



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE REGARDING FILING PROCEDURES FOR ELIGIBLE TELECOMMUNICATIONS CARRIERS SEEKING TO INVOKE FORBEARANCE GRANTED BY LIFELINE MODERNIZATION ORDER

### WC Docket No. 11-42

In the *Lifeline Modernization Order*, the Commission designated broadband Internet access service (BIAS) as a Lifeline-supported service.<sup>1</sup> At the same time, the Commission forbore from requiring Lifeline-only eligible telecommunications carriers (ETCs) to offer Lifeline-supported BIAS services.<sup>2</sup> It also forbore from requiring other ETCs (high-cost recipients) to offer Lifeline-supported BIAS in areas where they do not receive high-cost support or do not commercially offer broadband services that meet the Lifeline minimum service standards.<sup>3</sup> Starting December 2, 2016, Lifeline-only ETCs and high-cost recipients are obligated to offer Lifeline-supported BIAS throughout their designated service areas, except to the extent that they have elected to avail themselves of forbearance relief from the obligation to provide Lifeline-supported BIAS.<sup>4</sup> To elect forbearance relief from their obligations to offer Lifeline-supported BIAS, Lifeline-only ETCs and high-cost recipients must submit forbearance notifications to the Commission.<sup>5</sup> This Public Notice provides additional guidance on the forbearance notification process and responds to certain questions staff have received concerning the forbearance granted by the *Lifeline Modernization Order*.

*Scope of Forbearance Relief.* Lifeline-only ETCs may avail themselves of forbearance from the obligation to offer Lifeline-supported BIAS anywhere in their designated service areas.<sup>6</sup> High-cost recipients must offer Lifeline BIAS if they, or an affiliated entity, are offering BIAS in the relevant Census blocks.<sup>7</sup> High-cost recipients may avail themselves of forbearance from this obligation only in

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<sup>1</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3972, paras. 30-32 (2016) (*Lifeline Modernization Order*).

<sup>2</sup> *Lifeline Modernization Order*, 31 FCC Rcd at 4071-74, paras. 297, 300-308.

<sup>3</sup> See *id.* at 4071, 4074-77, paras. 297, 309, 311-312, 317-319, & n.805.

<sup>4</sup> See 47 U.S.C. § 214(e)(1)(A), 47 CFR § 54.101(a) (as amended by the *Lifeline Modernization Order*); see also *Lifeline Modernization Order*, 31 FCC Rcd at 3972, 4071-72, paras. 30-32, 297, 299-301.

<sup>5</sup> See *id.* at 4071-72, 4074-75, paras. 300, 301, 309, 312, 313.

<sup>6</sup> See *id.* at 4071-72, para. 298, 300, 301.

<sup>7</sup> Under the framework adopted by the Commission in the USF/ICC Transformation Order, high-cost recipients may meet their broadband public interest obligations by offering service through the incumbent ETC or through an affiliated entity. See *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 7227, 7228-79, para. 6

areas where they are not receiving high-cost support or are not subject to high-cost public interest broadband obligations.<sup>8</sup> The *Lifeline Modernization Order* provides that this forbearance will be implemented at the Census block level.<sup>9</sup> Lifeline-only ETCs and high-cost recipients may still elect to offer and receive reimbursement for providing Lifeline-supported BIAS to eligible subscribers in Census blocks where they have availed themselves of forbearance relief.<sup>10</sup>

ETCs receiving high-cost support in Census blocks where they do not yet commercially offer BIAS with speeds of at least 4/1 Mbps or greater, but where they are subject to a high-cost public interest broadband obligation, are not eligible for forbearance in those Census blocks.<sup>11</sup> For example, ETCs subject to rate-of-return regulation are not currently eligible to file forbearance from the Lifeline BIAS obligation because such ETCs have the high-cost public interest obligation to offer BIAS with speeds of at least 4/1 Mbps upon reasonable request throughout their service areas pursuant to the *USF/ICC Transformation Order*.<sup>12</sup> However, the obligation to offer Lifeline BIAS is not triggered for a particular location until the rate-of-return carrier offers Internet access service at speeds of at least 4/1 Mbps to that location.<sup>13</sup>

As another example, once Connect America Fund Broadband Loop support is eliminated for Census blocks served by qualifying competitors, as specified in the *Rate-of-Return Reform Order*,<sup>14</sup> rate-of-return ETCs that do not otherwise receive high-cost support (e.g., High-Cost Loop support) may file a forbearance notification for such areas. Similarly, once rate-of-return carriers authorized to receive

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(WCB 2013) (noting that the Commission required rate-of-return carriers to offer broadband service as a condition of receipt of high-cost support and clarifying that rate-of-return carrier ETCs may meet their public interest obligation to provide broadband service either by serving retail customers directly or indirectly through an Internet Service Provider).

<sup>8</sup> *See id.* at 4074-76, paras. 309, 311, 312, 317, 318 & n.805. The Bureau developed a reference chart summarizing high-cost recipients' Lifeline BIAS obligations and forbearance notification requirements for each high-cost support mechanism. This chart is available on the Commission's website at <https://transition.fcc.gov/wcb/High-Cost%20Recipient%20Lifeline%20Broadband%20Obligations.docx>. This chart reflects an informal staff summary. The Commission's rules and orders are ultimately controlling. Some high-cost areas may not qualify for forbearance relief today, but may qualify for forbearance relief in the future if the carrier's high-cost support for that area is eliminated (e.g., the high-cost support term ends, and the carrier does not receive another form of high-cost support for that area, or there is a determination that high-cost support is no longer available for a particular Census block). *See Wireline Competition Bureau Provides Guidance Regarding Designation as a Lifeline Broadband Provider and Lifeline Broadband Minimum Service Standards*, Public Notice, DA 16-1118, at n.15 (WCB Sept. 30, 2016) (*Lifeline Broadband Provider Designation Public Notice*). High-cost recipients may seek forbearance relief for these areas within 30 days of a qualifying change in the associated high-cost support. *See id.*

<sup>9</sup> *Lifeline Broadband Provider Designation Public Notice*, at n.15 (citing to *Lifeline Modernization Order*, 31 FCC Rcd at 4075, para. 312).

<sup>10</sup> *Lifeline Modernization Order*, 31 FCC Rcd at 4072, 4074, paras. 300, 311.

<sup>11</sup> *See id.* at 4075, 4076, paras. 309, 317, 318 & ns.804, 805.

<sup>12</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17740, para. 206 (2011).

<sup>13</sup> *See* 47 CFR § 54.408(b)(1)-(2) (as amended by the *Lifeline Modernization Order*); *see also Lifeline Modernization Order*, 31 FCC Rcd at 4076, para. 318 & n.805.

<sup>14</sup> *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3131, para. 116 (2016).

Alternative Connect America Cost Model (A-CAM) support begin receiving that support, they may file a forbearance notification for the Census blocks that are not funded under A-CAM because they will not be receiving support for those blocks and will not be subject to broadband public interest obligations in those blocks.

*Forbearance Notification Requirement.* To elect forbearance relief, Lifeline-only ETCs and high-cost recipients must first submit a forbearance notification to the Commission that includes certain required information, described below. Lifeline-only ETCs and high-cost recipients remain obligated to offer Lifeline-supported BIAS in Census blocks for which they have not availed themselves of forbearance relief within their designated service areas.<sup>15</sup>

*Timing of Forbearance Notifications.* Lifeline-only ETCs and high-cost recipients seeking forbearance relief must file forbearance notifications with the Commission by the later of December 2, 2016 (which is 60 days after announcement of OMB approval for the *Lifeline Modernization Order*) or within 30 days of receiving their ETC designations or a qualifying change to their high-cost support for a specific area.<sup>16</sup>

*Content of Forbearance Notifications.* ETCs may use the forbearance notification process only for availing themselves of the forbearance granted by the *Lifeline Modernization Order*. To enable review and tracking of forbearance notifications, the Bureau directs that Lifeline-only ETCs and high-cost recipients include the following information in their forbearance notifications:

- a. *Carrier Name:* Identify the name of the ETC (and any associated d/b/a) availing itself of forbearance relief.
- b. *ETC Designation Information:* Identify the applicable ETC designation order, designating authority, type of designation (e.g., Lifeline-only ETC) and date of the ETC designation for each area where the ETC is seeking forbearance relief.
- c. *Areas Where ETC Seeks Forbearance:* Identify the areas where Lifeline-only ETCs or high-cost recipients are availing themselves of forbearance relief. ETCs can provide this information by indicating the geographic areas, as specified below, where they are claiming forbearance relief or by indicating the geographic areas where they are not claiming forbearance relief and will offer BIAS pursuant to the Lifeline obligation.
  - (i) Lifeline-only ETCs should provide at least one of the following with their forbearance notifications:
    - An Excel file listing the Census recognized geographic areas (e.g., Census blocks, Census block groups, Census tracts, Counties) and associated Federal Information Processing Standards (FIPS) Code where (a) the ETC is availing itself of forbearance relief, or (b) the ETC will offer BIAS pursuant to the Lifeline obligation.<sup>17</sup> Please list the geographic areas in numerical order by FIPS Code.

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<sup>15</sup> *Lifeline Broadband Provider Designation Public Notice*, at n.15

<sup>16</sup> *See Lifeline Modernization Order*, 31 FCC Rcd at 4072, 4075, paras. 301, 313; *see also Lifeline Broadband Provider Designation Public Notice*, at n.15.

<sup>17</sup> For the terms “Census blocks, Census block groups, Census tracts, or Counties,” the Bureau relies upon the definitions provided by the United States Census Bureau. *See* United States Census Bureau, *2010 Geographic Terms and Concepts*, <https://www.census.gov/geo/reference/terms.html> (last visited Nov. 14, 2016). In their

- A shapefile indicating the Census recognized geographic areas, as specified above, where (a) the ETC is availing itself of forbearance relief, or (b) the ETC will offer BIAS pursuant to the Lifeline obligation.
- (ii) High-cost recipients should provide at least one of the following with their forbearance notifications:
- An Excel file listing each Census block and associated FIPS Code where (a) the ETC is availing itself of forbearance relief, or (b) the ETC will offer BIAS pursuant to the Lifeline obligation. Please list the Census blocks in numerical order by FIPS Code.
  - A shapefile indicating each Census block where (a) the ETC is availing itself of forbearance relief, or (b) the ETC will offer BIAS pursuant to the Lifeline obligation.
  - We also offer an alternative for price cap carriers that accepted Phase II high-cost support and intend only to offer BIAS pursuant to the Lifeline obligation in those Phase II high-cost areas. These price cap carriers may simply include a link to the Commission’s List of Connect America Phase II Model-Based Support Eligible Census Blocks and the public notice indicating the states where the carrier has been authorized to receive Phase II model-based support.<sup>18</sup>
- d. *Date and Reason for Change:* A forbearance notification by an ETC availing itself of forbearance relief based on a qualifying change in the ETC’s high-cost support for a specific area must identify the date and reason for the change.
- e. *Signature and Contact Information for ETC’s Authorized Representative:* All forbearance notifications should be signed by an authorized representative for the ETC availing itself of forbearance relief and should also include that individual’s contact information.
- f. *Optional Information on Areas Where Carrier Elects to Offer BIAS:* To assist the Commission’s understanding of the marketplace of Lifeline providers offering voice-only service versus Lifeline BIAS, ETCs may also indicate whether, notwithstanding the forbearance relief, they intend to offer Lifeline-supported BIAS in any of the areas where they are availing themselves of forbearance.

*Filing Process.* Lifeline-only ETCs and high-cost recipients availing themselves of forbearance relief must file their forbearance notifications in WC Docket No. 11-42 using the Commission’s

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forbearance notifications, carriers should provide the FIPS Codes that corresponds to the level(s) of Census recognized geographic area(s) where the ETC is availing itself of forbearance relief or will offer BIAS pursuant to the Lifeline obligation. At the county level, FIPS Codes have five digits. At the Census block level, FIPS Codes have fifteen digits. Carriers can look up county FIPS Codes on the Census Bureau website at <http://www.census.gov/geo/reference/codes/cou.html> (last visited Nov. 14, 2016).

<sup>18</sup> The Commission’s list of Connect America Phase II Model-Based Support Eligible Census Blocks is available at [https://transition.fcc.gov/wcb/CAM43\\_Supported\\_Locations.zip](https://transition.fcc.gov/wcb/CAM43_Supported_Locations.zip) (last visited Nov. 14, 2016).

Electronic Comment Filing System<sup>19</sup> and must also submit a copy of their forbearance notification with attachments (if under 15 MB) or without attachments (if over 15 MB) to USAC via email to [TelcoLifeline@usac.org](mailto:TelcoLifeline@usac.org). For attachments exceeding 15 MB, ETCs must submit copies of their attachments according to the instructions available on USAC's website at <http://www.usac.org/li/program-requirements/lifeline-broadband.aspx>.

For further information, please contact Garnet Hanly, Wireline Competition Bureau, Telecommunications Access Policy Division, at (202) 418-0995 or via email at [Garnet.Hanly@fcc.gov](mailto:Garnet.Hanly@fcc.gov), or contact Rashann Duvall, Wireline Competition Bureau, Telecommunications Access Policy Division, at (202) 418-1438 or via email at [Rashann.Duvall@fcc.gov](mailto:Rashann.Duvall@fcc.gov).

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<sup>19</sup> The Commission's Electronic Comment Filing System is available at <http://apps.fcc.gov/ecfs>.