

**BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS, MEDIA, AND BROADBAND
SENATE COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION
UNITED STATES CONGRESS**

In the Matter of)
)
Universal Service Fund Working Group Request)
for Comment)

**NATIONAL LIFELINE ASSOCIATION COMMENTS IN RESPONSE TO UNIVERSAL
SERVICE FUND WORKING GROUP REQUEST FOR COMMENT**

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EXECUTIVE SUMMARY

Congress and the Federal Communications Commission must act swiftly and purposefully to ensure that low-income households continue to have sustainably affordable access to communications services through a fully funded low-income program that is structured to effectively close the affordability component of the digital divide while preserving program integrity. To this end, the National Lifeline Association (NaLA), on behalf of its service provider, distributor and vendor community members, respectfully makes the following recommendations and observations:

- **Congress and the FCC should *either* consolidate the Lifeline program with the Affordable Connectivity Program (ACP) *or* reform both so that they better serve the goal of making essential communications services affordable each and every month**
- **Any future low-income program should be designed to ensure that low-income households have *sustainably affordable access to essential communications services* by carrying forward key program design elements from the ACP**
 - **Reasonable Monthly Service Benefit** – ACP offers a \$30 per month (which can be combined with Lifeline’s \$9.25 per month), allowing broadband service providers to offer and consumers to afford more robust speed or data allowances
 - **Device Benefit** – ACP offers a connected device benefit of up to \$100
 - **No Minimum Service Standards** – Setting a general performance standard (broadband must support telework, remote learning and telehealth) rather than a minimum amount of data promotes competitive options for consumers
 - **National Verifier/NLAD** – Use of the National Verifier/NLAD is an effective way to ensure that only eligible households enroll
 - **More Competition** – Allowing hundreds of fixed and mobile broadband providers – both facilities-based and reseller – to compete ensures that consumers benefit from more options
 - **Technology Neutral** – Consumers should be able to choose which fixed and mobile broadband service offerings work best for their households

- **Benefit Transfer Limits** – Limiting benefit transfers preserves program integrity, protects consumers and allows service providers to invest in better products
- **Safe Harbor** – Allowing service providers to rely on the National Verifier’s eligibility determinations encourages market entry thereby promoting competitive choices for consumers
- **The effectiveness of a low-income support program should be measured by whether low-income households have *sustainably affordable access to essential communications services***
 - Adoption is a secondary benefit that can be addressed only in part by a low-income affordable connectivity benefit program
- **Appropriated funding will be needed at least until USF reform can be accomplished**
 - USF reform likely will not be completed before mid-2024 when ACP funding is projected to be exhausted
 - Congress needs to appropriate additional ACP funding to ensure that the over 20 million households and 60 million individuals who rely on ACP support do not lose access to affordable broadband service
- **Consolidating the ACP and Lifeline program would require reconciling policy differences – to preserve program integrity, the following actions should be considered:**
 - **Preserving the current level of combined Lifeline and ACP benefits so that subscribers eligible for ACP and Lifeline do not have their available discounts reduced below \$39.25**
 - **Eliminating the facilities requirement for Lifeline** (currently subject to conditional, long-term forbearance)
 - **Eliminating Lifeline’s mobile broadband minimum service standards** (currently subject to waiver) which have resulted in irreparable harm to that program and to the consumers not served by it as a result
 - **Conforming eligibility criteria** by considering whether to remove National School Lunch as an eligibility trigger and by setting a uniform income eligibility standard
 - **Limiting benefit transfers** to once per 90 days to promote program integrity, protect consumers and allow service providers to invest in product improvements

- **Eliminating exceptions to the use the National Lifeline Accountability Database (NLAD)** to improve program integrity
- **Extending/clarifying the enforcement safe harbor** to ensure that service providers that rely in good faith on the National Verifier’s eligibility determinations are subject to neither penalties nor claw-back of benefits that cannot be un-provided
- **Supporting voice service** as both a standalone and bundled option because it is an essential and important service to low-income consumers
- **Requiring participating providers to be designated in a reasonable and predictable manner** as an eligible telecommunications carrier (or similar designation) so long as the requirement does not impose unnecessary burdens or barriers to market entry or competition
- **Setting per-household benefit limits that reflects the size of a household** so that all low-income individuals have a fair shot at having sustainably affordable access
- **If ACP and Lifeline remain separate programs, they should be reformed to be more complementary and consistent**
- **The FCC and USAC must be more transparent and accountable in the administration of any low-income affordability program**
 - USAC’s systems are not engineered to a commercially reliable level – database outages significantly impact the ability to enroll subscribers and cost service providers millions of dollars in expenses and lost revenues
 - USAC routinely fails to provide timely, clear and consistent communications about service outages, leaving consumers in limbo and fermenting distrust of service providers and the government

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**NATIONAL LIFELINE ASSOCIATION COMMENTS
IN RESPONSE TO UNIVERSAL SERVICE FUND WORKING GROUP
REQUEST FOR COMMENT**

The National Lifeline Association (NaLA), by and through the undersigned counsel, hereby submits its comments in response to the Universal Service Fund (USF) Working Group's Request for Comment (RFC) about the future of the USF.¹ NaLA and its members are committed to providing low-income American households with initial and sustainable access to robust and affordable voice and broadband services. NaLA's members have extensive experience offering affordable communications services to low-income households through their participation in the Lifeline program and the Affordable Connectivity Program (ACP). NaLA applauds all stakeholders for their respective efforts in ensuring that all Americans have sustainably affordable access to their choice of essential communications services each and every month.

The success of the Lifeline program and the ACP, as evidenced by the millions of households that rely on voice and broadband services supported by these low-income programs every month, demonstrates the urgent need for continued ACP funding and Lifeline program reform. The ACP is a bi-partisan success story, but it will exhaust its funding in the first half of next year before Congress and the Federal Communications Commission (FCC or Commission) can reform the USF.

NaLA respectfully proposes that *either* Congress and the FCC consolidate the Lifeline program with the ACP *or* reform both so that they better serve the goal of making essential communications services sustainably affordable each and every month. Furthermore, the

¹ See Universal Service Fund (USF) Working Group Request for Comment, at <https://www.lujan.senate.gov/usf/>.

effectiveness of the Lifeline program and the ACP, or any consolidated low-income program, would be significantly improved by increasing the transparency and accountability in program administration.

INTRODUCTION

NaLA supports a community of stakeholders, Lifeline and ACP service providers, distributors, vendors, and enrollment representatives – all of which have the common goal of facilitating low-income households' sustainable access to affordable communications services. NaLA coordinates with consumer advocacy groups and community-based organizations that work to ensure that low-income individuals receive essential services, including communications services. NaLA also works with network owners, aggregators and enablers, as well as manufacturers and distributors of communications equipment, such as smartphones and tablets, which can be used with Lifeline and ACP services. In addition, NaLA interfaces with software and technology companies that develop computer applications and interfaces to facilitate more effective and efficient Lifeline and ACP enrollment processes, high-quality responsive customer service, and compliance with applicable FCC rules governing the Lifeline program and the ACP. By maintaining strong relationships with key stakeholders in the Lifeline and ACP markets, encouraging those participants to work together, and advocating for Lifeline and ACP supporters and recipients, NaLA is the only ecosystem-based organization exclusively focused on ensuring that low-income Americans have sustainably affordable access to essential communications services.

Most of NaLA's Lifeline and ACP service provider members operate as resellers by using the networks of their underlying wireless service providers to offer voice, text and

broadband services to their own subscribers.² Such wireless resellers are also known as mobile virtual network operators (MVNOs). Wireless carriers, including MVNOs, play a significant role in the Lifeline program and the ACP. Lifeline subscribers overwhelmingly prefer wireless service over fixed service (94 percent versus six percent as of August 2023)³ and eight of the top ten Lifeline service providers are MVNOs.⁴ More than half of ACP subscribers prefer mobile broadband over fixed broadband (53.5 percent versus 45.6 percent)⁵ and three of the top ten ACP providers are MVNOs.⁶ *Through May 2023, at least 35.5 percent of total EBB and ACP funds have gone to support MVNO subscribers.*⁷

MVNOs offer meaningful competition to the mobile network operators (MNOs) and fixed providers (wired and wireless), often offering substantially more data to ACP subscribers than facilities-based MNOs offer. For example, one major MNO offers a \$30 plan with unlimited voice, text and 5 GB data.⁸ In contrast, one MVNO offers a \$30 plan with 1,000

² NaLA's distribution channel members distribute both fixed and mobile service offers, including those of non-wireless network operators.

³ See USAC, Lifeline's Data and Statistics, available at <https://www.usac.org/lifeline/resources/program-data> (last visited August 14, 2023).

⁴ CGM, LLC analysis of data from the USAC Lifeline Funding Disbursement Search, available at <https://apps.usac.org/li/tools/disbursements/default.aspx>.

⁵ See USAC, Additional ACP Data, available at <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/additional-acp-data/> (last visited August 8, 2023); see also *Consumer Flyer About the Affordable Connectivity Program Surpassing 20 Million Participants*, Fact Sheet, August 14, 2023 (FCC ACP Fact Sheet) (46 percent of ACP enrolled households use ACP for fixed connections in the home); see also Total Enrolled ACP Subscribers by Service Type, available at <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/additional-acp-data/> (last visited August 13, 2023). The remainder of ACP subscribers (0.9 percent) prefer fixed wireless or satellite broadband service.

⁶ CGM, LLC analysis of data available at <https://usaspending.gov>.

⁷ *Id.*

⁸ See <https://www.att.com/affordable-connectivity-program/>.

minutes, unlimited text and 10 GB data⁹ and another MVNO offers a \$30 plan with unlimited voice, text and 15 GB data.¹⁰ Other MVNOs offer plans with even more data and most MVNO plans include a free smartphone. In short, MVNOs provide consumers with unique value propositions and are essential to the success of any low-income affordable access program.

I. ACP Funding Will Exhaust Before Congress and the FCC Can Reform the USF

NaLA acknowledges the significant role the USF plays in ensuring that low-income households have access to communications services at affordable rates and agrees with Senator Luján that the universal service “programs and funding mechanism must be updated and improved to meet the needs of tomorrow.”¹¹ Although it is important to maintain the USF and ensure its continued viability in the future, it is essential that low-income households’ access to universal service is not compromised while USF reforms are being considered. Over the past few years, the tremendous success of the ACP has demonstrated that low-income households want sustainably affordable access to robust broadband services. As a result of the ACP’s success, funding for the program is projected to be depleted before USF reforms reasonably could be adopted. Therefore, extending ACP funding is a vital and urgent step that must be taken to maintain low-income households’ affordable access to communications services.

A. The ACP Is a Bi-Partisan Success Story – Providing Sustainably Affordable Access to Broadband Service for More than 60 Million Americans

Under the ACP, eligible low-income households receive a discount of up to \$30 per month toward broadband Internet access service (and up to \$75 per month for households on

⁹ See <https://www.accesswireless.com/lifeline/enroll-new>.

¹⁰ See <https://www.excesstelecom.com/plans>.

¹¹ See *Luján, Thune Announce Public Comment Period for Universal Service Fund Working Group*, available at <https://www.lujan.senate.gov/newsroom/press-releases/lujan-thune-announce-public-comment-period-for-universal-service-fund-working-group/>, July 27, 2023.

qualifying Tribal lands), plus a one-time discount of up to \$100 to purchase a connected device.¹² The ACP had its genesis in the Emergency Broadband Benefit (EBB) program, which provided discounted broadband service and connected devices to low-income households to address the economic impacts of the COVID-19 pandemic. The EBB program established under the Consolidated Appropriations Act of 2021 (CAA)¹³ and signed into law by President Donald Trump, and the ACP established under the Infrastructure Investment and Jobs Act of 2021 (Infrastructure Act)¹⁴ and signed into law by President Joseph Biden both enjoyed bi-partisan congressional support.

The ACP's bi-partisan support is further evidenced by the fact that all four FCC Commissioners have expressed their strong support for the ACP and commitment to ensuring that eligible low-income households receive the benefits of the ACP. Chairwoman Jessica Rosenworcel noted that the ACP "is the biggest program we have ever had to help ensure that every family can afford the broadband that is now essential for full participation in modern life" and that it is a "powerful tool to close the digital divide."¹⁵ Commissioner Brendan Carr similarly recognized the ACP's role in closing the digital divide by stating that "[t]he FCC has taken an unprecedented series of steps to address the affordability side the digital divide with new funding from Congress."¹⁶ Commissioner Starks hailed the ACP as a "turning point" for the

¹² See 47 C.F.R. § 54.1803.

¹³ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020).

¹⁴ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021).

¹⁵ Statement of Chairwoman Jessica Rosenworcel, *Affordable Connectivity Program, Emergency Broadband Benefit Program*; WC Docket Nos. 21- 450, 20-445, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (January 14, 2022) (ACP Order).

¹⁶ Statement of Commissioner Brendan Carr, ACP Order; *see also id.* ("We have a unique opportunity to use this program, and the billions of additional dollars that Congress has made available across a range of federal agencies, to close the digital divide."); *see also* Statement of Commissioner Nathan Simington, ACP Order (noting his satisfaction with the order "which

“[n]early 47 million Americans [who] have yet to adopt broadband simply because they can’t afford it, and millions more [who] have made difficult sacrifices to keep their broadband on.”¹⁷ Moreover, a bipartisan group of Members of the House of Representatives recently sent a letter to House and Senate leadership calling on them to “include full funding for the [ACP] in the upcoming government appropriations bill to ensure that households can access the broadband they desperately need.”¹⁸

The ACP, as “the largest broadband affordability effort in U.S. history”¹⁹ is a bi-partisan success story. As of August 2023, over 20 million households have enrolled in the ACP and over 8 million connected devices have been delivered.²⁰ Based on the average U.S. household size of 3.15,²¹ more than 63 million Americans rely on the ACP to make broadband more affordable and stay connected every month. ACP enrollments are split essentially evenly between Democratic and Republican congressional districts.²² ACP enrollment of over 20

incorporated extensive feedback from all commissioners’ offices, industry, and other groups outside of the FCC.”)

¹⁷ Statement of Commissioner Geoffrey Starks, ACP Order; *see also id.* (“improving awareness of ACP is— assuredly—an essential first step”).

¹⁸ *See* <https://d12t4t5x3vyizu.cloudfront.net/gottheimer.house.gov/uploads/2023/08/8.17.2023-Reps.-Gottheimer-Fitzpatrick-Letter-to-Leadership-on-ACP-Broadband.pdf>.

¹⁹ *See* FCC ACP Fact Sheet.

²⁰ *Id.*

²¹ *See* American Community Survey, Selected Social Characteristics in the United States, 2021: ACS 1-Year Estimates Data Profiles, United States Census Bureau (2021), available at <https://data.census.gov/table?q=DP02:+SELECTED+SOCIAL+CHARACTERISTICS+IN+THE+UNITED+STATES&g=010XX00US&tid=ACSDP1Y2021.DP02>.

²² *See* <https://acpdashboard.com/> (go to “Enrollment by Congressional District” and click on “Enrollment statistics by political party” to see Summary of All Congressional Districts by Political Party showing 8,975,863 households enrolled in Democratic districts and 9,367,306 households enrolled in Republican districts).

million households represents a participation rate of over 47 percent by eligible households.²³

This high participation rate, achieved during the first 19 months of the program, demonstrates that the ACP's structure enables service providers to offer affordable services that help meet the needs of low-income households, that consumers are aware of the program and that the enrollment process is relatively accessible to many eligible consumers.

The ACP was designed to provide robust and affordable broadband service options to low-income households. The following characteristics of the ACP have facilitated its success.

Reasonable Monthly Service Benefit. ACP's support level of \$30 per month is much higher than Lifeline's (\$9.25/month).²⁴ This more rational and reasonable support amount makes broadband service more affordable to low-income consumers while simultaneously enabling service providers to compete to offer more robust speed or data allowances for both fixed and mobile broadband services. The increased ACP support amount is even more beneficial to low-income consumers when combined with the Lifeline support amount to make more than one service and more robust broadband products affordable.

Device Benefit. ACP offers a one-time connected device benefit of up to \$100 which provides eligible consumers with an option to purchase a tablet with a screen size better suited to support remote learning, telehealth and telework.

No Minimum Service Standards (MSS). Unlike the Lifeline program, the FCC wisely decided not to impose MSS on ACP providers. Instead, the FCC determined "that internet service offerings must include a broadband connection ... -- fixed or mobile -- that permits households to rely on these connections for the purposes essential to telework, remote learning, and telehealth."²⁵

National Verifier. The Universal Service Administrative Company's (USAC's) National Verifier is used by most ACP providers to verify the identity and address of applicants, as well as to make eligibility determinations by accessing various databases and reviewing

²³ There are approximately 42 million households eligible to participate in the ACP. *See Affordable Broadband - FCC Could Improve Performance Goals and Measures, Consumer Outreach, and Fraud Risk Management*, United States Government Accountability Office, GAO-23-105399, August 2023, at 63. Other sources estimate that there are 52 million households eligible for the ACP. *See* Institute for Local Self-Reliance, *Affordable Connectivity Program*, available at <https://acpdashboard.com> (last visited August 14, 2023). Even assuming a larger number of ACP-eligible households, the participation rate is over 38 percent.

²⁴ *See* 47 C.F.R. §§ 54.403(a)(1), 54.1803(a).

²⁵ *Id.*

documentation if necessary. The National Verifier has been a reasonably effective tool to ensure that only eligible consumers are enrolled in the ACP.

More Competition. The ACP does not require that service providers be designated as Eligible Telecommunications Carriers (ETCs).²⁶ Virtually any broadband provider can compete, and consumers can choose the plan and provider that best meet their needs. If done correctly, an ETC requirement (or similar) could aid in preserving program integrity while not artificially imposing burdens on willing service providers and restricting competition to the detriment of consumers.

Technology Neutrality. The technology neutral nature of the ACP allows consumers to choose whether they want to prioritize the relatively larger data capacities offered with fixed services, or the mobility available with mobile wireless services. A substantial percentage of ACP applicants choose to combine their \$9.25 Lifeline benefit with their \$30 ACP benefit to obtain more robust broadband service while others choose to use the discounts to obtain separate services or lines of service. ACP enrollment is distributed broadly across fixed and mobile network operators and resellers (with a slight preference for mobile connections), demonstrating the advantages of a technology neutral program.²⁷

Benefit Transfer Limits. The ACP limits benefit transfers to once per month.²⁸ When adopting this limitation, the Commission explained that “[t]his limit on ACP transfers will further protect ACP households against uninformed and unwanted transfers, curb aggressive transfer activity from providers, and also give providers and consumers confidence in the discount amount to be applied to a household’s internet service bill.”²⁹ As explained below in Section II, the benefit transfer rules and processes should be improved to be more effective. However, the ACP’s benefit transfer limit protects consumers, promote program integrity and allows service providers to invest in better products for consumers.

Safe Harbor. The ACP has a statutory safe harbor from enforcement for providers that rely on the National Verifier or documentation from applicants for eligibility determinations.³⁰ This safe harbor gives broadband providers confidence to enter the market knowing they can rely on determinations of the National Verifier without then being subject to unforeseen enforcement actions if a mistake is later discovered. The safe harbor should extend to USAC and the

²⁶ See 47 U.S.C. § 214(e); 47 C.F.R. § 54.201.

²⁷ See FCC ACP Fact Sheet (46 percent of ACP enrolled households choose a fixed broadband connection; see also USAC, Additional ACP Data, available at <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/additional-acp-data/> (last visited Aug. 8, 2023).

²⁸ 47 C.F.R. § 54.1810(b).

²⁹ ACP Order, ¶ 188.

³⁰ The safe harbor provision provides that “[t]he Commission may not enforce a violation of this section...or any rules of the Commission promulgated...if a participating provider demonstrates to the Commission that such provider relied in good faith on information provided to such provider to make the verification required by subsection (b)(2).” CAA, § 904(j).

Commission seeking to claw back payments by seeking the return of disbursed funds paid for discounts (i.e., benefits) provided in reliance on such determinations.

The success of the ACP is further demonstrated by the results of NaLA's Annual Consumer Survey of more than 60,000 ACP and Lifeline program participants.³¹ The survey's findings show that broadband support subsidies provide affordable access for essential communications with family, healthcare, schools, employers and government programs. Moreover, consumers who subscribe to ACP and the Lifeline program are part of a population that is age, gender, ethnicity and geographically diverse. ACP and Lifeline program subscribers have difficulty paying for broadband and a majority of those subscribers do not have a credit or debit card or a bank account. Indeed, more than 95 percent of ACP and Lifeline program subscribers say that they are unable to afford a co-pay for their monthly service. The ACP, and especially the availability of free broadband service offered under the ACP, has resulted in better outcomes for consumers, including savings on healthcare, closing the homework gap, more efficient distribution of government resources and benefits, and broader participation in the workforce and economy.³²

B. Sustainably Affordable Access Is the Measure of Low-Income Program Effectiveness

In the RFC, the USF Working Group asked whether existing programs have been effective. The overarching goal of the Lifeline program and the ACP is to bridge the digital divide for low-income households, so that they can have sustainably affordable access to voice

³¹ See NaLA *Ex Parte* Letter from John J. Heitmann, Counsel, NaLA to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-450, 20-445, 11-42 (filed Dec. 19, 2022), Exhibits C and D (attaching NaLA 2022 Annual Consumer Survey).

³² See Dine, Jessica, ITIF, "Enabling Equity: Why Universal Broadband Access Rates Matter," (Aug 2023), available at <https://itif.org/publications/2023/08/14/enabling-equity-why-universal-broadband-access-rates-matter/>.

and broadband service. If access to these essential communications services is not sustainably affordable over an extended time period, any benefits received are fleeting. The digital divide will not be closed simply by helping low-income households adopt broadband service for the first time. Rather, low-income households need sustainably affordable broadband service so that they do not have to choose each month between putting food on the table, a car repair or other expense, and having access to the Internet.

When considering the effectiveness of low-income programs, such as the ACP, focusing only on whether such programs have assisted first-time adopters of services does not offer a comprehensive measure of effectiveness. Limiting the ACP to low-income households that do not have broadband service, as has been contemplated by certain critics of the ACP, would raise several practical issues. For example, even if ACP applicants were required to certify that they do not have broadband service, such a certification would not be reliable because there is no way for ACP providers, or even the National Verifier, to know whether an applicant has a non-ACP supported broadband service. Furthermore, if an ACP applicant does not have broadband service at the time they are completing an application, that fact standing alone does not indicate whether the applicant has not had broadband service for the past day, the past week or month or for a longer period of time. And low-income households should not be required to deny themselves broadband service for any amount of time to make themselves eligible for ACP discounts. The ACP must be available to all eligible low-income households – those that currently have broadband service (but have difficulty affording it), as well as those that do not have broadband service.

C. Appropriated Funding Will Be Needed at Least Until USF Reform Can Be Accomplished

The ACP's tremendous success raises a concern about the continued availability of funding needed to support the program upon which over 63 million low-income individuals currently rely for access to broadband service. NaLA recognizes that USF reform could result in additional resources being allocated to making discounted broadband service available to low-income households but is concerned about the timing of those reforms. Extended funding for the ACP is necessary now to ensure that low-income households do not lose access to affordable broadband service while USF reform is being considered.

Projections show ACP funding exhaustion in the first half of next year, as early as April 2024.³³ Given this short timeline, it is imperative that a funding solution, even if temporary, is implemented promptly. USF contributions reform would need to significantly increase the budget for the USF's Low-Income Program if it is to step in to pay for the ACP. The current budget for the Low-Income Program (which covers the Lifeline program) is \$2.7 billion per year³⁴ (with significantly less being spent) while the ACP spend rate is \$615 million per month.³⁵

³³ See *A Tool to Track Federal Funding for Affordable Broadband*, Ry Marcattilio-McCracken, Institute for Local Self-Reliance (June 27, 2023) available at <https://ilsr.org/new-resource-tracking-affordable-connectivity-program/> (“Assuming as many eligible households enroll as is possible, the fund will be exhausted in April 2024, when only 73 percent of households who are eligible have signed up.”); see also <https://acpdashboard.com/> (“When Will Funding Run Out”) (last visited August 16, 2023); *Washington may be about to take a giant step backward in closing the digital divide*, Blair Levin (March 13, 2023), available at <http://www.brookings.edu/articles/washington-may-be-about-to-take-a-giant-step-backward-in-closing-the-digital-divide/> (noting that the ACP is projected to exhaust its funds during the first half of 2024, leaving low-income households with little savings or discretionary income to face broadband service charges).

³⁴ See Public Notice DA 22-800 (the indexed budget for the calendar year beginning January 1, 2023, will be \$2,572,862,300.); Public Notice DA 23-621 (the indexed budget for the calendar year beginning January 1, 2024 will be \$2,778,691,284).

³⁵ See <https://acpdashboard.com/> (last visited August 16, 2023).

The current amount of Lifeline funding could not support a consolidated Lifeline program and ACP.

Congress and the FCC have been talking about USF reform, including contributions reform, for decades but have been unable to make progress. In 2019, the Federal-State Joint Board on Universal Service³⁶ issued a Recommended Decision in which it recommended that the FCC revise the USF contributions mechanism by adopting a connections-based assessment on residential services and an expanded revenues-based assessment on business services.³⁷ The Joint Board also recommended enlarging the scope of assessable services to include broadband Internet access services. Although it took over five years for the Joint Board to issue a recommendation, the FCC has not completed any USF contribution reform in the four years since.³⁸ Instead, the FCC has “recommend[ed] Congress provide the Commission with the legislative tools needed to make changes to the contributions methodology and base in order to reduce the financial burden on consumers, to provide additional certainty for entities that will be required to make contributions, and to sustain the [Universal Service] Fund and its programs over the long term.”³⁹ While Congress has introduced legislation to reform the USF, no reforms have been enacted.⁴⁰

³⁶ The Federal-State Joint Board on Universal Service (Joint Board) was established in March 1996, to make recommendations to implement the universal service provisions of the Communications Act. This Joint Board is comprised of FCC Commissioners, State Utility Commissioners, and a consumer advocate representative.

³⁷ *Federal State Joint Board on Universal Service, Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, WC Docket Nos. 96-45, 06-122, 09-51, Recommended Decision (rel. October 15, 2019) (Recommended Decision).

³⁸ *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Report, FCC 22-67 (rel. August 15, 2022), ¶ 111.

³⁹ *Id.*

⁴⁰ *See, e.g.*, S.3236 – Reforming Broadband Connectivity Act of 2021; S.975 - Reforming Broadband Connectivity Act of 2023.

NaLA understands that USF reform is a complex and politically sensitive issue. Thus, it is essential that Congress realize that establishing and executing any USF reform is likely to take time and that any reform cannot reasonably be completed before mid-2024. ACP funding requirements for two years are likely to be at or near the \$19-22 billion range. Congress will need to allocate/appropriate additional funding for the ACP, even if it is just temporary, until USF reform can be completed. Solely relying on USF reform, without providing additional ACP funding at least on an interim basis would place tens of millions of vulnerable low-income households at a serious risk of losing access to affordable broadband service.

II. Congress and the FCC Should Either Consolidate the Lifeline Program with the ACP or Reform Both

As Congress and the FCC consider ways to reform low-income programs that support communications services, they must focus on the goal of such programs – providing sustainably affordable access to essential communications services. To achieve this goal, the subsidy levels of both the Lifeline program (\$9.25 per month) and the ACP (\$30 per month) must be maintained so that providers can offer broadband services to applicants that meet their needs. A consolidated low-income program that combines the Lifeline program subsidy with the ACP subsidy would enable providers to offer more than one service or more robust broadband offers to their eligible low-income subscribers.

A consolidated low-income program should mirror those aspects of the ACP that facilitated its success (as detailed in Section I.A.) and adopt important aspects of the Lifeline program that ensure consumers' communications needs are met and preserve program integrity. Any consolidated low-income program also must remain technology neutral and open to all types of broadband providers, including fixed and mobile and facilities-based and reseller service providers. As demonstrated by the success of the ACP, this will allow the most competition and

drive increases in the value of service offerings available to consumers. If the Lifeline program and ACP remain separate programs, then the programs should be reformed to be more complementary to each other.

A. Consolidating the ACP and Lifeline Program Would Require Reconciling Policy Differences

If Congress and the FCC decide to consolidate the ACP and Lifeline Program into a single low-income communications support program, several policy differences will need to be considered carefully and reconciled. A consolidated low-income program should combine the best policies from Lifeline and the ACP, including the policies that have made the ACP so successful and the important Lifeline support for voice. Congress and the Commission also must carefully consider the one per household limitation, which could reduce available lines of service under a consolidated program and is inconsistent with the purchase of multiple lines of communications services by most American households.

1. Consumer Benefits Should Not Be Reduced

The primary driver of the success of the ACP has been the monthly service support amount, which is often combined by subscribers with the monthly Lifeline benefit to purchase more valuable broadband plans. The Lifeline program had been in decline⁴¹ with the static monthly reimbursement of \$9.25, which was a relic of discounts the FCC thought was sufficient for residential telephone service more than a decade ago. The \$9.25 per month rate was set on an

⁴¹ USAC reports that Lifeline subscribership declined from a high of over 17 million in 2012 to 12.7 million in 2016 to just over 8 million in 2019. *See* FCC Universal Service Monitoring Report (2020), WC Docket Nos. 11-42 et. al., Table 2.1, 28 (2020 FCC USF Monitoring Report). NaLA has reported that Lifeline participation got as low as just over 6 million subscribers in March 2020. *See* NaLA Notice of Oral *Ex Parte* Presentation, WC Docket No. 17-287 et al., Exhibit (Aug. 24, 2020) (NaLA Aug. 24, 2020 *Ex Parte*) (also including a chart showing the decline in Lifeline participation by state since December 2016).

“interim” basis in 2012⁴² and has not increased since. The voice and eventually broadband services that Lifeline ETCs were able to provide helped low-income Americans, but they were far from the game-changing broadband services that the ACP has made possible.

The ACP opened up competition further by requiring participating broadband providers to make available ACP discounts of up to \$30 monthly on any and all broadband plans offered at retail.⁴³ That has resulted in a wide range of service offerings for consumers to choose from, including many mobile wireless and now fixed broadband services priced at \$30 and therefore provided at no charge to consumers. ACP providers that are also Lifeline ETCs have also allowed qualified low-income households to combine the \$30 ACP and \$9.25 Lifeline discounts to receive more robust broadband plans with a retail price of approximately \$40.⁴⁴ The \$40 price point has allowed some mobile wireless ACP providers to offer plans with unlimited voice, text and data,⁴⁵ not offered at \$30 per month. Subscribers eligible for ACP and Lifeline should not

⁴² See Lifeline Reform Order, ¶ 462.

⁴³ See 47 U.S.C. § 1752(b)(7); ACP Order, ¶ 94 (“The Infrastructure Act adds a requirement that a participating provider ‘shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same terms available to households that are not eligible households.’”).

⁴⁴ A difference in retail price from \$30 to \$40 often results in large increases in high-speed data from mobile wireless carriers. See NaLA Notice of Oral *Ex Parte* Presentation, WC Docket Nos. 21-450, 20-445, 11-42, Exhibit F NaLA Annual 2022 Mobile Broadband and Voice Retail Price Survey (Dec. 19, 2022) (NaLA Dec. 19, 2022 *Ex Parte*) (showing the Cricket \$30 offer at 5 GB and its \$40 offer at 10 GB, the H2O Wireless offer at 6 GB for \$30 and 15 GB for \$40, the Metro by T-Mobile offer at 5 GB for \$30 and 10 GB for \$40, the Simple Mobile and Total Wireless offers at 5 GB for \$30 and 15 GB for \$40 and the TracFone offer at 3 GB for \$30 and 8 GB for \$40).

⁴⁵ See, e.g., StandUp Wireless \$40 unlimited voice, text and data plan with 10 GB of high-speed data, available at <https://standupwireless.com/acp/plans/>; Access Wireless \$40 unlimited voice, text and data plan with 15 GB high-speed data, available at <https://www.accesswireless.com/lifeline/enroll-new>; Life Wireless \$40 unlimited voice, text and data plan with speeds reduced at 20 GB, available at <https://www.lifewireless.com/plans>; and TruConnect \$40 unlimited voice, text and data plan, available at <https://www.truconnect.com/plans>.

have their available discounts reduced below \$39.25 if the ACP and Lifeline are consolidated into a single low-income program.

The ACP connected device benefit also has met an important need, as many low-income consumers have difficulty affording devices with more capabilities and larger screens better suited to support remote learning, telehealth and telework. The ACP's connected device benefit of up to \$100 should be maintained as an essential element of any low-income support program.

2. Rely on a Competitive Marketplace to Set Plan Offerings, Not Minimum Service Standards

After the monthly service support amount, the second most important difference between the ACP and Lifeline, which led to the success of the ACP, is the reliance on competition rather than MSS to determine what plans will be available to consumers. The Commission's decision to decline to adopt MSS for the ACP recognizes that having a MSS in Lifeline has been a detriment to consumers. For example, Lifeline support for providing mobile broadband service that meets the MSS has been stagnant at \$9.25 per month since 2012.⁴⁶ However, since 2016, the MSS for mobile broadband, as established under the FCC's rules, has increased over time and is currently 4.5 GB per month.⁴⁷ No retail service providers offer 4.5 GB for as little as \$9.25 a month, especially when combined with the voice and text services that wireless

⁴⁶ See 2012 Lifeline Reform Order, ¶ 58 (adopting \$9.25 as an interim non-Tribal Lifeline support amount commencing April 2012); *Lifeline and Link Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197 and 10-90, Third Report and Order, Further Report and order, and order on Reconsideration, FCC 16-38 (rel. April 27, 2016), ¶ 114 (establishing \$9.25 as a permanent non-Tribal Lifeline support amount).

⁴⁷ See 47 C.F.R. § 54.408(b)(2); *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, WC Docket No. 11-42, Public Notice, DA 23-621 (rel. July 21, 2023) (extending 4.5 GB as MSS for mobile broadband through December 1, 2024).

consumers want and expect.⁴⁸ Thus, Lifeline providers are required to provide an amount of data for \$9.25 that no business would choose to provide without a co-pay, which is not economically sustainable for most of the eligible low-income population. As a result, providing Lifeline service based on a \$9.25 subsidy amount is not a sustainable business, and Lifeline had been in decline before the ACP. USAC reports that Lifeline subscribership decreased from a high of over 17 million in 2012 to 12.7 million in 2016 to 6.5 million in 2021.⁴⁹ As of July 2023, Lifeline participation was 6.7 million.⁵⁰ The latest Lifeline eligible population reported by USAC is 38,059,039, which means that approximately 17 percent of the eligible population participates in the Lifeline program.⁵¹ In contrast, during the short time that the ACP has been available, ACP subscribership has grown to over 20 million households, representing a participation rate of over 47 percent of eligible households.⁵² A consolidated low-income program should encourage service providers to offer competitive plans and allow consumers to choose from an array of affordable plans by not imposing MSS.

⁴⁸ See NaLA Dec. 19, 2022 *Ex Parte*, Exhibit F NaLA Annual 2022 Mobile Broadband and Voice Retail Price Survey (Boost Mobile and Hello Mobile offer an unlimited voice, text and 1 GB plan for \$10; US Mobile offers unlimited voice, text and 1 GB data for \$12).

⁴⁹ See FCC Universal Service Monitoring Report (2022), WC Docket Nos. 11-42 *et. al.*, Table 2.1, 2.8.

⁵⁰ See USAC FCC Filings, 2023 Fourth Quarter Filings, LI08-Lifeline Subscribers by State or Jurisdiction January 2023 through June 2023, available at <https://www.usac.org/wp-content/uploads/about/documents/fcc-filings/2023/fourth-quarter/low-income/LI08-Lifeline-Subscribers-by-State-or-Jurisdiction-January-2023-through-June-2023.xlsx>.

⁵¹ See Lifeline Program Data, Lifeline Participation, available at <https://www.usac.org/lifeline/resources/program-data/#Subscribership>.

⁵² See *supra* n.24.

3. Conform ACP and Lifeline Eligibility Criteria

To consolidate Lifeline and the ACP, Congress and the FCC also would need to make eligibility criteria consistent. Lifeline and ACP eligibility are largely aligned, with a few notable exceptions. First, the National School Lunch (NSL) program is an eligibility trigger for ACP, but not for Lifeline.⁵³ To reconcile this discrepancy, consideration should be given to dropping NSL as an eligibility trigger for any consolidated low-income program because the NSL Community Eligibility Provision (CEP) makes some non-low-income households eligible for support, which means the program may not be as well targeted as it could be to those low-income households most in need.⁵⁴ Further, NSL eligibility resulted in some apparently ineligible enrollments in the EBB before the FCC and USAC implemented certain changes to the National Verifier verification process.⁵⁵

Second, ACP income eligibility includes households with income up to 200 percent of the Federal Poverty Guidelines (FPG), but Lifeline income eligibility includes households with income up to only 135 percent of the FPG.⁵⁶ NaLA lacks the expertise to recommend the appropriate income level for low-income eligibility, but it should be at least 135 percent and consideration should be given to setting the trigger at something less than 200 percent of the FPG in order to target the low-income support most directly to the households that need it.⁵⁷

⁵³ See 47 C.F.R. § 54.1800(j)(3); 54.409(a)(2).

⁵⁴ See ACP Order, ¶ 52 (describing the Community Eligibility Provision, “through which schools or school districts provide free lunch or breakfast to all students without requiring an individual application for a meal benefit.”). Therefore, a higher income family may qualify for ACP because one of the children attends a school that qualifies for the NSL CEP.

⁵⁵ See ACP Order, ¶ 55.

⁵⁶ See 47 C.F.R. § 54.1800(j)(2); 54.409(a)(1).

⁵⁷ The ACP spend is also likely to be reduced by recent changes in the Supplemental Nutrition Assistance Program (SNAP). See Luhby, Tami, CNN, “Here’s who would have to work for government benefits – and who wouldn’t – under the debt ceiling package” (June 2, 2023),

Finally, all Lifeline applicants, with limited exceptions,⁵⁸ have their eligibility determined by the National Verifier,⁵⁹ which serves to protect program integrity, reduce or eliminate waste, fraud and abuse, and make eligibility consistent across all service providers. On the other hand, the ACP allows some providers to enroll applicants without using the National Verifier, which has resulted in concerns over program integrity identified by the Commission,⁶⁰ and could result in eligibility that extends beyond the criteria set by Congress and implemented in the National Verifier, potentially in ways that are not sufficiently well targeted to low-income households. For example, if a provider is permitted to enroll ACP applicants based on zip code, the provider is likely to enroll households that are low-income as well as some households that are higher income and would not otherwise qualify for the ACP (similar to the NSL CEP). However, it is difficult to know the extent to which such enrollments are occurring because the Commission has withheld alternative verification process applications and approvals from public view.

Allowing such eligibility and enrollments outside of the National Verifier may have been necessary or beneficial at the beginning of the EBB program when some broadband providers that were not Lifeline ETCs could not quickly develop the digital connections necessary to access the National Verifier. However, now that we are more than two years into the EBB and

available at <https://www.cnn.com/2023/06/02/politics/food-stamps-debt-ceiling-work-requirements/index.html>.

⁵⁸ See *infra* Section II.A.1.e.

⁵⁹ See 47 C.F.R. § 54.410(a)(1), (c)(1).

⁶⁰ See Letter from Chief, Wireline Competition Bureau, FCC to Charter Communications (May 17, 2023); Letter from Chief, Wireline Competition Bureau, FCC to Cox Communications, Inc. (May 17, 2023); Letter from Chief, Wireline Competition Bureau, FCC to Starry, Inc. (May 17, 2023), available at <https://www.fcc.gov/document/fcc-protecting-integrity-success-affordable-connectivity-program>. In the letters, the WCB states, “we remain concerned that alternative verification processes, although allowed by the law, may result in improper enrollments.”

its successor the ACP, all broadband providers are capable of using the National Verifier to determine applicant eligibility. Thus, consideration should be given to requiring all ACP providers to use the National Verifier to verify eligibility for all applicants and program participants as doing so may improve program integrity and ensure that ACP support is consistently and effectively targeted.

4. Benefit Transfer Limitations Protect Program Integrity and Consumers While Driving Improved Service Offerings

The Lifeline Program has no benefit transfer limits, which means that consumers can switch service providers at will, including multiple times per month. This drives waste in the program because consumers can engage in activities that increase service provider costs unfairly. For example, some consumers sign up for service with one Lifeline service provider early in a month, use all of the subscriber's allocated minutes and/or data and then switch providers before the end of the month to receive another allotment of minutes and/or data. The first service provider will have provided a month's discounted service but will receive no reimbursement from USAC for providing that benefit. Consumers also switch service providers to obtain free smartphones (perhaps to be sold). Consumers can switch service providers multiple times each month, which drives up unreimbursed costs for service providers. The result is that, prior to the EBB and ACP, most Lifeline service providers were no longer offering free devices and many imposed co-pays for monthly service throughout most of the country. Others simply slowed or stopped the most successful outreach channels because providing Lifeline service was not a profitable business.

In the ACP Order, the FCC adopted a one benefit transfer per service month limitation. The Commission explained that “[t]his limit on ACP transfers will further protect ACP households against uninformed and unwanted transfers, curb aggressive transfer activity from

providers, and also give providers and consumers confidence in the discount amount to be applied to a household's internet service bill.”⁶¹ The ACP benefit transfer limit is an improvement, but needs reform to be more effective.

Under the current ACP benefit transfer rule which allows subscribers to transfer to a new ACP provider once per service month, an ACP subscriber could enroll with Provider 1 on August 30, transfer his or her benefit to Provider 2 on August 31 and then transfer his or her benefit again on September 1 to Provider 3.⁶² While an improvement over the Lifeline program, the manner in which the Commission has written and implemented the ACP benefit transfer rule has spurred consumer complaints and confusion both of which adversely impact program integrity. To improve on the current situation, the benefit transfer rule should restrict benefit transfers to once every 90 days starting at enrollment, subject to limited consumer protection exceptions administered solely by USAC.⁶³ Such a rule would more effectively meet the Commission's program integrity goals and would incentivize service providers to improve service offerings because they could feel confident they would not lose a new subscriber for at least 90 days and subscribers would not be able to “game the system” to obtain multiple devices or benefits in a single month.

⁶¹ ACP Order, ¶ 188.

⁶² See NaLA Notice of Oral Ex Parte Presentation, WC Docket Nos. 21-250, 20-445, 11-42, 4 (Feb. 17, 2023).

⁶³ Benefit transfer consent should be able to be collected only when a subscriber is eligible to transfer (i.e., not during the 90-day restricted period) so that providers do not “warehouse” benefit transfer consents that could later result in consumer confusion when one of several providers “wins” on the first day a new benefit transfer is available. Further, USAC should administer the exceptions process with proof required rather than allowing customers to simply check a box with no proof of the claimed exception.

5. Use of the National Verifier and NLAD

As is the case in the ACP, a consolidated low-income program should not allow states to opt out of USAC's National Lifeline Accountability Database (NLAD), and effectively opt out of the National Verifier as well. The NLAD allows service providers to enroll and manage eligible subscribers in the Lifeline program and the ACP and prevents subscribers from claiming more than one Lifeline program or ACP discount by checking its database of subscribers for duplicates. It provides various functions that are essential for maintaining the integrity of a low-income program, including confirming that a subscriber has qualified through the National Verifier, sending service providers a list of subscribers as of a snapshot date so that accurate claims for reimbursement can be submitted, processing de-enrollments and updating subscriber information.

The ACP rules require all service providers to use the NLAD,⁶⁴ while the Lifeline program rules allow states to opt out of NLAD if they certify that they have a “comprehensive system in place to prevent duplicative federal Lifeline support that is at least as robust as the system adopted by the Commission....”⁶⁵ Those NLAD opt-outs effectively allow the states to opt out of use of the National Verifier as well. Requiring all states and service providers participating in a consolidated low-income program to use the NLAD will avoid consumer-

⁶⁴ See 47 C.F.R. § 54.1806(d); *see also* ACP Order, ¶ 56 (NLAD “serves as an important safeguard against duplicate subscribers and limiting service provider reimbursement claims to the actual number of enrolled subscribers.”).

⁶⁵ 47 C.F.R. § 54.404(a) “A valid certification must also describe in detail how the state system functions and for each requirement adopted by the Commission to prevent duplicative support, how the state system performs the equivalent functions.”). California, Oregon and Texas are NLAD opt-out states. NaLA does not here suggest that California should not be able to maintain its own verification processes for its state funded Lifeline program or that those verifications cannot be used as part of the National Verifier verification process.

impacting deficiencies associated with state systems, protect the integrity of the program, and promote program consistency.

6. Extend/Clarify the ACP Safe Harbor

The Infrastructure Act includes a safe harbor provision applicable to the ACP, which provides that “[t]he Commission may not enforce a violation of this section...or any rules of the Commission promulgated...if a participating provider demonstrates to the Commission that such provider relied in good faith on information provided to such provider to make the verification required by subsection (b)(2).”⁶⁶ Both the Lifeline program and the ACP require service providers to rely on program eligibility determinations made by the National Verifier when enrolling consumers in the programs and confirming continued eligibility as part of the required annual recertification.⁶⁷ However, only ACP providers receive protection when they rely in good faith on the National Verifier’s confirmation of an applicant’s eligibility. A consolidated low-income program should include a safe harbor and not subject service providers to enforcement actions so long as they reasonably rely on the National Verifier’s determination of initial or continued eligibility. Further, the safe harbor should clearly extend to not just enforcement actions, but also efforts to claw back reimbursements related to enrollments cleared by the National Verifier or based on information relied on in good faith by the service provider because it is impossible to recover discounts on services already provided to consumers.

7. Any Consolidated Low-Income Program Must Support Voice Service

While the focus on closing the digital divide is on affordable access to broadband services, low-income households still value and want voice service, including in some instances

⁶⁶ CAA, § 904(j).

⁶⁷ See 47 C.F.R. §§ 54.410, 54.1806.

standalone voice service. In 2021, the Wireline Competition Bureau released the 2021 State of the Lifeline Marketplace Report.⁶⁸ This report highlighted that approximately 8 percent of Lifeline subscribers continue to opt in to voice-only Lifeline plans or a bundled plan that only meets the voice MSS.⁶⁹ Removing voice-only support services may force Lifeline subscribers who only desire voice services into more expensive, bundled plans that the subscriber may not desire and may not be able to afford.⁷⁰ The FCC's decision this year to pause a planned phase-out in Lifeline support for voice-only services for yet another year was based on these findings in the Marketplace Report.⁷¹

NaLA's 2022 Annual Consumer Survey found that three-quarters of respondents said voice, text and data were all equally important, but of those that chose one service as being most important, 15.59 percent said voice and only 6 percent said data.⁷² Voice is as essential as broadband to many low-income consumers, and therefore, should be supported in any consolidated low-income program for discounted communications services.

⁶⁸ See *Report on the State of the Lifeline Marketplace*, WC Docket No. 11-42 *et al.*, Report, (March 19, 2021), <https://www.fcc.gov/document/bureau-releases-report-state-lifeline-marketplace> (2021 Marketplace Report).

⁶⁹ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Order, DA 21-1389, ¶¶ 19-20 (Nov. 5, 2021) (2021 Lifeline Waiver Order); see 2021 Marketplace Report at 21.

⁷⁰ See 2021 Lifeline Waiver Order, ¶ 8; see 2021 Marketplace Report, at 23.

⁷¹ See 2021 Lifeline Waiver Order, ¶¶ 12-13 (“The persistent subscriptions to voice-only service offerings, pace of adoption of broadband, and net benefits of continuing voice-only support, however, provide strong considerations for maintaining Lifeline support for voice-only services for at least one additional year.”).

⁷² See NaLA 2022 Annual Consumer Survey, at 2.

8. Consideration Should Be Given to a Revised Eligible Telecommunications Carrier or Similar Requirement

In the Request for Comment, the Working Group specifically seeks comment on the question “Should Congress eliminate the requirement that a provider must be an “Eligible Telecommunications Carrier” to receive USF subsidies?” NaLA’s comments are limited to the ETC requirement for providing service supported by the low-income programs, which is currently required for the Lifeline program, but not the ACP.

As an initial matter, if Congress were to revise section 214 of the Communications Act,⁷³ it should remove for the purposes of any low-income support program the facilities requirement in the Communications Act.⁷⁴ The facilities requirement is subject to blanket forbearance by the FCC adopted more than a decade ago.⁷⁵ But this resulted in the compliance plan requirement that the Commission has used as a gatekeeping measure to restrict competition in and to reduce the effectiveness of the Lifeline program.⁷⁶ There are dozens of such Lifeline compliance plans that have been pending with the Commission for approval, many for a decade or more.⁷⁷

Clearly, the more open competition available from fixed and mobile wireless broadband providers in the ACP has been beneficial and resulted in more and better options for consumers. However, an ETC or similar requirement could serve an important program integrity role by allowing for initial screening/basic registration and limited oversight of service providers.

⁷³ 47 U.S.C. § 254(e).

⁷⁴ 47 U.S.C. § 214(e)(1)(A).

⁷⁵ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, ¶ 368 (2012) (“We forbear, on our own motion, from applying the Act’s facilities requirement of section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions noted below.”).

⁷⁶ *Id.*

⁷⁷ See <https://www.fcc.gov/general/lifeline-compliance-plans-etc-petitions>.

Unfortunately, the Lifeline program's ETC requirement has not led to a regulatory regime with reasonable screening and oversight. Dozens of pending petitions for designation as a wireless ETC to participate in the Lifeline program in the states where only the FCC can grant a designation await approval.⁷⁸ Many of these ETC petitions have been pending for a decade or more, with no indication that the Commission will ever address them. Moreover, some state commissions have failed to designate additional ETCs or have not designated ETCs in a timely manner.⁷⁹ The FCC's failure to act on the pending ETC petitions and certain state commissions' unjustified delays or refusals to designate more ETCs have artificially imposed burdens on willing service providers and restricted competition to the detriment of consumers.

9. A Consolidated Low-Income Program Should Reconsider the One-Per-Household Restriction

Congress and the Commission should reconsider the one-per-household limitation for any consolidated low-income communications support program.⁸⁰ Setting per-household benefit limits that reflect the size of an eligible household would address the unfairness that results from blanket application of the one benefit per household rule of both the ACP and Lifeline programs.

⁷⁸ See <https://www.fcc.gov/general/lifeline-compliance-plans-etc-petitions>.

⁷⁹ For example, ETC proceedings before the New Mexico Public Regulation Commission often span several years and include several rounds of data requests and hearings, causing applicants to withdraw rather than expending further resources on a futile effort to obtain ETC designation. See, e.g., *Petition of Boomerang Wireless, LLC d/b/a enTouch Wireless for Limited Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. 214(e)(2)*, Case No. 13-00215-UT (petition was filed on June 24, 2013; after numerous filings and two hearings a recommended decision was issued September 14, 2017; matter was remanded to hearing examiner for further proceedings on January 31, 2018; motion to withdraw filed on May 9, 2018).

⁸⁰ See 47 C.F.R. §§ 54.409(c), 54.1805(b).

The average American household has about four mobile wireless connections alone, with many also having a fixed broadband connection.⁸¹

Currently, low-income households that qualify for Lifeline and the ACP can receive two separate benefits, which they can use to purchase any mix of fixed and mobile wireless services. For example, low-income households can use Lifeline and ACP to purchase two separate mobile wireless voice and broadband bundle services on two different devices – or they can choose to apply one benefit to a mobile service and another to a fixed service. They can also combine benefits so that more robust service offerings are affordable. The option to receive more than one benefit and service should not be taken away by consolidation of the low-income programs.

Notably, other low-income support measures are calibrated to the size of the household because larger households need additional benefits. For example, Supplemental Nutrition Assistance Program (SNAP) benefits increase with the size of the household. The District of Columbia monthly SNAP benefits increase from \$281 for one person to \$1,691 for a household of eight with an additional \$211 for each additional member of the household.⁸² Congress and the Commission therefore should reconsider any per household benefit limit to reflect the modern communications marketplace and household size for any consolidated low-income program. Congress and the Commission should calibrate the low-income benefit to the size of the household, which would allow for the purchase of a mix of communications solutions with

⁸¹ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 Communications Marketplace Report, FCC 22-103, ¶ 73 (rel. Dec. 30, 2022) (499 million is the CTIA estimate of mobile wireless connections, but using the Numbering Resource Utilization/Forecast estimate of 457 million, that would still be an average of 3.69 mobile wireless connections per American household); U.S. Census Bureau, Quickfacts, available at <https://www.census.gov/quickfacts/>.

⁸² See DC Department of Human Services, SNAP Benefits, available at <https://dhs.dc.gov/service/snap-benefits>.

multiple devices, giving households with more individuals a fairer shot at having sustainably affordable access to essential communications services.

B. If ACP and Lifeline Remain Separate Programs, They Should Be Reformed to Be More Complementary and Consistent

If the Lifeline program and ACP remain separate programs, then the programs should be reformed to be more complementary to, and consistent with, each other. For the reasons discussed in Sections II.A.1.b, d, e, and f, the Lifeline program should be reformed to eliminate the MSS, include a 90-day benefit transfer limit to reduce churn and improve program integrity, and include a comprehensive safe harbor. The FCC should also open competition by granting long-pending compliance plans and federal ETC petitions, and by imposing reasonable shot-clock limitations on state ETC designation proceedings. The Lifeline program should continue to support fixed and mobile voice and broadband service. A standalone ACP program also should be reformed by taking into consideration the recommendations set forth in Section II.A.1.c.

III. The FCC and USAC Must Be More Transparent and Accountable in the Administration of Any Low-Income Program

NaLA commends the efforts of the FCC and USAC to expeditiously implement first the EBB program and then the ACP. NaLA also commends the FCC and USAC for improvements made to the National Verifier and NLAD reliability – and communications about outages – in response to data submitted by NaLA regarding performance issues and downtime.⁸³ However, the need for further improvements in platform reliability and communications about service outages remains urgent.

⁸³ See NaLA *Ex Parte* Letter from John J. Heitmann, Counsel, NaLA to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-450, 20-445, 11-42 (filed February 17, 2023), at 2-4 and Exhibit C.

USAC's National Verifier and NLAD systems are not engineered to commercially reliable levels – and communications about outages remain sporadic and haphazard leaving service providers and consumers in the dark and subject to delays of unknown cause and duration. When the National Verifier or NLAD has an outage, most service providers are unable to verify eligibility, enroll consumers or update those databases regarding the status of their subscribers. Outages result in eligible subscribers being frustrated and blocked from getting verified for and enrolled in the Lifeline program or the ACP.⁸⁴ Furthermore, without access to detailed information about outages, service providers cannot tell Lifeline or ACP applicants standing in front of their enrollment representatives with partially completed applications why the system is down or when it will be resolved so that they may complete their enrollment. Applicants and enrollment representatives in the field do not know whether to go home and try again the next day or stay and wait for the system to come back online, which results in consumer distrust, frustration and anger at the service providers and the government. Outages also result in millions of dollars of unrecouped expenses and lost revenues for service providers. Such losses inhibit service providers' ability to better reach and serve eligible low-income consumers with innovative services and devices.

⁸⁴ Two outage examples are illustrative. On December 30, 2022, the National Verifier and NLAD were down for *over twelve hours* from at least 7:49 a.m. until 10:17 p.m. Although USAC provided some information to service providers during the outage, it failed to provide commercially standard communications updates, leaving consumers literally out-in-the cold. Over the weekend of July 15, 2023, the National Verifier went down around 8:00 p.m. on Saturday night but USAC did not send any notice of the issue until Sunday at 1:17 p.m. The National Verifier was back up at 5:00 p.m. on Sunday. A 17-hour delay in sending any communication about an outage shows a clear need for improvement and greater accountability.

CONCLUSION

NaLA appreciates the opportunity to submit comments in this important inquiry. It is important to maintain the USF and ensure its continued viability in the future. It is essential that low-income households' access to universal service is not compromised while USF reforms are being considered. Extending ACP funding is a vital and urgent step that must be taken to maintain low-income households' affordable access to communications services while USF reform is undertaken.

Respectfully submitted,



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