

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Lifeline and Link Up Reform and
Modernization

Telecommunications Carriers Eligible for
Universal Service Support

Connect America Fund

WC Docket No. 11-42

WC Docket No. 09-197

WC Docket No. 10-90

REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

New America’s Open Technology Institute (OTI) files this reply to oppositions to petitions for reconsideration of the Lifeline *Order*.¹ This reply focuses on the affordability arguments raised by CTIA, TracFone, and Joint Lifeline ETC Petitioners (collectively Petitioners).

Petitioners are incorrect to argue that the Federal Communications Commission (FCC) did not engage in a meaningful analysis of the affordability of Lifeline service. The record clearly demonstrates that program affordability was intensely debated and that the FCC seriously examined this concern against a countervailing need to ensure that service plans are reasonably comparable. The FCC also took many steps to ensure that Lifeline

¹ *Lifeline and Link Up Reform and Modernization*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (“*Order*”).

plans remain affordable, including reforms that will ease the cost burden on Lifeline providers and promote competition in the program. The FCC also created mechanisms to periodically review the market and adjust the program’s rules as needed after the initial implementation phase. Consequently, Petitioners’ arguments are untimely at best, but in any event should be rejected.

I. The FCC took a comprehensive, holistic approach to affordability to ensure that low-income consumers were not relegated to “second-tier” Internet service.

Petitioners argued the *Order*—particularly the sections related to mobile minimum service standards and the mobile standard formula—did not analyze whether those minimum standards would result in “affordable” rates and that the FCC did not analyze what “affordable” means in the Lifeline context.² These claims are flatly wrong. The record makes abundantly clear the FCC was highly motivated to ensure affordable rates while also ensuring Lifeline does not become a second-tier service.³

As an initial matter, the FCC explained how it interprets “affordable” under Sections 254(b)(1) and 254(i). The *Order* stated that “in applying [the affordability] concept we . . . consider the risk that, while some low-income consumers subscribe to a service, they must spend an undue portion of their funds to do so but for the provision of universal

² See CTIA Petition for Reconsideration at 2-6; Joint Lifeline ETCs Petition for Reconsideration at 3-9; TracFone Petition for Reconsideration at 12-18; Joint Lifeline ETCs Opposition (July 29, 2016) at 13; TracFone Comments (July 29, 2016) at 9-10.

³ *Order*, at ¶¶ 71, 75 (citing OTI Comments at 2-3).

service support.”⁴ The Commission further explained that it does not merely look at whether “a customer would not purchase a service at all but for discounts made possible . . . by universal service support.”⁵ The FCC must draw administrable lines “while balancing the various policy objectives in section 254 of the Act and section 706 of the 1996 Act,”⁶ language that likely was intended to reference the objectives of affordability and reasonable comparability. The *Order* also states that “affordable” is not synonymous with “free.”⁷ This interpretation is reasonable, appropriate, and strongly supported by the record, including OTI’s comments urging the FCC to ensure that Lifeline participants have access to robust Internet service.⁸

The FCC took several actions to ensure affordability and reasonable comparability of Lifeline service. First, the mobile broadband minimum standards in the *Order* will be phased-in rather than applied immediately. As explicitly noted in the *Order*, the minimum standard could have been 2 GB by December 2016.⁹ However, the FCC chose to phase-in this standard over three years to allow for the market to adjust.¹⁰

Further, the FCC eased the cost burden on ISPs by setting minimum speeds at 3G rather than 4G speeds. This is important because the FCC has thoroughly addressed

⁴ *Order*, at ¶ 57 n.163.

⁵ *Id.*

⁶ *Id.*

⁷ *Order*, at ¶ 116. The first Lifeline program consisted of a waiver of the “subscriber line charge” for low-income households, but not other portions of a telephone bill. *See Order*, ¶ 23; 50 Fed. Reg. 939, 942 (1985).

⁸ OTI comments, at 2-3 (Aug. 31, 2015).

⁹ *Order*, at ¶ 95.

¹⁰ *Order*, at ¶ 93.

Lifeline pricing and affordability with specific reference to pricing data of 3G plans.¹¹ That analysis compared data from the FCC's *18th Mobile Competition Report*, which discussed 3G offerings between 1 and 2-cents per MB, and a filing from TracFone, which described retail plans of 1-cent per MB. Using these numbers as a baseline (1 to 2-cents per MB), the 500MB required by the *Order* fits well within the allotted \$9.25 Lifeline subsidy. That analysis also noted that data costs have been falling by 20 percent per year, as of April 2015. This analysis suggest prices should align well with the Lifeline subsidy.

Second, the FCC took several steps to reduce costs for providers and consumers. The *Order* creates a National Lifeline Eligibility Verifier, which means Lifeline providers will no longer incur costs related to verification.¹² The new verification system relieves providers of a costly administrative burden and combats potential waste, fraud, and abuse, thus allowing for lower prices.¹³ The *Order* also streamlines the Eligible Telecommunications Carrier (ETC) process by making the FCC the one-stop shop for providers hoping to benefit from the program, thereby alleviating the burden associated with applying for ETC status in several states.¹⁴

Third, the FCC created several opportunities to reevaluate and adjust the minimum standards if the need arises. As such, Petitioners' arguments are at best premature. One such opportunity is the annual minimum standard adjustment. After the three-year phase-

¹¹ Jon Wilkins & Matt DelNero, *Lifeline: Striking the Right Balance*, FCC (Mar. 21, 2016), <https://www.fcc.gov/news-events/blog/2016/03/21/lifeline-striking-right-balance>.

¹² *Order*, at ¶ 130.

¹³ *Id.*

¹⁴ *See Order*, at ¶ 277.

in is complete, the Wireline Bureau will annually release a Public Notice to determine whether the minimum standard is reasonable.¹⁵ At that time, adjustments can be made if necessary.

Another opportunity to evaluate the program is through the State of the Lifeline Market Report, due June 30, 2021.¹⁶ The report provides an opportunity to improve the program and explicitly must take into account “the affordability of both voice and broadband services” and may result in “adjusting . . . minimum service standards, so that the Lifeline program continues to achieve its objectives.”¹⁷ These periodic updates provide ample opportunity for the minimum standards to be readjusted to fit the facts on the ground and reflect changing market conditions.

Fourth, Petitioners’ arguments about the differences in affordability at the household and individual levels have already been adequately addressed by the Commission. Lifeline has long been administered as a household program. The FCC has previously declined to extend the program to individuals for budget reasons, and did the same in this *Order*.¹⁸ Therefore, the FCC should reject these arguments on their merits.¹⁹

¹⁵ *Order*, at ¶¶ 97-98.

¹⁶ *Order*, at ¶ 66.

¹⁷ *Id.*

¹⁸ *Order* at ¶ 68 (citing 2012 *Lifeline Reform Order* at ¶ 46).

¹⁹ The FCC should also reject many of them by virtue of 47 CFR § 1.429(l)(3), which states the FCC may dismiss petitions for reconsideration that “[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding.”

CONCLUSION

The Commission adequately ensured Lifeline service is both affordable and reasonably comparable. Given the deficiencies in Petitioners' arguments discussed herein, there is no reason to delay implementation of the Lifeline *Order*. The Commission should reject Petitioners' arguments regarding affordability.

Respectfully Submitted,

/s/

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