Before the
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 TRACFONE WIRELESS, INC.

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EXECUTIVE SUMMARY

TracFone Wireless, Inc. ("TracFone"), the nation's largest reseller of wireless telecommunications services, has been a good steward of public dollars in the Lifeline program for the nearly 10 years that it has participated in the program. TracFone is constantly modernizing and improving its internal systems to ensure compliance with program rules, while making constructive recommendations to the Federal Communications Commission ("FCC" or "Commission") and USAC aimed to further protect and strengthen the integrity of the program. To that end, TracFone commends the FCC for seeking comments on a number of TracFone's policy proposals aimed at preventing waste, fraud, and abuse in its *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding. In particular, TracFone appreciates the Commission seeking comment on its recommendation to adopt a "conduct-based approach" to Lifeline carrier eligibility that relies on various existing audit processes to determine a provider's eligibility to continue to participation in the Lifeline program.

TracFone also appreciates the Commission's ongoing desire to further reform the Lifeline program to reduce the program's exposure to waste, fraud, and abuse while enhancing the quality of service for its participants. Unfortunately, in proposing to exclude all non-facilities-based Lifeline providers (the "Facilities-Based Proposal") from the program and reorienting its mission from one that addresses affordability to one that encourages infrastructure deployment, the Commission has chosen a blunt instrument that would deny more than 8 million households their preferred Lifeline services without meaningfully reducing the opportunities for waste and fraud. Indeed, in proposing to do away with consumer choice and competition brought about by resellers, the NPRM fails to make the case for how the remaining facilities-based monopolies resulting from such regulatory intervention will spur rural network buildout or otherwise benefit Lifeline customers, particularly since many facilities-based providers have reduced their Lifeline

participation or sought to leave the program altogether in recent months. The NPRM also fails to demonstrate how using Lifeline dollars for infrastructure purposes will alter the economics of rural broadband deployment sufficiently to generate facilities-based competition while fulfilling the Congressional mandate to make communications services affordable for low-income consumers, regardless of where they live. The NPRM makes no cost-benefit analysis of the disruptions the Facilities-Based Proposal would create in the lives of 8.3 million eligible households – among them an estimated 1.2 million veterans and 1.4 million senior citizens – against the marginal benefits it may produce to enhance the integrity of the program. It departs greatly from the light-touch regulatory approach favored by the current Administration, and represents a sweeping, unprecedented, and possibly illegal governmental intrusion into an otherwise healthy and competitive marketplace that lacks signs of widespread market failure. The Commission must reject its proposal that singles out resellers for their collective status, not for their individual behaviors, and that, if implemented, will forever undermine the utility of the Lifeline program for more than two out of every three existing Lifeline subscribers and render it inaccessible or impractical for still millions more.

Even if the Commission rightly rejects the Facilities-Based Proposal and TracFone and other resellers are permitted to continue serving Lifeline customers, the NPRM includes several additional proposals targeting the resale business model or the program in general that would render it uneconomical for resellers or other Lifeline providers to continue offering Lifeline services in their current form. Specifically, the NPRM's proposals to limit disbursements to resellers to the amounts paid to wholesale carriers contradicts the plain text of the statute as well as bipartisan understanding of the types of services for which Lifeline dollars are intended. The proposal to adopt a maximum discount level would eliminate the most popular types of Lifeline

offerings that have improved the program's participation rate. Other proposals, such as a self-enforcing budget cap or the discontinuation of voice-only support phase down in only rural parts of the country, are similarly misguided. Collectively, TracFone fears that the adoption of these proposals will lead to millions more eligible households uninterested or unable to participate in the program, deteriorating competition amongst Lifeline providers, stagnating quality of services for their customers, and a failure of the Commission to meet its statutory mandate that universal service support be "specific, predictable, and sufficient" for low-income consumers in all parts of the nation. TracFone urges the Commission to consider these unintended consequences in mind as it reviews the record.

At the heart of the Lifeline program is a mission shared by all Universal Service Fund programs: a mandate to make affordable communications services available to *all* Americans in *all* parts of the country. The Commission should bear that goal in mind and redirect its attention to combatting Lifeline waste, fraud, and abuse in appropriately tailored ways, redouble its attention and effort on recently adopted measures such as the National Verifier to ensure they are implemented faithfully, and allow a competitive Lifeline market to flourish without unnecessary government intervention. TracFone is hopeful that the current Commission will succeed where previous Commissions have failed: making Lifeline an efficiently managed program not by sheer regulatory force, but by listening and responding to the needs of low-income families through a light regulatory touch that maximizes this limited public resource and makes the program more convenient, affordable, and accessible for those in need of a hand up, not a handout.

I. INTRODUCTION AND BACKGROUND

TracFone Wireless, Inc. ("TracFone") hereby comments on the Federal Communications Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding regarding proposed reforms to the federal Universal Service Fund's ("USF") Lifeline program for low-income consumers.[1] Although TracFone appreciates the Commission's commitment to addressing challenges facing the Lifeline program and its thoughtfulness in determining how to advance key policy interests, this NPRM proposes drastic departures from previous policies. In so doing, the Commission threatens to harm low-income consumers, significantly decrease competition in the market for Lifeline services, and undermine the universal service principles that underlie the Lifeline program.

As the Commission considers taking additional steps to reform the Lifeline program, TracFone urges the agency to be mindful of the policy that lies at the heart of the program: making communications services accessible to low-income consumers across the country, regardless of where they live. The FCC has long recognized the affordability challenge posed by traditional voice services for low-income Americans. That is why by the time Congress enacted the Telecommunications Act of 1996, which created the Universal Service Fund and formed the basis for the High Cost Fund, the Rural Health Care Program, and the E-Rate Program, the Commission's own Lifeline Assistance Program had already been in existence for over a decade.[2] Cognizant of the importance of the program in furthering the goals of universal service, Congress not only identified low-income households in the "Universal Service Principles" as a

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[1] *Bridging the Digital Divide for Low-Income Consumers*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, 2017 WL 6015800 (Dec. 1, 2017) ("NPRM").

[2] *See generally MTS and WATS Market Structure; and Establishment of a Joint Board; Amendment*, Final Rule, 50 Fed. Reg. 939-01 (1985) (creating the Lifeline Assistance Program).

separate and distinctive consumer population to be served by the Fund,[3] it also created a specific "savings clause" section to preserve the then-existing administration of Lifeline service to needy consumers.[4]

Indeed, while incorporating the pre-existing Lifeline program into the USF mechanism, Congress fully intended Lifeline to remain a consumer-centric program focusing on the affordability of services and adoption. In the Senate Commerce Committee report that accompanied the Senate version of the Telecommunications Act, the term "affordable" used to describe the Universal Service Principles was made "in reference to what consumers are able and willing to pay for a particular service included in the definition of universal service."[5] In explaining the predecessor provision to section 254(e) of the Communications Act, the report explained that this provision was "not intended to prohibit support mechanisms that directly help individuals afford universal service. For instance, nothing in this section is intended to limit or eliminate the Lifeline and Link-up America programs currently enforced by the Commission and States, and other similar programs."[6]

For nearly 33 years after the Commission established the Lifeline program, the same basic understanding of Lifeline as the only FCC consumer-oriented universal service program focusing on the affordability of communications services guided the Commission's

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3 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.").

4 *Id.* § 254(j) ("Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.").

5 Report of the Committee on Commerce, Science, and Transportation on S. 652, S. Rep. No. 104-23, at 26 (1995).

6 *Id*. at 29.

administration and reform of the program. Under the leadership of six bipartisan FCC Chairmen, the Lifeline program experienced a period of steady growth that led to vigorous competition among Lifeline service providers and rapid increases in consumer benefits under the service plans, which in turn led to unprecedented increases in program participation by eligible subscribers. Indeed, the program has now grown to serve roughly 12 million customers, including 1.2 million veterans and 1.4 million senior citizens, even though participation among eligible consumers remains below 50%.

The most significant expansion of the program occurred when Chairman Kevin Martin, after Hurricane Katrina, exercised the Commission's forbearance authority to permit non-facilities-based wireless carriers to participate in the Lifeline program.[7] Following that visionary decision, a vibrant and fiercely competitive marketplace emerged to serve the needs of some of the most ignored and forgotten in our society. TracFone was the first wireless reseller to offer a Lifeline service plan that included voice minutes and text messages with a free phone at no cost to consumers. For the first time, Lifeline subscribers were able to enjoy the benefits of having a mobile device without having to worry about paying out of pocket. This new service would prove to be a key growth factor for the program, as many Lifeline beneficiaries live paycheck to paycheck and cannot afford even a modest copay. As other resellers entered the market, competition encouraged carriers to provide even better benefits and services. From 2008 – when TracFone was first permitted to participate in Lifeline – to immediately prior to the adoption of the Commission's *2016 Lifeline Reform Order*, TracFone increased its monthly voice benefit

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7 *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15095 (2005) ("*2005 Forbearance Order*"), *modified by* 24 FCC Rcd 3375 (2009).

from 250 to 350 minutes, and its monthly text message allowance from 1,000 messages to unlimited text messaging.

Of course, the expansion of Lifeline was not without growing pains. Opportunities for waste, fraud, and abuse emerged as a result of challenges such as customers seeking duplicative support and a lack of reliable mechanisms to determine customer eligibility. Fortunately, the FCC took decisive action in 2012 and again in 2016 to address vulnerabilities in the system.[8] Although the full impact of these reforms have yet to be seen, it is unmistakable that the size of the Lifeline program has stabilized at around $1.5 billion since 2014.[9]

It is against this backdrop that a significant number of proposals in the Commission's most recent foray into Lifeline reform seem misaligned with Commission's oft-stated goal of helping to connect people to the digital economy. Disregarding the statutory mandate and decades of bipartisan consensus, the NPRM seeks to re-envision the Lifeline program as a subsidies program for rural broadband deployment, premised upon redirecting Lifeline dollars to overbuild incumbent service providers' last mile facilities in an attempt to generate competition to benefit low-income households exclusively in rural areas. To achieve this goal, the NPRM

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8 *See Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, ¶¶ 179-299 (2012) ("*2012 Lifeline Reform Order*") (adopting multiple reforms designed to curtail Lifeline waste, fraud and abuse, including creating a National Lifeline Accountability Database to prevent multiple carriers from receiving support for the same subscribers; phasing out toll limitation service support; eliminating Link Up support except for recipients on Tribal lands served by eligible telecommunications carriers that participate in both Lifeline and the high-cost program; reducing the number of ineligible subscribers in the program; and imposing independent audit requirements on carriers receiving more than $5 million in annual support); *Lifeline and Link Up Reform and Modernization*, 31 FCC Rcd 3962, ¶¶ 126-216, 395-432 (2016) ("*2016 Lifeline Reform Order*") (adopting reforms to further curtail Lifeline waste, fraud and abuse in the program, including creating the National Verifier; modifying the list of federal assistance programs that provide default Lifeline eligibility; removing state-specified eligibility criteria for Lifeline support; preempting states from designating Lifeline Broadband Providers; establishing a non-self-enforcing budget for the program; and requiring the creation of uniform, standardized forms for the Lifeline program as deemed appropriate by the Wireline Competition Bureau).

9 *See* Universal Service Administrative Company, "Funding Disbursement Search," https://usac.org/li/tools/disbursements/default.aspx (last visited Feb. 20, 2018).

proposes to impair the market for Lifeline services by excluding non-facilities-based providers, a decision that would prevent 73 percent of existing Lifeline customers—or 8.36 million families—from using their preferred choices of provider, and would disproportionately harm customers residing in urban areas. The NPRM makes this proposal based on unsupported assumptions about how the elimination of resellers from the Lifeline program would achieve the Commission's policy goals, and it fails to demonstrate market failure warranting the FCC's regulatory intervention. The NPRM performs little to no cost-benefit analysis on the proposed rule's impact on the wireless industry and consumers,[10] and it has offered little to no statistical evidence to justify any of its departures from precedent.

Overall, the NPRM is an unjustified, overly regulatory approach to Lifeline that ignores the evidence of market-based competition, a clear Congressional mandate and bipartisan regulatory activities addressing the affordability challenge for millions of low-income Americans, and, most importantly, the plight of millions of working class consumers living in both rural *and* urban areas—including more than 1 million veterans and 1 million elderly consumers—who rely on the program as a literal lifeline to help them remain connected to the rest of society.

To best encourage success of the Lifeline program, protect the consumers that depend on it, and allow providers to compete in the markets for Lifeline and wireless telecommunications services, the Commission must allow resellers to continue participating fully in the program, decline to impose a maximum discount level or self-enforcing budget mechanism, and

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[10] Indeed, Chairman Pai has often emphasized the importance of cost-benefit analysis at the FCC, and has even directed the creation of a new Office of Economics and Analytics to, among other things, conduct economic analysis for rulemaking proceedings. *See* Remarks of Chiarman Ajit Pai at the Hudson Institute, "The Importance of Economic Analysis at the FCC," (Apr. 5, 2017), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-344248A1.pdf.

discontinue the phase-down of voice-only services. In contemplating Lifeline reform, the Commission should rededicate its attention to the implementation of recently adopted measures combatting Lifeline waste, fraud, and abuse. To the extent necessary, the Commission should consider additional measures that are appropriately tailored to achieve this objective while also fostering competition in the Lifeline marketplace and ensuring consumers have access to Lifeline providers of their choice. Finally, the Commission also should focus on improving the National Verifier so that it works for consumers.

II. THE COMMISSION'S PROPOSAL TO ELIMINATE LIFELINE SUPPORT FOR NON-FACILITIES-BASED SERVICES WOULD DEVASTATE THE LIFELINE PROGRAM, CONTRADICT STATUTORY MANDATES, AND FAIL TO SERVE THE COMMISSION'S STATED POLICY GOALS.

In its most troubling series of proposals, the NPRM seeks comment on "discontinuing Lifeline support for service provided over non-facilities-based networks,"[11] a proposal which would eliminate from the Lifeline program more than 40 eligible telecommunications carriers ("ETCs") and immediately cut off Lifeline support for roughly 8.3 million low-income families that receive service from such providers. The NPRM suggests that adopting this "Facilities-Based Proposal" would serve the Commission's policy goals of "focusing Lifeline support to encourage investment in voice- and broadband-capable networks" and "eliminating waste, fraud, and abuse in the Lifeline program."[12] Although the NPRM also recognizes that the Lifeline program should enable "consumer choice in a competitive market"[13] and notes that doing so is a goal of this proceeding,[14] the Facilities-Based Proposal threatens to directly contravene this objective.

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[11] NPRM ¶ 67.

[12] *Id*. ¶¶ 67, 68.

[13] *Id*. ¶ 80.

[14] *Id.* ¶ 1.

As the National Association of Regulatory Utility Commissioners explains in its recently-adopted resolution, the FCC must "continue to allow non-facilities based carriers to receive Lifeline funds because they have been crucial in ensuring that low-income households are connected to vital telecommunication services."[15] Indeed, if adopted, then the Commission's proposal will have wide-reaching negative consequences for millions of customers. It would disregard overwhelming consumer preference for non-facilities-based providers, requiring approximately 8.3 million low-income families (more than 70 percent of Lifeline customers) to leave their current provider and either lose service altogether or switch to a provider they did not initially choose and for whom Lifeline is not a core offering. The proposal would impose substantial burdens and costs on, and disrupt service to, millions of current Lifeline subscribers, many of whom rank among this country's most vulnerable populations and who can ill afford the additional cost and disruption.

The Facilities-Based Proposal also would constitute an unprecedented action by the Commission – the elimination of the majority of wireless Lifeline providers – leaving customers in at least 11 states with one or no service provider options, at a time when facilities-based providers are continuing to exit the market. In doing so, the Commission would impair today's competitive Lifeline marketplace – and the corresponding benefits of competition currently enjoyed by consumers. In addition, the proposal would cause many Lifeline customers to experience a degradation in their current level of service as the one facilities-based wireless Lifeline provider likely left standing has a smaller coverage footprint than the networks supporting TracFone and other non-facilities-based Lifeline providers.

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[15] NARUC "Resolution to Ensure that the Federal Lifeline Program Continues to Provide Service to Low-Income Households," *available at* https://pubs.naruc.org/pub/E0D49A02-AAAA-6EDE-79A1-9D97B1C6E393 . (last visited Feb. 21, 2018).

Further, the NPRM fails to demonstrate how adopting the Facilities-Based Proposal would meet the Commission's stated policy objectives. Indeed, basic facts about broadband deployment economics and historical abuse of the Lifeline program suggest that eliminating resellers would not serve these objectives. Finally, adopting the Facilities-Based Proposal would contradict several statutory obligations related to the provision of universal service and forbearance from statutory requirements.

A. The Facilities-Based Proposal would have a catastrophic impact on the Lifeline program and would harm the market for wireless telecommunications services.

Since the Commission first allowed non-facilities-based providers to enter the Lifeline program in 2008, resellers have become essential to the program and the customers who depend on it. As the Commission has acknowledged, resellers often "ha[ve] better access to some market segments than the host facilities-based service provider and can better target specific market segments, such as low-income consumers[.]"[16] When the Commission forbore from the facilities requirement of Section 214(e) to permit TracFone to enter the program, it found that as a Lifeline provider, TracFone "would be offering Lifeline-eligible consumers a choice of providers not available to such consumers . . . for accessing telecommunications services."[17] Further, consistent with the Commission's own predictions, the participation of non-facilities-based providers in the Lifeline program has "spur[red] innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers."[18]

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16 *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Twentieth Report, FCC 17-126, 2017 WL 4348640, ¶ 15 (Sept. 27, 2017) ("*2017 Mobile Competition Report*").

17 *2005 Forbearance Order* ¶ 15. Indeed, TracFone entered the Lifeline market on invitation from Chairman Martin in light of TracFone's unique capabilities to reach and serve low-income customers.

18 *Id.* ¶ 13.

Because they are uniquely positioned to serve low-income customers, non-facilities-based providers have become indispensable participants in the Lifeline program. Given the crucial role resellers have assumed in the Lifeline program, the NPRM's sweeping proposal to limit Lifeline to facilities-based providers would have a harmful impact on the provision of Lifeline services and the millions of consumers that depend on those services. Further, because many non-facilities-based providers depend on the Lifeline program to remain in business, the Facilities-Based Proposal also could negatively affect the market for wireless telecommunications services generally.

1. Lifeline customers overwhelmingly choose non-facilities-based providers for Lifeline service – providers the Facilities-Based Proposal would categorically disqualify.

Today, non-facilities-based providers serve the majority of Lifeline customers.[19] This is not an aberration. Rather, the Lifeline market share of non-facilities-based providers has been growing steadily over the last several years. These providers accounted for 56 percent of Lifeline subscriptions in 2013; 61 percent in 2014; and 68 percent in 2015.[20] Based on the most recent available data from the Universal Service Administrative Company ("USAC"), approximately 8.3 million Lifeline customers currently have chosen non-facilities-based

[19] Although the Lifeline program continues to offer a subsidy for fixed broadband service, Lifeline customers have overwhelmingly opted for mobile options. *See e.g.*, USAC, "Lifeline Historical Support Distribution," http://www.usac.org/li/about/process-overview/stats/historical-support-distribution.aspx (last visited Feb. 21, 2018). This mirrors a growing industry trend. The Center for Disease Control reports that 52.5 percent of all adults now live in a wireless-only household, and more than 70 percent of adults aged 25-34 do so. Stephen Blumberg & Julian Luke, Centers for Disease Control and Prevention, National Center for Health Statistics, "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January- June 2017" at 1-2 (2017), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201712.pdf.

[20] *See* FCC, Universal Service Monitoring Report at Table 2.8 (2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf ("2016 USF Monitoring Report"); Universal Service Monitoring Report at Table 2.8 (2015), https://apps.fcc.gov/edocs_public/attachmatch/DOC-337019A1.pdf ("2015 USF Monitoring Report"); Universal Service Monitoring Report at Table 2.8 (2014), https://apps.fcc.gov/edocs_public/attachmatch/DOC-330829A1.pdf ("2014 USF Monitoring Report").

providers over facilities-based alternatives.[21] Notably, TracFone has supported more Lifeline subscribers than any other single provider since 2010[22]; more than 4 million subscribers selected TracFone in 2017 alone.

Customers have been drawn to non-facilities-based providers for their innovative service offerings and positive consumer experience record. This might be because many non-facilities-based providers focus on Lifeline – and the needs of Lifeline customers – as an important part of their business and not as a minor sideline. Some non-facilities-based providers, such as Assist Wireless and Q-Link Wireless, limit their business exclusively to the Lifeline market. TracFone's entire business model centers on the no-contract, prepaid offerings, preferred by most Lifeline customers. Not surprisingly, the result is that Lifeline customers make up a significant segment of TracFone's customer base – approximately 17 percent.[23] In contrast, Lifeline customers appear to make up only 2.5 percent of Verizon's customers,[24] 6.4 percent of

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[21] *See supra* note 9.

[22] 2016 USF Monitoring Report at Table 2.5; 2015 USF Monitoring Report at Table 2.5; 2014 USF Monitoring Report at Table 2.5; Universal Service Monitoring Report at Table 2.8 (2013), https://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/2013_Monitoring_Report.pdf; Universal Service Monitoring Report at Table 2.8 (2012), https://apps.fcc.gov/edocs_public/attachmatch/DOC-319744A1.pdf; and Universal Service Fund Monitoring Report at Table 2.8 (2011), https://apps.fcc.gov/edocs_public/attachmatch/DOC-311775A1.pdf.

[23] As of the end of 3Q 2017, TracFone had approximately 23.7 million total customers.

[24] The estimates for subscriber numbers for Verizon, AT&T, T-Mobile, and Sprint are based on publicly available data. *See* Dennis Bournique, "Second Quarter 2017 Prepaid Mobile Subscriber Numbers By Operator," Prepaid Phone News (Aug. 2, 2017), https://www.prepaidphonenews.com/2017/08/second-quarter-2017-prepaid-mobile.html. Neither Verizon nor AT&T releases subscriber numbers. The 2016 USF Monitoring Report attributes $33,879,000 in Lifeline claims to Verizon, and $81,469,000 to AT&T, which, when divided by $9.25 per subsidy comes to approximately 3.66 million and 8.81 million, respectively. 2016 USF Monitoring Report Table 2.5. Assuming Verizon and AT&T include Lifeline subscribers in their overall subscriber count, Lifeline subscribers make up approximately 2.5 and 6.5 percent of their customer base, respectively.

AT&T's, 5.9 percent of T-Mobile's,[25] and 10.2 percent of Sprint's.[26] And, AT&T and T-Mobile have both indicated their intent to withdraw from the Lifeline market to focus on their core customer base.[27]

Through their attentiveness to Lifeline customers, non-facilities-based providers have developed innovative service offerings and customer policies that particularly appeal to and benefit Lifeline customers. For example, TracFone was the first provider to provide free wireless devices to Lifeline consumers, and was the first to eliminate roaming charges.[28] TracFone also led Lifeline providers by being the first to provide Caller ID, call-waiting, three-way calling, 411 directory assistance, and unlimited text messaging to its subscribers.[29] TracFone's SafeLink Health Solutions program – which currently serves more than 800,000 subscribers and millions of Medicaid recipients over the past eight years – uses mobile

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25 T-Mobile no longer includes Lifeline customers in its overall subscriber count. *See* T-Mobile Q32017 10-Q at 44 (filed Oct. 23, 2017), http://investor.t-mobile.com/Cache/390730947.pdf. Adding 4.4 million Lifeline subscribers to a base of 69.6 million, we estimate their total subscriber base to be 74 million. Lifeline subscribers make up approximately 5.9 percent of that base.

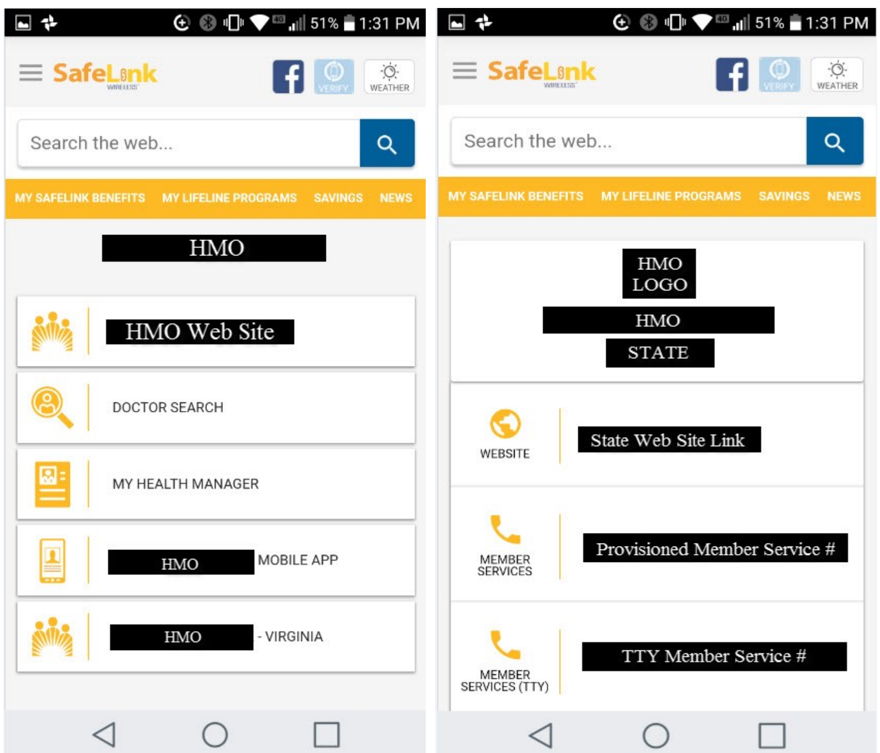
26 Sprint no longer includes Lifeline customers in its overall subscriber count. *See* Sprint Q32017 10-Q at 25 (filed Nov. 2, 2017), http://d18rn0p25nwr6d.cloudfront.net/CIK-0000101830/b9718960-0e75-4399-bc79-aa95e2f4f7ec.pdf. Adding 2.8 million wholesale Lifeline customers and 3.3 million Assurance Wireless customers to a base of 53.7 million, we estimate their subscriber base to be 59.8 million. Lifeline subscribers make up approximately 10.2 percent of that base.

27 Daniel Fuller, "T-Mobile's CEO Wants to Get Rid of Lifeline Program," Android Headlines (June 9, 2017), https://www.androidheadlines.com/2017/06/t-mobiles-cfo-wants-to-get-rid-of-lifeline-program.html ("T-Mobile's chief financial officer, Braxton Carter, recently announced intent to end the company's voluntary participation in the Lifeline program, a government-subsidized program that provides low-income customers with vastly discounted basic phone service. Carter called the program 'non-sustainable,' saying that the requirements for providing the voice and data services entailed in the terms of Lifeline service outweigh the potential profits."); Press Release, Missouri Public Service Commission, "AT&T Missouri May Relinquish ETC Designation and Cease Providing Discounted Telephone Service Under the Lifeline and Disabled Programs" (Jan. 12, 2017), https://psc.mo.gov/Telecommunications/ATT_Missouri_May_Relinquish_ETC_Designation; Mike Dano, "AT&T's Cricket to Discontinue Lifeline Support," Fierce Wireless (June 4, 2014), https://www.fiercewireless.com/wireless/at-t-s-cricket-to-discontinue-lifeline-support ("Cricket prepaid brand is planning to phase out its support for the government's Lifeline service.").

28 *See* Letter from Mitchell F. Brecher, Counsel for TracFone Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, Enclosure at 5 (filed Aug. 14, 2017) ("TracFone Presentation").

29 *Id.*

technology to keep patients connected with their providers and to give patients the information they need to improve their health and seek appropriate care.[30] Two years ago, TracFone collaborated with Microsoft and Health Choice Network to roll out a successful pilot program designed to provide patients suffering from diabetes with the tools they need to better manage their care.[31] Most recently, TracFone has deployed a healthcare portal (shown on the next page) that SafeLink subscribers can use to access their health maintenance organization's ("HMO") website, search for doctors, contact member services, and access other information related to health benefits.



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[30] SafeLink Health Solutions provides qualifying customers with a free handset with voicemail, caller ID, call waiting, long distance, unlimited text, free calls to the health plan member services number, and up to 350 minutes each month.

[31] The pilot program provided participants with a Windows smartphone equipped with Microsoft's built-in suite of health care solutions, such as access to security-enhanced, HIPAA-enabled messaging and health records, as well as other specialized health-related applications to aid condition management by, for example, providing treatment plan information or facilitating self-tracking of vital health information such as blood sugar levels.

TracFone and other non-facilities-based providers have been engaged actively with the Commission to improve the Lifeline program to benefit Lifeline customers[32] and prevent waste, fraud and abuse.[33] Non-facilities-based providers have a distinguished record of filling a niche in the marketplace by being attentive to customer needs, as evidenced by the growing share of subscribers that choose them as the best option for Lifeline service. Yet the NPRM's proposal would interfere with this marketplace dynamic and ban their continued participation in the program, and leave many subscribers with only facilities-based options, some of whom may exit the Lifeline marketplace in the near term. Such an action neither advances the goals of the Lifeline program nor serves the interests of Lifeline customers.

2. The Facilities-Based Proposal would burden, disrupt service for, and potentially impose additional costs on millions of Lifeline subscribers.

As noted above, the vast majority of Lifeline subscribers – approximately 8.3 million – currently receive service from non-facilities-based providers and would be directly affected by the NPRM's proposal. TracFone has served the market for nearly nine years, and currently has subscribers that have received service from TracFone for more than six years, choosing to

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[32] *See, e.g.*, Petition for Waiver of TracFone Wireless, Inc., WC Docket No. 11-42, at 2 (filed Nov. 3, 2017) (proposing a flexible approach to the Commission's minimum service standards to empower low-income consumers to obtain the highest value for their Lifeline benefits); Reply Comments of TracFone Wireless, Inc., WC Docket No. 11-42, at 7-8 (filed Sept. 30, 2015) (proposing that the Commission require all ETCs that provide no charge voice Lifeline service and handsets to offer Lifeline subscribers the option to receive a Wi-Fi-enabled smartphone device with Internet browsing capabilities); Petition for Reconsideration of TracFone Wireless, Inc., WC Docket No. 11-42, at 18-19 (filed Apr. 2, 2012) (advocating that consumers should be able to use text messages for purposes of the Lifeline program's 60 day non-usage policy).

[33] In the last several years, TracFone proposed – and the Commission ultimately adopted – numerous measures to prevent waste, fraud, and abuse, including elimination of Link Up support for wireless ETCs, collection of dates of birth and Social Security numbers for eligibility verification, de-enrollment after 60 days, annual recertification requirements, and retention of audit documentation. TracFone Presentation at 9. More recently, TracFone worked with agencies and departments across 21 states to obtain access to state databases and verify applicants' eligibility, in full support of the National Verifier. *Id.* at 7. TracFone has also advocated to ban in-person handset distribution, eliminate the loophole created by the Independent Economic Household Worksheet, and prohibit incentive-based compensation for third party agents. Letter from Mitchell F. Brecher, Counsel for TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-287, *et al.*, Attachment B (filed Nov. 9, 2017).

recertify with TracFone each year and obtain affordable and innovative wireless services. By banning their chosen provider, the Facilities-Based Proposal would require TracFone's customers and the other millions of Lifeline customers subscribed to non-facilities-based services to scramble to find and sign up with a new provider and plan or lose service altogether. Those that fail to do so in a timely manner will lose their critical service. Those that manage to do so may incur additional costs. All will experience some manner of burden and disruption. And all will be forced to surrender their provider of choice.

It seems unlikely that the Commission would simply direct that the Lifeline customer base of non-facilities-based providers be moved to one or more facilities-based providers without customer involvement. Such an action would contravene decades of Commission precedent supporting customer choice and outlawing changing a customer's service provider without their consent.[34] Indeed, the Chairman and members of this Commission have previously stressed the importance of consumer preference in developing agency policy.[35] This action would also be clearly inconsistent with the Commission's historic focus on preserving competition where it exists.[36] Therefore, the adoption of the proposal is more likely to require notification to

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34 *See, e.g.*, *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, Notice of Proposed Rulemaking, 32 FCC Rcd 6022 (2017).

35 *See, e.g.*, Dissenting Statement of Chairman Pai, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Report and Notice of Inquiry, 30 FCC Rcd 1375, 1485 (2015) (stating that "the driving factor in defining broadband should be consumer preference"); Dissenting Statement of Commissioner Michael O'Rielly, *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Notice of Proposed Rulemaking, 31 FCC Rcd 2500, 2643 (2016) (criticizing the Commission for seeking "to override consumer preferences with the Commission's own policy choices"); Remarks of Commissioner Michael O'Rielly before the 2017 Hispanic Radio Conference, at 3-4 (Mar. 28, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344114A1.pdf (contending that consumer preference should be considered in shaping FCC policy around the broadcaster "Main Studio" rule).

36 For example, in consumer-facing materials, the Commission notes that its Tech Transitions rules focused on providing consumers options in preserving competition where it exists today. *See* FCC Consumer Guides, "Tech Transitions: Network Upgrades That May Affect Your Service," at https://www.fcc.gov/consumers/guides/tech-transitions-network-upgrades-may-affect-your-service (last visited Feb. 21, 2018). The Commission's Strategic Plan for 2009-2014 stated a number of competition-related objectives, including fostering sustainable competition

customers that their chosen provider is forced to terminate Lifeline service and that they will need to take action to switch to a new Lifeline provider by a certain date.

For those customers who receive and understand the notice, the proposal will require them to shop for another Lifeline provider and service plan that meets their needs. This will not only be time-consuming for these customers, but likely also confusing. Each customer would first need to identify one or more Lifeline providers in his/her area and review the service plans they offer. Once the customer has selected the new service provider and plan, he or she will need to take steps to sign up for that provider's service, which will likely involve having his or her identity and Lifeline eligibility verified. This may involve finding the time and paying the cost to travel to the new provider's store. It will surely involve an investment of time by the Lifeline customer to make an informed decision and effect the switch. At best, it will be an inconvenience; but more likely it will be unnecessarily disruptive.

Undoubtedly, there will be a significant number of Lifeline customers who do not receive or understand the notice, or do not switch providers in time. The proposal is likely to result in service being cut off for many of society's most vulnerable, including many of the working poor in rural and urban areas. For many Lifeline customers, their Lifeline service is their only means of communication. Losing that service will cut them and their families off from hearing from employers or potential employers, using the Internet to complete homework, gathering information about and accessing critical government programs, and keeping in touch with friends and family. This loss of service would be particularly harmful to populations that are historically

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across the entire telecommunications sector and ensuring that consumers have choices among communication services and are protected from anti-competitive behavior in the increasingly competitive telecommunications landscape. *See* "Strategic Plan of the FCC – Competition," at https://www.fcc.gov/general/strategic-plan-fcc (last visited Feb. 21, 2018). Congress has also charged the Commission with preserving competition for Internet services. 47 U.S.C. § 230(b) ("It is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services . . . .").

disadvantaged and most in need of affordable access to telecommunications services. For instance, 31 percent of TracFone's subscribers are single mothers; 14 percent are elderly; 12 percent are veterans; and 40 percent are racial minorities. Although the disruption may end up being temporary – perhaps a few days or weeks – it could nevertheless have an outsized impact on certain vulnerable populations if they lost out on a job opportunity or could not communicate with their loved ones during an emergency.

And all Lifeline customers who switch – timely or not – may find that they are subject to additional costs with the new provider. Plans differ from carrier to carrier. Non-facilities-based providers like TracFone have been particularly successful in attracting Lifeline customers because their plans deliver significant value at a comparatively low cost.[37] However, under the proposal, resellers and their plans will no longer be an option so customers may find themselves paying more for the same or lesser services. For those left only with wireline facilities-based providers as their option, they may only find a $9.25 discount on their monthly residential phone or broadband bill. Gone are the benefits such as a free device and the option of receiving a no-cost service plan. For those fortunate enough to be within the coverage of a wireless facilities-based provider, they will likely face a monopoly that is now free of the competitive pressure from resellers to offer innovative plans or lower prices. Although the Lifeline program was created to make telecommunications more affordable to low-income Americans, the Facilities-Based Proposal is highly likely to impose additional costs on customers who are the least able to bear them.[38]

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[37] TracFone offers unlimited voice and texting services, 1 GB of data, and free smartphones to its subscribers. For a comparison of Lifeline providers and their service offerings, *see* https://www.prepaid-wireless-guide.com/lifeline-providers.html (last visited Feb. 21, 2018).

[38] *2012 Lifeline Reform Order* ¶ 17 ("If quality voice service is not affordable, low-income consumers may subscribe to voice service at the expense of other critical necessities, such as food and medicine, or may be unable to

Lifeline was designed to help low-income Americans afford and gain access to critical communications services. Modifying the program requirements to impose costs and burdens on millions of users – and potentially to disrupt service to some customers – is inconsistent with the program's intent and the public interest.

3. The Facilities-Based Proposal would eliminate competition and its benefits and relegate low-income subscribers in rural and urban America to a monopoly market or worse in many states.

Largely because of the participation of non-facilities-based providers, the Lifeline market today is robustly competitive in [nearly all] states, with multiple providers offering a variety of Lifeline service options. Currently, 41 states and Puerto Rico have four or more options for wireless Lifeline service. The benefits of competitive markets are well recognized by the Commission and the agency has identified competition as a goal for the Lifeline market. However, the NPRM's proposal, if adopted, would dramatically change that, leaving only one or no Lifeline providers in a significant number of states. Lifeline customers will plainly suffer in terms of there being fewer choices, less innovation and higher prices.

The Commission has extoled the benefits of competition as "critical for driving innovation and investment to the ultimate benefit of the American consumer."[39] It noted in its most recent *Mobile Competition Report* that competition "continues to play an essential role in the mobile wireless marketplace – leading to lower prices, more innovation, and higher quality service for American consumers."[40] With respect to wireless services – which is the medium of

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purchase sufficient voice service to obtain adequate access to critical employment, health care, or educational opportunities.").

[39] *See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Eighteenth Report, 30 FCC Rcd 14517, ¶ 1 (WTB 2015).

[40] *2017 Mobile Competition Report* ¶ 93.

choice for the vast majority of Lifeline customers – Congress directed the Commission to promote competition, decreeing that a finding "that [a regulation] would promote competition among providers of commercial mobile services . . . may be the basis for a Commission finding that such regulation . . . is in the public interest."[41] In response, the Commission has consistently espoused "a deeply rooted preference for preserving and enhancing competition in relevant markets"[42] and has generally required divestitures where a transaction would reduce the number of competitors in a given market to three or fewer, finding that such a transaction "may result in a significant likelihood of successful unilateral effects and/or coordinated interaction."[43]

The Commission historically has also emphasized the importance of competition in the Lifeline marketplace, including through its 2012 and 2016 reforms aimed at increasing the number of market participants and thereby "providing more choice and better service for the consumers benefitting from the program."[44] Indeed, the Commission cited the importance of competition as a rationale for forbearing from the facilities requirement in the first place:

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41 47 U.S.C. § 332(c)(1)(C).

42 *See, e.g.,* Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, *Memorandum Opinion and Order and Declaratory Ruling,* 23 FCC Rcd 17444, ¶ 27 (2008) ("*Verizon-ALLtell Order*"); Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, ¶ 28 (2008); Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, ¶ 12 (2007); AT&T Inc. and BellSouth Corporation Application for Transfer of Control, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, ¶ 20 (2007); Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., *Memorandum Opinion and Order*, 21 FCC Rcd 11526, ¶ 18 (2006); Applications of Nextel Communications, Inc. and Sprint Corporation, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, ¶ 21 (2005); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, ¶ 19 (2005); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, ¶ 41 (2004) (*Cingular-AT&T Wireless Order).*

43 *See, e.g., Verizon-Alltel Order* ¶ 101 (citing *Cingular-AT&T Wireless Order*, 19 FCC Rcd 21522, ¶ 191 (2004)) ("Generally, we find that, in any market in which the transaction would reduce the number of genuine competitors to three or fewer, the proposed transaction may result in a significant likelihood of successful unilateral effects and/or coordinated interaction."). In the *Verizon-Alltel Order*, the Commission required divestitures in markets in Iowa, Michigan, and Tennessee. *Id.* ¶¶ 102-06.

44 *2016 Lifeline Reform Order* ¶ 220.

> Our public-interest inquiry must include consideration of whether forbearance would promote competitive market conditions, including the extent to which such forbearance would enhance competition among providers of telecommunications services. We conclude that forbearance from the facilities requirement will enhance competition among retail providers that service low-income subscribers. Lifeline-only ETCs offer eligible consumers an additional choice of providers for telecommunications services. The prepaid feature that many Lifeline-only ETCs offer is an attractive alternative for subscribers who need the mobility, security, and convenience of a wireless phone, but who are concerned about usage charges or long-term contracts.[45]

However, if the Facilities-Based Proposal is adopted, then the Commission would be taking the unprecedented step of removing existing competitors from the market, and in this case, the majority of competitors. Such a drastic diminution in the number of market participants would plainly reduce or eliminate the significant benefits of competition currently enjoyed by Lifeline-eligible customers.

USAC data shows that the overwhelming majority of Lifeline customers – 89.2 percent – choose to subscribe to wireless services instead of fixed wireline services.[46] And, as noted previously, most of these customers choose non-facilities-based providers over facilities-based competitors. Indeed, facilities-based wireless providers are generally limited players in the Lifeline marketplace. With the exception of Sprint, the other large facilities-based wireless providers each offer Lifeline service in only a limited number of states,[47] and two of these – AT&T and T-Mobile – have demonstrated a legitimate intention to leave the Lifeline

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[45] *2012 Lifeline Reform Order* ¶ 378. TracFone recognizes that not all Lifeline-only ETCs are resellers, but many are.

[46] *See* USAC, "Lifeline Historical Support Distribution," at http://www.usac.org/li/about/process-overview/stats/historical-support-distribution.aspx (last visited Jan. 23, 2018) (showing wireless ETCs accounting for 89.27 percent of overall Lifeline disbursements).

[47] AT&T Mobility offers Lifeline service in thirteen (13) states (Alabama, Alaska, Arkansas, Kentucky, Louisiana, Michigan, Mississippi, North Dakota, Oregon, South Dakota, Texas, Washington, and West Virginia); Verizon offers Lifeline service in four (4) states (Iowa, New York, North Dakota, and Wisconsin);T-Mobile offers Lifeline service in seven (7) states (Florida, Kentucky, Minnesota, Mississippi, Pennsylvania, Virginia, and Washington); and U.S. Cellular offers Lifeline service in nine (9) states (Iowa, Kansas, Maine, Missouri, Nebraska, Oklahoma, Oregon, Washington, and Wisconsin).

marketplace.[48] The remaining facilities-based wireless Lifeline providers tend to be very small and provide only partial coverage of a state. A reseller ban would contradict the market dynamism that this FCC promotes in so many contexts.

Given this landscape, adoption of the Facilities-Based Proposal would limit millions of Lifeline-eligible customers to two or fewer providers for wireless Lifeline service from which to choose. In fact, in the District of Columbia and nine (9) states (likely to grow with AT&T and T-Mobile diminishing their Lifeline participation), Sprint would be the only option. Below is a sampling of such states and the effect of the proposal:

CALIFORNIA[49]
No. of Lifeline Subscribers in 2015[50]: **1,483,190**
Percent using non-facilities-based providers: **52.9%** (approx. **784,608** subscribers)
Wireless Providers with ETC designation:

1. Access Wireless[51] (Sprint)
2. ~~Air Voice Wireless LLC~~
3. Assurance Wireless (Sprint)
4. ~~Bluejay Wireless~~
5. ~~Boomerang Wireless~~
6. ~~Feel Safe Wireless~~
7. ~~SafeLink Wireless (TracFone/América Móvil)~~
8. ~~Safetynet Wireless (division of AmeriMex Communications)~~
9. ~~TruConnect~~

48 *See supra* note 27.

49 USAC, "Companies Near Me – California," at http://www.usac.org/ls/companies/CompanyListing.aspx?state=CA&stateName=California (last visited Feb. 21, 2018).

50 Subscriber numbers are taken from Eligible Lifeline Population Statistics spreadsheet, which reflected the number of active NLAD subscribers enrolled as of Oct. 25, 2015. *See* USAC, "Eligible Lifeline Population Statistics," at http://www.usac.org/_res/documents/about/quarterly-stats/LI/Eligible-Lifeline-Population-Statistics.xlsx (last visited Feb. 21, 2018) (Eligible Lifeline Population Statistics).

51 TracFone considers Sprint-supported service to include Virgin Mobile d/b/a Assurance Wireless, as well as i-Wireless d/b/a Access Wireless. Access Wireless is the Lifeline brand of i-Wireless, which merged with Sprint's Assurance Wireless brand in 2016. *See* Colin Gibbs, "Sprint's Assurance to merge with Access Wireless in tie-up of Lifeline providers," Fierce Wireless (May 2, 2016), https://www.fiercewireless.com/wireless/sprint-s-assurance-to-merge-access-wireless-tie-up-lifeline-providers. Sprint owns 70 percent of Access Wireless, and i-Wireless owns the remaining 30 percent.

MARYLAND[52]
No. of Lifeline Subscribers: **231,824**
Percent using non-facilities-based providers: **79.6%** (approx. **184,532** subscribers)
Wireless Providers with ETC designation:

1. Access Wireless (Sprint)
2. ~~American Assistance~~
3. ~~Assist Wireless~~
4. Assurance Wireless (Sprint)
5. ~~Boomerang Wireless~~
6. ~~CellSpan~~
7. ~~Life Wireless~~
8. ~~Q Link Wireless~~
9. ~~SafeLink Wireless (TracFone/América Móvil)~~
10. ~~Sage Telecom Communications, Inc.~~
11. ~~StandUp Wireless~~
12. ~~Tempo Telecom, LLC~~
13. ~~TerraCom~~
14. ~~True Wireless~~

MASSACHUSETTS[53]
No. of Lifeline Subscribers: **255,768**
Percent using non-facilities-based providers: **60.8%** (approx. **155,507** subscribers)
Wireless Providers with ETC designation:

1. Assurance Wireless (Sprint)
2. ~~Global Connection of America~~
3. ~~SafeLink Wireless (TracFone/América Móvil)~~

NEW JERSEY[54]
No. of Lifeline Subscribers: **296,721**
Percent using non-facilities-based providers: **51.2%** (approx. **151,921** subscribers)
Wireless Providers with ETC designation:

1. Assurance Wireless (Sprint)
2. ~~SafeLink Wireless (TracFone/América Móvil)~~

NORTH CAROLINA[55]
No. of Lifeline Subscribers: **370,566**
Percent using non-facilities-based providers: **62.1%** (approx. **230,121** subscribers)
Wireless Providers with ETC designation:

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52 USAC, "Companies Near Me – Maryland," http://www.usac.org/ls/companies/CompanyListing.aspx?state=MD&stateName=Maryland (last visited Feb. 21, 2018).

53 *Id.* at "Massachusetts," http://www.usac.org/ls/companies/CompanyListing.aspx?state=MA&stateName=Massachusetts (last visited Feb. 21, 2018).

54 *Id.* at "New Jersey," http://www.usac.org/ls/companies/CompanyListing.aspx?state=NJ&stateName=New%20Jersey (last visited Feb. 21, 2018).

55 *Id.* at "North Carolina," http://www.usac.org/ls/companies/CompanyListing.aspx?state=NC&stateName=North%20Carolina (last visited Feb. 21, 2018).

1. Access Wireless (Sprint)
2. Assurance Wireless (Sprint)
3. ~~SafeLink Wireless (TracFone/América Móvil)~~
4. ~~StandUp Wireless~~

OHIO[56]
No. of Lifeline Subscribers: **608,259**
Percent using non-facilities-based providers: **77.2%** (approx. **469,576** subscribers)
Wireless Providers with ETC designation:

1. Access Wireless (Sprint)
2. ~~Air Voice Wireless~~
3. ~~American Broadband & Telecommunications~~
4. Assurance Wireless (Sprint)
5. ~~Boomerang Wireless~~
6. ~~Q Link Wireless~~
7. ~~SafeLink (TracFone/América Móvil)~~
8. ~~Sage Telecom Communications LLC~~
9. ~~StandUp Wireless~~
10. ~~Tempo Telecom (formerly Birch Communications)~~

Thus, unless a new facilities-based provider enters the marketplace (which seems highly unlikely), Lifeline subscribers in California,[57] Connecticut,[58] Delaware,[59] the District of Columbia,[60] Maryland,[61] Massachusetts,[62] New Jersey,[63] North Carolina,[64] Ohio,[65] and Rhode

[56] *Id*. at "Ohio," at http://www.usac.org/ls/companies/CompanyListing.aspx?state=OH&stateName=Ohio (last visited Feb. 21, 2018).

[57] *See supra* note 49.

[58] USAC, "Companies Near Me – Connecticut," http://www.usac.org/ls/companies/CompanyListing.aspx?state=NC&stateName=North%20Carolina (last visited Feb. 21, 2018).

[59] *Id*. at "Delaware," http://www.usac.org/ls/companies/CompanyListing.aspx?state=NC&stateName=North%20Carolina (last visited Feb. 21, 2018).

[60] *Id*. at "District of Columbia," http://www.usac.org/ls/companies/CompanyListing.aspx?state=DC&stateName=District%20of%20Columbia (last visited Feb. 21, 2018).

[61] *See supra* note 52.

[62] *See supra* note 53.

[63] *See supra* note 54.

[64] *See supra* note 55.

[65] *See supra* note 56.

Island[66] would have only one option – Sprint. That's more than 3.5 million current Lifeline customers – or approximately 27 percent of all Lifeline subscribers – who would only have one provider from which to choose. If AT&T and T-Mobile make good on their reasonable plans to exit Lifeline, then another 2.29 million Lifeline subscribers in Arkansas, Florida, Illinois,[67] Louisiana, Minnesota, and Virginia would be limited to Sprint as their only option for Lifeline service.[68] Nearly 470,000 others in Indiana, Nevada, New Hampshire, and South Carolina would be faced with the option of Sprint or a carrier with only partial state coverage.[69] And then there are the Lifeline subscribers of Vermont, who would no longer have *any* option for wireless Lifeline service if the proposal is adopted.[70]

Such a reduction in the number of wireless service providers in a market—and the creation of numerous *de facto* monopolies—has never been ordered by the Commission, under any Administration. Indeed, lesser reductions have not been permitted where a proposed transaction would reduce the number of competitors to three or fewer, as the Commission

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66 USAC, "Companies Near Me – Rhode Island," http://www.usac.org/ls/companies/CompanyListing.aspx?state=RI&stateName=Rhode%20Island (last visited Feb. 21, 2018).

67 *Id.* at "Illinois," at http://www.usac.org/ls/companies/CompanyListing.aspx?state=IL&stateName=Illinois (last visited Feb. 21, 2018). Access Wireless is majority-owned by Sprint. *See supra* note 51.

68 *Id.* at "Arkansas," http://www.usac.org/ls/companies/CompanyListing.aspx?state=AR&stateName=Arkansas; "Florida," http://www.usac.org/ls/companies/CompanyListing.aspx?state=FL&stateName=Florida; "Louisiana," http://www.usac.org/ls/companies/CompanyListing.aspx?state=LA&stateName=Louisiana; "Minnesota," http://www.usac.org/ls/companies/CompanyListing.aspx?state=MN&stateName=Minnesota; "Virginia," http://www.usac.org/ls/companies/CompanyListing.aspx?state=VA&stateName=Virginia (last visited Feb. 21, 2018).

69 *Id.* at "Indiana," http://www.usac.org/ls/companies/CompanyListing.aspx?state=IN&stateName=Indiana; " Nevada," http://www.usac.org/ls/companies/CompanyListing.aspx?state=NV&stateName=Nevada; "New Hampshire," http://www.usac.org/ls/companies/CompanyListing.aspx?state=NH&stateName=New%20Hampshire; "South Carolina," http://www.usac.org/ls/companies/CompanyListing.aspx?state=SC&stateName=South%20Carolina (last visited Feb. 21, 2018).

70 *Id.* at "Vermont," http://www.usac.org/ls/companies/CompanyListing.aspx?state=VT&stateName=Vermont (last visited Feb. 21, 2018).

consistently has found that the diminution in competition would harm consumers and has required system divestitures to maintain the number of marketplace competitors.[71] It would be wholly inconsistent with decades of precedent for a Commission action to cause such a drastic reduction in competition and consumer choice. Such action would clearly be contrary to the public interest.

4. The Facilities-Based Proposal would degrade the level of communications service that many Lifeline customers have historically enjoyed.

Congress charged the Commission with ensuring that "[q]uality services [are] available at just, reasonable, and affordable rates" for consumers throughout the nation, "including low-income consumers."[72] The Commission has adopted many such measures – e.g., Lifeline minimum service standards – to ensure that voice and broadband services provided through the Lifeline program offer robust and meaningful broadband connectivity.[73] Yet, if adopted, then the Facilities-Based Proposal would result in many Lifeline customers experiencing a reduction in coverage – contrary to the public interest and in direct contravention of Congress' intent for the Lifeline program.

As noted above, the adoption of the proposal would limit Lifeline-eligible customers in many states to one or no wireless Lifeline provider option(s). Unless another provider enters the market, Lifeline customers in Vermont will have no options for wireless Lifeline service, and thus will experience a drastic degradation in service level. In at least 9 states and the District of Columbia, Lifeline customers will be limited to the fourth nationwide facilities-based carrier as the only option for wireless Lifeline service. Lifeline customers switching from resellers that

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71 *See supra* note 43.

72 47 U.S.C. § 254(b)(3).

73 USAC, "Lifeline Program Requirements – Minimum Service Standards," at https://usac.org/li/program-requirements/lifeline-broadband.aspx#minimum (last visited Jan. 6, 2018).

rely on one or more of the top three nationwide facilities-based providers to the fourth largest are also likely to experience a reduction in coverage. A comparison of geographic footprint against the third largest nationwide facilities-based network – which is the underlying network utilized by the majority of SafeLink subscribers – makes clear that SafeLink customers forced to switch from their existing service would lose a substantial amount of coverage. Some illustrative states are sampled below: [74]

CALIFORNIA

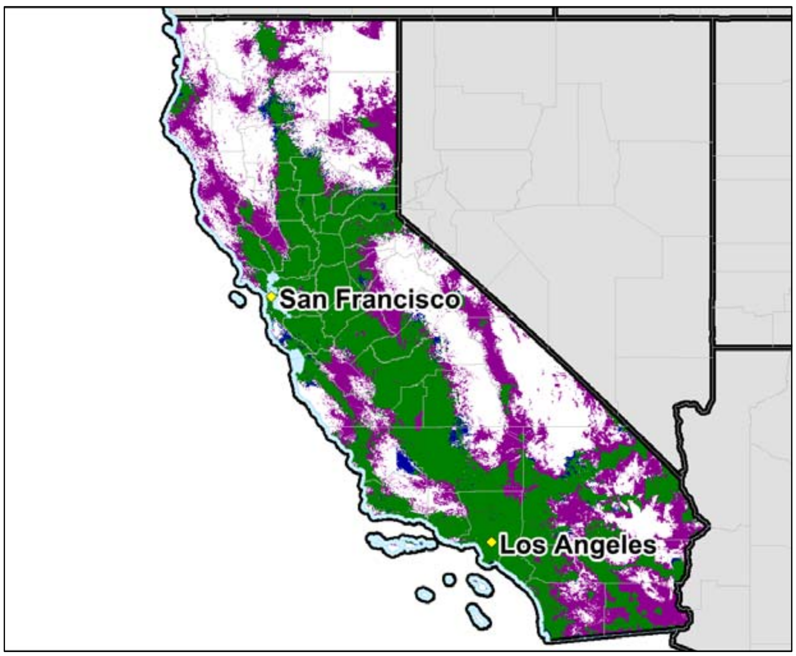

Figure 1: Existing underlying network (Purple), sole wireless provider if resellers are excluded (Blue) and Combined (Green) Voice Coverage in California, Form 477 Data 4Q16

California has 1,483,190 Lifeline customers served by 10 wireless ETCs. Should the Facilities-Based Proposal be adopted, only the fourth largest nationwide wireless service provider would remain as a facilities-based Lifeline provider.

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[74] The maps below are based on coverage data made available by the FCC as part of the FCC Form 477 reporting. *See* https://www.fcc.gov/form-477-mobile-voice-and-broadband-coverage-areas. For these maps, we used the December 2016 data for "voice" services. While Sprint's only voice services are CDMA (FCC identifier "85"), the FCC identifies T-Mobile as using both GSM (identifier "86") and LTE (identifier "83") voice networks. Since T-Mobile apparently makes both networks available for Lifeline services, the T-Mobile coverage reflects aggregate coverage of both network technologies. In order to determine state-specific comparable coverage, the Form 477 data was partitioned into states, normalized to include only land areas (Sprint's data included coastal coverage over water, T-Mobile's did not, so only land-based coverage was included for an apples-to-apples comparison), and then overlap areas were identified. Geographic coverage was obtained by using object "area" functions within the GIS program.

NEVADA

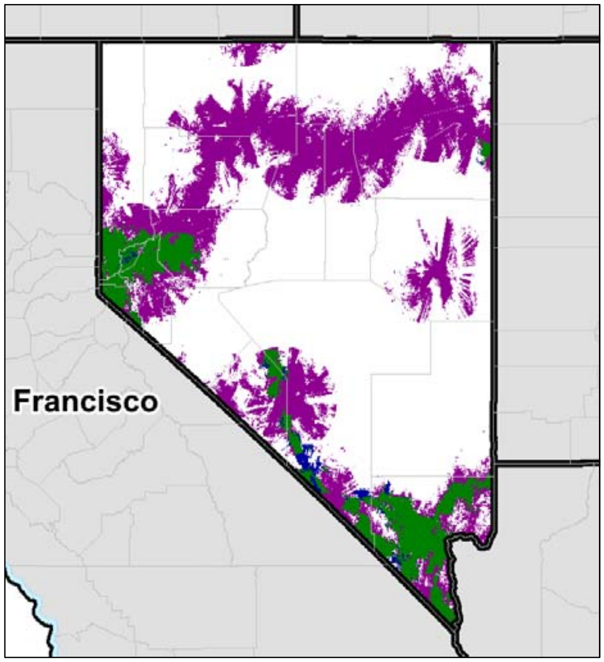

Figure 2: Existing network (Purple), new network if resellers are excluded (Blue) and Combined (Green) Voice Coverage in Nevada, Form 477 Data 4Q16

Nevada has 142,834 Lifeline customers served by 14 wireless ETCs. Should the Facilities-Based Proposal be adopted, only the fourth largest nationwide wireless service provider would remain as a facilities-based Lifeline provider on non-tribal lands.

OHIO

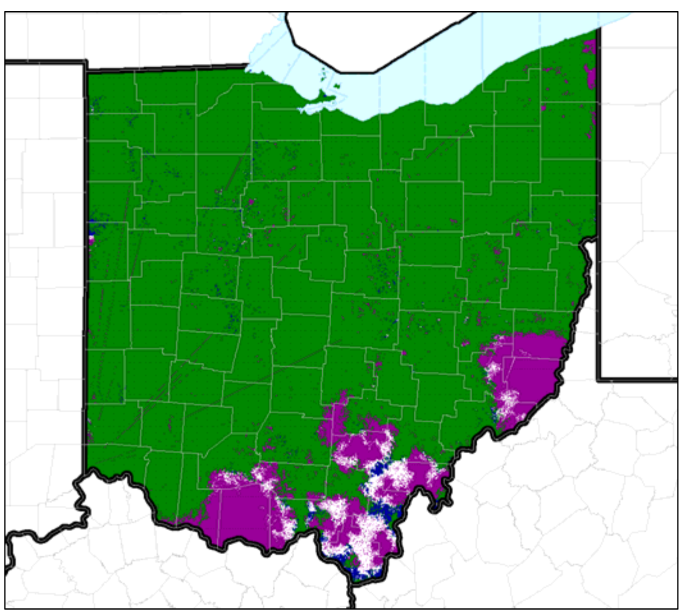

Figure 3: Existing network (Purple), new network if resellers are excluded (Blue) and Combined (Green) Voice Coverage in Ohio, Form 477 Data 4Q16

Ohio has 257,654 Lifeline customers served by 10 wireless ETCs. Should the Facilities-Based Proposal be adopted, only the fourth largest nationwide wireless carrier would remain as a facilities-based Lifeline provider.

ARKANSAS

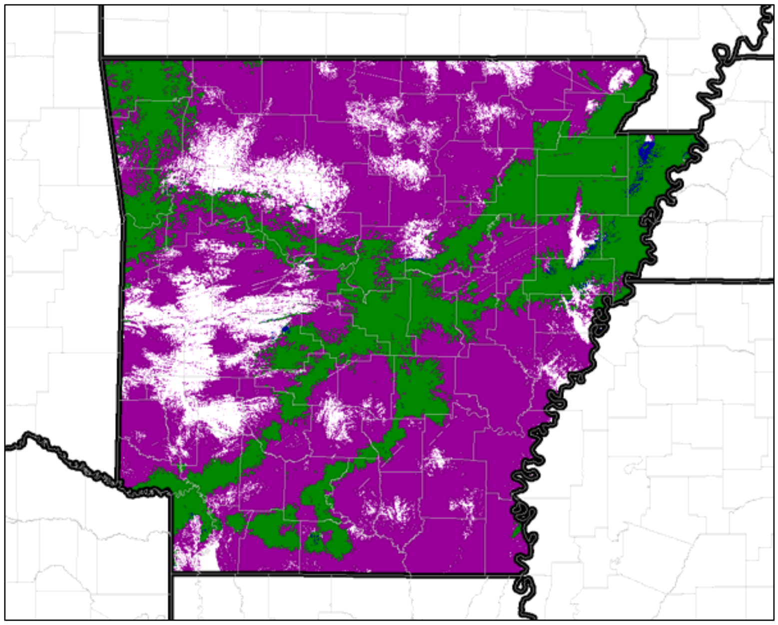

Figure 4: Existing network (Purple), new network if resellers are excluded (Blue) and Combined (Green) Voice Coverage in Arkansas, Form 477 Data 4Q16

Arkansas has 115,492 Lifeline customers served by 15 wireless ETCs. Should the Facilities-Based Proposal be adopted, only the second and the fourth largest nationwide wireless carriers would remain as facilities-based Lifeline providers. As noted above, AT&T, the second largest nationwide carrier, has indicated an intent to exit the market.

By taking the unprecedented step of removing existing competitors from the market, the proposal would leave many Lifeline consumers with a level of coverage far less than they enjoy today. For some Lifeline subscribers, this would mean completely losing critical wireless reception in their home and neighborhood. By definition, such a proposal harms the public and is contrary to the public interest.

5. Eliminating resellers from Lifeline could have unintended consequences for the entire wireless telecommunications market and existing agreements between resellers and facilities-based providers.

In addition to harming the market for Lifeline services, limiting Lifeline participation to facilities-based providers could have unintended negative consequences for the entire wireless

telecommunications market. Eliminating resellers from Lifeline threatens to put many resellers out of business entirely, thereby eliminating these providers' diverse and competitive service offerings for all customers. This could have repercussions for the competitiveness of the wireless telecommunications industry, as the Commission has found that resellers are uniquely situated to serve not only low-income customers but also other market segments such as consumers with lower data-usage needs.[75]

The NPRM also threatens the market for wireless telecommunications services by disrupting existing service agreements between facilities-based and non-facilities-based providers. In proposing to eliminate non-facilities based providers from the Lifeline program, the NPRM asks how a facilities-based requirement for the Lifeline program should apply where a reseller and facilities-based provider have formed a joint venture, and asks how "the Commission [should] ensure Lifeline support is only issued to ETCs that satisfy the facilities requirement[.]"[76] Many facilities-based providers already have entered into carefully negotiated agreements with resellers regarding the provision of services, including Lifeline services. The Commission's brief discussion of joint ventures in the NPRM suggests that the Commission might adopt rules that could nullify or hamper existing joint ventures between resellers and facilities-based providers. This not only would serve as yet another means by which the Commission would negatively interfere with the dynamic wireless telecommunications market, but would violate the Commission's notice-and-comment obligations under the Administrative Procedure Act.[77] The Commission has proposed no rules on the formation of joint ventures between entities related to the provision of Lifeline services, and the scant mention of joint

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75 *2017 Mobile Competition Report* ¶ 15.

76 NPRM ¶ 68.

77 *See* 5 U.S.C. § 553(c).

ventures in once sentence of the NPRM fails to convey a position on how the Commission seeks to proceed in this regard. Because "something is not a logical outgrowth of nothing"[78] and stakeholders simply cannot "divine [the Commission's] unspoken thoughts,"[79] Commission must conduct further proceedings with opportunity for public comment if it seeks to adopt final rules related to joint ventures.

B. The Facilities-Based Proposal would fail to serve the Commission's policy objectives as envisioned in the NPRM.

Adoption of the Facilities-Based Proposal not only would destroy competition for wireless telecommunications services and harm millions of low-income families that depend on the Lifeline program, but would fail to serve the policy objectives that the Commission identified in the NRPM. The Commission asserts that eliminating resellers from the Lifeline program will promote broadband deployment and curtail Lifeline waste, fraud, and abuse. However, these assertions rest on unsupported and illogical assumptions. The Facilities-Based Proposal is an overbroad and uncertain means to advance these stated policy goals.

1. Eliminating resellers from the Lifeline market is unlikely to increase broadband deployment.

The NPRM proposes discontinuing Lifeline support for non-facilities-based services to "advance [the Commission's] policy of focusing Lifeline support to encourage investment in voice- and broadband-capable networks."[80] This theory is based on a number of unsupported and questionable assumptions. Eliminating non-facilities-based providers is unlikely to positively impact broadband deployment.

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78 *Envtl. Integrity Project v. E.P.A.*, 425 F.3d 992, 996 (D.C. Cir. 2005) (quoting *Kooritzky v. Reich*, 17 F.3d 1509, 1513 (D.C. Cir. 1994)).

79 *Id*. (quoting *Arizona Pub. Serv. Co. v. E.P.A.*, 211 F.3d 1280, 1299 (D.C. Cir. 2000)).

80 NPRM ¶ 67.

First, the NPRM assumes that eliminating non-facilities-based providers would encourage widespread Lifeline participation by facilities-based providers. Facilities-based providers are already eligible to participate in the Lifeline program and receive a subsidy for serving low-income customers, yet these providers collectively serve only 30% of Lifeline subscribers, and many are continuing to exit the program altogether.[81] Indeed, Lifeline penetration was at its lowest when only facilities-based providers were permitted to provide Lifeline services. The NPRM does not propose to increase the $9.25/month subsidy or provide any other incentive for facilities deployment. Thus, the NPRM offers no justification as to why eliminating non-facilities-based providers would increase participation by their facilities-based counterparts.

Even if the elimination of resellers from the Lifeline program spurred participation by facilities-based providers, the NPRM does not suggest how this participation would stimulate the deployment of network facilities. Because "Lifeline support can serve to increase the ability to pay for services of low-income households," the NPRM speculates that "such an increase can thereby improve the business case for deploying facilities to serve low-income households" and "encourage the deployment of facilities-based networks by making deployment of the networks more economically viable."[82] However, the Commission provides no data or other evidence to support these propositions, and basic facts about how the Lifeline program operates undermine these assertions. First, FCC rules obligate Lifeline providers to pass the full amount of the Lifeline subsidy through to consumers in the form of lowered rate to address the issue of affordability.[83] Second, whereas the Commission's Connect America Fund provides support to

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81 *See supra* note 27.

82 *NPRM* ¶ 65.

83 *See* 47 C.F.R. § 54.403(a)(1), (a)(3), (b).

providers to build out and maintain network facilities in areas where such deployment would otherwise be prohibitively expensive, Lifeline funds are not geographically based, instead following the consumer.[84] Given the transient nature of many Lifeline subscribers and the highly variable nature of Lifeline demand,[85] it is difficult to comprehend how the ability to serve Lifeline customers, or even the existence of Lifeline customers in a specific geographic area at one point in time, would encourage investment in the deployment of permanent network facilities.

Moreover, the Commission offers no evidence to suggest that the level of funding available from the Lifeline program is sufficient to influence broadband deployment decisions. CTIA reports that U.S. wireless providers invested $200 billion in network deployment between 2010 and 2016.[86] In 2015 alone, AT&T's network investments totaled nearly $19 billion and Verizon's exceeded $16 billion.[87] The U.S. Census Bureau estimates that wireless service providers spent $32.7 billion on capital expenditures in 2015.[88] The Lifeline program offers a $9.25 monthly subsidy for each low-income customer, with an enhanced subsidy for Tribal lands, resulting in a total of $1.5 billion in support that serves 12 million families. The NPRM

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84 *See* 47 C.F.R. § 54.403(a)(1) (providing that "[f]ederal Lifeline support in the amount of $9.25 per month will be made available to an eligible telecommunications carrier providing Lifeline service to a qualifying low-income consumer, except as provided in paragraph (a)(2) of this section, if that carrier certifies to the Administrator that it will pass through the full amount of support to the qualifying low-income consumer and that it has received any non-federal regulatory approvals necessary to implement the rate reduction").

85 Studies have shown that approximately 12 percent of U.S. households relocate yearly, and residential mobility rates are higher among low-income households, renters, and younger families. Claudia J. Coulton, The Federal Reserve Bank of San Francisco and Urban Institute, "Using Data to Understand Residential Mobility and Neighborhood Change" (2018), http://www.whatcountsforamerica.org/portfolio/using-data-to-understand-residential-mobility-and-neighborhood-change/.

86 *2017 Mobile Competition Report* ¶ 7.

87 Comments of CTIA, GN Docket No. 17-199, at 6 (filed Sept. 21, 2017).

88 *2017 Mobile Competition Report* ¶ 7 n.30.

does not show how the availability of Lifeline funds currently received by non-facilities based providers would meaningfully impact the business case for broadband deployment.

Finally, the Commission appears to assume that adopting the Facilities-Based Proposal would do more to encourage broadband deployment than the existing program structure, an assumption that completely ignores the symbiotic relationship between resellers and facilities-based providers. Because resellers purchase voice and data capabilities from facilities-based providers on a wholesale basis, the participation of resellers in the Lifeline program confers a benefit to facilities-based providers. Lifeline subsidies received by wireless resellers are in part used to invest in the deployment, maintenance, and upgrade of facilities-based networks. Thus, if adopted, then the Facilities-Based Proposal could *actually decrease* deployment by eliminating the ability of facilities-based providers to obtain revenue through resellers' participation in the Lifeline program while failing to provide sufficient incentive for facilities-based providers to serve Lifeline customers themselves.

2. The Facilities-Based Proposal is not an appropriate means to combat Lifeline waste, fraud, and abuse.

The NPRM asks whether "the facilities-based requirement [would] further the Commission's goal of eliminating waste, fraud, and abuse in the Lifeline program[.]"[89] The Commission's theory that eliminating resellers would enhance the overall integrity of the Lifeline program misunderstands key aspects of historic Lifeline enforcement, makes unsupported assumptions, and would be an overly broad and ineffective approach to combating waste, fraud, and abuse.

89 NPRM ¶ 68.

First, the waste, fraud, and abuse that the Commission describes is not attributable only to resellers. Multiple facilities-based carriers have entered into consent decrees with the Commission in the past five years to terminate investigations into the carriers' alleged violations of the Lifeline program rules.[90]

Second, factors other than abuse by resellers explain the uptick in Lifeline enforcement that has occurred since resellers joined the Lifeline program in 2008. For instance, many of the rules aimed at protecting Lifeline's program integrity (many of which were proposed by resellers such as TracFone[91]) were adopted during this time period. Indeed, the "one per household" rule was not adopted by the Commission until 2012.[92] A host of new program obligations, coupled with inconsistent guidance from the Commission and USAC on compliance with these obligations, likely contributed to an increase in enforcement activities in the Lifeline program. Increased public interest and Congressional scrutiny into the program during this time period also may have contributed to a higher number of enforcement actions targeting the Lifeline program.

Third, even if the enforcement statistics suggest that resellers are worse offenders than facilities-based providers, this is a product not of disproportionate program abuse by resellers,

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90 *See, e.g., AT&T Services, Inc.*, Order and Consent Decree, 30 FCC Rcd 3728 (2015) (terminating an investigation into AT&T's alleged failure to de-enroll Lifeline subscribers that failed to respond to recertification requests and requiring AT&T to pay a civil penalty in the amount of $6.9 million); *Southern New England Telephone Company d/b/a Frontier Communications of Connecticut*, Order and Consent Decree, 30 FCC Rcd 3782 (2015) (terminating an investigation into provider's alleged failure, while affiliated with AT&T, to de-enroll Lifeline subscribers that failed to respond to recertification requests and requiring provider to pay a civil penalty in the amount of $4 million); *CenturyLink, Inc.,* Order and Consent Decree, 28 FCC Rcd 6918 (2013) (terminating an investigation into whether CenturyLink violated its obligations to offer discounted services to low-income consumers pursuant to an FCC Merger Order and requiring CenturyLink to make a voluntary contribution to the U.S. Treasury in the amount of $250,000).

91 *See, e.g.,* Comments of TracFone, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, at 31 (filed Apr. 21, 2011) (supporting adoption of a de-enrollment requirement for non-responders and uniform re-certification standards).

92 *2012 Lifeline Reform Order* ¶ 69.

but of the Commission's unfortunate targeting of non-facilities-based providers in enforcing Lifeline program rules. This point was vividly made in the Government Accountability Office's May 2017 report entitled "Additional Action Needed to Address Significant Risks in FCC's Lifeline Program,"[93] which states:

> We found . . . that FCC proposed penalties inconsistently against Lifeline providers that had duplicate subscribers. For example, USAC's [in-depth validations] determined that 41 Lifeline providers had intracompany duplicates; of these, FCC proposed penalties against 12. In some cases, Lifeline providers that FCC penalized had fewer duplicates than others that were not penalized.[94]

The GAO Report does not identify which Lifeline providers were subject to proposed forfeitures for alleged overpayments and which were not subject to proposed fines. Without that provider information, it is impossible to determine whether some or all of the companies which were given a "pass" by the Commission may have been facilities-based rather than resellers. For that reason, TracFone filed with the Commission a Freedom of Information Act request seeking the In-Depth Validation ("IDV") data compiled by USAC for all Lifeline providers (facilities-based and resellers).[95] The Wireline Competition Bureau denied this request, and the Commission denied TracFone's application for review of this decision.[96]

The Commission steadfastly has refused to disclose IDV duplicate enrollment information for any Lifeline providers other than the 12 chosen by the Commission to receive

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[93] United States Government Accountability Office, Report to Congressional Requesters, "Telecommunications: Additional Action Needed to Address Significant Risks in FCC's Lifeline Program," GAO - 17-538 (2017), *available at* https://www.gao.gov/assets/690/684974.pdf.

[94] *Id.* at 61. The GAO Report contains several specific examples. It mentions that one Lifeline provider received $8,300 in overpayments and the FCC proposed a fine of $3.7 million, but that another provider received approximately $250,000 in overpayments but did not receive a proposed fine. The GAO Report also cites a situation in which one provider received $8,000 in overpayments and the FCC proposed a $1.2 million fine, but it not proposed any fine for another provider who had received double the amount of overpayments (about $16,000).

[95] FOIA Request submitted by Mitchell F. Brecher, April 2, 2014, FOIA Control Number 2014-338.

[96] *See* Letter to Mitchell F. Brecher from Kirk S. Burgee, Chief of Staff, Wireline Competition Bureau, Freedom of Information Act Request Control No. 2014-338 (July 3, 2014); *In the Matter of Mitchell F. Brecher On Request for Inspection of Records*, FOIA Control No. 2014-338, (rel. March 16, 2016).

notices of apparent liability in 2013. There is reason to believe that several of the Lifeline providers (including possibly some of those noted in the GAO Report) who did not receive proposed forfeitures despite having high number of duplicate enrollments were, in fact, facilities-based carriers. Unless and until the Commission publicly identifies all of the Lifeline providers' IDV results for the 2012-2013 period, its assertion that the vast majority of Commission actions involving Lifeline fraud have involved resellers remains unsupported and provides no factual basis for the proposed reseller exclusion.

It is simply not the case that resellers as a group are responsible for Lifeline waste, fraud, and abuse. Categorically eliminating support for all non-facilities-based providers is therefore an overbroad means to improve the integrity of the Lifeline program. Eliminating providers based on the ownership of underlying telecommunications facilities would disqualify numerous providers such as TracFone that are dedicated to compliance with Lifeline program rules and have been staunch advocates for reforms that strengthen the integrity of the program. Indeed, many non-facilities-based providers have significant quality control and anti-fraud measures in place to ensure that funds are used properly and subscribers are properly verified. TracFone itself has a robust 13-step program to combat, waste, fraud, and abuse. Yet the NPRM proposes to eliminate TracFone from the program simply because TracFone does not operate its own wireless facilities. Eliminating support for all non-facilities-based providers to combat waste, fraud, and abuse is an imprecise remedy that would punish many compliant non-facilities-based providers,[97] ignore non-compliant facilities-based providers, and discriminate against non-facilities-based Lifeline providers.

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[97] *Cf. Textor v. Cheney*, 757 F. Supp. 51, 56 (D.D.C. 1991) (holding that, in the context of administrative agency debarment, a debarment decision must be based on substantial evidence and is invalid if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law" in violation of the Administrative Procedure Act).

C. The Facilities-Based Proposal contradicts the Commission's statutory obligations.

In addition to failing as a matter of policy, adoption of the Facilities-Based proposal would contradict two of the Commission's statutory obligations: (1) its mandate to provide universal service to low-income consumers under Section 254 of the Communications Act; and (2) its obligation under Section 10 of the Telecommunications Act of 1996 to forbear from provisions of the Act if certain criteria are met. The Facilities-Based proposal also would contradict both Section 254's requirement that every telecommunications carrier providing interstate telecommunications services contribute on an equitable and nondiscriminatory basis to the preservation and advancement of universal service and the Commission's principle of competitive neutrality.

1. Eliminating support for non-facilities-based services is contrary to the Commission's mandate to serve low-income consumers.

Section 254(b) of the Communications Act requires the Commission to "base policies for the preservation and advancement of universal service" on a series of enumerated "universal service principles."[98] One of these principles is that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas[.]"[99] Another universal service principle provides that "[t]here should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service."[100]

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98 47 U.S.C. § 254(b).

99 *Id*. § 254(b)(3).

100 *Id*. § 254(b)(5).

Although the Commission first established the Lifeline program in 1985 and Section 254 was not adopted until the passage of the Telecommunications Act of 1996, in its *1997 Universal Service Order* the Commission acknowledged that the 1996 Act "clarifie[d] not only the scope of the Commission's authority, but also the specific nature of [its] obligations" with respect to the provision of telecommunications services to low-income populations.[101] Specifically, the Commission explained that "the Act evinces a renewed concern for the needs of low-income citizens," and that "for the first time, Congress expresse[d] the principle that rates should be 'affordable,' and that access should be provided to 'low-income consumers' in all regions of the nation."[102] The Commission further found that "[t]hese principles strengthen and reinforce the Commission's preexisting interest in ensuring that telecommunications service is available 'to all people of the United States,'" and that, "[u]nder these directives, all consumers, including low-income consumers, are equally entitled to universal service as defined by this Commission under Section 254(c)(1) [of the 1996 Act]."[103] In its order granting TracFone forbearance to allow it to participate in the Lifeline program, the Commission explained that the "statutory goals of the low-income program" are "to provide support for qualifying low-income consumers throughout the nation, *regardless of where they live*."[104]

The Facilities-Based Proposal contradicts these statutory obligations in several key respects. First, it fails to ensure that universal service funds are "specific, predictable, and sufficient." As discussed at length above, adopting the Facilities-Based Proposal would cut off 8.3 million subscribers from their providers, and would leave millions of customers with one or

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101 *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 335 (1997) ("*1997 Universal Service Order*").

102 *Id.*

103 *Id.*

104 *2005 Forbearance Order* ¶ 23 (emphasis added).

zero options for wireless Lifeline services. Second, the proposal effectively seeks to transform the Lifeline program into another *high cost* universal service program, ignoring the Commission's mandate to provide universal service to *low-income consumers*. Poor people are not only (or even mostly) located in rural areas, and rural residents are not all poor. TracFone's own data shows approximately 16% of its Safelink customers reside in rural parts of the United States. Far from serving all low-income customers "regardless of where they live," the Commission's plan reflected in the NPRM seeks to prioritize rural broadband deployment and service to rural customers over provision of service to low-income consumers as a group. Indeed, underlying the Facilities-Based Proposal is the NPRM's assertion that "broadband service is not as ubiquitous or as affordable as voice service . . . particularly . . . in rural and rural Tribal areas," and that "limiting Lifeline support to facilities-based broadband service" can encourage such deployment.[105] The NPRM fails to explain how the Facilities-Based Proposal would serve the statutory obligations that underlie the Lifeline program as the Commission has articulated and applied them over the past 20 years.

2. Eliminating support for non-facilities-based services would effectively reverse the forbearance relief granted to TracFone in violation of Section 10 of the Telecommunications Act of 1996.

Adopting the Facilities-Based Proposal also would effectively reverse the forbearance previously granted to non-facilities-based providers, in contravention of the Telecommunications Act of 1996. Pursuant to Section 10 of the Act, "the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service" if it determines that the following three criteria are met: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices,

105 NPRM ¶¶ 63, 65.

classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.[106]

Section 214(e) of the Communications Act requires that to be designated as an eligible telecommunications carrier ("ETC") and receive universal service support, a telecommunications provider must offer services "either using its own facilities or a combination of its own facilities and resale of another carrier's services."[107] In 2005, upon "careful examination of the regulatory goals of universal service as applied to low-income consumers," the Commission, under Chairman Martin, granted TracFone forbearance from the facilities requirement for ETC designation to allow TracFone to participate in the Lifeline program as a service provider.[108]

In granting TracFone forbearance to allow it to provide Lifeline services as a non-facilities-based provider, the Commission made several key findings that mandated forbearance under Section 10. With respect to the first prong of Section 10, the Commission found that as a reseller, TracFone "is by definition subject to competition and that this competition ensures that its rates are just and reasonable and not unjustly or unreasonably discriminatory," and that TracFone's wireless prepaid offering is "neither dependent upon the retail service offerings of its underlying carriers nor simply a rebranding of [such offerings] which may provide a valuable alternative to eligible consumers."[109] Thus, the Commission concluded, "[w]here, as here, the

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[106] 47 U.S.C. § 160(a). With respect to the third criterion, the Commission also must consider "whether forbearance . . . will promote competitive market conditions." *Id.* § 160(b).

[107] *Id.* § 214(e).

[108] *2005 Forbearance Order* ¶ 9.

[109] *Id.* ¶ 13.

wireless reseller is forgoing all universal service support but Lifeline, which is customer-specific and is designed to make telecommunication service affordable to eligible consumers, the facilities requirement is unnecessary to preserve the integrity of the universal service program or the fund."[110]

With respect to the second prong of Section 10, the Commission found not only that "imposing a facilities requirement on a pure wireless reseller is not necessary for the protection of consumers," but that "*forbearance from this provision will actually benefit consumers*."[111] Specifically, the Commission concluded that TracFone's prepaid offerings "may be an attractive alternative for such consumers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts."[112] The Commission also found that granting forbearance to TracFone would not unduly burden consumers through increased pass-through charges of carriers' USF contribution obligations, noting that increases in the size of the fund would be outweighed by the benefits, and that "[s]ignificantly, granting TracFone's Petition will not have any effect on the number of persons eligible for Lifeline support."[113] Finally, the Commission found that "appropriate safeguards are in place to deter waste, fraud, and abuse," and that granting forbearance to TracFone would "balance [the Commission's] objective of increasing participation in the low-income program with [its] objective or preventing and deterring waste, fraud, and abuse."[114]

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110 *2005 Forbearance Order* ¶ 14.

111 *Id.* ¶ 15 (emphasis added).

112 *Id.*

113 *Id.* ¶ 17.

114 *Id.* ¶ 21.

With respect to the third prong of Section 10, the Commission found that "requiring TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live."[115] Noting that only one-third of eligible households were participating in Lifeline at that time, the Commission found that "granting TracFone's Petition serves the public interest in that it should expand participation of qualifying consumers."[116]

Although the Commission found that all three Section 10 criteria were met and thus the Commission was required to forbear from the facilities requirement to enable TracFone to be designated as an ETC to provide Lifeline services as a pure reseller, the NPRM inexplicably states that the Commission "do[es] not expect" that its proposal to effectively eliminate non-facilities-based providers from the Lifeline program "would impact the forbearance relief from section 214(e)(1)(A)'s facilities requirement."[117] The NPRM then states that the Commission "recognize[s] that not reversing this forbearance relief may create a tension that could be relieved by making the requirements for obtaining a Lifeline-only ETC designation under section 214(e)(1)(A) match the facilities requirement for receiving Lifeline reimbursement,"[118] thereby appearing to suggest that the Commission would undo the forbearance relief previously granted to cohere with the new restrictions on Lifeline participation that would be imposed through the adoption of the Facilities-Based Proposal.

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115 *Id.* ¶ 23.

116 *Id.* ¶ 24.

117 NPRM ¶ 69.

118 *Id.*

The Commission's view of the Facilities-Based Proposal as it relates to forbearance is fundamentally flawed. First, adopting rules that prohibit non-facilities-based providers from receiving Lifeline reimbursement as a matter of Lifeline's program rules indisputably and inevitably defeats the forbearance relief previously granted to resellers for them to be designated as ETCs. The Commission forbore from Section 214(e) in 2005 to permit TracFone to be designated as an ETC precisely so that it could provide Lifeline services. Subsequently prohibiting pure resellers from participating strips this forbearance of any effect. Because the Commission was *required* to forbear from Section 214(e) upon finding that the three prongs of Section 10 were satisfied by TracFone's participation in the Lifeline program, it may only reverse this forbearance and prohibit TracFone's participation if it finds that facts and circumstances have changed such that forbearance is no longer required.[119] As the Commission has made no such finding, adopting the Facilities-Based Proposal at this juncture would contravene the Commission's statutory mandate under Section 10.

Further, even if the Commission could properly undertake such an analysis here, the Commission cannot conclude that the factors compelling forbearance in 2005 to permit TracFone to be a Lifeline provider have changed so as to permit it now to reverse its conclusions on forbearance. Indeed, it is still the case that TracFone is subject to competition, provides unique valuable services to customers that are independent from those provided by underlying carriers, and charges rates that are just and reasonable and not unjustly or unreasonably discriminatory. It is still the case that use of a carrier's own facilities is unnecessary to ensure just and reasonable

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119 *See Bus. Data Servs. in an Internet Protocol Env't*, Report and Order, 32 FCC Rcd 3459, 3535 ¶¶ 172, 174 (2017) (explaining that the Commission "read[s] [Section 10] as giving [the Commission] the authority to modify or reverse forbearance," but only "when [the Commission] determine[s] that one or more of those forbearance criteria are no longer met," and noting that "modifying or reversing forbearance once granted by the Commission or by operation of law is a step that should be taken with great care").

rates, protect consumers, and further the statutory objectives of the Lifeline program. It is still the case that allowing TracFone to participate in Lifeline benefits consumers and serves the public interest—increasingly so as TracFone has continued to innovate in the Lifeline market and more than 4 million Lifeline customers have chosen TracFone as a provider. It is still the case that TracFone's participation properly strikes the balance between encouraging Lifeline participation and curtailing waste, fraud, and abuse (and in fact, the Commission has only increased safeguards against waste, fraud, and abuse since TracFone entered the program). Accordingly, the forebearance previously granted to TracFone must be retained, and TracFone must be permitted to continue participating in the Lifeline program.

3. Eliminating support for non-facilities-based services would contravene Section 254's requirement that telecommunications carriers contribute to universal service support on an equitable and nondiscriminatory basis as well as the FCC's principle of competitive neutrality.

Section 254(d) mandates that "[e]very telecommunications carrier that provides interstate services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[120] Section 254(b) includes equitable and nondiscriminatory contributions to the preservation and advancement of universal service among the principles that must form the basis for the Commission's universal service policies.[121] Precluding non-facilities based providers such as TracFone from participating in the Lifeline program would eliminate their ability to receive any universal service subsidies without making any change to their required USF contributions. They would thus be in the position of subsidizing their competitors' universal service offerings while being barred from receiving support for offerings of their own,

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120 47 U.S.C. § 254(d).

121 *Id*. § 254(b)(4).

which is far from the equitable and nondiscriminatory allocation of duties required by the statute. This result is especially inequitable given the lack of any reasonable justification for eliminating support for non-facilities-based Lifeline services addressed above at length in sections II(A) and II(B).

Consistent with the "equitable and nondiscriminatory" requirement of Section 254, the FCC established "competitive neutrality" as an additional and distinct principle on which it bases its policies for advancing universal service.[122] The Commission has explained this principle in the context of determining universal service support:

> Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another.[123]

The Facilities-Based Proposal, which unfairly disadvantages non-facilities-based providers by eliminating them from participation in the Lifeline program while continuing to require full USF contributions from them, is entirely inconsistent with the FCC's longstanding competitive neutrality principle.

III. THE COMMISSION SHOULD CONTINUE PROVIDING LIFELINE SUPPORT FOR NON-FACILITIES-BASED PROVIDERS, AND SHOULD SEEK TO SERVE ITS POLICY OBJECTIVES THROUGH OTHER, BETTER MEANS.

Because eliminating Lifeline support for non-facilities-based providers would devastate the Lifeline program and contradict the Commission's statutory obligations while failing to serve the Commission's policy aims, the Commission should continue providing support for non-facilities-based providers. The Commission can meet its policy goals of encouraging broadband

[122] *1997 Universal Service Order* ¶ 46.

[123] *Id.* ¶ 47.

deployment and eliminating waste, fraud, and abuse from the Lifeline program through other, better means than categorically eliminating non-facilities-based providers from the program.

As a threshold matter, TracFone seeks to address the perceived level of waste, fraud, and abuse in the Lifeline program. There has been speculation that a 2014 analysis of Lifeline subscriber data reported in the 2017 GAO report discussed above reveals significant and on-going problems with the process by which subscribers are qualified and enrolled by Lifeline providers.[124] A recent analysis, which TracFone has attached to these comments, evaluates the GAO report and demonstrates that contrary to that view, most, if not all, of the oft-cited 1.2-million cases in which GAO was unable to confirm the eligibility of a Lifeline subscriber are a function of the timing of, and manner in which, the GAO analysis was conducted.[125] The authors calculate that GAO's inability to confirm the eligibility of at least 1 million of the 1.2 million subscribers was the result of methodological issues with the analysis. The paper also demonstrates that USAC was in the middle of evaluating and improving its data processes at the time GAO pulled data for its study, and that by the end of the following quarter (March 2015) more than 1.5-millilon subscribers had been de-enrolled from the program.

A. The Commission recently adopted Lifeline reforms that have the potential to combat waste, fraud, and abuse.

The Commission has long been dedicated to curtailing waste, fraud, and abuse in the Lifeline program and has made great strides in this area. In its *2016 Lifeline Reform Order*, the Commission adopted several proposals designed to improve the integrity of the program,

[124] *See Bridging the Digital Divide for Low-Income Consumers*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017) (Statement of Chairman Ajit Pai) (explaining that the GAO report "discovered 1,234,929 Lifeline subscribers who apparently were not eligible to participate in the program as well as 6,378 individuals who apparently reenrolled after being reported dead").

[125] *See* attached report by Susan Gately and Helen Golding, "An Analysis of the 'Unconfirmed' and 'Deceased' Subscriber Findings in the 2017 GAO Lifeline Report" (Feb. 2018).

including directing USAC to create the National Verifier; modifying the list of federal assistance programs that provide default Lifeline eligibility; removing state-specified eligibility criteria for Lifeline support; preempting states from designating Lifeline Broadband Providers; establishing a non-self-enforcing budget for the program; and requiring the creation of uniform, standardized forms for the Lifeline program as deemed appropriate by the Wireline Competition Bureau.[126]

The full effects of the reforms adopted in the *2016 Lifeline Reform Order* have not yet been seen. Indeed, many of the rules adopting these reforms did not even become effective until the end of 2016.[127] Moreover, some reforms have not been implemented: as discussed at length in Section VII, *infra*, the National Verifier remains delayed. Before adopting a sweeping proposal to tackle waste, fraud, and abuse by categorically excluding providers comprising more than 70% of the entire Lifeline program, the Commission should focus on the implementation of previously adopted reforms, allow those reforms to work their way through the system, and evaluate the impact of these reforms.

B. The NPRM identifies several additional measures that will combat waste, fraud, and abuse without harming the Lifeline program.

As a long-time advocate of integrity in the Lifeline program, TracFone commends the Commission for its dedication to identifying reforms to curtail Lifeline waste, fraud, and abuse.

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[126] *2016 Lifeline Reform Order* ¶¶ 126-216, 395-432.

[127] *See Lifeline and Link Up Reform and Modernization*, Final Rule, 81 Fed. Reg. 33025 (2016) (announcing an effective date for the *2016 Lifeline Reform Order* of June 23, 2016 except for amendments to Sections 54.101, 54.202(a)(6), (d), and (e), 54.205(c), 54.401(a)(2), (b), (c), and (f), 54.403(a), 54.405(e)(1) and (e)(3) through (5), 54.407(a), (c)(2), and (d), 54.408, 54.409(a)(2), 54.410(b) through (h), 54.411, 54.416(a)(3), 54.420(b), and 54.422(b)(3), which would become effective upon Office of Management and Budget ("OMB") approval); *Lifeline and Link Up Reform and Modernization*, Final Rule; Correction, 81 Fed. Reg. 45973 (2016) (announcing an effective date of July 15, 2016 for corrections to the *2016 Lifeline Reform Order*, other than corrections to Sections 54.202, 54.405, 54.408, and 54.410, which would become effective upon OMB approval); *Lifeline and Link Up Reform and Modernization*, Final Rule; Announcement of Effective Date, 81 Fed. Reg. 67922 (2016) (announcing the OMB approval of rule changes in the *2016 Lifeline Reform Order* and establishing effective dates of October 3, 2016 for Sections 54.202(a)(6), (d), and (e), and 54.205(c), December 2, 2016 for Sections 54.101, 54.401(a)(2), (b), (c), (f), 54.403(a), 54.405(e)(1), (e)(3) through (e)(5), 54.407(a), (c)(2), (d), 54.408, 54.409(a)(2), 54.410(b) through (e), (g) through (h), 54.411, 54.416(a)(3), 54.420(b), and 54.422(b)(3), and January 1, 2017 for Section 54.410(f)).

In particular, the NPRM identifies several reforms advocated by TracFone in the past aimed at improving the integrity of the Lifeline program: (i) prohibiting agent commissions related to enrolling subscribers in the Lifeline program and live distribution of handsets;[128] (ii) requiring Lifeline applicants residing in multi-person residences to submit a certification confirming that the applicant resides at the address and is not part of the same economic household as any other resident already receiving Lifeline support;[129] and (iii) codifying agent registration and other requirements.[130] To best improve the integrity of the program, the Commission should impose agent registration and other agent-related requirements, adopt a certification requirement for applicants residing in multi-person residences, and require disbursement holdbacks of a certain percentage each month.

With respect to live distribution of handsets and agent commissions, the Commission has previously declined to ban such practices despite TracFone's petitions. Due to vigorous competition in the Lifeline market and the absence of Commission action, TracFone was forced to also provide live handset activations for qualified Lifeline applicants while compensating its agents through a commission-based system. TracFone has learned since then that the two practices have their own advantages in encouraging Lifeline's program participation by those who are eligible. TracFone now believes that the risks created by these business practices can be mitigated by the Commission mandating the adoption of robust anti-fraud measures as well as agent registration and evaluation standards. These include implementing a third-party verification system to confirm a Lifeline applicant's name, date of birth, and address, as well as

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128 NPRM ¶ 91.

129 *Id.* ¶ 99.

130 *Id.* ¶ 92.

utilizing key performance indicator matrix such as the level of early churn for non-usage to monitor agent behavior.[131]

Thus, TracFone favors the Commission's proposals to establish requirements specifically applicable to agents, including agent registration. Most Lifeline providers use independent agents and agencies to seek out and enroll Lifeline customers on their behalf. Because those agents are integral to the marketing of Lifeline services, they too should be subject to Commission rules governing their conduct and should be accountable for violation of such rules. Pursuant to Section 217 of the Communications Act,[132] acts and omissions of common carrier agents are deemed to be acts or omissions of common carriers. Moreover, the Commission has explicitly reminded Lifeline providers that ETCs are responsible for the conduct of their agents.[133] However, an agent registration program and the promulgation of rules and standards governing agent conduct would empower the Commission to take enforcement actions directly against those agents who defraud the program. This would be an important step in the effort to prevent fraud. Agents frequently move from one agency to another and often from representing one Lifeline provider to representing another provider, often after engaging in fraudulent behavior. By the time that an ETC has learned of an agent's misdeeds, the agent has departed for another ETC or an agency representing another ETC.

TracFone supports an agent registration process as well as establishment of standards which agents must meet in order to continue in the program. For example, agents who submit a disproportionate number of applications which are rejected by NLAD should be suspended from

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131 Comments of TracFone, WC Docket No. 11-42, at 7-8 (filed Aug. 31, 2015); Reply Comments of TracFone, WC Docket No. 11-42, at 12-13 (filed Sept. 30, 2015).

132 47 U.S.C. § 217.

133 *See, e.g.*, FCC Enforcement Advisory No. 2013-4, "Lifeline Providers are Liable if their Agents or Representatives Violate the FCC's Lifeline Program Rules," DA 13-1435 (rel. June 25, 2014).

the program for a specified period, *e.g.*, 3 months. A second period of unacceptably high NLAD rejections should result in permanent debarment. Agents who have been determined to have knowingly engaged in fraudulent conduct in order to maximize enrollments and maximize their compensation should be subject to monetary forfeitures in accordance with Section 503 of the Communications Act and should be debarred from the Lifeline program.

The Commission also can curtail Lifeline waste, fraud, and abuse by adopting its proposal to require subscriber certifications related to the submission of the Independent Economic Household ("IEH") Worksheet. To implement the "one-per-household" rule adopted in 2012,[134] the Commission directed USAC to develop a worksheet to be completed by Lifeline applicants whose claimed addresses were associated with other Lifeline accounts. The IEH Worksheet, though well-intentioned, creates an exploitable honor system in which applicants could obtain multiple Lifeline services within one household by providing false answers with no means for verifying the accuracy of those answers.

TracFone brought this concern regarding the IEH Worksheet to the Commission's attention in two ex parte letters in 2014.[135] In these submissions, TracFone suggested that, in situations where multiple persons claimed the same address, the applicants should be required to confirm the accuracy of their worksheet responses rather than have the ETCs accept the IEH Worksheet answers at face value. TracFone also proposed that Lifeline applications from persons residing at multi-person address locations such as homeless shelters, assisted living centers, and group homes be accompanied by certifications from shelter or home administrators

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134 47 C.F.R. § 54.409(c).

135 Letter from Mitchell F. Brecher, counsel to TracFone, to Marlene H. Dortch, Secretary, WC Docket No. 11-42 (filed Sept. 24, 2014); Letter from Mitchell F. Brecher to Marlene H. Dortch, Secretary, WC Docket No. 11-42 (Dec. 5, 2014).

attesting that (1) the applicant resides at the location; and (2) that the applicant is not related to anyone else residing at the location. The NPRM rightfully recognizes that these proposals would help to ensure the accuracy of a subscriber's IEH Worksheet.

Finally, the Commission should further protect against program fraud by requiring holdbacks from USAC disbursements of a stated percentage each month. TracFone implemented such a holdback on a voluntary basis in 2015 when it notified USAC that its Form 497 reports would underreport its claimed subscribers and requested reimbursement by one percent. That one percent holdback reduced TracFone's disbursement receipts subject to annual true-up, but provided a "cushion" to be used if improper payments were discovered. TracFone recommends adoption of mandatory disbursement holdbacks as an additional mechanism for protecting the USF from fraud in connection with the Lifeline program.

The Commission should expeditiously adopt all of these proposals. The adoption of these reforms, in conjunction with careful implementation of the reforms adopted in the *2016 Lifeline Order* designed to curb waste, fraud, and abuse in the system, will make considerable progress toward strengthening the Lifeline's program integrity without also harming the program and the consumers that depend on it.

C. The Commission should adopt a conduct-based approach to further limit waste, fraud, and abuse.

As advocated by TracFone and appreciatively identified in the NPRM,[136] to further curtail Lifeline waste, fraud, and abuse the Commission should adopt a "conduct-based approach" to Lifeline eligibility that uses various existing audit processes to determine a provider's continuing participation in the Lifeline program.

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136 NPRM ¶ 73.

USAC has many auditing tools at its disposal to assess the compliance of Lifeline providers with program rules. In addition to the IDV process discussed above, USAC also conducts audits of USF contributors and recipients through Beneficiary and Contributor Audit Program ("BCAP") and the Payment Quality Assurance ("PQA") process. The PQA process was established pursuant to the Improper Payments Information Act of 2002[137] and the Improper Payments Elimination and Recovery Act of 2010[138] to obtain information from providers of USF-supported services, including Lifeline, about improper disbursements to such providers and to share that information with the Commission.

Virtually all Lifeline providers, including TracFone, have been subject to PQA reviews. In some cases, those reviews lead to more formalized audits which may result in recovery of improper disbursements. However, the Commission has not used PQAs to assess provider conduct and suitability for program participation. PQA results are an important indicator of provider conduct. TracFone recommends that the Commission establish standards governing Lifeline eligibility for all providers based on their performance on USAC audits. These standards are summarized in the chart below.

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[137] 31 U.S.C. § 3321.

[138] *Id.* § 3301.

Compliance Review	Failure Rate Results Exceeding	Objective	Proposed Lifeline Standard (Action)
BCAP and Biennial Audits:	1.5%	Improper enrollments or USAC recoveries exceeding 1.5% within a reviewed period	ETC suspension from the Lifeline program or option for ETC to post a performance bond equal to 10% of the anticipated annual revenue from Lifeline disbursements.
PQA Audits:	1.5%	Improper enrollments or USAC recoveries exceeding 1.5% within a reviewed period	ETC suspension from the Lifeline program or option for ETC to post a performance bond equal to 10% of the anticipated annual revenue from Lifeline disbursements.
IDV Audits - Intracompany:	1.5%	Improper intracompany enrollments or USAC recoveries exceeding 1.5% within a reviewed period for intracompany duplicate customers.	For < 1.5% offense: Immediate ETC suspension from the Lifeline program until issue resolved and immediate return of USF reimbursements received for the intracompany duplicate. For 1.5% to 4.99% offense: Immediate ETC suspension from the Lifeline program until issue resolved and immediate return of USF reimbursements received for the intracompany duplicate. ETC to post a performance bond equal to 10% of the anticipated annual revenue from Lifeline disbursements. For 1st > 4.99% offense: Immediate ETC suspension from the Lifeline program until issue resolved and immediate return of USF reimbursements received for the intracompany duplicate. ETC to post a performance bond equal to 10% of the anticipated annual revenue from Lifeline disbursements. For subsequent > 4.99% offense: Immediate dismissal from the Lifeline program with no remedy.

Using these criteria, the Commission or USAC should immediately conduct an audit of all providers using all available audit data, and disqualify providers that fail to meet these thresholds. This simple measure will do far more to combat waste, fraud, and abuse than any of the reforms under the Commission's consideration.

D. The Commission could consider establishing a non-Lifeline revenue threshold for participation in the program.

The Commission also could condition a provider's participation in the Lifeline program on the existence of revenue from sources other than Lifeline services. For instance, the Commission could establish a threshold percentage of a provider's business consisting of service to non-Lifeline customers, such as 50%, and only allow an ETC to participate in Lifeline if this threshold is met. To the extent the Commission's concerns about Lifeline waste, fraud, and abuse are animated by the fact that many non-facilities-based providers enter the market to provide only Lifeline services, and that such Lifeline-only providers might be motivated by

opportunities for regulatory arbitrage—an assumption that TracFone does not accept and, as discussed above, the Commission has presented no evidence to support—this solution would eliminate those providers while keeping in the program non-facilities-based providers that have demonstrated an interest in establishing a physical presence and serving a wide range of customers. Thus, to the extent the Commission is insistent on categorical exclusions from the Lifeline program as a means to improve program integrity, a non-Lifeline revenue threshold could serve as a slightly more tailored means to disqualify bad actors.

E. Existing FCC programs encourage broadband deployment without harming low-income consumers.

The Commission has implemented many programs and other initiatives aimed at fostering broadband deployment, including the Mobility Fund and High Cost program within the Commission's Connect America Fund. The Commission should focus on these initiatives, and ensure that they operate effectively and efficiently, rather than attempting to transform the Lifeline program into another such initiative.

IV. OTHER PROPOSALS IN THE NPRM THREATEN TO FURTHER HARM THE LIFELINE PROGRAM

The Facilities-Based Proposal is just one proposal in the NPRM that would have grave consequences for the Lifeline program. Multiple other proposals in the NPRM similarly threaten to harm the program by making it harder or impossible for low-income consumers to participate, eliminating valued service options, and hampering the ability of non-facilities-based providers to offer Lifeline services.

A. The Commission should not limit payments to resellers to amounts paid to wholesale carriers.

The NPRM seeks comment on how the Commission may determine "whether existing or future resellers have fully complied with the statute's exhortation that universal service funding must be spent 'only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'"[139] To this end, the NPRM asks whether Lifeline resellers have "passed through all Lifeline funding to their underlying carriers to ensure federal funding is appropriately spent on the required 'facilities and services,'" and asks whether "limiting payments to resellers to what they pay their wholesale carriers [would] fully effectuate the congressional intent of section 254(e) [of the Communications Act]."[140]

This series of inquiries misunderstands the business model of resellers and the plain language of Section 254(e). Section 254(e) provides that an ETC receiving universal service support must "use that support only for the provision, maintenance, and upgrading of facilities *and services* for which the support is intended."[141] Thus, the statute plainly states that universal service funding can be used to cover the costs of providing Lifeline services. The suggestion

[139] NPRM ¶ 72.

[140] *Id*.

[141] 47 U.S.C. 254(e) (emphasis added).

that resellers must pass all Lifeline funding through to the underlying wholesale carriers would deliberately read the words "and services" out of Section 254(e).

Indeed, in its *2005 Forbearance Order*, the Commission considered and rejected the argument that Section 254(e) precludes an ETC from using USF funds solely for the provision of services. There, USTelecom argued that the use of the phrase "facilities and services" in Section 254(e) meant that "an ETC must use any universal support received for facilities as well as services,"[142] and accordingly that forbearance from this provision was required to allow TracFone to participate in the Lifeline program as a pure reseller. The Commission rejected this argument, finding that as used in Section 254(e), "facilities and services" was a disjunctive phrase and accordingly, no forbearance was required to permit TracFone to use Lifeline funds as a pure reseller.[143]

The Commission has already found that Section 254(e) does not limit Lifeline expenditures to the deployment and maintenance of facilities, and that "Congress intended that a carrier must use the universal support received to meet the goals of the specific support mechanism under which it was distributed."[144] Limiting payments to resellers to the amounts of they pay wholesale carriers therefore not only would not effectuate, but would directly contradict, the intent of the statute.

Further, The NPRM's suggestion that Lifeline providers improperly use Lifeline funding is misplaced. Non-facilities-based providers such as TracFone have internal accounting measures to ensure that the funds are used only for eligible expenses. Absent evidence that resellers are misusing Lifeline funds and sufficient justifications as to how such a proposal would

[142] *2005 Forbearance Order* ¶ 26.

[143] *Id*.

[144] *Id*.

serve low income consumers and comport with Section 254(e), the Commission should not limit payments to resellers to amounts paid to wholesale carriers.

B. The Commission should discontinue its phase-down of Lifeline support for voice-only services, and should reject its proposal to maintain the phase-down solely in non-rural areas.

In its *2016 Lifeline Reform Order*, the Commission adopted a new policy that Lifeline services must include a broadband offering to receive the subsidy, and adopted a transition period for phasing out Lifeline support for voice-only options.[145] Pursuant to this schedule, no Lifeline discount will be available for voice-only service offerings beginning December 1, 2021.

TracFone vehemently opposed the Commission's proposal to end support for voice-only service offerings, filing a Petition for Reconsideration in which it explained that the "phased elimination [of voice-only services] only postpones, but does not eliminate, loss of an essential service relied upon for years by millions of low-income households."[146] TracFone further explained that "[t]here are and will always be a portion of the populace for whom the most essential telecommunications service is the ability to make a phone call or receive a phone call, without regard to whether those persons can afford a bundled Lifeline service which includes both voice and broadband service," and argued that "[u]ntil such time as the Commission is able to determine based on a factual record that consumers using broadband services as their sole means of voice and text communications will have ubiquitous and reliable access to E911, NG911 and other emergency and critical N11 services, "traditional" voice service . . . will

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145 *2016 Lifeline Reform Order* ¶ 52.

146 Petition for Reconsideration of TracFone Wireless, Inc., WC Docket Nos. 11-42, 09-197, 10-90, at 2 (filed June 23, 2016).

remain essential services, and must remain available, and must remain eligible for full Lifeline support on a standalone basis."[147]

The NPRM revisits the phase-down of support for voice-only services, asking whether "the Commission [should] make any changes to the current schedule for phasing out Lifeline support for voice services" given the NPRM's stated policy objective of focusing the Lifeline program to encourage broadband deployment.[148] Yet, again, the Commission remains focused on the provision of services to rural customers. Finding that "it is unclear whether low-income consumers would be able to obtain quality, affordable voice service in rural areas without Lifeline support,"[149] the NPRM seeks comment on "eliminating the phase down of Lifeline support for voice-only service in rural areas."[150]

Maintaining the phase-down of Lifeline support for voice-only services in all but rural parts of the country would be ill-advised. A policy that would discontinue the phase-down in rural areas only, thus continuing to deprive non-rural customers in other areas of standalone voice services, plainly and facially discriminates against customers residing in urban areas. Moreover, the Commission's reasoning for this discriminatory proposal—that rural consumers need voice-only service subsidies more than their urban counterparts—is fundamentally flawed in several respects. First, the NPRM proposes to institute this policy change based purely on statistics about the affordability of *wireline* voice offerings in rural versus urban areas.[151] Even if prices for wireline services vary between rural and urban areas, the Commission completely

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147 *Id.* at 2, 5.

148 NPRM ¶ 75.

149 *Id.* ¶ 76.

150 *Id.*

151 *Id.*

ignores the availability of wireless services, which are priced consistently across both types of area. The Commission's analysis also ignores the relative poverty rates between rural and urban areas, the latter of which is higher than the former.[152] The NPRM fails to provide a sound, evidence-based justification for continuing the Lifeline subsidy for voice-only services in rural areas while eliminating it for urban consumers.

Further, like the Facilities-Based Proposal, the NPRM's proposal to inconsistently eliminate the voice-only phasedown would harm certain consumers while failing to serve the Commission's policy goals. Indeed, allowing rural Lifeline providers to continue to receive subsidies for legacy voice services creates a perverse disincentive for such carriers to invest in and deploy broadband-capable networks. The Commission must reject this misguided proposal.

C. The Commission should not adopt a self-enforcing budget mechanism.

The NPRM proposes to implement "a self-enforcing budget mechanism" for the Lifeline program. The NPRM claims that such a mechanism will "ensure that Lifeline disbursements are kept at a responsible level," "prevent undue burdens" on USF contributors, and "ensure the efficient use of limited funds."[153] The NPRM's budget cap proposals are unnecessary, would hamper the Lifeline program and harm Lifeline customers, and, to the extent such a mechanism would prioritize rural customers, would arbitrarily discriminate against customers in other areas.

A self-enforcing budget mechanism accompanied by an annual budget cap is unnecessary given the Commission's *2016 Lifeline Reform Order*. There, the Commission adopted an initial annual budget for the Lifeline program of $2.25 billion and directed the Wireline Competition Bureau to report to the Commission by July 31 of each year if total disbursements exceeded 90

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[152] *See* Alemayehu Bishaw and Kirby G. Posey, United States Census Bureau, Social, Economic and Housing Statistics Division, "A Comparison of Rural and Urban America: Household Income and Poverty" (Dec. 8, 2016).

[153] NPRM ¶ 105.

percent of the budget in the previous calendar year.[154] According to the Commission, this budget scheme would both "provide ample room for new households to enroll in the program" while allowing the Commission to "monitor the program and account for the reasons for growth in the program in order to make adjustments, if necessary."[155]

The NPRM switches course and proposes to replace this plan with a "self-enforcing budget" that would impose an annual cap on Lifeline disbursements subject to a mechanism by which support levels would automatically be adjusted in the event the cap is exceeded. The Commission proposes to forecast disbursements and expenses for six-month periods, proportionately reducing support if expenses are expected to exceed one half of the annual cap to ensure that expenses remain within the budget.[156] Alternatively, the Commission proposes reducing disbursement levels in subsequent periods to compensate for exceeding the cap in a given period.[157]

The NPRM fails to justify this policy shift or provide any explanation as to why the budget scheme adopted in the *2016 Lifeline Reform Order* was insufficient to meet the Commission's policy goals with respect to Lifeline spending. 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 Reform Order*. Yet the Commission still

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[154] *2016 Lifeline Reform Order* ¶ 402.

[155] *Id*.

[156] NPRM ¶ 106.

[157] *Id*. ¶ 107.

proposes a policy that "will inherently exclude an undetermined number of the eligible low-income consumers."[158]

A self-enforcing budget cap runs counter to the statutory principle that mechanisms to preserve and advance universal service must be "specific, predictable, and *sufficient*."[159] Reducing disbursements once the cap is exceeded or in anticipation of the cap being exceeded will result in eligible low-income consumers being unable to receive the Lifeline benefits on which they depend. This is especially true given that the NPRM proposes to use "historical disbursement levels" to establish the cap, including considering the $820 million expenditure level from 2008, the year before non-facilities-based providers were permitted to receive Lifeline support. Given that Lifeline expenditures currently total $1.5 billion, adopting an arbitrary cap based on a previous disbursement level guarantees that benefits will be cut or reduced for existing subscribers, undermining the statutory mandate that universal service be "specific, predictable, and sufficient."

A budget cap based on historical disbursement levels not only will harm existing Lifeline customers, but will prevent organic growth. According to the most recently available data, only 33% of eligible households participate in the program,[160] leaving ample room for additional growth in subscribers. Further, because use of Lifeline services is of a transient nature, demand for Lifeline services is highly variable. Although in 2016 the Commission considered how it might "establish[] a ceiling with appropriate room for organic growth" in the Lifeline

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158 Testimony of Scott Bergmann, Vice President, Regulatory Affairs, CTIA, for "Legislative Hearing on Seven Communications Bills" before the House Energy & Commerce Subcommittee on Communications & Technology (Apr. 13, 2016).

159 47 U.S.C. § 254(b)(5) (emphasis added).

160 Universal Service Administrative Company, "Program Statistics: Lifeline Participation" (2015), http://usac.org/li/about/process-overview/stats/participation.aspx.

program,[161] the Commission has now abandoned this objective, instead seeking to adopt a cap that is designed to prevent organic growth and to hamper the ability of providers to meet the varying demand of their subscribers in direct contravention of the universal service principle enshrined in Section 254(b)(5).

In proposing to adopt a self-enforcing budget mechanism, the NPRM promises not only to hamper the Lifeline program and harm its subscribers, but also yet again to arbitrarily discriminate against non-rural subscribers. Specifically, the NPRM proposes to "prioritize funding in the following order if disbursements are projected to exceed the cap: (1) rural Tribal lands, (2) rural areas, and (3) all other areas."[162] The Commission offers no justification as to why rural customers should be prioritized and how such a prioritization comports with the Commission's previous finding that Congress intended access to telecommunications service to "be provided to 'low-income consumers' *in all regions of the nation*."[163]

D. The Commission should not impose a maximum discount level for Lifeline services.

The NPRM asks "whether to apply a maximum discount level for Lifeline services above which the costs of the service must be borne by the qualifying household."[164] A maximum discount level is illogical as a matter of policy and would do more harm than good by further discouraging Lifeline participation and raising costs for providers, particularly wireless resellers, without fostering significant benefits.

As discussed above, the introduction of wireless resellers into the Lifeline program has led to significant benefits for low-income consumers. Wireless resellers introduced the

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161 *2016 Lifeline Reform Order* ¶ 401.

162 NPRM ¶ 108.

163 *1997 Universal Service Order* ¶ 335 (emphasis added).

164 NPRM ¶ 112.

innovative "no cost" Lifeline service plans that have led to the rise in program participation. A maximum discount level would undermine this progress by greatly reducing Lifeline participation. The FCC's Lifeline broadband pilot projects as well as TracFone's own surveys have shown 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%. Further, 85% of respondents to TracFone's survey who would discontinue Lifeline services if subjected to a modest copay cited inability to pay as the reason for departure from the program.

Moreover, it is unclear what a maximum discount level would accomplish as a matter of policy. Unlike the rest of the USF programs, participation in Lifeline is already means-tested to target the subsidies toward those who are the most economically insecure. TracFone's own survey has shown approximately 44% of its Lifeline subscribers are unbanked. 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. Indeed, the Commission considered and rejected a proposal that would have imposed a minimum consumer charge on Lifeline subscribers in 2012, finding that there was "insufficient data to establish that such a federal requirement would effectively protect the program from waste, fraud, and abuse without thwarting [the Commission's] goal of making vital communications services available to low-income consumers."[165]

It is also important to note that the Commission already has adopted minimum service standards for both voice and data services, a policy change designed to maximize the value of the

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165 *2012 Lifeline Reform Order* ¶ 268.

Lifeline subsidy.[166] The NPRM fails to justify the imposition of a maximum discount level and explain what such a policy will accomplish that is not already accomplished by the Commission's existing minimum service standards.

Finally, a maximum discount level would unduly interfere with the market for Lifeline services and the business models of Lifeline providers. First, the proposal would be costly or financially impossible for resellers, who would be required to invest in new billing systems to handle monthly payment from subscribers. Second, a maximum discount level requirement is akin to rate regulation, since the FCC will be dictating to the carriers the price they must set for Lifeline-supported services. Moreover, this policy threatens to violate the Commission's statutory mandate to "ensure that universal services is available at rates that are just reasonable, and affordable."[167] The Commission should thus reject its proposal to impose a maximum discount level.

V. TO ENHANCE CONSUMER WELFARE AND CHOICE, THE COMMISSION SHOULD ADOPT A "UNITS" PROPOSAL FOR LIFELINE CARRIERS TO MEET THE MINIMUM SERVICE STANDARDS.

In an appropriately titled subsection on "Enabling Consumer Choice," the NPRM invites comment on a "units" proposal offered by TracFone as an alternative way for Lifeline providers to comply with the Commission's minimum service standards for voice and broadband Internet access service.[168] TracFone commends the Commission for soliciting comment on this proposal and believes that its adoption would indeed enable meaningful consumer choice by Lifeline households.

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166 *2016 Lifeline Reform Order* ¶¶ 69-103.

167 47 U.S.C. § 254(i).

168 *See* NPRM ¶ 80 (citing Letter from Mitchell F. Brecher, Counsel for TracFone Wireless, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42 (filed Sept. 7, 2017)).

In the *2016 Lifeline Reform Order*, the Commission promulgated a series of graduated minimum service standards which Lifeline providers would have to meet in order for their voice and broadband services to receive USF support.[169] Beginning December 1, 2017, the minimum service standard for mobile voice service is 750 minutes per month; the minimum service standard for mobile broadband is 1 GB per month. TracFone's units proposal is based on a simple premise – that Lifeline consumers rather than the Commission should determine how to use their Lifeline-supported service and they should be allowed to change their usage allocation (between voice and broadband) each month, depending on their current needs and preferences, so long as the amount of service available to the consumer meets the minimum service standards.

TracFone proposed that for the year commencing December 1, 2017, wireless Lifeline providers send to each Lifeline consumer 1,000 units per month. Each unit could be used for one minute of voice service or one 1 MB of mobile broadband data service. Each Lifeline consumer would be provided with a monthly Lifeline benefit of $9.25 which could be used for voice service or for broadband Internet access. How each consumer elected to use that benefit would be for the consumer to determine based on his or her current needs and preferences. Approval of such a units plan would only require a Commission declaration that such a plan conforms with its rules. No rule change would be necessary. As explained below, a units plan is fully consistent with the Commission's minimum service standard rule.

Section 54.408(a) defines minimum service standard as "*the level of service which an eligible telecommunications carrier* ***must provide*** *to an end user in order to receive the Lifeline*

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[169] *2016 Lifeline Reform Order* ¶ 69-113. Those minimum service standards are codified at Section 54.408 of the Commission's rules, 47 C.F.R. § 54.408.

support amount."[170] A standard dictionary definition of "provide" is "to make available."[171] By delivering 1,000 units to each Lifeline customer every month, an ETC is providing those units, *i.e.*, making them available. How to use the units provided (either minutes of voice or MBs of broadband data) is for the consumer to determine.

The units proposal is consistent with the market realities that not all Lifeline customers want or need the same Lifeline services. Indeed, in the *2016 Lifeline Reform Order*, Commissioner O'Rielly stated in dissent:

> Some recipients might want a broadband connection to fill out a job application, but others might just want a simple voice service to use in case of emergency – the original purpose of the [Lifeline] program. The Commission calls such basic offerings "second class" service, but I imagine that those who will end up with no service at all might call them a Lifeline.[172]

Adopting TracFone's units proposal will ensure that all qualified Lifeline consumers are able to retain their supported service whether or not, in any given month, they choose to use the service primarily for broadband or primarily for voice.

Although the Wireline Competition Bureau stated in a public notice that bundled or "units" plans would not meet the minimum service standards because such plans "do not provide a guaranteed level" of minutes or broadband data,[173] this bureau-level public notice is in no way binding on the Commission and does not preclude the Commission from clarifying that its rules allow ETCs to meet the minimum service standards by providing units usable either for voice or broadband data as TracFone has proposed. Moreover, the Bureau's 2016 notice seems to have

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170 47 C.F.R. § 54.408(a)(1) (emphasis added).

171 *See, e.g.,* Webster's II New Riverside University Dictionary, Riverside Publishing Company, at 948 (1948). Most standard English language dictionaries contain similar definitions of "provide."

172 *2016 Lifeline Reform Order* ¶ 104.

173 *Wireline Competition Bureau Provides Guidance Regarding Designation as a Lifeline Broadband Provider and Lifeline Broadband Minimum Service Standards*, Public Notice, DA 16-1118, at 7 (rel. September 30, 2016).

rewritten the minimum service standard definition codified at Section 54.408(a) by converting it from a requirement to "provide" (*i.e.*, to make available) a minimum level of service to a requirement to "guarantee" such services under all circumstances. As long as an ETC makes available a sufficient quantity of service to meet the minimum service standards, it should be able to comply with the minimum service standards. Nothing in the rules dictates otherwise.[174]

Accordingly, a units plan which would allow Lifeline-eligible consumers to use their Lifeline-supported service as they chose, based on their own needs and preferences, would be fully consistent with the Commission's minimum service standard rule. It would also further the Commission's stated goal of encouraging adoption of broadband by low-income households without forcing consumers out of the program if, at any time, they need supported voice service more than supported broadband service. The Commission should take this opportunity to clarify that its rules permit such bundled or units plans.

VI. ADDITIONAL COMMENTS IN RESPONSE TO THE NOI

The Notice of Inquiry ("NOI") that was simultaneously adopted by the Commission in this proceeding seeks comment on whether to impose a limitation on the amount of support Lifeline participants can receive or the length of time that participants may receive such benefits.[175] Such a concept does nothing to further the goals of universal service and must be swiftly rejected.

As an affordability program, Lifeline is the only Universal Service Fund program that is means-tested. Whereas a billionaire owner of a country estate could live in a house subsidized

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[174] For example, a wireline local exchange carrier could provide a Lifeline consumer with a month of unlimited local exchange service at its tariffed rate reduced by the Lifeline subsidy. If the consumer never made or received a call during the month (perhaps, *e.g.*, if the consumer were away the entire month), the service would still be "provided," *i.e.*, made available, whether or not it was used. Under the rationale of the Bureau's September 2016 public notice, that service might not meet the minimum service standard unless the consumer actually used the service.

[175] NPRM ¶ 130.

with High Cost support so long as such home is located in a rural, insular part of the country, Lifeline participants are only eligible for the program if they meet a certain income threshold, or otherwise qualify for other federal public assistance programs. When a Lifeline-eligible household is able to lift itself out of poverty and disqualify from the underlying public benefits program, it will become ineligible for Lifeline services as well. The annual re-certification requirement provides an additional, routine check-point to ensure only those who are in need of the service receive the service.

Further, a limit on lifetime Lifeline benefits is inconsistent with the purpose of the program. The need of a person living in poverty to access telecommunications services that are vital to daily life is no less dire simply because the person has received Lifeline services in the past, and an eligible subscriber's previous use of Lifeline benefits in no way justifies denying that person access to these vital services today. To fulfill the Lifeline program's mission to "provide support for qualifying low-income consumers throughout the nation," the Commission should reject any proposals to limit this support based on lifetime benefits received.

VII. THE COMMISSION MUST REMAIN VIGILANT ON IMPLEMENTATION OF PAST REFORMS

While the Commission pursues additional new reforms to the Lifeline program, it must not distract itself from the important tasks ahead, especially the creation of the National Verifier. The Commission, which sets the policies affecting the operation of the National Verifier, also has the responsibility to oversee USAC's implementation of the National Verifier based on FCC policies. It is disconcerting then that USAC has been given seemingly unfettered control over the creation of the National Verifier that often involved *policymaking* on the part of USAC dressed up as technical implementation of the Commission's directives.

A leading case in point is USAC's decision not to provide an Application Programming Interface ("API") for the National Verifier to service providers. Such a seemingly technical decision has enormous public policy implications and should be addressed through a notice and comment proceeding rather than behind closed doors. As a threshold matter, it is unclear to TracFone the level of involvement USAC envisions carriers will have in a Lifeline recipient's application process once the National Verifier is up and running. Given that consumers will be able to verify their eligibility independently through a separate consumer portal envisioned by USAC, it is unclear how they will choose a service provider and how such service provider will be notified of their choice once their eligibility is verified.

By divorcing the eligibility verification process from the actual enrollment process, the consumer portal may inadvertently create disincentives for Lifeline carriers to invest resources that would assist consumers with the Lifeline eligibility verification and application, leading to a decrease in enrollment. Should USAC maintain the current system where qualifying low-income households continue to apply for the subsidies through their carrier of choice, allowing access to an API would be absolutely essential in enabling service providers to interface with the National Verifier directly for the purposes of submitting subscribers' personal information and supporting documentation. Given that TracFone processes more than 20,000 Lifeline applications daily, access to APIs are necessary to ensure a timely and cost-effective enrollment process. Instead, USAC seems to suggest service providers have to rely on a manual process to check for customer eligibility in the National Verifier – a process that will be time consuming, costly, and more prone to error than utilizing a USAC-provided API. USAC currently relies on using National Verifier's API to interface with state and federal eligibility databases, there simply isn't any reason why the same API couldn't be provided to service providers, especially since service

providers are already given access to NLAD's API to check against duplicate applications without significant issues that could be attributed to such access.

Another good example is USAC's decision to severely limit customer access to the service by allowing only two channels for Lifeline enrollment: an in-person channel through interacting with a Lifeline service provider's agent, or an online channel through USAC's own website for direct consumer application. It is ironic that, while the Commission is looking at proposals that could greatly curtail the efficacy of deploying field agents to sign up eligible Lifeline participants, USAC is placing even greater importance on the use of such agents as means for Lifeline enrollment. Gone are the existing channels that allow consumers to apply through a service provider's own website, a service provider's own toll-free number, or through faxing. Such a policy decision with widespread impact on Lifeline's enrollment should not be left to the discretion of USAC – an entity that lacks transparency and accountability.

Collectively, USAC's decisions to withhold the National Verifier's API and limit the number of application channels have the effect of cutting out Lifeline service providers in the Lifeline enrollment process that goes far beyond what the FCC has prescribed in the *2016 Lifeline Reform Order*. An unintended consequence will be USAC burdened with processing a lot more ineligible applications than ever before. That is because TracFone and other service providers currently prescreen the enrollment applications before sending them to NLAD for duplicate verification. Through multiple validation systems that screen out and eliminate ineligible applicants, TracFone is able to reduce by 95% the number of applications it receives to the number of applications that are eventually pinged against NLAD. It is unclear whether USAC has accurately estimated the capacity of applications it will be required to handle.

More importantly, the absence of an API and the reduction in application channels will discourage consumer participation in the Lifeline program. A consumer's user experience will be made more burdensome by the fact that he or she must manually input their personal information twice – once when submitting the application through the service provider, and a second time when checking eligibility via the National Verifier. Some eligible customers inevitably will be turned away due to input and data matching errors. Others may find the entire application process to be too time-consuming to be worthwhile. Indeed, the new standard application form from USAC is currently 6 pages long, while the Independent Economic Household worksheet is now 3 pages long.

These important decisions with such significant impact on a consumer's enrollment experience should not be left to the discretion of USAC bureaucrats without sufficient input from consumers, service providers, and elected officials. Rather than creating more work for itself by pursuing new ideas, the FCC should continue to facilitate a smooth launch of the National Verifier that puts consumers first.[176] To best ensure the success of the National Verifier, USAC and the Commission should monitor closely the rollout of the first five states, and consider what adjustments should be made with respect to customer approvals, customer satisfaction and ease of enrollment as the National Verifier is implemented in additional states.

VIII. THE ABILITY OF WIRELESS RESELLERS TO PARTICIPATE IN THE LIFELINE PROGRAM AND RECEIVE LIFELINE BROADBAND SUBSIDIES IS UNAFFECTED BY THE REGULATORY CLASSIFICATION OF BROADBAND SERVICES.

Finally, to the extent the Commission's proposal to eliminate resellers from Lifeline was motivated by its recent reclassification of broadband internet access services ("BIAS") in the

[176] For a more thorough discussion on National Verifier implementation issues, *see* Letter from Mitchell F. Brecher, Counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287, Notice of Ex Parte Presentation (filed Feb. 20, 2018).

Restoring Internet Freedom Order, TracFone seeks to clarify that the Commission has authority to utilize federal Lifeline program funds to provide affordable broadband services to low-income households no matter the regulatory classification of BIAS. In the *Restoring Internet Freedom Order,* the Commission returned both fixed and mobile BIAS to its regulatory classification as an "information service."[177] The FCC concluded that it has authority under Section 254(e) of the Act to continue providing universal service funds to carriers that provide broadband service over facilities-based, broadband-capable networks that also support voice service.[178] In light of its proposal to discontinue Lifeline support for services provided over non-facilities-based networks, the FCC declined to address what effect, if any, reclassification might have on Lifeline program support for non-facilities-based providers of information services.[179]

Reclassification does not affect the Lifeline program, including the use of funds for non-facilities-based broadband services. Congress gave the FCC the flexibility to establish the types of services – telecommunications or otherwise – that are to be supported by Federal universal service dollars.[180] Congress also made clear its intent that the FCC facilitate access to "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges" to all Americans.[181] To help achieve this important goal,

177 *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, WC Docket No. 17-108, FCC 17-166, at 8 (rel. Jan. 4, 2018) ("*Restoring Internet Freedom Order*").

178 *See Restoring Internet Freedom Order* ¶ 193; NPRM ¶¶ 77-79. The agency reasons that since voice service is a supported service under the statute and the FCC's rules, it can provide funding for facilities-based, broadband networks that also support voice service irrespective of the regulatory classification of BIAS.

179 *See id.*

180 *See* 47 U.S.C. § 254(c)(1)-(3).

181 47 U.S.C. § 151. This sentiment is repeated elsewhere in the Communications Act with a focus on the deployment of advanced services. *See, e.g.*, 47 U.S.C. §§ 157(a) ("It shall be the policy of the United States to encourage the provision of new technologies and services to the public."), 230(b)(1) ("It is the policy of the United States to promote the continued deployment of the Internet and other interactive computer services and other interactive media.").

Congress authorized the FCC under Sections 254 to support broadband, even as a standalone service, using USF resources. Were that not enough, the FCC can use its ancillary authority to further Congress's command to make access to advanced telecommunications and information services available to all Americans at just, reasonable, and affordable rates.

A. Section 254 authorizes the Commission to support broadband services through the Lifeline program.

Section 254 provides the FCC clear, textual authority to support broadband services directly through the universal service Lifeline program. "Universal service" is defined generally as "an evolving level of telecommunications services . . . taking into account advances in telecommunications and *information technologies and services* under § 254(c)(1) "[182] Congress instructed the Commission to define the "services that are supported by Federal universal service support mechanisms" with guidance from the Joint Board and based on the universal service principles in Section 254(b).[183]

The principles upon which the agency "shall base policies for the preservation and advancement of universal service" manifest Congress's intent that universal service funds may be used to support broadband services, whether those services are classified as telecommunications services or information services.[184] The first statutory principle is that "[q]uality services should be available at just, reasonable, and affordable rates."[185] This includes "[a]ccess to advanced telecommunications *and information services*."[186] The Commission also must consider "[s]uch other principles as the Joint Board and the Commission determine are

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182 47 U.S.C. § 254(c)(1) (emphasis added).

183 *See id.* §§ 254(a), (b).

184 *Id.* § 254(b).

185 *Id.* § 254(b)(1).

186 *Id.* §§ 254(b)(2), (3) (emphasis added).

necessary and appropriate for the protection of the public interest, convenience, and necessity."[187]

The Joint Board recommended in 2010 that the FCC "specifically find that universal support should be directed where possible to networks that provide advanced services," in addition to voice services.[188] The FCC adopted the Joint Board's recommendation in 2011, acknowledging that "Congress made clear in section 254 that the deployment of, and access to, information services—including 'advanced' information services—are important components of a robust and successful federal universal service program."[189] Both the Joint Board and the FCC concluded that it would be in the public interest to expand the list of USF-eligible services to include broadband services.[190]

B. The Commission can support BIAS using Lifeline funds using its ancillary jurisdiction.

The Commission is well within its ancillary authority under Title I to use Lifeline program funds to support BIAS. Two conditions must be met before the Commission may exercise ancillary authority. First, the "the subject of the regulation must be covered by the Commission's general grant of jurisdiction under Title I of the Communications Act," and second, the subject of the regulation must be "reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities."[191] Both conditions are easily satisfied in this instance.

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[187] *Id.* § 254(b)(7).

[188] *Federal-State Joint Board on Universal Service,* Recommended Decision, 25 FCC Rcd. 15598, 15625 (2010) ("*2010 Joint Board Recommended Decision*").

[189] *See Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 17679, 17686 (2011) ("*USF/ICC Transformation Order*").

[190] *2010 Joint Board Recommended Decision* at 1562; *USF/ICC Transformation Order* at 17679.

[191] *Comcast Corp. v. FCC*, 600 F.3d 642, 636 (D.C. Cir. 2010).

The FCC's general jurisdiction extends to "all interstate and foreign communication by wire or radio" originating and/or received within the United States.[192] Section 4(i) authorizes the FCC to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions."[193] This includes its fundamental mandate "to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges,"[194] as well as its express mandate under Section 254.

Section 254 directs the FCC to implement a universal service support structure consistent with the principles identified in Section 254(b).[195] Included among these key principles are the precepts that "[a]ccess to advanced telecommunications and *information services* should be provided in all regions of the Nation," including low-income consumers and those in rural, insular, and high-cost areas at rates reasonably comparable to rates charged for similar services in urban areas.[196] The Commission therefore has ample authority to use USF resources to support information services.

Accordingly, even if Section 254 did not give the Commission direct authority to extend USF support to BIAS—which demonstrably is not the case—such support would fall within the Commission's ancillary authority under Title I.

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192 47 U.S.C. § 152. *See id.* § 153(59) (defining "communication by wire" as "the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.").

193 *Id.* § 154(i).

194 *Id.* § 151.

195 *See id.* § 254(b).

196 *Id.* §§ 254(b)(2), (b)(3). *See also* Tex. Office of Pub. Util. Counsel v. FCC, 183 F.3d 393, 444 (5th Cir. 1999) (affirming the Commission's use of Title I to complement its authority under Section 254).

IX. CONCLUSION

In light of the foregoing, TracFone respectfully urges the Commission to make any modifications to its rules governing the federal Lifeline program in a manner that is consistent with the comments provided herein.

Respectfully Submitted,

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February 21, 2018

An Analysis of the "Unconfirmed" and "Deceased" Subscriber Findings in the 2017 GAO Lifeline Report

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February 2018

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Preface

For several years, the FCC has been actively working to improve the efficiency and accountability of its Lifeline program, working to root out waste, fraud and abuse that had crept into the program over time. While most evidence suggests those efforts have been highly successful a GAO report released in June 2017, *Additional Action Needed to Address Significant Risks in FCC's Lifeline Program [GAO 17-538]*, has garnered a lot of attention and raised the specter that the Lifeline program is still plagued by abuse. With that as the backdrop, the authors set out to evaluate the GAO's 2017 report and examine the relevance of the findings therein to the Lifeline program *today*.

Despite the title, much of the GAO 2017 report deals with issues related to oversight of the Universal Service Fund program *in toto* – i.e., growth in the USF contribution factor, concerns related to the how USAC holds funds prior to distribution, and the potential for universal service fund contributors to understate their payment obligations, – and not to the Lifeline program specifically. The authors do not address those portions of the report. The 2017 report also reiterates concerns raised in an earlier (2015) GAO report regarding the need for evaluation of how well the program is meeting its targeted purpose. Since GAO recognizes in its report that the FCC has responded to those 2015 concerns and is in the midst of that evaluation, those concerns are also not the subject of this paper. The analysis herein is limited to that portion of the report that relates to the concerns about the enrollment of ineligible subscribers in the Lifeline program – specifically GAO's analysis of subscriber lists from 2014 – and the conclusions that GAO and others have subsequently drawn from that analysis. This report also addresses GAO's concern that the sheer number of ETCs (eligible carriers) may hamper efficient administration of the Lifeline program and thus result in improper enrollments.

The authors have been evaluating matters related to the operation of the FCC's universal service fund since its inception and have written extensively on opportunities for waste, fraud, and abuse in the High Cost Fund portion of USF. GAO is to be lauded for attempting to identify waste, fraud, and abuse (or opportunities for these to occur) in the Lifeline Program. However, the subscriber list data from 2014 have changed so substantially since then (especially with respect to the elimination of a large number of potentially problematic subscribers) that they simply do not reflect the condition of Lifeline subscribership in 2017 or 2018.

Susan M. Gately and Helen E. Golding **February 2018**

Executive Summary

Ongoing references to GAO's 2017 Lifeline Report, now itself almost a year old, ignore that it analyzed a snapshot of Lifeline data that is more than three years old – data from 2014 not 2017. The snapshot was taken in the midst of a period of dramatic changes to Lifeline program subscriber verification processes and enrollment numbers. Any problem subscribers that GAO did identify in the 2017 Report were likely off the Lifeline rolls three years ago (and it is not even clear the subscribers that GAO failed to confirm back in 2014 were, in fact, ineligible at that time to receive the Lifeline program benefit).

- Enrollment in the Lifeline program has dropped by more than 40% (more than 7-million) since its peak in 2012, when program changes directed by the FCC began being implemented.
- More than 1.5-million subscribers were dis-enrolled during 4Q14 and 1Q15 alone (the quarter when GAO sampled the data discussed in the 2017 Report and the next quarter).
- The much referenced "deceased" subscribers found by GAO represent 6/100$^{\text{ths}}$ of 1% (0.06%) of the data analyzed – well below standard data error rates (which could have occurred in either the Lifeline data set or Social Security Death Index or both).
- GAO's analysis was conducted on a snapshot of data from a newly constructed database; corrections resulting from a "scrubbing" of that data completed in the months following GAO's snapshot were not included in the data it used.
- The Lifeline database GAO used for its analysis was not constructed or intended to be used as part of the Lifeline eligibility verification process; the information in that database was also not the basis for payments to Lifeline providers.
- GAO attempted to cross-match different fields within that Lifeline database against a dozen different state and federal government-maintained data sets that were being maintained for uses distinct from the Lifeline eligibility verification process.
- Most of the instances in which GAO's could not "confirm" subscriber eligibility, are in hindsight, explainable by the process used – not by subscriber ineligibilty.
- GAO expressed concern with the number of carriers participating in the Lifeline program (known as ETCs). The vast majority of the Lifeline providers are wireline incumbent local exchange carriers – specifically the same rural carriers (RLECs) that comprise most of the participants in the high cost portion of the Universal Service Fund – not wireless carriers and not resellers.

An Analysis of the "Unconfirmed" and "Deceased" Subscriber Findings in the 2017 GAO Lifeline Report

Susan M. Gately and Helen E. Golding*

In 2012 the FCC announced a multi-year, multi-part plan to improve the efficiency and accountability of its Lifeline program, the last stages of which are still being developed and implemented. As a result of those efforts, the number of subscribers has dropped by more than 40% since 2012 (the year of peak enrollment).[1] In 2017, the GAO released an analysis of a snapshot of a non-random sample of Lifeline subscriber data from 2014 and reported that it was unable to confirm the eligibility of 36% of those subscribers.[2] It also reported finding a minuscule percentage of subscribers (6/100ths of a percent) that it identified as being deceased.[3] It is worth noting that the dataset GAO analyzed, known as NLAD, was not part of the Lifeline verification or disbursement process. But even aside and apart from the problems inherent in GAO's analysis that predisposed it from the start to a high "unconfirmed" result, the analysis is, quite simply, outdated. The unquestioning repetition of certain findings from 2014 by reference to the GAO 2017 Report has unfortunately given ongoing life to the outdated analysis.

Adding to the problem, some have seized upon the "unconfirmed" or "deceased" subscribers reported in the 2017 GAO Report as signs of rampant abuse or serious structural problems with the Lifeline program. Our analysis strongly suggests that such conclusions are not supported. GAO's inability to make an exact "match" of the 2014 USAC NLAD subscriber lists with programmatic data sets maintained by other government entities mostly reflects the difficulty of matching up two unrelated data sets (including one still under construction), and the failure of some providers to timely remove de-enrolled subscribers from NLAD;[4] it does not reliably identify improper Lifeline enrollments.

> The *Lifeline program* is one of four set up by the FCC to address the goal of universal service. Its purpose is to ensure that low-income consumers have access to telecom services. Significantly smaller in magnitude than the fund that provides "high-cost" support to telecom service providers it accounted for only about 15% of close to $9-billion in USF program disbursements last year.

* The Authors are respectively the Principal of and Consultant to SMGately Consulting, LLC each of whom has more than 30 years of experience in economic and policy analysis in the telecom arena

GAO's approach

GAO is to be lauded for attempting to identify sources of waste, fraud, and abuse in the Lifeline Program and, despite inherent problems, those portions of its report that relate to its analysis of 2014 data might have been illuminating at the time. However, the 2014 subscriber data GAO attempted to "confirm" and the databases from which that data came have changed so substantially since then that they shed little light today. That, in combination with the fact that the data snapshot for the GAO analysis occurred right in the midst of a significant drop-off in the Lifeline rolls (more than 1.5-million subscribers during the last quarter of 2014 and first quarter of 2015 combined)[5], renders the results meaningless for purposes of evaluating potential waste, fraud and abuse in the Lifeline program in 2018.

GAO conducted an analysis of what it described as a "nongeneralizable selection"[6] of Lifeline program data from 2014 and identified what it deemed to be *potentially* improperly enrolled subscribers. It found, "Based on its matching of subscriber to benefit data, GAO was unable to confirm whether about 1.2 million individuals of the 3.5 million it reviewed, or 36 percent, participated in a qualifying benefit program, such as Medicaid, as stated on their Lifeline enrollment application."[7] As the old saying goes, hindsight is 20/20, and looking back now at the database snapshot GAO had to work with from 2014 and the methodology it employed to "confirm" subscribers' eligibility, it is remarkable that GAO was able to confirm, or "match", as many of the subscribers as it did.

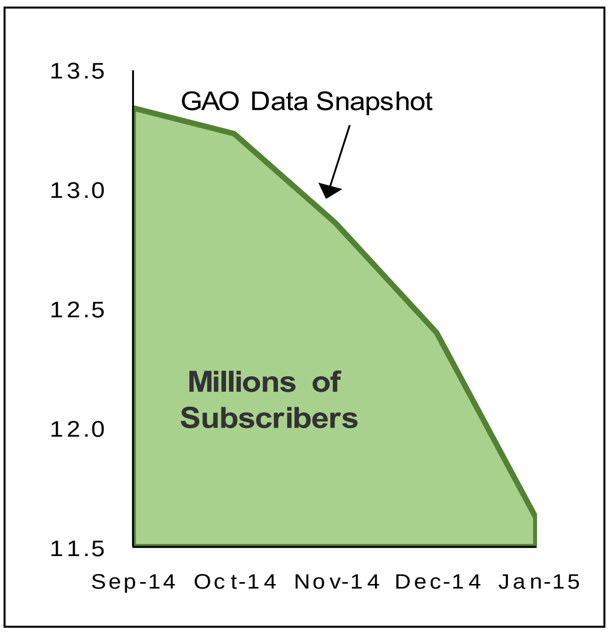

Figure 1: Enrollment decline at time of GAO data snapshot

NLAD was never the right list of subscribers for GAO to analyze

The National Lifeline Accountability Database, (NLAD) (the dataset used by GAO in its analysis) was not designed to be used as part of the Lifeline disbursement process[8] or to aid in verifying subscriber eligibility. Its function was to aid in the identification and prevention of duplicate subsidies flowing to the same household from multiple providers and nothing more.[9] At the time of GAO's review, NLAD was still under construction and had not yet been

"scrubbed" for accuracy.[10] USAC review of individual provider NLAD entries versus subscriber claims made through Form 497 have revealed that carriers do not always purge the NLAD data set of names of individuals that are no longer being subsidized. For one provider a USAC audit in February of 2015 identified almost 50% more names in the NLAD database than the provider reported on FCC Form 497 (used for disbursement purposes) – a function of the fact that adequate procedures where not yet in place to remove the names of de-enrolled subscribers in the new database.[11] As a practical matter, GAO's analysis of the 2014 NLAD seems to presume an equivalency between the set of individuals in NLAD at that time and the set of individuals that were eligible for and receiving a subsidy from the program – that equivalency simply did not exist.

"Unconfirmed is not synonymous with "ineligible"

Instead of indicating subscribers that were improperly enrolled, GAO's 'unconfirmed" subscribers could have arisen just as easily from a coding error in one or more of the state-maintained program eligibility data sets or simply from having the information being matched appear slightly differently in the two databases being compared. Put differently, GAO's inability to "confirm" eligibility through this process, and the conclusions some have drawn from that inability, is analogous to concluding that your car keys *were stolen* because you didn't find them in the first place you looked. In fact, GAO identified less than 12,000 subscribers that could be viewed as improperly receiving benefits out of the NLAD dataset of more than 10.5-million "unique" entries (less than 1/8th of one percent.)[12] Everything else represents nothing more than GAO not finding the keys in the first place it looked.

GAO attempted to match its *sample* from the November 2014 snapshot of the NLAD database against state-maintained SNAP and Medicaid data-sets for FL, GA, MI, NE, NY, and OH and against the federal SSI dataset. Datasets that Lifeline providers did not have access to and that were not used as part of the Lifeline eligibility verification or disbursement process in place at the time.

Explanations for and corrections to GAO's findings

The oft-cited observation that GAO was unable to "match" 36% of the subscribers in its sample from the 2014 NLAD dataset begs the following question: Assuming that 100% of names in the 2014 NLAD dataset had been "eligible" subscribers, and knowing what we know now, should there have been an expectation that 100% of names would be "confirmed" via matching against other state and federal datasets? If the answer to that question is no (which it is), it is instructive to examine what level of "unconfirmed" subscribers should have been expected, given the then-existing data set?

As it turns out, most, if not all, of the 1.2-million cases in which GAO was unable to confirm subscriber eligibility (using its November 2014 sample) are explained by causes unrelated to the "ineligibility" of those participants in the Lifeline program. We have identified three primary drivers that explain in large part GAO's inability to match a portion of NLAD subscriber entries to state and federal benefit databases:

- Effects of the annual recertification and de-enrollment process
- Effects of the use of uncorrected (raw) data from the new NLAD database
- Effects of population mobility

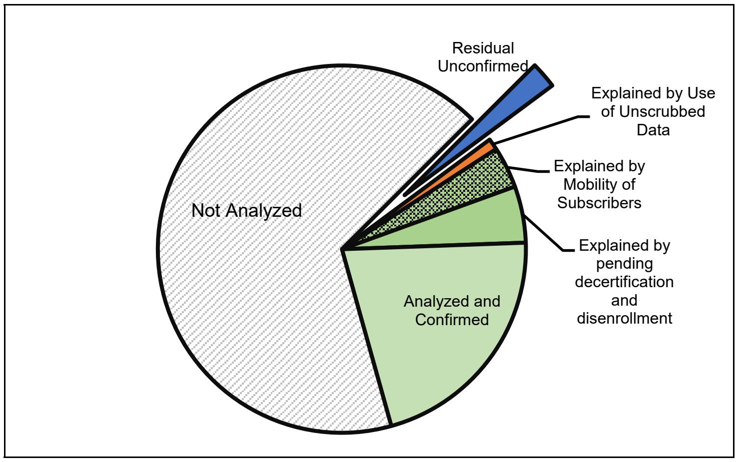

Figure 2: Almost all of the unmatched NLAD data in GAO's sample is explained by other drivers

Each is discussed in more detail in Appendix A. Taken together, and using the conservative end of the adjustment ranges identified in the Appendix, we find that about 1-million of the 1.2-million subscribers whose program eligibility GAO was unable to confirm in November 2014 are explained not by "ineligibility," but rather by the nature of the exercise.

If performed as described in its Report, GAO's methodology would have also identified as "unconfirmed" those cases where (a) the *subscriber* is different than the *benefit qualifying person (BQP)* (example – the subscriber is a guardian of a low-income disabled minor receiving SSI benefits),[13] (b) the subscriber's eligibility was confirmed as qualified via the NLAD *dispute resolution process* (the applicant offered proof of identity or address despite failing automated third party identity validation or USPS address validation)[14], or (c) the subscriber is a participant in a state-run *address confidentiality program* (in place to protect victims of domestic or sexual violence or stalking).[15]

Attempts to draw conclusions about the efficacy of the Lifeline enrollment program from the flawed analysis discussed above also proceed from the mistaken assumption that mismatches between the NLAD and other state-run datasets indicate problems with Lifeline enrollments rather than errors or deficiencies in the cross-referenced state and federal eligibility datasets (or some combination of the two). As an example, states have 3 years to update subscriber data in Medicaid datasets, yet GAO utilized these datasets as part of its analysis.[16]

Relevance of deceased subscriber findings

A second GAO finding that has attracted attention – that through this process, GAO "found 6,378 individuals reported as deceased who are receiving benefits" – suffers from many of the same methodological flaws. There is no way to verify whether the finding represents anything more than data entry errors. Those identified as deceased represent less than 6/100ths of 1% of the more than 10-million subscribers in the NLAD database. This is well below what might have been expected given standard data entry error rates – particularly since GAO was using the unscrubbed data set. That said, improvements continue to be made in the coordination of death information among programs, and Lifeline administration has benefitted from these improvements.[17]

GAO also remarked upon *opportunities* for waste, fraud, and abuse resulting from the Lifeline programs reliance "on over 2,000 Eligible Telecommunication Carriers that are Lifeline providers to implement key program functions, such as verifying subscriber eligibility," a "complex internal control environment" it deemed to be "susceptible to risk of fraud, waste, and abuse as companies may have financial incentives to enroll as many customers as possible." As a factual matter, GAO overstated the number of ETCs enrolling subscribers and receiving disbursements by about 50%, but more importantly, the majority of "Lifeline" ETCs are small rural incumbent LECs (RLECs) providing wireline service (most of whom receive less than $1,000 per month in Lifeline disbursements). The large number of participating ETCs is a direct function of the fragmented nature of the rural telecommunications landscape in the US – particularly for wireline services. The "risk of fraud, waste, and abuse" from these RLECs participation in the FCC's (3 times larger) USF High Cost Fund is far greater than anything available to them through the Lifeline program.

If "financial incentives [for carriers] to enroll as many customers as possible" exist they would operate regardless of whether there were one, a hundred, or ten thousand Lifeline providers. And a financial incentive to enroll customers can and should be a good thing for a program designed specifically to expand the reach of the US communications network to include otherwise unserved segments of the population – particularly given the large segment of the Lifeline-eligible population that is not presently participating in the plan and "connected."[*] A problem only exists if there is both a financial incentive *and the ability* to fraudulently enroll customers – something the controls the FCC has implemented over the last four years (and continues to implement) make highly unlikely.

Ineligible subscribers that were in the program in 2014 have likely been long removed

The above observations and adjustments to GAO's analysis are not meant to suggest any disagreement with its objective of improving the accuracy and accountability of Lifeline program administration. However, even to the extent that GAO's analysis of 2014 data raises legitimate concerns about program operations at the time, the reliance on that analysis in a mid-2017 Report remains problematic. Changes targeted at addressing those concerns were already underway in 2014 and have made a dramatic difference in the administration of the Lifeline program. Close to 1-million subscribers were dropped from the Lifeline rolls in the 4th quarter of 2014 and another 600,000 were dropped over the next three months in the 1st quarter of 2015.[18] This represented 12% of the total lifeline subscriber base. The actual number and percentage of participants that were de-enrolled was even greater, because the total change in subscribership includes newly qualified and enrolled subscribers that offset some of the drops. De-enrollment of subscribers was much higher in the sample states where GAO (matching against state verification databases) was unable to confirm 935,000 subscribers: by the end of March 2015, those states had 700,000 fewer subscribers (even accounting for new subscribers).[19] Thus, within a few months of the GAO's snapshot of Lifeline eligibility, the reforms already underway in November 2014 were showing impressive results. Not content with past successes, however, the FCC continues to work with USAC and providers on improving the mechanisms to support accuracy and accountability in Lifeline administration.

Appendix A: Primary drivers that explain much of GAO's inability to match a portion of NLAD subscriber entries to state and federal benefit databases

Effects of annual recertification and de-enrollment of subscribers: *15% to 30%*

Lifeline subscribers' eligibility must be recertified by providers or states annually. All subscribers enrolled as of January 2014 had to be processed for recertification at some time during the calendar year (by 12/31/14).[20] Only 39% of those subject to recertification in 2014 remained enrolled by year end (61% were de-enrolled and removed from the database).[21] Since subscribers remain eligible for the program throughout the recertification process as many as 100% of those subscribers could have been in the 11/14 NLAD database snapshot sampled by GAO (just prior to the date for removal from the rolls). Based on the number of subscribers needing recertification in 2014, we calculate that up to 30% of total November 2014 NLAD listings could have been ready to be eliminated from that database within a month.[22*] Even if one posits that half of the recertifications and associated purging of customers were completed well in advance of the year-end requirement, the timing of GAO's analysis would still explain the inability to "match" 15% of the dataset – or almost half of GAO's "unconfirmed" subscribers.

Effects of uncorrected data in the new NLAD database snapshot: 3%

In November 2014 when GAO took a snapshot of the NLAD database to use in its analysis USAC was still in the process of "scrubbing" the initial 10-million-plus entries into the new NLAD dataset (a process not completed until the spring of 2015).[23] Corrections made to the dataset resulting from that work would not have been in the data snapshot used by GAO. The data fields subject to USAC's scrubbing and correction would have been the very same information (subscriber name, date of birth, last four digits of social security number and address) that GAO was using to match the NLAD with other eligibility datasets. Even a small discrepancy in information would have prevented GAO from confirming subscriber eligibility, hampering its ability to match the relevant data points. We analyzed characterizations of the data scrubbing results and conservatively estimate that a minimum of 3% of the total NLAD database entries used by GAO in its analysis and possibly many more, were subsequently corrected.[24] Put differently, the use of raw, unscrubbed data explains GAO's inability to "confirm" eligibility of at least 3% of the subscribers in its sample.

Effects of population mobility across databases and time: 11% to 15%

GAO's data matching exercise required an exact match in most or all relevant fields, including the subscriber's address (or portions thereof). Population mobility (change of address during the year), particularly for this population, is in the range of 11% to 15% annually.[25] Any movement by subscribers during the year or timing differences in updating addresses between the NLAD and the various eligibility databases would have prevented GAO from confirming a match. Thus, the use of address information as a component of the program eligibility matching process used by GAO introduces an expected "mismatch" rate in the range of 11% to 15% into the data analysis attributable to population mobility.

END NOTES

[1] Lifeline enrollment has dropped from a high of 17.6-million in June 2012 to 10.3-million in December 2017. See, USACs Appendix LI08 from "Federal Universal Service Support Mechanisms Fund Size Projections" for the First Quarter of 2013 and Second Quarter 2018. Accessed on Feb 14, 2018 at http://www.usac.org/about/tools/fcc/filings/default.aspx

[2] *Additional Action Needed to Address Significant Risks in FCC's Lifeline Program,* Government Accountability Office Report, GAO 17-538, publicly released in June 2017, at 3 and 38. Accessed on February 14, 2018 at https://www.gao.gov/products/GAO-17-538

[3] GAO reported finding 6,378 NLAD entries for individuals it deemed to be deceased out of 10.5-million unique individuals it evaluated in the database. GAO 17-538 at 38 and 43.

[4] See discussion at 2-3 *infra.*

[5] FCC Universal Service Monitoring Report, period ending September 2016, released January 17. 2017 at Table 2.6. Accessed at https://www.fcc.gov/document/wcb-releases-2016-universal-service-monitoring-report.

[6] GAO 17-538 at 69.

[7] GAO 17-538, "Highlights" page.

[8] A fact acknowledged by GAO 17-538 at 39 "Because Lifeline disbursements are based on providers' reimbursement claims, not the number of subscribers a provider has in NLAD, our analysis of NLAD data could not confirm actual disbursements associated with these individuals."

[9] GAO 17-538 acknowledges NLAD's purpose and function (see footnote 1 of Appendix 1 at 69) "NLAD is a Lifeline enrollment database designed to help carriers identify and resolve duplicate claims for Lifeline-supported service and prevent future duplicates. NLAD provides a means for carriers to check on a real-time and nationwide basis whether the consumer is already receiving a Lifeline Program-supported service." Beginning in January 2018 counts of subscribers in the now-mature NLAD dataset are being used in place of Form 497. USAC *High Cost Low Income Committee Briefing Book*, January 29, 2018 at 148. Accessed February 14, 2018 at http://usac.org/_res/documents/about/pdf/bod/materials/2018-01-29-hcli-briefing-book.pdf.

[10] GAO 17-538 at 46.

[11] USAC *High Cost Low Income Committee Briefing Book*, January 29, 2018, at 138 and 141.

[12] GAO identified 5,510 "duplicate" and 6,378 "deceased" subscribers out of the 10.5-million unique entries it evaluated in the NLAD dataset. GAO 17-538 at 43.

[13] See USAC NLAD Frequently Asked Questions, Question 12. Accessed on February 14, 2018 at http://www.usac.org/li/about/faqs/faq-nlad.aspx, and the USAC NLAD input template, accessed on February 14, 2018 at http://www.usac.org/li/tools/nlad/nlad-resources.aspx.

[14] See USAC NLAD Frequently Asked Questions: Dispute Resolution, Questions 35 – 40, accessed on February 14, 2018 at http://www.usac.org/li/about/faqs/faq-nlad.aspx and USAC Dispute Resolution guidelines, accessed on February 14, 2018 at http://usac.org/li/tools/nlad/dispute-resolution/default.aspx.

15 The Address Confidentiality Program (ACP) refers to state or locally-run programs that provide confidential addresses to victims of domestic violence. While the actual title of the program may vary by state, within NLAD documentation, ACP is an umbrella term that includes them all. See http://www.usac.org/_res/documents/li/pdf/nlad/NLAD-Glossary.pdf.

16 GAO 17-538 at 41.

17 In November 2017, USAC implemented new procedures for Lifeline enrollment that make use of the SSA Death Master File (DMF) and other data sources to determine if a person may be deceased. See, USAC *High Cost Low Income Committee Briefing Book*, January 29, 2018, at 148.

18 See endnote 5 *supra*. USAC reported subscribers for end of Sept 2014, December 2014 and March 2015 of 13.34-million, 12.40-million and 11.79-million respectively.

19 See, table below. Data taken from USAC Appendix LI08 from "Federal Universal Service Support Mechanisms Fund Size Projections" for the First, Second and Third Quarters of 2015. Accessed on Feb 14, 2018 at http://www.usac.org/about/tools/fcc/filings/default.aspx

	Q3 2014	Q4 2014	Q1 2015
FLORIDA	945,537	924,110	892,523
GEORGIA	502,696	480,839	431,714
MICHIGAN	688,387	585,716	491,966
NEBRASKA	11,036	10,162	9,774
NEW YORK	1,099,501	955,785	862,822
OHIO	633,983	564,622	487,945
TOTALS	3,881,140	3,521,234	3,176,744

20 Public Notice, *Wireline Competition Bureau Provides Guidance Regarding the 2013 Lifeline Recertification Process*, DA 13-1188, Released May 22, 2013.

21 USAC Annual Report for 2015, at 11. Accessed on February 14, 2018 at http://www.usac.org/_res/documents/about/pdf/annual-reports/usac-annual-report-2015.pdf .

22 USAC reported 4.9-million de-enrollments in 2014, equal to 36% of the 13.34-million subscribers enrolled in the lifeline program at the end of the 3rd quarter of 2014. See Tables 2.7 and 2.8 of the FCC Universal Service Monitoring Report, period ending September 2015, released 12/25/2015. 2017. Accessed at https://www.fcc.gov/document/wcb-releases-2015-universal-service-monitoring-report.

23 GAO 17-538 at 46.

24 The magnitude of the improvement in accuracy resulting from the USAC's scrubbing of the NLAD data was estimated by analyzing the number of duplicates detected by GAO pre-scrub [GAO 17-538 at 4] with the number of duplicates detected and eliminated by USAC [GAO 17-538 at 44]. The effect of the data scrubbing on this one objective (elimination of duplicates) resulted in 3% of the subscribers being identified as duplicates and removed from the lifeline rolls. It is highly likely that the scrubbing corrected other records as well, with respect to other relevant data points considered in the GAO matching exercise.

25 https://www.census.gov/data/tables/2014/demo/geographic-mobility/cps-2014.html, Table 1.1