



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 17-287, 11-42 and 09-197; FCC 19-111; FRS 16301]

Bridging the Digital Divide for Low-Income Consumers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on adding a goal of broadband adoption to the Lifeline program, making additional program integrity improvements to the program, and establishing privacy training requirements for entities accessing Lifeline subscribers' personal information.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed as soon as possible.

ADDRESSES: Interested parties may file comments and reply comments, identified by WC Docket Nos. 17-287, 11-42 and 09-197, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System ECFS:

<http://fjallfoss.fcc.gov/ecfs2/>.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CYA257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The

Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

FOR FURTHER INFORMATION CONTACT: Jodie Griffin, Wireline Competition Bureau, 202-418-7550 or TTY: 202-418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking 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. For years, the Commission has been taking steps to address waste, fraud, and abuse in the program, including through the establishment of a National Lifeline Eligibility Verifier. The Commission continues that work to strengthen the Lifeline program. Specifically, seeking comments on appropriate program goals and metrics for a modernized Lifeline program and additional improvements to program integrity.

II. DISCUSSION

2. The Commission seeks comments on continuing to improve the operation and oversight of the Lifeline program; seeks comments on adding the goal of increasing broadband adoption for consumers who would not otherwise subscribe to broadband as one of the Lifeline program's goals and also seeks comments on making additional program integrity improvements to the program and establishing privacy training requirements for entities accessing personal information in the NLAD.

3. *Program Goals and Metrics.* In the *2017 Lifeline Order* (FCC 17-155), the Commission concurred with the Government Accountability Office (GAO) and past Commissions that outcome-based performance goals and measures would help to achieve Congress's universal service goals. The Commission now seeks comments on whether the Lifeline program's current goals adequately reflect the importance of measuring the program's impact on adoption and continued connectivity, and how the program's goals can be improved.

4. *Increasing Broadband Adoption Among Consumers.* The Commission seeks comments on adding a new goal to the program: increased broadband adoption for consumers who, without a Lifeline benefit, would not subscribe to broadband. Believing that broadband adoption, and the impact it will have on closing the digital divide, should be a focus of the Lifeline program. Increasing broadband adoption as a goal will help to ensure that Lifeline funds are appropriately targeted toward bridging the digital divide. To achieve this goal, requires the Commission to accurately evaluate the impact of Lifeline funds on broadband adoption.

5. The Commission first seeks comments on our authority to adopt as a goal of the Lifeline program increasing broadband adoption for consumers who otherwise would not

subscribe to broadband. Is such a goal a component of preserving and advancing universal service, as directed by section 254(b) of the Act? How would this goal relate to the principles of promoting the availability of quality services at just, reasonable, and affordable rates and promoting access to reasonably comparable telecommunications and information services for low-income consumers?

6. The Commission next seeks comments on the appropriate method of measuring broadband adoption by low-income consumers. As GAO noted in its report, the current structure of the Lifeline program “ma[kes] it difficult for the [C]ommission to determine causal connections between the program and the number of individuals with telephone access.” The Commission seeks to alter that structure as it relates to broadband, to ensure that Lifeline funds are being used effectively to help close the digital divide by encouraging broadband adoption by households that otherwise would not subscribe to the supported service, and seeking comment on the best way to accomplish this.

7. The Commission seeks comments on the best data sources to help measure adoption progress. The Commission proposes to ask Lifeline applicants questions in the enrollment process regarding how the program has impacted their broadband adoption, and to seek comments on what those specific questions should be. For example, should the Commission ask Lifeline applicants whether they already subscribe to voice or broadband service, and whether they would be able to afford their Lifeline-supported service without the Lifeline discount? Also, should the Commission add questions to determine whether the Lifeline program is effectively reaching specific demographics, like veterans or households with children?

8. Instead of or in addition to seeking information directly from Lifeline applicants, what other methods and data can be explored to determine the impact of the Lifeline benefit on broadband adoption? Should the Commission rely on other Commission reports or data sources? For purposes of this goal, how should the Commission identify low-income consumers or areas if other Commission reports or data sources are used? The Commission also seeks comments on how best to measure the impact of Lifeline on broadband adoption for groups of consumers.

9. When determining whether the program's goals are being met, should the evaluation consider fixed and mobile broadband services differently? In the annual report required by section 706 of the Act, the Commission reports data on fixed and mobile broadband separately and recognizes variations in speed and other characteristics. How should consideration of these goals for the Lifeline program be impacted by the similarities and differences between fixed and mobile broadband?

10. When measuring broadband adoption, the Commission proposes examining the effectiveness of the Lifeline program by recognizing that Lifeline-supported broadband Internet access service and some other forms of broadband Internet access service are, to various extents, substitutable. For example, some Lifeline consumers may value broadband access so highly that they would purchase some level of broadband service even in the absence of a Lifeline benefit. Other consumers who currently use a Lifeline-supported broadband Internet access service would prefer to not purchase broadband Internet access service (or purchase broadband access intermittently) without Lifeline support. Finally, some consumers currently do not subscribe to any broadband Internet access service at all. In this context, how can the

Commission identify, measure, and analyze the effect of the Lifeline program on increasing broadband adoption? Is the degree of substitution between Lifeline-supported and unsupported broadband Internet access service affected by the characteristics of Lifeline service (such as download speeds, data caps, etc.) of the Lifeline-supported broadband Internet access service? The Commission also seeks comments on additional criteria to consider during evaluating the program's impact on broadband adoption.

11. *Additional Program Integrity Recommendations.* In the *2017 Lifeline Order*, the Commission sought comment on potential changes that would help eliminate waste, fraud, and abuse within the Lifeline program. The Commission also proposes additional requirements that will help the Commission, and ETCs, achieve that goal. First, the Commission proposes requiring ETCs to upload their internal customer account numbers into the NLAD in order to help USAC match its records with those of the ETC. Second, the Commission proposes requiring ETCs and the National Verifier to record and retain a Lifeline applicant's eligibility proof number and the type of proof the applicant used to qualify for the program. Lastly, the Commission proposes requiring ETCs to provide the NLAD or National Verifier with access to the same data maintained by the ETC, including non-usage data and the time the customer enrolled. The Commission also seeks comments on the best ways to ensure that consumer usage is accurately measured and defined.

12. *Internal Customer Account Numbers.* When examining data to determine if improper payments were made, USAC often needs to examine an ETC's data. However, the internal number that an ETC uses to identify a subscriber in its own service and billing records is currently not entered into the NLAD. As a result, it may be difficult for USAC or enforcement

authorities, such as the Commission, the U.S. Department of Justice, or state public service commissions, to compare an ETC's records with USAC's NLAD or reimbursement records because it can be difficult to locate an individual subscriber's records. Accordingly, the Commission proposes amending § 54.404(b) of the Commission's rules to require ETCs to submit their internal customer account numbers into the NLAD when enrolling or recertifying subscribers. Concluding that this will facilitate examination of relevant data, and therefore help to eliminate waste, fraud, and abuse. The Commission seeks comments on this proposal including its costs and benefits.

13. *Eligibility Proof Number and Type.* The Commission also seeks comments on improving the information collected during the process of manually reviewing eligibility documentation for those applicants whose eligibility cannot be confirmed by an automated data source. In 2016, the Commission determined that a provider had been using "temporary SNAP cards to enroll consumers because these cards did not include the actual benefit recipient's name," and repeatedly used the same program eligibility card to enroll multiple applicants. The Commission believes that requiring ETCs and the National Verifier to track both the eligibility proof number and the type of eligibility proof will enable both ETCs and the National Verifier to quickly determine if improper enrollment techniques are being used. Therefore, the Commission proposes amending §§ 54.404(b) and 54.410(d) of the Commission's rules to require that where the applicant provides eligibility documentation, ETCs and the National Verifier shall collect and record the identification number or card number indicated on the eligibility documentation (*e.g.*, the SNAP card number or Medicaid card number) and the type of eligibility proof used by an applicant to demonstrate eligibility for the

Lifeline program. The proposal would not apply where an applicant's eligibility is verified through an automated database. The Commission seeks comments on the proposed requirement, including its costs and benefits.

14. *Demonstrating Compliance with Usage Requirements.* The Commission seeks comments on ways to ensure the accuracy of ETCs' claims that subscribers are actually using their broadband Internet access service on an ongoing basis. The current usage rules require subscribers receiving a free-to-the-end-user Lifeline service to use the service every 30 days by, among other ways, using broadband data. Given this requirement, would it be possible for an ETC to evade our 30-day usage requirement by installing an application ("app") on a user's phone that would "use" data without any action by the user? Even if such data usage would not meet the requirement that qualifying usage be "undertaken by the subscriber," there is concern that it would be difficult to differentiate legitimate subscriber usage from ETC-arranged data usage that happens without the knowledge or direction of the subscriber in an audit or enforcement investigation. Could an ETC thus fabricate usage data to continue claiming support for a Lifeline subscriber who is no longer using the service?

15. The Commission seeks comments on how to amend its rules to address this vulnerability. Would requiring subscribers to periodically contact USAC remedy this issue? Would requiring subscribers to use an app to confirm continued usage be a sufficient and user-friendly solution? What would such an app look like, and how could the Commission ensure that such an app would not "use" data without any activity from the user? The other types of "usage" under the Commission's rules all require an affirmative act by the user, and the Commission seeks comments on what other options would guarantee that "usage of data" is

understood to mean “usage of data initiated by the Lifeline subscriber.” Does the Commission have the authority to prohibit ETCs from installing an app that “uses” data without direction from the subscriber? The Commission also seek comments on any potential privacy implications of modifying the usage requirement or requiring the installation of a specific app or method of usage. Finally, the Commission seeks comments on the costs of these proposals and on how to minimize the burden on consumers and ETCs of verifying legitimate monthly usage.

16. The Commission also seeks comments on amending §54.417 of the Commission’s rules to clarify an ETC’s obligation to maintain records that document compliance with the usage requirement. The current rule requires ETCs to “maintain records to document compliance with all Commission and state requirements governing the Lifeline and Tribal Link Up program for three full preceding calendar years and provide that documentation to the Commission or Administrator upon request.” While the rule already applies to the usage requirement in §§ 54.405(e)(3) and 54.407(c) of the Commission’s rules, comments are sought on whether a more detailed explanation of what documentation ETCs must maintain in the context of the non-usage requirement would provide certainty to ETCs. If the Commission amended § 54.417 to give more specific guidance on document retention in the context of the usage requirement, what documentation should ETCs be required to maintain to show that data usage is “undertaken by the subscriber,” and not by the ETC, as the Commission’s rules require? What are the costs and benefits of specifically requiring ETCs to maintain detailed data usage records, which could be examined to reveal any trends that reveal indications of potential usage fabrication (for example, an account that only uses data once every 30 days, at

2:00 a.m.)? Should such usage data be maintained for the same general timeframe as other compliance documentation under § 54.417 of the Commission's rules? In adopting such a requirement, how can the Commission best safeguard Lifeline subscribers' privacy? For example, should the Commission require certain security practices for the collection, retention, and management of this information, or are existing ETC security and privacy practices sufficient in this regard?

17. *De-enrollment Process.* The Commission seeks comments on amending § 54.405(e)(1) of the Commission's rules to clarify ETCs' obligation to act promptly to notify subscribers when the ETC has reason to believe that the subscriber is not eligible for the Lifeline program. Currently, the rule provides the subscriber 30 days to demonstrate continued eligibility and a five-business-day de-enrollment period if the subscriber fails to demonstrate her eligibility. However, the rule does not specify how quickly the ETC must act to send the subscriber the written notice that begins the 30-day period once it has reason to believe the subscriber is not eligible for the Lifeline benefit. The Commission seeks comments on implementing a firm deadline to ensure that ETCs do not unreasonably delay in sending the 30-day notice. Should the Commission amend § 54.405(e)(1) of the rules to require ETCs to send written notice to the subscriber no later than five business days after the ETC has a reasonable basis to believe the subscriber is no longer eligible for Lifeline service? Would amending the rule to allow the ETC five business days to send the 30-day de-enrollment notice be sufficient? The Commission also seeks comments on how the rule should apply to states in which the National Verifier has launched. In those states, should the ETC instead be required to notify the

National Verifier of its reason to believe that the subscriber is not eligible, upon which notice the National Verifier can conduct any necessary outreach and de-enrollments?

18. The Commission also seeks comments on amending § 54.405 of the Commission's rules to codify the de-enrollment process when the de-enrollment is conducted by USAC under its authority as administrator of the Fund. Should the de-enrollment procedures operate differently when USAC de-enrolls a subscriber from the NLAD, pursuant to an ETC's request or a program integrity review, under its authority as administrator of the Fund? Should USAC continue to rely on the ETC to conduct subscriber outreach for program integrity reviews, and if so, should the Commission's rules specifically direct USAC to de-enroll or deny reimbursement for those subscribers if the ETC is nonresponsive or delayed in its response? How should the Commission ensure that subscribers are given an opportunity to demonstrate continued eligibility before being de-enrolled? Are there any other clarifications the Commission should make to its de-enrollment rules?

19. *Distribution of Free Handsets.* Lifeline providers often offer a free handset with the activation of Lifeline service. Many of the ETCs offering free handsets also provide Lifeline service that is free to the subscriber where there is no regular billing relationship between the subscriber and the ETC. Often the device is handed directly to the consumer at enrollment without requiring any payment by the consumer, and this practice has been the subject of reports that focus on ineligible consumers enrolling in Lifeline. For example, undercover local news teams have reported that they were able to obtain a free cell phone even when the undercover reporter was not eligible for the Lifeline service. In the *2017 Lifeline Order and Notice* and in response to Lifeline stakeholder suggestions, the Commission asked whether it

should prohibit Lifeline providers from distributing handsets in person. The Commission now asks for further focused comments on the practice of in-person distribution of free handsets and its possible role in encouraging ineligible Lifeline customers to attempt to enroll in the program.

20. In response to the *2017 Lifeline Order and Notice*, some commenters argue that in-person distribution of free handsets benefits low-income and vulnerable Lifeline customers, such as those that are homeless or otherwise displaced. Others note that banning in-person free handset distribution “would be well worth the program’s substantial gain in controls and, in turn, credibility that would result from implementation of this measure ...” While the Commission does not suggest that every ETC that distributes free handsets in this manner is engaging in or encouraging fraudulent behavior, our oversight experience suggests that the practice encourages ineligible consumers to attempt to enroll in Lifeline. The Commission seeks comments on ways to minimize the risk of waste, fraud, and abuse stemming from the in-person distribution of free handsets upon enrollment in the Lifeline program.

21. The Commission seeks comments on requiring ETCs to charge Lifeline subscribers a fee in exchange for receiving a handset or device in-person at enrollment. How prevalent is the in-person distribution of free handsets today? Is this practice primarily associated with free-to-the-end-user Lifeline plans? Would such a restriction eliminate incentives for ineligible consumers to attempt to enroll in Lifeline? Does the promise of an immediate free phone along with a free service provide improper incentives to potential subscribers? The Lifeline program currently does not provide support for equipment used with the supported service. Does the Commission have the statutory authority to prohibit ETCs from

distributing free handsets to Lifeline subscribers or otherwise regulate the distribution of handsets to ETCs?

22. Does the long-standing restriction on using the Lifeline subsidy for equipment support a new requirement that all Lifeline subscribers must pay a fee for the cost of the handsets used to provide the supported service? What are the costs and benefits of such a requirement? Would delaying the distribution of free handsets, or allowing the in-person distribution of handsets only to Lifeline subscribers who, either up front or through a payment plan, have paid an end-user fee, help eliminate fraud within the program? Would such requirements discourage participation in the program by eligible subscribers? What would be the impact on broadband adoption if Lifeline subscribers had to pay a fee in exchange for a handset? What sources of data or industry studies could be helpful to estimate the magnitude of these effects? How should the Commission evaluate the savings to the Universal Service Fund from reduced waste, fraud, and abuse against the lower consumer benefits to Lifeline subscribers who would no longer subscribe because of an increased cost to the customer? Would a charge for the handset ensure that the carriers are providing handsets that customers value? Would the potential program integrity and consumer benefits of requiring ETCs to charge Lifeline subscribers for handsets distributed in person outweigh any potential burdens to ETCs and Lifeline subscribers?

23. The Commission recognizes that many other activities, such as in-person training on how to use the handset, occur between the ETC and the subscriber at enrollment. How would limitations on the distribution of free handsets impact these other activities? Are there

other changes that could be made to this practice that would eliminate opportunities for fraud while ensuring that customers have access to affordable handsets?

24. The Commission and USAC have made a number of important changes to the Lifeline program and its administrative systems to reduce waste, fraud, and abuse, including a duplicate check with the NLAD and implementation of the National Verifier to make eligibility determinations. Has the implementation of the NLAD and recent changes to the Lifeline rules (including the requirement to retain eligibility documents) reduced the opportunities for fraud that were associated with the distribution of free handsets? Will the National Verifier further reduce the opportunities for fraud associated with this practice? Do any of these program or system changes reduce the risk of problems associated with in-person distribution of free handsets and obviate any need to require ETCs to charge a fee for receiving a handset at an in-person enrollment or for the Commission to place other restrictions on this practice?

25. In 2012, the Commission eliminated a rule requiring that ETCs charge Tribal Lifeline customers a minimum of \$1 per month. The Commission acknowledged that while the rule had specified the minimum charge, carriers were not required to collect the amount from customers, and some did not. What lessons should the Commission learn from the now eliminated \$1 minimum service charge for Tribal Lifeline customers? If the Commission were to require ETCs to charge Lifeline subscribers a nominal fee for handsets distributed in person, is there a significant risk that ETCs would not actually collect that fee from Lifeline subscribers? How would the requirements be designed to address that risk?

26. The Commission further notes that, in the *2017 Lifeline Order and Notice*, comments were sought on whether it should impose a maximum discount level for Lifeline

services, which would require customers to pay a portion of the costs of the supported service. There, the Commission proposed to adopt a maximum discount level as a way to further reduce waste, fraud, and abuse in the program. The Commission reasoned that under the current model where providers offer “free-to-the-end-user” Lifeline service, “service providers may engage in fraud or abuse by using no-cost Lifeline offerings to increase their Lifeline customer numbers when the customers do not value or may not even realize they are purportedly receiving a Lifeline-supported service.” Would requiring that ETCs charge Lifeline customers a fee in exchange for a handset constitute a minimum charge for Lifeline service? Alternatively, would requiring ETCs to assess a regular fee on subscribers for the Lifeline supported service mitigate any problems associated with providing in-person free handsets?

27. *Certifying Privacy Protection Efforts.* The Commission seeks comments on two issues that are expected to address open recommendations made by the Commission’s Office of Inspector General (OIG) following its review of USAC’s NLAD implementation in 2018. The first is a recommendation to require ETCs and state agencies with access to the USAC NLAD and National Verifier systems to certify that they have given their employees and enrollment representatives appropriate privacy training before those individuals may access the NLAD or National Verifier systems. The Commission believes that such a training and certification requirement would reduce the possibility that Lifeline subscribers’ personal information would be accessed, used, or disclosed inappropriately. In response to a second recommendation from the Commission’s OIG, the Commission seeks comments on whether state commissions and ETCs conduct background investigations of their staff that access USAC’s systems, the nature of

those investigations, and whether the Commission should require that state commissions and ETCs certify that they complete such investigations.

28. In an effort to ensure that Lifeline subscribers' personal information is kept private and secure, the Commission has repeatedly directed USAC to implement strict standards regarding how it handles and gives external access to the Lifeline subscriber data that it receives as the administrator of the Lifeline program. The Commission has not, however, specifically required ETCs and state agencies to train their personnel regarding appropriate privacy precautions for accessing and handling personal information. A lack of such a training requirement could result in employees and enrollment representatives of ETCs or state agencies accessing highly sensitive information about Lifeline applicants or subscribers without having received sufficient instruction in the appropriate use and disposal of those data. The Commission therefore proposes and seeks comments on requiring ETCs and state agencies with access to the USAC NLAD and National Verifier systems to certify that they have given their employees and enrollment representatives appropriate privacy training.

29. Outside of the Lifeline context, Commission rules governing customer proprietary network information (CPNI) already require telecommunications carriers to "train their personnel as to when they are and are not authorized to use CPNI, and carriers must have an express disciplinary process in place." Additionally, telecommunications carriers must have an officer annually certify a carrier's compliance with the Commission's CPNI rules. In considering a training and certification requirement for entities with NLAD and National Verifier access, the Commission seeks comments on the sufficiency of an ETC's CPNI certification to cover the effective training of their staff accessing these systems. The Commission also seeks

comments on the scope and focus of existing ETC training programs and whether they address any unique personal information issues that arise when submitting Lifeline information to USAC that are not adequately addressed by the CPNI rules. Is there a need for a Lifeline-specific rule mandating training beyond what is put forward in the Commission's CPNI rules? Further, the Commission seeks comments on the scope of ETCs' existing training programs and whether they include contractors, sub-contractors, enrollment representatives, and other individuals that might interact with personal information being used in NLAD or the National Verifier.

30. The Commission also seeks comments on the availability of existing privacy training resources for state agencies that have access to personal data in the NLAD or National Verifier. Are there existing state agency privacy training programs that would satisfy the same purposes of a Lifeline-specific privacy training? Should state agencies' privacy training cover the same type of data protection standards as would be required by telecommunications carriers under the Commission's CPNI rules? If not, how should the training differ?

31. The Commission also seeks comments on how a privacy training and certification requirement, if any, should be implemented. Should USAC conduct the training directly, or make a training available if an ETC or state agency does not conduct its own? The Commission proposes requiring ETCs and state agencies to certify in their NLAD and National Verifier access agreements that they have implemented compliant training programs or require their relevant employees and enrollment representatives to complete USAC's training prior to using USAC's system to access Lifeline applicant or subscriber personal information, and the Commission seeks comments on this approach.

32. Finally, to further confirm that Lifeline subscriber's personal information is appropriately protected, the Commission seeks comments on a proposal to require state commissions and ETCs to provide written confirmation that they have conducted background investigations of their staff with access to the NLAD or National Verifier systems. Do state commissions and ETCs already complete background investigations for staff members with access to NLAD or the National Verifier? Do state commissions and ETCs conduct similar investigations for agents, contractors, and other non-employees that might handle Lifeline subscriber data and interact with NLAD or the National Verifier? How are these investigations documented, and would providing written confirmation to USAC of these investigations be feasible and reliable? The Commission also seeks comments on the burdens of such a requirement beyond the steps that state commissions and ETCs may already be taking. Would those burdens be outweighed by reduced waste, fraud, and abuse in the Lifeline program?

III. PROCEDURAL MATTERS

A. Initial Paperwork Reduction Act Analysis

33. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), the Commission seeks specific comments on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

34. *Ex Parte Rules – Permit-But-Disclose.* The proceeding the FNPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

B. Initial Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the comments deadline dates. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.

36. *Need for, and Objective of, the Proposed 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. The Lifeline program is administered by the Universal Service Administrative Company (USAC), the Administrator of the universal service support programs, under Commission direction, although many key attributes of the Lifeline program are currently implemented at the state level, including consumer eligibility, eligible telecommunication carrier (ETC) designations, outreach, and verification. Lifeline support is passed on to the subscriber by the ETC, which provides discounts to eligible

households and receives reimbursement from the universal service fund (USF or Fund) for the provision of such discounts.

37. In the *2017 Lifeline Order and Notice*, the Commission sought comment on a number of proposals that were intended to improve the integrity of the program. Many of those proposals were adopted in the *Fifth Report and Order*. Building on those efforts, in the FNPRM, the Commission seeks comment on revising the goals of the Lifeline program and how to measure the program's achievements with respect to broadband adoption. The Commission also seeks comment on its proposal to require ETCs, USAC, and the National Verifier, as appropriate, to recertify each Lifeline subscriber's eligibility once every 12 months, as measured from the subscriber's service initiation date. The Commission also proposes a number of changes designed to improve integrity of the Lifeline program.

38. *Legal Basis.* The legal basis for the Further Notice of Proposed Rulemaking is contained in sections 1 through 4, 201-205, 254, and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, and 403.

39. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will 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). Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”

40. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commissions actions, over time, may affect small entities that are not easily categorized at present. Therefore described, 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.

41. 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).

42. 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 this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.” The small entities that may be affected include Wireline Providers, Wireless Carriers and Service Providers, and Interment Service Providers.

43. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* In the FNPRM, the Commission seeks comments on modifying its goals for the Lifeline and on proposed reforms of the program that are intended to improve the integrity of the program by further eliminating waste, fraud, and abuse in the program.

44. *Increased Broadband Adoption as a New Program Goal.* In the FNPRM, the Commission seeks comments on adding a new goal to the program: increased broadband adoption among consumers who otherwise, without a Lifeline benefit, would not subscribe to broadband. The Commission seeks comments on its authority to adopt as a goal of the Lifeline program increasing broadband adoption for consumers who otherwise would not subscribe to broadband. The Commission also seeks comments on the appropriate method for measuring broadband adoption among consumers who otherwise would not subscribe to broadband. The Commission asks which data sources could help inform the Commission’s measurement of the

goals and asks whether there are additional questions that can be asked of Lifeline applicants during the enrollment process regarding how the program has impacted their broadband adoption. Should the Commission also add questions to determine whether Lifeline is effectively reaching specific demographics, like veterans or households with children? The Commission seeks comments on what other methods can be used to determine the impact of the Lifeline benefit on broadband adoption, and whether the Commission should rely on Commission reports or other data sources. Furthermore, for the purposes of this goal, the Commission asks how it should identify low-income consumers or areas if other Commission reports or data sources are used. The Commission also asks how it should define broadband and whether its evaluation of this goal consider fixed and mobile broadband differently. The Commission also asks whether this goal should also measure adoption of voice service from consumers who would not otherwise have it. The Commission also proposes to examine Lifeline's impact across several categories of consumers, from those that value broadband so highly that they would purchase it even without a Lifeline benefit, to those that may currently use a Lifeline-supported broadband Internet access service but would lose access to that service or only purchase broadband intermittently without Lifeline support. The Commission also wishes to examine those that do not subscribe to any broadband Internet access service at all. The Commission asks how to identify, measure, and analyze adoption among each of these groups, and how would it inform whether the Lifeline program is meeting the goal of increasing broadband adoption? The Commission seeks comments on any additional criteria to consider when evaluating the program's impact on broadband adoption among consumers.

45. *Upload Internal Customer Accounts and Eligibility Proof Number and Type.* The Commission proposes to amend § 54.404(b) of the rules to require ETCs to upload their internal customer account numbers into the NLAD when enrolling or rectifying subscribers in order to help facilitate the examination of internal data to determine if improper payments were made. The Commission also proposes amending §§ 54.404(b) and 54.410(d) of the rules to require ETCs and the National Verifier to collect and record the identification number or card number indicated on the eligibility documentation (*e.g.*, the SNAP card number or Medicaid card number) and the type of eligibility proof used by a subscriber to demonstrate eligibility for the Lifeline program. The proposal would not apply where a subscriber's eligibility is verified through an automated database. The Commission seeks comments on the proposal.

46. *Demonstrating Compliance with Usage Requirements.* The Commission also seeks comments on ways to ensure the accuracy of ETCs' claims that subscribers are using their broadband Internet access service under the non-usage rule. The Commission asks whether it would be possible for an ETC to pre-install an app on a subscriber's phone that would "use" data without any action by the user? Could an ETC fabricate usage in order to continue claiming support for a Lifeline subscriber who is no longer using the service? The Commission invites comments on whether it could require subscribers to use an app to confirm usage. The Commission also seeks comments on any potential privacy implications of modifying the usage requirement or requiring the installation of a specific app or method of usage.

47. The Commission also seeks comments on amending § 54.417 of the Commission's rules to clarify an ETC's obligation to maintain records that document compliance with the usage requirement. The current rule requires ETCs to "maintain records to document

compliance with all Commission and state requirements governing the Lifeline and Tribal Link Up program for three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. While the rule already applies to the usage requirement in §§ 54.405(e)(3) and 4.407(c) of the Commission’s rules, the Commission seeks comments on whether a more detailed explanation of what documentation ETCs must maintain in the context of the non-usage requirement would provide certainty to ETCs. If the Commission amended § 54.417 rule to give more specific guidance on document retention in the context of the usage requirement, what documentation should ETCs be required to maintain to show that data usage is “undertaken by the subscriber,” and not by the ETC, as the Commission’s rules require? What are the costs and benefits of specially requiring ETCs to maintain detailed usage records, which could be examined to show any trends that reveal indications of potential usage fabrication (for example, an account that only used data once every 30 days, at 2:00 am)? Should such usage data be maintained for the same general timeframe as other compliance documentation under § 54.417 of the rules?

48. *De-enrollment Process.* The Commission seeks comments on amending § 54.405(e)(1) of the rules to clarify ETCs’ obligations to act promptly to notify subscribers when the ETC has reason to believe that the subscriber is not eligible for the Lifeline program. Currently, the rule provides the subscriber 30 days to demonstrate continued eligibility and a five-business-day de-enrollment period if the subscriber fails to demonstrate his or her eligibility. However, the rule does not specify how quickly the ETC must act to send the subscriber the written notice that begins the 30-day period. An ETC that unreasonably delays sending the 30-day notice would violate the existing rule, but the Commission also seeks

comments on implementing a firm deadline to avoid future confusion. The Commission seeks comments on whether it should amend § 54.405(e)(1) of the rules to require ETCs to send written notice to the subscriber no later than five business days after the ETC has a reasonable basis to believe that the subscriber is no longer eligible for Lifeline service? Would amending the rule to allow the ETC five business days to send the 30-day-de-enrollment notice be sufficient? The Commission also seeks comments on amending § 54.405 of its rules to codify the de-enrollment process when the de-enrollment is conducted by USAC under its authority as administrator of the Universal Service Fund. Should the de-enrollment procedures operate differently when USAC de-enrolls a subscriber from NLAD pursuant to an ETC's request or a program integrity review, under its authority as administrator of the Fund? Should USAC continue to rely on the ETC to conduct subscriber outreach for program integrity reviews or other situations, and if so, should the Commission's rules specifically direct USAC to de-enroll or deny reimbursement for those subscribers if the ETC is nonresponsive or delayed in its response? How should the Commission ensure that subscribers are given an opportunity to demonstrate continued eligibility before being de-enrolled? Are there any other clarifications the Commission should make to its de-enrollment rules?

49. *Distribution of Free Handsets.* The Commission also seeks further comments on the practice of in-person distribution of free handsets. Specifically, the Commission seeks comment on ways to minimize the risk of waste, fraud, and abuse stemming from the in-person distribution of free handsets upon enrollment in the Lifeline program. The Commission seeks comments on requiring ETCs to charge Lifeline subscribers a fee in exchange for receiving a handset or device in person at enrollment. How prevalent is the in-person distribution of free

handsets today and is this practice primarily associated with free-to-the-end-user Lifeline plans? Would the restriction eliminate incentives for ineligible consumers to attempt to enroll in Lifeline and does the promise of an immediate free phone along with a free service provide improper incentives to potential subscribers? The Commission asks whether it has the statutory authority to prohibit ETCs from distributing free handsets to Lifeline subscribers or otherwise regulate the distribution of handsets to ETCs. Does the longstanding program restriction on support for equipment used for the supported service justify a new requirement that all Lifeline subscribers must pay a fee for the handsets used to provide the supported service? The Commission seeks comments on whether important changes to NLAD and the roll-out of National Verifier have reduced the opportunities for fraud that were associated with the distribution of free handsets. The Commission seeks comments on other alternatives, such as delaying the distribution of free handsets or allowing the in-person distribution of handsets only to Lifeline subscribers who, either up front or through a payment plan, have paid an end-user fee. Would those alternatives help eliminate fraud within the program? What would be the impact on program participation if Lifeline subscribers had to pay a fee in exchange for a handset? Would a fee create significant barriers to participating in the Lifeline program? If the Commission were to implement this requirement, how much should the fee be for a handset? The Commission seeks comment on the impact of limiting distribution of handsets would have on other activities, such as in-person training on handset use. The Commission also asks if it were to require ETCs to charge Lifeline subscribers a nominal fee for handsets distributed in person, is there a significant risk that ETCs would not actually collect that fee from Lifeline subscribers, and how could the Commission monitor and enforce an ETC's compliance with that

requirement. The Commission also notes that it recently sought comment on whether it should impose a maximum discount level for Lifeline services, which would require customers to pay a portion of the costs of the supported service. Would requiring that carriers charge Lifeline customers a fee in exchange for a handset constitute a minimum charge for Lifeline service? Would requiring ETCs to assess a regular fee on subscribers for the Lifeline supported service mitigate any problems associated with providing in-person free handsets?

50. *Certifying Privacy Protection Training Efforts.* The Commission seeks comment on requiring ETCs and state agencies with access to the USAC NLAD and National Verifier systems to certify that they have given their employees, agents, and representatives appropriate privacy training before those individuals may access the NLAD or National Verifier systems. In an effort to ensure that Lifeline subscribers' personal information is kept private and secure, the Commission has repeatedly directed USAC to implement strict standards in how it handles and gives external access to the Lifeline subscriber data that it receives as the administrator of the Lifeline program. The Commission has not, however, specifically required ETCs and state agencies to train their personnel in appropriate privacy precautions for accessing and handling personal information. A lack of such a training requirement could result in employees, agents, and representatives of ETCs or state agencies accessing highly sensitive information about Lifeline applicants or subscribers without having received sufficient instruction in the appropriate use and disposal of that data. In implementing a certification requirement for entities with NLAD and National Verifier access, the Commission seeks comments on the sufficiency of an ETC's customer proprietary network information (CPNI) certification to certify the effective training of their staff accessing these systems. The

Commission also seeks comment on the scope and focus of existing ETC training programs and whether they address any unique personal information issues that arise when submitting Lifeline information to USAC that are not adequately addressed by the CPNI rules. Is there a need for a Lifeline-specific rule mandating training beyond what is put forward in the Commission's CPNI rules? The NPRM also seeks comments on the scope of ETCs' existing training programs and whether they include contractors, sub-contractors, agents, representatives, and other individuals that might interact with personal information being used in NLAD or the National Verifier. The Commission also seeks comments on the availability of existing privacy training resources for state agencies that have access to personal data in NLAD or National Verifier. Are there existing state agency privacy training programs that would satisfy the same purposes of a Lifeline-specific privacy training? Should state agencies' privacy training cover the same type of data protection standards as would be required by telecommunications carriers under the Commission's CPNI rules? If not, how should the training differ? The Commission also seeks comments on how a privacy training and certification requirement should be implemented. Should USAC conduct the training directly, or make a training available if an ETC or state agency does not conduct their own? The Commission proposes requiring ETCs and state agencies to certify in their NLAD and National Verifier access agreements that they have implemented compliant training programs or require their relevant employees, agents, and representatives to complete USAC's training prior to using USAC's system to access Lifeline applicant or subscriber personal information, and we seek comments on the approach. Finally, to further confirm that Lifeline subscriber's personal information is appropriately protected, the Commission seeks comments on a proposal to

require state commissions and ETCs to provide written confirmation that they have conducted background investigations of their staff with access to the NLAD or National Verifier systems. The Commission seeks comments on existing practices regarding employee background investigations and the burdens associated with a requirement to regularly provide such information to USAC.

51. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternative 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.”

52. The FNPRM seeks comments on several policies that would revise the program’s goals and promote the availability of modern services for low-income families, and also reduce waste, fraud, and abuse in the program. Several of the policies would increase the economic burdens on small entities, and certain changes would lessen the economic impact on small entities. Requiring ETCs to upload its internal customer account numbers and to provide a subscriber’s eligibility proof number and type are some of the measures proposed that are intended to help eliminate waste, fraud, and abuse in the Lifeline program. Moreover, the proposal to codify the de-enrollment obligations help ensure that ETCs do not unreasonably

delay in sending out 30-day notices to subscribers that may no longer be eligible for Lifeline. In those instances in which a policy would increase burdens on small entities, it is determined that the benefits from such changes outweigh the increased burdens on small entities because those proposed changes would facilitate the Lifeline program's goal of supporting affordable, high-speed Internet access for low-income Americans or would minimize waste, fraud, and abuse in the program. The Commission invites comments on ways in which the Commission can achieve its goals, but at the same time further reduce the burdens on small entities. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM and this IRFA, in reaching its final conclusions and taking action in the proceeding.

IV. ORDERING CLAUSES

53. 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, and Further Notice of Proposed Rulemaking, IS ADOPTED

54. 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, Further and Notice of Proposed Rulemaking including the Initial 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, Reporting and Recordkeeping
Requirements, Telecommunications, Telephone.
Federal Communications Commission.

Marlene Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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.

2. Amend § 54.404 by revising paragraph (b)(6) to read as follows:

§ 54.404 The National Lifeline Accountability Database.

* * * * *

(b) * * *

(6) Eligible telecommunications carriers must transmit to the Database in a format prescribed by the Administrator each new and existing Lifeline subscriber's full name; full residential address; date of birth and the last four digits of the subscriber's Social Security number or Tribal Identification number, if the subscriber is a member of a Tribal nation and does not have a Social Security number; the type of documentation and associated identification number used to demonstrate eligibility, if applicable; the telephone number associated with the Lifeline service; the ETC's internal account number or identification number associated with that subscriber; subscriber non-usage information; identity of the enrollment representative; time the subscriber was enrolled; the date on which the Lifeline service was initiated; the date on which the Lifeline service was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for Lifeline.

* * * * *

3. Amend § 54.405 by revising paragraph (e)(1) to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

* * * * *

(e) * * *

(1) *De-enrollment generally.* If an eligible telecommunications carrier has a reasonable basis to believe that a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under § 54.409, within five business days the carrier must notify the subscriber of impending termination of his or her Lifeline service. Notification of impending termination must be sent in writing separate from the subscriber's monthly bill, if one is provided, and must be written in clear, easily understood language. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination that requires, at a minimum, written notification of impending termination, must comply with the applicable state requirements. The carrier must allow a subscriber 30 days following the date of the impending termination letter required to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the carrier consistent with applicable annual re-certification requirements, as described in § 54.410(f). An eligible telecommunications carrier must de-enroll any subscriber who fails to demonstrate eligibility within five business days after the expiration of the subscriber's time to respond. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination must comply with the applicable state requirements.

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4. Amend § 54.410 by revising paragraph (d)(2)(vii) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(d) * * *

(2) * * *

(vii) If the subscriber is seeking to qualify for Lifeline under the program-based criteria, as set forth in § 54.409, the name of the qualifying assistance program from which the subscriber, his or her dependents, or his or her household receives benefits, the subscriber's associated identification number, and the type of documentation the subscriber is submitting to demonstrate participation in that program, if necessary; and

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[FR Doc. 2019-27221 Filed: 12/26/2019 8:45 am; Publication Date: 12/27/2019]