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

REPLY COMMENTS OF PUBLIC KNOWLEDGE

Phillip Berenbroick
Daiquiri Ryan
Public Knowledge
1818 N Street, NW
Suite 410
Washington, DC 20036
(202) 861-0020

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EXECUTIVE SUMMARY

In 2016, the Federal Communications Commission updated the Lifeline program for the 21st Century. The program now allows eligible, low-income households to subscribe to Lifeline-supported broadband internet access service. The Lifeline broadband program is helping to make broadband access, and the benefits and connectivity it enables, more attainable for America's most economically vulnerable families, helping to close the digital divide.

Universal service has long been a national priority. Since its creation in 1985, Lifeline has helped low-income households access basic, essential telecommunications services. Originally, Lifeline supported fixed voice service, but as Americans migrated to mobile networks, the program was updated to reflect consumers' changing needs by supporting mobile voice. Today, broadband is an essential service, and the FCC's 2016 modernization of the program recognized this by updating Lifeline to support broadband internet access service.

Unfortunately, the Commission's Notice of Proposed Rulemaking and Notice of Inquiry threaten, for the first time in the program's history, to make modern, essential communications services supported through Lifeline less accessible and less affordable for low-income Americans, veterans, seniors, and others. The Commission proposes to erect barriers to entry for competitive and innovative service providers, restrict current providers that serve approximately 70 percent of Lifeline subscribers from participating in the program, require co-pays that would widen the digital divide by making even Lifeline-supported service too expensive for those in poverty, create strict budget caps that would reduce the effectiveness of the program or deny service to eligible families, and establish a lifetime benefit cap on subscriber participation.

The Commission has provided little, if any evidence, data, or cost-benefit analysis to justify its proposals. Instead, the agency engages in burden shifting of epic proportions –

proposing to radically abandon the nation's longstanding, bipartisan support for universal service and affordable communications for all – and require those in favor of the maintaining the Lifeline program's commitments to the poor to provide evidence and analysis to explain why the Commission is wrong.

The record overwhelmingly rejects the Commission's proposals to abandon the nation's commitment to universal service.

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Public Knowledge files these Reply Comments in response to the Federal Communications Commission's ("FCC" or "Commission") recent *Notice of Proposed Rulemaking and Notice of Inquiry* ("*NPRM*" and "*NOI*") proposing changes to the Lifeline program.[1]

I. THE COMMISSION SHOULD NOT ELIMINATE THE LIFELINE BROADBAND PROVIDER DESIGNATION

The Commission should reject the *NPRM*'s proposal to eliminate the Lifeline Broadband Provider ("LBP") category of ETCs and the state preemption on which the FCC based its authority to designate LBPs. A diverse cross section of civil rights groups, municipalities, public interest and consumer advocates, and think tanks support keeping the LBP category of the ETCs and oppose the Commission's proposal.[2]

The proposal to eliminate the LBP designation is premised on this Commission's belief that the *2016 Lifeline Modernization Order* erred as a matter of law in establishing the FCC's authority to designate eligible telecommunications carriers ("ETCs") pursuant to 47 U.S.C. § 214(e)(6).[3] The *NPRM* is incorrect as a matter of law and omits any substantive explanation or

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[1] Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, WC Docket Nos. 17-287, 11-42, 09-197, *Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*, 32 FCC Rcd 10475 (2017) ("*NPRM*" and "*NOI*").

[2] *See e.g.*, WC Docket Nos. 17-287, 09-197, 10-90 (all citations to comments reference filings in these proceedings unless otherwise indicated); Comments of Low Income Consumer Advocates at 18-20, Comments of Information Technology & Innovation Foundation at 3-4 ("ITIF"), Comments of the City of New York at 2-3 ("NYC"), Comments of the National Hispanic Media Coalition (11-16) ("NHMC"), Comments of Media Alliance, Comments of Oregon Citizens' Utility Board at 2 ("Oregon CUB"), Comments of EveryoneOn at 2, Comments of National Housing Conference at 2, Comments of Free Press at 18-20, Comments of New America's Open Technology Institute at 18-20 ("OTI").

[3] *See NPRM* at ¶¶ 55-56 (citing Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund, WC Docket Nos. 11-42, 09-197, 10-90, *Third Report and Order, Further Report and Order, and*

justification for the agency's evolution in its interpretation of the Communications Act. Further, eliminating the LBP designation will preclude market entry for competitive and innovative service providers for Lifeline subscribers, undermining the *NPRM*'s stated goal "to empower Lifeline subscribers to obtain the highest value for the Lifeline benefit through consumer choice in a competitive market."[4]

A. The Commission Has Provided No Justification for its Changed Interpretation of the Agency's Authority

The Commission's proposal to eliminate the LBP designation appears to rest solely on the fact that state public utility commissioners objected to the *2016 Lifeline Modernization Order*'s establishment of the FCC's authority to designate ETCs as LBPs and preempt states in designating broadband only ETCs. The Commission devotes less than two full paragraphs to recounting the *2016 Lifeline Modernization Order*'s legal justification and policy rationale for its decision, as well as the legal challenge to that decision by the National Association of Regulatory Utility Commissioners ("NARUC") and a coalition of states. While the *NPRM* cites "these circumstances" and "further review" as the impetus behind its proposal, the "further review" still appears to be pending because *NPRM* fails to provide any substantive, fact-based, or legally sufficient justification for the change in the Commission's interpretation of Section 214 of the Communications Act, other than point out that "serious concerns" have been raised by some parties, lawsuits have been filed (on which no court has ruled), and the Commission has had a change of heart.[5]

Order on Reconsideration, 31 FCC Rcd 3962 ¶¶ 217-89 (2016) ("*2016 Lifeline Modernization Order*").
[4] *NPRM* at ¶ 80.
[5] *See id*. at ¶¶ 55-56.

The *2016 Lifeline Modernization Order*'s justified the LBP designation and state preemption in part by explaining "broadband Internet access service is jurisdictionally interstate for regulatory purposes."[6] Under Section 214(e)(6), the Commission has the authority to designate a common carrier as an ETC when the carrier "is not subject to the jurisdiction of a State commission."[7] Additionally, the Commission found that Section 706 of the Telecommunications Act of 1996 authorizes preemption in order to encourage and accelerate broadband deployment to all Americans.[8] The Commission went on to explain that due to the interstate service classification of broadband, and the fact that state designation of Lifeline-supported broadband ETCs conflict with implementation of the universal service goals of Section 254(b), the Commission could preempt state authority over broadband internet access service ("BIAS") providers, triggering the agency's 214(e)(j) authority, and designate ETCs for the purpose of becoming LBPs offering Lifeline-supported broadband service.[9]

As the record makes clear, the *NPRM* does not to engage on the question of whether BIAS is an interstate or intrastate service, or regarding the Commission's authority to preempt state regulatory authority over BIAS providers.[10] However, in a very different context, the Commission recently claimed that "it is well-settled that Internet access is a jurisdictionally interstate service because a substantial portion of Internet traffic involves accessing interstate or foreign websites," and that "broadband Internet access service is predominantly interstate because a substantial amount of Internet traffic begins and ends across state lines."[11] As a result,

[6] *2016 Lifeline Modernization Order* at ¶ 255.
[7] *See* 47 U.S.C. § 214(e)(6); *2016 Lifeline Modernization Order* at ¶ 240.
[8] *See 2016 Lifeline Modernization Order* at ¶¶ 253-54 (*citing* 47 U.S.C. § 1302).
[9] *See id*. at ¶¶ 249-56
[10] *See e.g.*, Low Income Consumer Advocates at 20; NHMC at 16.
[11] Restoring Internet Freedom, WC Docket No. 17-108, *Declaratory Ruling, Report and Order, and Order*, 33 FCC Rcd 311, ¶ 199 (2018) (internal quotations omitted).

the FCC concluded, "the Commission has the legal authority to preempt inconsistent state and local regulation of broadband Internet access service."[12] The Commission's logic in December 2017 is identical to the *2016 Lifeline Modernization Order*'s explanation that it had the authority to preempt states and designate LBP ETCs because BIAS is a jurisdictionally interstate service.

The Commission has not only refuses to provide any explanation for its reinterpretation of the agency's authority to designate ETCs as LBPs under Section 214(e)(6), but it also never explains how it reached this divergent conclusion (that preemption was in error) while still relying, in other contexts, on the FCC's authority to preempt state regulation based on BIAS' status as an interstate service. Notwithstanding support from various state regulatory commissions in the record,[13] the Commission's complete failure to provide any explanation or justification, other than that it engaged in "further review," for its changed interpretation of the agency's authority to preempt state regulation of BIAS under the Communications Act cannot withstand scrutiny within the record.

B. Eliminating the Lifeline Broadband Provider Category of Eligible Telecommunications Carriers Would Preclude Additional Competition, Innovation, and Choices for Lifeline Subscribers

The record makes clear that eliminating the LBP category of ETC, and the state preemption on which it is based, will choke off the development of innovative and narrowly targeted BIAS deployments aimed explicitly at bringing affordable to low-income communities, and closing the digital divide.[14] Neither the *NPRM*, nor the commenters in the record that support the proposal to eliminate the LBP category of ETCs challenge these assertions, nor do they

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[12] *Id*. at ¶ 197.

[13] *See e.g.*, Comments of National Association of Rural Utility Commissioners at 5-18 ("NARUC"), Comments of Nebraska Public Service Commission at 2-4 ("Nebraska PSC"), Joint Comments of Minnesota Public Utilities Commission and Minnesota Department of Commerce at 2-3 ("Minnesota State Agencies").

[14] *See e.g.*, NYC at 2, National Housing Conference at 3, OTI at 20, Free Press at 18-20.

provide any policy goal that will be achieved by eliminating the LBP designation. As Free Press points out, the *NPRM* "proposes to eliminate LBPs, yet fails to explore the trade offs, costs, or impacts of such a drastic action on Lifeline users and the broader telecom market."[15] The Commission must explore these questions in depth to accurately weigh the relative costs and benefits of its proposal. It has not.

The Commission argues that the goals of the *NPRM* include focusing the program "on supporting affordable communications service for the nation's low-income households,"[16] and enabling subscribers to stretch the value of their Lifeline subsidy by having competitive choices.[17] However, maintaining the existing scheme wherein the FCC can designate providers as LBP ETCs is the best course of action for promoting competition from market entrants, providing innovative and affordable services for Lifeline subscribers, and ensuring that each universal service dollar is used as efficiently as possible. The Commission fails to consider that maintaining the status quo is the best solution for achieving its goals.

In the *2016 Lifeline Modernization Order*, the agency explained that many commenters detailed that the ETC designation process could vary widely between different states, and that streamlining the ETC designation process could help promote new competitive Lifeline offerings from both large and small BIAS providers.[18] The agency agreed, finding that "even just the burden of seeking designation from multiple states and the Commission is sufficient to discourage broadband service providers from entering the Lifeline program," and introducing Lifeline-supported affordable broadband services across their service areas.

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[15] Free Press at 18.
[16] *NPRM* at ¶ 121.
[17] *Id*. at ¶ 80.
[18] *See 2016 Lifeline Modernization Order* at ¶¶ 235-36, n.628.

The Commission concluded that many providers that may want to offer Lifeline-supported service were not designated as ETCs, including many "larger providers with infrastructure" (in other words, facilities-based providers) "and market offerings that span multiple states must be afforded a reasonable, clear pathway into the Lifeline broadband program."[19] Further, the Commission concluded that preemption of the states and establishment of the LBP designation "would serve the universal service principles of section 254(b) by increasing low-income consumers' access to advanced telecommunications and information services at affordable rates."[20]

The record in the instant proceeding aligns with the *2016 Lifeline Modernization Order*'s findings and conclusions. In late-2016 and early-2017, the Commission began to see the emergence of new competitors and service offerings in the Lifeline program by granting LBP designations to nine providers.[21] One of those LBPs, Boomerang Wireless, had over 17,000 subscribers who were receiving service prior to the decision by the FCC's present leadership to revoke all LBP designations.[22]

National Housing Conference explains that the LBP designation offers the opportunity for innovative, targeted, and affordable broadband services targeted to low-income persons by allowing "community based providers, nonprofits and housing providers to serve their residents

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[19] *Id*. at ¶ 250.
[20] *Id*. at ¶ 251.
[21] *See* Telecommunications Carriers Eligible for Universal Service Support, Lifeline and Link Up Reform and Modernization, WC Docket Nos. 09-197, 11-42, *Order*, 32 FCC Rcd 784 (2017); Telecommunications Carriers Eligible for Universal Service Support, Lifeline and Link Up Reform and Modernization, WC Docket Nos. 09-197, 11-42, *Order*, 31 FCC Rcd 12736 (2016).
[22] *See* Telecommunications Carriers Eligible for Universal Service Support, Lifeline and Link Up Reform and Modernization, WC Docket Nos. 09-197, 11-42, *Order on Reconsideration*, 32 FCC Rcd 1095 (2017); NHMC at 13.

and clients with broadband, which they are well positioned to do."[23] For example, in Cleveland, Ohio, service providers and the local housing authority are "pursuing a novel initiative to provide broadband access to CMHA apartment building tenants, using millimeter-wave technology to provide backhaul" to serve low-cost broadband access to the low-income residents in county affordable housing. Lifeline-support under the LBP designation could provide the revenue source to cover the initiatives ongoing operating costs. [24]

However, the Commission's proposal to eliminate the LBP designation will likely eliminate the possibility for broadband-only providers to participate in the program. This result would eliminate choices for consumers who prefer Lifeline-supported BIAS rather than voice or a bundled service, and needlessly making Lifeline-supported broadband service more expensive than necessary.[25] Additionally, the proposal to eliminate the state preemption and streamlined LBP designation process will also likely keep the nation's largest BIAS providers, including cable and wireless providers, from offering Lifeline-supported services on a nation-wide basis, or across their network footprints. As a result, Lifeline subscribers are likely to see fewer innovative and targeted service offerings and have fewer competitive affordable choices than they would have if the Commission left the current regulatory regime in place. Further, as the Low Income Consumer Advocates make clear, "[g]iven that the Commission is proposing to remove non-facilities based providers from the Lifeline program, pulling the plug on approximately 70 percent of the program's participants, the proposal to eliminate a streamlined entry point into the program for facilities-based providers is particularly counterproductive."[26]

[23] National Housing Conference at 3.
[24] *Id*. at 2.
[25] NYC at 2, Oregon CUB at 2, OTI at 20, Free Press at 20.
[26] Low Income Consumer Advocates at 19.

II. THE COMMISSION SHOULD NOT RESTRICT PARTICIPATION IN LIFELINE TO FACILITIES-BASED PROVIDERS

The Commission should abandon its proposal to limit Lifeline support to facilities-based providers offering service over voice-and-broadband-capable last-mile networks.[27] The facilities-based proposal will drastically reduce consumer access to Lifeline-supported services, eliminate the providers of choice for an overwhelming majority of Lifeline subscribers, raise prices, reduce competitive and innovative service offerings, and lead to reduced investment in facilities-based networks. The record rejects the Commission's proposal, along with the Commission's reasoning that prohibiting wireless resellers from providing Lifeline-supported service will somehow spur new network investment.[28] As one commenter put it, eliminating Lifeline support for resellers "would stand as a prototypical case of throwing the baby out with the bathwater."[29]

A. Limiting Lifeline Support to Facilities-Based Providers Will Reduce Consumer Access to Lifeline-Supported Services

The Commission is incorrect in its belief that restricting Lifeline support to facilities-based providers will "encourage access to quality, affordable broadband service for low-income Americans."[30] As Mobile Future correctly explains, eliminating reseller participation from the Lifeline program "will negatively impact the availability of mobile broadband service options for low-income consumers."[31] Instead of closing the digital divide, "the proposal would potentially disconnect millions of low-income Americans who depend on the targeted service offerings of

[27] *See NPRM* at ¶¶ 65-67.
[28] *See id*. at ¶ 65.
[29] Comments of ITTA – The Voice of America's Broadband Providers at 3 ("ITTA").
[30] *Id*.
[31] Comments of Mobile Future at 3 ("Mobile Future").

non-facilities-based mobile broadband providers to get access to the Internet."[32] Rather than continuing with the agency's tradition of modernizing Lifeline to meet the needs of low-income households to address an evolving communications marketplace, removing resellers from the program would have the opposite effect – leaving poor families stranded and without a viable plan from the Commission to replace lost service.[33]

Restricting Lifeline participation to facilities-based providers would disregard clear consumer preferences and prohibit resellers—the providers that Lifeline customers overwhelmingly prefer—from offering Lifeline-supported service.[34] The Commission's plan would eliminate the carriers that serve over 70% of current Lifeline households, and leave large portions of the country without any Lifeline provider, or only a single, monopoly provider.[35] The record emphasizes that such an outcome would be disruptive to the fragile, low-income households that rely on Lifeline for basic connectivity,[36] reduce the number of Lifeline providers and lead to increases in the prices that Lifeline-participating households pay for service,[37] and undermine the main goal of the program—promoting access to affordable communications for low-income persons.[38]

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[32] *See e.g.*, *id,* Nebraska PSC at 6.
[33] *See* Free Press at 20-21.
[34] *See e.g.*, Comments of Citizens Against Government Waste at 8-9 ("CAGW"), Comments of New York State Public Service Commission at 2 ("New York State PSC"), Comments of the National Association of Telecommunications Officers and Advisors and National League of Cities at 3 ("NATOA & NCL"), Comments of Ohio Public Utilities Commission at 4-5 ("Ohio PUC"), ITTA at 2-3, Comments of Florida Public Service Commission at 2-3 ("Florida PSC"), Oregon CUB at 2, OTI at 23, Free Press at 29.
[35] Low Income Consumer Advocates at 5-6.
[36] *See e.g.*, Comments of Randolph J. May, President, Free State Foundation at 5 ("Randy May"), ITTA at 2, OTI at 23, NARUC at 5, Sprint at 17, Comments of TracFone at 7, 13-17.
[37] *See e.g.*, Free Press at 29.
[38] *See e.g.*, Comments of Verizon at 9.

Several state commissions describe the catastrophe that will befall low-income Lifeline subscribers in their states if the Commission eliminates support for resellers. The Indiana Utilities Regulatory Commission explains that the Hoosier State has been approving requests by facilities-based providers to relinquish their ETC designations based. In some cases, wireless resellers may be the only providers offering Lifeline service in these relinquished territories. As a result, the Commission's proposal to eliminate reseller participation in Lifeline would leave many areas of Indiana entirely without a Lifeline provider, or an ETC.[39] In Pennsylvania, hundreds of zip codes currently have no facilities-based provider options, while hundreds more would only have a single provider.[40] In New York, as of April 2017, only one wireless facilities-based provider offered Lifeline service. Thus, eliminating support for resellers "could restrict users who depend on Lifeline for mobile service to a single company, creating a monopoly market for Lifeline service and decreasing, rather than increasing competition."[41] In Ohio, "[a]s of November 2017, 78 percent of Ohio Lifeline customers obtained service from a non-facilities based wireless eligible telecommunications carrier,"[42] and 96 percent of Ohio Lifeline subscribers obtain service from a provider other than their ILEC.[43] As New America's Open Technology Institute ("OTI") demonstrates, more than forty states have at least as many Lifeline subscribers preferring to receive service from resellers as from facilities-based providers, with many states having significantly more reseller subscribers than facilities-based subscribers.[44]

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[39] Comments of Indiana Utility Regulatory Commission at 3-4.
[40] *See* Comments of Pennsylvania Low Income Individuals, Service Providers, Organizations, and Consumer Rights Groups at 2-3 ("Pennsylvania Consumer Rights Groups").
[41] NYC at 3.
[42] Ohio PUC at 3.
[43] *Id*. at 5.
[44] *See* OTI at 23.

As Sprint details, "there would be a sharp reduction in the number of wireless providers offering Lifeline service; in some areas, there may remain only a single facilities-based wireless Lifeline service provider, and in other areas, there may be no facilities-based wireless Lifeline provider at all."[45] CTIA notes that such an outcome "would more likely have negative impacts on competition and harm low income consumers."[46] TracFone explains that the proposal would eliminate the majority of wireless Lifeline providers, and leaving customers in at least eleven states with no Lifeline provider, or only a monopoly provider.[47]

One certain consequence of the Commission's proposal to eliminate reseller participation is that millions of Lifeline subscribers will lose their service provider. As a result, there will almost certainly be a reduction in Lifeline participation by eligible households, expanding the digital divide.[48] Providers that remain are unlikely to accommodate all of the former reseller subscribers. As a result, "[m]any of these customers will be faced with either struggling to pay for non-Lifeline mobile service or obtaining stationary Lifeline service through their ILEC."[49] Such a result would not serve the public interest, nor would it comply with the Commission's universal service mandate under Section 254.

B. Limiting Lifeline Support to Facilities-Based Providers Will Discourage Deployment of Facilities-Based Networks

Contrary to the Commission's evidence-free assertion that eliminating resellers will promote network investment, the record makes clear that eliminating resellers from the program

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[45] Comments of Sprint at 17.
[46] Comments of CTIA at 11.
[47] TracFone at 7.
[48] *See* NARUC at 18.
[49] Ohio PUC at 4. *See also* TracFone at 16.

is "unlikely to materially improve the business case for broadband deployment."[50] For example, Verizon explains, that restricting Lifeline to facilities-based providers does not improve the business case for deployment in high-cost areas, particularly because "Lifeline consumers contribute revenue to the underlying facilities-based carrier regardless of whether it serves the customer directly or via resale."[51] Mobile Future reiterates this point, noting, "[t]he revenues that non-facilities based providers generate for facilities-based carriers support investment in the underlying facilities-based networks."[52]

In fact, the record explains that eliminating participation by resellers will actually harm investment in facilities-based networks.[53] For example, Mobile Future details, "Lifeline support for resellers also serves to encourage deployment. Wholesale revenues received from resellers can increase the ability of facilities-based carriers to deploy or maintain infrastructure where it would be otherwise uneconomical to do so." INCOMPAS submits that eliminating resellers from the Lifeline program will "extinguish a valuable revenue stream for network owners."[54] The National Lifeline Association points out that eliminating resellers from the Lifeline program "would remove an aggregate 7.1 million lines and millions of dollars of associated revenue each month from underlying providers With lower wholesale line count and revenues, facilities-based providers will have less revenue and incentive to invest in broadband deployment."[55] The New York State Public Service Commission concurs, noting that "curtailing resellers is inconsistent

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[50] Verizon at 3. *See e.g.*, Mobile Future at 3, Comments of USTelecom at 2, Comments of Oklahoma Public Utilities Division at 6 ("Oklahoma PUD"), Oregon CUB at 2, NARUC at 21; Sprint at 21-22, ITIF at 5, TracFone at 32, Comments of the National Lifeline Association at 18-19 ("NALA").
[51] Verizon at 9-10.
[52] Mobile Future at 3.
[53] *See e.g.*, Mobile Future at 8, Comments of INCOMPAS at 6, CTIA at 16, TracFone at 32, NALA at 18-19.
[54] INCOMPAS at 6.
[55] NALA at 18-19.

with 47 U.S.C. § 214(e)(1)(A) and may reduce network utilization rates as a source of revenue to underlying network providers.[56]

Simply put, Facilities-based providers find it more profitable to serve Lifeline-eligible consumers through partnerships with resellers.[57] Shockingly, the Commission fails to grasp even the basic economics of the marketplace and the damage its proposal will reap. INCOMPAS clearly spells out that facilities-based providers "amortize their costs over the entire customer base, including MVNO end users," and eliminating those customers threatens to undermine investments in network deployment.[58] Sprint explains that its monthly average revenue per user ("ARPU") as of September 2017 was $46.00 for postpaid customers. In contrast, the federal Lifeline subsidy is $9.25 per customer. As a result of this discrepancy, "Lifeline support is not, and cannot be, the financial determinant of capital intensive facility deployment decisions."[59] Similarly, Q4 2017 ARPU for the other nationwide wireless carriers ranged between $46-$57. As a result, the Lifeline market is an unappealing market for carriers focused on earning more revenue per subscriber line,[60] and even clearing the field of wireless resellers is unlikely to provide an incentive for facilities-based providers to serve low-income Lifeline-eligible customers.

The record also demonstrates that restricting Lifeline participation to facilities-based providers is unnecessary to address waste, fraud, and abuse.[61] As the Florida Public Service Commission emphasizes, the business plan being pursued by resellers is not to defraud the Lifeline program, instead, it is to serve the low-income and Lifeline-eligible segment of the

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[56] New York State PSC at 2.
[57] *See e.g.*, Comments of Benton Foundation at 2.
[58] INCOMPAS at 6.
[59] Sprint at 21-22.
[60] *See* Comments of Q Link Wireless, LLC at 33-34 ("Q Link").
[61] *See e.g.*, Verizon at 3, Mobile Future at 3, Q Link at 25.

market that is largely unserved by traditional carriers.[62] Additionally, several commenters explain that implementation of the National Verifier is likely to effectively address many of the program integrity issues raised by the *NPRM*.[63]

The Ohio Public Utilities Commission aptly concludes that prohibiting resellers from offering Lifeline-supported service "appears to be a solution in search of a problem that does not exist to any significant extent."[64] NARUC paints a direr picture, explaining, "elimination of non-facilities-based service has the very real potential of gutting the Lifeline program."[65] The Commission should abandon this proposal.

III. THE COMMISSION SHOULD ABANDON ANY PROPOSALS THAT WILL HINDER THE EFFICIENCY AND PURPOSE OF THE LIFELINE PROGRAM

A. The Commission Should Not Replace the Current Lifeline Budget Mechanism With a Self-Enforcing Budget

In the *2016 Lifeline Order*, the Commission adopted a budget mechanism for the Lifeline program.[66] In order to ensure the financial stability of the Lifeline program while still guaranteeing access to critical communications services to all eligible customers, the Commission implemented an initial budget of $2.25 billion. This initial budget ceiling was chosen to allow appropriate organic growth and provided for "over 20 million households to participate in the program with basic support for an entire year before the budget is reached."[67] The Commission also implemented a safeguard to effectively monitor the program; if the Lifeline program disbursed 90 percent or more in a given year, the Wireline Bureau is required to produce a report to the Commission detailing the reasons for increased spending and

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[62] Florida PSC at 2.
[63] *See e.g.*, Sprint at 2, USTelecom at 2, ITIF at 6, NALA at 24.
[64] Ohio PUC at 2.
[65] NARUC at 20.
[66] *See 2016 Lifeline Modernization Order* at ¶¶ 395-403.
[67] *Id*. at ¶ 401.

recommending next steps.[68] This mechanism ensures adequate time for fiscally responsible planning, and put the Lifeline program in line with other Universal Service Fund programs. Most importantly, the Commission's 2016 budget mechanism protected Lifeline customers from sudden, mid-year elimination of service and purposefully avoided denying service to otherwise eligible consumers.[69]

The *NPRM* proposes to replace the 2016 budget mechanism with a self-enforcing, hard-cap budget.[70] The Commission should avoid implementing mechanisms that will limit the effectiveness of the Lifeline program, including a self-enforcing budget. The Lifeline program already has a cap—the program is income-based, so only the finite universe of qualifying low-income persons can subscribe at any given time. Additionally, there are far better mechanisms to ensure program integrity, some of which are already being implemented by the Commission, like the National Eligibility Verifier. Consumer and public interest advocates, civil rights organizations, unions, farmers, facilities-based providers, and resellers all strongly oppose the self-enforcing budget proposal.[71] Lifeline-eligible households, current subscribers, and providers offering Lifeline-supported service will be harmed if the Commission adopts its self-enforcing budget proposal. Creating a self-enforcing budget cap will create unnecessary uncertainty in the

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[68] *Id*. at ¶ 402. *See also NPRM* at ¶ 104.

[69] *2016 Lifeline Modernization Order* at ¶¶ 398-99.

[70] *NPRM* at ¶¶ 104-110.

[71] *See e.g.*, TracFone at 58-61, Sprint at 2-8, Comments of Cox at 9-10, USTelecom at 8-9, INCOMPAS at 12-14, ITIF at 7-8, Free Press at 49-56, OTI at 29-30, NHMC at 23-25, Comments of Multicultural Media, Telecom and Internet Council and Lifeline Supporters at 14-15 ("MMTC"), Comments of Asian Americans Advancing Justice at 2-3 ("AAAJ"), Comments of National Association for the Advancement of Colored People at 2 ("NAACP"), Letter from Rainbow PUSH Coalition at 2 ("Rainbow PUSH"), National Housing Conference at 3, Letter from National Grange at 3 ("National Grange"), Letter from National Association of American Veterans at 2 ("American Veterans"), New York State PSC at 2, NYC at 6, Oregon CUB at 3, Randy May at 6, Letter from America's Health Insurance Plans at 3 ("AHIP"), Letter from LGBT Technology Partnership at 3.

program, act as a deterrent to Lifeline provider participation in the program, and will sabotage two of the Commission's stated priorities in the *NPRM*: promoting competition and choice in the Lifeline market, and incentivizing investment in broadband networks. Lastly, rationing Lifeline is contrary to the goal of universal service and stifles the program's ability to bring affordable communications to the poor.

The record indicates that BIAS providers oppose the Commission's proposed self-enforcing budget.[72] Broadband providers and their trade associations agree that the proposed changes would be disruptive for Lifeline subscribers and unnecessarily increase administrative and overhead costs for providers – funds that could be spent on network investment or safeguarding the program against wasteful spending. Cox explains that the FCC's budget proposal would "require costly changes to carrier billing systems in many instances. Tariff modifications and customer notifications would also be required and call center volumes could be expected to increase." These expenses "would simply divert valuable resources from other provider priorities."[73] USTelecom reiterates this point, detailing that "[t]he administrative costs and challenges associated with implementing a self-enforcing budget mechanism would be significant," and points out that "a self-enforcing budget mechanism could be disruptive to consumers *and providers*," and that the Commission can "achieve its desired goals, without resorting to a self-enforcing budget," and without the costs that would accompany "the adoption of such a framework would introduce significant complexity into the application of the Lifeline benefit and reimbursement process."[74] USTelecom specifically "encourages the Commission to

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[72] *See* Cox at 9-10, INCOMPAS at 12-14, USTelecom at 8-9, Sprint at 2-8, TracFone at 58-61.
[73] Cox at 9.
[74] USTelecom at 8-9 (emphasis added). *See also* Cox at 1, Randy May at 6 ("there are dozens of practical implementation problems that would have to be resolved in connection with adoption of a self-enforcing budget cap, for example, relating to the appropriate period or periods for

defer further consideration of a self-enforcing budget mechanism until after the National Verifier is implemented."[75] Adding that "the improved tracking and controls associated with the National Verifier will provide the Commission with a more realistic picture of what Lifeline demand truly looks like," and will inherently fortify marketplace and forecast certainty.[76]

The record further emphasizes that a self-enforcing budget cap is violates Section 254(b)(5), which states that "the Commission's budget must be consistent with the principle that support mechanisms be "specific, predictable and sufficient... [and]...requires that support be "sufficient to achieve the purposes" of universal service."[77] If the Commission chooses to place a hard cap on the Lifeline program, it will be in violation of these statutory requirements and will morph the program to a framework that is inconsistent with the agency's universal service mission.

A vast majority of commenters agree that a self-enforcing budget would deny Lifeline services to the most vulnerable populations of the American public.[78] As Sprint points out, even the Commission has recognized in the past that "a cap could result in rationing of available support to the most economically vulnerable end users, and raises worries that eligible consumers would be denied service."[79] Further, commenters raise concerns that if a budget cap is implemented by the Commission, low-income minorities and other vulnerable segments of

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assessing compliance, the forecasting models to be utilized, the methodology to be employed in reducing payments under a cap, the way to prioritize disbursements, and more").

[75] USTelecom at 9.

[76] *Id*.

[77] Q Link at 19-20 (quoting 47 USC §254(b)(5)). *See also* TracFone at 59.

[78] *See* MMTC at 14-15, NAACP at 2, National Grange at 3, Cox at 9-10, NHMC at 23-25, National Housing at 3, Rainbow PUSH at 3, INCOMPAS at 12-14, ITIF at 7-8, Free Press at 49-56, TracFone at 58-61, OTI at 9-30.

[79] *See* Sprint at 4 (quoting *2016 Lifeline Modernization Order* at ¶ 399).

society are losers."[80] A hard budget cap places the Commission in the position to determine which families or individuals are more deserving of Internet access."[81] This includes taking communications away in life or death situations, like natural disasters. A self-enforcing budget may eliminate service for "families that need connectivity, and will not equip the program to respond in times of great need,"[82] like the devastation seen in the 2017 hurricane season. Altogether, the record makes an overwhelming case that the proposed budget cap would widen, not narrow, the digital divide, harming the public interest and contravening the Commission's universal service mandate.[83]

The record contains little support for imposing a self-enforcing budget on the Lifeline program, save for blanket claims that the Lifeline program requires cost controls. Citizens Against Government Waste argues that the proposed hard budget cap is a "fiscally responsible approach to managing costs and an appropriate method for the commission to restrain the growth of a program whose budget has exponentially increased over many years."[84] This is argument is unfounded and out of touch with the realities of the Lifeline program as it exists today. In reality, Lifeline is a drastically underutilized social safety net program—and the record makes this fact abundantly clear. In fact, as multiple commenters emphasize, Lifeline remains extremely undersubscribed and serves a mere 33 percent of individuals who are eligible for the program.[85]

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[80] MMTC at 15.
[81] Comments of Common Sense Kids Action at 10 ("Common Sense Kids").
[82] *Id*. at 9.
[83] New York State PSC at 2 ("Erecting an arbitrary budget that would automatically curtail Lifeline benefits would simply widen the digital divide and ill serve the public interest").
[84] CAGW at 10.
[85] INCOMPAS at 14 ("the program remains substantially undersubscribed and, as a result, trying to impose a self-enforcing budget at this time would likely make the problem worse, not better"), ITIF at 7 ("Far fewer individuals actually participate in Lifeline than are eligible"), Q Link at 20 ("Lifeline is chronically undersubscribed - about 33% of eligible households subscribe").

Present Lifeline program disbursements are significantly below its historic high[86] (which was still approximately $1M under the current budget), and there is no evidence that runaway spending is on the horizon, or that the current budget process is inadequate.[87] Commenters agree that the Commission does not offer sufficient justification and has "failed to articulate any reasoned rationale for its 180 degree turn and decision to discard the existing budget mechanism."[88] The evidence in the record overwhelmingly rejects the adoption of self-enforcing budget.

B. A Maximum Lifetime Benefit Undermines the Purpose of the Lifeline Program and Should Be Abandoned by the Commission

The *NOI*'s proposed maximum lifetime Lifeline benefit ignores the realities of those who depend on it.[89] As consumers age, the need for affordable communications does not disappear, and arbitrarily capping the amount of Lifeline support an individual can receive in a lifetime would harm the economically-vulnerable populations. Creating a lifetime benefit cap would also require the Commission to track Lifeline customers throughout their lifetimes. Imposing a lifetime benefit cap on the Lifeline program is costly, cruel, and unnecessary.

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[86] Cox at 10, INCOMPAS at 14 ("there is neither a compelling need for a self-enforcing budget for the Lifeline program at this time, nor a rationale for imposing one …, nor a practical means to do so"), Sprint at 4, 7.

[87] TracFone at 59 ("There is no evidence to suggest that the current budget process for the Lifeline program is inadequate, nor is it likely that actual disbursements for the Lifeline program in the near future will go beyond the budget threshold for further FCC action established in the *2016 Lifeline Modernization Order*."), Sprint at 4 ("There is no evidence to suggest that the budget approach adopted in the *2016 Lifeline Modernization Order* is not working or that the $2.25 billion budget adopted in that order is unreasonable.").

[88] Free Press at 56.

[89] *NOI* at ¶¶ 130-31.

Every single commenter that weighed in on the lifetime benefit cap proposal opposed the plan.[90] There is not a single word of support in the record for the Commission's proposal. The record makes it overwhelmingly clear that placing an arbitrary cap on Lifeline benefits in an individual's lifetime is "inconsistent with the [program's] goal of making service more affordable for eligible low income Americans."[91] A benefit cap is contrary to the ultimate purpose of Lifeline and universal service, and creates competing lists of the vulnerable instead of providing them with a tool for economic mobility.[92]

Particularly, the record indicates that a Lifetime benefit cap would disproportionately adversely affect vulnerable populations like children and veterans. Children, who depend on broadband access to complete their homework, rely on their parents' eligibility for Lifeline services. As Common Sense Kids Action highlights, a lifetime benefit cap would deprive a child from access to critical broadband services simply because their parent reached an arbitrary maximum benefit level before they were born.[93] Moreover, households with multiple children will be harmed and could potentially exacerbate the Homework gap by denying Lifeline benefits to younger children if their family maximum benefit was reached when an older sibling needed broadband access.[94] Similarly, a benefit cap will "disproportionately punish older low-income American veterans, who may find they again need Lifeline service later in life, but who will no

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[90] *See* e.g., TracFone at 66-67, CTIA at 3; NALA at 108-110, NHMC at 31-33, Letter from Association for Community Affiliated Plans, Blue Cross Blue Shield Association, and Medicaid Health Plans of America, at 3 ("ACAP, et al."), Free Press at 61-62, OTI at 25-28, Low Income Consumer Advocates at 14-15, Minnesota State Agencies at 12, Florida PSC at 8, American Veterans at 2.

[91] CTIA at 3. *See also* Free Press at 61, TracFone at 67 ("a limit on lifetime Lifeline benefits is inconsistent with the purpose of the program"), OTI at 27 ("Preventing elderly Americans from being able to make a 911 call because they have been in the Lifeline program for more than an arbitrary number of years undermines the core purpose of universal service.").

[92] AAAJ at 3.

[93] Common Sense Kids at 11.

[94] OTI at 27.

longer be eligible to receive Lifeline-supported service."[95] Nearly 1.4 million veterans could be affected by the Commission's proposed lifetime benefit cap, essentially placing "an expiration date on [Lifeline's] support for our nation's veterans."[96]

Commenters also explain that imposing a lifetime benefit cap would unnecessarily complicate program administration. OTI points out that creating a maximum benefit cap "would substantially complicate the program, jeopardize consumer privacy, deter consumer and provider participation, and destabilize the Lifeline marketplace."[97] Many commenters agree: the level of complexity and administrative oversight that would be required to track and catalogue data in fulfillment of a maximum lifetime benefit cap is unprecedented.[98]

The record contains no support for a lifetime benefit cap. The Commission's justification for a lifetime benefit cap amounts to a "misguided belief that users would be more discerning about signing up for Lifeline if…[there was a maximum benefit cap]," which, as Free Press points out, "is unsupported by the evidence."[99]

Not only is a lifetime benefit cap cruel and nonsensical, it would harm the very mission of the Lifeline program and would disincentivize provider participation. As the Minnesota Public Utilities Commission and Minnesota Department of Commerce articulates, capping lifetime Lifeline benefits is opposite to the Commission's declared goal of increasing broadband deployment via regulatory reform.[100] Eliminating potential Lifeline consumers via a maximum lifetime benefit (or other mechanisms proposed by the Commission in this proceeding such as a

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[95] Letter from the National Korean War Veterans Association at 2 ("Korean War Veterans"); *see also* American Veterans at 2.
[96] OTI at 28.
[97] *Id*. at 25.
[98] *Id*. at 27, Low Income Consumer Advocates at 14, Florida PSC at 8.
[99] Free Press at 61.
[100] Minnesota State Agencies at 12.

self-enforcing budget or maximum benefit amount) disincentivizes providers, even those who are facilities based, from investing in expanding their services.[101] Further, restricting the length of time in which a Lifeline benefit can be utilized "may serve to inhibit facilities investment,"[102] undercutting one of the *NPRM*'s few clearly stated motivations. The record strongly opposes the *NOI*'s proposal to enforce a maximum discount or require a copay from Lifeline customers.

C. Requiring a Co-pay or Enforcing a Maximum Discount for Recipients Will Devastate the Lifeline Program

The Commission should continue to focus the Lifeline program to address affordability and abandon its proposal to require a copay from Lifeline subscribers. Requiring a copay or enforcing a maximum discount dismisses the economic-fragility and vulnerability of low-income consumers who utilize Lifeline services. Most Lifeline subscribers are enrolled in "free" options offered by the program, and could be economically devastated by a sudden, unexpected copay requirement, perhaps even turning to destructive lines of credit to remain connected. The free Lifeline service options are the most popular among subscribers because it is the most economically feasible for them, who as low-income consumers simply do not have the spare income to contribute to a plan requiring additional payment.[103] Without a truly free Lifeline option, low-income consumers will be left between a rock and a hard place, forced to choose between dropping out of the program (and losing their 21st century connection to the world) or resorting to harmful alternatives, like high-interest loans, to maintain service. It is unfair and unnecessary for the Commission to drive low-income consumers to debt and economic ruin by requiring a copay. The Lifeline program is, and always has been, rooted in purposeful assistance

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[101] *Id.*
[102] *Id.*
[103] *See* NALA at 64 ("no-cost Lifeline services allow low-income Americans to maintain a consistent communications method and phone number even when they do not have the disposable income to pay for it").

to combat affordability issues for communications services. Lifeline will cease to fulfill its purpose as a pathway out of poverty if those who are eligible for services have to avail themselves further into poverty to receive assistance.

The record strongly opposes the implementation of a maximum discount or copay requirement in the Lifeline program.[104] Commenters highlight that the Lifeline program is most effective for "the most economically fragile subscribers—homeless veterans, domestic violence victims, and victims of natural disasters—because they do not require a credit check, deposit, late fees, or a checking account or some other way to make a monthly payment."[105] Proposals for a copay requirement "ignore the lived experience of low-income consumers who--when compared to middle-class and more affluent Americans--lack the money, time, and social capital to undertake what seems like a simple task--paying a few dollars a month for service."[106] As NHMC emphasizes, "for families that would otherwise qualify for Lifeline, taking on a bill for communications services necessarily comes at the expense of other important needs such as food, healthcare costs, clothing, or school supplies."[107] Access to communications is a necessity for low-income families, and should be treated by the Commission as such.

Many Commenters raise concerns about the harmful effects a copay would have on low-income communities who historically struggle with access to financial services. The Federal Deposit Insurance Corporation estimates that 9 million households are unbanked; an additional 19.9 percent are underbanked, and thus resort to money orders, payday loans and check cashing

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[104] *See* e.g., Sprint at 2, 8-12, TracFone at 61-63; Q Link at 42-43, INCOMPAS at 7-12, NALA at 61-66, NHMC at 25-26, Comments of Hispanic Technology and Telecommunications Partnership at 2, Free Press at 56-61, OTI at 32-33, Low Income Consumer Advocates at 15-17, NAACP at 2, National Grange at 3.
[105] Letter from Consumer Action at 2.
[106] INCOMPAS at 8.
[107] NHMC at 26.

in order to pay their monthly bills.[108] Moreover, 57 percent of those in unbanked households cited not having enough money to maintain an account as why they continued to remain unbanked.[109] These unbanked or underbanked consumers would undoubtedly be left behind under a Lifeline program that required monthly payments. Adding a payment requirement would be expensive for unbanked Lifeline customers; a "small co-pay for Lifeline balloons into many multiples of that amount in reality" when a customer must resort to "check cashing stores or money transfer services that are expensive."[110]

The record also indicates that a mandatory copay would increase costs for providers and would increase churn rates.[111] As TracFone explains, the FCC's broadband pilot program and TracFone's surveys show "that the demand for Lifeline services is highly elastic when it comes to price, indicating that even a modest monthly copay could greatly reduce the Lifeline participation rate, by as much as 85%."[112] Requiring a copay means increased administrative oversight for providers and "increased business cost[s] for setting up and maintaining billing systems, hiring billing and collections staff, and handling partial and late payments as well as negotiating payment plans."[113] Shifting Lifeline's structure to require monthly payments from low-income consumers "will likely lead to disconnections and churn, which would increase

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[108] Federal Deposit Insurance Corporation, 2015 National Survey of Unbanked and Underbanked Households (2015), *available at* https://www.fdic.gov/householdsurvey ("FDIC Survey"), *see also* Consumer Action at 2.
[109] *See* FDIC Survey.
[110] INCOMPAS at 10.
[111] *See e.g.,* Free Press at 57, 60, TracFone at 62, Q Link at 42, Sprint at 8-9 ("The Commission further found that even a modest minimum charge could be an excessive financial burden that will discourage potential low-income consumers from enrolling in Lifeline, and cause existing subscribers to leave the program"), OTI at 1, INCOMPAS at 11, National Grange at 3, Comments of Communications Workers of America at 4.
[112] TracFone at 62.
[113] Low Income Consumer Advocates at 17.

long-term costs to carriers and reduce program effectiveness,"[114] the exact opposite of the Commission's intention to improve efficiency.[115] The record also overwhelmingly asserts that there is no evidence to show that the Commission's proposed mandatory copay would do anything to protect the integrity of the Lifeline program.[116]

Few commenters in the docket support a mandatory copay. Those that do simply reiterate the Commission's position and assert that requiring a financial contribution for Lifeline-supported service encourages beneficiaries to "value" the service, and that a required copay will ultimately deter fraud.[117] This argument is equally unpersuasive as it is insensitive; ranking Lifeline eligible consumers and choosing which consumers receive access to communications services is directly opposite to the Commission's statutory mandate of Universal Service. It will also damage the Lifeline program more than it will "fix" it, as "poor people are far less likely to be able to pay a given bill in a given month than are people who do not struggle financially to survive," and "requiring households that struggle to pay even a nominal amount will result in higher churn rates."[118] Further, commenters emphasize that there is zero evidence to show current Lifeline subscribers do not currently "value" the services the Lifeline program subsidizes, or that the implementation of a mandatory co-pay would have any effect on the value

[114] Free Press at 60.
[115] *See* Free Press at 58.
[116] *See* TracFone at 62 ("There is not a scintilla of evidence to suggest that a co-pay requirement would lead to reduction in waste, fraud, and abuse in the program, nor is there any evidence to suggest that users of a "no cost" Lifeline service value that service any less than users of a service with a co-pay requirement"), Sprint at 10 ("we are aware of no evidence to support the theory that a modest (to ensure that service is affordable) minimum monthly usage fee would deter any end user intent on committing fraud").
[117] *See* Oklahoma PUD at 15.
[118] Free Press at 57.

that subscribers derive from Lifeline.[119] The record also demonstrates that the Commission has provided no evidence to show that a mandatory co-pay would reduce fraud.[120]

IV. THE COMMISSION SHOULD ABANDON ITS PHASE OUT OF VOICE-ONLY SERVICES AND CONTINUE PROVIDING THE OPTION OF CRITICAL VOICE SERVICES TO LIFELINE RECIPIENTS

In the *2016 Lifeline Order*, the Commission chose to phase-out voice-only support from the Lifeline program.[121] The Commission found that "[t]o be sustainable and achieve our goals of providing low-income consumers with robust, affordable, and modern service offerings, a forward-looking Lifeline program must focus on broadband services."[122] Though the inclusion of broadband in the Lifeline program was strongly supported, the record in the *2016 Lifeline Modernization Order* docket also demonstrated strong support for the continued support for voice-only service.[123] Commenters explained that low-income consumers still relied on voice-only services, and the Commission agreed "that voice continues to be an important resource for consumers to utilize in communicating with others."[124] However, despite this concession, the Commission still chose to discontinue voice-only services from the Lifeline program. Millions of Americans are still dependent on voice service for essential communication, and the Commission should undo the *2016 Lifeline Modernization Order*'s decision to phase out support for voice-only services.

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[119] Sprint at 8, 10, CTIA at 23, Minnesota State Agencies at 10, NALA at 62.
[120] Sprint at 8, 10, TracFone at 62.
[121] *2016 Lifeline Modernization Order* at ¶ 52 ("we conclude that it is necessary that going forward the Lifeline discount will no longer apply to a voice-only offering following an extended transition period").
[122] *Id*.
[123] *Id*. at ¶57, n.166-67.
[124] *Id*. at ¶58.

Voice service is essential for all low-income consumers, not just those who reside in a rural area. Thus, the Commission should continue to support voice-only services and abandon the ongoing phase-out of support. Over 8.4 million Lifeline subscribers have chosen to include voice services either as a part of a bundle or as a stand alone service.[125] Voice-only services remain important for job seekers, parents, victims of domestic violence, and consumers in need of emergency services.

The record indicates that state-level public utility commissions are opposed to the Commission's proposed phase-out of voice only services. Nearly all of these commenters cite consumer choice and access to emergency services, particularly for seniors, as important rationales to continue voice-only support within Lifeline.[126] As Pennsylvania's Low Income Individuals, Service Providers, Organizations, and Consumer Rights Groups comment, "[e]liminating voice only Lifeline options would force low income families in rural and urban areas alike to choose between connecting with their community and accessing medical care, rent, heat, and other critical services."[127] The Oklahoma Public Utility Division also reminds the Commission that "Lifeline consumers, just as any other consumers, should be allowed to decide what best suits their needs (and provides the best value to them) and that stand-alone voice-services should be an option from which consumers can choose."[128]

Industry representatives and consumer advocates agree, and emphasize the continued to need for voice-only services throughout the Lifeline program, and not just in rural America.[129] Commenters also emphasize that voice-only services within the Lifeline program are essential to

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[125] Low Income Consumer Advocates at 8.
[126] *See* Minnesota State Agencies at 6, Nebraska PSC at 7-8, California PUC at 13, Oklahoma PUD at 9, NARUC at 24, Florida PSC at 4.
[127] Pennsylvania Consumer Rights Groups at 4.
[128] Okahoma PUD at 9.
[129] TracFone at 56-57, Low Income Consumer Advocates at 8-9.

bridging the communications gap, as "affordability is still a barrier for low-income consumers to access basic voice service."[130] Further, the "phasing down of Lifeline support appears to be counter-productive in meeting the communication needs of low income consumers,"[131] and the Commission's overall goal of technology-neutral universal service. Even as technologies have advanced and evolved, basic voice service continues to be a critical communications service; people still rely on it to conduct business, communicate with loved ones, and to contact emergency services, regardless of an individual's zip code.

V. THE COMMISSION SHOULD NOT ELIMINATE THE LIFELINE PROGRAM'S EQUIPMENT REQUIREMENT

The *2016 Lifeline Modernization Order* required "Lifeline providers that provide supported broadband service and devices to their consumers to provide devices that are Wi-Fi enabled, and to offer devices that are equipped with hotspot functionality."[132] Additionally, the Commission prohibited tethering charges.[133] To provide time for the market to adapt to the equipment requirement, the Commission established a transition timeline that extends to December 1, 2024.[134] The *NPRM* seeks comment on whether to eliminate this equipment requirement.[135] It should not.

As the Commission explained in 2016, "Wi-Fi enabled phones are essential tools to help individuals stay connected, and because the hotspot requirement will help to ensure that households without fixed Internet access will be able to share their access will be able to share

[130] Low Income Consumer Advocates at 8.
[131] Minnesota State Agencies at 6.
[132] *2016 Lifeline Modernization Order* at ¶ 367.
[133] *Id*. at ¶ 377.
[134] *Id*. at ¶ 378.
[135] *See NPRM* at ¶ 81.

their access to the Internet among multiple members if so desired."[136] Further, the Wi-Fi requirement allows Lifeline subscribers to access the internet using Wi-Fi networks that are less expensive (and often free) than purchasing additional data or larger data plans.[137] The Commission made clear that by mandating Wi-Fi access in devices provided by Lifeline-supported broadband service providers, it sought to "increase the value of the supported connection so that Lifeline consumers can regularly and reliably access the Internet."[138]

In adopting its requirement hotspot functionality requirement, the Commission noted that the most economically vulnerable Americans are the most likely to be mobile dependent. Hotspot functionality can allow multiple users to access the internet, even in a mobile-only household, significantly increasing the usefulness of both the device and the BIAS service.[139]

In seeking comment on the equipment mandate, the Commission argues that the requirement may be unnecessary because most Americans already have Wi-Fi enabled smartphones.[140] However, the record reflects strong support for keeping the equipment mandate, and minimal opposition.[141] The *2016 Lifeline Modernization Order* pointed out that the vast majority of American consumers already own Wi-Fi enabled mobile devices, and that hotspot-enabled devices are increasingly ubiquitous.[142] As a result of the widespread availability and popularity of these devices, they should not be significantly more expensive for providers to supply than non-Wi-Fi-enabled devices. Any minor cost increase for these devices is far

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[136] *2016 Lifeline Modernization Order* at ¶ 367.
[137] *See id*. at ¶¶ 375-76.
[138] *Id*. at ¶ 374.
[139] *Id*. at ¶ 377.
[140] *NPRM* at ¶ 81.
[141] *See e.g.,* Media Alliance, Common Sense Kids at 12-13, NATOA & NLC at 4, National Housing Conference at 3, NYC at 4-5, Oregon CUB at 3, OTI at 11-17. *But See* Reply Comments of Daniel Lyons, Associate Professor of Law, Boston College Law School at 1, Sprint at 23.
[142] *2016 Lifeline Modernization Order* at ¶¶ 376-77.

outweighed by the additional functionality and utility that Wi-Fi and hotspot enabled devices provide for multiple users.

The value of Wi-Fi and hotspot capability is undisputed. For example, Common Sense Kids Action notes that for households with access to a computer, tethering can be critical for improving a student's ability to do homework or fill out financial aid forms on a larger screen.[143] Other commenters echo the *2016 Lifeline Modernization Order's* explanation that Wi-Fi and hotspot enabled devices enhances internet access for Lifeline recipients.[144] Greater consumer demand for and usage of Wi-Fi networks will drive investment in and deployment of these networks – helping to close the digital divide and make broadband access more ubiquitous and affordable.

The City of New York explains that many cities are deploying technologies to enhance internet access, such as public Wi-Fi installations, and that promoting Wi-Fi enabled devices for Lifeline subscribers ensures that those consumers can access these publicly available networks and increase the usefulness of their connection.[145] New York is not alone. OTI explains that more than fifty cities now offer free Wi-Fi. Eliminating the Wi-Fi mandate would see Lifeline subscribers without Wi-Fi-enabled devices burn through limited mobile data allotments faster than necessary, and either incur expensive overages or reduce their data usage.[146] Reductions in network usage and demand leads to less investment in and deployment of broadband-capable networks.

To conclude, The Oregon Citizens' Utility Board correctly explains that there is no legitimate rationale for eliminating the equipment mandate, and doing so would run counter to

[143] Common Sense Kids at 12.
[144] *See* NATOA & NLC at 4, National Housing Conference at 3.
[145] NYC at 5.
[146] OTI at 12-13.

the FCC's stated interest in closing the digital divide and incentivizing broadband network expansion.[147] We agree.

VI. THE COMMISSION SHOULD FOCUS ON IMPLEMENTING THE NATIONAL VERIFIER

The *2016 Lifeline Modernization Order* established the National Lifeline Eligibility Verifier "to make eligibility determinations and perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline program."[148] The Commission explained that the key objectives for the National Verifier were to "protect against and reduce waste, fraud, and abuse; to lower costs to the fund through administrative efficiencies; and to better serve eligible beneficiaries by facilitating choice and improving the enrollment experience."[149] Rather than adopt its myriad of counterproductive proposals, the record reflects a strong desire for the Commission to focus its efforts on standing up the National Verifier.

Many commenters strongly urge the Commission to defer consideration of larger changes to the Lifeline program.[150] Verizon cautions that the Commission should first implement the National Verifier, and that "[a]dditional changes to the program at this time are premature and could divert carrier and USAC resources better targeted to the successful implementation of the National Verifier."[151] Several parties explain that once successfully implemented, the National Verifier should effectively address many of the issues raised by the *NPRM*, and improving the

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[147] Oregon CUB at 3.
[148] *2016 Lifeline Modernization Order* at ¶ 126.
[149] *Id*. at ¶ 128.
[150] *See e.g.*, Verizon at 1-3, ITIF at 6, Sprint at 2, NALA at 24-26, USTelecom at 2.
[151] Verizon at 2-3.

integrity of the Lifeline program.[152] The Commission should heed this input and abandon the harmful proposals detailed above.

Lastly, the Commission should not halt new Lifeline enrollments in states where the launch of the National Verifier has been delayed. This suggestion would needlessly harm consumers, and has been summarily rejected in the record.[153] Sprint points out that "it is unreasonable and unfair to hold hostage or otherwise penalize eligible end users and Lifeline service providers because of a state's unwillingness or inability – technical, financial, or other – to participate in the timely deployment of the National Verifier."[154] Such an approach would "vague, potentially arbitrary, and punitive" toward faultless Lifeline-eligible persons and providers.[155] The Florida Public Service Commission correctly explains that the Commission's proposal is ripe for abuse, and that blameless Lifeline-eligible low-income families would likely bear the harm.[156] Rather than adopting an approach that is sure to harm vulnerable, Lifeline-eligible households, the Commission should, as it works with states to stand up the National Verifier, allow eligible subscribers to continue to enroll in the program, with eligibility determinations made, as they are today.[157]

VII. CONCLUSION

The Commission should abandon the *NPRM*'s harmful proposals, as addressed above. Instead, the Commission should focus its work on launching and implementing the National Verifier, and recommitting the Lifeline program to allow consumers to us the program's subsidy to support voice-only service, if desired.

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[152] *See* Sprint at 2, USTelecom at 2, ITIF at 6, NALA at 24.
[153] *See e.g.*, Minnesota PUC at 4, Florida PSC at 6, Sprint at 12-14, NALA at 104-106.
[154] Sprint at 13.
[155] *Id*. at 13.
[156] *See* Florida PSC at 6.
[157] *See* Sprint at 14.

Respectfully submitted,

/s/ Phillip Berenbroick
Senior Policy Counsel
PUBLIC KNOWLEDGE

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