FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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
	)	

COMMENTS OF THE CITY OF NEW YORK

I. INTRODUCTION

The City of New York ("the City") submits these comments in connection with the Federal Communications Commission ("FCC" or "Commission") proceedings listed above.[1] The City is concerned that the FCC's recent proposals limit the types of providers that can qualify for a Lifeline subsidy, cap available funds to deny eligible Americans Lifeline benefits, eliminate an equipment requirement to deprive low-income Americans access to Wi-Fi enabled devices, prioritize benefits to the detriment of urban low-income communities, and recommend an undefined and insufficiently detailed risk-based approach for audits.

Nearly one third of New York City households do not have a home broadband subscription.[2] The lowest income New Yorkers are nearly twice as likely to lack a home broadband subscription as the city-wide population, and more than five times as likely as those with the highest income.[3] Broadband service in New York City is more expensive than both the national average and

[1] *In the Matter of Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization,* and *Telecommunications Carriers Eligible for Universal Service Support*, 83 FR 2104, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (*hereinafter* "NPRM and NOI").
[2] 2016 American Community Survey Public Use Microdata Sample as augmented by NYC Opportunity (group quarters deleted), *prepared by* Poverty Research Unit, NYC Opportunity (Jan. 2018).
[3] *Id*.

international standards.[4] The City remains committed to addressing these broadband affordability challenges and achieving universal broadband for our residents and businesses, and we seek a complementary national policy that ensures that affordable broadband options are available to all Americans. As discussed below, the City believes that the Commission's proposed changes will do more harm to the Lifeline program than good and make it increasingly difficult for the most vulnerable Americans in urban areas to access needed funds for more affordable internet service.

II. STAND-ALONE LIFELINE BROADBAND PROVIDER DESIGNATIONS SHOULD NOT BE ELIMINATED

The Lifeline Broadband Provider ("LBP") designation is an important feature of the Lifeline program, which has the potential for transformative benefits, leading to new investment in densely-populated, low-income urban areas that expand options for disadvantaged customers. The Commission's proposal to eliminate standalone LBPs[5] would prevent lower cost providers that do not operate their own networks from participating in the program. New Yorkers, especially those in public housing, need greater participation in the Lifeline program by New York City internet service providers ("ISPs"), not less. Eliminating standalone LBP designations could favor larger service providers such as the traditional telephone operators or the four major wireless carriers, disadvantage businesses willing to serve low-income populations, and provide fewer choices for consumers.

The Commission notes in its NPRM that Lifeline's goal is to "increase the ability to pay for services of low-income households,"[6] but eliminating the standalone LBP designation and requiring the provision of voice service does not further this goal. Rather, it merely requires that providers offer another service they may have already determined is not economically viable to offer, and a Lifeline subsidy is unlikely to change that. As the City noted in previous filings in this proceeding, New York City needs companies willing to make new investments that benefit

[4] According to a 2014 New America study, the cost of a 25 Mbps broadband connection was higher in New York City than any of the other 24 cities included in the study, domestic or international. *See*, Nick Russo et al., *The Cost of Connectivity 2014*, New America Open Technology Institute (Oct. 30, 2014), https://www.newamerica.org/oti/policy-papers/the-cost-of-connectivity-2014/ (examining the estimated cost of a 25 Mbps connection).

[5] NPRM and NOI at ¶ 58.

[6] NPRM and NOI at ¶ 65.

customers with varying levels of means, including and especially those in public housing, or companies willing to develop business models focused on low- and moderate-income consumers.

Further, the City is concerned that the Commission's proposal to end the stand-alone LBP designation when taken with its proposal to continue with the phase down of Lifeline support for voice service may be viewed as a means to effectively phase down the entire Lifeline program.[7]

III. LIFELINE SHOULD NOT BE LIMITED TO FACILITIES-BASED BROADBAND NETWORKS THAT ALSO SUPPORT VOICE SERVICE OVER THE ELIGIBLE TELECOMMUNICATIONS CARRIER'S LAST-MILE NETWORK

Limiting Lifeline eligibility to facilities-based broadband providers that also support voice service[8] and excluding resellers will significantly harm the 70% of Lifeline subscribers who only get service through non-facilities based broadband providers.[9] In New York State, as of April 2017, there was only one broadband provider and four wireless service providers taking part in Lifeline; three of those wireless providers appear to be resellers.[10] Ending eligibility for non-facilities-based providers could restrict users who depend on Lifeline for mobile service to a single company, creating a monopoly for Lifeline service and decreasing, rather than increasing, competition. Those consumers who would most benefit from multiple broadband choices from multiple providers could be left with few options for affordable service. Further, non-facilities-based providers buy and resell services from facilities-based providers; users of any of the service providers are therefore likely to encourage investment in broadband networks. Additionally, investment in broadband networks is subject to diverse pressures; it is not clear that restricting Lifeline support to facilities-based providers would have any significant effect on investment in broadband networks, but it could cause significant disruptions to the lives and finances of the people who rely on Lifeline service provided by non-facilities-based providers. Finally, it is unclear how this proposal to limit Lifeline participation to facilities-based networks that also

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[7] NPRM and NOI at ¶¶ 74-76.

[8] NPRM and NOI at ¶¶ 63-73.

[9] Phillip Berenbroick, *Chairman Pai Plans to Put an End to the U.S. Commitment to Universal Service and Affordability*, Public Knowledge (Nov. 15, 2017), https://www.publicknowledge.org/news-blog/blogs/chairman-pai-plans-to-put-an-end-to-the-us-commitment-to-universal-servic.

[10] *NYS Lifeline Provider List*, New York State Public Service Commission (April 2017), *available at* http://www3.dps.ny.gov/W/AskPSC.nsf/All/01BC8E76E515299785257FA2006AE2F7?OpenDocument (click link for "Lifeline-Providers 2017.pdf") (the wireless providers are Access Wireless, Assurance Wireless/Virgin Mobile – Sprint, Safelink Wireless/Tracfone, and Verizon Wireless; the broadband provider is Time Warner Cable (now Charter)).

support voice service would operate in concert with the planned phase down of voice service support in the Lifeline program. The City is concerned that these policies taken together will decrease investment, as Lifeline providers may anticipate their investments in voice service may be stranded after the phase down.

IV. PHASE DOWN OF LIFELINE SUPPORT FOR VOICE SERVICE SHOULD BE HARMONIZED WITH OTHER PROPOSALS

The City believes the Commission needs to clarify its plans regarding the phase down of Lifeline support for voice services. While the Commission states that it intends to continue the phase down targeted for 2021 to encourage investment in broadband-capable networks,[11] the Commission also "propose[s] limiting Lifeline support to broadband service provided over facilities-based broadband networks that *also support voice service* [emphasis added]."[12] It appears the Commission intends to require that Lifeline providers maintain networks that provide a service that would at some point be phased out of the Lifeline program. Setting aside the question of whether the Commission should continue the phase down of Lifeline support for voice services, it is unclear what effect these two proposals, if both were adopted, would have on provider participation. It seems unlikely that requiring broadband providers to support voice services but neither reimbursing them for those services nor incentivizing consumers to take advantage of such services with Lifeline support would increase investment in networks or participation in Lifeline. Such a regulatory scheme would likely have the opposite effect, reducing investment in networks or causing providers to discontinue offering service under the Lifeline program, slowing broadband deployment and widening the digital divide. The Commission should harmonize its proposals regarding Lifeline before enacting any rule changes regarding the phase down of voice service from the Lifeline program, stand-alone LBP designations, or voice service requirements.

V. LIFELINE'S EQUIPMENT REQUIREMENT SHOULD BE RETAINED

The City opposes the Commission's proposal to eliminate the equipment requirement, particularly as it applies to mobile providers.[13] The current rule "mandates that any Lifeline provider that 'provides devices to its consumers[] must ensure that all such devices are Wi-Fi enabled,' prohibits

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[11] NPRM and NOI at ¶¶ 74-76.
[12] NPRM and NOI at ¶ 67.
[13] NPRM and NOI at ¶ 81.

'tethering charge[s],' and requires mobile broadband providers to offer devices 'capable of being used as a hotspot.'"[14] As the Commission notes, "a 'substantial majority' of Americans already own Wi-Fi enabled smartphones,"[15] and Americans that rely on Lifeline should not be relegated to second-class status with devices that lack common but no less essential features. Cities are deploying a range of technologies and strategies to support access to the internet, including Wi-Fi. New York City has extensive public Wi-Fi installations in parks, libraries, and other public spaces,[16] including LinkNYC, which provides fast, free, and secure Wi-Fi connections as well as free phone calls, access to emergency services, and device charging.[17] The City has also organized a project to provide broadband service over Wi-Fi to residents of the Queensbridge Houses, the largest public housing complex in the country with more than 3,100 households. Allowing Lifeline providers to offer devices that lack this essential functionality could cut those users off from these services and increase the digital divide.

VI. SAFEGUARDS ARE NECESSARY TO PREVENT WASTE, FRAUD, AND ABUSE BUT THE FCC'S PROPOSALS DO NOT SERVE THIS PURPOSE

While the City supports efforts to effectively identify and limit waste, fraud, and abuse,[18] such efforts should neither discourage use of the Lifeline program, nor result in people who should have access to the program being denied benefits. Eliminating minimum standards and replacing mandatory biennial independent audits with an undefined and unspecified risk-based audit approach would increase the uncertainty of participating in the program and potentially reduce participation by providers. The City is also concerned that this proposal could negatively impact Lifeline enrollment.

Further, interested parties cannot effectively comment on a proposal whose actual workings will be determined at a later date. This NPRM proposes to select companies for audits "based on risk factors identified by the Wireline Competition Bureau and Office of the Managing Director, in coordination with USAC."[19] Without knowing what those factors are, the City is unable to

[14] NPRM and NOI at ¶ 81.
[15] NPRM and NOI at ¶ 81.
[16] *NYC Wi-Fi Hotspot Locations*, NYC OpenData (last visited Feb. 13, 2018), https://data.cityofnewyork.us/Social-Services/NYC-Wi-Fi-Hotspot-Locations/a9we-mtpn (showing the locations of Wi-Fi hotspots that provided free or limited free (e.g., a number of free sessions per day) throughout New York City).
[17] *See*, LinkNYC, https://www.link.nyc/index.html.
[18] NPRM and NOI at ¶ 83.
[19] NPRM and NOI at ¶ 84.

substantively comment on this proposal. The relevant paragraphs provide commenters with no specific rules or proposals, and instead contain only vague references to "risk factors," and do not even go so far as to suggest what those risk factors might be. This broad discussion does not meet the standards required of a Notice of Proposed Rulemaking,[20] as it lacks both the substance of the proposal and a description of the subjects and issues involved. The Commission should not issue any rules on an as-yet underdetermined proposal.

VII. SELF-ENFORCING BUDGETS OR CAPS TO THE LIFELINE PROGRAM SHOULD NOT BE ADOPTED

The City is strongly opposed to a "self-enforcing budget mechanism" or placing caps on the Lifeline program.[21] Lifeline is intended to help Americans in need of financial aid to access communications services that have become a necessity in our society. The City understands the desire of the Commission to operate within budget, but not at the expense of the persons who depend on the Lifeline program as their only means to get online. The Commission does not suggest that such aid would only be decreased if providers were found to be engaging in fraud or allowing significant waste or abuse. Instead, the Commission's proposal would decrease benefits to each subscriber as the number of needy Americans increases. Caps or other budgetary restrictions to the Lifeline program would limit Americans' access to communications services at times they need to connect to public services, search for jobs, and take advantage of the low-cost, highly-efficient productivity services enabled by access to the internet. The Commission should not adopt any proposal that limits support when need is greatest.

VIII. PRIORITIZATION OF LIFELINE SUPPORT DOES NOT PROMOTE AFFORDABLE BROADBAND TO ALL

The Commission asks whether to prioritize rural areas over urban areas for Lifeline subsidies.[22] Lifeline aid should not be targeted to specific parts of the country. The program is intended to help subscribers get access to affordable services anywhere, and prioritizing certain areas over others is contrary to the Commission's charge to promote access to telecommunications and information services for "[c]onsumers in all regions of the Nation, including low-income

[20] 5 U.S.C. § 553(b).
[21] NPRM and NOI at ¶¶ 104-107.
[22] NPRM and NOI at ¶¶ 108 and 124-25.

consumers and those in rural, insular, and high cost areas . . . ."[23] The Commission should not target subsidies based on where consumers live to the detriment of similarly situated consumers in other areas of the country.

IX. CONCLUSION

While we support efforts to reform and modernize the Lifeline Program and to promote investment in broadband networks, the City believes that the FCC's recent proposals in its NPRM and NOI only serve to further disenfranchise the low-income and underserved communities the program purports to help. The FCC should therefore reconsider its proposals to reverse long-needed improvements to the Lifeline program and instead focus on moving forward with actions that further improve the program.

Respectfully,

/s/________________________

THE CITY OF NEW YORK

February 21, 2018

[23] 47 U.S.C. § 254(b)(3).