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April 21, 2021

**By ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

Re: **Notice of Oral *Ex Parte* Presentation, WC Docket Nos. 11-42, 20-445**

Dear Ms. Dortch:

On Monday, April 19, 2021, the undersigned counsel on behalf of the National Lifeline Association (NaLA) met (via phone) with Jodie Griffin, Allison Jones, John Lockwood, Nicholas Page, and Ryan Palmer of the Wireline Competition Bureau (WCB) to discuss the NaLA Petition for Rulemaking filed later that day, as well as the Lifeline non-usage de-enrollment waiver, post-waiver de-enrollments and an alternative verification process (AVP) proposed by several NaLA members for the Emergency Broadband Benefit (EBB) Program.

**NaLA Lifeline Petition for Rulemaking**

In the meeting, we first previewed the NaLA Petition for Rulemaking filed later that day asking the Commission to substantially increase the Lifeline reimbursement and implement certain reforms to ensure the Lifeline program evolves to better facilitate low-income consumer access to affordable voice and broadband services, and to be the best possible “landing place” for low-income consumers after the EBB runs out.<sup>1</sup> We asked that the Commission issue a public notice seeking comment on the Petition for Rulemaking with reasonable comment deadlines taking into account the need to implement the EBB while reforming the Lifeline program.

**Lifeline Non-Usage Waiver Order and Cure Notice**

Next we discussed recent USAC guidance regarding interpretation of the non-usage portion of the Commission’s most recent Lifeline COVID-19 Waiver Order.<sup>2</sup> All of the previous waiver orders had

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<sup>1</sup> See National Lifeline Association Petition for Rulemaking, RM-\_\_\_\_\_ (Apr. 19, 2021) (Petition for Rulemaking).

<sup>2</sup> See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, et al., Order, DA 21-229 (WCB 2021) (Seventh COVID-19 Waiver Order).

proposed to end the waivers as of the end of a month (e.g., May 29, 2020; June 30, 2020; Feb. 28, 2021). The Seventh COVID-19 Waiver Order, on the contrary, says “we decline to further extend the existing waiver of the Commission’s Lifeline usage requirement beyond May 1, 2021” and “we extend the waiver and require ETCs to send cure notices to subscribers who, as of May 1, 2021, have not used their service in the previous 30-days.”<sup>3</sup> That means the waiver continues through May 1, 2021 and subscribers get through that day to use the service before Lifeline providers send a notice saying the subscriber has not used the service and will be de-enrolled in 15 days. Lifeline providers cannot know who has not used as of May 1, 2021 until 12:00am on May 2, 2021.

The California Public Utility Commission (CPUC) tried to follow the path of the previous FCC orders and ended its suspension of the non-usage rule a day earlier on April 30, 2021.<sup>4</sup> It therefore correctly requires ETCs to send 15-day cure notices the following day (May 1) and de-enroll those subscribers that do not cure or respond on May 16, 2021.<sup>5</sup> Since California’s suspension ends on April 30 and the FCC’s waiver ends on May 1, they cannot both start the cure period on the same day (May 1) and require de-enrollments on the same day (May 16). The FCC’s order gives an extra day (May 1). Therefore, per the Seventh COVID-19 Waiver Order, the 15-day cure period starts on May 2 and de-enrollments should occur on May 17.

However, in a USAC Lifeline email sent yesterday, USAC states,

In February, the FCC released a waiver extending most of the previous waivers related to the COVID-19 pandemic by an additional four months. However, this waiver does not extend the waiver for the FCC’s Lifeline non-usage rule past May 1. As a result, subscribers who, as of May 1, 2021, have not used their service in the previous 30 days will enter their 15-day cure period on May 1. Service providers must send notice to provide impacted subscribers the opportunity to cure their non-usage. The cure period will end on May 15, and subscribers that do not cure must be de-enrolled on May 16. No de-enrollments for non-usage may occur prior to May 16.

The Commission has been clear that USAC guidance is non-binding and Lifeline providers should follow the Commission’s rules and orders.<sup>6</sup> Pursuant to the Seventh COVID-19 Waiver Order, the history of the waiver orders and the comparison to the CPUC’s Email Ruling, USAC’s guidance to send cure notices on

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<sup>3</sup> *Id.*, ¶¶ 1, 10.

<sup>4</sup> See Email Ruling From ALJ Stephanie Wang Extending the Suspension of Certain Processes and Rules, R.20-02-008 (Feb. 25, 2021) (California Email Ruling).

<sup>5</sup> See *id.*

<sup>6</sup> See *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket No. 17-287 et al., FCC 19-111, ¶ 120 (Nov. 14, 2019) (“Commission precedent is clear that carriers must rely on the Commission’s rules and orders even in the face of conflicting informal advice or opinion from USAC or Commission staff.”).

May 1, 2021 must be incorrect.

USAC's guidance is also incorrect even if the Bureau did intend for ETCs to send the non-usage cure notices on May 1, 2021 because the 15-day cure period does not then begin until May 2 and ends 15 days later on May 16, with de-enrollments on May 17. In the 2016 Lifeline Modernization Order, the Commission states, "Lifeline service providers must notify subscribers of possible termination on the 30<sup>th</sup> day and terminate service if, during the **subsequent** 15 days, the subscriber has not used the service."<sup>7</sup> Therefore, the cure period does not start until the day after the cure notice is sent. USAC guidance cannot contradict this requirement in the Commission's 2016 Lifeline Modernization Order and neither can the Bureau in the waiver order.

### **Lifeline Non-Usage Waiver Order De-Enrollments**

In addition, we requested that the Bureau extend the de-enrollment waiver for a subset of Lifeline subscribers that would otherwise be de-enrolled in mid-May so that they can more easily opt in to the EBB Program and also use their Lifeline service without having to re-enroll. Rather than de-enrolling all of the Lifeline subscribers that have not used their service within the last 30 days as of May 1, 2021, we requested that the Bureau extend the de-enrollment waiver by 90 days to August 1, 2021 for Lifeline subscribers who had entered into non-usage within the past 90 days. A study submitted by TracFone and validated by a similar study performed by a NaLA member, indicates that there is a significant chance that Lifeline subscribers will begin to use or re-enroll in Lifeline service.<sup>8</sup> Rather than force these eligible Lifeline subscribers to re-enroll in Lifeline or to apply separately for the EBB program, we encouraged the Bureau to consider allowing these subscribers to remain enrolled in Lifeline so that Lifeline and EBB providers can attempt to contact the subscribers to use their Lifeline service and to more easily opt in to a more robust EBB service offering. During the time between May 2 and August 1, 2021, the Lifeline providers would not be permitted to claim Lifeline reimbursements unless the subscriber used the Lifeline service. The new waiver would extend only the de-enrollment requirement in Section 54.405(e)(3) of the Commission's rules. In that way, the Lifeline program would not continue to provide reimbursements for any non-using subscribers, but subscribers would be given the opportunity to opt-in to the EBB and re-establish usage of their Lifeline service without having to complete the more onerous EBB enrollment process or re-enroll in Lifeline.

### **EBB Alternative Verification Process**

Finally, we discussed a limited supplemental EBB AVP that some NaLA members have included in

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<sup>7</sup> *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶ 415 (2016) (2016 Lifeline Modernization Order) (emphasis added).

<sup>8</sup> See TracFone Wireless, Inc. *Ex Parte* Submission, WC Docket Nos. 11-42, 20-445, 2 (Feb. 4, 2021) (TracFone indicated that "52% of TracFone's SafeLink subscribers who stopped using Lifeline services and had no usage in April 2020 resumed using the[] service within six months (October 2020).").

their EBB applications for the National Lifeline Accountability Database (NLAD) opt-out states – California, Texas and Oregon. All EBB participating providers, including eligible telecommunications carriers (ETCs) that can and will primarily rely on the National Verifier for EBB eligibility determinations, are permitted to submit and have approved an AVP. Pursuant to the Consolidated Appropriations Act (CAA), all participating providers can use the National Verifier, rely upon an AVP approved by the Commission, **or** rely on a school to verify the eligibility of a household.<sup>9</sup>

Most importantly, this AVP is pro-consumer without introducing any additional risk of waste, fraud and abuse. For subscribers in California, Texas and/or Oregon, the ETCs propose to supplement the National Verifier by relying on the eligibility determinations made by the California LifeLine third party administrator (TPA), the Texas Low Income Discount Administrator (LIDA) or the Oregon Telephone Assistance Program (OTAP). The ETC will use eligibility approvals received from the state administrators affirming a subscriber's eligibility for Lifeline. These three states operate under FCC NLAD-opt-out approval and have an FCC/USAC approved National Verifier process that relies on the identity and eligibility determination made by the state administrators.<sup>10</sup> The state administrators verify eligibility for federal Lifeline today and the ETCs would merely rely on those determinations for the EBB.

ETCs will confirm receipt of an approval from the state administrator prior to enrolling a consumer in the EBB and **will send the daily (or weekly for Oregon) file indicating the approval to the NLAD for verification at enrollment.** (As an alternative, USAC can arrange to have the state administrators send the files directly to USAC, which can be used to verify eligibility determinations by the state administrators that can also be used to verify applicants' eligibility for EBB).

Because California, Texas and Oregon are NLAD opt-out states, an AVP is necessary to allow ETCs to enroll customers in the EBB Program based on the state administrators' eligibility approvals, which are not currently transmitted to USAC in real-time, but which can be verified by ETCs or the state administrators sending the daily (or weekly for Oregon) files directly to USAC. It would be unfair to EBB-eligible consumers to make them wait as long as 30 days for the state administrator to send a report to USAC confirming federal Lifeline – and thus EBB – eligibility. It would also be inefficient and unfair to applicants for Lifeline and EBB support to force them to undergo a Lifeline eligibility determination by the state

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<sup>9</sup> See Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020) (enacted), § 904(b)(2), available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

<sup>10</sup> See e.g., *Wireline Competition Bureau Announces the Launch of the National Lifeline Eligibility Verifier in California*, WC Docket No. 11-42, Public Notice, DA 20-1372, 1 (Nov. 18, 2020) (Given the unique circumstances in California, where the state agency conducts Lifeline eligibility de-terminations directly, the Bureau and USAC have collaborated with the state to enable it to continue to conduct eligibility verification for the federal Lifeline program in partnership with National Verifier.); *Wireline Competition Bureau Announces the Launch of the National Lifeline Eligibility Verifier in Oregon and Texas*, WC Docket No. 11-42, Public Notice, DA 20-1237 (Oct. 19, 2020).

administrator and then a redundant EBB eligibility determination by the National Verifier when the state administrator determination automatically qualifies them for the EBB.<sup>11</sup>

This AVP is sufficient to guard against waste, fraud and abuse<sup>12</sup> because the Commission already relies on it for Lifeline eligibility determinations, based on the state administrators' commitment to provide eligibility determination functionality at least as robust as that provided by NLAD and based on the National Verifier's reliance on the state administrators' eligibility and identity verification processes. Because these states' Lifeline eligibility verification processes are sufficient to guard against waste, fraud and abuse in the Lifeline program, they are equally sufficient to guard against waste, fraud and abuse in the EBB Program.

As an alternative, in lieu of this AVP the Commission could clarify that EBB participating providers' newly enrolled Lifeline subscribers can opt-in to the EBB service in the NLAD opt-out states after receipt of a verification of Lifeline eligibility from the state administrator.<sup>13</sup> The ETC or the state administrator could still transmit the daily or weekly file to USAC to demonstrate Lifeline enrollment.<sup>14</sup>

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically.<sup>15</sup>

Respectfully submitted,



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<sup>11</sup> See CAA, § 904(a)(6)(A).

<sup>12</sup> See *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21-29, ¶ 66 (rel. Feb. 26, 2021) (EBBP Order).

<sup>13</sup> See *id.*, ¶ 52.

<sup>14</sup> See *id.*, n. 148.

<sup>15</sup> 47 C.F.R. § 1.1206(b).

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