spent “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” (47 U.S.C. 254(e)). Have Lifeline resellers passed through all Lifeline funding to their underlying carriers to ensure federal funding is appropriately spent on the required “facilities and services” rather than non-eligible expenses like free phones and equipment? What accounting measures have Lifeline resellers instituted to ensure that Lifeline funding has only been used for eligible expenses? Would eliminating resellers from the program address any concerns about the appropriate use of federal funds by Lifeline providers? Would limiting payments to resellers to what they pay their wholesale carriers fully effectuate the congressional intent of section 254(e)? What auditing or other review should the Commission or USAC carry out to ensure that resellers that have been receiving funds used them properly?

22. Alternatively, the Commission seeks comment on TracFone’s suggestions that it minimizes waste, fraud, and abuse in the Lifeline program through “conduct-based requirements.” One form of conduct-based requirement would be to suspend for a year or disbar any Lifeline ETC with sufficiently high improper payment rates, whether on the basis of Payment Quality Assurance reviews or program audits. The Commission seeks comment on such a conduct-based requirement. If the Commission were to adopt such a requirement, what should be the measuring stick it uses and what should be the trigger? Should the Commission use a percent of Lifeline revenues improperly paid in a given state? Should the Commission establish a threshold amount of improper payments, such as \$50,000, as a trigger for suspension in a state? What levels should be established for disbarment? And should the Commission apply such a requirement to all Lifeline providers, as TracFone suggests, or only wireless resellers, the historic source of most of the Commission’s enforcement actions and investigations with respect to waste, fraud, and abuse? Another conduct-based requirement could be the suspension of companies that regularly engage in fraud-related conduct—such

as practices that TracFone has previously suggested eliminating from the program. Would banning such practices and suspending those who engaged in them mitigate our concerns about rampant waste, fraud, and abuse? Would any of the conduct-based requirements minimize waste, fraud, and abuse in the Lifeline program to the same extent as the proposed facilities requirement? How could TracFone’s proposals be implemented with minimal additional administrative burden on Lifeline service providers? How would such proposals ensure that Lifeline support is being appropriately used to advance the deployment of broadband-eligible networks?

23. *Continuing the Phase Down of Lifeline Support for Voice Service.* The Commission also seeks comment on continuing the phase down of Lifeline support for voice-only services. In the *2016 Lifeline Order*, the Commission adopted rules to gradually phase out Lifeline support for voice-only services to further the Commission’s goal of transitioning to a broadband-focused Lifeline program. The current rules provide that Lifeline support will decrease to zero dollars on December 1, 2021, with an exception permitting Lifeline voice support to continue in Census blocks where there is only one Lifeline provider. (47 CFR 54.403(a)(2)(iv).) In deciding to phase down Lifeline support for voice-only service, the Commission explained that continuing to provide Lifeline support for voice-only service may “artificially perpetuate a market with decreasing demand” and may incent Lifeline providers to “avoid providing low-income consumers with modern services as Congress intended.” The Commission also cited the declining prices of fixed and wireless voice-only services and the availability of a wide-range of voice-only services in the marketplace.

24. Continuing the phase down of Lifeline support is faithful to section 254(b)’s mandates and would support our proposal to focus Lifeline support to encourage investment in broadband-capable networks. (*See* 47 U.S.C. 254(b)(1)–(3)). The Commission acknowledges that some parties have argued against the phase down of Lifeline support for voice service, citing, among other concerns, the lack of affordability of voice service. However, the Commission expects that even without Lifeline voice support, low-income consumers would be able to obtain quality, affordable voice service in urban areas. Based on the *2018 Urban Rate Survey*, several providers charge monthly rates of fifteen dollars or less

for fixed voice-only service, and the national average monthly rate for fixed voice-only service is \$25.50. (See 2018 Urban Rate Survey, Voice Data, Column J, Rows 423, 496, 501, 763, 788, <https://www.fcc.gov/general/urban-rate-survey-data-resources>.) The 2016 *Universal Service Monitoring Report* indicates that telephone expenses represent under four percent of after-tax income for low-income households. (See *Universal Service Monitoring Report*, CC Docket No. 96–45, et al., at 57, Table 6.12 (2016) [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-343025A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf).) Therefore, the Commission expects that even without Lifeline support for voice-only service, the monthly cost of such service in urban areas would represent a small percentage of low-income households' after-tax income. The Commission seeks comment on continuing the phase down of Lifeline support for voice-only service. Should the Commission make any changes to the current schedule for phasing out Lifeline support for voice services to support the policy changes the Commission proposes in this section? Should the Commission retain the exception permitting Lifeline support for voice services after December 1, 2021 in areas where there is only one Lifeline provider? (47 CFR 54.403.) Would retaining this exception impede the adoption of Lifeline broadband service or investment in broadband-enabled networks?

25. In contrast, it is unclear whether low-income consumers would be able to obtain quality, affordable voice service in rural areas without Lifeline voice support. The Commission's rules require high-cost ETCs to offer voice service at rates that are reasonably comparable to the rates for similar services in urban areas, *USF/ICC Transformation Order*, 76 FR 73830, November 29, 2011. Although such rates may be affordable in theory, they may not be in practice: The 2018 reasonable-comparability benchmark for voice services is \$45.38—almost double the average urban rate. The Commission accordingly seeks comment on eliminating the phase down of Lifeline support for voice-only service in rural areas. Would eliminating the phase down be the best way to ensure that consumers in rural areas are offered affordable voice services? Should voice-only support be limited to a subset of rural areas where voice rates are actually above the urban average? If so, by how much? And how should the Commission determine the areas where voice-only support is available? Would offering voice-only support to rural

Tribal lands ensure more affordable voice services in those areas? If so, what should be the level of support offered compared to the amount of support available for broadband?

26. *Legal Authority.* The Commission believes it has authority under Section 254(e) of the Act to provide Lifeline support to ETCs that provide broadband service over facilities-based broadband-capable networks that support voice service. Section 254(e) provides that a carrier receiving universal service support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” Our proposed changes to Lifeline support comport with the Commission's authority under Section 254 because voice service would continue to be defined as a supported service under the Commission's rules, and the networks receiving Lifeline support would also support voice service. (47 CFR 54.401(a)(2)). Thus, under the proposed changes, Lifeline support would be used “for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” (47 U.S.C. 254(e)). This legal authority does not depend on the regulatory classification of broadband internet access service and, thus, ensures the Lifeline program has a role in closing the digital divide regardless of the regulatory classification of broadband service.

27. Relying on the Commission's authority under Section 254(e) for the proposed changes to Lifeline support would also better reconcile the Commission's authority to leverage the Lifeline program to encourage access to broadband with the Commission's efforts to promote access to broadband through high-cost support. In the universal service high-cost program, the Commission relied on section 254(e) as its authority to require ETCs receiving support through the Connect America Fund (including the Mobility Fund) or the existing high cost-support mechanisms to invest in broadband-capable networks, but declined to add broadband internet access service to the list of supported services. In adopting this requirement, the Commission explained that Section 254(e) grants the Commission the authority to “support not only voice telephony service but also the facilities over which it is offered” and that Congress's use of the words “services” and “facilities” in Section 254(e) provides the “Commission the flexibility not only to designate the types of telecommunications services for which support would be provided, but also to

encourage the deployment of the types of facilities that will best achieve the principles set forth in section 254(b) and any other universal service principle that the Commission may adopt under section 254(b)(7), *USF/ICC Transformation Order*. The Commission further explained that it has a “‘mandatory duty’ to adopt universal service policies that advance the principles outlined in section 254(b) and the Commission has the authority to ‘create some inducement’ to ensure that those principles are achieved.” In 2014, the U.S. Court of Appeals for the Tenth Circuit upheld the Commission's interpretation of its section 254(e) authority in the *USF/ICC Transformation Order*.

28. The Commission seeks comment on the Commission's legal authority to adopt the proposed changes to Lifeline support. Are there other sources of authority that allow the Commission to make these changes to Lifeline support proposed in this section?

29. The Commission seeks comment on ways the Lifeline program can responsibly empower Lifeline subscribers to obtain the highest value for the Lifeline benefit through consumer choice in a competitive market. In particular, the Commission seeks comment on a request from TracFone Wireless, Inc. (TracFone) to allow providers to meet the minimum service standards through plans that provide subscribers with a particular number of “units” that can be used for either voice minutes or broadband service. TracFone argues that the Bureau's previous guidance that such “units” plans do not meet the minimum service standards was given without public comment and represented an improper reading of the relevant rule. (47 CFR 54.408.) Should the Commission now allow “units” plans to receive reimbursement from the Lifeline program? What impact would these plans have on consumer choice in the Lifeline market? Would such a decision require a change in the Commission's rules? If the Commission permits such plans, how should the Commission determine the appropriate support amount for those plans that combine voice and broadband options when the support level for voice service decreases to \$7.25 while the support amount for broadband service remains at \$9.25? (See 47 CFR 54.403(a).)

30. The Commission also seeks comment on eliminating the Lifeline program's “equipment requirement.” (See 47 CFR 54.408(f).) That rule mandates that any Lifeline provider that “provides devices to its consumers[] must ensure that all such devices are

Wi-Fi enabled,” prohibits “tethering charge[s],” and requires mobile broadband providers to offer devices “capable of being used as a hotspot.” (See 47 CFR 54.408(f)(1)–(3)). The Commission never sought comment on such requirements before imposing them on all Lifeline providers and appears to lack the statutory authority to adopt or enforce such requirements. And although well-intentioned, the equipment mandate appears unnecessary if not affirmatively harmful. As the *2016 Lifeline Order* recognized, a “substantial majority” of Americans already own Wi-Fi enabled smartphones, suggesting such mandates are not needed. And even those Lifeline providers that appear to support offering Wi-Fi-enabled devices or hotspot-enabled equipment acknowledge the increased cost of such equipment, and fail to explain why consumers should not be free to choose lower-cost options. For example, the equipment mandate would prohibit a cable Lifeline provider from offering a low-cost modem rather than an integrated modem-Wi-Fi-router, even if a Lifeline consumer wanted to use a desktop computer to access the internet. What is more, the *2016 Lifeline Order* lacked record evidence suggesting that these mandates would have any meaningful impact on the homework gap—their nominal purpose. As such, it appears these mandates are more likely to widen the digital divide than close it. And so, for the first time, the Commission seeks comment on whether the Commission may or should retain the equipment mandates in our rules, or whether they instead should be eliminated.

31. In the interest of removing regulations that no longer benefit consumers, the Commission proposes to eliminate § 54.418 of the Commission’s rules, and the Commission seeks comment on this proposal. (See 47 CFR 54.418.) When enacted, section 54.418 required ETCs to notify their customers about the then-upcoming transition for over-the-air full power broadcasters from analog to digital service (the “DTV transition”) over the course of several months in 2009. The DTV transition has since occurred, and it appears that the rule is no longer relevant. The Commission seeks comment on this proposal.

32. As the Commission embarks on an effort to reform the incentives and effectiveness of the Lifeline program, it is incumbent on the Commission to consider ways it can continue to fight and prevent waste, fraud, and abuse in the program. To that end, the Commission seeks comment on a number of proposals to improve the

Lifeline program’s administration to preserve program integrity.

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

34. USAC’s current audit program consists of audits targeted to high-risk participants as well as mandatory audits of certain carriers, such as all carriers offering Lifeline for the first time and any carrier receiving more than \$5 million in program support in a given year. Recognizing that some mandatory audits were unnecessary, the Commission in the *2016 Lifeline Order* directed the Office of Managing Director to work with USAC to modify the approach for determining the first-year Lifeline providers to be audited. The Commission intended this direction to prevent wasteful auditing of companies with limited subscriber bases, for example, and to allow USAC to more efficiently direct audit resources to higher risk providers. The Commission’s rules still require carriers drawing more than \$5 million annually from the program to obtain independent biennial audits. (47 CFR 54.420.)

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

outlined in the rules with the identified carriers obtaining an independent auditor and following a standardized audit plan outlined by the Commission. (47 CFR 54.420(a)). The Commission believes this approach would be more efficient and more effective at rooting out waste, fraud, and abuse in the program because the identified risk factors would better target potential violations than merely focusing on companies receiving large Lifeline disbursements. A wider range of risk factors would be more responsive to identified program risks.

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

37. In its recent report, the Government Accountability Office (GAO) identified significant fraud and an absence of internal controls by performing undercover work to determine whether ETCs would enroll subscribers who are not eligible for Lifeline support. (See GAO, *Telecommunications: Additional Action Needed to Address Significant Risks in FCC’s Lifeline Program*, GAO–17–538, at 44–46 (2017), <http://www.gao.gov/products/GAO-17-538>.) The Commission seeks comment on conducting similar undercover work as part of the audits administered by USAC or a third-party auditor acting on USAC’s behalf. Would such auditing techniques be a cost-effective way to eliminate fraud in the program? What administrative challenges would the Commission or USAC face in undertaking such undercover work?

38. Finally, the Commission seeks comment on how Lifeline program audits can ensure that Lifeline beneficiaries are actually receiving the service for which ETCs are being reimbursed. What documentation should an audit require to demonstrate that service is being provided? How should an audit detect and report instances where the subscriber’s equipment makes it difficult or

impossible for the subscriber to use the relevant service? Would changes to auditing methods on this issue require any changes to the Lifeline program rules? Should the Commission require Lifeline service providers to demonstrate that they have addressed any issues that resulted in PQA failures above a certain threshold, or audit findings that result in recovery of more than a certain percentage of the disbursements during the audit period?

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

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

41. The Commission seeks comment on codifying in the Commission's rules the USAC administrative requirement that ETCs' customer enrollment representatives register with USAC in order to be able to submit information to the NLAD or National Verifier systems. The Commission also seeks comment on the scope of the use of representatives' information. USAC is currently implementing an ETC representative registration database to help detect and prevent impermissible activity when enrolling or otherwise working with USAC to enroll Lifeline subscribers. The Commission is aware of certain practices of sales representatives resulting in improper enrollments or otherwise violating the Lifeline rules. (See Letter from Ajit V. Pai, Chairman, FCC, to Vickie Robinson, Acting Chief Executive Officer and General Counsel, USAC, at 1–4 (July 11, 2017), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0711/](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0711/)

[DOC-345729A1.pdf](http://www.gao.gov/products/DOC-345729A1.pdf); GAO, Telecommunications: Additional Action Needed to Address Significant Risks in FCC's Lifeline Program, GAO-17-538 (2017), <http://www.gao.gov/products/DOC-345729A1.pdf>.) These practices include data manipulation to defeat NLAD protections, using personally identifying information (PII) of an eligible subscriber to enroll non-eligible subscribers, and obtaining false certifications from subscribers. USAC's current administrative efforts to create this database of ETC representatives would also combat waste in the event a representative using impermissible enrollment tactics is engaged by multiple ETCs. The Commission seeks comment on codifying the ETC representative registration requirement. How should the Commission define an ETC enrollment representative for these purposes? What information would be necessary for the creation of this database? What privacy and security practices should be used to safeguard this information?

42. The Commission also seeks comment on its ability to take appropriate enforcement action against registered ETC representatives who violate the rules governing Lifeline enrollment. For the Commission to exercise its forfeiture authority for violations of the Act and its rules without first issuing a warning, the wrongdoer must hold (or be an applicant for) some form of authorization from the Commission, or be engaged in activity for which such an authorization is required. (See 47 U.S.C. 503(b).) Toward this end, the Commission seeks comment on whether it should implement a certification or blanket authorization process applicable to ETC representatives who register with USAC. How would this blanket authorization coincide with the Commission's existing authority over Lifeline providers' officers, agents, and employees under Section 217 of the Act? (See 47 U.S.C. 217).

43. The Commission also seeks comment on whether the Commission should require ETCs to implement procedures that prohibit commission-based ETC personnel from verifying eligibility of Lifeline subscribers. By prohibiting commissions, the Commission hopes to dis-incentive improper, fraudulent, or otherwise illegal enrollment processes sometimes utilized by ETCs' representatives. The Commission proposes that those employees, agents, or third parties who receive a significant portion of their compensation based on the number of Lifeline subscribers they enroll in the program be precluded from determining

eligibility. The Commission is concerned that ETCs implementing procedures barring commission-based personnel from reviewing and verifying subscriber eligibility certifications and documentation will reduce financial incentives for commission-based personnel to enroll ineligible subscribers. Should this proposal preclude ETCs from using commission-based personnel altogether, or should it instead require ETCs to simply implement procedures precluding commission-based personnel from determining eligibility? As an additional safeguard, should the Commission require Lifeline providers to ensure that service provider representatives involved in soliciting customers are separated from service provider representatives who are involved in the verification process?

44. *NLAD Dispute Resolution.* The Commission seeks comment on requiring USAC to directly review supporting documents for manual NLAD dispute resolutions, including information regarding the ETC agent submitting the documentation. The Commission believes this requirement would reduce improper enrollments in the program. Currently, manual documentation review is required when a subscriber wishes to dispute an NLAD denial. An NLAD denial occurs when a subscriber fails one of the protective checks contained in the NLAD system. For example, if USAC's automated identity check rejects a consumer's application, that consumer may produce documentation verifying their identity, because the databases that are available to automatically verify identity are not comprehensive. A Lifeline subscriber may dispute an NLAD denial by submitting the appropriate documentation to the ETC. The ETC then reviews the documents, verifies the information at issue in the dispute, and processes the dispute resolution with USAC.

45. The current system's reliance on carrier certification for dispute resolution has been questioned for making the Lifeline program vulnerable to waste, fraud, and abuse. (See Testimony of FCC Commissioner Ajit Pai Before the Subcommittee on Communications and Technology of the United States House of Representatives Committee on Energy and Commerce, Oversight of the Federal Communications Commission, at 4–5 (July 12, 2016), available at <https://www.fcc.gov/document/commissioner-pai-statement-house-oversight-hearing>.) Having USAC conduct actual document review associated with NLAD dispute resolutions would increase the

accountability of the resolutions. The Commission seeks comment on this proposal. Do the associated costs and administrative burdens associated with such review justify this additional step? If the Commission directed USAC to adopt this measure, what would be the optimal response time for USAC to process such disputes? How should USAC collect the documentation and what privacy safeguards should be taken to protect that information? Should USAC offer a list of acceptable documentation, and what documentation should qualify?

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

47. *Independent Economic Household Forms.* The Commission next seeks comment on limiting ETCs' use of the Independent Economic Household (IEH) worksheet only when the consumer shares an address with other subscribers already enrolled in the Lifeline program. The 2016 Lifeline Order amended the language of § 54.410(g) of the Commission's rules to require a prospective subscriber to complete an IEH worksheet upon initial enrollment and during any recertification in which the subscriber changes households and as a result shared an address with another Lifeline subscriber. The

intended purpose of the IEH worksheet was for use when multiple independent households reside at the same residence. If an ETC collects an IEH worksheet from all subscribers regardless of whether another Lifeline subscriber resides at the same address, it is more difficult for USAC to monitor aggregate trends and particular ETCs' use of the IEH worksheet to detect improper activity. Prophylactic use of the household worksheet can therefore subvert the duplicate address protections and may result in increased waste, fraud, and abuse. The Commission seeks comment on amending the language of § 54.404(b)(3) to only permit the use of an IEH worksheet after the ETC has been notified by the NLAD, or state administrator in the case of NLAD opt-out states, that the prospective subscriber resides at the same address as another Lifeline subscriber.

48. Additionally, the Commission seeks comment on other methods to prevent abuse of the IEH worksheet process. Should the Commission direct USAC to develop a list of addresses known to contain multiple households? The addresses would primarily be assisted-living and retirement facilities, homeless shelters, public housing, and similar institutions. This list would enable USAC or the Commission to more effectively investigate addresses with high numbers of enrollments that do not appear to be physically or organizationally capable of housing many independent economic households. How should this list of known multiple-household addresses impact whether an ETC may collect an IEH worksheet from the prospective Lifeline consumer? Should the Commission require Lifeline applicants residing in multi-person residences (e.g., homeless shelters, nursing homes, assisted living facilities) to submit a certification from the facility manager confirming that the applicant resides at the address and is not part of the same economic household as any other resident already receiving Lifeline support? What administrative approaches would reduce burdens on subscribers without creating vulnerabilities in the program's integrity?

49. More broadly, the Commission seeks comment on other dispute resolutions or "overrides" to Lifeline enrollment requirements that should be restricted or eliminated. Are there other points of the enrollment process that rely on the consumer's certification or manual document review in a way that irreparably weakens the integrity of the enrollment process? The Commission

notes that, currently, a consumer may go through a dispute resolution process if that consumer is not found in a third-party identity verification database, has the same address as another Lifeline subscriber, has an address not recognized by the U.S. Postal Service, or cannot be found in an available eligibility program database. What additional steps should the Commission institute as part of this resolution process to reduce the opportunity for abuse? Should the Commission limit the ability of providers or subscribers to override those initial failures with additional documentation to prevent fraudulent or abusive practices?

50. *Other Measures.* Finally, the Commission seeks comment on whether there are other measures the Commission could take to further reduce waste, fraud, and abuse and improve transparency in the program. Should the Commission require USAC to conduct ongoing targeted risk-based reviews of eligibility documentation or dispute resolution documentation? Should the Commission codify a requirement that subscribers be compared to the Social Security Master Death Index during the enrollment and recertification processes? Should the Commission amend its rules to require that a provider's Lifeline reimbursement be based directly on the subscribers it has enrolled in the NLAD to prevent claims for "phantom" subscribers? Should the Commission prohibit Lifeline providers from distributing handsets in person to Lifeline consumers and, if so, should there be any exceptions? Are there additional measures the Commission should take to address waste, fraud, and abuse in the program? The Commission seeks comment on these proposals.

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

accessible to other Lifeline stakeholders to increase the effectiveness and transparency of the program?

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

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

54. The Commission proposes to adopt a self-enforcing budget mechanism to ensure that Lifeline disbursements are kept at a responsible level and to prevent undue burdens on the ratepayers who contribute to the program. The Commission believes a self-enforcing budget is appropriate to ensure the efficient use of limited funds. The Commission therefore proposes to replace the approach adopted in the *2016 Lifeline Order* and require an annual cap for Lifeline disbursements. The Commission intends for the program to automatically make adjustments in order to maintain the cap in the event the budget is exceeded.

55. The Commission seeks comment on the operation of such a self-enforcing budget. What is the appropriate period over which the Commission should measure and enforce the cap? Would a six-month period be appropriate? For example, under this proposal, for each upcoming six-month period, USAC would forecast expected Lifeline and Link Up disbursements, as well as administrative expenses attributable to

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

56. Alternatively, the Commission seeks comment on a different self-enforcing budget mechanism that would allow Lifeline spending in a given period to exceed the cap, but would result in Lifeline disbursements being reduced in the next period to accommodate the excessive spending. In this mechanism, disbursements would be reduced proportionally throughout the following period to ensure the disbursements and expenses do not exceed the budget less the amount by which the previous period’s disbursements and expenses exceeded the budget. The Commission seeks comment on this approach, noting that it has the benefit of not requiring a forecast or handling the inevitable under- or over-shooting of the actual demand. Under this proposal, when should the cap for the second period of time be set? At the beginning of the first period, or the second one? The Commission also seeks comment on whether it is acceptable to allow disbursements to exceed the budget in a given period, even where adjustments made in the following period mean the

program spends less than the total budgeted amount over the two periods. Would any of the proposed budget mechanisms result in a significant variance in the disbursement cap for consecutive funding years, and if so, what impact would that have on Lifeline consumers and providers?

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

58. The Commission also seeks comment on the appropriate initial amount for this cap. Would historical disbursement levels be instructive in determining the appropriate annual cap? In 2008, when the Commission first allowed a non-facilities-based ETC to receive Lifeline support, Lifeline expenditures totaled approximately \$820 million. By 2012, that amount had grown to over \$2.1 billion. The Commission’s initial steps to eliminate waste, fraud, and abuse within the program have reduced Lifeline disbursements to just over \$1.5 billion in 2015. If the Commission adopted a previous disbursement level as the annual disbursement cap, which disbursement level would be appropriate? The Commission seeks comment on these issues and other relevant matters, such as whether this cap should include USAC’s expenses for administering the Lifeline program. If so, how should the Commission incorporate these administrative expenses?

59. The Commission also seeks comment on whether and how the program’s cap should be adjusted in subsequent years. Should the cap remain the same, absent further action

by the Commission, or should the cap be automatically indexed to inflation? Should the cap be tied to other metrics, like the growth or decrease of poverty nationwide or participation in means-tested programs?

60. In this section, the Commission seeks comment on ways to focus Lifeline support toward encouraging broadband adoption among low-income consumers and minimizing wasteful spending in the program.

61. *Maximum Discount Level.* The Commission seeks comment on whether to apply a maximum discount level for Lifeline services above which the costs of the service must be borne by the qualifying household. Today, many service providers use the monthly Lifeline support amount to offer free-to-the-end-user Lifeline service, for which the Lifeline customer has no personal financial obligation. In 2016, certain wireless Lifeline service providers estimated that 11 million Lifeline participants (85 percent of all Lifeline program participants) subscribed to plans providing free-to-the-end-user Lifeline service. (See Letter from John Heitmann, Kelly Drye & Warren LLP, to Marlene Dortch, Secretary, FCC, WC Docket No. 11–42 et al., at 2 (Feb. 3, 2016)). In contrast, the Commission's other universal service support programs all require beneficiaries or support recipients to pay a portion of the costs of the supported service. For example, the E-rate program discount levels range from 20 percent to 90 percent of the costs of eligible goods and services, and E-rate beneficiaries are required to pay the remaining costs of the supported goods and services. (47 CFR 54.505(b) and 54.504(a)(1)(iii).) Should the approach that the Commission has taken in other universal service support programs be instructive in the Lifeline context? Do the users of the supported service value that service more if they contribute financially? Are such users more sensitive to the price and quality of the service? Is there any particular approach taken by another universal service support program that should inform the Commission's analysis for the Lifeline program? Under the Commission's rules, providers of video relay service (VRS) are compensated for the reasonable costs of providing VRS. (47 CFR 64.604(c)(5)(iii)(E)(1).) Do the policies underlying that approach apply in the Lifeline context? The concept of maximum discount levels and mandatory contributions is not limited to federal benefit programs administered by the Commission. For example, many participants in the U.S. Department of Housing and Urban Development's

(HUD's) Public Housing and Housing Choice Voucher programs and the U.S. Department of Health and Human Services' (DHHS') Low-Income Home Energy Assistance Program (LIHEAP) are required to pay a portion of the costs of their utilities or rent. The Commission seeks comment on the utility of comparing these programs to the Lifeline program, and if the Commission should consider the approach undertaken in other benefit programs with capped support amounts. For those other benefit programs, has the efficacy of mandatory end user payments been evaluated? Did the requirement of end user payments impact services provided to the consumer, program enrollment, or competition in the relevant market? Importantly, did such a requirement reduce the waste, fraud, and abuse in those programs that would have occurred absent the cap?

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

63. One proposal is to adopt a maximum discount level to improve the Lifeline program's efficiency and further reduce waste, fraud, and abuse in the program. Under the current structure, service providers may engage in fraud or abuse by using no-cost Lifeline offerings to increase their Lifeline customer numbers when the customers do not value or may not even realize they are purportedly receiving a Lifeline-supported service. The Commission seeks comment on whether Lifeline's

current benefit structure fails to ensure that the program supports services that consumers value. Would a maximum discount level curtail such practices and prevent universal service funds from being spent on services of little to no value for the Lifeline consumer?

64. What rule changes would be needed to implement a maximum discount level? If the Commission established a maximum discount level requirement for Lifeline, how should such a requirement operate? Are there specific pricing data or other data that would help the Commission determine an appropriate maximum discount level? Should the required end user payment be a flat amount or a percentage of the price of the service? Should the maximum discount level apply differently to enhanced Lifeline support than standard Lifeline support? Should the maximum level apply to Link Up support? How would a maximum discount level apply for prepaid services or consumer payment structures that otherwise do not require a monthly billing relationship between the provider and the consumer? Should Lifeline service providers have flexibility to determine the timing of the customer's payment (e.g., upfront payments, monthly, post-paid)? What steps could the Commission take to ensure that Lifeline service providers actually collect the required customer share? How should the Commission treat partial payments by Lifeline subscribers? Should there be any exceptions to the maximum discount level and, if so, what is the justification for these exceptions? How could the Commission implement a maximum discount level with minimal increases in Lifeline service provider costs and administrative burdens? Are there specific data that would help the Commission evaluate the potential impact of a maximum discount level on the Lifeline participation rate of qualifying low-income consumers? Are there other alternatives the Commission should consider to ensure that the Lifeline program supports services that Lifeline customers value?

65. In the *2016 Lifeline Order*, the Commission adopted minimum service standards to make sure that Lifeline customers receive quality Lifeline-supported services. A maximum discount level may also achieve this goal because consumers who pay a portion of the costs may be more sensitive to the price and quality of the service. Would a maximum discount level therefore make minimum service standards unnecessary? Do the minimum service standards serve additional purposes that would not be

served by a maximum discount level? If the Lifeline program rules included both a maximum discount level and minimum service standards, should the Commission revise the formulas used to determine the minimum service standards or adjust the mechanisms by which the minimum service standards are updated? Similarly, would adopting a maximum discount level eliminate the need for the usage requirement in § 54.407(c)(2) of the Lifeline program rules and the related non-usage de-enrollment rule in § 54.405(e)(3)?

66. *Targeting Non-Adopters.* The Lifeline program was originally created to promote low-income consumers' access to affordable services. Some parties have suggested that the Commission should target Lifeline support to low-income consumers who have not yet adopted broadband service. The Commission seeks comment on changes the Commission could make to target consumers who have not yet adopted broadband, and to what extent the Commission should weigh efforts that facilitate reaching those consumers specifically? The Commission seeks comment on whether and how the Commission should adopt a support framework that encourages adoption of high quality communications service by low-income consumers. What rule changes would be necessary to implement these changes?

67. The Commission seeks comment on the need for regulatory action to address the problems identified here, as well as the costs and benefits of our proposals along with data and other information that can be used to quantify these. Specifically, the Commission seeks comment on the need for and costs and benefits of regulatory action of the following proposals, relative to the status quo: Encouraging cooperative federalism between state data sources and the National Verifier; directing Lifeline support to facilities-based providers; alternatives to a facilities requirement; adopting a maximum discount level; changes to encourage Lifeline consumers to adopt broadband services; adopting a self-enforcing budget; enhancing targeted audits of participating providers; and acting on the other interpretive and policy changes for which the Commission seeks comment above. Commenters proposing alternatives to our proposals should discuss the need for and costs and benefits of their proposal, including relative costs and benefits of their proposal as compared to those set forth here, and should provide supporting evidence. The Commission also seeks comment on options to achieve the most effective use of resources to achieve the

purposes of the Lifeline program, and specifically to lower the cost of adoption to lower-income subscribers. The Commission seeks data and information commenters believe is necessary for these analyses and comment on specific methodologies commenters believe are best suited for this purpose. The Commission also seeks comment generally on how to evaluate the relative importance of public interest outcomes that are not readily susceptible to quantification, such as "equity, human dignity, fairness, and distributive impacts." (See Executive Order 13563, 76 FR 3821, 3821–23 (Jan. 18, 2011)).

### III. Notice of Inquiry

68. The Lifeline program is an important means of achieving universal service. In the *2016 Lifeline Order* the Commission took the step of allowing Lifeline to support broadband to help low-income Americans obtain access to quality, affordable service. However, the Commission remains concerned about the well-documented digital divide for low-income Americans, and in particular low-income Americans residing in rural Tribal, rural, and underserved areas.

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

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

71. Ensuring that service providers have appropriate incentives to deploy and provide services to these populations can further the

Commission's efforts to bring digital opportunity to low-income Americans who have not yet adopted broadband and low-income Americans residing in rural or rural Tribal areas who typically experience difficulty obtaining access to affordable, quality broadband. The Commission seeks comment on actions the Commission could take to create better economic incentives for providers participating in the Lifeline program. The Commission also seeks comment on how those incentives would impact the program's effectiveness at reaching certain subsets of the low-income population.

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

73. The Commission seeks comment on whether and how the Commission should adopt rule changes to target Lifeline support to bring digital opportunity to areas that offer less incentive for deployment of high-speed broadband service, such as rural areas and rural Tribal areas. Rural and rural Tribal areas have higher percentages of broadband non-adopters compared to other areas. It is also well documented that lower-income households have lower broadband adoption rates and lower in-home broadband connectivity rates compared to higher-income households. Some have suggested that the Commission should therefore target Lifeline support primarily to nonadopters to improve the effectiveness and efficiency of the Lifeline program. In light of these analyses, the Commission seeks comment on whether the Lifeline program could better reach nonadopters of broadband by focusing Lifeline support in areas where providers need additional incentive to offer high-speed broadband service.

74. *Rural and Rural Tribal Areas.* The Commission specifically seeks comment on whether and how the Commission should adjust the Lifeline support amount to encourage affordable

broadband access for low-income consumers in rural areas. Low-income consumers in rural or rural Tribal areas may have difficulty obtaining affordable, quality broadband service because service providers have less incentive to incur the costs to deploy advanced facilities or to provide a wide range of services at competitive prices in these areas. In rural areas, higher deployment costs can also lead to fewer service options and higher prices that disproportionately impact low-income consumers. The Commission also focuses on rural Tribal areas in which affected stakeholders have suggested that the current Lifeline Tribal enhanced subsidy amount is insufficient to incentivize broadband deployment in rural Tribal areas. Although broadband deployment in both rural and rural Tribal areas is lagging compared to other areas, the current Lifeline program rules only provide targeted enhanced monthly Lifeline support (up to an additional \$25 per month) for Lifeline customers residing on Tribal lands. (47 CFR 54.403(a)(3).)

75. The Commission is also mindful about the need to establish the correct support amounts. If the Commission establishes enhanced Lifeline support for consumers living in rural and rural Tribal areas, how could the Commission provide targeted support while also promoting the interests of fiscal responsibility and minimizing the burden on the ratepayers who support the Fund? Are there specific pricing data or other data that the Commission should consider in determining the appropriate enhanced monthly support amounts for Lifeline subscribers in rural and rural Tribal areas? Should a single enhanced monthly support amount apply in all rural areas or should Lifeline consumers in rural areas on Tribal lands or another subset of rural residents receive a higher monthly support amount? How should the enhanced monthly support amounts compare to the monthly support amount for Lifeline subscribers who do not live in rural areas? What data or metrics should the Commission use to identify the rural areas that qualify for enhanced support? What geographic level (*e.g.*, county, Census tracts, Census block groups) should the Commission use to identify these rural areas? Is the E-rate program's definition of "rural" the best option for identifying rural areas in the Lifeline program, or should the Commission consider some other definition to identify rural areas? (47 CFR 54.505(b)(3)(i)-(ii))

76. *Underserved Areas.* The Commission next seeks comment on whether and how the Commission

should also target Lifeline support to bring digital opportunity to low-income areas where service providers have less incentive to invest in facilities or offer robust broadband offerings compared to other areas. Recent reports argue that certain low-income areas experience less facilities deployment when compared to other areas, and that low-income consumers in those areas may experience increased difficulty obtaining affordable, robust communications services.

77. The Commission seeks comment on how the Commission can address this issue with the Lifeline program. If the Commission permits an enhanced subsidy amount for households in these areas, how should the Commission define underserved areas for the purpose of this enhanced support, and how should the Commission identify these underserved areas? What data could inform the Commission as to the prevalence of service providers electing not to invest as much in facilities or robust broadband offerings compared to other areas, and the areas where this has occurred? What types of broadband deployment, service offerings, adoption data or other measures could the Commission use to determine whether areas are underserved because service providers have less incentive to invest in facilities and broadband services in those areas compared to other areas? Are there certain income levels or other markers in a geographic area that could help the Commission reliably identify whether an area is likely to be underserved? For example, could the Commission address underserved areas by offering enhanced Lifeline support in areas where the median household income and/or broadband investment rates are significantly lower than the national average?

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

79. The Commission next seeks comment on whether the Commission

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

80. What rule changes would be necessary to implement a benefit limit or time limit for consumer participation in the Lifeline program? If the Commission established a benefit limit or time limit for Lifeline, how should such a requirement operate and how should it be enforced? Are there specific data that would help the Commission determine an appropriate monetary or temporal limit in support? Currently in the Lifeline program, households remain enrolled for 1.75 years on average. How should this information affect our decision to impose this restriction? Should the limit be applied to households or individuals, and how would the Commission or USAC track benefits received if consumers transfer to different providers? Should there be any exceptions to the benefit limit or time limit and, if so, what is the justification for these exceptions? How could the Commission implement a benefit limit or time limit with minimal increases in the costs or administrative burdens for Lifeline service providers? Are there specific data that would help the Commission evaluate the potential impact of a benefit or time limit on the Lifeline participation rate of qualifying low-income consumers? Are there other alternatives to a benefit limit that the Commission should consider to better focus Lifeline funds on those households who need it most?

81. This Notice of Inquiry seeks comments on potential ways to sharpen the focus of the Lifeline program to further promote digital opportunity for all Americans. The Commission now seeks comment on the program's goals and metrics that would allow us to better determine if Lifeline support is truly achieving the purpose of closing the digital divide. In 2015, the GAO reported that "outcome-based performance goals and measures will help illustrate to what extent, if any, the Lifeline program is fulfilling the guiding principles set forth by Congress." (GAO,

Telecommunications: FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program, GAO-15-335, at 13 (2015), <http://www.gao.gov/assets/670/669209.pdf>.) In 2016, the Commission revised its Lifeline program goals by including the affordability of voice and broadband service, as measured as the percentage of disposable household income spent on those services, to the goals established in the Commission's 2012 *Lifeline Order*, 77 FR 12951, March 2, 2012. The Commission agrees outcome-based performance goals and measures have an important role ensuring Lifeline support is achieving Congress's universal service goals. The Commission seeks comment on how the Commission should determine and define the Lifeline program's goals and metrics and how those goals should inform the Commission's efforts to sharpen the focus of the Lifeline program, as discussed in this Notice of Inquiry.

#### IV. Procedural Matters

##### A. Paperwork Reduction Act

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

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

summaries thereof) will be published in the **Federal Register**.

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

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

86. In this NPRM, the Commission seeks comment on a number of significant reforms that will effectively and responsibly leverage the Lifeline program to bridge the digital divide for low-income consumers. The Commission seeks comment on respecting the states' primary role in eligible telecommunications carrier designation by eliminating Lifeline Broadband Provider designations. The Commission also seeks comment on proposals to enable consumer choice and proposed policies to focus Lifeline support to encourage investment in broadband-capable networks. Finally, the Commission proposes several

program accountability improvements to reduce waste, fraud, and abuse and improve transparency in the program.

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

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

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

Commission estimates that most governmental jurisdictions are small.

90. In this NPRM, the Commission seeks public input on new and additional solutions for the Lifeline program, including reforms that would bring the program closer to its core purpose and promote the availability of modern services for low-income families. The issues the Commission seeks comment on in this NPRM are directed at enabling us to meet our goals and objectives for the Lifeline program, and reducing waste, fraud, and abuse. Specifically, the Commission seeks comment on a number of potential changes that would increase the economic burdens on small entities, and also seek comment on proposals that would decrease those burdens. The Commission has identified the applicable potential changes below that impact small entities.

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

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

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

from coverage of the rule, or any part thereof, for such small entities.”

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

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

96. *Focusing Lifeline Support to Encourage Investment in Broadband-Capable Networks.* The Commission seeks comment on several potential policies that would focus Lifeline support to encourage investment in broadband-capable networks. The Commission also seeks comment on TracFone's suggested alternatives to the proposed facilities requirement. The Commission's proposed policies would change the services eligible for Lifeline support and would also change the type of providers that can receive Lifeline support. In particular, these policies would eliminate Lifeline support for ETCs that do not offer facilities-based broadband service over their own

networks, or would continue the phase down of Lifeline support for voice-only service in urban areas. However, these policies would facilitate the Lifeline program goals of providing low-income consumers access to quality, affordable broadband services, in particular by encouraging service providers to invest in broadband networks in unserved and underserved areas. The Commission also notes that these policies may benefit small entities that operate facilities-based broadband-capable networks, whose services would be more affordable for low-income consumers through the application of the Lifeline discount. The benefits of these policies to Lifeline customers outweighs any impact of these changes on small entities. TracFone's suggested alternatives to the proposed facilities requirement would impact Lifeline service provider in-person hand-set distribution, operations practices concerning Lifeline solicitations and eligibility verifications, and application processes. These alternatives would increase service providers' administrative burdens. However, they would also minimize waste, fraud, and abuse in the program, which in turn benefits consumers and service providers that pay into the Universal Service Fund. Therefore, the benefits of these changes would outweigh and impact of these changes on small entities.

97. *Focusing Lifeline Support on Modern Communications Services.* The Commission seeks comment on adopting a maximum discount level for Lifeline subscribers, and potential changes to encourage Lifeline consumers to adopt broadband services. These changes could increase costs associated with ETCs' administrative processes, including billing. However, the Commission expects these burdens to be manageable for ETCs. Further, these proposed changes would help minimize waste, fraud, and abuse in the Lifeline program, and would also increase the effectiveness of Lifeline support by targeting support to Lifeline consumers who have not yet adopted broadband services. Therefore, the benefits of these proposed changes outweigh the impact of the proposed changes on small entities.

98. *Reforms to Increase Efficient Administration of the Lifeline Program.* The Commission seeks comment on a number of reforms to increase the efficient administration of the program, including requiring ETCs to supply documentation to USAC for National Lifeline Accountability Database (NLAD) dispute resolutions, ETCs to collect documentation for subscribers

seeking to self-certify to continued eligibility, and limiting the use of independent economic household forms to only NLAD dispute resolutions. These reforms could increase costs associated with ETCs' administrative processes. However, the Commission expects these burdens to be manageable for ETCs. In addition, in states where the National Verifier will be implemented, these burdens would be temporary because the National Verifier would take over eligibility verification and recertification in those states. Further, these proposed changes would help minimize waste, fraud, and abuse in the Lifeline program, which in turn would benefit consumers and providers that pay into the Universal Service Fund. Therefore, the benefits of these proposed changes outweigh the impact of these proposed changes on small entities.

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

100. The proceeding for this NPRM and NOI initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons

attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### D. Comment Filing Procedures

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

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

#### *Availability of Documents.*

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

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

#### V. Ordering Clauses

121. *Accordingly, it is ordered*, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201-205, 254, and 403, and section 1.2 of the Commission's rules, 47 CFR 1.2, this Notice of Proposed Rulemaking and Notice of Inquiry is adopted.

#### List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 54 as follows:

## PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

### § 54.201 [Amended]

■ 2. Amend § 54.201 by removing paragraph (j).

### § 54.202 [Amended]

■ 3. Amend § 54.202 by removing paragraphs (d) and (e).

### § 54.205 [Amended]

■ 4. Amend § 54.205 by removing paragraph (c).

■ 5. Amend § 54.404 by revising paragraph (b)(3) to read as follows:

### § 54.404 The National Lifeline Accountability Database.

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

### § 54.408 [Amended]

■ 6. Amend § 54.408 by removing paragraph (f).

■ 7. Amend § 54.410 by revising paragraphs (f)(2)(iii) and (f)(3)(iii) and removing and reserving paragraph (g) to read as follows:

### § 54.410 Subscriber eligibility determination and certification.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more state databases containing information regarding enrollment in qualifying assistance programs, then the eligible telecommunications carrier may

obtain a signed certification from the subscriber on a form that meets the certification requirements in paragraph (d) of this section. The subscriber must present documentation meeting the requirements in paragraph (b)(1)(i)(B) or (c)(1)(i)(B) of this section to establish continued eligibility. If a Federal eligibility recertification form is available, entities enrolling subscribers must use such form to re-certify a qualifying low-income consumer.

\* \* \* \* \*

(3) \* \* \*

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

\* \* \* \* \*

### § 54.418 [Removed and Reserved]

■ 8. Remove and reserve § 54.418.

[FR Doc. 2018-00153 Filed 1-12-18; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[MB Docket Nos. 17-317, 17-105; FCC 17-168]

### Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) addresses ways to modernize certain notice provisions in the Commission's rules governing multichannel video and cable television service.

**DATES:** Comments are due on or before February 15, 2018; reply comments are due on or before March 2, 2018.

**ADDRESSES:** You may submit comments, identified by MB Docket Nos. 17-317,

17-105, by any of the following methods:

- *Federal Communications*

*Commission's website:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

*People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Maria Mullarkey of the Policy Division, Media Bureau at [Maria.Mullarkey@fcc.gov](mailto:Maria.Mullarkey@fcc.gov), or (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 17-168, adopted and released on December 14, 2017. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-168A1.docx](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-168A1.docx). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street SW, CY-A257, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Synopsis

1. In this Notice of Proposed Rulemaking (NPRM), we address ways to modernize certain notice provisions in part 76 of the Federal Communications Commission's rules governing multichannel video and cable television service. First, we seek comment on proposals to modernize the rules in subpart T of part 76 (subpart T),<sup>1</sup> which sets forth notice requirements applicable to cable

<sup>1</sup> 47 CFR 76.1601 through 76.1630.