

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
Connect America Fund)	WC Docket No. 10-90

To: The Commission

**CTIA REPLY TO OPPOSITIONS
TO PETITIONS FOR RECONSIDERATION**

CTIA¹ submits this Reply in response to the initial filings on the Federal Communications Commission’s (“Commission’s”) June 30, 2016 *Public Notice* seeking comment on petitions for reconsideration in the above-captioned dockets, including CTIA’s.² Given the strong record support for CTIA’s petition, and two oppositions’ failure to address CTIA’s substantive objections to the long-term mobile broadband performance standards, the Commission should grant CTIA’s petition. Thus, the FCC should seek public input on a more economically justifiable standard and reconsider the *Lifeline Third Report and Order’s* decision

¹ CTIA® represents the U.S. wireless communications industry. With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century connected life. CTIA members benefit from its vigorous advocacy at all levels of government for policies that foster the continued innovation, investment and economic impact of America’s competitive and world-leading mobile ecosystem. The association also coordinates the industry’s voluntary best practices and initiatives and convenes the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² *Petitions for Reconsideration of Action in Lifeline Rulemaking Proceeding*, Public Notice, WC Docket Nos. 11-42, 09-197, 10-90, Report No. 3046 (rel. June 30, 2016) (“*Public Notice*”); *Petition for Reconsideration of CTIA*, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 23, 2016) (“*Petition*”).

to set the long-term minimum capacity standards for mobile broadband at 70 percent of the average mobile data usage per household.³ The record also shows that the Pennsylvania Public Utilities Commission’s petition should be denied.⁴

I. THE RECORD SUPPORTS THE GRANT OF CTIA’S PETITION AND THE FCC SHOULD THUS VACATE ITS LONG-TERM LIFELINE MOBILE BROADBAND USAGE STANDARD AND SEEK PUBLIC INPUT ON A MORE ECONOMICALLY JUSTIFIABLE STANDARD THAT WILL SUPPORT AFFORDABLE SERVICE FOR LIFELINE CUSTOMERS.

The majority of the parties addressing CTIA’s Petition in response to the *Public Notice* support CTIA’s objection to the formula for calculating a mobile broadband minimum service standard beginning in December 2019. Only two filers opposed the Petition, and they failed to rebut CTIA’s legal and policy objections to the rule. Thus, the record clearly supports the Petition’s grant.

A. The Majority of Commenters Agree That CTIA’s Petition Should Be Granted.

Commenters addressing CTIA’s Petition generally agree that the long-term minimum standard for mobile broadband could present affordability challenges and should consequently be reconsidered.⁵

³ *Lifeline and Link-Up 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, 31 FCC Rcd 3962, 3995 ¶ 94 (Apr. 27, 2016) (“*Order*”).

⁴ Petition for Clarification of the Pennsylvania Public Utility Commission, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 23, 2016) (“*Pennsylvania Petition*”).

⁵ See Petition for Reconsideration of CTIA, WC Dockets Nos. 11.42, 09-197, 10-90, at 3-4, fn. 9 (filed June 23, 2016) (explaining that “[a]s the record demonstrates, an unjustifiably high usage requirement does not adequately account for the affordability of mobile broadband plans for the lowest-income Americans who may rely upon the Lifeline program.”)

Specifically, Sprint notes that the adopted standard “could well have the perverse effect of limiting or even decreasing adoption rates by setting minimum data allotment thresholds that will be prohibitively expensive for low income consumers.”⁶ TracFone agrees, explaining that the Commission failed to undertake any analysis of whether the standard would result in unaffordable rates, and that the adopted standard is not supported by the evidence in the proceeding.⁷

Of equal concern, Q Link notes that the standard could “make it infeasible for ETCs to offer useful packages.”⁸ This observation is corroborated by a joint coalition of eight currently designated eligible telecommunications carriers (“ETCs”), who call the standard “deeply flawed” and agree it must be reconsidered, in part due to insufficient consideration for its effect on affordability.⁹

⁶ Comments of Sprint Corporation, WC Docket Nos. 11-42, 09-197, 10-90, at 2-3 (filed July 29, 2016) (also arguing that “[b]ecause the formula to be used ignores affordability, results in an excessively high minimum data allotment, limits consumer choice, and introduces uncertainty, its use should be reconsidered”).

⁷ TracFone Wireless, Inc.’s Comments in Response to Petitions for Reconsideration, WC Docket Nos. 11-42, 09-197, 10-90, at 9 (filed July 29, 2016) (“TracFone agrees with CTIA and the Joint Lifeline ETC Petitioners that the primary flaw with the Commission’s minimum service standard for mobile broadband is the Commission’s failure to analyze whether the standard would result in affordable rates. ... the Commission’s long-term formula for calculating the minimum standard for mobile broadband service at 70 percent of the average per-household data usage rate is not supported by any evidence in the record of this proceeding.”).

⁸ Comments of Q Link Wireless, LLC, WC Dockets No. 11-42, 09-197, 10-90, at 6 (filed July 29, 2016).

⁹ Joint Lifeline ETC Respondents’ Opposition to Petitions for Reconsideration, WC Docket Nos. 11-42, 09-197, 10-90, at 13 (filed July 29, 2016) (explaining that “[t]he Commission failed to appreciate the affordability challenges that its broadband minimum service standard would impose on low-income consumers, as well as the unworkability of its unnecessarily complicated and unclear long-term standard”).

B. The Two Parties Opposing the Petition Fail to Refute Its Objections to the Rule.

Only two parties – the National Association of Utility Consumer Advocates (“NASUCA”)¹⁰ and a coalition led by the Greenlining Institute (“Greenlining”)¹¹ – filed in opposition to CTIA’s Petition and neither of these filers substantively addressed CTIA’s objections to the long-term mobile broadband service standard formula.

Specifically, although NASUCA asserts that the Commission “reasonably based mobile data Lifeline standards on the usage of 70% of customers,” it offers no support for this statement – and fails to refute the record evidence cited in CTIA’s Petition.¹² Yet, NASUCA also notes that “[a]ffordability should be addressed first.”¹³ The Commission’s failure to address affordability – the “central touchstone”¹⁴ and “animating principle of the Lifeline program”¹⁵ – was one of the major factors in CTIA’s Petition.¹⁶

Similarly, Greenlining expresses general opposition to any reduction in minimum service standards,¹⁷ but fails to address the challenge to affordability in the current long-term standard formula. Greenlining’s filing also argues that the Commission should not make changes to the

¹⁰ Opposition to Petitions for Reconsideration, WC Docket Nos. 11-42, 09-197, 10-90 (filed July 29, 2016) (“NASUCA Comments”).

¹¹ Consolidated Opposition of the Greenlining Institute *et al.*, WC Docket Nos. 11-42, 09-197, 10-90 (filed July 29, 2016) (“Greenlining Comments”).

¹² NASUCA Comments at 5.

¹³ *Id.*

¹⁴ *Order*, 31 FCC Rcd at 3984 ¶ 57.

¹⁵ *Id.* at 3981 ¶ 54.

¹⁶ *See, e.g.*, Petition at 2-4.

¹⁷ Greenlining Comments at 6-7.

Order “until and unless it has collected sufficient data to indicate that changes are necessary.”¹⁸

In this regard, Greenlining’s suggestion that the FCC maintain a standard which still requires sufficient data to support is exactly backwards. Because the evidence in the record demonstrates that the adopted standard may result in unaffordable service, the Commission should vacate the standard unless and until it has sufficient data to support it. This is particularly true given that the standard will not take effect until December 2019.¹⁹

Given that most commenters support CTIA’s Petition, and the parties opposing it do not sufficiently refute CTIA’s arguments, the Commission should grant CTIA’s petition and vacate the long-term minimum standard for mobile broadband pending development of a record that accounts for the affordability of a long-term mobile broadband standard for Lifeline customers.

II. COMMENTERS RAISE SERIOUS QUESTIONS ABOUT THE PENNSYLVANIA PUC’S PETITION.

The *Public Notice* also sought comment on a petition from the Pennsylvania Public Utility Commission, which invited the agency to “clarify” that state commissions may exercise regulatory oversight over Lifeline Broadband Providers (“LBPs”).²⁰ Both USTelecom²¹ and NCTA²² raise serious questions about the Pennsylvania Petition, and it should be denied.

¹⁸ *Id.* at 7.

¹⁹ *Order*, 31 FCC Rcd at 3986-87 ¶ 65.

²⁰ Pennsylvania Petition at 1-2, 7.

²¹ United States Telecom Association (“USTelecom”) Opposition to Petitions for Clarification and Reconsideration, WC Docket Nos. 11-42, 09-197, 10-90 (filed July 29, 2016) (“USTelecom Comments”).

²² Comments of the National Cable & Telecommunications Association (“NCTA”), WC Docket Nos. 11-42, 09-197, 10-90 (filed July 29, 2016) (“NCTA Comments”).

USTelecom²³ and NCTA²⁴ alike observe that the “clarifications” Pennsylvania seeks conflict with the uniform national framework that the Commission established for LBPs in the *Order*. The purpose of the Commission’s national LBP designation was to provide a uniform, simplified process for retail broadband providers to enter the Lifeline program. Pennsylvania’s request for broad state authority over LBPs is contrary to the interstate character of broadband services.²⁵ For these reasons, USTelecom and NCTA raise valid concerns. The Commission should deny Pennsylvania’s petition, which would significantly undermine the Commission’s goals in creating the streamlined, national LBP designation.

²³ See, e.g., USTelecom Comments at 2 (“Although the Pennsylvania PUC characterizes its petition as a request for ‘clarification,’ the Petition is in fact seeking to dismantle key elements of the LBP framework.”).

²⁴ See, e.g., NCTA Comments at 1 (“[g]ranted the Pennsylvania PUC’s request would undo the benefits of having a single, federal process on which Lifeline Broadband Providers can rely”); *id.* at 2-3 (explaining that one of the entire purposes of the *Order* was to ease “the burdens of navigating a state-by-state ETC designation process,” which “were deterring providers from participating in the Lifeline program” – necessitating a unified national framework).

²⁵ NCTA Comments at 3-4; USTelecom Comments at 3-4.

III. CONCLUSION.

The record demonstrates that CTIA's Petition should be granted, and the Pennsylvania Petition should be denied.

Respectfully submitted,

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