

entry “Ozone (8-Hour, 1997): Muncie, IN (Delaware County)”]; and
 ■ f. Removing the entry for “Terre Haute Hydrocarbon Control Strategy” and

adding in its place the entry “Ozone (8-Hour, 1997): Terre Haute, IN (Vigo County)”.

The revisions read as follows:

§ 52.770 Identification of plan.
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 (e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

| Title | Indiana date | EPA approval | Explanation |
|--|--------------|--|-------------------------------|
| Ozone (8-Hour, 1997): Evansville, IN (Vanderburgh and Warrick Counties). | 6/20/2019 | 12/27/2019, [insert Federal Register citation]. | 2nd limited maintenance plan. |
| Ozone (8-Hour, 1997): Fort Wayne, IN (Allen County). | 6/20/2019 | 12/27/2019, [insert Federal Register citation]. | 2nd limited maintenance plan. |
| Ozone (8-Hour, 1997): Jackson Co., IN (Jackson County). | 6/20/2019 | 12/27/2019, [insert Federal Register citation]. | 2nd limited maintenance plan. |
| Ozone (8-Hour, 1997): Greene Co., IN (Greene County). | 6/20/2019 | 12/27/2019, [insert Federal Register citation]. | 2nd limited maintenance plan. |
| Ozone (8-Hour, 1997): Muncie, IN (Delaware County). | 6/20/2019 | 12/27/2019, [insert Federal Register citation]. | 2nd limited maintenance plan. |
| Ozone (8-Hour, 1997): Terre Haute, IN (Vigo County). | 6/20/2019 | 12/27/2019, [insert Federal Register citation]. | 2nd limited maintenance plan. |

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 17-287, 11-42 and 09-197; FCC 19-111; FRS 16302]

Bridging the Digital Divide for Low-Income Consumers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) acts to restore the traditional role of states in the eligible telecommunications carrier (ETC) designation process. The Commission also acts to strengthen the Lifeline program’s enrollment, recertification, and reimbursement processes so that limited Universal Service Fund (USF or Fund) dollars are directed only toward qualifying low-income consumers.

DATES: Effective January 27, 2020, except for amendatory instruction 7 (§ 54.406(b)) which is effective February 25, 2020 and amendatory instruction 8 (§ 54.406(a)) which is effective March 26, 2020 and amendatory instructions 6.b. (§ 54.404(b)(12)) and 11 (§ 54.410(f)), which are delayed. The

Federal Communications Commission will publish a document in the **Federal Register** announcing this effective date.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration (Order), in WC Docket Nos. 17-287, 11-42 and 09-197; FCC 19-111 adopted October 30, 2019 and released November 14, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: <https://docs.fcc.gov/public/attachments/FCC-19-111A1.pdf>.

Synopsis

I. Introduction

1. The Commission’s Lifeline program plays a critical role in closing the digital divide for low-income Americans. Abuse of the program, however, continues to be a significant concern and undermines the Lifeline program’s integrity and effectiveness. Strengthening the accountability of the program is therefore essential to ensuring that it effectively and efficiently helps qualifying low-income

Americans obtain the communications services they need to participate in the digital economy.

2. Today, the Commission continues that work to strengthen the Lifeline program’s enrollment, recertification, and reimbursement processes so that limited Universal Service Fund (USF or Fund) dollars are directed only toward qualifying low-income consumers. Specifically, restoring the states’ proper role in designating eligible telecommunications carriers (ETCs) to participate in the Lifeline program, clarify the obligations of participating carriers, and take targeted steps to improve compliance by Lifeline ETCs and reduce waste, fraud, and abuse in the program. The Commission also clarifies several of the program’s rules in response to petitions for reconsideration and requests for clarification.

II. Discussion

3. In the Order, the Commission takes significant steps to promote the integrity, effectiveness, and efficiency of the Lifeline program. First, the Commission restores the traditional state role in designating ETCs and traditional ETC designation categories, while taking steps to increase transparency with states to improve oversight functions. Next, the Commission amends the Lifeline program rules to improve the integrity of providers’ enrollment and recertification processes, and also

establishing protections to help prevent improper payment claims before they occur. Finally, the Commission acts to improve its rules regarding Lifeline auditing practices.

4. *Respecting the States' Role in Program Administration.* For the Lifeline program to be successful, the parties involved in its operations—from the Commission to the participating ETCs—must respect their particular roles and obligations under the law. To that end, in the Order, the Commission first restores longstanding recognition of the states' primary role in the ETC designation process, as established in the Communications Act of 1934 as amended (“the Act”), and restores the traditional categories of ETC and ETC obligations consistent with section 214(e)(1)(A) of the Act.

5. *Restoring States' Traditional and Lawful Role in ETC Designations.* Congress made states—not the Commission—primarily responsible for designating ETCs. And States have vigorously exercised their oversight authority to combat waste, fraud, and abuse in the Lifeline program. In some cases, states have been the first to identify waste, fraud, and abuse by ETCs—the Hawaii Public Utilities Commission first identified the issues with Blue Jay's overclaims of Tribal subscribers, and the Oklahoma Corporation Commission “first identified fraudulent funding requests from Icon Telecom.” More recently, an apparent violation of the Commission's non-usage rule was initially uncovered by an investigation by the Oregon Public Utility Commission. States have also conducted further investigations of ETCs for which the FCC first identified compliance issues. For example, in 2013, following the consent decree resolving the Commission's investigation of Lifeline reseller TerraCom regarding intracompany duplicate subscribers, the Indiana Utility Regulatory Commission conducted its own investigation of TerraCom and identified instances of waste and abuse. States have also filtered out ineligible carriers by refusing designations to those with substandard services and weeded out bad actors by revoking designations for unlawful practices. Most recently, in May 2019, the Illinois Commerce Commission (ICC) denied wireless reseller Q Link LLC's request for a Lifeline-only ETC designation. The ICC cited Q Link's “inability to provide accurate, consistent and reliable information” as “reason enough for it to deny Q Link's request for ETC designation,” and found that Q Link “failed to demonstrate it has the

financial and technical capability to provide service in its requested service areas.” States have also performed audits, addressed consumer complaints, and maintained valuable state matching programs. In doing all this, states have brought to bear personnel and resources far greater than the Commission alone could offer.

6. By contrast, Congress cast the Commission in a supporting role. For its part, the Commission merely designates carriers where states are ill suited to do so—for example, where states lack jurisdiction, or in unserved areas where no carrier is willing to provide USF services. For the two decades since Congress passed the Telecommunications Act of 1996, this is how the Commission understood its role.

7. With the *2016 Lifeline Order* (FCC 16–38; 81 FR 33026 (May 24, 2016)), the Commission departed from the parameters set by statutory text and longstanding practice. First, that order created a new type of ETC—the Lifeline Broadband Provider ETC. It then purported to preempt any state authority over this new ETC, demoting states from the job they had performed well. Finally, to fill the void it had created by preempting state authority, it adopted a view of the Commission's role under section 214(e) that was expansive enough to permit the Commission to exercise designation authority over Lifeline Broadband Provider ETCs. In the Order, the Commission finds that the actions taken by the Commission in the *2016 Lifeline Order* were contrary to both statutory text and sound public policy. The Commission restores the lawful role of states in the ETC designation process.

8. *Section 214 and the 2016 Lifeline Order.* To obtain universal service funds for providing Lifeline service, a provider must be designated as an “eligible telecommunications carrier”—or “ETC”—under section 214(e) of the Act. Section 214(e)(1) of the Act establishes eligibility requirements for ETCs. These include that common carriers offer the services supported by the USF “support mechanisms” under section 254(c)—Lifeline is one of four such “mechanisms”—and that they advertise the availability of those services.

9. The next paragraph—214(e)(2)—orders state commissions to designate common carriers that meet these requirements as ETCs. In relevant part, section 214(e)(2) provides that “[a] State commission shall upon its own motion or upon request designate a common carrier that meets the requirements [for eligibility in section 214(e)(1)] as an eligible telecommunications carrier for a

service area designated by the State commission.” The general rule, in other words, is that state commissions are responsible for designating ETCs.

10. There are limited exceptions to the rules. Later provisions in section 214 address gaps in the ordinary designation process—areas where a state commission may be unable or ill-suited to exercise designation authority. The Commission's limited role in designating ETCs falls within these gaps.

11. The first gap occurs where no common carrier is willing to provide supported services to all or part of an unserved community. In that case, section 214(e)(3) generally orders the Commission and states to (1) identify the common carriers best able to serve these communities and (2) require them to do so. The section divides responsibility for this task along jurisdictional lines: It orders state commissions to address the provision of *intrastate* services, and orders the Commission to address the provision of *interstate* services, as well as services in areas served by carriers outside of the jurisdiction of state commissions.

12. The second gap occurs where “a common carrier providing telephone exchange service and exchange access . . . is not subject to the jurisdiction of a State commission.” This provision gives the Commission designation authority over, for example, wireless carriers operating in states lacking jurisdiction over such carriers and certain Tribal carriers. Congress adopted section 214(e)(6) over a year after the passage of the Telecommunications Act to rectify the “oversight” that a handful of common carriers might otherwise fall outside the jurisdiction of state commissions. Without the fix of section 214(e)(6), that oversight would leave certain carriers—including most notably, Tribal carriers—wholly ineligible for universal service support. The legislative history confirms that the gap-filling section 214(e)(6) “w[ould] apply to only a limited number of carriers” and that it was not “intended to restrict or expand the existing jurisdiction of State commissions over any common carrier.” The Commission itself recognized that Congress had not intended section 214(e)(6) to “alter the basic framework of section 214(e), which gives the state commissions the principal role in designating eligible telecommunications carriers under section 214(e)(2).”

13. That is the extent of the Commission's role in designating ETCs. There is no suggestion in sections 214(e)(2), (3), or (6) that the Commission can supersede the states' designation

authority, or that the states' designation authority is generally limited to specific services, such as intrastate services. While section 214(e)(3) limits state authority to intrastate services *in unserved areas*, this specific jurisdictional limitation only highlights the absence of a general jurisdictional limitation on states' authority. Instead, the text of section 214 makes clear that Congress gave primary authority for ETC designations to the states, and that the Commission's role is merely to fill gaps in the ordinary designation process.

14. This is how the Commission read section 214 for nearly two decades—from the passage of the Telecommunications Act until the *2016 Lifeline Order*. In 2000, the Commission reviewed the text and legislative history of section 214(e) and concluded that “state commissions have primary responsibility for the designation of [ETCs] under section 214(e)(2).” In 2005, it affirmed this conclusion and again noted that section 214(e)(2) “provides state commissions with the primary responsibility for performing ETC designations.” In 2011, the Commission again found that states have “primary jurisdiction to designate ETCs,” and that its role was to “designate[] ETCs where states lack jurisdiction.” Even the *2015 Lifeline Order and FNPRM* (FCC 15–71; 80 FR 40923 (July 14, 2015) and 80 FR 42670 (July 17, 2015)) recognized that “[s]ection 214(e)(2) assigns primary responsibility for designating ETCs to the states.”

15. The *2016 Lifeline Order* abandoned this longstanding interpretation. That order created a new category of ETC, which offered only a single supported Lifeline service (broadband internet access service) and was subject to the Commission's (not states') designation authority. Arriving at this unlikely outcome required standing section 214(e) on its head: First, the *2016 Lifeline Order* found that section 214(e)(1) authorized an ETC to offer only a single supported service rather than all services supported under the Lifeline program. This enabled the creation of the Lifeline Broadband Provider ETC. Next, despite the absence of any legal or factual conflict justifying preemption, the *2016 Lifeline Order* preempted state commissions from designating this new type of ETC. Then—in part by forbearing from a limit on the Commission's own authority—the *2016 Lifeline Order* determined that the Commission had newfound authority to designate this new category of ETC under section 214(e)(6).

16. *Restoring Traditional Designation Roles and ETC Categories*. The

Commission eliminates the Lifeline Broadband Provider ETC category and restore the traditional state and Federal roles in designating ETCs under the Act. The Commission does this for two principal reasons. First, the Commission concludes that the 2016 rules rested on a legally insupportable construction of section 214(e). Nothing in the *2016 Lifeline Order* or the record persuades the Commission otherwise. Second, the Commission concludes that the Lifeline Broadband Provider rules announced in the *2016 Lifeline Order* did not serve the public interest. Instead, the Commission concludes that the record in the proceeding demonstrates that the traditional designation framework and ETC categories better serve the Commission's direction to efficiently and responsibly promote universal service. Tampering with this framework was not sound policy, nor did it appropriately balance the interest in promoting competition or encouraging new providers to participate in the program, while also guarding the program against further waste, fraud, and abuse.

17. The Commission begins by concluding that the approach embodied in the *2016 Lifeline Order* was not supported by the statute. To explain this conclusion, the Commission must retrace the long path that the *2016 Lifeline Order* took around the obstacle posed by the statutory text. In brief, the steps on this path were: (1) Reinterpreting section 214(e)(1) to mean that ETCs need not offer all supported services; (2) relying on this reinterpretation to establish Lifeline broadband support as a “separate element of the Lifeline program;” (3) reinterpreting section 214(e)(6) to suggest that state commissions have no authority to designate ETCs with respect to supported interstate services; and (4) preempting states from designating ETCs for the separate element of Lifeline broadband support. The *2016 Lifeline Order* then filled the gap in designation authority it created by (5) reinterpreting out of existence the limit on FCC authority that an FCC-designated ETC must be a “common carrier providing telephone exchange service and exchange access” and, (6) alternatively, forbearing from that same limit on the FCC's authority. Each of these steps was unlawful.

18. *First*, ETCs must offer each of the Lifeline supported services designated by the Commission. Section 214(e)(1) requires that a “common carrier designated as an eligible telecommunications carrier” must, “throughout the service area for which the designation is received,” “offer the

services that are supported by Federal universal service support mechanisms” under section 254(c). The *2016 Lifeline Order* began by interpreting section 214(e)(1)(A) not to require an ETC to offer *all* supported services for the mechanism for which it was designated; instead, the *2016 Lifeline Order* concluded that the obligations in section 214(e)(1)(A) could be “tailored to match” an ETC designation. This tailoring would allow ETCs to obtain a designation to provide only one supported service, and to trim from their Lifeline offerings other services that the Commission has designated under the Lifeline mechanism.

19. The statute says otherwise. Again, section 214(e)(1)(A) requires an ETC to “offer . . . services” that are supported by a universal service “mechanism[] . . .” Lifeline—one of four such mechanisms under section 254(c)—supports both voice *and* broadband internet access services. Participating in the Lifeline program without assuming any obligations with respect to voice service, then, conflicts with the requirement in section 214(e)(1) that ETCs “offer the services that are supported” by the Lifeline program. Forbearance—not interpretation—would have been the appropriate way for the Commission to refrain from enforcing what section 214(e)(1)(A) plainly requires. But the Commission did not use this mechanism here and, in any case, the conditions for forbearance were not met. Accordingly, the Commission finds that based on the language of section 214(e)(1)(A), the Lifeline program is a single, uniform support mechanism. ETCs therefore must offer *all* Lifeline supported services, unless the ETC qualifies for and avails itself of the forbearance granted in the *2016 Lifeline Order*, which established limited forbearance from section 214(e)(1)'s service requirements, including (1) targeted forbearance from obligations to offer broadband internet access service, and (2) conditional forbearance from existing non-Lifeline only ETCs' Lifeline voice obligations where several objective competitive criteria are met.

20. *Second*, and relatedly, it follows that Lifeline broadband internet access service support is not a separate “element” of the Lifeline program. After concluding that section 214(e)(1) service obligations could be tailored to particular services, the *2016 Lifeline Order* deemed Lifeline broadband internet access service support a “separate element of the Lifeline program.” But again, section 214(e)(1) does not permit the *à la carte* designation of services; instead, it

groups ETC service offerings by universal service *mechanism*.

21. The notion of separate, service-specific “elements” has no statutory basis. The *2016 Lifeline Order* patches together authority for this inventive approach by referring to sections 214(e)(3), 214(e)(1), 254(e), and the *2014 E-Rate Order* (FCC 14–99; 79 FR 49160 (Aug. 19, 2014)). Standing alone, these authorities provide little support for the *2016 Lifeline Order’s* novel interpretation: The three statutory provisions respectively confer designation authority in unserved areas, specify which carriers can receive universal service support, and govern how that support can be used. And they offer no more support for the notion of a universal service “element” when read together. Accordingly, the Commission concludes that the *2016 Lifeline Order’s* distinction underlying Lifeline Broadband Provider designations fails on its own terms.

22. *Third*, section 214(e)(6) does not suggest that state commissions lack the authority to designate ETCs with respect to supported interstate services. The *2016 Lifeline Order* found it ambiguous whether, for the Commission to have jurisdiction under section 214(e)(6), a carrier seeking ETC designation must be (1) *entirely* outside a state commission’s jurisdiction *or* (2) only outside a state commission’s jurisdiction *with respect to a particular service*, even if a state commission retains general jurisdiction over the carrier. Seizing on this supposed ambiguity, the *2016 Lifeline Order* held that section 214(e)(6) provided the Commission the authority to take over designations where a carrier provides only a service that is jurisdictionally interstate (for example, broadband internet access service).

23. The Commission sees no such ambiguity. First, the jurisdictional nature of a particular service that a carrier offers is irrelevant for the purposes of determining whether *the carrier itself* is “subject to the jurisdiction of a State commission.” And while section 214(e)(6) may not address the situation where specific services fall outside the jurisdiction of a state commission, there is a ready explanation for that silence: Section 214(e)(1) does not countenance the separate designation of specific interstate services. Sealing this conclusion is the fact that other provisions in section 214(e) plainly contemplate states designating ETCs that provide both interstate and intrastate services. The fact that Congress expressly limited states’ designation authority under section 214(e)(3) to intrastate services

underscores that the states’ designation authority is not so limited under section 214(e)(2); if Congress had intended to limit states’ designation authority under 214(e)(2) to intrastate services, it would have expressly done so.

24. *Fourth*, the *2016 Lifeline Order’s* decision to preempt states from designating Lifeline Broadband Provider ETCs was unlawful. This preemption rested largely on the ground that allowing state commissions to designate those ETCs would hinder the goals of Federal universal service and dampen broadband competition. The Commission disagrees with both justifications and find that this preemption analysis was otherwise flawed in several respects.

25. As an initial matter, no conflict with Federal law justifies preemption. As the *2016 Lifeline Order* explains, “[F]ederal law preempts any conflicting state laws or regulatory actions that would prohibit a private party from complying with [F]ederal law or that ‘stand[] as an obstacle to the accomplishment and execution’ of [F]ederal objectives.” Here, while Congress established the goal of promoting broadband deployment in section 254(b), it also placed the primary responsibility for designating ETCs on state commissions in section 214(e)(2). Read together, these provisions establish that section 254(b) seeks to promote broadband deployment to the extent possible within the state-focused designation process set forth in section 214. Disregarding section 214(e)(2), the *2016 Lifeline Order* found a purported “conflict[]” between state designation of Lifeline Broadband Providers and the Commission’s implementation of the goals of section 254(b). But this “conflict” assumes, without explanation, that the relevant goal under section 254(b) is promoting broadband deployment in the abstract, unconstrained by the state-focused designation process mandated by section 214. The Commission finds that no such conflict exists, and that the principles listed in section 254(b) may not lawfully be construed in a manner that would ignore or override other statutory provisions, including the state-focused framework of section 214(e).

26. In addition, the *2016 Lifeline Order* wrongly relied on section 706 as authority for preemption. Section 706, among other things, directs the Commission to focus its efforts on removing barriers to investment in “advanced telecommunications services.” The *2016 Lifeline Order* found that the burdens of obtaining separate designations from states ran afoul of this directive by posing “a

barrier to investment and competition in the Lifeline marketplace.”

27. This reasoning stumbles from the gate because section 706 does not furnish a basis for the preemption of states’ designation authority. The Commission has previously concluded that the directives in section 706 to promote broadband deployment “are better interpreted as hortatory, and not as grants of regulatory authority.” But even if section 706 did confer regulatory authority, it would be trumped by the more specific grants of authority in section 214(e). “[I]t is a commonplace of statutory construction that the specific governs the general.” In contrast to sections 214(e)(2) and 214(e)(6), which expressly confer designation authority, section 706 merely directs the Commission and states to encourage the deployment of broadband services and generally instructs the Commission to take action to accelerate deployment if it finds advanced telecommunications capability is not being deployed in a reasonable and timely fashion. The specific grant of designation authority to states prevails over section 706’s general language regarding broadband deployment.

28. Furthermore, as a practical matter, the preemption regime instituted by the *2016 Lifeline Order* created confusion and anomalies in the division of labor between the Commission and the states that the Commission’s new approach avoids. The *2016 Lifeline Order* preempted states from designating Lifeline Broadband Providers, but left untouched states’ designation authority over traditional ETCs—who in some cases could effectively become Lifeline Broadband Provider ETCs without seeking FCC designation. The *2016 Lifeline Order* also suggests that states could oversee federally designated Lifeline Broadband Providers in their jurisdictions vis-à-vis consumer protection. In other words, the *2016 Lifeline Order* preempted state authority to designate Lifeline Broadband Provider ETCs, but left states with uncertain residual authority to oversee and impose conditions on Lifeline Broadband Provider ETCs. The Commission finds that the arbitrariness of this result is another reason for reversing the Commission’s preemption decision.

29. Conversely, the Commission finds that the state designation process furthers Federal universal service goals—it does not “thwart” them. As explained further, the traditional state designation role better serves section 254(b)’s policy goals by facilitating thorough state reviews of carriers seeking ETC designations, as well as

state monitoring of carriers who have received ETC designations. This helps prevent, detect, and curb waste, fraud, and abuse in the program, which in turn promotes the efficient and responsible use of limited program funds. States' traditional designation role also encourages states to maintain their own support programs, furthering the universal service goals.

30. The Commission notes that the reversal of the preemption decision in the *2016 Lifeline Order* in no way conflicts with the Commission's determination in other contexts—such as in the *Restoring Internet Freedom Order* (83 FR 7852 (Feb. 22, 2018))—that broadband internet access service is jurisdictionally interstate and that inconsistent state and local regulation may be preempted on that ground. Several commenters argue otherwise, relying on the premise that states' ETC designation authority under section 214(e)(2) can be preempted simply because of the interstate nature of broadband internet access service. This argument ignores the fact that section 214 itself expressly confers on state commissions the primary responsibility to designate carriers that are subject to state jurisdiction. It also ignores—the absence of a conflict justifying preemption. The Commission therefore finds no inconsistency between the reversal of the unlawful preemption in the *2016 Lifeline Order* and the Commission's preemption of inconsistent state and local regulation of broadband internet access services in other contexts.

31. *Fifth*, the *2016 Lifeline Order* unlawfully expanded the Commission's designation authority under section 214(e)(6). Section 214(e)(6) gives the Commission designation authority only “in the case of a common carrier providing telephone exchange access service and exchange access that is not subject to the jurisdiction of a State commission.” The limit on the Commission's authority is clear: The Commission's designation authority under section 214(e)(6) is predicated, in part, on a common carrier “providing telephone exchange access service or exchange access.” Yet the *2016 Lifeline Order* interpreted this limit on the Commission's authority to mean (1) that the supported service need not be telephone exchange service or exchange access, (2) that the carrier itself need not provide telephone exchange service or exchange access, (3) that the carrier need not have any facilities to provide telephone exchange service or exchange access, (4) that the carrier need not have any customers for telephone exchange service or exchange access, and (5) that

the carrier need not provide telephone exchange service or exchange access for any length of time beyond when the carrier's ETC application is pending at the Commission.

32. The effect is to remove the phrase “providing telephone exchange access service and exchange access” from the statute. By emptying the word “providing” of all meaning, the Commission's interpretations violate the canon of statutory construction dictating that a statute should be interpreted in a manner that gives effect to each of its words and clauses. If Congress intended for the provision to have the overly broad meaning that the Commission ascribed to it in the *2016 Lifeline Order*, Congress would have used more expansive language in section 214(e)(6). The Commission therefore finds that the *2016 Lifeline Order*'s interpretations of section 214(e)(6) unlawfully expanded the Commission's jurisdiction to designate ETCs.

33. *Sixth*, and finally, the *2016 Lifeline Order*'s alternative forbearance from section 214(e)(6)'s requirement that carriers be providing telephone exchange service and exchange access was improper. Section 10 provides that the Commission may forbear from applying provisions of the Act to carriers and services—not that it can forbear from statutory limitations on its own authority. To read section 10 otherwise would render statutory constraints on the Commission meaningless: Take, for example, the absurdity of the Commission forbearing from the limitations imposed by the phrase “interstate or foreign” in the Communications Act. This would expand the Commission's authority to *all* telecommunications services, obliterating the jurisdictional divide established by Congress. Clearly, Congress did not intend the Commission to use forbearance to so aggrandize itself. Here, the qualifying language “providing telephone exchange service and exchange access” limits the category of carriers that the Commission may designate under section 214(e)(6). It therefore constrains the Commission's authority—not the authority of ETCs. Section 10 does not authorize the Commission to forbear from the limitation on its own authority.

34. *The Traditional ETC Designation Framework Best Promotes the Goals of the Lifeline Program*. In addition to lacking legal authority for the 2016 approach, the Commission independently concludes that the goals of the Lifeline program are best served when states play the primary role in ETC designations.

35. The traditional framework also has the advantage of providing strong state and Federal oversight of ETCs. The cooperative federalism that exists under the traditional framework provides states certainty with respect to their role in monitoring and enforcing the activities of ETCs. This in turn encourages states to devote staff and resources to thoroughly reviewing ETC designation applications and policing ETCs, providing a stronger system for promoting the efficient use of universal service funds, protecting Lifeline consumers, and reducing waste, fraud, and abuse than if states did not serve these critical roles. States have a record of more than twenty years of sound performance in their statutory role and monitoring the ETCs they designate. As NARUC has noted, states have been “crucial” in “policing the [F]ederal fund to eliminate bad actors.” Many states have robust processes for analyzing ETC designation petitions, addressing concerns with Lifeline-supported services, ensuring that the ETCs they designate satisfy the Lifeline service and other requirements, and preventing and identifying waste, fraud, and abuse in the Lifeline program. States' traditional designation role has also encouraged the continuation of state matching programs.

36. By contrast, state commenters explain in the record that the stand-alone Federal Lifeline Broadband Provider ETC category “complicates administration,” “frustrates” state policies and procedures, “undermine[s] state programs,” and “adds an unnecessary layer of complexity to the ETC framework.” State commenters also express concern that the Lifeline Broadband Provider ETC designation creates uncertainty with respect to states' role in monitoring and enforcing ETC activities, and engenders consumer confusion.

37. This burdensome creation cannot be justified on the grounds that it is necessary to promote competition, as some commenters maintain. To the contrary, the traditional state role has not resulted in a lack of competition in the Lifeline marketplace or lack of affordable broadband internet access service for Lifeline consumers. The traditional designation roles and ETC categories better allow the Commission and states to appropriately balance the interest in encouraging more providers to participate in the Lifeline program and promote competitive broadband options, innovation, and choice for Lifeline consumers, while also guarding the program against further waste, fraud, and abuse. Existing ETCs continue to participate in the Lifeline program

based on their traditional state designations and in some cases have expanded their Lifeline offerings to new states, and new providers continue to receive traditional state ETC designations, permitting them to participate in the Lifeline program. As of October 1, 2019, for the September data month, the National Lifeline Accountability Database (NLAD) data indicates that approximately 355 unique holding companies claimed Lifeline support for providing approximately 3.8 million Lifeline subscribers with Lifeline-supported broadband internet access service that meets the Commission's minimum service standards.

38. *Other Considerations.* Importantly, the elimination of Lifeline Broadband Provider designations does not preclude new providers from entering the Lifeline program or prevent Lifeline subscribers from receiving Lifeline discounts for qualifying broadband internet access service under current rules. Providers interested in participating in the Lifeline program remain able to obtain ETC status through existing state designation processes or from the Commission where the Commission has designation authority under section 214(e)(6). Further, Lifeline customers are able to receive discounts on Lifeline service offerings that include broadband internet access service. The Commission also clarifies that while section 254(e) authorizes the Commission to provide Lifeline reimbursements only to ETCs, the statute and Lifeline program rules do not preclude ETCs from offering broadband internet access service satisfying the Lifeline minimum service standards through affiliated broadband internet access service providers that operate under the ETC's existing designation. However, the Commission makes clear that where ETCs offer qualifying broadband internet access service to Lifeline subscribers through such affiliated entities, only the ETC is eligible to receive reimbursement from the Lifeline program, and the ETC remains legally responsible for ensuring compliance with the requirements and obligations for ETCs in the statute and in the rules, as well as all Lifeline program rules and reporting requirements.

39. *Conclusion.* In the *2016 Lifeline Order*, the Commission interfered with a process that has functioned smoothly for over twenty years, without a compelling reason, and without the proper authority to do so. For over twenty years, state commissions have performed well in their statutory role of designating ETCs. The Commission

finds that there was no policy basis to depart from the framework established by Congress, and that, in any case, the Commission lacked the authority to do so. For these reasons, the Commission here concludes that the approach in the *2016 Lifeline Order* is foreclosed by the plain text of section 214 and hence was contrary to law. Moreover, to the extent that the statute is ambiguous, the Commission believes that the reading of section 214 endorsed in the *Order* far better comports with the Act's language, structure, and policy objectives, for the reasons stated herein, and is thus at minimum a reasonable exercise of the discretion delegated by Congress.

40. Consistent with the actions to restore states' traditional ETC designation role, § 54.201(j) of the rules is eliminated, which precluded states from designating Lifeline Broadband Providers. The rule change will become effective January 27, 2020. In addition, because of the elimination of the Lifeline Broadband Provider designations, §§ 54.202(d)(1) through (3) and (e) and 54.205(c) of the rules are eliminated. The Commission finds that there is no need for a transition period before the rule changes take effect because, currently, no provider has a Federal Lifeline Broadband Provider designation. The rule changes will become effective January 27, 2020.

41. *Increased Transparency with Stated to Improve Program Oversight.* The Commission next directs the Universal Service Administrative Company (USAC) to take a number of measures intended to increase the transparency of the Lifeline program and support enforcement against program non-compliance. In the *2017 Lifeline Order and NPRM* (FCC 17–155; 83 FR 2075 and 83 FR 2104 (Jan. 16, 2018)), the Commission sought comment on the types of reports USAC should make available to states and information that should be shared with the relevant state agencies to increase transparency and accountability within the Lifeline program. State agencies support the proposal that USAC notify the Commission and state agencies of suspicious ETC activity within the Lifeline program and encouraged further data sharing as an additional means for weeding out waste, fraud, and abuse in the Lifeline program.

42. In light of the support, the Commission directs USAC to compile and make available on its website program aggregate subscribership data, including data broken out at the county level and by service type. USAC shall compile and present the data in a way that will be most clear to the states and the public. USAC already makes

program statistics and other information available on its website. Making the additional subscribership data available increases program transparency and continues to promote accountability in the Lifeline program. Better insight into the program also will provide states with another tool in detecting anomalies that might indicate wasteful and fraudulent activity in the Lifeline program.

43. The Commission also agrees with state commenters that sharing information regarding trends related to eligibility check failures, for example, will enable states to recognize compliance issues and act appropriately. The states play an important role in identifying and stopping wasteful and fraudulent activity in the Lifeline program, and the Commission finds that it is essential to the integrity of the program that evidence of suspicious activity is shared with the appropriate state officials. Therefore, the Commission instructs USAC to develop a process by which it will share with the Commission staff, the Commission's Office of Inspector General (OIG), and relevant state agencies' information regarding suspicious activity. To further the sharing of information regarding such activity, USAC should work with state personnel to identify appropriate state officials who should have access to these reports. USAC is instructed to make suspicious reports and trends available upon request from the state officials, and USAC is cautioned to ensure that the sharing of data, which could potentially contain sensitive information, complies with the Privacy Act and any other restrictions. The record is clear that the states value the information, and the Commission encourages the states to use the data provided in a way that furthers the integrity of the Lifeline program.

44. *Improving Program Integrity in Program Enrollment and Recertification.* The Commission next turns to improving the Lifeline program's enrollment and recertification procedures to prevent waste, fraud, and abuse in the program. First, the Commission establishes new rules and limitations on ETCs' use of enrollment representatives to remove incentives to commit fraud and abuse in the Lifeline eligibility determination process. Second, the Commission acts to improve the integrity of Lifeline enrollments and direct USAC to continue targeted reviews of enrollment documentation. Finally, the Commission requires additional documentation during the annual

recertification process for certain Lifeline subscribers.

45. *Preventing Waste, Fraud, and Abuse by Enrollment Representatives.* The Commission first concludes that ETCs should be prohibited from paying commissions based on the number of submitted Lifeline applications or approved enrollments to individuals who enroll Lifeline subscribers or who verify eligibility of Lifeline subscribers on behalf of ETCs. In this context, the Commission understands “commissions” to broadly include direct financial compensation or other incentives such as non-cash rewards and travel incentives. In addition, the Commission codifies the requirement that USAC register all Lifeline ETC enrollment representatives. For these purposes, the Commission defines an enrollment representative as an employee, agent, contractor, or subcontractor, acting on behalf of an ETC or third-party organization, who directly or indirectly provides information to USAC or a state entity administering the Lifeline Program for the purpose of eligibility verification, enrollment, recertification, subscriber personal information updates, benefit transfers, or de-enrollment. The Commission also makes clear that ETCs are ultimately responsible for ensuring that all enrollment representatives register with USAC, and ETCs will be subject to enforcement action if an individual who has not registered with USAC acts as an enrollment representative on that ETC’s behalf. The combination of (1) prohibiting ETCs from paying commissions to individuals who enroll Lifeline subscribers or who provide information for eligibility verification, recertification and changes to subscribers’ information, and (2) requiring registration of each individual enrollment representative, will help to ensure accountability and prompt ETCs to crack down on improper behavior before it happens, thereby preventing waste, fraud, and abuse in the Lifeline program.

46. *Prohibiting Enrollment Representative Commissions.* Much of the waste, fraud, and abuse in the Lifeline program revealed by audits, enforcement investigations, and criminal proceedings has involved non-compliance by the ETC employees and contractors charged with reviewing applicants’ eligibility documentation and enrolling new Lifeline subscribers. However, the Commission’s rules have thus far not directly addressed the common practice by ETCs of providing commissions for enrollment representatives to enroll consumers in the Lifeline program. The Commission

has long held that ETCs are liable for rule violations committed by their agents or representatives, but there is no specific Commission rule targeting enrollment representative misbehavior.

47. Since the *2012 Lifeline Order* (FCC 12–11; 77 FR 12952 (March 2, 2012)), there have been reports of ETCs hiring enrollment representatives who did not comply with the Lifeline program rules for eligibility determinations. It is common practice for ETCs to offer commissions for agents to enroll consumers in the Lifeline program. However, even ETCs have acknowledged the mixed incentives these compensation schemes foster, with TracFone, for example, filing a petition asking the Commission to “prohibit[] incentive-based agent compensation.” Moreover, members of Congress have expressed concern to the Commission about the use of enrollment representatives who fraudulently enroll subscribers in the Lifeline program.

48. The Commission also has tangible evidence of enrollment representative impropriety leading to waste and abuse of the program. In December 2016, the Commission’s Enforcement Bureau entered into a Consent Decree with Lifeline ETC Total Call Mobile (TCM), where TCM admitted it used a commission compensation system for enrolling Lifeline subscribers that had resulted in “[h]undreds of TCM field agents [engaging] in fraudulent practices to enroll consumers who were . . . otherwise not eligible for the Lifeline program.” TCM had “sought and received reimbursement for tens of thousands of consumers who did not meet the Lifeline eligibility requirements,” and TCM agreed to pay a fine of \$30 million dollars for violating the Lifeline rules.

49. Even with public reports of enrollment abuse and successful enforcement actions against Lifeline ETCs, the Commission’s insight into the day-to-day enrollment operations of all ETCs is limited. The General Accounting Office (GAO) raised concerns in 2017, when it confirmed in a report on its performance audit of the program that, after conducting extensive data review and covert investigations into ETC Lifeline enrollment practices, the Commission and USAC “have limited knowledge about potentially adverse incentives that providers might offer employees to enroll [Lifeline] subscribers” but noted that apparent findings of large-scale improper enrollments from enforcement investigations was cause for concern. The GAO raised similar concerns regarding the recertification process. Since that report was issued, additional

investigations and reports have provided more indications that enrollment representative commissions create incentives that increase the likelihood of waste, fraud, and abuse in the program. The Commission OIG’s 2018 Semiannual Report to Congress noted that a Lifeline enrollment agent “pled guilty to conspiracy to commit wire fraud” and was ordered to pay restitution to the Commission of over \$200,000 for having enrolled “850–950 non-existent Lifeline customers in the program” and having received commission for those fake enrollments.

50. Finally, in October 2018, the Commission released the largest Notice of Apparent Liability for Forfeiture (NAL) to date against a Lifeline provider when it proposed a \$63 million forfeiture against American Broadband & Telecommunications Company (American Broadband). American Broadband’s agents apparently repeatedly enrolled ineligible or fake subscribers and relied on master agents and sales agents paid on commission. Over 42,000 customers were apparently claimed by American Broadband over the NAL period, and many of those were claimed due to improper enrollments by the agents.

51. In the *2017 Lifeline Order and NPRM*, the Commission sought comment on prohibiting an ETC from offering or providing ETC personnel with commissions based on enrollments or verification of eligibility and on codifying a requirement that ETC representatives who enroll consumers in Lifeline must register with USAC. The Commission stated its belief that prohibiting commissions related to enrolling subscribers in the Lifeline program “may benefit ratepayers by reducing waste, fraud, and abuse in the program.” It also noted that many ETCs use commissions as a means of compensating sales employees and contractors and that such compensation schemes “can encourage the employees and agents of ETCs to enroll subscribers in the program regardless of eligibility, enroll consumers in the program without their consent, or engage in other practices that increase waste, fraud, and abuse in the program.”

52. In response to the *2017 Lifeline Order and NPRM*, numerous commenters supported limiting or prohibiting ETCs from offering or providing commissions to sales agents or employees who verify the eligibility of potential Lifeline subscribers. Some commenters suggested that the Commission should only address commissions for third-party sales agents or representatives. However, while an ETC may have more supervision over its

direct employees than third-party sales agents or representatives, the Commission does not believe that employees are immune from the financial motivation that commissions might offer to commit potentially fraudulent activity. Several commenters also suggested that any limitation on commissions was unnecessary or needed further evaluation in light of the rollout of the National Verifier. While the National Verifier plays an important role in helping to address waste, fraud, and abuse in the program, the Commission does not believe that it will eliminate the financial incentives for individuals to attempt to defraud the Lifeline program. Commissions based on the number of Lifeline applications or successful Lifeline enrollments are one such incentive, and by limiting them, the Commission removes a financial incentive for committing fraudulent activity.

53. Based on the record and to limit a potential source for fraud or abuse in the program, the Commission prohibits ETCs from offering or providing commissions to enrollment representatives and their direct supervisors based on the number of consumers who apply for or are enrolled in the Lifeline program with that eligible telecommunications carrier. This restriction applies to employees, agents, officers, or contractors working on behalf of the ETC who enroll Lifeline applicants, review eligibility documents or recertification forms, including sales and field agents, and any direct supervisors of those individuals, whether employed by the ETC or employed by a third-party contractor of the ETC. For purposes of the rule, an ETC's payment to a third-party entity that in turn provides commissions to an enrollment representative is subject to the prohibition. This restriction is not intended to prevent ETCs from using customer service representatives to assist consumers in the Lifeline application and recertification processes. The Commission adds § 54.406(b) of the Commission's rules to prohibit ETCs from utilizing commission structures for those enrollment representatives involved in the eligibility determination, enrollment process, or recertification process. These changes will become effective February 25, 2020.

54. The Commission expects that the targeted prohibition of certain practices by ETC employees and agents will help reduce the incentive for enrollment, customer service, and recertification employees to commit fraud against the Lifeline program. In the Commission's investigation of American Broadband,

the conduct of the agents hired by the company ranged from enrolling subscribers who were apparently not eligible and apparently falsifying eligibility documentation, to apparently creating false identities and enrolling false and deceased individuals into the program. While an ETC is liable for the actions of its agents and representatives, and the Commission has the authority to recover improper reimbursements distributed to ETCs, the record demonstrates that the liability has not been sufficient to successfully deter fraud committed by employees and agents. The Commission believes prohibiting ETCs from offering commissions to certain employees or agents, along with other measures taken in the Order, will prevent improper enrollments before they happen.

55. *Enrollment Representative Registration with USAC.* To further prevent waste, fraud, and abuse, the Commission next requires that all ETC enrollment representatives register with USAC to access USAC's Lifeline systems in the process of Lifeline enrollment, benefit transfers, subscriber information updates, recertification, and de-enrollment. In July 2017, USAC was directed to require enrollment representatives of ETCs to register with USAC to enable USAC to both verify the identity of individual enrollment representatives and "determine the ETC(s) he or she works for." USAC was directed to provide each enrollment representative with a unique identifier to be used by the enrollment representative to interact with NLAD and to lock enrollment representatives out of the NLAD "for a set period of time after too many invalid subscriber entry attempts." USAC was further directed to incorporate the data gained from the enrollment representative registration system into its audit findings and to report any suspected abuse by individual enrollment representatives to the Commission's OIG "for evaluation as to whether civil or criminal action is appropriate and to the Enforcement Bureau for administrative action and remedies."

56. The Commission then asked for public comment on codifying a rule to require enrollment representative registration in the *2017 Lifeline Order and NPRM*. The Commission sought comment on having the representative registration identifiers be used when enrolling consumers via the National Verifier, as well as when interacting with the NLAD. The Commission reiterated that it is "aware of certain practices of sales representatives resulting in improper enrollments or otherwise violating the Lifeline

rules. . . . [including] data manipulation to defeat NLAD protections, using personally identifying information of an eligible subscriber to enroll non-eligible subscribers, and obtaining false certifications from subscribers." In light of recent developments, such as the *American Broadband NAL* where several enrollment representatives allegedly engaged in the aforementioned practices and the OIG Report citing of an enrollment representative who suffered criminal penalties for fraudulently enrolling subscribers in Lifeline, the Commission concludes that codifying in the Commission's rules the requirement that specified ETC enrollment representatives must register with USAC would help to combat waste, fraud, and abuse.

57. Several commenters supported a Commission rule requiring that ETCs' enrollment representatives register with USAC to submit information to the NLAD or National Verifier. The Commission agrees the requirement would provide clarity to all parties and would assist the Commission and USAC in detecting and investigating potential waste, fraud, or abuse by an ETC's enrollment representatives. The Commission therefore amends the Commission's rules and requires each ETC enrollment representative to register with USAC and obtain a unique representative identification number. When enrolling or recertifying individuals in the Lifeline Program, ETCs must use the Lifeline Program Application Form "in all states and territories to obtain the information necessary to evaluate whether a consumer is eligible to receive Lifeline service and to obtain the consumer's certifications," and the Lifeline Program Annual Recertification Form "in all states and territories to recertify the eligibility [of] subscribers who are receiving Lifeline service." As such, an ETC will be in violation of section 54.410 of the Commission's rules, as well as this new rule, if the ETC's enrollment representative enrolling a consumer in Lifeline or submitting a consumer's recertification form does not enter their representative identification number as required by the rule and by Section 5 of the Lifeline Program Application Form and Section 5 of the Lifeline Program Annual Recertification Form. ETCs are responsible for ensuring that their enrollment representatives complete this registration process. This registration process does not absolve ETCs of Commission rule or state law violations committed by their enrollment representatives or other

employees. The rule shall become effective March 26, 2020.

58. For the purposes of the ETC representative registration system, all enrollment representatives must register with USAC and receive a unique identifier. In order to register, each such ETC enrollment representative must provide information that USAC, after consultation with the Bureau and the Office of Managing Director, determines is necessary to identify and contact him or her; this information may include first and last name, date of birth, the last four digits of his or her social security number, personal email address, and residential address. It is critical that USAC confirms that individuals that interact with its systems are actually who they claim to be, and the Commission expects that this information would allow USAC to conduct a successful identity check during the registration process for the vast majority of registrants. In light of ETCs' concerns about requiring their employees to submit the last four digits of their social security number to the registration system, the Commission permits USAC to make the submission of such information optional. However, the Commission notes that if a registrant declines to provide the last four digits of his or her social security number, that registration may be significantly less likely to be automatically validated through the third-party identity check, thus requiring the registrant to provide additional documentation confirming his or her identity to complete the registration process. Once issued, the representative identification number will be tied to a specific enrollment representative and will not be transferable. To ensure compliance, the Commission also concludes that ETCs are responsible for the proper enrollment of their representatives in this system, as an ETC's enrollment representative needs to be registered with USAC prior to enrolling or recertifying consumers in the Lifeline program and prior to completing and submitting the Lifeline Program Application Form and Lifeline Program Annual Recertification forms.

59. The Commission recognizes the concern with collecting and retaining personal information from ETC enrollment representatives; however, such information is necessary to verify the identity of the person completing enrollment representative activities, and to assign that individual a unique identification number to access the NLAD and the National Verifier. In particular, it is essential that USAC and the Commission be able to monitor for and detect patterns of noncompliant or

fraudulent behavior by specific enrollment representatives, especially because it is not uncommon for enrollment representatives to be employed by multiple ETCs. The requested enrollment representative information is narrowly tailored and is no broader than necessary to verify the identity of the enrollment representative before providing him or her access to the NLAD and National Verifier and to enable USAC to monitor the activities of specific enrollment representatives. Furthermore, this information will allow USAC and others to take action against an enrollment representative who has engaged in noncompliant or fraudulent behavior and prevent such a representative from enrolling or recertifying Lifeline subscribers for any ETC. Given the sensitive nature of this information, the Commission directs USAC to comply with both the Privacy Act of 1974 and the Federal Information Security Management Act of 2002. In implementing this change, the Commission recognizes that USAC may, for administrative efficiency, consolidate the registration system codified in the *Order* with existing or future registration processes that it uses to allow access to its technological systems (for example, allowing authorized certifying officers to log into the Lifeline Claims System).

60. The Commission believes that these security measures and the narrowly tailored nature of the personal information that USAC is collecting address the concerns that stakeholders have recently expressed regarding a registration requirement. These stakeholders also raised concerns about the application of any registration requirement to direct ETC employees and suggested that any direct ETC employees not be required to submit the same level of personal information as agents or representatives not directly employed by an ETC. However, limiting the personal information collected for those individuals to the individual's name and business contact information would impede USAC's ability to independently verify the identity of registered individuals and could obscure potential duplicate registrations. Also, in addition to documenting fraudulent activity from sales agents and external representatives, the Commission has documented apparently fraudulent practices executed by direct ETC employees. A two-tiered approach to registering enrollment representatives would create an unacceptable risk of fake or duplicate accounts and could give ETCs the opportunity to improperly

characterize their enrollment representatives as direct employees to minimize USAC's ability to oversee enrollment representative activity, creating an avenue for waste, fraud, and abuse. As such, the Commission believes that it is appropriate for this registration requirement to include direct ETC employees, better positioning the Commission, USAC, and even ETCs to address potentially fraudulent activity.

61. One stakeholder group specifically suggested that the Commission issue a Public Notice seeking further comment on the enrollment representative registration requirement. However, the Commission provided ample notice to stakeholders and sought comment on a range of issues impacting this effort in the *2017 Lifeline Order and NPRM*. The *2017 Lifeline Order and NPRM* sought comment on the codification process generally, how the Commission should define an ETC enrollment representative, what information should be solicited for this database, and what privacy and security practices should be used to safeguard this information. These are all considerations that the Commission acts on, and the suggestion that stakeholders did not have ample notice or time to comment on these issues is not supported by the factual history of this proceeding.

62. TracFone Wireless, Inc. (TracFone) also raised several proposals for addressing different aspects of the enrollment representative registration process. TracFone suggested that the Commission prohibit third party agents from representing more than one Lifeline provider at any one time. However, the Commission believes that such a prohibition would be overly broad and unsupported by the proceeding's record. TracFone also argued that registration should only be required for individuals involved in the eligibility verification process if those individuals are compensated with commissions. However, since the *Order* prohibits commissions for enrollment representatives and their supervisors, applying the registration requirement only to representatives who receive commission-based compensation would render the requirement meaningless. USAC and the Commission would lose the ability to monitor enrollment representatives' practices and to proactively address potential fraud committed by these individuals.

63. As part of the enrollment representative registration process, the Commission also requires individual enrollment representatives with direct access to USAC's systems to sign a user agreement for NLAD and the National

Verifier before gaining access to NLAD or the National Verifier. The Commission directs USAC to develop a user agreement that requires these enrollment representatives to acknowledge that they will only use NLAD and the National Verifier for the specified purposes and that their access to either or both databases may be suspended or terminated for unauthorized or unlawful use. Individual enrollment representatives with direct access to these systems must re-submit the user agreements annually and must also confirm in USAC's database that their contact information is up to date within 30 days of any change in such information. This will ensure that enrollment representatives' information in the database remains current and that the enrollment representative is still actively using the National Verifier or the NLAD on behalf of the ETC. In operating the ETC representative registration system, USAC shall have the authority to protect the integrity of its registration system by, among other things, locking the NLAD and National Verifier accounts of ETC enrollment representatives with a prolonged inactive period (*i.e.*, consecutive months) or a pattern of suspicious activity, such as unusual rates of invalid enrollment attempts. While a representative's account is locked, the representative will lose the ability to enter, alter, remove, or view subscriber information in the NLAD and National Verifier systems.

64. *Enrollment Process Improvement—Independent Economic Household Worksheets.* Next the Commission amends the rules to limit when an ETC can record an Independent Economic Household (IEH) worksheet in the NLAD. Specifically, an ETC will be permitted to do so only where the consumer completing the worksheet shares an address with another Lifeline subscriber. This limitation will assist USAC's efforts to detect improper duplicate addresses among Lifeline subscribers listed in the NLAD and will reduce administrative burdens on USAC.

65. The Commission's rules limit Lifeline service to one subscription per household. There are instances, however, where multiple subscribers share the same residential address but are considered independent economic households under the Lifeline program rules. For example, multiple subscribers living in a shelter may share the same address, or multiple subscribers may provide the same apartment building address without a unit number. Alternatively, subscribers might share the same home address, but would not

be part of the same household if they do not contribute to and share in the household income and expenses. The IEH worksheet asks several questions that help the ETC and subscriber determine if the subscriber is an independent household in the event that another subscriber lives at the same address. The Commission's rules require that the IEH worksheet certifying compliance with the one-subscription-per-household rule be completed at the time of enrollment if the consumer resides at the same address as another individual receiving a Lifeline benefit and during any recertification in which the subscriber changes households, and as a result, shares an address with another Lifeline subscriber. However, an ETC often will record the collection of an IEH worksheet in the NLAD and note that the applicant is in an independent economic household, even if the subscriber does not share an address with other Lifeline subscribers.

66. In the *2017 Lifeline Order and NPRM*, the Commission sought comment on the practice of collecting and recording worksheets from all subscribers, regardless of whether that subscriber shares an address with another Lifeline subscriber and asked whether that practice makes it more difficult for USAC to detect improper activity. Noting that the "[p]rophylactic use of the household worksheet can therefore subvert the duplicate address protections and may result in increased waste, fraud, and abuse," the Commission asked whether it should amend its rules to permit the use of the form only in instances where the ETC has been notified that the applicant shares the same residential address as another Lifeline subscriber.

67. Some commenters argue that it is important that providers be able to collect the IEH worksheet from the applicant at the time of enrollment because providers may not receive a real time notification that the applicant shares an address with another Lifeline customer. Others are generally supportive of the Commission's proposal to restrict the collection of the IEH worksheets. The Commission recognizes the strong preference that some ETCs have for routinely collecting the IEH worksheet at the outset from Lifeline applicants, regardless of whether that applicant shares an address with another Lifeline customer. Upon a review of the record, the Commission finds no compelling reason to prohibit the practice of collecting the IEH worksheet from all applicants, but in order to more readily identify through use of the "IEH flag" which subscribers share an address with

another Lifeline subscriber, the Commission finds it necessary to restrict the recordation of the IEH worksheet in the NLAD. Accordingly, the Commission amends § 54.404(b)(3) of the Commission's rules to permit ETCs to record an IEH worksheet in the NLAD only when the NLAD has alerted the ETC that the prospective subscriber shares the same residential address as another Lifeline subscriber is a reasonable approach to support USAC's efforts in identifying duplicate addresses. ETCs shall not record an IEH worksheet in NLAD in any other situation. These changes shall be effective January 27, 2020.

68. Finally, the rule does not alter ETCs' conduct in NLAD opt-out states (California, Oregon, and Texas) because the rule only covers the information that ETCs submit to the NLAD. More specifically, ETCs in NLAD opt-out states must continue to follow the relevant state laws, regulations, or agency instructions. To be clear, because this rule change impacts the recordation of IEH worksheets in the NLAD and not the use of the IEH worksheet itself, ETCs are still permitted to collect IEH worksheets prior to enrollment. ETCs may not record that subscriber's IEH form in the NLAD, however, unless the NLAD has alerted the ETC that the subscriber shares an address with another Lifeline subscriber.

69. *Deceased Subscribers.* In its report, GAO identified 6,378 deceased individuals that remained enrolled in Lifeline even though they were reported as deceased for over a year before enrollment or recertification. To combat this issue, USAC was directed to de-enroll the subscribers GAO identified as deceased, and going forward on a quarterly basis, to check a sample of subscribers against the Social Security Death Master File and to de-enroll subscribers and recoup reimbursements as appropriate. Since then, USAC has added a check of the Social Security Death Master File when validating a consumer's identity, which prevents a consumer appearing on the Social Security Death Master File from enrolling in the program unless the consumer successfully disputes the automated result through documentation. In the *2017 Lifeline Order and NPRM*, the Commission sought comment on whether it should codify USAC's current practice of cross-checking a subscriber's information against the Social Security Death Master File at the time of enrollment and recertification. Commenters agree that a codification of USAC's current practice is a reasonable way to help control

waste, fraud, and abuse. Accordingly, the Commission adds a new rule, § 54.404(b)(12), notifying ETCs that they must not enroll a prospective Lifeline subscriber if the NLAD or National Verifier cannot identify the subscriber as living, unless that subscriber can produce documentation demonstrating his or her identity and status as living. The revised rules prohibit ETCs from claiming subscribers that are identified as deceased for purposes of requesting or receiving reimbursement from Lifeline. The changes contain new or modified information collection requirements, which will not be effective until approved by the Office of Management and Budget. The effective date will be announced in a future **Federal Register** document.

70. If an ETC has claimed reimbursement for a period during which a subscriber was deceased, USAC is directed to reclaim reimbursements back to the time of enrollment or recertification if the subscriber was deceased and listed on the Social Security Death Master File at the time of enrollment or recertification. The Commission also directs USAC to continue its efforts to prevent ETCs from claiming and seeking reimbursement for subscribers identified as deceased and listed on the Social Security Death Master File. Specifically, USAC shall continue sampling existing subscribers on a quarterly basis and, for any subscriber identified as deceased according to the Social Security Death Master File, USAC shall first require ETCs to provide “proof of life” documentation and then de-enroll any subscribers who cannot produce such documentation to successfully dispute the Social Security Death Master File match.

71. *Reimbursement Process.* The Commission next revises the rules to include a limitation on the subscribers for which an ETC may claim and receive reimbursement. In the *2017 Lifeline Order and NPRM*, the Commission sought comment on whether it should amend its rules to require that disbursements be based on the subscribers enrolled in NLAD as a way to prevent reimbursements for fictitious or “phantom” subscribers that are not in NLAD and are improperly claimed by providers. Section 54.407 of the Commission’s rules provides that reimbursement for providing Lifeline service will be provided directly to the ETC “based on the number of actually qualifying low-income customers it serves directly as of the first day of the month.” The Commission now codifies the requirement that the number of eligible subscribers an ETC may claim

for reimbursement must be no more than the number of qualifying subscribers the ETC directly serves as of the snapshot date as indicated by the data in the NLAD. In the three NLAD opt-out states, ETCs may also base claims for reimbursement on any reports or information the state administrator provides to the ETC concerning which subscribers can be claimed. The Commission directs USAC to continue to base its Lifeline claims and reimbursement process on the number of qualifying subscribers the ETC serves on the snapshot date. USAC shall base the reimbursement on data available in NLAD, future USAC systems that record program enrollment, or on data provided by a state administrator for the NLAD opt-out states. Section 54.407(a) is amended to reflect the requirement. The rule change will become effective January 27, 2020.

72. *Recertification—Improving Recertification Integrity.* The Commission next amends the Commission’s rules to require ETCs to collect eligibility documentation from the subscriber at the time of recertification in certain circumstances. In the *2017 Lifeline Order and NPRM*, the Commission acknowledged that the current rules allow a subscriber to self-certify that he or she continues to be eligible for the Lifeline program, even if a database indicates that the subscriber’s participation in a qualifying program has changed and his or her eligibility cannot be determined by querying any available state or Federal eligibility or income database. The Commission asked for comment “on prohibiting subscribers from self-certifying their continued eligibility during the Lifeline program’s annual recertification process if the consumer is no longer participating in the program they used to demonstrate their initial eligibility for the program.”

73. To help ensure the integrity of the recertification process, the Commission amends the Commission’s rules to require ETCs to collect eligibility documentation from the subscriber at the time of recertification if the subscriber’s eligibility was previously verified through a state or Federal eligibility or income database and the subscriber’s continued eligibility can no longer be verified through that same database or another eligibility database. The rule change creates a more rigorous and verifiable recertification process and is tailored to provide additional focus on subscribers who have changes in their eligibility from year to year. The Commission also amends the rules to accommodate this process in the National Verifier. If the ETC is unable to

re-certify the subscriber’s eligibility or is notified by the National Verifier or the relevant state administrator that the subscriber is unable to be re-certified, the ETC shall proceed with the de-enrollment requirements in § 54.405(e)(4) of the rules.

74. Amending the Commission’s rules to require this additional recertification step closes off another avenue for waste, fraud, and abuse within the Lifeline program by requiring additional documentation from subscribers whose eligibility was previously confirmed through an eligibility database but are no longer included in any eligibility database. This change balances the need to increase the integrity of the Lifeline program by ensuring that subscribers continue to demonstrate eligibility each year, with the limited burden of providing additional documentation only when the situation warrants it. The proposal is supported by state agency commenters, many of whom noted the importance of verifying eligibility in situations where a subscriber’s eligibility cannot be determined through a check of a database. The National Lifeline Association and ETCs also note their support for the requirement.

75. Some commenters express concern that this requirement would be burdensome for low-income subscribers because it would require them to produce additional documentation. Smith Bagley, Inc. (SBI) also argues that subscribers aged 60 years or older and residing on Tribal lands should be exempt from the requirement to produce additional documentation if their eligibility cannot be first determined through a database check. SBI contends that if such a customer can no longer be verified as a Medicaid participant in a database, “it is statistically likely that they also qualify via household income or [Supplemental Security Income]” because, among SBI’s Lifeline customers aged 60 years or older, “approximately 39% qualified via household income compared to 12% of its entire Lifeline base.” SBI contends that for this subset of subscribers, requiring the submission of eligibility documentation would be particularly burdensome because of mobility restrictions and other difficulties. The Commission is cognizant of the burdens that providing additional documentation can have on some low-income consumers, including those over the age of 60, and so the rule is tailored to only require supporting documentation when eligibility was confirmed through a database check, the subscriber is no longer included in that database, and eligibility cannot otherwise be verified through a check of another state or Federal eligibility or

income database. Accordingly, the Commission declines to implement SBI's suggestion to permit Lifeline subscribers on Tribal lands over the age of 60 to self-certify their eligibility when they cannot otherwise be verified through a database. Recognizing that it may be a challenge for some to submit documentation in accordance with this rule, but this yearly requirement balances the need to maintain the integrity of the Lifeline program while minimizing the burden on individual subscribers. Also declining to implement the recommendation of the Oklahoma Corporation Commission's Public Utility Division to eliminate all self-certifications, as finding that the self-certification process at the time of recertification strikes a balance by limiting administrative burdens on program participants while still maintaining the integrity of the Lifeline program by enforcing a verifiable process by which to confirm eligibility.

76. The Commission therefore amends § 54.410(f) of the Commission's rules to reflect these changes, and directs USAC to update the recertification forms as necessary to reflect these changes. The changes contain new or modified information collection requirements, which will not be effective until approved by the Office of Management and Budget. The effective date will be announced in a future **Federal Register** document. Any recertification initiated on or after the effective date must comply with the amended rules.

77. *Risk-Based Auditing.* The Commission next modifies the Lifeline program's audit requirements to better target potential non-compliance and reduce burdens on some ETCs. Participants in the Lifeline program are subject to substantial oversight and compliance reviews. With oversight from the Commission's Office of the Managing Director (OMD), USAC is responsible for conducting, either itself or through third parties, Beneficiary and Contributor Audit Program (BCAP) audits and Payment Quality Assurance (PQA) reviews of program participants. More recently, USAC has conducted additional reviews as requested in the July 2017 Letter to USAC. Additionally, under the Commission's Biennial Audit framework, ETCs receiving \$5 million or more in reimbursements from the Lifeline program are required to obtain an independent audit that is intended "to assess the ETC's overall compliance with the program's requirements." In the *2017 Lifeline Order and NPRM*, the Commission sought comment on its proposal to modify the Biennial Audit requirements from a \$5 million

reimbursement threshold to a purely risk-based model.

78. Finding that targeted tools are necessary to identify abusers of the program and to ensure that USAC's procedures are sufficient to properly administer the Lifeline program, the Commission adopts a new approach that will use risk-based factors—rather than the level of Lifeline disbursements—to identify ETCs that must complete Biennial Audits pursuant to § 54.420(a) of the Commission's rules. As one commenter argues, "the number of subscribers served by a provider," and thus the level of reimbursements made to the provider, "is not indicative of its risk profile." The Commission agrees that the amount of reimbursements should not be the only factor to consider in determining when a Biennial Audit is necessary under § 54.420(a) of the rules. Accordingly, the Commission directs USAC to develop and submit for approval by OMD and the Bureau a list of proposed risk-based factors that would trigger a Biennial Audit under § 54.420(a) of the Commission's rules in accordance with the guidance provided in the GAO's Yellow Book and the Office of Management and Budget (OMB) Circular No. A-123, *Management's Responsibility for Internal Control*. A risk-based approach for biennial audits will incorporate a wider range of risk factors that will better identify waste, fraud, and abuse in the program because these factors will target potential violations rather than only companies that happen to receive a certain level of Lifeline reimbursements. To ensure the efficient and effective implementation of the approach, the Commission directs OMD and the Bureau, in conjunction with USAC, to update the Biennial Audit Plan as necessary to reflect the changes made herein and otherwise implemented since the development and release of the last Biennial Audit Plan. Commenters generally welcome this move to a targeted, risk-based approach, noting that this approach will be much more effective at weeding out waste, fraud, and abuse than the current method. The move also would likely result in cost savings for ETCs that were targeted simply due to their size. Risk-based audits will direct resources to where they are needed more—the monitoring of providers that exhibit certain risk factors that warrant further investigation through an audit.

79. ETC commenters request that the Commission work with stakeholders in developing the risk register. While the Commission appreciates ETCs' interest in developing risk-based factors, it is important that the Commission receive

recommendations from USAC, including any experts it may hire, based on standard methodologies for identifying risk-based factors and developing risk registers. As such, the Commission declines to direct OMD or USAC to seek comment on the risk register from any particular stakeholders, but instead anticipate that OMD and the Bureau will direct USAC to use auditing best practices, including the GAO Yellow Book, for identifying risk-based factors and developing the recommendations for the risk register. The Commission expects that such efforts by USAC to develop the risk register will follow relevant Federal guidance on evaluating and managing risk. The Commission highlights that the approach is designed to maintain the integrity of the audit process such that the risk register will serve its intended purpose of aiding in the detection and prevention of fraud, waste, and abuse in the program. The Commission notes that it already uses the approach for other Lifeline audit plans. For example, the FCC and USAC do not share the annual risk analyses used to select auditees pursuant to the Beneficiary and Contributor Audit Program. The Commission further notes that, pursuant to the guidance in OMB Circular A-123, it is within the Commission's discretion to adopt an approach "that will ensure the greatest financial benefit for the government," and the Commission believes that this risk-based approach will do so by directing resources toward audits where instances of waste, fraud, and abuse are more likely to be revealed. Finally, the approach will ensure that the development of the risk register will remain flexible so that USAC can adjust the risk register to meet any changes in the Lifeline program. The changes will become effective January 27, 2020.

80. The Commission also addresses several outstanding petitions to resolve pending questions pertaining to the rules and oversight of the Lifeline program and to provide clarity to program participants. The Commission addresses USTelecom's petition for reconsideration and clarification of the *2016 Lifeline Order*; the National Association of State Utility Consumer Advocates (NASUCA) petition for reconsideration of the *2016 Lifeline Order*; the petitions of USTelecom and General Communication, Inc. (GCI) and the joint petition of NTCA—the Rural Broadband Association (NTCA) and WTA—Advocates for Rural Broadband (WTA) seeking reconsideration of the *2016 Lifeline Order*; the National Lifeline Association (NaLA) 2018

petition for declaratory ruling that the Commission allow ETCs to seek reimbursement for eligible subscribers during the non-usage cure period; and TracFone's 2012 petition for declaratory ruling and interim relief regarding actions taken by the Puerto Rico Telecommunications Regulatory Board to address duplicate Lifeline subscribers identified by the Board. The Commission partially grants the petitions of USTelecom and GCI and the joint petition of NTCA and WTA and the Commission dismisses as moot or denies the other petitions.

81. *ETC Service Obligations.* Pending before the Commission is USTelecom's Petition for Reconsideration and Clarification of the *2016 Lifeline Order*. The Commission dismisses as moot USTelecom's requests that the Commission (1) extend the effective date for the requirement to offer Lifeline-supported broadband internet access service, and (2) apply to non-Lifeline Broadband Providers the Commission's clarification that for Lifeline Broadband Providers, "media of general distribution" in section 214(e)(1)(B)'s advertising requirement means media reasonably calculated to reach "the specific audience that makes up the demographic for a particular service offering." The requirement to offer Lifeline-supported broadband internet access service took effect on December 2, 2016. The Fifth Report and Order, eliminates the Lifeline Broadband Provider category. As a result, the Commission's clarification concerning the advertising requirements for Lifeline Broadband Providers no longer applies to any ETC. Accordingly, the Commission dismisses the requests as moot.

82. The Commission denies USTelecom's request for reconsideration of the requirement that the last ETC in a Census block continue to offer Lifeline stand-alone voice service. USTelecom argues that this requirement is "arbitrary and capricious" and is inconsistent with the Commission's decision to shift Lifeline support from voice service to broadband internet access service. Two parties filed comments opposing USTelecom's request for reconsideration of this requirement.

83. USTelecom's arguments do not warrant reconsideration of this requirement. The Commission adopted the requirement in the *2016 Lifeline Order*, notwithstanding its conclusion that the Lifeline program should transition to focus more on broadband internet access services, after considering (1) the historical importance of voice service, (2) that

consumer migrations to new technologies are not always uniform, and (3) that measures to continue addressing the affordability of voice service may still be appropriate consistent with the objectives of sections 254(b)(1), (b)(3), and 254(i) of the Act. Based on its consideration of these factors, the Commission concluded that, consistent with its "responsibility to be a prudent guardian of the public's resources," continued support for voice services should prioritize in an "administrable way, those areas where the Commission anticipates there to be the greatest likely need for doing so," and that it made the most sense to provide any continued support for stand-alone voice to the last ETC serving the Census block. The Commission acknowledged that this support could be targeted in other ways (e.g., based on other geographies, or demographic criteria), but was not persuaded that these other approaches would be easily administrable. The Commission also determined that it made the most sense to provide this continued support to the single, existing ETC serving the Census block rather than requiring the designation of a new provider for this purpose.

84. Finding that the Commission's decision to require the last ETC serving a Census block to continue offering Lifeline-supported voice service is not inconsistent with the decision and supporting rationale for shifting Lifeline dollars from voice service to broadband internet access service. As explained in the *2016 Lifeline Order*, the Commission adopted this requirement after considering a number of factors, including the objectives of section 254(b), and also narrowly tailored this approach to meet the needs of areas where the Commission anticipated the greatest likely need for addressing the affordability of stand-alone voice services. USTelecom has not demonstrated that the Commission erred in considering these factors or adopting a narrowly tailored solution to address them.

85. While USTelecom argues that the existence of one ETC does not correlate to the absence of multiple voice providers, and that the rates of non-ETC voice providers would not be higher in Census blocks where there is only one ETC, USTelecom's petition fails to provide any specific evidence to support those arguments. USTelecom also has not demonstrated that the Commission erred in determining that focusing on Census blocks with one ETC was the most readily administrable approach, or that it made the most sense to require the single existing ETC

already serving the Census block to continue to provide stand-alone Lifeline voice service. Accordingly, the Commission denies USTelecom's request for reconsideration of the requirement that the last ETC in a Census block continue offering Lifeline stand-alone-voice service.

86. *Backup Power.* The Commission next addresses a June 23, 2016, NASUCA petition for reconsideration of the *2016 Lifeline Order* arguing that, among other issues, the *Order* did not "require that payment arrangements be offered for back-up power for Lifeline customers." NASUCA requests that the Commission "at the very least require Lifeline ETCs to offer [Lifeline subscribers] extended payment plans for the back-up power option" or permit "back-up power [to] be provided at no additional cost to the Lifeline consumer." CenturyLink, GVNW and USTelecom opposed this portion of NASUCA's petition for reconsideration and argue that the Commission should reject or decline to consider NASUCA's back-up power proposals for Lifeline consumers. The Commission declines to grant NASUCA's request.

87. NASUCA's arguments concerning Lifeline support for backup power arrangements do not warrant reconsideration of the *2016 Lifeline Order*. NASUCA's petition does not point to any errors of fact or law in the *2016 Lifeline Order*. Instead, NASUCA's petition reprises the same arguments that NASUCA made in its comments responding to the *2015 Lifeline Order and FNPRM* and requests a change in the Commission's policies that would allow Lifeline support for backup power. The Commission's current rules do not require Lifeline providers to allow Lifeline consumers to make installment payments for backup power and do not provide Lifeline support for backup power options. The approach is consistent with the Commission's determination in 2015 and 2016 that backup power is a matter of consumer choice and should be funded by individual consumers. Specifically, in the *Ensuring Continuity of 911 Communications Reconsideration Order* (FCC 15–98; 80 FR 62470 (Oct. 16, 2015)), the Commission recognized the importance of "ensur[ing] that all (including low-income) consumers have the ability to communicate during a power outage," but ultimately found that its previous conclusion that backup power is a matter of consumer choice to be funded by individual consumers "appropriately balanced competing interests in ensuring that consumers had the ability to purchase backup power." Given the Commission's prior, thorough

consideration of backup power issues for all consumers, including low-income consumers, the fact that the *2016 Lifeline Order* does not adopt NASUCA's backup power proposals for Lifeline consumers does not warrant reconsideration of the *2016 Lifeline Order*.

88. *Rolling Recertification*. The Commission next partially grants the petitions of USTelecom and GCI and the joint petition of NTCA and WTA (collectively, Petitioners) that request reconsideration of the 2016 decision to implement rolling recertification prior to the implementation of the National Verifier. Petitioners argue that the Commission failed to provide sufficient notice of the rule change prior to adoption in the *2016 Lifeline Order*. The Petitioners raise strong arguments that the logical outgrowth standard is not satisfied here. In light of the Petitioners' arguments and the desire to develop a full and complete record, the Commission hereby grants the petitions for reconsideration as they apply to the discrete rule and reverses the rolling recertification requirement for ETCs pending future disposition of the issues raised.

89. In the *2016 Lifeline Order*, the Commission mandated rolling recertification, which required an ETC to recertify each Lifeline customer's eligibility every 12 months, as measured from the customer's service initiation date, except in states where the National Verifier, state Lifeline administrator, or other state agency conducts the recertification. The Commission found that the change would create administrative efficiencies while avoiding the imposition of undue burdens on providers, USAC, or the National Verifier. Previously, ETCs were simply required to annually certify the continued eligibility of subscribers, except for those in states where the state Lifeline administrator or other state agency conducts the recertification. In the *2015 Lifeline Order and FNPRM*, the Commission sought comment on the National Verifier's role in the recertification process and other potential National Verifier functions, but did not propose or seek specific comment on changes to the recertification process in states where the National Verifier had not yet launched.

90. Petitioners contend that the language of the *2015 Lifeline Order and FNPRM* did not provide adequate notice, as required by the Administrative Procedure Act (APA), that the Commission was contemplating revising § 54.410(f)(1) to implement a rolling recertification requirement for

providers before the National Verifier launched. On reconsideration, the Commission agrees that the *2015 Lifeline Order and FNPRM* did not explicitly notice the Commission's intent to require rolling recertification before the National Verifier launched. Although the APA does not require that the notice "specify every precise proposal which [the agency] may ultimately adopt as a rule" or that the final rule "be the one proposed in the NPRM," the final rule must be a "logical outgrowth" of its notice." A rule is considered a "logical outgrowth" of the Notice if a party should have anticipated that the rule ultimately adopted was possible.

91. Here, the Commission agrees that a party could not be expected to have anticipated that a notice of proposed rulemaking seeking comment on the National Verifier's role in the recertification process would result in a rule requiring ETCs to recertify subscribers every 12 months as measured from each subscriber's service initiation date, even in states where the National Verifier has not launched. Accordingly, the Commission reverses, solely on notice grounds, the rolling recertification requirement on ETCs. As of the effective date of the *Order*, ETCs will not be required to complete recertification of a Lifeline customer's eligibility by the anniversary of that customer's service initiation date. Instead, the recertification process must merely be completed on an annual basis pursuant to the revised § 54.410(f)(1) of the Commission's rules. The Commission notes that ETCs, USAC, and the National Verifier may continue to use a rolling recertification approach, as that would meet the requirement for annual recertification. Recertifications for all eligible Lifeline subscribers must be completed by the end of each calendar year, unless the requirement otherwise is waived by the Bureau or Commission. All other Commission guidance and rules with respect to the recertification process remain in effect.

92. *Reimbursement Under the Usage Requirement*. The Commission next denies the Petition for Declaratory Ruling filed by NaLA asking the Commission to permit ETCs to seek reimbursement "for all Lifeline eligible subscribers served as of the first day of the month" pursuant to the Commission's non-usage rules, "including those subscribers that are in an applicable 15-day cure period following 30 days of non-usage."

93. In the *2012 Lifeline Order*, as a measure intended to reduce waste in the program, the Commission introduced a requirement that an ETC that did not

assess and collect from its subscribers a monthly charge could not receive support for subscribers who had either not activated service, or who had not used the service within a consecutive 60-day period. In this way, ETCs would only receive support for eligible low-income subscribers who actually use the service. ETCs were also required to notify their subscribers of possible de-enrollment at the end of the 60-day period if the subscriber failed to use the Lifeline supported service during the next 30 days. In the *2016 Lifeline Order*, the Commission shortened 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. Per the change, ETCs must notify subscribers of possible de-enrollment on the 30th day of non-usage and de-enroll the subscriber if, during the subsequent 15 days, the subscriber has not used the service.

94. NaLA's petition for declaratory ruling requested that the Commission permit Lifeline ETCs to seek reimbursement for all Lifeline subscribers served on the first day of the month, including those subscribers receiving free-to-the-end-user Lifeline service who are in the 15-day cure period per the Commission's non-usage rules. NaLA states that USAC's website changed its guidance from allowing reimbursement for Lifeline subscribers during the 15-day cure period of the non-usage rule to disallowing ETCs to claim reimbursement for subscribers during the 15-day cure period. NaLA further states that disallowing reimbursement for those subscribers enrolled during the 15-day cure period would be arbitrary and capricious because it ignores the language of § 54.407(a) and disregards ETCs' "reasonable reliance on the initial guidance" provided by USAC. NaLA also asserts that disallowing reimbursement for subscribers in the 15-day cure period for non-usage potentially would constitute a regulatory taking without just compensation, in violation of the United States Constitution.

95. SBI, Sprint Corporation, and Q Link Wireless all filed comments in support of NaLA's Petition. SBI states that the Lifeline rules "entitle SBI to reimbursement for all Lifeline customers it serves directly as of the first of the month" making "SBI entitled to reimbursement for a customer whose 'cure' period includes the snapshot date." It further states that nowhere do the rules require "SBI to go back after the end of the 'cure' period and return

the Lifeline subsidy [because] there is nothing to return since SBI was providing service during that period.” Sprint states that “service providers incur significant costs for accounts in mandatory cure status” as that subscriber’s account “remains active, and the service provider continues to incur the costs associated with an active account.” Both Sprint and SBI argue that inefficiencies result from an ETC not being able to claim a subscriber during the cure period but then filing for reimbursement if the subscriber ultimately ends up using the service during the cure period. Q Link reiterates NaLA’s argument that mandating Lifeline service to subscribers in a cure period but prohibiting ETCs from claiming such subscribers would effect a regulatory taking.

96. The Commission denies NaLA’s Petition requesting permission to seek reimbursement for subscribers who have not used the Lifeline supported service in 30 consecutive days. The non-usage rule states that an ETC offering free-to-the-end-user Lifeline service “shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 30 days” ETCs are further obligated to provide a subscriber who has not used her or his service within those 30 days “15 days’ notice . . . that the subscriber’s failure to use the Lifeline service within the 15-day notice period will result in service termination for non-usage.” Read together, the plain language of the rules does not confer any right for the ETC to receive reimbursement during the 15-day cure period. The rules expressly state that ETCs can seek reimbursement only for subscribers who use their service within a consecutive 30-day period. The 15-day cure period serves as a notification to the subscriber that she must use her service, or it will be automatically terminated at the end of the 15 days. NaLA’s argument that it should be able to seek support during the 15-day notice and cure period is intended effectively to extend the non-usage period by 50%.

97. The Commission is not persuaded by NaLA’s argument for granting the petition because it relied on informal staff guidance and USAC’s website. Commission precedent is clear that carriers must rely on the Commission’s rules and orders even in the face of conflicting informal advice or opinion from USAC or Commission staff. NaLA and others must rely on the plain language of the non-usage rules, as codified by the Commission, which state that ETCs will not be eligible to be reimbursed for those subscribers who

are in a 15-day non-usage cure period regardless of whether the subscriber’s 15-day cure period includes the snapshot date. Additionally, the Commission notes that a group of ETCs with at least some overlap with the current NaLA Petitioners acknowledged that the Commission’s rules require ETCs to keep Lifeline subscribers enrolled in the program during the cure period without requesting reimbursement for that service.

98. The Commission also rejects NaLA’s argument that § 54.407(a) and (c)(2) of the Commission’s rules are inconsistent and in conflict. Section 54.407(c)(2) prohibits ETCs providing free-to-the-end-user Lifeline service from claiming support for subscribers who have not used their Lifeline service in the last consecutive thirty days or who have not cured their non-usage. While § 54.407(a) of the rules generally provides for the payment of reimbursements to ETCs for qualifying subscribers in the NLAD on the first day of the month, § 54.407(c)(2) of the rules places a specific restriction on the general rule declaring which subscribers an ETC can claim for reimbursement. The specific language in a rule prevails over more general language. Because the specific language of § 54.407(c)(2) of the rules provides a limitation on the general reimbursement rule of § 54.407(a) and also clearly states that an ETC “shall *only* continue to receive universal service support reimbursement” for subscribers who have used their service within a 30 consecutive day period, it is not arbitrary for the Commission to determine that ETCs are not owed payment for the 15-day notification period required by § 54.405(c)(3) that falls beyond the 30-day non-usage period per the rule. The Commission also notes that the alternative to the 15-day cure period is to require an ETC to immediately de-enroll a subscriber from the Lifeline program on day 30 of non-usage, which would result in the subscriber’s service being disconnected with no notice to the subscriber and would therefore be contrary to the public interest.

99. Finally, the Commission disagrees with NaLA’s argument that requiring ETCs to provide uncompensated service during the 15-day cure period would violate the Takings Clause of the Fifth Amendment. The Takings Clause prohibits the government from taking “private property . . . for public use, without just compensation.” While NaLA’s Petition does not elaborate on the argument, Q-Link explains that denying compensation during the 15-day cure period would effectively

mandate that subscribers “be permitted physically to occupy portions of the ETC’s network and airtime . . . without just compensation.” There is a simple problem with the argument: Any actual use of an ETC’s network—even the sending of a single text message—would establish subscriber “usage,” entitling the ETC to reimbursement. In other words, the Commission’s rules deny compensation only where there is no use—and therefore, under Q-Link’s formulation, no physical occupation. Where there *is* actual use during this 15-day period, ETCs would receive compensation.

100. The potential taking, then, is merely the burden of providing a wholly unused service for fifteen days. While NaLA and other commenters provide no information on the weight of the burden, it is far from the kind of permanent condemnation of physical property that typifies a *per se* taking. Nor would it amount to a regulatory taking: (1) The economic impact of a 15-day period of uncompensated service would be light; (2) the rule would not upend any reasonable investment-backed expectation; and (3) any interference could not fairly be characterized as a “physical invasion by government,” notwithstanding Q-Link’s arguments to the contrary.

101. For these reasons, the Commission denies NaLA’s Petition. ETCs are not entitled to reimbursement during the 15-day cure period for a subscriber who has not used the service within 30 consecutive days unless the subscriber cures the non-usage, after which the ETC may seek reimbursement.

102. *State Efforts to Eradicate Duplicate Claims.* The Commission denies a TracFone Petition for Declaratory Ruling and Interim Relief filed in 2012 concerning actions taken by the Puerto Rico Telecommunications Regulatory Board (Board or TRB) to address duplicate Lifeline subscribers as identified by the Board. The regulations and processes enacted by the Board to address duplicative Lifeline support in Puerto Rico were valid and not subject to preemption by the Commission. Specifically, the Commission finds that the Board was not required to adopt the interim procedures concerning duplicative Lifeline subscribers outlined in the Commission’s *2011 Duplicative Payments Order* (FCC 11–97; 76 FR 38040 (June 29, 2011)) because those procedures established a minimum set of requirements for USAC to use to address duplicate Lifeline subscribers that USAC identified through in-depth data validations and other similar audits. In addition, the Commission

finds that the Board's de-enrollment procedures did not conflict with or serve as an obstacle to the de-enrollment procedures adopted by the Commission and, as a result, were not subject to preemption. The Commission also notes that many of the policy concerns raised by TracFone and commenters concerning the Board's process have either been addressed by (1) changes the Board made to its duplicate policies and procedures soon after TracFone's petition was filed, (2) the fact that the Board filed a request to opt out of the NLAD in November 2012, or (3) the fact that the NLAD now conducts duplicate checks for Puerto Rico subscribers following the Bureau's 2015 grant of Puerto Rico's request to opt into the NLAD.

103. According to TracFone's Petition, the Board sent letters to TracFone and several other ETCs in January and February 2012 together with a list of duplicate subscribers, and instructed the ETCs to de-enroll these subscribers by a specified date. TracFone argues that the Board letters instructing ETCs to de-enroll the consumers violate (1) the intent of section 254(b)(3) of the Communications Act, which establishes as a core principle the goal that consumers in all regions of the Nation, "including low-income consumers," have access to affordable telecommunications services, and (2) the rules and procedures governing de-enrollment of "duplicates" established by the Commission on an interim basis in 2011 and those later adopted on a permanent basis in 2012. TracFone argues that the Board should be required to adopt the Industry Duplicate Resolution Process outlined by the Commission in its *2011 Duplicative Payments Order*. TracFone also points to the opt-out process outlined in the *2012 Lifeline Order*, which codified a permanent approach for addressing duplicates in the Federal rules, and argues that the Board did not follow the process, and that the Board's process has the potential to leave residents without service, in violation of the *2012 Lifeline Order*. Finally, TracFone requests that the Commission issue an order concluding that the directives to ETCs contained in the Board's letters are unlawful and preempted.

104. Multiple commenters filed in support of TracFone's Petition, agreeing that the Commission should issue a declaratory ruling and arguing that the Board's actions directing TracFone and other ETCs to de-enroll duplicate subscribers were unlawful, contrary to universal service program policy and inconsistent with Federal procedures. NASUCA, in its comments, also

recommended that the Commission issue a ruling (1) that Puerto Rico consumers who are eligible for Lifeline be allowed to maintain one Lifeline service per household, even if they had received duplicate Lifeline service previously, and (2) clarifying that states that operate their own systems for identifying duplicates are required, as a condition of opting out of the Federal duplicate resolution process, to include safeguards to allow eligible consumers to receive one Lifeline service per household.

105. Several commenters point to the duplicates resolution measures adopted by the Commission and raise concerns that the Board process for addressing duplicates deviates from the process the FCC outlined in the *2011 Duplicative Payments Order*, the *2012 Lifeline Order*, and the *June 2011 Guidance Letter* (DA 11-1082). NASUCA, for example, argues the Commission should clarify that state systems that opt out of following the Federal approach must include both the functional capabilities and safeguards equivalent to those administered by USAC. Sprint and PRTC argue that the Board should adopt the FCC's processes and procedures. Sprint, PRTC, and T-Mobile point to the need for nationwide consistency in addressing the duplicates issue. PR Wireless agrees with TracFone that the Board's processes are inconsistent with Federal procedures. Several commenters raise concerns that the process established by the Board will result in consumers being barred from receiving service for an extended period of time (from four months to a year) if they are determined to be receiving service from more than one carrier. One commenter also raises concerns regarding how the Board was addressing situations where there are multiple households at a single address.

106. The Commission has taken a number of important steps to create robust processes and procedures to address the issue of duplicative Lifeline support. In the Commission's *2011 Duplicative Payments Order*, the Commission clarified that qualifying low-income consumers may receive no more than a single Lifeline benefit and established the requirement that an ETC, upon notification from USAC, de-enroll any subscriber that is receiving multiple benefits in violation of that rule. The Commission also directed the Bureau to send a letter to USAC to implement an administrative process to detect and resolve duplicative claims that was consistent with the proposed Industry Duplicate Resolution Process submitted by a group of ETCs. This was intended as an interim process, "while

the Commission considers more comprehensive resolution of this and other issues raised in the *2011 Lifeline and Link Up NPRM* (FCC 11-32 [76 FR 16482 (March 23, 2011)]). Then, in 2012, the Commission adopted a number of Lifeline program reforms and codified a more permanent approach to address duplicative support. Specifically, in the *2012 Lifeline Order*, the Commission created and mandated the use by ETCs of the NLAD with specified features and functionalities designed to ensure that multiple ETCs do not seek and receive reimbursement for the same subscriber.

107. The Commission finds that the Board's actions did not run afoul of the rules or the Act. Under section 254(f) of the Telecommunications Act of 1996, "[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service." In addition, "[a] State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms." In the *2011 USF/ICC Transformation Order* (FCC 11-161; 76 FR 73830 (Nov. 29, 2011)), the Commission stated that section 254(f) permitted states to impose additional reporting requirements as long as they "do not create burdens that thwart achievement of the universal service reforms set forth in this *Order*." The Commission concludes the Board's policies and procedures did not rely on or burden Federal universal service support mechanisms. In fact, the Board's policies were assisting the Federal universal service program by addressing the Lifeline duplicates issue, consistent with the overall objectives of the *2011 Duplicative Payments Order* and were being undertaken and implemented using the Board's own resources. The Board is responsible for regulating telecommunications services in Puerto Rico. In accordance with statutes adopted by the Puerto Rico General Assembly, the Board has a mandate to "preserve and promote universal service through predictable, specific and sufficient support mechanisms" and to ensure that the Lifeline subsidy is limited to "a single wireless telephone line or to a single wireless service for the family unit." It was with this mandate in mind that the Board took action to address duplicate Lifeline recipients after the Board

became aware that this was a significant concern in Puerto Rico. According to the Board, based on a review of information it had requested from ETCs on a quarterly basis, “the Board became aware of many cases where the subscribed participants were receiving the service from more than one carrier.”

108. The actions of the Board were not in conflict with the rules and thus did not trigger the criteria for Federal preemption. When the Board sent the letters to TracFone concerning duplicate Lifeline subscribers in January and February of 2012, only the Commission’s interim procedures established in the *2011 Duplicative Payments Order* were in effect. The rule regarding de-enrollment adopted in the *2011 Duplicative Payments Order* specified that, “upon notification by the Administrator to any ETC” that a subscriber is already receiving Lifeline service from another ETC, “the ETC shall de-enroll the subscriber from participation in that ETC’s Lifeline program within 5 business days.” The policy adopted by the Board, however, did not relate to duplicates identified by the Administrator but, rather, to those duplicates identified by the Board. The Board regulations specified that the Board would identify duplicates and that ETCs would have no more than 10 working days (from the date the Board duplicates notice was sent) to notify consumers they were ineligible for the service. The Board also adopted other policies related to duplicates, but these policies did not conflict with or serve as an obstacle to the Commission’s rules. While the Commission stated in its *2011 Duplicative Payments Order* that “these new rules would apply to ETCs in all states, regardless of that state’s status as a [F]ederal default state or a non-default state,” the *2011 Duplicative Payments Order* did not explicitly bar states from imposing their own policies and procedures, unless such regulations were “in conflict with or serve[d] as an obstacle to implementation of the de-enrollment procedures” adopted in the *2011 Duplicative Payments Order*. The Commission finds the Board’s policies were neither in conflict with nor an obstacle to implementation of the Commission’s *2011 Duplicative Payments Order* procedures.

109. Indeed, the Commission finds that the Board’s process was consistent with the overall approach that the Bureau directed USAC to follow in the *June 2011 Guidance Letter*. There, the Bureau directed USAC, in cases where the duplicate subscriber was the same individual at the same address, to identify duplicative subscribers and notify ETCs, identify a “default ETC,”

and notify subscribers that they had 35 days to either choose a provider or begin receiving service from only the default provider. After the 35-day timeframe, USAC was directed to notify the provider regarding the subscribers that should be de-enrolled. The Board process enabled consumers to appeal the Board decision regarding their duplicate status and, as later amended, also enabled subscribers to continue to receive service “with the service to which the subsidy was first applied.” As a result, the Board process allowed subscribers to dispute the Board’s findings and continue to receive service while also addressing the duplicates issue, which was in line with the overall approach the Bureau recommended for USAC to follow.

110. TracFone’s claims that the Board failed to make the required opt-out filing (claims which were made before the opt-out deadline occurred) are not accurate. At the time the Board sent the letters to TracFone concerning duplicate Lifeline subscribers, the Commission’s changes in the *2012 Lifeline Order* to adopt more permanent duplicate procedures and establish the NLAD, and permit states to opt out of the NLAD, were not yet in effect. In the *2012 Lifeline Order*, the Commission approvingly acknowledged that some states had already developed their own systems to check for duplicative Lifeline support, stating its intent not to inhibit state progress. The Commission also clarified that “[w]e allow states to opt-out of the duplicates database requirements outlined in the *Order* if they certify one time to the Commission that they have a comprehensive system in place to check for duplicative [F]ederal Lifeline support that is at least as robust as the processes adopted by the Commission and that covers all ETCs operating in the state and their subscribers.” In October 2012, the Bureau issued a public notice outlining the process states must follow to opt out of the NLAD. The Board made a filing with the Commission seeking to opt out of the NLAD and the duplicates resolution process in November 2012 in which the Board described the system and processes it had in place to check for duplicative Lifeline support. Therefore, TracFone’s claims that the Board failed to make the required opt-out filing are not accurate. For all of these reasons, the Commission denies TracFone’s petition.

III. Severability

111. All of the actions taken by the Commission in the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration are

designed to work in unison to make voice and broadband services more affordable to low-income households and to strengthen the efficiency and integrity of the Lifeline program’s administration. However, each of the separate Lifeline reforms the Commission undertakes in the Fifth Report and Order, Memorandum Opinion, and Order and Order on Reconsideration serves a discrete function. Therefore, it is the intent that each of the rules adopted shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is the Commission’s intent that the remaining rules shall remain in full force and effect.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

112. The *Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in the proceeding. In addition, the Commission noted that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

B. Congressional Review Act

113. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that the rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration and the FRFA (or summaries thereof) will also be published in the **Federal Register**.

C. Final Regulatory Flexibility Analysis

114. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to the Fifth Report and Order, and Memorandum Opinion and Order and Order on Reconsideration. The Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

115. Need for, and Objectives of, the Final Rules. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Since the *2012 Lifeline Order*, the Commission has acted to address waste, fraud, and abuse in the Lifeline program and improved program administration and accountability. In the *Order*, the Commission eliminates the Lifeline Broadband Provider (LBP) designation category and the Federal designation process for Lifeline Broadband Providers. The Commission also takes steps to strengthen the reliability and integrity of the Lifeline program's enrollment, recertification, reimbursement, and audit processes.

116. Pursuant to these objectives, the Commission adopts changes to its Lifeline program rules. First, to restore the traditional categories of eligible telecommunications carriers (ETC) and ETC obligations, the Commission eliminates the Lifeline Broadband Provider ETC category and the Federal designation process for Lifeline Broadband Providers. Accordingly, the Commission eliminates § 54.201(j) of the rules, which precluded states from designating Lifeline Broadband Providers. In addition, the Commission also eliminates §§ 54.202(d)(1) through (3) and (e) and 54.205(c) of the rules.

117. To further improve the integrity of the Lifeline enrollment process, the *Order* prohibits ETCs from offering or paying commissions to enrollment representatives or their direct supervisors based on the number of Lifeline applications submitted or enrollments approved. Additionally, to prevent waste, fraud, and abuse in the Lifeline program, the Commission further requires all ETC enrollment representatives who provide information to USAC or a state entity administering a state Lifeline program

during the Lifeline enrollment process to register with USAC. The Commission amends its rules to require each ETC enrollment representative to register with USAC and obtain a unique registration number prior to accessing the NLAD or National Verifier. Ultimately, ETCs are responsible for ensuring that their enrollment representatives complete the registration process.

118. The Commission also amends its rules regarding the recordation of information related to the Independent Economic Household (IEH) Worksheet. The Commission finds that amending § 54.404(b)(3) of the Commission's rules to permit ETCs to record an IEH worksheet in the NLAD only when the NLAD has alerted the ETC that the prospective subscriber shares the same residential address as another Lifeline subscriber is a reasonable approach to support USAC's efforts in identifying duplicate addresses. ETCs shall not record an IEH worksheet in NLAD in any other situation. Additionally, to further combat waste, fraud, and abuse in the Lifeline program, the Commission adds a new rule, § 54.404(b)(12), notifying ETCs that they must not enroll a prospective Lifeline subscriber if the NLAD or National Verifier cannot identify the subscriber as living, unless that subscriber can produce documentation demonstrating his or her identity and status as living. The revised rule prohibits ETCs from claiming subscribers that are identified as deceased for purposes of requesting or receiving reimbursement from Lifeline. If an ETC has claimed reimbursement for a period during which a subscriber was deceased, USAC is directed to reclaim reimbursements back to the time of enrollment or recertification if the subscriber was deceased and listed on the Social Security Death Master File at the time of enrollment or recertification.

119. The Commission also modifies § 54.407 of the rules to clarify that the number of eligible subscribers that an ETC may claim for reimbursement must be the number of qualifying subscribers the ETC directly serves as of the snapshot date as indicated by the NLAD. In the case of NLAD opt-out states (California, Oregon, and Texas), ETCs may also base claims for reimbursement on any reports or information the state administrator provides to the ETC concerning the subscribers that can be claimed. The Commission amends § 54.410(f)(2)(iii) of the rules to require ETCs to collect eligibility documentation from the subscriber at the time of recertification if the subscriber's eligibility was

previously verified through a state or Federal eligibility or income database and the subscriber's continued eligibility can no longer be verified through that same database or another eligibility database. The rule change creates a more verifiable recertification process and is tailored to provide additional focus on subscribers who have changes in their eligibility from year to year. The Commission also amends its rules to accommodate the process in the National Verifier. If the ETC is unable to re-certify the subscriber's eligibility or is notified by the National Verifier or the relevant state administrator that the subscriber is unable to be re-certified, the ETC shall proceed with the de-enrollment requirements in § 54.405(e)(4) of the rules.

120. The Commission also amends its recertification rules to require ETCs to collect eligibility documentation from the subscriber at the time of recertification if the subscriber's eligibility was previously verified through a state or Federal eligibility or income database and the subscriber's continued eligibility can no longer be verified through that same database or another one. The Commission also modifies § 54.420(a) of the rules, regarding biennial audits by removing the \$5 million reimbursement threshold and implementing a purely risk-based model.

121. The Commission acts on several Petitions for Reconsideration and requests to clarify ETCs' obligations under the Lifeline program. The Commission dismisses as moot USTelecom's request that the Commission extend the effective date for the requirement to offer Lifeline-supported broadband internet access service and apply to non-Lifeline Broadband Providers a clarification extended to Lifeline Broadband Providers regarding an advertising requirement. The Commission also denies USTelecom's request for reconsideration of the requirement that the last ETC in a Census block continue to offer Lifeline standalone voice service. The Commission denies the Petition for Reconsideration of the National Association of State Utility Consumer Advocates, in which the petitioners objected to the Commission's previous decision not to require ETCs to provide back-up power payment arrangements or other options to Lifeline consumers. The Commission also clarifies when an ETC may seek reimbursement for subscribers who are within the cure period that is triggered by the non-usage rules. The Commission also grants requests for reconsideration

of the Commission's rolling recertification requirement filed by USTelecom, NTCA and WCA (jointly), and GCI and revises § 54.410(f)(1) of the rules by removing the rolling recertification requirement and reinstating the requirement that recertifications be completed annually. Furthermore, the Commission also denies a TracFone Petition for Declaratory Ruling and Interim Relief filed in 2012 concerning actions taken by the Puerto Rico Telecommunication Regulatory Board to address duplicate Lifeline subscribers as defined by that board.

122. *Summary of Significant Issues Raised by Public Comments to the IRFA.* The Commission received no comments in direct response to the IRFA contained in the 2017 Lifeline Order and NPRM.

123. *Description and Estimate of the Number of Small Entities to Which Rules May Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

124. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. Therefore, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 29.6 million businesses.

125. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and

tax data filed by nonprofits with the Internal Revenue Service (IRS).

126. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on the data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."

127. The small entities that may be affected are Wireline Providers, Wireless Carriers and Service Providers and internet Service Providers.

128. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* A number of the rule changes will result in additional reporting, recordkeeping, or compliance requirements for small entities. For all of the rule changes, the Commission has determined that the benefit the rule change will bring for the Lifeline program outweighs the burden of the increased requirements. Other rule changes decrease reporting, recordkeeping, or compliance requirements for small entities. The Commission noted the applicable rule changes impacting small entities.

129. *Compliance burdens.* The rules implemented impose some compliance burdens on small entities by requiring them to become familiar with the new rules to comply with them. For several of the new rules, the burden of becoming familiar with the new rule in order to comply with it is the only additional burden the rule imposes.

130. *Improving Program Integrity in Program Enrollment and Recertification.* The Commission modifies its rules to improve the integrity within the Lifeline program. The Order prohibits ETCs from offering or providing commissions to enrollment representatives and their

direct supervisors based on the number of Lifeline applications submitted or enrollments approved and requires that enrollment representatives register with USAC. The Order further modifies the rules regarding the recertification process, and now requires Lifeline subscribers to provide supporting documentation to prove eligibility when the subscriber's continued eligibility cannot be verified in a state or Federal eligibility database. While the changes will require ETCs to undertake additional steps to ensure compliance with the new rules, the rules will strengthen the Lifeline program by removing avenues for fraud.

131. *Limiting the Recordation of IEH Worksheets.* The Commission modifies the rules to limit the recording of an IEH worksheet in USAC's Lifeline systems only to situations where the Lifeline subscriber resides at the same address as another Lifeline subscriber. Requiring ETCs to record the collection of an IEH worksheet only where the Lifeline subscriber resides at a duplicate address decreases the burden on the carrier by reducing the situations in which an ETC must record the worksheet.

132. *Modifications to the Biennial Audit Rule.* The Commission modifies its rules to require that a risk-based approach be used to identify ETCs that must complete independent audits pursuant to § 54.420(a) of the Commission's rules rather the level of USF reimbursements. Under the new standard, which replaces the outdated threshold that limited third-party biennial audits to those providers that receive at least \$5 million in Lifeline reimbursements, ETCs that receive less than \$5 million in Lifeline reimbursements may now be subject to an independent audit pursuant to the rule.

133. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

134. The rulemaking could impose minimal additional burdens on small entities. In the *Order*, the Commission modifies certain Lifeline rules to target funding to areas where it is most needed. In developing the rules, the Commission worked to ensure the burdens associated with implementing these rules would be minimized for all service providers, including small entities. In taking these actions, the Commission considered potential impacts on service providers, including small entities. The Commission considered alternatives to the rulemaking changes that increase projected reporting, recordkeeping and other compliance requirements for small entities. The Commission's decision to amend the rules to permit an ETC to record an IEH worksheet in NLAD only in situations where a consumer shares an address with another Lifeline subscriber allows ETCs, including small entities, to continue collecting worksheets from subscribers at the enrollment process. The Commission considered the comments urging for no change to that process and found no compelling reason to prohibit the practice. By not disturbing the practice of collecting worksheets at the outset, the Commission minimized the burden on small entities. Given the narrow and targeted scope of the changes being made, no alternative readily presents itself to limit the burdens on small business or organizations. The identified increase in burden is minimal and outweighed by the advantages in combating waste, fraud, and abuse in the program.

V. Ordering Clauses

135. *Accordingly, it is ordered*, that pursuant to the authority contained in sections 1–4, 201, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 214, 254, and 403, and § 1.2 of the Commission's rules, 47 CFR 1.2, the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration *is adopted* and will be effective January 27, 2020, except to the extent provided herein.

136. *It is further ordered*, that part 54 of the Commission's rules, 47 CFR part 54, is *amended* and such rule amendments shall be effective January 27, 2020, except for the amendments to § 54.406(b), which shall be effective February 25, 2020; amendments to § 54.406(a), which shall be effective March 26, 2020; and §§ 54.404(b)(12) and 54.410(f), containing new or modified information collection requirements, which will not be effective until approved by the Office of

Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

137. *It is further ordered*, that, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration and Clarification filed by United States Telecom Association on June 23, 2016 is *granted in part, dismissed in part and denied in part*.

138. *It is further ordered*, that, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by National Association of State Utility Consumer Advocates on June 23, 2016 is *denied*.

139. *It is further ordered* that, pursuant to authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, the Petition for Declaratory Ruling filed by National Lifeline Association on February 7, 2018 is *denied*.

140. *It is further ordered*, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, that the Emergency Petition for Declaratory Ruling and For Interim Relief filed by TracFone on February 22, 2012 is *denied*.

141. *It is further ordered*, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration and Clarification filed by NTCA—The Rural Broadband Association—and WTA—Advocates for Rural Broadband—on June 23, 2016 is *granted in part*.

142. *It is further ordered*, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration and/or Clarification filed by General Communication, Inc. on June 23, 2016 is *granted in part*.

143. *It is further ordered* that the Commission *shall send* a copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration to the Government Accountability Office pursuant to the

Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

144. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, internet, Telecommunications, Telephone, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302, unless otherwise noted.

§ 54.201 [Amended]

■ 2. Effective January 27, 2020, amend § 54.201 by removing paragraph (j).

§ 54.202 [Amended]

■ 3. Effective January 27, 2020, amend § 54.202 by removing paragraphs (d) and (e).

§ 54.205 [Amended]

■ 4. Effective January 27, 2020, amend § 54.205 by removing paragraph (c).

■ 5. Effective January 27, 2020, amend § 54.400 by adding paragraph (p) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(p) *Enrollment representatives*. An employee, agent, contractor, or subcontractor, acting on behalf of an eligible telecommunications carrier or third-party entity, who directly or indirectly provides information to the Universal Service Administrative Company or a state entity administering the Lifeline Program for the purpose of eligibility verification, enrollment, recertification, subscriber personal information updates, benefit transfers, or de-enrollment.

■ 6. Amend § 54.404 by:

- a. Effective January 27, 2020, revising paragraph (b)(3); and
- b. Effective upon publication of a rule document in the **Federal Register** announcing the effective date, adding paragraph (b)(12).

The revision and addition read as follows:

§ 54.404 The National Lifeline Accountability Database.

* * * * *

(b) * * *

(3) If the Database indicates that another individual at the prospective subscriber's residential address is currently receiving a Lifeline service, the eligible telecommunications carrier must not seek and will not receive Lifeline reimbursement for providing service to that prospective subscriber, unless the prospective subscriber has certified, pursuant to § 54.410(d), that to the best of his or her knowledge, no one in his or her household is already receiving a Lifeline service. This certification may be collected by the eligible telecommunications carrier prior to initial enrollment, but the certification shall not be recorded in the Database unless the eligible telecommunications carrier receives a notification from the Database or state administrator that another Lifeline subscriber resides at the same address as the prospective subscriber.

* * * * *

(12) An eligible telecommunications carrier must not enroll or claim for reimbursement a prospective subscriber in Lifeline if the National Lifeline Accountability Database or National Verifier cannot verify the identity of the subscriber or the subscriber's status as alive, unless the subscriber produces documentation to demonstrate his or her identity and status as alive.

* * * * *

- 7. Effective February 25, 2020, add § 54.406 to read as follows:

§ 54.406 Activities of representatives of eligible telecommunications carriers.

(a) [Reserved]

(b) *Prohibition of commissions for enrollment representatives.* An eligible telecommunications carrier shall not offer or provide to enrollment representatives or their direct supervisors any commission compensation that is based on the number of consumers who apply for or are enrolled in the Lifeline program with that eligible telecommunications carrier.

- 8. Effective March 26, 2020, § 54.406 is further amended by adding paragraph (a) to read as follows:

§ 54.406 Activities of representatives of eligible telecommunications carriers.

(a) *Enrollment representative registration.* An eligible telecommunications carrier must require that enrollment representatives register with the Universal Service Administrative Company before the enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier.

(1) As part of the registration process, eligible telecommunications carriers must require that all enrollment representatives must provide the Universal Service Administrative Company with identifying information, which may include first and last name, date of birth, the last four digits of his or her social security number, email address, and residential address. Enrollment representatives will be assigned a unique identifier, which must be used for:

- (i) Accessing the National Lifeline Accountability Database;
- (ii) Accessing the National Verifier;
- (iii) Accessing any Lifeline eligibility database; and
- (iv) Completing any Lifeline enrollment or recertification forms.

(2) Eligible telecommunications carriers must ensure that enrollment representatives shall not use another person's unique identifier to enroll Lifeline subscribers, recertify Lifeline subscribers, or access the National Lifeline Accountability Database or National Verifier.

(3) Eligible telecommunications carriers must ensure that enrollment representatives shall regularly recertify their status with the Universal Service Administrative Company to maintain their unique identifier and maintain access to the systems that rely on a valid unique identifier. Eligible telecommunications carriers must also ensure that enrollment representatives shall update their registration information within 30 days of any change in such information.

(4) Enrollment representatives are not required to register with the Universal Service Administrative Company if the enrollment representative operates solely in a state that has been approved by the Commission to administer the Lifeline program without reliance on the Universal Service Administrative Company's systems. The exemption in this paragraph (a)(4) will not apply to any part of a state's administration of the Lifeline program that relies on the Universal Service Administrative Company's systems.

* * * * *

- 9. Effective January 27, 2020, amend § 54.407 by revising paragraph (a) to read as follows:

§ 54.407 Reimbursement for offering Lifeline.

(a) Universal Service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers listed in the National Lifeline Accountability Database that the eligible telecommunications carrier serves directly as of the first of the month. Eligible telecommunications carriers operating in a state that has provided the Commission with an approved valid certification pursuant to § 54.404(a) must comply with that state administrator's process for determining the number of subscribers to be claimed for each month, and in those states Universal Service support for providing Lifeline shall be provided directly to the eligible telecommunications carrier based on that number of actual qualifying low-income customers, according to the state administrator or other state agency's process.

* * * * *

- 10. Effective January 27, 2020, amend § 54.410 by revising paragraph (g) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(g) *One-Per-Household Worksheet.* If the prospective subscriber shares an address with one or more existing Lifeline subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber must complete a form certifying compliance with the one-per-household rule upon initial enrollment. Eligible telecommunications carriers must fulfill the requirement in this paragraph (g) by using the Household Worksheet, as provided by the Wireline Competition Bureau. Where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline enrollment forms, eligible telecommunications carriers may use those forms in place of the Commission's Household Worksheet. At re-certification, if there are changes to the subscriber's household that would prevent the subscriber from accurately certifying to paragraph (d)(3)(vi) of this section, then the subscriber must complete a new Household Worksheet. Eligible telecommunications carriers must mark subscribers as having completed a

Household Worksheet in the National Lifeline Accountability Database if and only if the subscriber shares an address with an existing Lifeline subscriber, as reported by the National Lifeline Accountability Database.

* * * * *

■ 11. Effective upon publication of a rule document in the **Federal Register** announcing the effective date, § 54.410 is further amended by revising paragraphs (f)(1), (f)(2)(iii), and (f)(3)(iii) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(f) * * *

(1) All eligible telecommunications carriers must annually re-certify all subscribers, except for subscribers in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for the annual re-certification of subscribers' Lifeline eligibility.

(2) * * *

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more eligibility databases, then the eligible telecommunications carrier must obtain a signed certification from the subscriber confirming the subscriber's continued eligibility. If the subscriber's eligibility was previously confirmed through an eligibility database during enrollment or a prior recertification and the subscriber is no longer included in any eligibility database, the eligible telecommunications carrier must obtain both an Annual Recertification Form and documentation meeting the requirements of paragraph (b)(1)(i)(B) or (c)(1)(i)(B) from that subscriber to complete the process. Eligible telecommunications carriers must use the Wireline Competition Bureau-approved universal Annual Recertification Form, except where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline recertification forms.

* * * * *

(3) * * *

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more eligibility databases, then the National Verifier, state Lifeline administrator, or state agency must obtain a signed certification from the subscriber confirming the subscriber's continued eligibility. If the subscriber's eligibility was previously confirmed

through an eligibility database during enrollment or a prior recertification and the subscriber is no longer included in any eligibility database, the National Verifier, state Lifeline administrator, or state agency must obtain both an approved Annual Recertification Form and documentation meeting the requirements of paragraph (b)(1)(i)(B) or (c)(1)(i)(B) from that subscriber to complete the certification process. Entities responsible for re-certification under this section must use the Wireline Competition Bureau-approved universal Annual Recertification Form, except where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline recertification forms, or where the National Verifier Recertification Form is required.

* * * * *

■ 12. Effective January 27, 2020, amend § 54.420 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 54.420 Low income program audits.

(a) *Independent audit requirements for eligible telecommunications carriers.* Eligible telecommunications carriers identified by USAC must obtain a third-party biennial audit of their compliance with the rules in this subpart. Such engagements shall be agreed upon performance attestations to assess the company's overall compliance with the rules in this subpart and the company's internal controls regarding the regulatory requirements in this subpart.

(1) Eligible telecommunications carriers will be selected for audit based on risk-based criteria developed by USAC and approved by the Office of Managing Director and the Wireline Competition Bureau.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

RIN 0648-XV136

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Menhaden Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of determination of non-compliance; declaration of a moratorium.

SUMMARY: In accordance with the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), the Secretary of Commerce (Secretary) has determined that the Commonwealth of Virginia has failed to carry out its responsibilities under the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for Atlantic Menhaden and that the measure Virginia has failed to implement and enforce is necessary for the conservation of the Atlantic menhaden resource. This determination is consistent with the findings of the Commission on October 31, 2019. Pursuant to the Atlantic Coastal Act, a Federal moratorium on fishing for Atlantic menhaden in Virginia state waters and possession and landing of Atlantic menhaden harvested in Virginia State waters is hereby declared and will be effective on June 17, 2020. The moratorium will be terminated when the Commission notifies the Secretary that Virginia is found to have come back into compliance with the Commission's ISFMP for Atlantic menhaden.

DATES: June 17, 2020.

FOR FURTHER INFORMATION CONTACT: Derek Orner, Fishery Management Specialist, (301) 427-8567, derek.orn@noaa.gov.

SUPPLEMENTARY INFORMATION:

Non-Compliance Statutory Background

The Atlantic Coastal Act, 16 U.S.C. 5101 *et seq.*, sets forth a non-compliance review and determination process that is triggered when the Commission finds that a State has not implemented measures specified in an ISFMP and refers that determination to the Secretary for review and potential concurrence.

The Atlantic Coastal Act's non-compliance process involves two stages of decision-making. In the first stage, the Secretary must make two findings: (1) Whether the State in question has failed to carry out its responsibility under the Commission ISFMP; and if so (2) whether the measures that the State failed to implement and enforce are necessary for the conservation of the fishery in question. These initial findings must be made within 30 days after receipt of the Commission's non-compliance referral and consequently, this first stage of decision-making is referred to as the 30-Day Determination.

A positive 30-Day Determination triggers the second stage of Atlantic