

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Bridging the Digital Divide for Low-Income Consumers)	WC Docket No. 17-287
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	

To: The Commission

**COMMENTS OF NEW AMERICA’S OPEN TECHNOLOGY INSTITUTE AND
PUBLIC KNOWLEDGE**

Amir Nasr
Policy Analyst
Claire Park
Program Associate
New America’s Open Technology Institute
740 15th Street NW, Suite 900
Washington, D.C. 20005

Jenna Leventoff
Senior Policy Counsel
Lindsay Stern
Policy Fellow
Public Knowledge
1818 N St NW, Suite 410
Washington, D.C. 20036

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I. Introduction

New America’s Open Technology Institute and Public Knowledge (“OTI and PK”) hereby submit these comments in response to the Federal Communications Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned proceeding.¹ The Lifeline program is a crucial tool in the fight to bridge the digital divide, and the Commission should be strengthening the program to bring service to as many qualifying households as possible. The Commission should not create obstacles to participation in the program or jeopardize consumer privacy, as many proposals in the FNPRM would likely do. Moreover, there is a broad and concerning theme throughout the FNPRM that questions the validity of qualifying subscribers’ intentions, reflecting a deeply cynical view of the Lifeline program that we reject.

First, the Commission should take measures to encourage more qualifying low-income households to enroll in the Lifeline program. The participation rate has languished for years. Millions of Americans who qualify for Lifeline have not enrolled in the program. Cost is one of the biggest barriers to broadband adoption, and for those who qualify for Lifeline, the expenses associated with broadband access can often be prohibitive. In accordance with its statutory obligation to pursue universal service, the Commission should be working to maximize Lifeline’s participation rate to help overcome this barrier.

Second, the Commission must not adopt reforms that discourage participation in the program. The FNPRM proposes asking applicants a variety of questions such as whether they

¹ Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket No. 17-287, WC Docket No. 11-42, and WC Docket No. 09-197 (Rel. Nov. 14, 2019) (“FNPRM”).

would be able to purchase broadband service without a Lifeline subsidy. These questions could deter applicants and are immaterial to the Commission's statutory duty. Consumers should not have to answer a litany of questions regarding their financial priorities.

Third, the Commission should reject its proposal to monitor and verify program subscribers' usage of Lifeline service. The Commission seeks comment on this proposal without providing any evidence for why it would be necessary; the Commission merely offers a hypothetical of an eligible telecommunications carrier (ETC) uploading an application onto the device of a subscriber to "use" data without action from the subscriber to evade the Commission's 30-day usage requirement. The FNPRM does not provide any evidence that this has ever happened, nor does it offer a motive for an ETC to do this or an explanation for why a consumer would sign up for Lifeline service and not use it. This proposal is unnecessary, intrusive, and raises serious privacy concerns.

Fourth, the Commission should not prohibit ETCs from offering free handsets to Lifeline subscribers. This promotional benefit is a business choice that providers make at no cost to the Lifeline program. Moreover, it saves consumers money and incentivizes participation in the program. Prohibiting free handsets would discourage applicants and could push many participants out of the program by forcing them to purchase a device they cannot afford. The Commission offers no evidence that free handsets are a problem. If the market has decided that the free handset benefit works, then there is no reason for the Commission to intervene.

Finally, the Commission should protect the privacy of Lifeline subscribers. Americans who qualify and subscribe for Lifeline service should not have to trade privacy for access to phone and broadband services. The Commission should work to make sure that if an individual

opts to sign up for Lifeline service, their privacy will be protected when using Lifeline-supported service.

II. Lifeline is Underutilized and the Commission Should Take Steps To Encourage Participation

The Commission should encourage more participants to join the Lifeline program, rather than implementing burdensome obstructions to adoption. Though participation rates among those eligible for Lifeline are already low, with a general participation rate of 25% for 2018 and the lowest state participation rate reaching just 3%, the Commission seems intent on creating new barriers to entry rather than increasing enrollment and helping more people.² Meanwhile, the total number of Lifeline subscribers has also been consistently declining, with an overall participation rate of 33% in 2016 and down to 28% in 2017.³ This persists even though Lifeline is the only federal program that addresses affordability, one of the main reasons why people do not have broadband service.⁴ Access to internet at home depends on whether one can afford it.⁵ Studies suggest that low-income people can only afford to pay about \$10 per month for

² Universal Service Administrative Company, Program Data, Lifeline Participation, available at <https://www.usac.org/lifeline/learn/program-data/>; Wyoming and Nebraska share the lowest participation rate of those eligible for Lifeline.

³ Universal Service Monitoring Report, CC Docket No. 96-45 WC Docket No. 02-6 WC Docket No. 02-60 WC Docket No. 06-122 WC Docket No. 10-90 WC Docket No. 11-42 WC Docket No. 13-184 WC Docket No. 14-58 (2018), <https://docs.fcc.gov/public/attachments/DOC-357769A1.pdf>, at 27.

⁴ Monica Anderson and Madhumitha Kumar, *Digital divide persists even as lower-income Americans make gains in tech adoption*, The Pew Research Center (May 7, 2019), <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>.

⁵ Last year, the Pew Research Center found that access to internet at home depended on whether one could afford it. 44% of adults with household incomes below \$30,000 a year had no home broadband service, compared with 81% of households with incomes between \$30,000 and \$99,000. Meanwhile, the total number of Lifeline subscribers has also been consistently declining July 2016 to June 2018. The U.S. Census' American Community Survey (ACS) reveals that 41% of people surveyed in the U.S. who are internet subscribers have an annual income of \$75,000 or more, whereas those earning less than \$10,000 a year made up only 6% of internet subscribers in the nation. Therefore almost twice as many people earning more than \$75,000 a year were subscribed to the internet when compared to those earning between \$50,000 and \$74,999 a year.

broadband, a cost which competes with bills for other necessary expenses like food, electricity, gas, water, etc.⁶ The current monthly subsidy available for individuals through the Lifeline program is \$9.25 a month, while low-income plans offered by broadband carriers separate from Lifeline that are used for fixed broadband range from \$10 to \$20 per month. The program is therefore absolutely essential to helping people access employment opportunities, healthcare, government services, and other benefits that come with being connected. A large body of research shows how to improve access to, and participation in, public assistance programs like Lifeline; the Commission should look to these resources to help people sign up for Lifeline, rather than focusing on ways to further decrease participation and diminish benefits for those in need.⁷

III. The Commission Should Not Adopt Changes That Discourage Participation in the Lifeline Program

The Commission should avoid implementing changes that would discourage participation in Lifeline. In particular, although the Commission should begin measuring the impact of affordability on broadband adoption—which advocates have urged for years⁸—the Commission should ensure that it does not discourage participation in Lifeline or reduce the program’s

⁶Jonathan Sallet, *Broadband For America’s Future: A Vision For the 2020s*, The Benton Institute for Broadband & Society, https://www.benton.org/sites/default/files/BBA_full_F5_10.30.pdf, at 66.

⁷Mark Burton and John W. Mayo, “Understanding Participation in Social Programs: Why Don’t Households Pick up the Lifeline?” (March 2005), https://bear.warrington.ufl.edu/centers/purc/docs/papers/LIFELINE/0206/0305_Burton_Mayo_Understanding_Participation_in.pdf; Janice A. Hauge et al., “Participation in Social Programs by Consumers and Companies: A Nationwide Analysis of Participation Rates for Telephone Lifeline Programs,” September 1, 2007, <https://pdfs.semanticscholar.org/82bf/d9476793b629dc2ea3eb17bdbf7b3a82396b.pdf>.

⁸Ex Parte of Public Knowledge, Common Cause, New America’s Open Technology Institute, Next Century Cities, and the National Hispanic Media Coalition, GN Docket No. 19-285 (Jan. 21, 2020), <https://ecfsapi.fcc.gov/file/10121774818589/706%20Ex%20Parte%20Letter-%20Jan%202020.pdf> (“Public Interest Advocates Section 706 Ex Parte”).

effectiveness. In the FNPRM, the Commission asks a series of concerning questions that would likely deter participation. OTI and PK share the concerns of Commissioners Rosenworcel⁹ and Starks¹⁰ that the questions¹¹ are deeply misguided and “toxic,” as Commissioner Starks put it.

First, OTI and PK strongly oppose the Commission’s proposal to 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.”¹² The Commission has a statutory obligation to pursue universal service and this question is immaterial to that mandate.¹³ Technically, a family may be “able to afford” service without a subsidy, however, paying for that service—for families that qualify for Lifeline—would likely impose strains on a household for a myriad of other necessities such as food, water, rent or a mortgage, and education. The Commission’s role in administering Lifeline is not ensuring that only a certain subset of qualifying Americans use the Lifeline program—its role is to ensure that the Lifeline program is bringing service to as many qualifying households as possible to promote the idea of universal service in this country. Further, if the Commission were to ask these questions of applicants it

⁹ Statement of Commissioner Jessica Rosenworcel, Bridging the Digital Divide for Low-Income Consumers, WC Docket No. 17-287; Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42; Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197, <https://docs.fcc.gov/public/attachments/FCC-19-111A3.pdf> (“This does not add up, unless the real goal is to further restrict participation in the program. So let’s be honest about what is really going on because this feels like a backhanded effort to keep alive the notion that broadband is not truly necessary for a fair shot in today’s economy.”).

¹⁰ Statement of Commissioner Geoffrey Starks, Bridging the Digital Divide for Low-Income Consumers, WC Docket No. 17-287; Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42; Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197, <https://docs.fcc.gov/public/attachments/FCC-19-111A4.pdf> (“To the best of my research, I don’t believe we’ve ever probed elderly Medicare recipients on how much they actually value their medical services; nor should we probe vulnerable, Lifeline recipients on how much they value their connectivity. These are government programs and services designed and targeted for the benefit of particular citizens, and frankly our chief concern should be exploring how to make sure that they are fully utilized.”) (“Starks Statement”).

¹¹ FNPRM ¶ 136.

¹² FNPRM ¶ 139.

¹³ 47 U.S.C. § 254(b).

would likely make qualifying Americans less likely to subscribe and would impose a higher burden for what is designed to be a “lifeline” to those who need.

Second, OTI and PK strongly condemn the Commission’s proposal to examine “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.”¹⁴ The Commission, if it truly wishes to understand the impact of affordability on broadband adoption in this country, should not ask questions of this nature of Lifeline applicants or subscribers, as it wrongfully scrutinizes the purchasing choices of qualifying low-income individuals and places an undue burden on consumers to defend themselves for pursuing a Lifeline subsidy. These questions misunderstand the effect of cost on the digital divide and how that impacts consumers’ views on purchasing broadband access—for low-income consumers, the issue of cost and desire to purchase are inextricably linked.¹⁵ When asked whether cost or a perceived lack of relevance is the biggest barrier to adoption, the two choices can be interpreted as interchangeable for those who are in lower wage brackets. As previously noted, asking participants in the Lifeline program whether they would purchase broadband absent a Lifeline subsidy is both intrusive and unnecessary in the context of administering a universal service program and could deter applicants to the program. This question also sets a dangerous precedent and could result in the Commission collecting deeply flawed data that reflects a very different reality regarding broadband affordability in the United States. The question should not be

¹⁴ FNPRM ¶ 142

¹⁵ See Dana Floberg, *The Truth About the Digital Divide* (Sep. 25, 2019), <https://www.freepress.net/our-response/expert-analysis/insights-opinions/truth-about-digital-divide>; Benton Institute for Broadband & Society, *The Complexity of ‘Relevance’ as a Barrier to Broadband Adoption*, (2016), <https://www.benton.org/blog/complexity-relevance-barrier-broadband-adoption>; Benton Institute for Broadband & Society, *The Ability to Pay for Broadband*, (2019), <https://www.benton.org/blog/ability-pay-broadband>.

whether households “value” broadband enough to forgo other necessities to purchase it, but rather, why broadband remains so expensive for so many households across the country.

Finally, OTI and PK urge the Commission to take the long overdue step of collecting broadband pricing data. The Commission currently does not collect and publish broadband pricing data—including added fees and equipment rentals that play into consumers’ total costs—in any consistent manner that could shed light on how affordability affects the digital divide in the U.S.¹⁶ To fully understand the Lifeline program’s impact on broadband adoption, the Commission should begin to collect broadband pricing data from providers so it has the ability to compare it with its own data sources. In addition, the Commission should collect data from providers on deployment and subscription rates across the country and analyze this data to assess competition, as well as data from outside sources that shows information on average incomes and details on local populations. The Commission should be conducting detailed data analyses to gain a deeper understanding of the digital divide and the Lifeline program’s role in bringing more Americans broadband and phone service instead of asking intrusive and discouraging questions of potential new subscribers.

IV. The Commission’s Proposal To Monitor and Verify Consumer Use of Lifeline Service Is Deeply Flawed, Invasive, and Counterproductive

OTI and PK strongly oppose the Commission’s proposal to monitor and verify Lifeline subscribers’ use of their service.¹⁷ This proposal is invasive, unnecessary, and would likely deter participation in the program.¹⁸ Further, the language used in the request for comment on the

¹⁶ Public Interest Advocates Section 706 Ex Parte.

¹⁷ FNPRM ¶ 146.

¹⁸ *Id.*

proposal reflects a broad and concerning theme in this FNPRM where the Commission questions the validity of qualifying subscribers' intentions in participating in the Lifeline program and setting up new obstacles for applicants.

The Commission's reasoning for proposing monitoring and verifying use of Lifeline service is the possibility that an ETC could "evade" the Commission's 30-day usage requirement by "installing an application on a user's phone that would 'use' data without any action by the user."¹⁹ The Commission requests comment on whether or not this is possible with no citation to any instances of it ever happening, either reported or confirmed. It is unclear why an ETC would use resources to falsely "use" data for a subscriber unprompted—and why a subscriber would request a Lifeline device and service plan and never use it (thus requiring this potential app). There appears to be no reason for an ETC to do this, and even if the Commission had provided a theoretical motive, the FNPRM offers no reference to it ever happening.

As a remedy, the Commission requests comment on a series of problematic proposals. The Commission requests comment on requiring subscribers to "periodically contact USAC remedy this issue."²⁰ Such a requirement would prove burdensome to qualifying low-income individuals who may not have the time or institutional understanding to report to USAC regarding their Lifeline-supported service.

The Commission also proposes requiring subscribers to "use an app to confirm continued usage" and suggests that this might be a "sufficient and user-friendly solution."²¹ Requiring Lifeline participants to download an app that monitors their usage to verify they are truly using their Lifeline service would be intrusive and creates serious privacy concerns. The proposed

¹⁹ *Id.*

²⁰ FNPRM ¶ 147.

²¹ *Id.*

model could result in the government patrolling Lifeline subscribers' internet usage. How would this app confirm usage from the consumer? What information would this app collect from the consumer? To what extent would the app be able to monitor a Lifeline subscriber's browsing history, location information, or other activity on their device? Would that data be shared with government? Requiring an app to monitor Lifeline participants' activity simply to confirm their use of the service is a highly intrusive step to "solve" a "problem" that the Commission has not demonstrated truly exists. Moreover, the Commission has not indicated that it has any estimate or awareness of the resources it would take to develop this app.

V. The Commission Should Not Require ETCs To Charge Lifeline Subscribers For Handsets

The Commission should not prohibit ETCs from offering free handsets to Lifeline subscribers.²² This practice offers program recipients the ability to save the money that would have gone toward buying the handset and use it for other needs, and offers yet another incentive to qualifying Americans who might be hesitant to enroll in Lifeline due to the cost of buying a phone.

The fact that carriers offer free phones reflects the reality that this is something that consumers demand and need.²³ The Lifeline subsidy is only \$9.25 a month for qualifying households to purchase wireless service. This amount—while important to providing support for low-income Americans to gain access to the telecommunications capability needed for healthcare, employment, education, and other essential needs—does not provide a lot of room for

²² FNPRM ¶ 153.

²³ Starks Statement ("With regard to a fee, I heard firsthand from subscribers at the Larkin Street Youth Services center in San Francisco, California that they see the device alongside the voice and broadband service as inextricably linked. We shouldn't even articulate the possibility of placing yet another barrier to participation in front of these communities.").

any additional expenses associated with having a connection. This Commission, which so often prides itself in making “market-driven” decisions, should not restrict companies’ ability to bring more consumers into this market. Companies rarely give anything away for free without expecting some sort of return. If providers in the Lifeline market are offering free handsets, it reflects the reality that they believe that this will increase the number of customers they receive through the Lifeline program. As detailed above, the Commission’s statutory obligation to pursue universal service requires it to use programs such as Lifeline to serve as many qualifying Americans as possible. Allowing providers to offer free handsets is a crucial part of increasing the percentage of qualifying participants in the program that the industry itself has brought forward, and the Commission should not restrict this pro-consumer practice.

Additionally, the Commission’s question regarding whether “the promise of an immediate free phone along with a free service provide[s] improper incentives to potential subscribers” is deeply concerning.²⁴ A free phone to go along with free service would not provide “improper incentives” to those who cannot afford to buy a wireless connection, and the implication that it would reflect a deeply cynical view of the Lifeline program. Those who sign up for the Lifeline program are in need of help to buy a phone and broadband connection for their essential needs. The amount of money it costs to buy a phone, which would be out of pocket for the subscriber, could be enough of a deterrent to drive them away from participating in the program. The incentive that free handsets provide is not improper—it is the very incentive that the Commission should be striving for to increase the participation rate and achieve the universal service goals that Congress has laid out for the Commission.

²⁴ FNPRM ¶ 153.

Further, the Commission does not offer sufficient evidence of any problems associated with free handsets. The Commission’s only citation on the matter relates back to a local news story from 2014 where a reporter was offered a free phone as well as Lifeline service by an agent working for Total Call Mobile.²⁵ Not only was the story in question from over five years ago, but the Commission has already punished that company, Total Call Mobile, with a \$51 million fine for the very fraud depicted in that local news story—the practice of “enrolling tens of thousands of duplicate and ineligible consumers into the Lifeline program.”²⁶ The Commission has addressed the unlawful actions of Total Call Mobile by proposing the largest-ever fine against a Lifeline provider, and it is misleading to cite to that episode as evidence of a problem. The Commission should continue to enforce its rules when bad actors abuse the system, but imposing draconian restrictions such as a ban on free handsets is more likely to hinder the benefits of the Lifeline program than to root out fraud.

VI. The Commission Must Protect the Privacy of Lifeline Subscribers

As an arm of a government agency, the Universal Service Administrative Company (USAC) and its programs, which include Lifeline, are obligated primarily under the Privacy Act of 1974 and Federal Information Security Management Act of 2002, to protect individuals’ personal information.²⁷ While the Commission is aware of its obligations to protect the privacy

²⁵ CBS Denver, “Government’s Free Phone Program Riddled with Abuse, Fraud,” (Nov. 6, 2014), <http://denver.cbslocal.com/2014/11/06/governments-free-phone-program-riddled-with-abuse-fraud/>.

²⁶ “FCC Plans \$51 Million Fine for Lifeline Program Abuse,” Federal Communications Commission Press Release (April 7, 2016), <https://www.fcc.gov/document/fcc-plans-51-million-fine-lifeline-program-abuse-0>.

²⁷ FNPRM ¶ 66 refers to the Privacy Act, and ¶ 82 to the Federal Information Security Management Act of 2002, <https://docs.fcc.gov/public/attachments/FCC-19-111A1.pdf>; The United States Department of Justice, “Privacy Act of 1974,” updated January 15, 2020, <https://www.justice.gov/opcl/privacy-act-1974>; “H.R.3844 - Federal Information Security Management Act of 2002,” Congress.gov, introduced March 5, 2002,

of Lifeline subscribers, it must better protect users without making it harder for those who need support to get the opportunities made possible by broadband and telephone services.

To enroll in the program, potential subscribers are required to submit a significant amount of personal information to qualify for the program, including name, date of birth, the last digits of their Social Security Number or Tribal identification number, and address.²⁸ They must also confirm eligibility for the subsidy by disclosing household income level with a tax return or pay stub, or a card or award letter confirming participation in other federal assistance programs like Medicaid, SNAP, Veterans Pension or Survivors Pension, Tribally-Administered Temporary Assistance for Needy Families, and others.²⁹ This is not the only information at risk, however. A recent article from Forbes revealed that Assurance Wireless, a Virgin Mobile company and Lifeline ETC, provided Lifeline subscribers who signed up for texting and data services through them with free handsets which were downloaded with malware. According to cybersecurity analysts, the phones shipped by the ETC included malware capable of auto-installing apps without any user consent and collecting personal information including the full-body of text messages, contact lists, and call histories.³⁰ If that wasn't enough, the phone also included

<https://www.govinfo.gov/content/pkg/USCODE-2018-title5/pdf/USCODE-2018-title5-partI-chap5-subchapII-sec55>.

²⁸ Universal Service Administrative Company, "How to Get Lifeline," available at <https://www.lifelinesupport.org/how-to-get-lifeline/>.

²⁹ Universal Service Administrative Company, "How to Prove Participation," available at <https://www.lifelinesupport.org/do-i-qualify/how-to-prove-participation/>; Universal Service Administrative Company, Federal Poverty Guidelines, available at <https://www.lifelinesupport.org/do-i-qualify/federal-poverty-guidelines/>.

³⁰ Thomas Brewster, "US Funds Program With Free Android Phones For The Poor - But With Permanent Chinese Malware," (January 9, 2020), <https://www.forbes.com/sites/thomasbrewster/2020/01/09/us-funds-free-android-phones-for-the-poor---but-with-permanent-chinese-malware/?ss=cybersecurity#134de642abab>.

malware built into phone settings which facilitates advertising on the phone, and is not removable.³¹

The Commission's response to these problematic practices by ETCs should not be to stop providers from handing out free handsets and other material benefits for Lifeline subscribers, but to address these issues as privacy violations. For example, the Federal Trade Commission has barred particular app developers who have been found to be selling smartphone apps which monitor users' behavior, without disallowing people from selling smartphone apps at large.³² Since Lifeline subsidizes only internet or phone service, and not the devices or hardware to use with the services, ETCs like Assurance are taking advantage of Lifeline subscribers' hardship in affording the necessary equipment necessary. The Commission could require that ETCs provide services and hardware without requiring that Lifeline subscribers forfeit personal information beyond the minimum necessary for providing service, or requiring subscribers to opt into any services that ask for personal data.

Low-income people are disproportionately vulnerable to surveillance and other privacy-invasive practices. They are less likely to feel as though they "know enough" about managing privacy settings, are less likely to engage in other privacy-protective strategies that impact online tracking, are subject to greater surveillance, and, as in the case of Assurance Wireless, may unwillingly give up their privacy for immediate material benefits they need.³³ To protect the

³¹ Thomas Brewster, "US Funds Program With Free Android Phones For The Poor - But With Permanent Chinese Malware," (January 9, 2020), <https://www.forbes.com/sites/thomasbrewster/2020/01/09/us-funds-free-android-phones-for-the-poor---but-with-permanent-chinese-malware/?ss=cybersecurity#134de642abab>.

³² "FTC Brings First Case Against Developers of "Stalking" Apps," Federal Trade Commission Press Release, (October 22, 2019), <https://www.ftc.gov/news-events/press-releases/2019/10/ftc-brings-first-case-against-developers-stalking-apps>.

³³ Mary Madden et al., *Privacy, Poverty, and Big Data: A Matrix of Vulnerability for Poor Americans*, 95 WASH. U. L. REV. 053 (2017), at 75. Available at: https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6265&context=law_lawreview at 75.

privacy of Lifeline subscribers, the Commission must address these practices as privacy threats, not equipment or service issues.

VII. Conclusion

The Commission should improve participation rates in the Lifeline program and abandon the FNPRM's counterproductive proposals to survey applicants, monitor subscribers, and prohibit carriers from offering free handsets. The Commission should reject these proposals and instead collect the pricing data necessary to begin accurately diagnosing the issues of affordability that fuel the digital divide.

Respectfully submitted,

NEW AMERICA'S OPEN TECHNOLOGY INSTITUTE AND PUBLIC KNOWLEDGE

/s/ Amir Nasr
Claire Park
New America's Open Technology Institute
740 15th Street NW, Suite 900
Washington, D.C. 20005

Jenna Leventoff
Lindsay Stern
Public Knowledge
1818 N St NW, Suite 410
Washington, D.C. 20036