

Lifeline Modernization and Transition from Voice to Broadband

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The Federal Communications Commission (FCC or Commission) released the Lifeline Modernization Order on April 27, 2016, to modernize the Lifeline program to support broadband Internet access, which “has become a prerequisite to full and meaningful participation in society.” The Order establishes phased-in minimum service standards for fixed and mobile voice and broadband services to support “robust” service offerings so that low-income consumers have access to “services that a substantial majority of American consumers have already subscribed to” and phases in requirements for Wi-Fi and hotspot-enabled devices provided to Lifeline subscribers.

In addition, the Commission establishes a National Lifeline Eligibility Verifier (National Verifier) to make eligibility determinations and perform a variety of other functions, including providing support payments to providers and conducting annual recertification. Further, the Commission creates a streamlined federal Lifeline Broadband Provider (LBP) designation process as an alternative to the current ETC designation processes by interpreting and forbearing from parts of the Communications Act of 1934, as amended (Act). The FCC also streamlines the programs that qualify consumers for Lifeline, modifies the non-usage rules, establishes a 12-month benefit port freeze for broadband offerings, and allows the Wireline Competition Bureau (Bureau) to modify program forms. Finally, the Commission establishes a \$2.25 billion annual budget for the program with a trigger for the Bureau to submit a report to the Commission when the program reaches 90 percent of the budget.

The Lifeline Modernization Order will be effective 30 days after publication in the Federal Register, but several of the new and revised rules will require Paperwork Reduction Act (PRA) approval by the Office of Management and Budget (OMB). Petitions for reconsideration will be due 30 days after publication of the Order in the Federal Register.

I. Broadband Internet Access Service (BIAS) as a Supported Service

As of the first effective date of new minimum service standards (**December 1, 2016**),¹ the Commission amends section 54.101 of its rules to include broadband Internet access service (BIAS) as a supported service in the Lifeline program, which allows standalone broadband offerings to receive Lifeline support.

The Commission addresses collateral effects for High-Cost ETCs by forbearing from certain statutory requirements so that such ETCs “are not required to offer Lifeline-supported broadband service in Census blocks throughout their designated service areas, but instead only where the provider receives high-cost support and is commercially providing broadband consistent with the provider’s obligations set forth in the Commission’s high-cost rules and the Lifeline minimum service

standards.”

The Commission finds its authority to establish BIAS as a supported service in, among other provisions, the requirement in section 254 of the Act that low-income consumers have access to advanced telecommunications and information services and the direction and goals set forth under section 706 of the Act directing the FCC to encourage deployment of advanced telecommunications capability to all Americans.

II. Minimum Service Standards and Phase Out of Standalone Voice

The Commission establishes increasing voice minimum service standards based on its finding that “voice service is declining in price,” which “is particularly true of mobile voice services” and “there are no indications such cost decreases will cease” despite the cost information that many providers put into the record. The FCC further establishes minimum service standards for mobile voice and fixed and mobile broadband offerings by balancing statutory requirements that services be affordable and to offer reasonably comparable services to those to which a substantial majority (70 percent or more) of Americans consumers have subscribed.

The Commission confirms a permanent support level of \$9.25 per month per Lifeline subscriber (with an additional \$25 for Tribal subscribers), but claims to take no position on whether that amount will be sufficient to support the entire cost of supported service and notes that Lifeline was created to provide affordable, rather than free, service.

Voice. The Commission establishes increasing minimum service standards for mobile voice services while declining to do so for fixed voice services. The Commission also phases down support for fixed and mobile standalone voice before eliminating its support by December 1, 2021. First, the FCC imposes the following minimum service standards to receive Lifeline support for mobile voice service offerings:

- As of December 1, **2016**, providers must offer at least **500** minutes per month
- As of December 1, **2017**, providers must offer at least **750** minutes per month
- As of December 1, **2018**, providers must offer at least **1,000** minutes per month

Second, the Commission phases down support for standalone fixed and mobile voice according to the following schedule:

- **\$9.25** per month until November 30, **2019**
- **\$7.25** per month until November 30, **2020**
- **\$5.25** per month until November 30, **2021**
- **No support as of December 1, 2021**

If a Lifeline provider is the only Lifeline provider in a Census block, it can continue to receive support in the amount of \$5.25 per month per subscriber after December 1, 2021 until the Bureau identifies another Lifeline provider in the Census block.

Broadband. The Order establishes initial minimum service standards for both fixed and mobile

broadband service and a mechanism for updating those standards over time.

First, the Commission establishes initial minimum service standards for **fixed broadband** of **10 Mbps for download and 1 Mbps for upload** based on its finding that a “substantial majority” (70 percent or more) of consumers subscribe to fixed broadband services of at least such speeds. Further, the Commission establishes an initial data allowance at **150 GB** per month because that is the standard currently used in the Connect America Fund for rate of return carriers electing the “Alternative Connect America Cost Model.” The Order requires the Bureau to update the minimum service standards annually using the 30th percentile level of residential broadband service speeds reported nationally in the FCC Form 477.

The Order also sets initial phased-in minimum service standards speed and data usage for Lifeline **mobile broadband** services and provides a complicated mechanism for updating those standards after 2019. The Commission sets the initial speed standard at **3G** effective the later of December 1, 2016 or 60 days after PRA approval. The initial data usage standards for mobile broadband are:

- As of the later of December 1, **2016** (or 60 days after PRA approval), **500 MB** per month
- As of December 1, **2017**, **1 GB** per month
- As of December 1, **2018**, **2 GB** per month

Starting on December 1, 2019, the minimum data usage service standards will be set based on a complicated formula to determine the average mobile broadband data usage per **household** rather than individual because only one Lifeline benefit is available per household. Therefore, according to the latest data, that minimum standard for households would currently be 2 GB rather than 1.3 GB, which is the average usage for an individual.

To set the new mobile broadband minimum service standards, the Bureau will be required to annually release a Public Notice by July 31 notifying the public of the updated standard to be effective on December 1 of the same year (the first Public Notice would be released by July 31, 2019 to be effective on December 1, 2019). If the Bureau does not release the Public Notice or if the data on which the calculation is based is older than 18 months, the default is that the mobile data usage standards will automatically increase or decrease on December 1 by the most recent year-over-year percentage change in smartphone data usage per household, as reported in the two most recent Mobile Competition Reports and rounded up to the nearest 250 MB.² The Bureau should also consider the FCC Form 477 data and other relevant sources to determine whether the mobile speed standards should be updated, and should establish the speed standard in the July 31 Public Notices regardless of whether it is adjusted.

Bundles. During the mobile broadband phase-in period from December 1, 2016 through November 30, 2019, a voice and broadband bundle **must include at least one supported service meeting the minimum service standards applicable at that time.** From December 1, 2019 to November 30, 2021, a voice and broadband Lifeline bundle must include a mobile broadband offering that meets the broadband minimum service standards in order to receive the full \$9.25 benefit, and a bundle that does not meet the mobile broadband minimum service standard, but does meet the standalone voice minimum standard, may receive the applicable support level for standalone mobile voice.

Handsets/Equipment. To help to bridge the digital divide and close the homework gap, the Order

establishes standards for devices that are provided to Lifeline subscribers for use with a Lifeline-supported fixed or mobile broadband service. Lifeline providers are not required to provide devices (with or without charge), but if they choose to provide devices to broadband Lifeline subscribers, these requirements must be met. First, all devices provided for use with a Lifeline-supported fixed or mobile broadband service with or without charge after the effective date of section 54.408(f) of the new rules (no earlier than December 1, 2016) must be Wi-Fi enabled. Second, the Order adopts a phase-in requirement that a certain percentage of devices offered with or without charge for use with a mobile broadband service must be hotspot-capable (or capable of “tethering”) according to the following schedule:

- As of December 1, **2016**, at least **one** device
- As of December 1, **2017**, at least **15** percent of devices
- As of December 1, **2018**, at least **20** percent of devices
- As of December 1, **2019**, at least **25** percent of devices
- As of December 1, **2020**, at least **35** percent of devices
- As of December 1, **2021**, at least **45** percent of devices
- As of December 1, **2022**, at least **55** percent of devices
- As of December 1, **2023**, at least **65** percent of devices
- As of December 1, **2024**, and onward, at least **75** percent of devices

Lifeline mobile broadband providers are not permitted to impose an additional or separate tethering charge for any mobile data usage that is below the relevant minimum service standard.

III. National Lifeline Eligibility Verifier

The Order establishes a National Lifeline Eligibility Verifier (National Verifier) with the goals of reducing waste, fraud and abuse; reducing costs to Lifeline providers, including the risk of enforcement actions related to eligibility issues; and facilitating consumer choice and improving the enrollment process. At the core of the National Verifier will be the **Lifeline Eligibility Database (LED)**, which will contain a list of Lifeline eligible, non-duplicative potential subscribers by utilizing state databases, subscriber information from National Lifeline Accountability Database (NLAD) opt-out states and records provided by consumers. The development, maintenance and ongoing activities of the National Verifier will be funded by the USF.

Functions. The primary function of the National Verifier will be to verify eligibility for Lifeline applicants by reviewing proof of enrollment in Federal and Tribal programs. The process will have both electronic (interaction with other systems and databases) and manual (human review of documents) components. Applicants will be able to submit application information by various means including mail and an online portal. The Order sets the expectation that the National Verifier will conduct “comprehensive and timely reviews” and that the manual and electronic certification processes will be completed in a “reasonable amount of time” but **does not explicitly require real-time verifications.**

Access. The National Verifier will be designed with varying interface methods to accommodate use

by subscribers, Lifeline providers (perhaps by application programming interface or API), states and Tribal Nations. Lifeline providers will be able to access the LED to verify applicants' eligibility, to claim a subscriber as a Lifeline customer and to receive reimbursement based on the subscribers served in the LED. The National Verifier will also allow eligible low-income applicants to contact it directly to initiate and complete eligibility verifications and applications for Lifeline service. This may include the use of standardized forms. Once an applicant is listed in the LED, he or she will be notified and provided information on services and Lifeline providers in the area. The National Verifier is expected to communicate with subscribers using a variety of methods (e.g., mail, telephone, text messages, email), in various languages and in a manner that complies with disabilities access requirements. Finally, the Order directs USAC to consider opportunities to coordinate and partner with states as long as Tribal or state eligibility determinations are in line with the FCC's rules.

Support Payments. The National Verifier will function as the default basis for determining support payments to providers. However, the Commission states that section 54.707 of the rules authorizes USAC to suspend or delay support payments if a carrier fails to provide adequate verification of its entitlement to such support upon reasonable request, and the Commission reserves the right to direct USAC to initiate the suspension or delay of Lifeline support amounts even in advance of notice to the relevant service provider in "extraordinary cases where advance notice would likely cause significant harm to the universal service fund." In addition, the Order directs USAC to consider how to facilitate initiatives to aggregate eligible subscribers' Lifeline benefits to streamline the payment of benefits and encourage provider participation (**aggregation projects**).

Security and Privacy. The Order directs USAC to ensure that the National Verifier will incorporate robust privacy and data security best practices in compliance with all applicable laws and Federal government guidance on privacy and security.

Stakeholder Engagement. The Commission directs USAC and the Bureau to develop a plan for meaningful collaboration from potential users, service providers, states, Tribal Nations and others. The Order encourages USAC to create a stakeholder committee to advise USAC on the "**Draft National Verifier Plan.**"

Timing. Although the Commission does not establish hard deadlines, it *expects* the National Verifier to be deployed: in at least **five states by December 31, 2017**; in at least **20 states by December 31, 2018**; and in **all states and territories using the National Verifier by December 31, 2019**. The Order also contains several reporting requirements for the National Verifier. First, before December 1, 2016, USAC must provide a Draft National Verifier Plan to the Bureau and the Office of Managing Director (OMD) describing the verifier to be developed and an estimated budget. In addition, on or before July 31 and January 31 of each year until the implementation is complete, USAC must submit to the Bureau and OMD a National Verifier Implementation Update. Once the National Verifier is fully operational in the first states, USAC must submit to the Bureau in January of each year a report on the operations of the National Verifier.

IV. Streamlining Eligibility for Lifeline Support

As part of its efforts to "streamline eligibility for Lifeline support to increase efficiency and improve the program for consumers, Lifeline providers, and other participants," the Commission amends the list of programs through which consumers can demonstrate eligibility to receive Lifeline-supported service. Specifically, the Order provides that low-income households who qualify for and participate in **one of the following assistance programs will be eligible for enrollment in the Lifeline program: (1) SNAP; (2) Medicaid; (3) Supplemental Security Income (SSI); (4) Federal**

Public Housing Assistance (FPHA); and (5) Veterans Pension benefit. The Order adds the Veterans Pension benefit and Survivors Pension benefit to the list of programs through which a consumer can demonstrate eligibility for the Lifeline program and removes the Low-Income Home Energy Assistance Program (LIHEAP); National School Lunch Program's free lunch program (NSLP); and Temporary Assistance for Needy Families (TANF) from the list of Lifeline-qualifying assistance programs. The revised program eligibility criteria are scheduled to become effective on **December 1, 2016 or following PRA approval, whichever is later.** Lifeline providers should take the necessary steps over the next several months to ensure that they are prepared to comply with the revised list of eligibility options (i.e. updating website information and enrollment forms, retraining customer service employees, etc.).

Criteria for Streamlining Lifeline Eligibility

The Commission's decisions about which assistance programs would allow a consumer to demonstrate eligibility for Lifeline service were driven by three key considerations:

1. **Relying on High-Participation Federal Assistance Programs.** The Commission chose the programs that "currently represent the highest enrollment rates in Lifeline."
2. **Fostering a Long-Term Technological Solution for Lifeline Eligibility.** The Order limits program eligibility to SNAP, Medicaid, SSI, FPHA, and Veterans Pension in part because the existing databases for those programs "provide the potential for streamlined interactions between those programs' systems and the National Verifier."
3. **Protecting Against Waste, Fraud, and Abuse by Utilizing Highly Accountable Programs.** The Order states "[b]y relying on highly accountable programs that demonstrate limited eligibility fraud, Lifeline will greatly reduce the potential of waste, fraud and abuse occurring due to eligibility errors."

Independent Income-Based Eligibility. The Commission maintains income-based eligibility as an avenue for low-income households to access Lifeline support, with some modifications. For purposes of avoiding "intentional or unintentional underreporting of income," the amended rule defines "gross income" to mean "all income actually received by all members of the household from whatever source derived, unless specifically excluded by the Internal Revenue Code."

Tribal-specific Eligibility Criteria. In response to the Commission's determination that "there is much more progress to be made in increasing penetration and adoption of Lifeline services" on Tribal lands, the Order backtracks from a proposal in the NPRM that would have removed Lifeline eligibility based on federal Tribal assistance programs. Instead, the Commission maintains its existing rule that low-income consumers living on Tribal lands are eligible for Lifeline if they are receiving benefits from one of the following Tribal-specific assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families (Tribal TANF); Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR).

The Commission was careful to note, however, that other issues raised in the NPRM but not specifically addressed in the Order "remain open for consideration in a **future proceeding more comprehensively focused on advancing broadband deployment on Tribal lands.**" Those issues include modifying the enhanced support available on Tribal lands or deciding whether to restrict Lifeline and/or Link Up support to facilities-based carriers and/or carriers serving low density

areas on Tribal lands.

Separately, the Commission retains the **Cherokee Outlet** as a “former reservation in Oklahoma,” which allows individuals residing on this land to remain eligible for enhanced Tribal Lifeline support. The Commission’s **new Tribal map in Oklahoma** will become effective on **June 8, 2016**.

State-specific Eligibility Criteria. The Order further amends the Commission’s rules to remove state-specified eligibility criteria for Lifeline support.

V. Increasing Competition for Lifeline Consumers

The FCC adopts rules designed to “encourage market entry and increase competition among Lifeline providers, which will result in better services for eligible consumers to choose from and more efficient usage of universal service funds.” To that end, it updates “providers’ processes for entering the Lifeline program, providers’ obligations as Lifeline providers, and providers’ responsibilities when they may seek to exit the program,” which the Commission views as “crucial to providers’ decisions about whether to participate in the program at all, and they are accordingly fundamental pieces of a revitalized Lifeline program.” Specifically, the Commission:

- limits Lifeline participation to ETCs;
- establishes **Lifeline Broadband Provider (LBP)** ETCs and creates a designation process for such LBPs; and
- establishes reformed service and relinquishment obligations for different categories of ETCs.

Lifeline Participation Limited to ETCs. In the Order, the FCC continues to limit Lifeline provider eligibility to ETCs, and declines to extend Lifeline participation to non-ETCs. The Commission reasons that requiring ETC designation will protect consumers and promote efforts to minimize waste, fraud and abuse, and that “working within an updated ETC framework is a more sound approach to modernizing how carriers enter and exit the Lifeline program than creating entirely new registration processes and requirements for Lifeline providers.”

Authority to Designate LBPs. The FCC also creates a brand new provider designation for Lifeline support: the LBP. To establish the LBP designation, the Commission engages in complex lawyering. First, it creates a separate element of the USF to support Lifeline BIAS. Next, it preempts state designations for its new LBP designation, which it finds “would thwart federal universal service goals and broadband competition,” and prohibits, by rule, state commissions from designating LBPs. Then the Order expands the requirement that ETCs provide “telephone exchange service and exchange access” such that ETCs may offer any telecommunications service (by itself or through an affiliate) solely for the purposes of the LBP application and may discontinue providing the service after obtaining LBP designation. Finally, the FCC grants forbearance from the requirement that carriers must provide “telephone exchange service and exchange access” to seek LBP designation in the first place.

Application Requirements for LBPs. The FCC establishes a process for becoming an LBP under section 54.202 of its rules. First, LBP applicants will be subject to an expedited review process under which applications will be **deemed granted within 60 days** of filing a completed application provided that:

- (1) the provider has 1,000 or more non-Lifeline customers with voice telephone and/or BIAS service;

(2) the provider has offered broadband services to the public for at least the preceding two years (without non-emergency interruption); and

(3) the Commission has not notified the applicant that the grant will not be automatically effective.

For Tribally-owned and -controlled facilities-based providers (i.e., greater than 50 percent owned and actually controlled by a federally recognized Tribal Nation (or consortia)) that provide service on Tribal lands, the **60-day shot clock** will apply regardless of whether they meet the non-Lifeline customer or broadband service experience minimums. The Commission delegates to the Bureau authority to implement this process. Once a provider has obtained LBP designation, they may expand their LBP service area by submitting a letter to the Commission identifying the new service areas and certifying that there have been no material changes to the original petition. The letter request will be deemed granted five business days after submission, unless notified otherwise.

LBP applications must contain the following information:

- a certification that the provider will comply with the service requirements applicable to the support that it receives, including minimum service standards;
- a demonstration of the provider's ability to remain functional in emergency situations;
- a demonstration that the provider will satisfy applicable consumer protection and service quality standards (for wireless providers, a commitment to comply with the CTIA Consumer Code for Wireless Service satisfies this requirement);
- a demonstration that the provide is financially and technically capable of providing the Lifeline service, for example through compliance with subpart E of part 54 of the Commission's rules; and
- terms and Conditions for broadband Lifeline service offered at the time of designation.

All LBPs must comply with the designation requirements for Lifeline-only ETCs under section 214(e) of the Act and sections 54.201 and 54.202 of the Commission's rules.

Finally, the Commission decides that existing Lifeline-only ETCs will be able to receive Lifeline support for BIAS without re-submitting a petition for ETC designation as a Lifeline Broadband Provider.

State Role in Lifeline. While the Order preempts states from designating LBPs, it does not preempt the ability of states to create, administer, or establish their own rules for their own state-based Lifeline programs for voice, BIAS, or both. States may also designate Lifeline-only ETCs and non-Lifeline ETCs as allowed under state law.

Lifeline Obligations of ETCs. The Order forbears from various requirements for different types of ETCs. Specifically, Lifeline-only ETCs will be eligible to receive Lifeline support for BIAS but may choose only to offer supported voice service, while non-Lifeline-only ETCs will be eligible to receive support for BIAS but may choose to offer only voice service (except where they already offer broadband pursuant to high-cost obligations).

If an ETC elects not to provide BIAS, it must notify the Commission either 60 days after announcement of OMB PRA approval or 30 days after receiving ETC designation, whichever is later. Under new section 54.205(c), Lifeline broadband providers may also relinquish their ETC designation

by submitting a notice to the Commission. The notice will be deemed granted 60 days after the notice is filed, unless the provider is notified otherwise.

Moreover, while the Commission denies blanket forbearance from the requirement to provide Lifeline-supported voice service for Lifeline ETCs, it does grant conditional forbearance from the requirement to provide voice service for existing non-Lifeline-only ETCs where (1) 51 percent of Lifeline subscribers in a county are obtaining BIAS; (2) there are at least three other providers of Lifeline BIAS that each serve at least five percent of the Lifeline broadband subscribers in that county; and (3) the ETC does not actually receive federal high-cost universal service support.

Finally, the Order clarifies the **advertising rule**, explaining that the requirement to advertise in “media of general distribution” is contextual, and can include flyers, newspaper advertisements, or local television advertisements, or in the context of Lifeline service for eligible subscribers with hearing disabilities, can include web advertisements, mail, email, or other text-based methods of advertising.

VI. Lifeline Service Innovation

The Order addresses several issues related to Lifeline service innovation, including exploring ways to promote broadband adoption through non-price mechanisms and an extended benefit port freeze for broadband services.

Comprehensive Non-Price Digital Inclusion Plan. In the Order, the Commission directs the Consumer and Governmental Affairs Bureau (CGB) to develop a comprehensive plan within six months of the effective date of the Order for the Commission to better understand non-price barriers to digital inclusion for low-income Americans and to propose how the Commission can facilitate efforts to address those barriers. The plan should:

- propose methods for promoting broadband adoption and increased digital literacy;
- explore how to link efforts to increase the availability of affordable service and equipment, digital literacy training, and relevance programming;
- further ETC efforts to collaborate with schools, libraries, community centers and other organizations that serve low-income consumers;
- propose how it will convene stakeholders to explore how digital inclusion efforts can be tailored to local conditions by trusted community-based partners to maximize their effect;
- address how digital inclusion organizations can share their experience in localizing digital inclusion efforts;
- address information and studies regarding best practices for increasing the digital skills of those already online and how to spread them; and
- propose how to facilitate communication among schools, libraries, and community organizations across the country regarding how to tailor digital inclusion efforts to deepen the value of broadband to those already online.

Lifeline Service Stability (Benefit Port Freeze). The Order creates a new rule section, 54.411, which adopts a **12 month benefit port freeze** for Lifeline-supported broadband service, and retains the

60 day benefit port freeze period for Lifeline-supported voice service. Under the broadband port freeze, providers may not seek or receive Lifeline reimbursement for service provided to a subscriber who used the Lifeline benefit to enroll in a qualifying Lifeline BIAS offering with another Lifeline provider within the previous 12 months. After the 12 month period, the subscriber must be recertified as eligible, at which point they may opt to remain with the same Lifeline provider on a month-to-month basis or select a new provider, which will trigger a new 12-month port freeze period. During the initial 12-month period, the provider may not materially change (for the worse) the terms and conditions for service without subscriber consent. Further, while a subscriber may switch to a different qualifying service with the same provider during the initial 12-month period, if the subscriber switches from a BIAS service to a voice service, he or she is immediately subject to the 60-day voice period, rather than the 12-month period. The Commission provides a number of exceptions to the 12-month benefit port freeze, including if:

- the subscriber moves their residential address;
- the provider ceases operations or otherwise fails to provide service;
- the provider has imposed late fees for non-payment related to the supported service(s) greater than or equal to the monthly end-user charge for service; or
- the provider is found to be in violation of the Commission’s rules during the benefit year and the subscriber is impacted by such violation.

If the above exceptions apply, the subscriber may cancel service and switch to a new provider within the original 12-month period without re-verifying eligibility until the end of the original 12-month period. The Commission directs USAC to implement processes, including updating the NLAD, to comply with these new rules, and directs states that have opted out of the NLAD to do the same. These rules will become effective 60 days after announcement in the Federal Register of OMB approval, or December 1, 2016, whichever is later.

VII. Budget

The Order adopts a budget mechanism in a new rule, section 54.423, that sets an initial annual budget of \$2.25 billion beginning January 1, 2017, indexed to inflation. According to the Commission, the budget would allow over 20 million households to participate in the program with basic support for an entire year. If the program reaches 90 percent of the budget within a given year, the Bureau must issue a report to the Commission by July 31st of the following year. The report should evaluate program disbursements, including causes underlying program growth, the different service and technologies supported by Lifeline, disbursement amounts by state or other geographic areas, and any other relevant information. The report also should make recommendations about what should be done (e.g., adjusting minimum service standards, changing support levels, altering other requirements, or modifying the budget amount). The Commission expects it will take action within six months of receiving the report.

VIII. Efficient Program Administration

The Order adopts a number of other mandates and rule changes aimed at promoting efficiency and reducing waste, fraud and abuse in the Lifeline program. They are as follows:

Program Evaluation. The Order instructs USAC and the Bureau to conduct two evaluations to assess

the Lifeline program's progress toward achieving the Commission's goal of promoting the "affordability of voice and broadband service." First, the Commission directs the Bureau to "measur[e] the extent to which voice and broadband service expenditures exceed two percent of low income consumers' disposable household income as compared to the next highest income gap" and to publish the results of its research in the annual Universal Service Monitoring Report. Next, the Commission directs USAC "to begin a procurement process for an outside, independent, third-party evaluator to complete a program evaluation of the Lifeline program's design, function, and administration." The Order instructs that the evaluation "should be consistent with current GAO guidance on program evaluations" and the results are to be submitted to the Commission by **December 31, 2020** so the Commission can incorporate the findings into the State of the Lifeline Marketplace Report, due June 30, 2021.

Non-Usage Reform. The Order makes two notable changes to the non-usage rule. The Order first amends this rule to provide that if a subscriber uses data or *sends* an outbound text message, that action is sufficient to constitute "usage" such that the countdown for service cutoff is not triggered. This revision was "based on the reality that many consumers today view texting, voice, and broadband as interchangeable means of communication and often use text messages as the sole or primary means of communication." The Commission found that it would be "unnecessarily burdensome to require [Lifeline subscribers] to distinguish among the[se] services to ensure compliance with the program's usage requirement."

As a tradeoff to this increased flexibility, the Order further amends the rule to cut the non-usage period to 30 days. The Commission explains that "[b]roadening the list of services that can be used to demonstrate 'usage' ... should greatly ease consumers' ability to show their desire to retain Lifeline service." As such, the Commission determines that it would be "appropriate" to reduce the non-usage period "from 60 to 30 days, along with a corresponding reduction in the time allotted for service providers to notify their subscribers of possible termination from 30 to 15 days." The Commission was not persuaded by arguments from carriers that decreasing the non-usage period would lead to a higher number of de-enrollments, finding that "such assessments are based on a scenario in which the Commission did not permit texting, one of the prevalent means of wireless communications, to be used as a basis for demonstrating usage."

Rolling Recertification. The Order amends the annual recertification requirement so that recertification is completed on an individual subscriber basis "every 12 months, as measured from the subscriber's service initiation date" rather than once each calendar year, which often results in the annual recertification of all or most subscribers on the same date at the end of the year. The Commission found that the new approach would have a number of advantages, including "prevent[ing] the entity responsible for recertification from processing recertification and potential de-enrollment procedures for all subscribers at the same time," "mak[ing] the recertification process more manageable" and "enabl[ing] providers and the National Verifier to respond to any customers who need assistance in the recertification process without being overwhelmed by customer service requests."

Recognizing that adoption of the rolling recertification may cause some confusion for providers, the Order provides the following guidance for near-term recertification compliance:

- Prior to the implementation of the National Verifier in a state, to prevent the enrollment of ineligible customers, providers will be required to conduct an initial eligibility determination for every enrolling customer, regardless of whether that customer had previously received Lifeline-discounted service from another provider. The provider must then recertify the customer's

eligibility 12 months after the subscriber's service initiation date with that provider.

- After the National Verifier has been implemented in a state, the National Verifier's eligibility records for a subscriber will permit the National Verifier to only recertify the subscriber's eligibility every 12 months after the subscriber's first initiation of a Lifeline-discounted service. Thus, even if a subscriber changes Lifeline providers during the course of the year, the National Verifier will only need to recertify eligibility 12 months after the subscriber's first service initiation date, and every 12 months thereafter.
- The revised recertification rule is scheduled to go into effect on January 1, 2017 or upon PRA approval. For subscribers enrolled prior to January 1, 2017, recertification for 2016 will be conducted in accordance with current Lifeline practices and require recertification by December 31, 2016. For these subscribers, rolling recertification will begin July 1, 2017, at which point they will need to be recertified on a rolling basis based on their service initiation date.
- Subscribers enrolled on or after the effective date of the amended rule (presumably January 1, 2017) will be subject to recertification requirements at the end of the 12-month period that begins with their service initiation date.

The Order also codifies the requirement from the 2012 Lifeline Reform Order that the recertifying entity must "first query the appropriate state or federal database to determinate on-going eligibility prior to using other means to recertify subscribers," such as a written recertification form signed by the subscriber.

Finally, the Order revises the timelines for recertification and de-enrollment. Under the amended rule, a subscriber will have 60 days to respond to a subscriber's request for eligibility recertification (increased from 30 days). If the subscriber fails to respond to the request within the 60-day allotted time, the provider must de-enroll the subscriber within five business days. Additionally, service providers will be required to de-enroll a subscriber who has requested de-enrollment within two business days after making such a request. Lifeline providers should take time in the coming months to train their employees on these new timelines to ensure compliance with the amended rule.

Publishing Lifeline Subscriber Counts. To increase transparency and accountability, the Commission directs USAC to "modify its online Lifeline tool to make available to the public information about the Lifeline program, such as the total number of subscribers for which a provider seeks support for each [Study Area Code], including how many subscribers are receiving enhanced Tribal support," rather than simply disclosing disbursement amounts made to providers based on their Form 497s. The Order requires USAC to make these modifications before December 1, 2016.

The Order further instructs USAC "to work with the Bureau and OMD to formulate a plan for making available additional Lifeline information" in order to further promote transparency about the program.

Audits. As proposed in the NPRM, the Order revises the Commission's rule requiring all Lifeline providers to undergo an audit within their first year of receiving Lifeline reimbursements. The Commission made this change in recognition that "in many cases, the costs and burdens on the Commission, USAC and service providers outweigh the benefits of conducting audits at the conclusion of the provider's first year."

Universal Consumer Certification, Recertification and Household Worksheet Forms. The Order adopts

a modified version of a proposal in the NPRM to create “uniform, easily understood forms for the Lifeline program.” Specifically, the Order “delegate[s] to the Bureau to propose to OMB Lifeline forms for certification, recertification and the one-per-household requirement, if it believes that doing so will aid program administration.” It further authorizes the Bureau to “phase out and/or combine forms as needed” following implementation of the National Verifier. The Order makes clear that if the Bureau chooses to create universal forms, the language in them, including the consequences of providing false and misleading information, must be easily understood by subscribers. The Order further directs the Bureau to account for relevant program differences across states and territories.

Timelines for Implementation of the New Rules

<i>Effective Date</i>	<i>Rule Section</i>	<i>Summary of Rule Change</i>
30 Days After Publication of the Order in the Federal Register	54.201	Amends the definition of ETC
Immediately Upon PRA Approval in the Federal Register	54.400	Amends the definitions of “income,” “qualifying assistance program,” “broadband Internet access service,” “voice telephony service,” “supported services,” and “National Lifeline eligibility verifier”
	54.423	Creates the budget
December 1, 2016 or 60 Days Following PRA Approval, Whichever is Later	54.202(a)(6), (d), (e)	Creates additional requirements for Commission designation of ETCs
	54.205(c)	Establishes requirements for relinquishment of universal service by a Lifeline Broadband Provider
December 1, 2016 or 60 Days Following PRA Approval, Whichever is Later	54.101(a)-(e)	Revises requirements for receiving high-cost universal service support
	54.401(a)(2)-(c), (f)	Revises definition of Lifeline
December 1, 2016 or 60 Days Following PRA Approval, Whichever is Later	54.403(a)	Establishes timelines for phasing out support for standalone voice service
	54.405(e)(1), (e)(3)-(e)(5)	Amends the rules for de-enrollment
December 1, 2016 or 60 Days Following PRA Approval, Whichever is Later	54.407(a), (c)(2), (d)	Revises the requirements for reimbursement to be based on the National Verifier ; amends the non-usage rule ; adds a requirement for certification by an officer of the ETC that the ETC is in compliance with the Lifeline rules
	54.408	Adds a new subsection to establish minimum service standards
December 1, 2016 or 60 Days Following PRA Approval, Whichever is Later	54.409(a)(2)	Amends the list of eligibility programs through which a consumer can demonstrate eligibility for Lifeline
	54.410(b)-(e)	Revises the rules for establishing income-based and program-based eligibility, and the rule related to the eligibility certification form based on the potential

	availability of a universal form
54.410(g)-(i)	Amends the one-per-household form requirement to reflect potential availability of a universal form
54.411	Adds the new benefit portability rule
54.416(a)(3)	Adds a new requirement for an officer of the ETC to certify compliance with the minimum service standards
54.420(b)	Amends the audit requirement to reflect flexibility by the OMD to determine when an audit will occur
54.422(b)(3)	Amends the annual ETC reporting requirement to include certification of compliance with the minimum standards rule
January 1, 2017 or 60 Days Following PRA Approval, Whichever is Later	Amends the annual eligibility re-certification process based on establishment of the National Verifier

Please be advised that attorneys in Kelley Drye & Warren’s Communications practice group have extensive experience working on Lifeline program matters, including Federal Communications Commission technical and regulatory compliance; certification and reporting obligations; and enforcement matters. For more information regarding this client advisory, please contact your usual Kelley Drye attorney or any member of the Communications practice group. For more information on the Communications practice group, please [click here](#).

[1] Although new section 54.408 of the rules begins the minimum service standards as of December 1, 2016, the mobile minimum service standards begin on the *later of December 1, 2016 or 60 days after PRA approval*.

[2] Based on the 2013 and 2014 Mobile Competition Reports, the percentage increase would be 18.1 percent, which when rounded up to the nearest 250 MB, would be 2.25 GB per month.